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By Administrative Rules SOS at 11:19 am, Dec 06, 2024

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 15—Contractor Prequalification**

PROPOSED AMENDMENT

7 CSR 10-15.010 Prequalification to Bid of Certain Contractors. The Missouri Highways and Transportation Commission is deleting the form which follows the rule in the *Code of State Regulations* and amending sections (1) through (6).

PURPOSE: This amendment clarifies and streamlines the contractor prequalification process by updating and condensing the forms, requiring electronic submission of the form, and outlining the circumstances in which the form should be used.

(1) Definitions.

(A) The following definitions apply to this rule:

1. “Commission” means the Missouri Highways and Transportation Commission and all its members, jointly and severally;

2. “Department” means the Missouri Highways and Transportation Department, which may also be commonly referred to as the Missouri Department of Transportation. “Department” includes the chief engineer and all other officers and employees of the department, unless the text of this rule clearly indicates a contrary construction is intended;

3. “Chief engineer” means the chief engineer of the department; or if that position is vacant, then it means the assistant chief engineer;

4. “Highway project” means any type or combination of excavation, construction, demolition, maintenance, fabrication, paving, dredging, repair, erection, electrical, landscaping, seeding and mulching, erosion control, installation, manufacturing, transportation, or other work, done under a contract with the commission or department on or for any existing or proposed road, highway, or bridge in the Missouri state highway system;

5. “Contract” means a written agreement between a contractor and the commission or department, including, but not limited to, a purchase order or similar writing. A contract may include two (2) or more different highway projects as part of a required or permissive combination; and

6. “Cost estimate” means the contractor’s own estimate, in the form of a complete and responsive bid, submitted by a contractor for a highway project[;].

[7. All bids shall be submitted electronically using the department’s electronic bidding process.]

(B) For purposes of this rule, work performed for or under contract with the commission is also performed for the department, and work performed for or under contract with the department is also performed for the commission. The term “work” shall be construed liberally in determining whether work has been performed for the department or commission. Work performed as a subcontractor on a project for the department or commission shall be deemed work performed for the department.

(C) For purposes of this rule, bids opened by the department are deemed to be opened by or for the commission as well, unless the circumstances clearly require a contrary conclusion.

(2) Application of this Rule.

(A) *[This rule does not apply to—*

1. Any contractor which has a valid prequalification contractor questionnaire on file with the

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department, and which contractor (including, in the case of a partnership or joint venture, any component contractor) has performed any work for the department within the five (5) years preceding the date that contractor's bid for any highway project, or combination of projects, shall be opened by the department;

2. Any contractor which has a valid prequalification contractor questionnaire on file with the department, which has performed no work for the department within the five (5) years preceding the date that contractor's bid for any highway project or combination of projects shall be opened by the department, and which submits a bid (or cost estimate) on each individual highway project at or below two (2) million dollars; and

3. A contractor which meets the requirements of either paragraph (2)(A)1. or 2. of this rule is exempt from having to be prequalified to bid under section 227.105, RSMo, effective August 28, 1996.

(B)] This rule applies [only] to a contractor which intends to or does submit a bid (or cost estimate) [in excess of two (2) million dollars] for any one (1) highway project, whether that highway project is bid separately or in combination with any other highway project(s); and further, that contractor must have performed no highway project work for the department in the five (5) years preceding the date the department shall or does open that contractor's bid on that highway project].

(3) Contractor Prequalification Required to Submit Bid, When—

(A) The department shall not accept any bid (or cost estimate) [in excess of two (2) million dollars] for a single highway project (whether it is bid individually or in combination with others), which bid is submitted by a contractor [which has performed no highway project work for the department during the preceding five (5) years], unless the department has determined that the contractor is prequalified, **under this rule**, to bid;

(B) A bid (or cost estimate) on any highway project submitted by a contractor which is not prequalified [or exempt from prequalification] under [subsection (2)(A) of] this rule shall not be accepted by the department or commission. Acceptance by the department **or commission** only occurs if the highway project bid [of] by the contractor is received, opened, and the total bid publicly [read] **posted** by the department. [If part of a combination bid is legally acceptable and another portion is not (such as in permissive combinations which are not qualified "All or none"), the department shall accept that portion which was legally bid and shall not accept the rest.] If the department inadvertently errs in accepting a bid on a highway project which it should not have accepted under this rule and section 227.105, RSMo, the department, prior to any contract award, shall notify all contractors which bid on that highway project and the commission of the erroneous acceptance of the bid from a contractor which was not properly prequalified under this rule, showing that the matter has been corrected, and that action shall render null and void the prior erroneous bid acceptance;

[(C) A contractor which is neither prequalified nor exempt from qualification under this rule may be prequalified by satisfying the specific criteria set forth below in section (4) of this rule;

(D) Effective on or after August 28, 1996, the fact that a contractor has a standard contractor questionnaire on file with the department by the appropriate date does not allow that contractor to bid on all highway projects. It only permits that contractor to bid on those highway projects which have a cost estimated by the contractor at two (2) million dollars or less, if that contractor has done no work in the preceding five (5) years.]

(4) Contractor Prequalification Responsibility.

(A) Contractor (which, with reference to a partnership or joint venture, includes all component contractors jointly and severally) [which has performed no work for the department during the

preceding five (5) years] must supply the following information to the satisfaction of the department, on a prequalification contractor questionnaire form obtained from the department, in order to become prequalified to bid on any highway project *[with a completion cost estimated by the contractor through its bid to be in excess of two (2) million dollars]*:

1. *[The same information required of any other contractor on a standard contractor questionnaire form. The prequalification contractor questionnaire form requests this information also. It is not necessary for a contractor to complete both forms to be prequalified;*

2.] The type(s) of highway project[s] in which the contractor desires to be prequalified. A contractor may apply to be prequalified in any one (1), more than one (1), or all types of highway project work. For the purposes of this rule, the various general highway project work types are—

A. Earthwork, including excavation, fill, grading, hauling, wasting, compaction, and/or landscaping, including signing and signaling and other related work;

B. Bituminous pavement, including signing and signaling, guardrails, shoulders, and other related *[structures] work*;

C. Portland cement concrete pavement, including signing and signaling, guardrails, shoulders, and other related *[structures] work*;

D. Bridges, culverts and other similar structures, including signing and signaling, guardrails, shoulders, and other related structures; and

E. Other miscellaneous highway project types of work (which the contractor must describe specifically);

[3]2. The contractor's experience in performing the type(s) of highway project for which prequalification is requested. The contractor must include the construction experience of the contractor's key personnel necessary to complete the type(s) of highway project designated;

[4]3. The contractor's ability to complete the type(s) of highway project that the contractor has requested to be prequalified in. At a minimum, this shall include a showing of the contractor's ability to complete highway projects in a timely manner, by furnishing to the department a listing of all projects completed within the last five (5) years similar to the type(s) of highway project that the contractor requests prequalification on;

[5]4. *[The type(s) of highway projects the contractor is qualified to perform. This showing can be made by]* **A contractor requesting to be approved to bid on highway projects in excess of two (2) million dollars must submit** a signed and notarized *[writing] document* from the contractor's surety bonding company or broker, stating the type(s) of highway projects (as designated above) for which that company or broker will issue a performance and payment bond in an amount in excess of two (2) million dollars, to cover the highway project work and debts of that contractor;

[6]5. *[Satisfactory evidence of t]***The contractor[']s current] shall confirm they can obtain** insurance coverage.*[, including comprehensive general liability, worker's compensation, and automobile/vehicular coverage. The evidence of insurance shall, at a minimum, demonstrate that the contractor has the same insurance required by the commission of other contractors to perform construction work on a state highway project. Or, the contractor and its insurance company or broker shall submit notarized statements that the contractor is able to and]* **The contractor** shall obtain the required types and amounts of insurance **required by the commission and section 227.105, RSMo**, with the required endorsements, prior to commencing work if the contractor is awarded a *[Missouri state] highway project contract*;

[7]6. The contractor's designation of a Missouri resident individual or firm as its agent for the receipt of legal process. This designation must include the complete name, street, *[and]* mailing address, and phone number of that designated agent;

[8]7. The contractor's listing of all current work in progress, whether or not the work is a highway project. This listing shall include the total value of all such work not yet completed, and the contract and estimated actual completion dates of these projects;

[9]8. The equipment that the contractor has available for the type(s) of highway project for which prequalification is requested. For the purposes of this rule, equipment is available if the contractor currently owns, rents, or leases that equipment, or if the contractor has the present ability to rent, lease, or purchase such equipment so that it is available for use on such designated type(s) of highway project. The designation of available equipment shall include a specific list of all *[classes of]* equipment available to perform the type(s) of highway project work designated for prequalification, *and whether they are currently owned, leased, or available for rent, lease, or purchase*; and

[10]9. Where practical, the contractor shall provide from its highway project surety bonding company, copies of records from the most recent audit issued of that company (and not the brokerage company which merely sells the surety bonds issued by another company). Audit report documents and records from independent public accounting or certified public accountant (C.P.A.) firms are preferred, rather than internal bonding company audits. This information should indicate the general financial stability of the surety bonding company the contractor anticipates using to bond its highway projects in Missouri. If the bonding company is listed in the "United States Department of the Treasury, Fiscal Service, Department Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" and is authorized to issue surety bonding instruments in Missouri, only a photocopy of the bonding company's audit assets and liabilities balance sheet is necessary. The department prefers that the bonding company **electronically** submit these audit record copies directly to the *[department]* **Construction and Materials Division**. If it is not practical to obtain or submit these documents from the surety bonding company's most recent audit, a complete and detailed explanation of why it is not practical to provide that information at present, when that information will be provided to the department, or why that information is not necessary to be provided, must be submitted in lieu thereof, with supporting documentation. The department will determine if the justification for why it is not practical to obtain or submit the bonding company audit information is satisfactory.

(B) Submitting the Prequalification Contractor Questionnaire to the Department.

1. The prequalification contractor questionnaire must be completed fully and accurately, *[personally signed and notarized, and mailed or]* **signed by a representative of the contractor with the authority to sign on the company's behalf or their designee. The prequalification contractor questionnaire must be submitted electronically** *[delivered (including electronic means)]* to the *[department]* **Construction and Materials Division** so that it is received by the appropriate departmental staff no less than seven (7) calendar days prior to the date and hour *[the contractor anticipates bidding on any Missouri highway project. However, if the contractor already has a standard contractor questionnaire on file with the department, it may bid on any Missouri highway project which the contractor's bid estimates will cost two (2) million dollars or below]* **of the published letting date.**

2. The prequalification contractor questionnaire must be *[mailed or delivered to:]* **electronically submitted to the Construction and Materials Division at the email address provided on the department's website.**

*[Division Engineer, Construction and
Materials
Missouri Department of Transportation
1617 Missouri Boulevard*

PO Box 270

Jefferson City, MO 65102-0270]

(C) *[Delivery may be in person, by a representative or agent, or by any United States Postal Service or express delivery company, without restriction, or electronically, as long as it is complete and received in the appropriate office of the department no later than seven (7) calendar days prior to the date and hour the contractor's bid will be opened by the department.]*

(D) *[If the contractor fails to [supply] **electronically submit** the **completed** form to the department within this specified time frame, [submits an incomplete form which lacks any necessary information requested,] or does not submit any form at all, the contractor shall not be allowed to bid on any highway project [(if no valid standard contractor questionnaire is on file with the department). Additionally, the contractor shall not be allowed to bid on any highway project which that contractor estimates to cost in excess of two (2) million dollars.]*

(E) *The contractor will be notified in writing if the prequalification contractor questionnaire is incomplete or insufficient in any respect. If practicable, notification will be made by facsimile transmission as well as by first class United States mail, or electronically, so that the contractor is aware of the problem prior to submitting any highway project bid to the department].*

(5) Departmental Review and Contractor Prequalification.

(A) Once the department receives the **complete electronic** form from the contractor *[within the specified seven- (7-) day time period prior to the date and hour of the bid opening of the highway project]*, the department will review the prequalification contractor questionnaire form for accuracy and completeness, and will verify such information contained or attached to the form as the department deems appropriate. The department's review of the contractor's form will be conducted by the unit or staff designated by the chief engineer *[in writing for that purpose]*.

(B) If, in the discretion of the designated staff of the department, the contractor's prequalification contractor questionnaire and attachments show that the contractor should be qualified to bid on highway projects of the type(s) the contractor has requested prequalification for, the department will notify the contractor *[in writing by first class United States mail, and/or] electronically. [The department may also notify the contractor by phone or facsimile transmission if a highway project bid opening date is approaching, but there is no obligation upon the department to do so.]* The contractor may also contact the department by phone*[, facsimile transmission,] or [electronically,] email [or in writing,]* to confirm that its prequalification contractor questionnaire has been approved.

(C) If, in the discretion of the designated staff of the department, the contractor's prequalification contractor questionnaire and attachments do not show that the contractor is qualified to bid on any one (1) or more of the type(s) of highway project for which the contractor has requested prequalification, that departmental staff shall notify the contractor applicant *[in writing, or] electronically[,]* that the application is still undergoing review, and shall refer the matter to the chief engineer; or if the chief engineer is unavailable, the assistant chief engineer; or if they are unavailable, to the appropriate division engineer. That individual shall make the final administrative decision on behalf of the department, as to whether the contractor is or is not prequalified to bid on any or all types of highway projects for which prequalification is requested. That individual shall act no later than twenty-one (21) calendar days after the date the completed prequalification contractor questionnaire with all attachments was received. **The contractor applicant shall be notified electronically of the final administrative decision.**

(D) If a contractor is dissatisfied with the final administrative decision made by the department on its prequalification contractor questionnaire, the contractor may request in writing, or electronically, within twenty-one (21) calendar days of the date of *[mailing] receiving the final administrative*

decision by the department *[of the administrative review]* that the commission review the final administrative decision made by the department. A contractor is not obligated to seek commission review in order to preserve its rights. Any request for commission review shall be made to:

Commission Secretary
Missouri Highways and
Transportation Commission
105 West Capitol Avenue
PO Box 270
Jefferson City, MO 65102-0270
MHTC@modot.mo.gov

The request for review shall state specifically and completely the legal and factual basis upon which the contractor believes its prequalification application was denied in error. At the commission's sole discretion, the commission shall decide if it wishes to review the final *[departmental]* **administrative** decision. If the commission elects to *[itself]* review that decision, it shall make its review when it deems best, upon the records and documents in the possession of the department. There will be no further briefing, personal appearance, argument, or presentation to the commission by the contractor or its representative, agent, or attorney. The commission's decision on that record shall supersede the prior decision of the department, and shall then constitute the final administrative decision. If the commission elects in its sole discretion to not review the department's decision, then that departmental decision shall stand as the final administrative decision.

(E) A contractor which was denied prequalification to perform any type of highway project may reapply for prequalification for that or other types of highway projects in sixty (60) **calendar** days or more from the date of the final administrative decision by the department (or commission), or when the circumstances which caused the denial have changed significantly, whichever is less. If the contractor reapplies on the basis of a significant change of circumstances, a complete explanation and supporting documentation showing the significant change of circumstances must be attached, in addition to all other information and documentation required by this rule.

(F) The department and commission will not entertain appeals, requests for reconsideration, or other objections from any third parties that a contractor was prequalified wrongfully or improperly.

(6) Effect of Contractor Prequalification.

(A) The contractor shall be entitled to bid on all highway projects *[having a cost estimated by the contractor below two (2) million dollars; and on those highway projects having a cost estimated by the contractor in excess of two (2) million dollars]* for which it is prequalified to bid by the final administrative decision of the department (or where applicable, the commission). If the contractor bids on any highway project *[having a cost estimate by that contractor in excess of two (2) million dollars]* for which it has not been prequalified, its bid may be rejected¹, *subject to subsection (6)(B) of this rule*.

(B) *[If a contractor has a valid standard contractor questionnaire or prequalification contractor questionnaire on file with the department, and then does any highway project work for the department or commission, the contractor is entitled to bid on any highway project work without limitation or restriction. Any limitations on the type or estimated cost of highway project work which previously applied to a contractor which has any valid contractor questionnaire on file with the department no longer apply when that contractor has completed any highway project work for the department or commission within the five- (5-) year period prior to having its bid on a highway project opened. Further, a contractor who has submitted a valid prequalification contractor questionnaire may bid*

on any type of highway project, including those highway project types which the department (or commission) did not prequalify that firm for, if the contractor's bid or cost estimate of that highway project is not in excess of two (2) million dollars.

(C)] A contractor remains prequalified[, based upon its prequalification contractor questionnaire, for a period of one (1) year. At that time, the contractor will have up to three (3) months to refile another prequalification contractor questionnaire (if it has not done any highway project work for the department or commission in the last five (5) years before the contractor's bid will be opened) if the contractor desires to bid on highway projects having a cost estimate in excess of two (2) million dollars. However, the contractor may file a standard contractor questionnaire if the contractor has done any work for the department or commission within the five- (5-) year period preceding the date of bid opening of a highway project with a cost estimated by that contractor in excess of two (2) million dollars which the contractor will bid on; or if the contractor will not bid during the next year on a highway project having a cost estimated by that contractor in excess of two (2) million dollars.]
if they have been awarded a contract by the commission in the last 12 months. The contractors that remain prequalified must review a verification report to ensure the contractor information on file is accurate and current. The verification report will be sent from the department electronically to the email address on file on an annual basis. If no information needs to be changed, the contractor must sign and electronically submit, as noted in (4)(B)2. The verification report must be signed by a representative of the contractor with the authority to sign on the company's behalf or their designee. The verification report must be received on or before the expiration date to extend their prequalified status by one (1) year. If there is a lapse of time, or information needs to be updated, a new a new prequalification contractor questionnaire should be completed in its entirety and electronically submitted for review.

[(D) A contractor which filed a valid and acceptable prequalification contractor questionnaire, and then did any highway project work for the department or commission, does not need to file another contractor questionnaire form during the balance of the period in which that prequalification contractor questionnaire remains valid. That contractor will be viewed in all legal respects as if it had a standard contractor questionnaire on file. Once a prequalification contractor questionnaire is filed validly, it serves the same functions as a standard contractor questionnaire for all purposes.

(E) Any contractor which files a prequalification contractor questionnaire unnecessarily, because it has done highway project work for the department or commission within at least the last four (4) years, will not have the questionnaire rejected for that reason. Instead, the contractor will be informed in writing, or electronically, that its contractor questionnaire has been accepted, and that the contractor could have filed a standard contractor questionnaire instead.]

(C) A contractor remains prequalified for a period of one (1) year from the date of approval if not successfully awarded a contract by the commission.

(7) Miscellaneous Provisions.

(A) All information submitted by a contractor, its bonding company or others to the department relevant to a determination of minimum qualifications to bid under section 227.105, RSMo, and all information used by the department to determine the contractor's prequalification to bid under that statute and this rule, is protected from disclosure pursuant to the provisions of that statute and section 610.021, RSMo.

(B) The provisions of this rule are intended to be severable. If any provision is found by a court of competent jurisdiction to be invalid, unlawful, or unconstitutional, the remaining provisions of the rule are intended to be valid unless the court finds the valid provisions of the rule are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed

the commission would have promulgated the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the commission's intent or with section 227.105, RSMo.

AUTHORITY: sections 226.130 and 227.105, RSMo 2016. Emergency rule filed Aug. 15, 1996, effective Aug. 28, 1996, terminated Nov. 22, 1996. Emergency rule filed Nov. 12, 1996, effective Nov. 22, 1996, expired March 31, 1997. Original rule filed, Aug. 15, 1996 as 7 CSR 10.15.900 changed to 7 CSR 10-15.010, effective Feb. 28, 1997. Amended: Filed Dec. 8, 2016, effective July 30, 2017. Amended: Filed Dec. 6, 2024.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed amendment with the Missouri Highways and Transportation Commission, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*