



Finance  
& Services

# **SCHEME CONDITIONS**

**CONTRACTOR PREQUALIFICATION  
AND BEST PRACTICE ACCREDITATION SCHEME 2011-  
2014 FOR CONSTRUCTION AND RELATED WORKS  
VALUED \$0.5M AND OVER**

**August 2011**

## CONTACT DETAILS

### GENERAL SCHEME ENQUIRIES & APPLICATION FORM LODGEMENT

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

This is the preferred mode of communication

**POST:** Communication by post

Department of Finance and Services  
"Contractor Prequalification/Accreditation"  
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.

#### Contractor Prequalification

Larry Bailey Suppliers Systems Officer  
Contractors & Consultants  
Email: [larry.bailey@services.nsw.gov.au](mailto:larry.bailey@services.nsw.gov.au)  
Telephone: (02) 9372 8904

Brian Tucker Suppliers Systems Officer  
Performance Management  
Email: [brian.tucker@services.nsw.gov.au](mailto:brian.tucker@services.nsw.gov.au)  
Telephone: (02) 9372 8936

#### Contractor Best Practice Accreditation: Scheme Management

Sol Voron Best Practice Manager  
Email: [sol.voron@services.nsw.gov.au](mailto:sol.voron@services.nsw.gov.au)  
Telephone: (02) 9372 8828

## SCHEDULE OF DOCUMENT AMENDMENTS

<b>Revision Number</b>	<b>Date</b>	<b>Update Description</b>
0.	29 April 2011	Document Original
1.	19 August 2011	Review and Independent Appeal process enhanced

# CONTENTS

## 1.0 SCHEME CONDITIONS

The Scheme requires contractors to comply with the following conditions:

### 1.1 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 contractor to comply with the Code will be taken into account when considering the contractor for future business opportunities with the NSW Government.

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

### 1.2 Legal Entity and Business Operations

The Department only prequalifies contractors 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. Contractors trading under a Trustee company arrangement must demonstrate that they meet the Scheme requirements.

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

Contractors must have traded successfully for three (3) years prior to the date of their application.

### 1.3 Changes to Contractor's Status

Contractors prequalified / accredited 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. Contractors 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

#### **1.4 Performance Monitoring, Tracking & Management by the Contractor**

Prequalified contractors 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 Contractor to:

- Arrange to proactively schedule and attend face to face quarterly Contractor Performance meetings with the Client's Project Manager (to take place prior to the first week of February, May, August & November and when unsatisfactory performance is indicated).
- Manage the receipt and storage of completed and signed copies of Contractor Performance Reports (CPR) provided by the Client's Project Manager. The contractor 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 Contractor on request as a condition of their prequalification with the Department under the Consultant Prequalification Scheme).
- 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 Contractor's own system for performance monitoring, tracking and management by the Executive including the implementation of improvements.

#### **1.5 Monitoring Contractor Performance by the Department**

Contractors seeking or achieving prequalification/accreditation 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 contractor'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 contractors.

This monitoring may include, but not be limited to:

- Contractor Performance Reports (CPR's)
- Stakeholder Performance Reports (SPR's)
- The Code of Practice for Procurement
- Tendering Performance on contracts including whether the contractor 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 contractor's contracts in NSW
- The level of appropriateness of corrective actions implemented by the contractor following the report of a serious OHS event on the contractor's sites
- Ongoing continuous improvement in terms of the Scheme Matrix requirements (applicable to Best Practice Accreditation and may include monitoring for prequalification)
- 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
- The number of WorkCover Authority of NSW notices or on-the-spot fines issued to the contractor on any of its contracts
- Convictions or prosecutions for workplace safety or environmental law breaches
- Failure to obey an adjudicator's determination under *The Building and Construction Industry Security of Payment Act 1999* (NSW), subject to other legal rights
- Industrial relations issues that have resulted in a significant disruption to the works progress on the contractor'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, specifically evidence of Net Tangible Assets (Total Assets less Total Liabilities less intangibles) of not less than 5% of the upper limit of the level of prequalification, or, 7% where a firm is Best Practice Accredited; together with a current Ratio (ratio of current assets to current liabilities) in excess of 1; Working Capital in excess of 10% of the level of prequalification and a minimum annual turnover of \$1 million.

### **1.6 Benchmark for Positive Consistent Performance**

Contractors must demonstrate positive consistent performance. The average weighted Contractor Performance Report (CPR) score achieved by a contractor for each contract as well as on each individual CPR 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>Contractor's status within Scheme</b>	<b>Benchmark CPR Score (Minimum requirement)</b>
Prequalification	50%
Best Practice Accreditation	65%

### **1.7 Temporary Suspension**

The Department may suspend a prequalified contractor from receiving the benefits of Prequalification / Best Practice Accreditation under the Scheme, including receiving tendering opportunities, for up to three months if the Department considers from the monitoring of performance, that the contractor has not complied with the requirements of the Scheme.

Before the Prequalification / Best Practice Accreditation status of a contractor is suspended the Department will advise the contractor of the matters prompting the proposed action and will give the contractor the opportunity to give reasons why its Prequalification / Best Practice Accreditation should not be suspended.

A contractor 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 contractor. If the action taken by the contractor is considered by the Department to be insufficient, the suspension period may be extended and the contractor will be notified accordingly. Alternatively, the Department will revoke the suspension if it is satisfied that the contractor has taken appropriate action to address the reasons for the suspension.

### **1.8 Downgrading of Status**

The Department may downgrade a contractor's Prequalification / Best Practice Accreditation under the Scheme when the Department considers that a contractor 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 / Best Practice Accreditation status of a contractor is downgraded the Department will advise the contractor of the matters prompting the proposed action and will give the contractor the opportunity to give reasons why its Prequalification / Best Practice Accreditation should not be downgraded.

### **1.9 Removal of Prequalification / Best Practice Accreditation**

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

- breached any of the conditions for prequalification / accreditation
- 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 Contractor to promptly and adequately resolve the reasons for a temporary suspension from the Scheme
- Serious accidents and OHS incidents on any of the contractor's contracts in NSW;
- Convictions for OHS law breaches
- Failure to satisfy the Scheme Matrix requirements including documentation, implementation and operation. (Applicable to Best Practice Accreditation)
- 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)
- Failure to obey an adjudicator's determination under *The Building and Construction Industry Security of Payment Act 1999 (NSW)* , subject to other legal rights
- The contractor's project outcomes, business management systems, client satisfaction and ethical business practices do not meet the standards required of a contractor Prequalified / Best Practice Accredited under the Scheme

Before the Prequalification / Best Practice Accreditation of a contractor is removed the Department will advise the contractor of the matters prompting the proposed action and will give the contractor the opportunity to give reasons why its Prequalification / Best Practice Accreditation should not be removed.

### **1.10 Reviews**

If a contractor is not satisfied with a decision made in relation to its Prequalification / Best Practice Accreditation, the Contractor 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 Contractor 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 Contractor will be informed in writing of the outcome of the review, within 20 business days of the request.

### **1.11 Appeals**

If a contractor is not satisfied with the outcome of a review, the Contractor 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 Contractor must provide full details of the reasons for the appeal and any additional information upon which the Contractor 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 Contractor.

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 Contractor 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 Contractor will be provided with written reasons of the decision.

### **1.12 Publicity**

Prequalified contractors must not advertise, promote or publicise in any form their Prequalification or Best Practice Accreditation without the written consent of the Department.

### **1.13 Applicant's Acknowledgment**

In applying for Prequalification or Best Practice Accreditation, the applicant agrees that it accepts the Scheme conditions.

### **1.14 Disclaimer**

The Department reserves the absolute discretion to:

- accept a Prequalification or Best Practice Accreditation application with or without conditions; or
- reject a Prequalification or Best Practice Accreditation application; or
- suspend a contractor's Prequalification and / or Best Practice Accreditation; or
- downgrade a contractor's Prequalification and / or Best Practice Accreditation; or
- remove the Prequalification and / or Best Practice Accreditation of a contractor.

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

### **1.15 No Guarantee of Work**

The receipt of Prequalification or Best Practice Accreditation by a contractor does not guarantee:

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

### **1.16 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, contract value ranges and/or contract systems, 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 construction 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.

**END OF DOCUMENT**