

CITY OF GRAND JUNCTION, COLORADO

RESOLUTION NO. 127- 01

**A RESOLUTION ADOPTING
REVISED RULES AND PROCEDURES TO PRE-QUALIFY CONTRACTORS
TO BID ON CITY PUBLIC WORKS AND UTILITY PROJECTS**

RECITALS:

The City of Grand Junction, in cooperation with Western Colorado Contractor's Association, the Associated Builders and Contractors Association, the Mesa County Association of Realtors and the Home Builders Association has developed Rules and Procedures for Pre-Qualification of Contractors who desire to bid on City Public Works and Utility projects.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

That these **revised** Rules and Procedures for Pre-Qualification of Contractors are adopted as attached.

PASSED and ADOPTED this 5th day of December , 2001

/s/: Cindy Enos Martinez
President of the Council

Attest:

/s/: Stephanie Tuin
City Clerk

CITY OF GRAND JUNCTION
DEPARTMENT OF PUBLIC WORKS AND UTILITIES

RULES AND PROCEDURES FOR
PRE-QUALIFICATION OF CONTRACTORS
(Revised December 5, 2001)

Section I – Purpose and Organization

Purpose

These rules and procedures ("Rules") are to be followed by the Public Works and Utilities Department ("Department") to pre-qualify a contractor who desires to submit a bid as a prime contractor for construction of a Department project, and to describe how the pre-qualification can be suspended or revoked.

Pre-qualification Committee

The Pre-qualification Committee will administer these Rules.

The Pre-qualification Committee ("Committee") consists of the City Engineer, the Utility Engineer, the Construction Supervisor and the City Auditor, and any other person designated by the Director of Public Works and Utilities ("Director").

Section II – Pre-qualification Process

Application for Pre-qualification

The City will not accept a bid over \$50,000 for any Department project from a contractor who is not pre-qualified as provided in these Rules.

The Committee will presume that a contractor who is currently pre-qualified by the Colorado Department of Transportation ("CDOT") is pre-qualified at the equivalent financial category by the City, unless the Committee has reasonable information or basis to the contrary. If the Committee has reasonable information or basis to the contrary, the City will notify the contractor who may apply directly with the City as set forth in these Rules. CDOT pre-qualification is not binding or conclusive on the City. If a contractor gives the Committee proof of current CDOT pre-qualification each year, the contractor may assume that it is pre-qualified at the equivalent financial category for that year, or until the City notifies the contractor to the contrary.

To apply to be pre-qualified by the City, a contractor should file an application with the Department. Application forms are available at the Department. The completed form can be mailed to the Department of Public Works and Utilities, 250 N. 5th Street, Grand Junction, Colorado 81501 or faxed to 970/256-4022.

During the first week of each quarter at a time and place determined by the Director, if business requires, the Committee will review pre-qualification applications and conduct other needed business.

A joint venture may apply for pre-qualification in the name of the joint venture or each member may apply for pre-qualification separately. A joint venture may be pre-qualified to the accumulated total of the individual financial levels of all members.

An application for special pre-qualification required under an invitation for bids shall be submitted and considered in accordance with the terms, conditions, procedures and time frame specified in the invitation.

The City may charge a pre-set application fee, not to exceed the cost of processing and reviewing the pre-qualification application.

Application Requirements

A copy of these Rules and application form are available at the Department. A contractor may supplement the required information so that the Committee has the information it needs to decide a pre-qualification application, or other matter. At a minimum, a contractor, and each member of an applying joint venture, should provide:

The name, address, phone number and type of applicant (*e.g.*, sole proprietorship, partnership, corporation, LLC, LLP, *etc.*) and the name and title of each officer, partner, member, shareholder or owner of five or more percent (hereinafter collectively "owner") of the applicant;

The name, address and phone number of the registered agent if the contractor is a corporation. If the corporation is not a Colorado corporation, proof of authority to do business in this state is required;

The maximum contract amount and the type of work for which the contractor seeks pre-qualification, *e.g.*, street construction, concrete curb, gutter, and sidewalk, earthwork, structures, paving, underground utilities, *etc.*;

The contractor's experience in construction work including the number of years in each type of work, the type of work, and a list of all pertinent construction contracts performed in the past three years;

Disclosure of any denial, suspension or revocation of pre-qualification or removal of the contractor, or any affiliate or subsidiary, from a bidding list within the last six years by the federal government, any agency of any state government including Colorado, and any local government or department or arm of any federal, state or local government, along with the name and address of the government, the stated basis for the denial, suspension, revocation or removal and a detailed explanation of the contractor's view and final result;

Disclosure of any contract(s) that the contractor has failed to complete within the last six years, along with a written explanation of the reasons why;

The name, address and title of each principal, officer, partner, member, supervisor, of the contractor along with the type and length of experience of each;

The name and address of each owner of the contractor, including the name and address of each affiliate and subsidiary. If the contractor is a corporation, each owner means every person with a five percent or greater interest;

List the equipment owned, leased or available for use by the contractor;

For the financial category not to exceed \$500,000, a financial statement prepared in compliance with generally accepted accounting principles (GAAP). For the financial category not to exceed \$2,000,000, the statement shall include a complete report of the contractor's financial resources, liabilities, equipment and personnel, along with a statement by a licensed CPA that the statement satisfies GAAP and is in accordance with review standards published by the American Institute of Certified Public Accountants. For the financial category above \$2,000,000, the statement shall include a complete report of the contractor's financial resources, liabilities, equipment and personnel, and be audited by a licensed certified public accountant.

A disclosure by the chief or controlling officer, partner, member, or owner if the contractor or any company officer, member, partner, owner, subsidiary, or affiliate or officer thereof, has been convicted of a bid related crime or violation within the past six years in any jurisdiction in the United States; as to any such conviction, the name of the crime, the date and location of the conviction, the penalty or sentence, and the current employment or ownership status of each such company or officer;

A disclosure of each revocation, suspension, de-barment, or notice of intent thereof regarding the contractor, any director, officer or owner, including if any owner or officer is affiliated with a person who is under notice of intent to debar or has been debarred; as to each disclosure, include the name and address of the governmental unit, department or agency, the basis for the action and the current status of any such action.

Pre-qualification Procedure

The contractor should submit the application and information to the Director. The Committee will consider the application to be complete when it has no more questions and needs no more information. The Committee will review the application once it is complete.

If the City Auditor contacts the applicant, the applicant must cooperate to make an appointment for the Auditor to review the contractor's financial records. The Auditor shall review the financial statement with the applicant or its designated representative when the contractor requests such review in writing. The contractor must retain the financial statement reviewed by the Auditor for three years from the date of the being pre-qualified. If reviewed or audited financial statements are delivered to the City, they will be evaluated and held confidentially by the City Auditor.

The Committee will send a copy of a denial of an application to pre-qualify by certified mail, return receipt requested, within seven business days of the decision, along with the reason(s) in writing, and a statement that the denial may be appealed to the Director.

The contractor may appeal a denial of pre-qualification to the Director if done in writing and delivered, certified mail, return receipt requested, within forty-five calendar days of the date of the denial; the appeal must identify the facts and basis that establishes why the Director should overturn the decision of the Committee.

The Director shall hear an appeal, in an informal fashion, within forty-five calendar days of receipt of an appeal. The Director will give the applicant an opportunity to address the rationale of the Committee and to supply additional information, including witnesses, to give the contractor a fair opportunity to convince the Director to pre-qualify the applicant. The contractor shall bear the burden of going forward and the burden of persuasion in such appeal. The Director shall render his final decision in writing within ten business days after hearing the appeal.

Pre-qualification Criteria

There will be four categories:

Not to exceed \$50,000 – Evidence of current bonding capacity (payment and performance) in the current contract amount or up to \$50,000 is required. No financial information is required.

Not to exceed \$500,000 – Evidence of current bonding capacity (payment and performance) in the current contract amount or up to \$500,000, a demonstration of experience with projects of this size, and a financial statement (Income Statement and Balance Sheet) prepared by the company bookkeeper or owner is required. This statement does not need to be audited or reviewed.

Not to exceed \$2,000,000 – Evidence of current bonding capacity (payment and performance) in the current contract amount or up to \$2,000,000, a demonstration of experience with projects of this size, and a Financial Statement reviewed by a licensed certified public accountant is required.

Over \$2,000,000 – Evidence of current bonding capacity (payment and performance) in the current contract amount or a minimum of \$2,000,000, whichever is higher, a demonstration of experience with projects of this size, and a Financial Statement audited by a licensed certified public accountant is required.

In deciding if a contractor should be pre-qualified, the Committee shall consider:

- (a) If the contractor has equipment available to accomplish the type of work on which it intends to bid;
- (b) Whether the contractor has trained personnel available to perform the type of work on which it intends to bid in a safe and effective manner;
- (c) Whether the contractor has an organization and technical staff with the size, training, experience, and capability to accomplish the type of work on which it intends to bid;

Whether the contractor has the financial capability to perform the work on which it intends to bid as evidenced by financial solvency greater than or equal to the contractor's pre-qualification level. The City Auditor will use the following ratios when evaluating a contractor's financial solvency:

1. Total Current Assets to Total Current Liabilities of greater than 1.0;
 2. Cash and Accounts Receivable to Total Current Liabilities of greater than 1.0;
 3. Net Fixed Assets to Net Worth of less than 2.3;
 4. Total Liabilities to Net Worth of less than 4.0;
- (d) If these ratios are not met by a contractor, the Committee may consider other factors including irrevocable lines of credit and other financial guarantees;
 - (e) Whether the contractor has demonstrated experience in the type of work on which it intends to bid;
 - (f) Whether the contractor has demonstrated performance on past City contracts including, but not limited to, compliance with all contract terms and specifications, satisfactory quality of workmanship, adequate safety program, and consistent on-time performance;
 - (g) Whether the contractor is revoked, suspended, debarred or under notice thereof, in any jurisdiction;
 - (h) Whether the contractor has made false, deceptive or fraudulent statements in the application for pre-qualification, or in any other information relied on or submitted to CDOT and/or the City; and
 - (i) In the case of a special prequalification for a particular project, any additional criteria which the Committee selects.

Effect of Prequalification

A contractor who is pre-qualified as described in these Rules may submit bids on Department projects for which the contractor has the resources, personnel, equipment and experience to undertake. The low bidder on a specific project will still be independently evaluated prior to any award based on prequalification, required bid documents and other criteria determined by the City.

Department projects which are subject to these rules are those in the public rights-of-way and easements, such as road improvements, sewer and water and drainage facilities, and other projects such as regional storm water detention basins and improvements.

Continuing Pre-qualification Requirements

A contractor must apply and pre-qualify at least once every three years. A pre-qualification expires three years from the date of issue. The Committee may review a determination that a contractor is pre-qualified at any time at its own discretion and without notice to the contractor.

A contractor shall write the Director within three business days upon any significant decrease in their fiscal or workmanship qualifications, or of any action taken in any jurisdiction, or notice of a pending action, against the contractor or an affiliate of the contractor precluding its ability to bid on, perform work for or otherwise in any manner participate fully completely and competently in the Department's projects.

Section III – Suspension or Revocation

Grounds for Suspension or Revocation

The Committee may revoke or suspend pre-qualification if it reasonably determines that:

The contractor or affiliate of the contractor is declared in default on any contract and/or a judgment is entered against the contractor or affiliate by a court of competent jurisdiction.

The contractor, or affiliate or owner of the contractor has made a false, deceptive or fraudulent statement on its application for prequalification, in any documents connected with the application or a bid, including a performance capability statement, or in any other information submitted to or relied on by the Department, or in the course of any statement disclosure, hearing or process associated with pre-qualification;

The contractor has failed to report any significant decreases in capabilities or limitations on bidding or performing work in accordance with these Rules;

The contractor, or an affiliate or owner of the contractor, acts or fails to act such that a lack of integrity in contract-related matters is shown or may reasonably be concluded;

The contractor has failed to perform work in a safe, effective and efficient manner and/or has failed to properly respond to, resolve, or address, as applicable, any City, state or federal notices, concerns or violations involving safe, effective or efficient work/working conditions; or

The contractor no longer meets the criteria contained in these Rules.

Suspension and Revocation Procedures

The following shall guide any revocation or suspension of pre-qualification:

Any person may contact the City concerning information warranting revocation of pre-qualification of a contractor as set forth in the criteria of these Rules. If the Committee becomes aware of information warranting suspension or revocation of pre-qualification, notice of intent to revoke or suspend shall be sent to the contractor's last known address by certified mail, return receipt requested. The notice shall include a written statement citing general support for the intended action, and shall include the contractor's the right of appeal to the Director.

If the Committee has reasonable grounds to believe that the City's interests, or the public health, welfare or safety, requires suspension of pre-qualification without advance hearing or notice, the Committee may immediately suspend, upon written notice, a contractor's pre-qualification. Such suspension shall be for a temporary period of time generally not to exceed 45 days, during which time the Committee, or the Director, shall provide an opportunity to be heard and the opportunity to present pertinent and relevant information.

The contractor may appeal a Committee decision to revoke pre-qualification or to suspend pre-qualification by delivering, to the Director within thirty days of the Committee decision, a written appeal stating the basis of the appeal.

The Director must hear such an appeal within forty-five calendar days, as provided in the rule dealing with an appeal of a denial of pre-qualification.

Status During Appeal

During any appeal, the contractor shall not be deemed to be pre-qualified, unless otherwise ordered by a court of competent jurisdiction.

No basis for liability.

No person, contractor, individual or other entity may use these Rules as a basis to create or establish any liability, duty or basis for estoppel, damages, costs or fees with respect to any breach or mistake of the City, its employees, officers and agents regarding the adoption, implementation or operation of these Rules and actions taken pursuant to these Rules. These Rules are for internal operating purposes only and shall not be relied upon by any third-party, contractor, or other person even though these Rules were adopted as a result of a cooperative effort with third parties.