

Policies and Procedures for
Prequalification of Joint Ventures



SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION

**Policies and Procedures
for
PREQUALIFICATION
of
JOINT VENTURES**

**Rev. July 1, 2014
Replaces Previous Versions**

This policy and procedure document is a working document that may be updated as necessary to change and grow with the needs of the South Carolina Department of Transportation.

This document coincides with the following prequalification application:
Joint Venture Prequalification Application, SCDOT Form CA-3, July 1, 2014.

**Office of the
Director of Construction**

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Purpose of this Document

The purpose of this document is to establish and maintain SCDOT's policies and procedures consistent with law and regulations governing the prequalification of a prime contractor.

Executive Summary

The purpose of the SCDOT prequalification process is to impartially evaluate a joint venture, and to properly determine by its responsible business practices, work experience, manpower, equipment, and the individual contractors forming the joint venture that it deserves the privilege of bidding on a SCDOT highway construction project, and if awarded a contract for the project, that it has the capability to successfully complete the contract in the best interest of the people of South Carolina.

The Director of Construction office is responsible for prequalifying a joint venture to bid on SCDOT highway construction projects. A joint venture may be composed of two or more sole proprietorships, partnerships, limited liability companies, limited liability partnerships, corporations or a combination of these business entities. Regardless of its structure, the joint venture is not allowed to submit a bid on a highway construction project unless it has been prequalified in accordance with the policies and procedures contained herein.

State and federal statutes and regulations require that SCDOT highway construction projects be awarded to the lowest responsive and responsible bidder. State and federal statutes and regulations also allow the SCDOT to prequalify all bidders to ensure that the low bidder has the capability to successfully complete a SCDOT highway construction project.

The Prequalification process includes a Preliminary Review to ensure that all the requirements for a prequalification application have been met. If the application passes the Preliminary Review, a Final Review and Evaluation is performed to determine if the contractor has met the criteria for prequalification.

If the application is approved, a *Prequalification Certificate* is issued to the joint venture, allowing it to apply for bidding credentials and ultimately to submit a bid on any SCDOT highway construction project let through office of the Director of Construction. If the application is not approved, concurrence by the Director of Construction for the denial of prequalification is required.

This document is specifically for prequalification of joint venture contractors. For the prequalification of individual contractors, see *Policies and Procedures for Prequalification of Prime Contractors*.

Key Statutes and Regulations

(It should be understood that any reference to prime contractor or contractor in the laws and regulations below also apply to a joint venture contractor as well.)

- ▶ *South Carolina Code of Laws, Section 40-11-360. Exemptions from application of chapter; content of posters to be distributed to building permit offices.*

Subparagraph (A)(4) of this Section exempts contractors, performing highway construction work for the SCDOT, from the State Contractor licensing requirements in light of the fact that they are prequalified by the Department.

- ▶ *South Carolina Code of Laws, Section 57-5-1650. Regulations as to qualifications of contractors permitted to bid on work.*

This statute allows the Department to establish requirements for qualification of contractors bidding on highway construction work for the Department.

- ▶ *South Carolina Code of Regulation, Sections 63-300 through 63-307. Prequalification of Bidders.*

Section 63-300 states that all prime contractors bidding on SCDOT projects must be prequalified.

Section 63-301 provides the basis for prequalification.

Section 63-302 states that all prequalified contractors will be issued a Prequalification Certificate indicating that they are prequalified by the Department.

Section 63-303 requires the contractor to sign a sworn statement attesting to the truthfulness of its ability to perform the work on which he becomes eligible to bid, the amount and condition of the equipment he owns or leases, its references have knowledge of his character, experience, and capabilities, and any other information requested by the Department.

Section 63-304 states that failure to carry out any contract will disqualify a contractor from bidding on other contracts. This is interpreted to mean a contractor that is in a default or a delinquent status cannot bid as a prime contractor or work as a subcontractor until the default or delinquency status is lifted. This also applies to affiliates as defined by this Regulation.

Section 63-305 states that contractors that do not show satisfactory progress will not be able to bid on additional work, and contractors that show incompetency or irresponsibility may be disqualified.

Section 63-306 gives the policy and reasons for contractor disqualification and suspension from participation in contract with the Department.

Section 63-307 allows the department to use a Contract Performance Evaluation System and a Minimum Required Contractor Performance Score being assigned to a project. This is a

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prequalification on a specific project that prohibits bids on the project from contractors with scores below the set minimum score.

- ▶ *Code of Federal Regulations 23 CFR 635.110. Licensing and qualification of contractors.*

This federal regulation allows the State Transportation Department (STD), which in this case is SCDOT, to prequalify bidders on federal-aid highway construction projects. It also goes on to state that licensing cannot be required to bid on a project unless the license can readily be obtained before the letting. However it is silent on whether or not a license can be a requirement for award.

SCDOT Prequalification Personnel

The following SCDOT personnel are involved in the prequalification process:

- ▶ DIRECTOR OF CONSTRUCTION
- ▶ ASSISTANT CONSTRUCTION ENGINEER
- ▶ PREQUALIFICATION ADMINISTRATIVE ASSISTANT

Prequalification Application

Unlike prequalification applications for individual contractors, there is only one application form for both first-time applicants and renewing applicants. The application is the *Joint Venture Prequalification Application, Form CA-3, July 1, 2014*.

First Letter of Joint Venture Name	JV Prequalification Certificate Expiration Date
Number or A	January 31
B	March 31
C	May 31
D, E, or F	July 31
G or H	September 30
I, J, or K	November 30
L, M, or N	February 28 or 29
O or P	April 30
Q or R	June 30
S	August 31
T	October 31
U, V, W, X, Y, or Z	December 31

Table 1.

Policies and Procedures for Prequalification of Joint Ventures

South Carolina Code of Regulations, Article 63-301 requires a joint venture contractor applying for prequalification for the first time to submit the prequalification application to the Department at least 7 days before the first letting in which it wishes to bid. The 7 days are calendar days and submission means postmarked by the US postal service or hand-delivered to the Director of Construction office.

Preliminary Review

The PREQUALIFICATION ADMINISTRATIVE ASSISTANT performs the Preliminary Review of applications in the chronological order in which they were received with the exception that first-time applications are given priority.

Scope

The Preliminary Review consists of the following items:

- ▶ Log the prequalification applications into the Prequalification Log in the chronological order in which they are received.
- ▶ Check to see that all the required documents of the application have been submitted.
- ▶ Check to see that the Affidavits have been properly executed.
- ▶ Check to see that all the questions in the application have a legible, coherent, and relevant answer.

Deficiency in the Application

If a deficiency is found in the application, the PREQUALIFICATION ADMINISTRATIVE ASSISTANT contacts the person designated as the Contact Person in the application. The method of contact will be by telephone, fax, e-mail, or any combination of the three. The deficiency will be explained, and the contact information is noted in the Prequalification Log. The joint venture must submit substitute pages or additional pages to be inserted in the application. If the deficiency is minor, the PREQUALIFICATION ADMINISTRATIVE ASSISTANT may make handwritten corrections to the submitted application, but the corrections must have mailed, faxed, or e-mailed documentation from the joint venture.

The affidavit must have original ink signatures of both the person being deposed and the notary public. Stamped signatures will not be accepted. If there are errors in the affidavit, a new original hardcopy affidavit must be mailed or hand delivered. E-mailed, faxed, or scanned corrected copies of an affidavit will not be accepted.

Non-Responsive Applicant

If the joint venture fails to respond within three weeks after the initial contact by the PREQUALIFICATION ADMINISTRATIVE ASSISTANT, a follow-up contact is made. If the joint venture fails to respond within one week after the follow-up contact, the joint venture is deemed non-responsive, and the application is closed. If the joint venture wishes to pursue prequalification after the application is closed, it must submit a new application, and it will be logged in as a first-time applicant and subject to the 7-day bidding restriction.

Preliminary Review Completed

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After performing the Preliminary Review, and if no deficiencies are found, or if all deficiencies have been resolved, the application is passed on to the ASSISTANT CONSTRUCTION ENGINEER to perform the Final Review and Evaluation.

Final Review and Evaluation

In accordance with *South Carolina Code of Regulations, Section 63-301*, prequalification of a contractor is based on a verified showing of experience, responsibility record, and available equipment. The prequalification application must include the affidavit in the application testifying to the truthfulness of the application with the notarized signatures of the authorized representatives of all of the individual contractors forming the joint venture. The two acknowledgement forms included in the application must have a notarized signature of a representative of the joint venture.

The ASSISTANT CONSTRUCTION ENGINEER performs the Final Review and Evaluation of applications for the renewal of prequalification in the chronological order that they were received. First-time applications are given priority over renewal applications to allow them the maximum time possible to obtain bidding credentials from Bid Express.

Approval Criteria

The ASSISTANT CONSTRUCTION ENGINEER performs the Final Review and Evaluation using the following criteria:

- a. All of the individual companies forming the joint venture MUST be individually prequalified with SCDOT, and all the individual prequalifications must be current.
- b. The joint venture must have a legal structure and a name which distinguishes it from the individual companies forming the joint venture.
- c. All questions in the application must have an acceptable answer and be consistent with other information and responses in the application and in previous applications.
- d. The application contains the name, title, and office, cell, and home telephone number of a person in the joint venture who is available 24/7 to receive a call from the Secretary of Transportation, and who, on direction from the Secretary, has the authority to commit resources of the joint venture in a declared emergency.
- e. No intentionally false or misleading information is found in the application.
- f. The joint venture or any of the individual companies forming the joint venture must not owe any delinquent taxes.
- g. The joint venture or any of the companies forming the joint venture and their officers, principals, and managers must not be affiliated or otherwise connected to an individual currently serving a criminal sentence or to an individual or legal entity with an outstanding civil

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judgment for commission of a crime or act reflecting lack of business integrity and honesty with respect to performance of a public contract.

- h. The joint venture and its individual companies must have demonstrated successful experience in highway or highway related type of work.
- i. The joint venture has sufficient and appropriate personnel to perform at least 30% of the work on a highway project on which it would be likely to bid.
- j. The joint venture has sufficient and appropriate equipment to perform at least 30% of the work on a highway project on which it would be likely to bid.
- k. On the *Joint Venture Prequalification Application, SCDOT Form CA-3*, Question 3, the response should be NO. If the response is YES for this question, a full explanation must be provided and all required restitutions made, all penalties paid, all sentences served, and the joint venture and its individual companies must be currently in good standing with all local, state, and federal agencies.
- l. The joint venture, any of its individual companies, or any of their owners, officers, principals, or managers must not be currently under disqualification, suspension, or debarment at the time the application is submitted. When the disqualification or suspension is lifted, the joint venture may submit a new updated application.
- m. The joint venture must not have the same ownership, similar management, or principal employees as a joint venture or individual company currently under disqualification, suspension, or debarment.
- n. The joint venture must not be under the protection of a Bankruptcy Court, have a pending petition before a Bankruptcy Court, or have pending assignment of assets for benefit of creditors.

If the ASSISTANT CONSTRUCTION ENGINEER needs more information concerning criteria listed above, the information is requested from the joint venture's Contact Person. The request is noted in the Prequalification Log.

Denial of Prequalification

If the ASSISTANT CONSTRUCTION ENGINEER finds that the application has failed to satisfy one or more of the criteria for prequalification, a *Prequalification Not Approved, SCDOT Form PQ-2*, is prepared indicating the reason(s) for denial. The form is signed by the ASSISTANT CONSTRUCTION ENGINEER and sent to the DIRECTOR OF CONSTRUCTION for concurrence in the denial.

If the DIRECTOR OF CONSTRUCTION concurs in the denial of prequalification, he/she signs the *SCDOT Form PQ-2* and returns it to the ASSISTANT CONSTRUCTION ENGINEER. Upon receipt of the signed *SCDOT Form PQ-2*, the ASSISTANT CONSTRUCTION ENGINEER prepares and sends a letter to the joint venture informing it of the denial of prequalification and states the reason for the action. The letter and the *SCDOT Form PQ-2* are filed in the PREQUALIFICATION DENIED files.

If the DIRECTOR OF CONSTRUCTION does not concur in the denial of prequalification, or has questions, the DIRECTOR OF CONSTRUCTION and the ASSISTANT CONSTRUCTION ENGINEER discuss the application, and the application may be re-evaluated.

Approval of Prequalification

If after performing the Final Review and Evaluation for FIRST-TIME applicants, the ASSISTANT CONSTRUCTION ENGINEER determines that in his judgment the joint venture has satisfied all the criteria for prequalification, a *Joint Venture Prequalification Certificate, SCDOT Form CERT-3*, is prepared, and the ASSISTANT CONSTRUCTION ENGINEER indicates his approval by signing it. The prequalification application and certificate are then sent to the DIRECTOR OF CONSTRUCTION for his review and comments. If the DOC has no comments or objections, the new *Prequalification Certificate* is sent to the joint venture.

If after performing Final Review and Evaluation for RENEWAL applicants, the ASSISTANT CONSTRUCTION ENGINEER determines that in his judgment the Joint Venture has satisfied all the criteria for the renewal of prequalification, a *Prequalification Certificate* is prepared and the ASSISTANT CONSTRUCTION ENGINEER indicates approval by signing it. If the ASSISTANT CONSTRUCTION ENGINEER feels there are no issues that should be brought to the attention of the DIRECTOR OF CONSTRUCTION, the new *Prequalification Certificate* is sent to the joint venture without further review.

Prequalification Certificate

In accordance with *South Carolina Code of Regulations, Section 63-302*, if prequalification is approved; a *Prequalification Certificate* is prepared and sent to the joint venture. The certificate, *SCDOT Form CERT-3*, includes a SCDOT Vendor No., which is unique to the joint venture. The certificate has the date the certificate was issued and the expiration date of the certificate. At the bottom of the certificate is the Joint ventures current Contractor Performance Score (CPS). The *Prequalification Certificate* is mailed to the joint venture, but if the joint venture is a FIRST TIME applicant, a copy of the certificate is also faxed to the joint venture.

Information about the Contractor Performance Score can be found in the *Policies and Procedures for Contractor Performance Evaluation*, a copy of which can be found on the following SCDOT Internet webpage:

http://www.scdot.org/doing/contractor_Prequalified.aspx

Expiration and Renewal of the Prequalification Certificate

A *Prequalification Certificate* must be renewed annually before the existing certificate's Expiration Date. To remain continuously prequalified and eligible to bid, barring suspension or disqualification, the joint venture's renewal application must be received by the Director of Construction office before the close of business of the Expiration Date on the current certificate. However, renewal applications should not be submitted more than 2 months before the Expiration Date indicated on the existing certificate.

If the renewal application is received by the Director of Construction office before the Expiration Date on the current certificate, the prequalification will remain in effect even if the new *Prequalification Certificate* is not issued before the Expiration Date on the current certificate.

Although a joint venture's *Prequalification Certificate* will always expire on the same day every year as shown in Table 1 on page 5, the term of the first *Prequalification Certificate* will vary depending on when the first certificate is issued. The initial term of prequalification can vary from a minimum of 6 full months to a maximum of 17 full months depending on the Expiration Date shown in Table 1. The following 3 examples illustrate how the term of an initial *Prequalification Certificate* can vary:

- ▶ If the Able Company's first *Prequalification Certificate* was issued on January 18, 2014, the Expiration Date on the certificate would be January 31, 2015. Its term of prequalification would be 12 months.
- ▶ If the Able Company's first *Prequalification Certificate* was issued on July 18, 2014, the Expiration Date on the initial certificate would be January 31, 2015, and the term would be only 6 months.
- ▶ If the Able Company's first *Prequalification Certificate* was issued on August 18, 2014, the Expiration Date on the initial certificate would be January 31, 2016, because if the Expiration Date was set at January 31, 2015 the term would be less than 6 months. An Expiration Date of January 31, 2016 would have a term of seventeen (17) months.

After the initial term, if the joint venture submits the renewal package before the current certificate expires, the length of subsequent terms will always be 12 months.

Revocation of Prequalification Certificate

“Recognizing that preserving the integrity of the public contracting process is vital to the development of a balanced and efficient transportation system and is a matter of interest to all people of the State, it is hereby declared: The opportunity to bid on contracts, to participate as subcontractor or to supply goods or services to the Department is a privilege, not a right...” South Carolina Code of Regulations, Section 63-306(A)(2).

Disqualification or Suspension

If the FHWA suspends or disqualifies a currently prequalified joint venture, or any of the companies forming the joint venture, from bidding federal-aid projects, SCDOT will immediately revoke the joint venture's prequalification. During the period of any suspension or disqualification, the joint venture will not be allowed to bid as a prime contractor nor be approved to work as a subcontractor on any new state or federal-aid projects. This restriction also applies to affiliates as defined in *South Carolina Code of Regulations, Section 63-306*.

If SCDOT places a currently prequalified joint venture, or any of the companies forming the joint venture, in a Default or Delinquency status, the prequalification will be immediately revoked. While in the Default or Delinquency status, the joint venture will not be allowed to bid as a prime contractor nor be approved to work as a subcontractor on any new state or federal-aid projects. This restriction also applies to affiliates as defined in *South Carolina Code of Regulations, Section 63-306*.

Any persons or contractors involved in criminal and/or unethical conduct may be disqualified or suspended by the Department, and its prequalification may be immediately revoked or suspended. During the period of any suspension or disqualification, the joint venture will not be allowed to bid as a joint venture nor be approved to work as a subcontractor on any new state or federal-aid projects. This restriction also applies to affiliates as defined in *South Carolina Code of Regulations, Section 63-306*.

The Department may disqualify a joint venture who violates any standards of conduct identified below:

- a. Failure to carry a contract to completion.
- b. Failure to maintain suitable progress on a contract.
- c. Conviction of any crime reflecting a lack of business integrity or business honesty, including but not limited to, crimes involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statement, receiving stolen property, anti-trust violations, making false claims, making any unlawful payment or gratuity, obstruction of justice, violation of ethical standards, or conspiracy to commit any of the above.
- d. Civil judgment on a public contract for any acts or omissions reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards, or conspiracy to commit any of the above.
- e. Final administrative decisions by any governmental agency responsible for supervising or regulating public contracts, standards of ethical conduct or licensure for any acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards, or conspiracy to commit any of the above.

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- f. Any act or omission reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of a debarment agreement, violation of the ethical standards, or conspiracy to commit any of the above.
- g. Willful violation of any provision of a contract with the Department, or any regulatory or statutory provision relating to such contract, while serving as a contractor, subcontractor, or supplier.
- h. Persistent failure to perform or incompetent performance on one or more contracts with the Department as a prime contractor, subcontractor, or supplier.
- i. Knowingly allowing any person disqualified or suspended by the Department or by any other governmental or regulatory agency, to serve as a subcontractor or supplier or to play any other role under any contract with the Department without prior written authorization from the Department.
- j. Failure to cooperate fully and completely with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate.

Notice of disqualification, suspension, or sanctions may be issued by the Secretary of Transportation or his designee and shall include:

- a. A reference to the particular sections of the statutes, regulations, and rules involved;
- b. A short and plain statement of the matters asserted.

Civil sanctions imposed by the Department shall be remedial in nature and may include, but not limited to:

- a. disqualification or suspension for a specific period of time;
- b. monetary penalty;
- c. restitution and reimbursement to the Department for the cost of any investigation or proceedings relating to the circumstances leading to any sanctions; and
- d. conditions which must be met prior to restoration of a joint venture's *Prequalification Certificate*.

A violation of any of the sanctions imposed may be the basis of further sanctions.

If a joint venture is disqualified or suspended and is performing or providing services or materials under an active contract with the Department at the time of the disqualification or suspension, the Department may allow the disqualified or suspended contractor to complete its obligation under a contract when such completion is in the public interest.

Reinstatement of Contractor's Certificate

In accordance with *South Carolina Code of Regulations, Section 63-306(H)*, the disqualified or suspended joint venture may apply for the reinstatement of its *Prequalification Certificate* upon completion of all conditions imposed by the Department. Any application for the reinstatement of a *Prequalification Certificate* shall be subject to the then existing state or federal statutory and regulatory provisions and Departmental policies relating to prequalification of bidders.

A joint venture may seek relief from the disqualification or suspension imposed by the Department by requesting a contested case hearing before an ADMINISTRATIVE LAW JUDGE pursuant to *South Carolina Code of Laws, Section 1-23-600(H)* and the rules of procedure for the Administrative Law Judge Division. The request for a hearing must be made within thirty (30) days of receipt of the Departments notice of disqualification or suspension. The request for a contested case hearing stays the disqualification or suspension, and the prequalification must be reinstated.

The Department may submit a motion to lift the stay for good cause. A hearing on the motion must be held within 30 days, and ruling by the ADMINISTRATIVE LAW JUDGE must be issued within 15 days of the conclusion of the hearing.

Retention of Documents

The joint venture and individual contractor prequalification files are located in the Director of Construction office. The *Prequalification Certificate*, transmittal letter, and the Schedule of Expiration Dates are stapled to the front of approved prequalification applications, which are stored in in ACTIVE FILES in alphabetical order by the prequalified bidder's name. The files are maintained in the ACTIVE FILES until the joint venture fails to renew the prequalification.

Once a joint venture fails to renew the prequalification, the file is moved to the INACTIVE FILES and retained for three (3) years, after which they are destroyed.

For Information and Questions

For any questions concerning Joint Venture Prequalification, please contact the PREQUALIFICATION ADMINISTRATIVE ASSISTANT as listed on the webpage.