

5501:2-3-01	Net Assets
5501:2-3-02	Application For Qualification
5501:2-3-03	Responsibility And Competency
5501:2-3-04	Work Types
5501:2-3-05	Certificate of Qualification
5501:2-3-06	Joint Venture Bids
5501:2-3-07	Contracting Procedure--Foreign Contractors
5501:2-3-08	Subcontracting Procedure
5501:2-3-09	Prequalification Review Board
5501:2-3-10	Revocation And Debarment

5501:2-3-01 Net Assets

- (A) The determination of net assets is necessary in order to calculate the contractor's total dollar bidding capacity. The term "Net Assets" is qualifying assets minus certain liabilities. Assets shall mean current assets and other assets as further set out and defined by Rules 5501:2-3-01 to 5501:2-3-10 of the Administrative Code. Liabilities shall mean current liabilities and other liabilities as further set out and defined by rules 5501:2-3-01 to 5501:2-3-10 of the Administrative Code.
- (B) Current assets are those assets which mature within one year of the date of the financial statement and which are defined in accordance with generally accepted accounting principles unless otherwise indicated and shall include the following:
- (1) Cash on hand, excluding cash that is legally restricted as to its withdrawal or use.
 - (2) Cash equivalents, defined as highly liquid asset instruments with original maturities of three months or less, excluding cash equivalents that are legally restricted as to their withdrawal or use.
 - (3) Investments which have readily determinable fair values and all investments in debt securities.
 - (4) Unlisted investments which do not have readily determinable fair values shall be accepted at such valuation as determined under generally accepted accounting principles.
 - (5) Trade accounts receivable, unbilled accounts receivable, retainages, certified bid checks and deposits for bids must be recorded at their fair value. All receivables must be reduced to their net realizable value through an allowance for uncollectible accounts or otherwise. The applicant shall exclude all receivables from owners when computing net assets. Owners shall include sole proprietors, partners, shareholders, members or other forms of direct ownership, including immediate family members to be defined as family members whom an owner might control or influence or by whom they might be controlled or influenced because of the family relationship.
 - (6) Costs and estimated earnings in excess of billings on uncompleted contracts.
 - (7) Notes receivable, maturing within one year, must be reduced to their net realizable value through an allowance for uncollectible accounts or otherwise, and net of any related discount of premium. The applicant shall exclude all note receivables from

owners when computing net assets. Owners shall include sole proprietors, partners, shareholders, members or other forms of direct ownership, including immediate family members to be defined as family members whom an owner might control or influence or by whom they might be controlled or influenced because of the family relationship.

- (8) Prepaid expenses, such as interest, rent, insurance, taxes.
- (9) Inventories, at the lower of cost or market.
- (10) Other assets which mature within one year excluding intangible assets.

(C) Other assets shall be defined in accordance with generally accepted accounting principles unless otherwise indicated and shall include the following:

- (1) Cash surrender value of life insurance policies, net of any policy loans.
- (2) Notes receivable noncurrent, must be reduced to their net realizable value through an allowance for uncollectible accounts or otherwise, and net of any related discount or premium. The applicant shall exclude all note receivables from owners when computing net assets. Owners shall include sole proprietors, partners, shareholders, members or other forms of direct ownership, including immediate family members to be defined as family members whom an owner might control or influence or by whom they might be controlled or influenced because of the family relationship.
- (3) Equipment of the type customarily used in highway construction, furniture, fixtures, machinery and equipment collectively referred to as personal property, owned by the applicant, which may be accepted at not more than eighty per cent of its true value as declared on the Ohio Personal Property Tax return filed with the Ohio Department of Taxation, for equipment not subject to Ohio Personal Property Tax, eighty per cent of cost, subject to the true value computation as with other personal property, as recognized by the Ohio Department of Taxation for personal property tax purposes.
- (4) Real estate may be accepted at not more than its valuation for tax purposes as assessed by the county auditor under the supervision of the Tax Commissioner.

(D) Current liabilities shall include all obligations and accrued indebtedness payable within one year following the date of the financial statement. Examples of such obligations and accrued indebtedness are as follows:

- (1) Trade accounts payable.
- (2) Federal, state and local income taxes payable.
- (3) Retainages payable.
- (4) Billings in excess of costs and estimated earnings on uncompleted contracts.
- (5) Accrued payroll related items including but not limited to compensation, taxes on compensation, tax withholdings and workers' compensation.
- (6) Current portion of term debt, lines-of-credit and revolving credit agreements.
- (7) Amounts payable to related parties.
- (8) Dividends and distributions payable.
- (9) Accrued warranty and guarantee liabilities.
- (10) Accrued deferred compensation agreements.
- (11) Accrued compensated absences.

- (12) Current portion of accrued pension costs.
 - (13) Current portion of accrued post-retirement costs.
 - (14) Current portion of unconditional promises to give.
 - (15) Other current liabilities payable within one year following the date of the financial statement.
- (E) Other liabilities shall include:
- (1) Bank letters or letters of credit and related amounts outstanding under these arrangements payable within one year following the date of the financial statement.

5501:2-3-02 Application for Qualification

- (A) The Application for Qualification shall be made on a form entitled "Qualification Application" hereinafter referred to as the application. The applicant shall file all supporting data required by the application.
- (B) All contractors who request to become qualified with the Department to perform contract work, both prime and subcontract, in the amount not to exceed an aggregate of two million dollars yearly shall have a review performed on the contractor's financial statements and complete the application as required. Such review shall be performed by an independent certified public accountant. The two million dollars or less amount includes all uncompleted work for both Department and non-Department work inclusive of the bid amount. The following is required in order to have the application processed:
- (1) The financial statements included in the application shall be furnished by the applicant and reviewed by an independent certified public accountant. The term "independent" as applied to a certified public accountant shall have the meaning generally understood and accepted in standard accounting practice. The Independent Certified Public Accountant must perform the review of the financial statements in accordance with statements on standards for accounting and review services issued by the American Institute of Certified Public Accountants and issue a review report thereon.
 - (2) The issuance of the review report shall constitute certification that a review in accordance with such standards has been performed and reported.
- (C) All contractors who request to become qualified with the Department to perform contract work, both prime and subcontract, in an amount that is greater than an aggregate of two million dollars yearly shall have an audit performed on the contractor's financial statements and complete the application as required. Such audit shall be performed by an independent certified public accountant. The two million dollars or more amount includes all uncompleted work for both Department and non-Department work inclusive of the bid amount. The following is required in order to have the application processed:
- (1) The financial statements included in the application shall be furnished by the applicant and audited by an independent certified public accountant. The term "independent" as applied to a certified public accountant shall have the meaning generally understood and accepted in standard accounting practice. The independent certified public accountant must perform the audit of the financial statements in accordance with the standards as prescribed by generally accepted auditing standards and issue an audit opinion thereon.
 - (2) The issuance of the audit opinion shall constitute certification that an audit in accordance with such standards has been performed and reported.

5501:2-3-03 Responsibility and Competency

The Director shall determine an applicant's responsibility and competency by first computing the applicant's net assets in accordance with Rule 5501:2-3-01 of the Administrative Code. Next, the Director shall grant the applicant types of work for which the applicant is responsible and competent in accordance with Rule 5501:2-3-04 of the Administrative Code. Finally, the net assets will be multiplied by a factor between one and ten with ten being the maximum rating, with the resultant total representing the dollar bidding capacity or bidder's qualification amount. The multiplying factor the applicant receives will be determined by averaging the total scores received in the previous calendar year from its evaluations. If the applicant has not completed work for the Department, the applicant will receive the maximum rating of ten. If the applicant has performed work for the Department, but not in the previous calendar year, the applicant will receive its most recent rating. Each contractor will receive an evaluation for each project for which it has performed work. In the event it is a multiple year project, an evaluation will be completed yearly.

5501:2-3-04 Work Types

The Director shall publish a list of work types for which bidders who desire to become qualified contractors pursuant to Sections 5525.02 to 5525.09 of the Revised Code may make application. In order to receive a particular work type designation, applicants must complete the application for qualification in accordance with Rule 5501:2-3-02 of the Administrative Code and submit adequate information in support of their request for particular work types. The information must contain verifiable resumes of currently employed persons who have the requisite experience as set out in the minimum skills of the application for qualification.

The Director may amend at anytime the list of work types in order to remain current with technological advances, innovations in construction techniques and for other sound administrative reasons.

5501:2-3-05 Certificate of Qualification

A Certificate of Qualification shall be valid for one year or less, unless revoked by the Director in accordance with Sections 5525.03 and 5525.07 of the Revised Code and the rules promulgated pursuant thereto, provided that the applicant's financial statement is not more than one year and five months beyond the last day of an applicant's fiscal year.

The certificate shall set out the bidder's dollar bidding capacity and the work types for which the bidder is qualified on the basis of its submitted financial documents, previous performance for the Department and general work experience. The bidder may only bid on contracts for which it has dollar bidding capacity for one hundred per cent of its bid at the time of submittal. The dollar amount of all pending work shall be subtracted from the bidder's dollar bidding capacity at the time of bidding by the Department to determine whether the bidder has dollar bidding capacity at least equal to one hundred per cent of its bid.

A bidder must possess work types, and perform work, equal to at least fifty per cent of the total amount of the submitted bid price. The Director may, by insertion of a contract provision, reduce the fifty per cent amount.

Bidders without any prior work experience with the Department shall be granted a multiplying factor of ten in order to establish a dollar bidding capacity on their certificates. In the event a bidder bids with the Department as a prime contractor or is selected to perform work as a subcontractor, all pending work of the bidder will be assessed against the dollar amount set out in its certificate.

5501:2-3-06 Joint Venture Bids

- (A) When two or more persons, partnerships, limited liability companies or corporations bid jointly on a project, such bid is a "Joint Venture bid."

- (B) Joint Venture bidders must complete a Joint Venture application for qualification not less than five days before bids are opened if all Joint Venture partners hold certificates as individuals or not less than thirty days before bids are opened if a Joint Venture partner does not hold a certificate. Joint Venture bidders may make application to receive a Joint Venture certificate of qualification and may use the Joint Venture certificate of qualification for a period of time not to exceed the expiration date of any Joint Venture partner. All Joint Venture applications must be in writing on such forms as may be prescribed by the Director, must be signed by all Joint Venture partners, and must include the following information:
 - (1) The name of an individual who shall have power of attorney to act for and bind all of the Joint Venture partners, which power of attorney shall be filed with the signed contract; and
 - (2) The mailing address and street address of the Joint Venture.
- (C) In any Joint Venture the contract, contract bond and all insurance shall be in the name of the Joint Venture and shall be binding on and apply to all members of the Joint Venture jointly and severally.
- (D) The Joint Venture entity shall obtain a new tax identification number in accordance with the regulations of the United States Internal Revenue Service.
- (E) Each Joint Venture partner will receive a contractor evaluation for each project that it performs. The evaluation score will be added to each Joint Venture partner's yearly scores in order to determine each partner's multiplying factor.

5501:2-3-07 Contracting Procedure--Foreign Contractors

- (A) Foreign Corporations--Section 5525.18 of the Revised Code provides that the Director of Transportation shall not enter into a contract with a foreign corporation until the Ohio Secretary of State has certified that such corporation is authorized to do business in Ohio. Therefore, a copy of such certificate must accompany the application of qualification. A Certificate of Qualification shall not be issued until the certification from the Secretary of State is furnished.
- (B) Non-resident partnership or proprietorship--Section 5525.18 of the Revised Code provides that the Director of Transportation shall not enter into a contract with a person or partnership non-resident of the state until such person or partnership has filed with the Secretary of State a power of attorney designating the Secretary of State as his/their agent for the purpose of accepting service of summons in any action brought in this state against such person or partnership. A copy of such power of attorney must be submitted with the application for qualification and a certificate of qualification shall not be issued until it is furnished.

5501:2-3-08 Subcontracting Procedure

- (A) All subcontractors shall obtain a certificate of qualification as required by Section 5525.06 of the Revised Code, except for the following:
 - (1) Subcontractors who will perform less than two hundred fifty thousand dollars of subcontractor work on construction projects let by the Department in a calendar year; and
 - (2) Subcontractors who will perform work on a project for which there is no corresponding work type.
- (B) Prime contractors may employ, with the Director's permission, subcontractors who do not have a certificate of qualification to perform work on a per project basis in the collectively totaling no greater than fifteen per cent of the amount bid but not to exceed two million dollars. The individual

subcontractor yearly limitation set out in paragraph (a)(1) of this rule shall not be exceeded.

- (C) Subcontractors who hold a certificate of qualification must have sufficient dollar bidding capacity and work types necessary in order to be granted permission to perform the requested work.
- (D) No portion of any contract shall be sublet, assigned or otherwise disposed of by any certificate holder or by any subcontractor including the work proposed to be sublet to a subcontractor who does not hold a certificate of qualification, without the prior written permission of the Director, but such permission shall not relieve the contractor of the responsibility for the management and performance of its contract with the Department.
- (E) Each request by a certificate holder to sublet work must be in writing, including the work proposed to be sublet to a subcontractor who does not hold a certificate of qualification, and when requested be accompanied by a sworn statement of the proposed subcontractor setting forth all of its uncompleted contracts with all owners and uncompleted subcontracts with all contractors.
- (F) In the event that the subcontractor provides performance and payment bonds for the amount of the sublet work for which the director has granted permission, the Director then shall increase the dollar bidding capacity of the prime contractor by the amount of the performance bond.

5501:2-3-09 Prequalification Review Board

- (A) In accordance with Section 5525.07 of the Revised Code, the Director shall create a Prequalification Review Board, hereinafter referred to as the Board. The Board shall be comprised of three senior Department employees who are familiar with the Department's application for qualification process and the contractor evaluation process but who do not exercise daily control over either process.
- (B) The Board shall hear appeals from applicants and contractors for denials of requested work types, disagreements over dollar bidding capacity amounts and disputed performance evaluations. This Board has no authority to hear appeals for revocation of an application for qualification and the debarment of a contractor or an individual.
- (C) Within ten days upon receipt of the Director's decision regarding the applicant's application for qualification or the receipt of a performance evaluation, other than an action involving revocation and debarment, the applicant or contractor may request in writing a reconsideration of the application or the performance evaluation by the Director's Prequalification Review Board. The applicant or contractor shall submit additional evidence bearing on the applicant's qualifications or performance of the work and request either a hearing or a review of the submitted documents.
- (D) When an appeal has been filed and a review has been requested, the Board shall review the submitted documents in a timely manner and issue its decision within fifteen days of its deliberations. In the event a hearing is requested the Board shall schedule an informal hearing in a timely manner at which time the applicant or contractor shall have an opportunity to present its case. The Department may have representatives at the hearing offering evidence in rebuttal. The Board shall consider the evidence and issue its decision within fifteen days of the hearing.
- (E) The appellant may appeal the decision of the Board to the Court of Common Pleas within ten days upon receipt of the Board's decision.

5501:2-3-10 Revocation and-Debarment

In accordance with Section 5525.03 of the Revised Code, the Director may refuse to issue a certificate of qualification or may revoke a certificate of qualification and debar a certificate holder when the applicant or certificate holder has been found to be responsible for any one of the following:

- (A) The company has been defaulted by the Director on department project;
- (B) The company or its principals, including its key personnel, have been debarred or suspended by the United States Government or other states or other Ohio state agencies from bidding on or working on their projects;
- (C) The company or its principals, including its key personnel, have been convicted of crimes involving fraud that includes but is not limited to bribery, falsification of documents, theft and any offense that directly reflects on the integrity of the business;
- (D) The company files for protection from its creditors in the United States Bankruptcy Court;
- (E) The company or its principals, including its key personnel, deliberately submitted false or misleading information in connection with the application for a certificate of qualification or in connection with a bid for a contract or in connection with the performance of a contract;
- (F) The company or its principals, including its key personnel, have been found to have colluded with other bidders for purposes of obtaining or dividing contracts;
- (G) The company or its principals, including its key personnel, have been found to have violated its disadvantaged or minority prime contract or subcontract requirements;
- (H) The company or its principals, including its key personnel, have failed to pay prevailing wages, fringes and benefits to its employees;
- (I) The company has received a multiplier computed in accordance with Rule 5501:2-3-03 of the Administrative Code of less than 5.0 for two consecutive years when contractor evaluations have been performed.

Prior to a revocation and debarment action, the Director shall provide written notice to the applicant or certificate holder of the grounds for denial or revocation and debarment and afford the applicant or certificate holder an opportunity for a hearing before a hearing officer selected by the Director .

If the applicant or certificate holder desires a hearing then the applicant or certificate holder must request the hearing in writing within thirty days of the mailing of the notice for revocation and debarment.

The request for the hearing must be sent to the Director with a copy to the Administrator of the Office of Contracts. The Director shall schedule the hearing within fifteen days of receiving the request for a hearing. The hearing date may be continued by the Director at his request or the request of the applicant or certificate holder.

In the event an appeal is requested, the hearing officer will provide a reasonable opportunity for the appellant to present its evidence as to why its certificate should be issued or reinstated and the company or its individuals not be debarred. The hearing shall be an opportunity for the hearing officer to determine de novo whether the appellant should hold a certificate of qualification. The hearing officer may receive from the appellant and from the Department documents and other evidence he rules to be relevant to the proceedings. A stenographic transcript of the oral testimony shall be made.

The appellant and the Department may be represented by counsel, however, such representation is not required. Any subpoenas for the hearing shall be requested from the hearing officer for issuance by the Department.

The hearing officer shall, within seven days of the completion of the hearing, submit a written report to the Director setting forth his findings of fact and conclusions of law. The report shall include a recommendation of action to be taken by the Director. A copy of this written report shall, at the time it is submitted to the Director, be forwarded by certified mail to the appellant, or its representative of record, and to the Department. Both the appellant and the Department may file with the Director written objections to the hearing officer's report within ten days of receipt of the report. A copy of these objections shall be sent to the opposing party

by certified mail, return receipt requested, at the same time they are sent to the Director . The opposing party may submit to the Director a written response to the objections within seven days of receipt of the objections. The Director may refer the matter back to the hearing officer for consideration of the objections and responses. The hearing officer shall consider these objections and submit a supplementary report and recommendation to the Director within five days after such a referral. The Director shall not take any action approving, modifying, or rejecting the recommendation of the hearing officer or otherwise determine the eligibility of the appellant until after the applicable time periods provided in this paragraph unless it is modified by agreement of the applicant and the Department.

The Director will render a decision within fourteen days after the expiration of the time for submission from the appellant, the Department and the hearing officer. The decision shall be sent to the Office of Contracts and sent by certified mail to the appellant or its representative of record.

The appellant may appeal an adverse determination by the Director as provided for in Section 5525.03 of the Revised Code.

The record will be preserved and maintained in the custody of the Director following the decision of the Director. Copies of the record will be made available at cost.