

[PREQUALIFICATION FOR BIDDING] PUBLIC IMPROVEMENT CONTRACTS FOR  
HIGHWAY AND BRIDGE CONSTRUCTION  
CONTRACTOR PERFORMANCE EVALUATION

**The following rules are repealed in their entirety.**

[734-010-0200

*Repealed Rules*

*As required by OR Laws 2003, Chapter 794, Section 334, OAR 731-010-0010 through 731-010-0170 are repealed effective March 1, 2005. The repealed rules will continue to apply to the solicitation of Public Contracts first advertised, but if not advertised then entered into, before March 1, 2005.*

*Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430*

*Stats. Implemented: ORS 279C.300, sec. 334 & 336, ch. 794, OL 2003*

734-010-0210

*Effective Date*

*OAR 734-010-0200 through 734-010-0380 become effective on March 1, 2005 and apply to Public Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.*

*Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430*

*Stats. Implemented: ORS 279C.300, sec. 334 & 336, ch. 794, OL 2003*

734-010-0220

*Definitions*

*The following definitions apply to terms used in Division 10 rules:*

*(1) "Applicant" means any individual or legal entity submitting a Contractor's Prequalification Application to ODOT.*

*(2) "Authorized contractor representative" means the person authorized by the contractor to sign the prime contractor performance evaluation.*

*(3) "Bidder" means any individual or legal entity submitting a proposal to an advertisement for a contract.*

*(4) "Bid opening" means the day on which the bids for a highway project will be opened and read.*

*(5) "Commission" means the Oregon Transportation Commission.*

*(6) "Contract" means public improvement contracts, as defined in ORS 279A.010(1)(bb), awarded by the Oregon Department of Transportation under authority of ORS 279A.050 and 366.205.*

*(7) "Contractor" means the individual or legal entity that has entered into a contract with ODOT.*

*(8) "DAS" means Oregon Department of Administrative Services.*

*(9) "Date of Second Notification" means the date on which required construction work, including change order work and extra work, has been satisfactorily completed, except for minor corrective work, and the recording of daily time charges cease.*

*(10) "Disqualification" means an action taken by ODOT to prohibit an applicant from becoming prequalified or from bidding on ODOT contracts.*

- (11) “Engineer” means ODOT's Chief Engineer or authorized representative.
- (12) “Notice to Contractors” means the public announcement inviting bids for work to be performed or materials to be furnished.
- (13) “Notice to Proceed” means written notice from ODOT authorizing the contractor to begin the work.
- (14) “ODOT” means the Oregon Department of Transportation.
- (15) “OPO” means the ODOT Procurement Office.
- (16) “Construction Project Manager” represents ODOT on the project, including, but not limited to, an ODOT employee, local government representative, or consultant employed by ODOT or a local government. The Construction Project Manager also represents the Highway Administrator or Engineer, who directly manages and/or performs the engineering and administration of a contract.
- (17) “Revocation” means an action taken by ODOT terminating a contractor's prequalification and ability to bid on ODOT contracts.
- (18) “Suspension” means action taken by ODOT to temporarily suspend a contractor's prequalification for a specified period of time.
- (19) “Performance Level 1” is a performance evaluation range in which all of the scores on the performance evaluation set out under this rule fall into the acceptable category and do not require any corrective actions.
- (20) “Performance Level 2” is a performance evaluation range designating a performance evaluation that has one or more scores that have fallen below Performance Level 1 and requires some level of corrective action depending on the number of occurrences within a 36-month period.
- (21) “Performance Level 3” is a performance evaluation range designating a performance evaluation that has one or more scores below the ranges set in Performance Level 2 and requires a higher level of corrective action beyond those required for Performance Level 2.
- (22) “Verifiable Receipt” means confirmation of receipt of email, facsimile or certified mail.
- Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
- Stats. Implemented: ORS 279C.430

734-010-0230

*Prequalification for Bidding*

- (1) Pursuant to ORS 279C.430(1), the Commission requires that all bidders be prequalified within the appropriate class(es) of work contained in the current Contractor's Prequalification Application adopted by ODOT.
- (2) Special contractor prequalifications may be required in addition to the mandatory prequalification in subsection (1) when the elements of a particular public improvement project require specialized knowledge and/or expertise, or when a mandatory general prequalification is not required. When special prequalification is required, notice of the Request for Special Contractor Prequalification will be through ODOT's Electronic Procurement System, and in the Daily Journal of Commerce for projects with an estimated cost over \$125,000.
- (3) Subsection (1) of this rule does not apply to public improvement contracts with a value, estimated by ODOT, of less than \$100,000; however, ODOT may require a special contractor prequalification under subsection (2) even where there is no mandatory prequalification

*Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430*  
*Stats. Implemented: ORS 279C.430*

734-010-0240

*Conditions of Prequalification*

- (1) Applicants must be prequalified in the class(es) of work designated in the special provisions for the specific project in which the applicant desires to bid on ODOT contracts.*
- (2) Prequalification applications must be received at ODOT's address shown in the prequalification application at least 10 calendar days before the bid opening in which the applicant wishes to participate.*
- (3) If an applicant fails to complete the application as required or fails to submit the filing fee, ODOT will return the material submitted. Any changes or additional information required by ODOT must be submitted and signed by the same person that signed the original application. The changes and additional information must be attested to by a sworn affidavit. The applicant may send a new application that includes the changes or additional information required by ODOT.*
- (4) The date on which all required information has been received by ODOT's Procurement Office -- Construction Contracts Unit will be considered the receipt date of the prequalification application.*
- (5) Each member of a Joint Venture must be prequalified, with at least one of the Joint Venture members prequalified in each of the project's designated class(es) of work as defined in section (1) of this rule. A Joint Venture may be required to submit a joint venture agreement prior to award of the contract.*
- (6) Subcontractors are not required to be prequalified.*
- (7) All applicants desiring to prequalify shall:*
  - (a) Complete and submit the Contractor's Prequalification Application, in accordance with the directions contained therein, setting forth their qualifications to satisfactorily carry out the work to be performed. The prequalification application is available on the ODOT Procurement Office, Construction Contracts Unit website at <http://www.oregon.gov/ODOT/CS/CONSTRUCTION/Prequalifications> or from the ODOT Procurement Office -- Construction Contracts Unit, 455 Airport Road SE, Building K, Salem, Oregon 97301-5348; and*
  - (b) Submit a filing fee of \$100. In accordance with ORS 200.055(7), ODOT may collect a filing fee from applicants to cover the costs of the Department of Consumer and Business Services in administering ORS 200.005 to 200.075 and 279A.105. The \$100 fee must be submitted with the completed prequalification application to ODOT's address shown in the prequalification application.*
- (8) ODOT shall notify an applicant of acceptance or denial of prequalification within 30 days after receiving applicant's complete prequalification application and filing fee.*
- (9) Prequalification is valid until the first of the month following the one year anniversary of the date of the prequalification approval. Applicants must renew their prequalifications with the \$100 filing fee annually.*
- (10) Current prequalified applicants whose prequalifications expire September 1, 2012 will be re-assigned an expiration date that is based on the first day of the month following the applicant's Secretary of State business registration expiration date. The prequalification period*

*for these applicants will be extended to the first day of the month following the re-assigned date matching the Secretary of State business registration expiration date.*

*(11) New prequalification applicants that apply for prequalification after October 1, 2012 will be assigned an expiration date that is one year from the first day of the month following approval of the prequalification application.*

*(12) Applicants shall update their prequalification application with ODOT when information changes. Any change to an applicant's prequalification application must be received at ODOT's address shown in the prequalification application at least 10 days prior to bid opening if that information affects the bid submitted. Any changes requested by the applicant must be submitted and signed by the same person that signed the original application or by a person holding the same position as the person that signed the original application. The changes must be attested to by sworn affidavit. There is no charge to update an existing prequalification for minor changes such as changing an address, company name, or adding or deleting class(es) of work. Major changes must be submitted by a new prequalification application.*

*(13) Sections (2) through (12) of this rule also apply to applicants who use ODOT's prequalification system to prequalify for local agency projects.*

*Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430*

*Stats. Implemented: ORS 279C.430*

#### *734-010-0250*

##### *Effect of Prequalification on Bidding*

*(1) Applicants shall be considered prequalified upon receipt of written notification from ODOT.*

*(2) Bidders will be considered non-responsive and bids will be rejected under any of the following conditions:*

*(a) The bidder's prequalification application is not received at ODOT's address shown in the prequalification application at least 10 days prior to bid opening;*

*(b) The bidder is not prequalified in the class(es) of work designated in the special provisions; or*

*(c) The bidder's prequalification is not approved by ODOT.*

*Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430*

*Stats. Implemented: ORS 279C.430*

#### *734-010-0260*

##### *Waiving Prequalification Requirements*

*Prequalification requirements for contracts may be waived by the Deputy Director or Chief Engineer under the following circumstances:*

*(1) In the case of an emergency;*

*(2) If finding that special circumstances exist so that prequalification is not necessary.*

*Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430*

*Stats. Implemented: ORS 279C.430*

#### *734-010-0270*

##### *Disqualification, Revocation or Suspension*

*(1) Applicants must sign a sworn affidavit that the information they provide in the prequalification application is true. Any applicant for prequalification who willfully makes, or causes to be made, any false, deceptive or fraudulent statements in any questionnaire or*

*statement required to be submitted under this rule, shall be denied prequalification or the applicant's current prequalification shall be revoked.*

*(2) If ODOT disqualifies an applicant or revokes a prequalification, the applicant or prospective bidder shall receive a written notice identifying the reasons for the disqualification or revocation as found in ORS 279C.440.*

*Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430*

*Stats. Implemented: ORS 279C.430*

*734-010-0280*

*Appeals Covering Prequalification Application*

*(1) If ODOT denies an applicant's prequalification or revokes an existing prequalification, the applicant may appeal the denial or revocation by requesting a hearing with DAS in accordance with ORS 279C.445 and 279C.450. If the applicant wishes to appeal disqualification to DAS, the applicant must, within three business days after receipt of notice of disqualification, notify the CCM in writing.*

*(2) Upon receipt of such notice of appeal, the CCM will immediately notify the Director of DAS.*

*Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430*

*Stats. Implemented: ORS 279C.430]*