



**THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION**



**George n. Campbell,
Jr.
Commissioner**

**Jeff Brillhart, P.E.
Assistant Commissioner**

Gentlemen:

Enclosed is a copy of our Prequalification Regulations for contractors wishing to bid on projects advertised by this Department. Also included are copies of the Prequalification Statement and "Standard Form-Request for Proposal".

Your attention is called to TRA 401:04 Contractor Information, subsection © of the regulations, regarding an audited financial statement by an independent Certified Public Accountant and his/her letter of unqualified opinion. Also please note TRA 401.6(a), which states "in no case shall a request for prequalification be accepted after the tenth day set for the opening of bids for the project on which the contractor under consideration intends to bid".

In regards to the "Standard Form-Request for Proposal", the following information may be helpful. This form is to be completed at each request for bidding documents from this Department. Under the item "Value of uncompleted Work", list the total value of work remaining to be done on contracts. Under the item "Amount of uncompleted Work to be done by Subs", list the dollar value of work remaining that is to be done by others.

Prospective Bidders should also be aware that all projects require a bid guaranty and projects for which the apparent low bid exceeds \$25,000 or more will require a 100% contract bond which must be filed with the Contract Office prior to Governor and Council approval of the contract. All Public Works projects, regardless of the bid amount will require a 100% contract bond. Liability insurance and Worker's Compensation Insurance is also required. The necessary amounts are specified in the 2006 Road and Bridge Specifications and in the Special Provisions for each project.

Each applicant will need to submit a letter from their bonding company indicating both single and aggregate bonding limits.

In addition to the above, the successful bidders must also be registered with the Secretary of State's Office to do business in the State of New Hampshire.

If any further information is desired regarding your request for prequalification, please feel free to contact me.

Sincerely,

Deborah A. Weil
Prequalification Administrator

Telephone: 603-271-3402
Room 131

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION
PREQUALIFICATION STATEMENT

HPQS - 167
Rev. January, 2007

Date _____

Firm Name _____

Street _____ City _____ State _____

Zip _____ Telephone _____ Fax No. _____

E-Mail address: _____

CLASSIFICATION REQUESTED

Road Construction _____	Guardrail Construction _____
Traffic Signals _____	Bridge Construction _____
Bridge Rehabilitation _____	Bridge Painting _____
Covered Bridges _____	Marine Construction _____
Paving _____	Site Work _____
Building Construction _____	Building Demolition _____
HVAC Work _____	Electrical Work _____
Roofing _____	Asbestos Work _____
Other _____	

NOTE: Should any change occur which substantially alters the data contained herein, the above named prospective bidder shall immediately submit to the Department a complete revised Prequalification Statement developing the firm's current qualifications.

No proposal will be granted to a prospective bidder who is not prequalified. A contractor is not considered prequalified until the rules relative to filing of the prequalification statement and the financial report have been complied with and until determination of "Classification" and "Capacity" ratings has been made.

Nothing in the "Regulations for Prequalifying Contractors" shall be construed as depriving the Department of the right to reject any bid where, in the opinion of the Department, other circumstances and developments have changed the qualification or responsibility of the bidder.

Name _____

- A Corporation
- A Co-Partnership
- An Individual
- Limited Liability Co.

Address _____

How many year's has your organization been in business as a general contractor under your present business name? _____

How many year's experience in _____ construction work has your organization had: (a) As a General Contractor? _____

(b) As a Sub-Contractor? _____

If a Corporation, answer the following:	If a Co-Partnership, answer the following:
Capital paid in cash:	Date of Organization:
When Incorporated:	Is partnership, general, limited or association?
In what State:	Name and address of partners
President's Name	
Vice-President's Name	
Secretary's Name	
Treasurer's Name	

Owner's/Stockholder's Names (10%+)

Percentage Ownership

List any affiliation of the contractor organization, principal individual, officer or director with any other contractor or material supplier;

Have you ever failed to complete any work awarded to you? _____

If so, where, when, and why? _____

Has any officer or partner of your organization ever been an officer or partner of some other organization that failed to complete a construction contract? _____

If so, state name of individual, other organization and reason therefore _____

Has any officer or partner of your organization ever failed to complete a construction contract handled in his own name? _____

If so, state name of individual, name of Owner and reason therefore _____

Has any officer, partner or principal individual of your organization ever been convicted of any anti-trust violation, or been debarred from performing work on any contract? _____

If so, state name of that individual and reason for such action _____

Date of reinstatement _____

EXPERIENCE REFERENCES: LIST THE CONSTRUCTION PROJECTS YOUR ORGANIZATION HAS UNDER WAY ON THIS DATE

CONTRACT AMOUNT	CLASS OF WORK	PERCENT COMPLETE	PERCENT SUBLET	EXPECTED DATE OF COMPLETION	FIRM NAME	STREET	CITY-STATE-ZIP	CONTACT PERSON	TELEPHONE NUMBER

LIST PROJECTS YOUR ORGANIZATION HAS COMPLETED IN THE PAST THREE YEARS

CONTRACT AMOUNT	CLASS OF WORK	PERCENT COMPLETE	PERCENT SUBLET	DATE OF COMPLETION	FIRM NAME	STREET	CITY-STATE-ZIP	CONTACT PERSON	TELEPHONE NUMBER

Employment Record of principal individuals in your organization, including those personnel responsible for the preparation of bid proposals. Also include records of individuals who will be your field superintendents on proposed work in New Hampshire.

INDIVIDUAL'S NAME	PRESENT POSITION	YEARS OF CONSTRUCTION EXPERIENCE	MAGNITUDE & TYPE OF WORK	IN WHAT CAPACITY

NOTE: This financial report is to be completed if CPA's financial statement is not required. If a CPA's statement is required, completion of Item 13 (page 8) and Item 10 (page 9), only, is required. THIS REPORT MAY NOT SERVE AS THE REQUIRED CPA's BALANCE SHEET

Condition at close of business _____, _____
DATE YEAR

ASSETS

1. Cash on hand in Banks				
2. Notes Receivable (a) due within one year (Also complete Item 13 pg. 8)				
(b) due after one year				
3. Accounts Receivable (a) from completed contracts				
(b) from incomplete contracts (Eng. Est.)				
(c) from others				
(d) retainage				
4. Inventory-materials in stock not included in Item 3(b)				
5. Deposits for bids or otherwise as guarantees				
6. Prepaid Expenses				
7. Interest accrued on loans, securities, etc.				
8. Cash value of Life Insurance				
9. Stocks and Bonds (a) listed				
(b) unlisted				
10. Investments, subsidiaries or affiliates				
11. Fixed Assets	COST	ACC. DEP.	BOOK VALUE	
Machinery and Equipment				
Autos and Trucks				
Land				
Buildings				
Furniture and Fixtures				
Fixed Assets Retired				
NET				
12. Other Assets (List)				
TOTAL ASSETS				

13. Names of persons or entities who account for 25% or more of the total of notes receivable, and an indication of the percentage for each.

If individual notes receivable do not total 25%, please so indicate below.

NAMES	PERCENTAGE
_____	_____
_____	_____
_____	_____
_____	_____

LIABILITIES AND EQUITY

1. Notes Payable (a) due within one year (Also complete Item 10 page 9)	
(b) due after one year	
2. Accounts Payable	
3. Equipment Lease (Rental) Purchase Agreements	
4. Amount owed on equipment (a) due within one year	
(b) due after one year	
5. Real Estate encumbrances (a) Business	
(b) Personnel	
6. Federal Income Tax Provision (a) due within one year	
(b) Reserves	
7. Other Liabilities (List)	
8. Deferred Income (Completed contract method)	
9. Capital Stock paid up	
Additional Paid-In Capital	
Retained Earnings	
Net Worth	
Total Stockholders' Equity	
Stockholders' Equity and Total Liabilities	
Contingent Liabilities	

10. Names of persons or entities who account for 25% or more of the total of notes payable and an indication of the percentage for each.

If individual notes payable do not total 25%, please indicate below.

NAMES	PERCENTAGE
_____	_____
_____	_____
_____	_____
_____	_____

TO BE COMPLETED BY ALL APPLICANTS:

INFORMATION RELATING TO FINANCIAL REPORT

PREPARED BY _____
 Name of Individual Accountant or Officer

 Complete Address of Accounting Firm Zip

 (Area Code) Telephone Number

What equipment do you own that is available for proposed work?

Quantity	Item Description, Size, Capacity	Condition	Age	Cost	Depreciation	Book Value

Additional References: Give names and complete addresses of major suppliers and/or subcontractors with whom your firm has done business in the past three years.

Names and address of the following:

Bank_____

Bonding Company_____

Agent_____

The undersigned, on behalf of the applicant certifies that the applicant has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with any contract with the State of New Hampshire, or any other state, or any federal project.

I swear that all the statements herein contained, including the declaration of ownership and organization, the financial statement, and the record of experience have been examined by me, and to the best of my knowledge and belief are true and correct.

Signed_____

Title_____

Subscribed and sworn to before me this_____day of_____,20__

Notary Public or Justice of Peace

STATE OF NEW HAMPSHIRE

ALTERNATE W-9 FORM

PLEASE USE THIS FORM TO PROVIDE THE REQUESTED INFORMATION

Pursuant to IRS Regulations, you must furnish your Taxpayer Identification Number (TIN) to the State whether or not you are required to file tax returns. If this number is not provided, you may be subject to a 28% withholding on each payment made to you. To avoid this 28% withholding & to ensure that accurate tax information is reported to the IRS, A RESPONSE IS REQUIRED.

If a service provider is a part of a GROUP PRACTICE, it is the group name & TIN which is required on this Alternate W-9. If the service provider is a SOLE PROPRIETOR, it is the individual name & TIN which is required on this Alternate W-9.

BUSINESS NAME:
ADDITIONAL or DBA NAME:
REMIT ADDRESS:
CITY/TOWN: STATE: ZIP:
BUSINESS ADDRESS:
CITY/TOWN: STATE: ZIP:

TAXPAYER IDENTIFICATION NUMBER (TIN) as used on IRS tax return

Social Security # (SSN): Fed ID # (EIN/FIN):

PRINCIPAL ACTIVITY

Service Provider Product/Merchandise Provider Other Provider

List the principal type of service, product or other that is provided:

DESIGNATION (select ONLY THOSE which apply to you/your organization as provided to the IRS)

Individual/Sole-Proprietor Partnership/LLP Government
Corporation Estate or Trust Health Care Provider
LLC Non-Profit Legal Services
(attach exemption)

Under penalty of perjury, I declare that the information provided is true, correct & complete, to the best of my knowledge & belief.

NAME & TITLE (print or type):

TELEPHONE #: TOLL FREE #: FAX #:

SIGNATURE: DATE:

PLEASE RETURN WHEN COMPLETED TO:

NH Department of Transportation
Bureau of Finance & Contracts
7 Hazen Drive, Room 130
Concord, NH 03302-0483

New Hampshire Department of Transportation
STANDARD FORM-REQUEST FOR PROPOSAL

Request for proposal forms and plans must be made on this form and signed by an authorized representative of the company. "Status of Work Under Contract", both Public and Private must be completely filled out in the space provided below. Contracts \$50,000.00 or less may be lumped into a single total. Please use a separate form for each project request.

New Hampshire Department of Transportation
P.O. Box 483, Room 131, Contracts
Concord, NH 03302-0483

Enclosed is \$___, payable to the Treasurer, State of New Hampshire. Please forward to the undersigned plans and proposals for the following project:

Project Name	Project Number	Check One	Do Not Use
		Prime: <input type="checkbox"/>	
		Sub: <input type="checkbox"/>	

STATUS OF WORK UNDER CONTRACT
(As of Date Request)

Description of Contract	Owner and Contract	Amount of Contract	Total Value of Uncompleted Work \$	Total of Uncompleted work to be done by Sub \$	Completion Date
Total:					

Work to be charged Against Contractor: _____

I hereby certify that under penalty of perjury that the foregoing is a true and complete statement of all public and/or private work under contract or otherwise prosecuted both in and outside of the State of New Hampshire as of the date of this request.

(Signature)

Firm Name

Address

City/Town

Telephone

Enclosed are Rules TRA-401 as pertaining to Prequalification with the New Hampshire Department of Transportation.

These rules were adopted by the Commissioner on March 31, 2009 and filed with the Director of Legislative Services on April 8, 2009 in accordance with RSA 541-A, the Administrative Procedure Act.

Adopt Tra 401 previously effective 12-23-99 (Document #7176), and expired 12-23-07, to read as follows:

PART Tra 401 PREQUALIFICATION OF CONTRACTORS – CLASSIFICATION AND RATING OF PROSPECTIVE BIDDER

Tra 401.01 Purpose.

(a) The purpose of these rules is to establish requirements for those contractors intending to bid on projects advertised by the department and sanctions that can be imposed under these provisions shall be imposed in the public interest.

Tra 401.02 Scope.

(a) The requirements contained in Tra 401 shall apply to all those who intend to enter the competitive bidding process seeking award of a contract advertised by the department.

(b) Unless exempted herein, only those contractors prequalified under this part shall be eligible to become bidders on contracts advertised by the department.

Tra 401.03 Definitions.

(a) "Bidding crime" means any act prohibited by state or federal law and committed in any jurisdiction, involving fraud, conspiracy, collusion, lying or material misrepresentation with respect to bidding on any contract, public or private.

(b) "Commissioner" means the commissioner of the New Hampshire department of transportation, or authorized agent.

(c) "Contract" means a written agreement between the state and a contractor setting forth the obligations of the parties under the contract, including, but not limited to, the performance of the work and the basis of payment, and any supplemental documents identified in the contract or incorporated into the agreement.

(d) "Contractor" means an individual, partnership, limited liability company, association, corporation, subsidiary, or joint stock company that performs contracting services, and its members, managers, officers, shareholders, representatives, trustees, or receivers appointed by any court of competent jurisdiction.

(e) "Debar" means to preclude, revoke, or limit bidding privileges for a specified period of time.

(f) "Department" means the New Hampshire department of transportation.

(g) "Prequalification committee" means a committee from within the department consisting of the prequalification administrator and 5 members of the engineering staff as designated by the commissioner.

(h) "Principal individual" means anyone who possesses sufficient legal authority within a contractor to bind the organization contractually.

(i) "Prime contractor" means a contractor who enters into a contract with the state for performance of work prescribed by the contract.

(j) "Public interest" means protecting the health and safety of the citizens, curtailing negative financial impact to the state, assisting in investigations, or promoting competitive bidding.

(k) "Subcontractor" means an individual, partnership, limited liability company, association, corporation, subsidiary, or joint stock company that performs contracting services, and its members, managers, officers, shareholders, representatives, trustees, or receivers appointed by any court of competent jurisdiction to whom the prime contractor sublets any portion of the contracted work.

Tra 401.04 Contractor Information; Financial Statement.

(a) Any contractor proposing to bid on projects advertised by the department shall furnish a prequalification statement on forms available from the department as described in Tra 401.05.

(b) Any contractor proposing to bid on projects advertised by the department shall furnish a financial statement meeting the following standards:

(1) The financial information shall be as of the end of the contractor's last completed fiscal year, provided that a 3-month period following the close of a fiscal year shall be allowed for the preparation of updated financial statements;

(2) All information other than financial information contained in the statement shall be current as of the date of filing; and

(3) Any adverse change in the financial condition of the contractor since the date of the financial statement shall be indicated, and a written explanation given for the change.

(c) A contractor's financial statement shall be accompanied by a report of financial condition meeting the following standards:

(1) A contractor may elect to self certify as to financial condition by providing financial information on balance sheet forms provided by the department pursuant to Tra 401.05(b) if the contractor seeks prequalification to bid upon projects with a value of less than \$500,000;

(2) In all cases other than (1) above, the report shall be prepared by an independent certified public accountant certified to practice in New Hampshire, including the text of any footnotes to the financial statements as prepared by the certified public accountant;

(3) The report shall be accompanied by a letter expressing the unqualified opinion of the certified public accountant that the report fairly and accurately expresses the financial condition of the contractor as presented by management on the date of the report; and

(4) The report shall be based upon the following levels of service by the certified public accountant:

a. For projects with an estimated cost of \$4,000,000 or more, the report shall be based upon an audit of the firm's financial condition;

b. For projects with an estimated cost between \$500,000 and \$4,000,000, the report shall be based upon a review of the firm's financial condition; and

c. For projects with an estimated cost of less than \$500,000, the report shall be based upon a compiled financial statement.

(d) All information furnished shall be used to determine a contractor's classification and capacity rating in accordance with these rules. Information so supplied to the department shall be held in strict confidence, and treated as confidential, commercial, and financial information pursuant to RSA 91-A:5.

(e) Except when prequalification statements and supplementary information are the subject of litigation or an adjudicatory hearing, only the commissioner, assistant commissioner, prequalification committee, prequalification administrator, contracts administrator in the absence of the prequalification administrator and, upon request, the governor and council and department of justice shall have access to the prequalification statements and supplementary information. Other than at the request of the contractor, no reproduction shall be made of the prequalification submission, and no person with access to the information shall redisclose the information to any other person.

(f) In order to open the bidding process to a broader field of bidders and to assure competitive bidding, the prequalification process shall not apply in instances where the project is simple in scope and common to the industry including but not limited to simple carpentry or painting.

Tra 401.05 Prequalification Statement.

(a) Any contractor proposing to bid on a project(s) advertised by the department shall provide information on forms furnished by the department.

(b) The following information regarding the applicant shall be provided:

- (1) Name of contractor submitting statement;
- (2) Complete address;
- (3) Date of submission;
- (4) Telephone number;
- (5) Classification requested from among the following categories:
 - a. Road construction;
 - b. Guardrail construction;
 - c. Traffic signals;
 - d. Paving;
 - e. Bridge construction;
 - f. Bridge rehabilitation;
 - g. Bridge painting;

- h. Covered bridges;
 - i. Marine construction;
 - j. Site work;
 - k. Building construction;
 - l. Building demolition;
 - m. HVAC work;
 - n. Electrical work;
 - o. Roofing;
 - p. Asbestos work; or
 - q. Other, as specified;
- (6) Identification of the contractor, including:
- a. Form of organization, including but not limited to:
 - 1. Corporation;
 - 2. Partnership or limited partnership;
 - 3. Limited liability company; or
 - 4. Individual ownership;
 - b. Address of the organization;
 - c. Years organized under present business name; and
 - d. Experience in the type of construction work requested by applicant which shall include identification of past and current projects performed as either the prime contractor or as a subcontractor;
- (7) Specifics of the organization of the contractor as follows:
- a. If a corporation:
 - 1. Date of incorporation;
 - 2. Place of incorporation, and whether in good standing;
 - 3. Name of president;

4. Name(s) of corporate officers of the rank of vice-president or above;
5. Name of secretary;
6. Name of treasurer; and
7. Names of persons or entities owning 10% or more of the corporation, and indication of the percentage owned;

b. If a partnership or limited partnership:

1. Date of organization;
2. Nature of partnership;
3. Names of all general and limited partners; and
4. Addresses of all general and limited partners; and

c. If a limited liability company (LLC):

1. Date of organization;
2. Place of creation, and whether in good standing;
3. Name of the manager if a LLC; and
4. Name of each member owning 10% or more of the LLC and indication of the percentage owned;

(8) Listing of any affiliation of the contractor organization, principal individual, officer or director with any other contractor or material supplier;

(9) Listing of all on-going projects, public and private, as either a prime or subcontractor at date of filing indicating for each project:

- a. Contract amount;
- b. Class of work;
- c. Percentage completed;
- d. Percentage sub-contracted; and
- e. Full name and address of the entity that awarded the contract;

(10) Listing of completed contracts within the past 3 years indicating for each contract:

- a. Contract amount;

- b. Class of work;
 - c. Percentage completed;
 - d. Percentage sub-contracted; and
 - e. Full name and address of the entity that awarded the contract;
- (11) A statement as to whether the organization or legal entity, its officers or partners have in the past 3 years been:
- a. Found in a legal proceeding to be in default of a contract, including the date and parties to the proceeding;
 - b. Claimed in a legal proceeding to be in default of a contract, including the date and parties to the proceeding;
 - c. Put on notice that the legal organization is in default of a contract, including the date of breach and parties to the contract;
 - d. Formally accused of an antitrust violation;
 - e. Formally accused of a bidding crime; or
 - f. Formally accused of any charge that could lead to a debarment in NH or another jurisdiction.
- (12) A statement as to whether any officer, partner or principal individual of the organization is in litigation for, or has ever been convicted of an antitrust violation, the name of the individual, and reason for the action;
- (13) A statement as to the construction industry experience of each principal individual in the organization including:
- a. Individual's name;
 - b. Present position;
 - c. Number of years of construction experience;
 - d. Value and type of work; and
 - e. The capacity in which the work was performed or supervised;
- (14) Dated financial report including the following assets:
- a. Cash on hand;
 - b. Notes receivable;
 - c. Accounts receivable;
 - d. Inventory;
 - e. Deposits for bids or guarantees;

- f. Prepaid expense;
 - g. Cash value of life insurance on principal individuals;
 - h. Stocks and bonds;
 - i. Investments;
 - j. Fixed assets, including:
 - 1. Cost;
 - 2. Accumulated depreciation; and
 - 3. Book value;
 - k. Other assets; and
 - l. Names of persons or entities and percentages accounting for notes receivable;
- (15) Dated financial report including the following liabilities and equity:
- a. Notes payable;
 - b. Accounts payable;
 - c. Equipment lease and purchase agreements;
 - d. Amount owed on equipment;
 - e. Real estate encumbrances;
 - f. Federal income tax provision;
 - g. Other liabilities;
 - h. Deferred income;
 - i. Capital stock paid up;
 - j. Contingent liabilities; and
 - k. Names of persons or entities and percentages accounting for notes payable;
- (16) Information relating to the financial report, including the preparer's:
- a. Full name;
 - b. Complete address; and

- c. Telephone number;
 - d. Whether prepared on the cash basis or accrual basis;
- (17) A certified copy of any written agreement between the contracting legal entity and any other legal entity that guarantees the obligations of either legal entity;
- (18) Listing of construction equipment to be used in performance of the work for which prequalification is sought, including complete description and book value;
- (19) Names and complete addresses of major material suppliers and subcontractors with whom business was done within the past 3 years;
- (20) Names and addresses of the following financial entities used by the contractor:
- a. Bank;
 - b. Surety company; and
 - c Insurance agent;
- (21) Certification of non-collusion statement, as required by federal regulations; and
- (22) Authorized signature and title.
- (c) An authorized officer, partner, member, manager or principal of the legal entity or organization shall sign a sworn statement, under penalties of perjury, that the information contained in the application is true and accurate to the best of his/her information and belief.. The officer shall further attest that he/she is authorized to sign the contract on behalf of the legal entity.

Tra 401.06 Time of Filing and Review.

(a) Prequalification statements shall be filed with the department annually. Prequalification status shall expire one year and 3 months from the date of the financial statement filed as part of the prequalification statement. In no case shall a request for prequalification be accepted after the tenth day before the day set for opening of bids for the project on which the contractor under consideration intends to bid.

(b) A request for prequalification shall not be considered by the committee until a prequalification statement fully completed in accordance with Tra 401.05 and a financial statement fully completed in accordance with Tra 401.04 have been submitted by the contractor concerned. If the information contained in any statement required under this part is insufficient, the commissioner shall refuse to furnish such contractor with an official proposal form for an advertised project.

(c) The prequalification committee shall analyze the prequalification statement and financial statement and obtain verification of the information set forth in the statements. Obtaining verification shall include, but not be limited to, such methods as requesting written or oral references and evaluating past performance on state projects in any capacity. The prequalification committee shall request further clarification of information, or a personal interview with the contractor, if necessary to evaluate the prequalification statement and the financial statement.

(d) The prequalification committee shall consider a request for the revision of a prequalification rating at any time based upon the submission of information showing increased financial ability, equipment or ability to perform work.

(e) The prequalification committee shall consider the request of a debarred contractor to lift debarment at any time based upon the submission of information to show that cause for continuance of a debarment no longer exists.

Tra 401.07 Classification.

(a) Contractors shall be classified by the prequalification committee into one or more of the following areas of expertise:

- (1) Road construction;
2. Guardrail construction;
3. Traffic signals;
4. Paving;
5. Bridge construction;
6. Bridge rehabilitation;
7. Bridge painting;
8. Covered bridges;
9. Marine construction;
10. Site work;
11. Building construction;
12. Building demolition;
13. HVAC work;
14. Electrical work;
15. Roofing;
16. Asbestos work; and
17. Other, as specified.

(b) The prospective contractor shall indicate, at the place provided in the statement, the particular area(s) of expertise in which the contractor desires to prequalify.

(c) Classification shall be awarded in one or more areas of expertise based upon:

- (1) All information provided in the prequalification statement;
- (2) The actual past experience of the contractor in performance of work in one or more of the areas of expertise; and
- (3) References received based upon past work which indicate a record of successful performance of work as a contractor in that area of expertise.

Tra 401.08 Capacity Rating.

(a) The prequalification committee shall determine annually the capacity rating of a contractor.

(b) The capacity rating, which is the bidder's maximum bonding aggregate, shall be the largest amount, expressed in dollar volume, of work a contractor shall be judged capable of performing at any time, either as prime contractor or subcontractor, regardless of the location of the work and with whom it has contracted. The contractor is qualified by the prequalification committee to bid on a project based upon the contractor's financial statement, contract value of work on hand and bonding limits, both single and aggregate. The capacity rating shall be subject to change during a year based upon updated information received by the prequalification committee or upon application from the contractor.

Tra 401.09 Prequalification Determination.

(a) The prequalification committee shall use a combination of classification and capacity rating to determine the qualification of proposed contractors to bid on specific projects.

(b) The dollar value of the contractor's incomplete work as either a prime contractor or subcontractor shall be deducted from the capacity rating. The remainder shall be called the current capacity rating. Final prequalification determinations shall be expressed in terms of current capacity rating.

(c) The department shall notify each applicant who is prequalified of the amount of its current capacity rating and the classification of work on which the applicant shall be eligible to bid during the year.

Tra 401.10 Request for Proposal.

(a) Although sample copies of all project documents shall be released to the public pursuant to RSA 91-A, no request for proposal forms to be filed as part of an actual bid for a department project shall be provided to a prospective bidder who is not prequalified, except as provided under Tra 401.04(f). A contractor shall not be considered prequalified prior to filing the prequalification statement and financial report or prior to determination of classification and capacity ratings by the prequalification committee.

(b) Proposals shall not be issued to a contractor if performance evaluation reports show that on projects already under contract at the time of requesting proposals, the contractor is making unsatisfactory progress on the work. Unsatisfactory progress shall include but not be limited to a negative evaluation of timeliness of performance or quality of work performed.

(c) Prequalified contractors shall seek the issuance of a request for proposal by filing a form, available from the department, containing the following information:

- (1) The contractors name, address and telephone number;
- (2) Project name and number for which a request is being made;
- (3) Identification of the prime and subcontractor;
- (4) Status of all work under contract as of the date of the request which shall include:
 - a. Description of the contract;
 - b. Identification and address of the owner involved;
 - c. The amount of the contract;
 - d. The total value of uncompleted work in dollar amount;
 - e. The total value of uncompleted work to be performed by a subcontractor in dollar amount; and
 - f. The contract completion date.

(d) The prequalification committee shall issue request for proposal forms for use in actual bidding to a prospective bidder only if a review of the prequalification statement and financial statement show that:

- (1) The current capacity rating of the contractor exceeds the estimated value of the proposed contract;
- (2) The bonding capacity of the contractor exceeds the estimated value of the proposed contract;
- (3) The contractor possesses sufficient equipment and human resources to perform the work under the proposed contract as well as the projects the contractor has under current contract; and
- (4) The contractor has in the past met or exceeded contract performance expectations for a state contract:
 - a. In the same classification of expertise;
 - b. In the same or a similar location; and
 - c. For work of similar or greater complexity as the proposed work for which the contractor has requested a proposal;

(e) Request for proposal forms shall be labeled with the name of the bidder and shall be non-transferable, except for a jointly prepared request for proposal submitted in accordance with Tra 401.11.

Tra 401.11 Joint Qualification Rating.

(a) When 2 or more prequalified contractors wish to combine all or a portion of their assets for bidding on a project, they shall do so by filing with the department a jointly prepared request for proposal.

(b) If a contractor applying for prequalification is organized into more than one legal entity, the contractor may, by use of a written guarantee, whereby one legal entity guarantees the legal obligations of another legal entity, which shall include all assets and liabilities, obtain a different capacity rating than would be available for the smaller of the 2 legal entities. The guarantee between the legal entities shall hold the guaranteeing legal entity responsible for the contract as well as the legal entity which is the prospective bidder on the contract.

Tra 401.12 Denial of Prequalification and Debarment; Right To A Hearing.

(a) The department shall deny prequalification to a prospective contractor for any of the following reasons:

- (1) The applicant knowingly made materially false, deceptive or fraudulent statements either on the application, or at any conference with the prequalification committee, or on any bid proposal form;
- (2) The applicant has been convicted of participating in anti-trust violations;
- (3) The applicant is currently debarred from performing work in any state or on federal projects; or
- (4) Other factors are present which would materially affect the contractor's ability to perform contractual responsibilities, including but not limited to poor performance on previous contracts in any state or on federal projects.

(b) The department shall debar any prequalified contracting firm, its affiliates or subsidiary firms, or principal individuals if the prequalification committee receives information from the contractor, a governmental unit, or a public record that:

- (1) The contractor knowingly made materially false, deceptive or fraudulent statements either on the application, at any conference with the prequalification committee, on any bid proposal form, on documents filed with the department including but not limited to statement of hours worked, work performed, finances, cost, equipment used/purchased, materials used or payments made;
- (2) The contractor has been convicted of participating in anti-trust violations.
- (3) A contractor, or any of its principal individuals, has been convicted of any bidding crime as a result of a jury or bench trial, any plea of guilty or nolo contendere, any public admission of a contractor related to a bidding crime, or any admission of a bidding crime written and signed or made under oath by an unindicted co-conspirator;
- (4) A contractor, or any of its principal individuals, has been debarred by some other state or federal agency for reasons substantially similar to those listed above in preceding subsection (3) regarding bidding crimes.
- (5) Other factors of a serious and compelling nature are present which materially affect the contractor's ability to perform its contractual responsibilities, including but not limited to poor performance reflected in performance evaluations created during the performance of the work on previous contracts; or
- (6) A contractor has failed or neglected to advise the department of a conviction upon any bidding crime or debarment by any other state or federal agency within 30 days of such conviction or debarment.

(c) Any contracting firm, its affiliates or subsidiary firms, or any principal individual considered for debarment shall be formally notified by certified mail of the opportunity to request a hearing 30 days prior to actual debarment, provided that if necessary to protect the public interest in situations involving threat to public health or safety, the committee shall debar a contracting firm, its affiliates or subsidiary firms, or any principal individual effective immediately, and hold a hearing pursuant to RSA 541-A:30, III.

(d) The prequalification committee shall suspend or otherwise delay inquiry into possible debarment if such inquiry might impede state or federal investigations.

(e) If debarred, the term of debarment shall be 36 months, unless the prequalification committee determines that the reason for debarment no longer exists, or that the debarred contractor has successfully completed the terms of sentence, including probation responsibilities, for a bidding crime.

(f) The prequalification committee shall extend the debarment term beyond 36 months if any of the bases for debarment still exist, and such bases continue to materially affect the contractor's ability to perform contractual responsibilities.

(g) Debarment shall in no way affect the obligation of a contracting firm to complete services already under contract.

(h) Any debarred contracting firm, its affiliates or subsidiary firms, or any principal individual shall not participate in any capacity on any project administered by the state unless the terms of the debarment are limited to enable the contractor to participate in activities not covered by the debarment order.

(i) After investigation and inquiry of the contractor, the debarring agency and any available outside sources, the department may make an exception to the debarment requirement based upon a debarment in another state or by a federal agency as listed in above in subsection (b) (4). An exception may be deemed warranted depending upon the circumstances involved, including but not limited to: the severity of the underlying accusations for debarment in the other state or by a federal agency; the process involved with the debarment from the other state or federal agency, including whether the debarment is being appealed; and whether the contractor has met or exceeded contract performance expectations for a contract in New Hampshire within the past 5 years.

Tra 401.13 Request for Hearing.

(a) Decisions of the prequalification committee with respect to the following determinations may be appealed to the commissioner by filing a request for hearing pursuant to RSA 541-A:

- (1) Classification,
- (2) Capacity rating;
- (3) Prequalification status;
- (4) Denial of prequalification;
- (5) Requests to revise prequalification status;
- (6) Requests for joint qualification rating;

- (7) Refusal to approve cross corporate guarantee;
- (8) Suspension, revocation, or limitation on prequalification; or
- (9) Debarment.

(b) A request for hearing shall be sent to:

Commissioner
New Hampshire Department of Transportation
P.O. Box 483
Concord, NH 03302-0483

(c) A request for hearing shall be in writing and made within 30 days from the date of receipt of the decision by the applicant.

(d) The filing of a request for hearing shall not stay the bidding process on any proposed contract upon which an applicant has sought to be prequalified.