

Chapter 468-310 WAC

PREQUALIFICATION OF FERRY SYSTEM CONTRACTORS

WAC

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WAC 468-310-010 General requirements. Contractors desiring to offer bids for the performance of contracts for the construction, improvement or repair of a ferry operated by the Washington state ferries or for the repair, overhaul, or the dry-docking of any ferry operated by Washington state ferries must first be prequalified by the Washington state department of transportation (hereinafter "department") and shall file a standard prequalification questionnaire and financial statement (hereinafter "prequalification questionnaire") using forms furnished by the department. Contractors desiring to offer bids for the performance of contracts for the construction, improvement, or repair of ferry terminal facilities shall submit for consideration a prequalification questionnaire (DOT form 420-010) in accordance with chapter 468-16 WAC. The prequalification questionnaire shall include a report of the financial ability of the contractor, its organization, key personnel, equipment and plant facilities, and experience. Complete answers to all questions and the furnishing of all information as indicated by column headings or otherwise throughout the prequalification questionnaire are an essential part of compliance with these rules. A prequalification questionnaire from a contractor not previously prequalified under these rules, who desires to bid on a project must be received no later than 15 calendar days prior to the bid opening (or such other time as the department may specify with respect to any project) in order to receive consideration for that bid opening. The contractor shall authorize the department to obtain all information which it may deem pertinent with respect to the contractor's financial worth, assets and liabilities, and the adequacy of its performance of contracts performed by the contractor in whole or in part within the preceding three years. The department shall issue a certificate of prequalification to any contractor found to possess the qualifications prescribed.

Prequalification may be established in any calendar quarter and is renewable annually. Information submitted in the prequalification questionnaire will be used to establish the initial prequalification, classification and maximum capacity ratings of the contractor for its current fiscal year or remaining portion thereof plus one additional calendar quar-

ter. Prequalification will be renewed annually thereafter or at other times as designated by the department.

The department shall not make available for public inspection and copying financial information supplied by or on behalf of the contractor for the purpose of qualifying to submit a bid or proposal as provided herein. The foregoing restriction shall not, however, prohibit the department from giving such information in evidence or in pretrial discovery in any court action or administrative hearing involving the department and the contractor.

The department may at any time during which the certificate of prequalification is in effect demand a new prequalification questionnaire and if the same is not provided within sixty days of the date of request, the certificate of prequalification held by the contractor will be considered forfeited and the contractor will not be permitted to bid on contracts let by the department for those classes of ferry system construction or repair enumerated in WAC 468-310-050(6) until a new statement has been received by the department.

If at any time during the valid period of the certificate of prequalification the latest prequalification questionnaire on record with the department ceases to represent fairly and substantially the financial position or the equipment and plant facilities of the contractor to whom the certificate was issued, it shall be the responsibility of that contractor to so notify the department and to refrain from further bidding on ferry system construction or repair contracts until their prequalification has been confirmed or revised. Failure to give such notice will constitute a violation of these rules.

Qualified contractors shall be notified of impending expiration of their qualification and will be provided the necessary questionnaire forms for renewal at least forty-five days before the expiration date.

The department reserves the right to require a personal interview with any contractor when considering their qualifications.

[Statutory Authority: RCW 47.60.680 and 47.60.690. WSR 99-03-025 (Order 189), § 468-310-010, filed 1/11/99, effective 2/11/99. Statutory Authority: 1983 c 133. WSR 83-19-014 (Order 84), § 468-310-010, filed 9/12/83.]

WAC 468-310-020 Contents of standard prequalification questionnaire and financial statement. The standard prequalification questionnaire and financial statement shall be transmitted to the director of Washington state ferries. The contractor shall provide the following information:

(1) The name, address, phone number, contractor registration number and type of organization (corporation, copartnership, individual, etc.) of the contractor seeking prequalification.

(2) The contract size in dollars and the class or classes of work for which the contractor seeks prequalification (such as vessel dry-docking and hull repairs, vessel electrical repairs, etc.) as enumerated in WAC 468-310-050(6).

(3) Ownership of the contractor and if a corporation, the name of the parent corporation (if any) and any affiliated companies or subsidiaries.

(4) An accurate and complete record of the fifteen largest contracts in excess of ten thousand dollars performed by the contractor in whole or in part within the preceding three years both in Washington and elsewhere, including subcontracts, giving the contract amount, the date completed, the class of work, the name, address and phone number of the owner/agency representative, and any liquidated damages assessed against the contractor by an owner arising out of the performance of the contract.

(5) The principal officers and key employees showing the number of years each engaged in the class or classes of work for which the contractor seeks prequalification. The department may require resumes of such personnel as deemed proper for making its determination.

(6) Except as otherwise provided in this section or WAC 468-310-050(8), a contractor requesting prequalification certification to perform work in excess of ten million dollars shall submit copies of its audited annual statements for the previous three years as audited by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The financial statement shall not be more than twelve months old when submitted. Any wholly owned subsidiary corporation may file the latest consolidated financial statement of its parent corporation in lieu of a financial statement prepared solely for such subsidiary providing the financial statement otherwise meets the requirements of the preceding two sentences. If a consolidated financial statement is filed on behalf of a subsidiary corporation, a bid of the subsidiary corporation will be considered only if there is on file with the department a letter from the parent corporation guaranteeing performance by the subsidiary corporation of its contract with the department of transportation in an amount at least equal to the amount of the bid. A letter of guarantee by a parent corporation may cover a specific contract bid by its subsidiary or all contracts bid by its subsidiary within a stated period of time.

(7) A list of all major items of equipment to be used in those classes of work for which prequalification certification is requested including the original cost, age, location and condition of such equipment. The schedule shall show whether the equipment is owned, leased or rented. All major items of useful equipment should be listed even though fully depreciated but no obsolete or useless equipment should be included. In the event the contractor seeks prequalification certification to perform work on ferry vessels, the schedule shall also describe plant facilities of the contractor including shipyards, dry docks, repair facilities and other plant facilities.

(8) Such other information as may be required by the prequalification questionnaire.

(9) Notwithstanding the provisions of this section, a contractor who wishes to prequalify for the department's procurement of new auto ferries for the Port Townsend/Keystone ferry route, pursuant to the department's 2008 invitation for bids, shall submit a reviewed financial statement for at least one year in the previous three years, plus annual finan-

cial statements for two additional years in the previous three years. The reviewed financial statement shall be prepared by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The form and quantity of financial statements shall be specified in the department's invitation for bids and is subject to modification by addendum during the bid process. This subsection applies in lieu of the form and quantity of audited financial statements specified in subsection (6) of this section for the Port Townsend/Keystone vessel procurement only. It does not replace or modify any other provisions in this chapter or governing prequalification statutes that authorize the department to evaluate a contractor's financial ability to perform the contract.

[Statutory Authority: RCW 47.56.780, 47.60.680, and 47.60.690. WSR 08-19-004, § 468-310-020, filed 9/4/08, effective 10/5/08. Statutory Authority: RCW 47.60.816. WSR 04-11-004, § 468-310-020, filed 5/5/04, effective 6/5/04. Statutory Authority: RCW 47.60.680 and 47.60.690. WSR 99-03-025 (Order 189), § 468-310-020, filed 1/11/99, effective 2/11/99. Statutory Authority: RCW 47.60.680. WSR 88-19-040 (Order 114), § 468-310-020, filed 9/14/88. Statutory Authority: 1983 c 133. WSR 83-19-014 (Order 84), § 468-310-020, filed 9/12/83.]

WAC 468-310-030 Criteria for determining an unsatisfactory record of performing previous contracts.

The department may refuse to prequalify a contractor which it determines has an unsatisfactory record of performing previous contracts. In making such a determination the department shall consider the record of the contractor in performing any contract in excess of \$10,000 in value performed in whole or in part within the preceding three years in accordance with the following criteria, to wit, whether or not the contractor has with respect to such contract:

(1) Furnished records, including but not limited to drawings, plans, manuals, and financial records as required by the contract;

(2) Submitted all drawings and plans to the department for review and approval as required by the contract;

(3) Fulfilled the requirements of any contractual guarantee or warranty;

(4) Diligently pursued execution and completion of work or delivery of vessels in accordance with contractual time schedules as modified by extensions of time by the owner;

(5) Cooperated with the owner in the performance of the contract including providing the owner access to the work for inspection and providing the owner timely notices of tests and trials as required by the contract;

(6) Performed the contract in a workmanlike manner with adequate quality assurance;

(7) Otherwise completed the contract in compliance with contract plans and specifications.

[Statutory Authority: 1983 c 133. WSR 83-19-014 (Order 84), § 468-310-030, filed 9/12/83.]

WAC 468-310-040 Criteria for determining an unsatisfactory record of integrity.

The department may refuse to prequalify a contractor which it determines has an unsatisfactory record of integrity in the performance of previous contracts or in connection with prequalification or bidding. In making such a determination, the department may

consider any of the following as evidence of a lack of integrity:

(1) Conviction of violating a federal or state antitrust law by bidrigging, collusion, or restraint of competition between bidders, or conviction of violating any other bid-related or contract-related federal or state law. Conviction of a contractor's principal officers and agents of any such offenses will be imputed to the contractor;

(2) Willful concealment of any deficiency in the performance of a prior contract;

(3) Falsification of information or submission of deceptive or fraudulent statements in connection with prequalification, bidding, or performance of a contract;

(4) Debarment of the contractor by a federal or state agency or by a municipal corporation unless the period of the debarment has terminated;

(5) Default on a previous contract.

[Statutory Authority: 1983 c 133. WSR 83-19-014 (Order 84), § 468-310-040, filed 9/12/83.]

WAC 468-310-050 Classification and capacity rating. (1) Except as otherwise specified in this section, each contractor seeking prequalification under these rules will be classified for one or more of the classes of work listed in subsection (6)(a) of this section and will be given a maximum capacity rating in accordance with its financial ability, the adequacy of its equipment and plant facilities to perform the class or classes of work for which it has sought prequalification, the extent of the contractor's experience in performing contracts of the class or classes for which prequalification is sought, and the adequacy of the experience and capability of the contractor's officers and key employees in performing contracts of the class or classes for which prequalification is sought. The maximum capacity rating will limit the quantity of uncompleted work which the contractor shall have under contract at any one time either as a prime contractor or a subcontractor.

(2) Except as provided in subsections (7) through (9) of this section, the maximum capacity rating for a contractor applying for a rating in excess of fifty thousand dollars will be ten times the contractor's net worth as set forth in the standard prequalification questionnaire and financial statement. A properly executed letter of credit from an acceptable financial institution may be considered as an asset increasing the contractor's maximum capacity rating by the amount of the credit, but without the use of a multiplier. The maximum capacity rating for a contractor not submitting an audited financial statement as provided in WAC 468-310-020(6) will be ten million dollars: Provided, That in all cases the contractor's maximum capacity rating may be reduced to an amount considered by the department to be within the contractor's actual capacity based upon its organization, personnel, equipment and plant, and experience.

(3) Consideration will be given to raising, by an amount not to exceed fifty percent, the maximum capacity rating of a contractor who qualifies with respect to actual capacity based upon organization, personnel, equipment and plant facilities, and experience, upon receipt of evidence of a current bonding capacity of such additional amount with a corporate surety. Such evidence shall be in the form of a letter of commitment executed by an officer of the surety who is authorized to bind

the surety. Notwithstanding the provisions of this subsection, the maximum capacity rating for a contractor not submitting an audited financial statement as provided in WAC 468-310-020(6) will be ten million dollars.

(4) The certificate of prequalification issued by the department will establish a contractor's maximum capacity rating which will be subject to reduction by the total value of its current uncompleted work regardless of its location and with whom it may be contracted to determine the contractor's bidding capacity at the particular time.

(5) Notwithstanding the provisions of this section, a contractor will be allowed to submit a bid for an amount up to \$50,000 on a class or classes of work for which it is prequalified without regard to any financial maximum capacity rating or financial current capacity rating: Provided, That the contractor's current capacity may be reduced to an amount considered by the department to be within the contractor's actual capacity based upon its organization, personnel, equipment and plant facilities, and experience.

(6)(a) Construction, repair and maintenance work on ferry vessels for which prequalification certification under these rules may be granted are classified as follows:

Class 81	Vessel construction and renovation;
Class 82	Dry-docking and hull repairs;
Class 83	Vessel metal fabrication repairs;
Class 84	Vessel electrical repairs;
Class 85	Vessel miscellaneous repairs;

(b) A contractor currently prequalified under RCW 47.28.070 to perform those classes of work required in the construction, improvement and repair of ferry terminal facilities will initially be deemed prequalified under these rules to perform such classes of work with the same capacity rating as approved by the department for highway related work.

(7) Notwithstanding the provisions of this section, proposers who wish to prequalify for the department's construction of new 130-auto ferries, pursuant to the department's 2003 request for proposals, must submit evidence of their ability, if awarded the contract, to obtain contract security in the amount of thirteen million dollars. The department estimates such amount to be adequate to protect one hundred percent of the department's estimated exposure to loss on the vessel construction contract, as calculated by the department prior to issuance of the request for proposals. Such amount shall be specified in the project request for proposals and is subject to modification by addendum during the request for proposals process. The actual contract security amount for the project construction contract will be a percentage of the successful proposer's total bid price. Such percentage shall be specified in the construction contract within the request for proposals. For the new 130-auto ferries contract, this provision applies in lieu of the maximum capacity rating formula specified in subsection (2) of this section.

(8) Notwithstanding the provisions of this section or WAC 468-310-020, proposers who wish to prequalify for the department's construction of new 130-auto ferries, pursuant to the department's 2003 request for proposals, shall, in addition to the evidence of contract security required in subsection (7) of this section, submit an audited financial statement for at least one year in the previous three years, plus annual

financial statements for two additional years in the previous three years. The audited financial statement shall be performed by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The form and quantity of financial statements shall be specified in the project request for proposals and is subject to modification by addendum during the request for proposals process. For the new 130-auto ferries contract, this provision applies in lieu of the quantity of audited financial statements specified in WAC 468-310-020.

(9) This subsection shall apply to the Port Townsend/Keystone vessel procurement only and shall be used in lieu of the requirements of subsections (1) through (5) of this section. It does not replace or modify any other provisions in this chapter or governing prequalification statutes. The department may prequalify a contractor under a Class 81 classification to bid on the Port Townsend/Keystone vessel procurement pursuant to this section based on the department's evaluation of the following criteria:

(a) Whether the contractor has adequate equipment and plant facilities available to accomplish the work;

(b) Whether the contractor has trained personnel available to perform the work;

(c) Whether the contractor has demonstrated experience in the type of work;

(d) Whether the contractor has an organization and technical staff with the size, training, experience and capability to accomplish the work;

(e) Whether the contractor has adequate financial resources to perform the type and size of work, or the ability to timely secure such resources. In evaluating such financial resources, the department may consider the contractor's overall financial condition including, but not limited to:

(i) Level of capitalization;

(ii) Cash flow;

(iii) Level of business activity;

(iv) Credit history;

(v) Debts;

(vi) Assets; and

(vii) Ability to obtain financing, including but not limited to, irrevocable lines of credit, and parent company guarantees.

A contractor does not have adequate financial resources when, based upon the totality of the circumstances, it lacks the financial resources reasonably expected of a contractor capable of performing the work on time and without interruption.

[Statutory Authority: RCW 47.56.780, 47.60.680, and 47.60.690. WSR 08-19-004, § 468-310-050, filed 9/4/08, effective 10/5/08. Statutory Authority: RCW 47.60.816. WSR 04-11-004, § 468-310-050, filed 5/5/04, effective 6/5/04. Statutory Authority: RCW 47.60.680 and 47.60.690. WSR 99-03-025 (Order 189), § 468-310-050, filed 1/11/99, effective 2/11/99. Statutory Authority: RCW 47.60.680. WSR 88-19-040 (Order 114), § 468-310-050, filed 9/14/88. Statutory Authority: 1983 c 133. WSR 83-19-014 (Order 84), § 468-310-050, filed 9/12/83.]

WAC 468-310-060 Review of restrictions in prequalification certificate. Any contractor dissatisfied with restrictions on the dollar amount or class of work approved in its prequalification certificate may request in writing, a review

of their questionnaire and qualification rating with the director of Washington state ferries together with supporting documentation. The request must be filed within thirty calendar days of the date of receipt of the notice of qualification and must specifically state the basis for the request. The director or designee shall advise the applicant of his or her decision of the reconsideration within thirty calendar days of receipt of the request.

[Statutory Authority: RCW 47.60.680 and 47.60.690. WSR 99-03-025 (Order 189), § 468-310-060, filed 1/11/99, effective 2/11/99. Statutory Authority: 1983 c 133. WSR 83-19-014 (Order 84), § 468-310-060, filed 9/12/83.]

WAC 468-310-070 Joint ventures. The department recognizes two distinct types of joint ventures for prequalification, classified as follows:

(1) Individual project joint venture: An association of two or more prequalified firms formed for the specific purpose of submitting a joint bid on a particular project. The bid of an individual project joint venture will be accepted provided all members of the joint venture are currently prequalified. At least fifteen days prior to the date set for opening bids, the members of the joint venture must execute and file with the department, for its approval, a standard form of "individual project statement of joint venture" setting forth the name of the joint venture, the members of the joint venture, the title of the improvement and the names of those authorized to bind the joint venture. (Corporate minutes authorizing the joint venture must accompany the joint venture request for prequalification.)

(2) Continuing joint venture: An association of two or more firms formed for the purpose of submitting joint bids on projects to be let over a period of time. The bids of continuing joint ventures will be accepted if prequalification has been satisfactorily established by the following methods: A standard questionnaire and financial statement combining the assets and liabilities of all members of the venture shall be submitted in the name of the joint venture, together with a photostatic or certified copy of the joint venture agreement. Such agreement shall contain a provision which will unequivocally bind the parties, jointly and severally, to any joint venture contract entered into thereunder. It shall also specify the name under which the joint venture will operate and the names of those authorized to sign proposals, bonds, contracts, estimates and other documents and/or instruments in connection with the department's contracts. Corporate minutes authorizing the joint venture must accompany the joint venture request for prequalification. The department may require such further documentation as it may deem necessary. A continuing joint venture agreement will be executed as follows: An individual member of the joint venture shall sign in his individual capacity showing the name of the firm under which he is doing business. All partners both general and limited of a copartnership shall sign under the name of the copartnership. An authorized officer shall sign on behalf of a corporation with the corporate seal affixed. A certified copy of the resolution of the board of directors adopting the joint venture and authorizing the officer to enter into a joint venture agreement on behalf of the corporation shall accompany the agreement.

[Statutory Authority: 1983 c 133. WSR 83-19-014 (Order 84), § 468-310-070, filed 9/12/83.]

WAC 468-310-080 Nonrenewal and revocation of prequalification certificate. The department may refuse to renew a contractor's prequalification certificate, or may revoke a contractor's prequalification certificate in accordance with the criteria contained in WAC 468-310-030 and 468-310-040. In denying or revoking a contractor's prequalification certificate under this section or under WAC 468-310-030 or 468-310-040, the department shall specify the period of disqualification which shall not exceed three years. At the end of such period, the contractor may again apply for prequalification as provided in these rules.

[Statutory Authority: 1983 c 133. WSR 83-19-014 (Order 84), § 468-310-080, filed 9/12/83.]

WAC 468-310-090 Notification and opportunity for a hearing. Notification of the department's intent to (1) refuse to prequalify a contractor, (2) refuse to renew a contractor's prequalification certificate, or (3) revoke a contractor's prequalification certificate will be made in writing and will be served upon the contractor by mail, properly addressed with postage prepaid. The intended action set forth in the written notification shall become final unless the contractor serves on the assistant secretary for marine transportation, a written request for a hearing thereon within 10 days after receipt of the notification. Upon receipt of such a request, the department shall afford the contractor a hearing in accordance with chapter 34.04 RCW relating to contested cases.

[Statutory Authority: 1983 c 133. WSR 83-19-014 (Order 84), § 468-310-090, filed 9/12/83.]

WAC 468-310-100 Delegation of authority. The director of Washington state ferries is delegated authority to administer the provisions of chapter 133, Laws of 1981 and chapter 468-310 WAC. The director of Washington state ferries is delegated authority to exercise all powers vested in the secretary of transportation by WAC 468-10-234 relating to the adoption of a final order granting, denying or revoking a prequalification certificate pursuant to chapter 133, Laws of 1983. The director of Washington state ferries may further subdelegate authority to exercise all powers vested in the secretary of transportation by WAC 468-10-234. A person to whom such authority is subdelegated shall be deemed to be the designee of the secretary of transportation as that term is used in WAC 468-10-234.

[Statutory Authority: RCW 47.60.680 and 47.60.690. WSR 99-03-025 (Order 189), § 468-310-100, filed 1/11/99, effective 2/11/99. Statutory Authority: 1983 c 133. WSR 83-19-014 (Order 84), § 468-310-100, filed 9/12/83.]