

PRE-QUALIFICATION OF BIDDER'S/OFFEROR'S

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In the context of State construction related procurements, and for the purposes of this bulletin, the term 'pre-qualification' shall mean, *"an advance act or requirement that is used for the purpose of determining a bidder's/offeror's eligibility or ineligibility to participate in the ITB/RFP process"*. In this context, neither statute nor code allows for an action of 'pre-qualification' - that is, a prospective bidder/offeror cannot be initially constrained from responding to a State solicitation.

The closest the procurement code comes to 'pre-qualifying' a bidder/offeror is by the two step bid/proposal process afforded under AS 36.30.190 and AS 36.30.265. These statutes allow for the issuance of requests for unpriced technical offers, and then to follow with an ITB/RFP to those who are determined to have the technical merit and qualifications under the criteria set out in the first solicitation. Though this process may at first appear to be a 'pre-qualification' act, it differs in the significant aspect that it does not preclude the inherent right of the bidder/offeror to be preliminarily considered eligible to perform a function or service. Due process and legal rights are thus preserved.

Responsiveness and responsibility determinations should also not be confused with 'pre-qualification'. These determinations are made on a case by case basis, and not in a manner that excludes the first, all-important step of equal consideration. Examples of responsiveness requirements that are often placed on a prospective bidder/proposer are (in part):

- 1) certain minimum qualifications such as; previous experience with similar contracts, (xx) number of year's experience in a specific discipline, and/or other essential factors required in order to be deemed responsive.
- 2) evidence of registration (when applicable) as required under AS 08.18 [AS 36.30.110(b), AS 36.30.210].
- 3) a State Business License [AS 36.30.110(b), AS 36.30.210(e)], prior to bidding/proposing (on Federal Aid jobs, business licenses are not required in order to bid, but must be obtained prior to contract award).
- 4) in certain circumstances, they must meet the Professional Registration requirements of AS 36.90.100.
- 5) they cannot bid/offer if they have been debarred or suspended from contracting with the State (AS 36.30.050).

Certain information can also be requested from a bidder/offeror after bid opening such as to the availability of a key employee or to establish financial capabilities. Such request(s) drive to the issue of assessing the ability (responsibility) to adequately perform the requirements of the specific contract, and not to the guaranteed right for equal, initial consideration to bid/offer.

¹ **CONTRACT OFFICER BULLETINS** - From time to time, it is expedient to issue information, guidance, or directives on certain construction contract matters. Such communications can best be accomplished through the medium of 'bulletins'. These bulletins are "interpretive" in nature and serve to inform and direct. They reflect the departments' policy on the issue being addressed. If a conflict between a bulletin and a statute or a formally adopted regulation is found to exist, the law/regulation takes precedence [ref. AS 44.62.640(a)(3)]. Comments or suggestions are appreciated and can be directed to Jim Beeson @ JIM.BEESON@dot.state.ak.us, phone, 465-6965, Fax 465-4010.

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