



**Finance  
& Services**

# **SCHEME CONDITIONS**

**CONSULTANT PREQUALIFICATION SCHEME 2011-2013  
FOR CONSTRUCTION AND RELATED WORKS**

**August 2011**

## CONTACT DETAILS

### GENERAL SCHEME ENQUIRIES & APPLICATION FORM LODGEMENT

**EMAIL:** [consultantprequal@services.nsw.gov.au](mailto:consultantprequal@services.nsw.gov.au)

This is the preferred mode of communication

### POST:

Department of Finance and Services  
"Consultant Prequalification"  
Policy Support Services,  
Level 10, McKell Building  
2 - 24 Rawson Place  
Sydney NSW 2000

**General Scheme enquiries are to be directed through the email address above.**

**Urgent enquiries** may be made to the following Contact Officers.

#### Consultant Prequalification

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Contractors & Consultants  
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#### Scheme Continuous Improvement; Scheme Development

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## SCHEME CONDITIONS

The Scheme requires consultants to comply with the following conditions:

### 1 Code of Practice for Procurement

The NSW Government *Code of Practice for Procurement* sets the framework for all business relationships by:

- establishing the standards of behaviour expected from government agencies (as clients), employer and industry associations and unions; and
- requiring a strong commitment to continuous improvement and best practice performance by all participants in the supply chain.

Lodgement of an application will be evidence of the applicant's agreement to comply with the Code. Failure by a consultant to comply with the Code will be taken into account when considering the consultant for future business opportunities with the NSW Government.

Consultants must have a satisfactory record of compliance with the Code. This also includes ensuring that consultants and their sub-consultants, and suppliers comply with their legal obligations regarding their employees.

### 2 Legal Entity and Business Operations

The Department only prequalifies consultants that are recognised and acceptable legal entities having appropriate financial assets. The Department will not prequalify a Business Name, Trust or an entity that is under any form of external administration. Consultants trading under a Trustee company arrangement must demonstrate that they meet the Scheme requirements.

Prequalification of a consultant does not extend to related, associated or subsidiary business entities owned or controlled by the consultant or joint ventures to which the consultant is a party.

The Department will not prequalify:

- related, associated or subsidiary business entities for the same category of work and financial range unless the business relationships between the applicant entities and any already prequalified entity or entities satisfy the NSW Government Code of Practice for Procurement – Standards of Behaviour; or
- a joint venture for the same category of work and financial range as any of the parties to the joint venture.

Consultants must have traded successfully for two (2) years prior to the date of their application.

### 3 Changes to Consultant's Status

Consultants prequalified under the Scheme must immediately inform the Department of any substantial change in their financial capacity, technical capacity, capability, ownership status, contact details or address. Consultants must advise of a change in status by writing with full details to:

Senior Manager  
Policy Support Services  
Department of Finance & Services  
Level 10, McKell Building

2-24 Rawson Place,  
SYDNEY NSW 2000

A change in a consultant's status may include achieving or renewing accreditation with the Federal Safety Commission (FSC) for OHS Management Systems.

#### **4 Performance Monitoring, Tracking & Management by the Consultant**

Prequalified consultants should have in place a system for the monitoring, tracking and management of the firm's own performance on contracts procured through the NSW Government Procurement System for Construction.

The system is to enable the consultant to:

- Arrange to schedule proactively and attend face to face quarterly Consultant Performance meetings with the Client's Project Manager (to take place prior to the first week of February, May, August and November and when unsatisfactory performance is indicated). Prequalified Project Managers and Project Directors will follow this process by meeting directly with the Client to discuss the firm's performance.
- Manage the receipt and storage of completed and signed copies of Consultant Performance Reports (CPR) provided by the Client's Project Manager. Similarly, Project Managers and Project Directors will manage the receipt of Project Manager Performance Reports and Project Director Performance Reports respectively, which have been provided by the Client.

The consultant is to request the completion of any outstanding or incomplete CPRs from the Client's Project Manager. (Note that the Client's Project Manager is required to promptly provide copies of CPRs to the Consultant on request as a condition of their prequalification with the Department under the Consultant Prequalification Scheme.) Similarly the Project Manager and Project Director are to request the completion of any outstanding or incomplete CPRs directly from the Client.

- Review performance status and trends of all contracts at an executive level including analysis of performance status and trends on individual contracts.
- Identify performance issues requiring resolution and/or improvement including deciding on and implementing corrective actions.
- Review of consultant's own system for performance monitoring, tracking and management by the executive including the implementation of improvements.

#### **5 Monitoring Consultant Performance by the Department**

Consultants seeking or achieving prequalification under the Scheme are to be aware that the firm will be subject to a process of continuous monitoring and review in all matters related to the Scheme, including the consultant's performance and project outcomes.

The monitoring is not exclusive to work arranged by the Department or undertaken using the NSW Government Procurement System for Construction. Government agencies have agreed to exchange information on the performance of consultants.

This monitoring may include, but not be limited to:

- Consultant Performance Reports (CPR's)

- Project Manager Performance Reports
- Project Director Performance Reports
- Stakeholder Performance Reports (SPR's)
- The Code of Practice for Procurement
- Tendering Performance on contracts including whether the consultant has:
  - declined tendering opportunities offered without providing valid reason
  - failed to submit a tender without providing any valid reason after having accepted the tendering opportunity
  - submitted late tenders
  - submitted qualified, non-complying or uncompetitive tenders.
- The preparation of proper and conclusive accident and incident reports on any of the consultant's contracts in NSW
- The level of appropriateness of corrective actions implemented by the consultant following the report of a serious OHS event related to the consultant's work
- Results of any Quality Assurance Audit, or Environmental Management System Audit, or OHS Management System Audit conducted for, or on behalf of, any NSW government agency or by any properly credentialed Auditor or Auditor group
- Industrial relations issues that have resulted in a significant disruption to the works progress on the consultant's Departmental contracts
- Aboriginal Participation in Construction
- Project outcomes
- Client satisfaction
- Business management systems
- Project Management systems
- Ethical business practices
- Training and Development
- Financial Performance

## **6 Benchmark for Positive Consistent Performance**

Consultants must demonstrate positive consistent performance. The average weighted Performance Report score (including Consultant Performance Reports, Project Manager Performance Reports and Project Director Performance Reports) achieved by a consultant, on each contract as well as on each individual performance report, will be compared with a required minimum benchmark score. This will apply to all contracts undertaken during the life of the Scheme. The minimum benchmark score required is as follows:

<b>Benchmark Performance Score (Minimum requirement)</b>	60%
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## **7 Temporary Suspension**

The Department may suspend a prequalified consultant from receiving the benefits of Prequalification under the Scheme, including receiving tendering opportunities, for up

to three months if the Department considers from the monitoring of performance, that the consultant has not complied with the requirements of the Scheme.

Before the Prequalification status of a consultant is suspended, the Department will advise the consultant of the matters prompting the proposed action and will give the consultant the opportunity to give reasons why its Prequalification should not be suspended.

A consultant suspended from the Scheme must inform the Department when the actions required to address the reasons for the suspension have been implemented.

The Department will regularly review the status of a suspended consultant. If the action taken by the consultant is considered by the Department to be insufficient, the suspension period may be extended and the consultant will be notified accordingly. Alternatively, the Department will revoke the suspension if it is satisfied that the consultant has taken appropriate action to address the reasons for the suspension.

## **8 Downgrading of Status**

The Department may downgrade a consultant's Prequalification under the Scheme when the Department considers that a consultant has:

- demonstrated unsatisfactory tendering performance with tenders under the Scheme, for example declining tendering opportunities without providing valid reasons, accepting a tendering opportunity but not lodging a tender, lodging late tenders or lodging uncompetitive tenders;
- experienced an adverse change in capacity; or
- experienced an adverse change in business status.

Before the Prequalification status of a consultant is downgraded, the Department will advise the consultant of the matters prompting the proposed action and will give the consultant the opportunity to give reasons why its Prequalification should not be downgraded.

## **9 Removal of Prequalification**

The Department may remove a consultant's prequalification when the Department considers that a consultant has not met one or more of the scheme requirements including:

- breached any of the conditions for prequalification
- failure to meet financial requirements
- been the subject of substantiated reports of unsatisfactory performance for other NSW government agencies
- been determined by the Department's Panel of Assessors as not suitable for future work
- unsatisfactory tendering performance with tenders under the NSW Government Procurement System for Construction
- experienced an adverse change in capacity or capability
- experienced an adverse change in business status
- failure by the consultant to resolve promptly and adequately the reasons for a temporary suspension from the Scheme
- Serious accidents and OHS incidents on any of the consultant's contracts in NSW;

- convictions for OHS law breaches
- a pattern of unsatisfactory results of OHS Management System audits or Quality Management System audits or Environmental Management System audits conducted for, or on behalf of, any NSW government agency. (Note: There is no suggestion or requirement that audits for each of the above three separate disciplines are to be done concurrently)
- the consultant's project outcomes, business management systems, client satisfaction and ethical business practices do not meet the standards required of a consultant prequalified under the Scheme

Before the prequalification of a consultant is removed, the Department will advise the consultant of the matters prompting the proposed action and will give the consultant the opportunity to give reasons why its prequalification should not be removed.

## **10 Reviews**

If a consultant is not satisfied with a decision made in relation to its Prequalification, the Consultant may request a formal review of the decision.

The request for a review must be sought, in writing, within 20 business days of the date of receipt of the notice (letter or email message) advising of the original decision. The request for a review must provide full details of the reasons for the request and any additional information upon which the Consultant wishes to rely.

The request for the review is to be made to:

Senior Manager  
Policy Support Services  
Department of Finance and Services  
Level 10, McKell Building  
2-24 Rawson Place,  
SYDNEY NSW 2000

The Consultant will be informed in writing of the outcome of the review, within 20 business days of the request.

## **11 Appeals**

If a consultant is not satisfied with the outcome of a review, the consultant may appeal the review decision to an independent appeal panel within the Department.

A notice of appeal must be lodged, in writing, with the Department within 20 business days of the date of the Department's notice advising of the review decision. The Consultant must provide full details of the reasons for the appeal and any additional information upon which the Consultant wishes to rely.

The appeal will be considered by a specially convened independent appeal panel consisting of two senior staff of the Department. The Department may delegate membership of the appeal panel to senior staff of other Departments, where appropriate. Any person (or subordinate of that person) involved in the making of the original decision or the review of that original decision is prevented from participation. Furthermore, any person involved in the investigation of the breach of the Scheme or performance issue that gave rise to the original decision is prevented from participation.

The appeal process will be convened within 20 business days of lodgment of the appeal and will be determined by a decision of the appeal panel based on its review and analysis of:

- any information which guided and formed the basis of the original decision and/or the review decision; and
- any new or additional information submitted by the Consultant.

An appropriately delegated officer of the Department has the power to change the original decision by substituting a new or varied decision based on the recommendation of the appeal panel.

The notice of appeal and associated documents are to be submitted to:

Department of Finance and Services  
SCHEME APPEALS – CONSTRUCTION  
Policy Support Services  
Level 10, McKell Building  
2-24 Rawson Place,  
SYDNEY NSW 2000

The delegated officer will advise the Consultant in writing of the determination within 20 business days of the date of receipt of the notice of appeal. If the appeal has been unsuccessful, the Consultant will be provided with written reasons of the decision.

## **12 Publicity**

Prequalified consultants must not advertise, promote or publicise in any form their prequalification without the written consent of the Department.

## **13 Applicant's Acknowledgment**

In applying for prequalification, the applicant agrees that it accepts the Scheme conditions.

## **14 Disclaimer**

The Department reserves the absolute discretion to:

- accept a prequalification application with or without conditions; or
- reject a prequalification application; or
- suspend a consultant's prequalification; or
- downgrade a consultant's prequalification; or
- remove the prequalification of a consultant.

In the exercise of such discretion, the Department will not be liable for any costs or damages incurred by the consultant.

## **15 No Guarantee of Work**

The receipt of prequalification by a consultant does not guarantee:

- continuity of the prequalification over the duration of the scheme;
- receipt of opportunities to tender; or
- that engagements or work of any kind or quantity will be offered.

## **16 Review and Development of the Scheme**

The Scheme will be monitored by the Department to assess whether the objectives and intent of the Scheme are being met.

Modifications to the Scheme, including to work categories and contract value ranges, may be made at the sole discretion of the Department at any time during the life of the Scheme to cater for:

- changes to government policies and government agency circumstances;
- an increase in consultancy work available beyond that anticipated at the commencement of the Scheme;
- significant vacancies developing in a panel; or
- new requirements which necessitate the creation of sub-categories and additional panels within those categories.

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