

§ 143-135.8. Prequalification.

(a) Except as provided in this section, bidders may not be prequalified for any construction or repair work project.

(b) A governmental entity may prequalify bidders for a particular construction or repair work project when all of the following apply:

- (1) The governmental entity is using one of the construction methods authorized in G.S. 143-128(a1)(1) through G.S. 143-128(a1)(3).
- (2) The board or governing body of the governmental entity adopts an objective prequalification policy applicable to all construction or repair work prior to the advertisement of the contract for which the governmental entity intends to prequalify bidders.
- (3) The governmental entity has adopted the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project.

(c) The objective prequalification policy adopted by a governmental entity pursuant to subdivision (2) of subsection (b) of this section shall meet all of the following criteria:

- (1) Must be uniform, consistent, and transparent in its application to all bidders.
- (2) Must allow all bidders who meet the prequalification criteria to be prequalified to bid on the construction or repair work project.
- (3) Clearly state the prequalification criteria, which must comply with all of the following:
 - a. Be rationally related to construction or repair work.
 - b. Not require that the bidder has previously been awarded a construction or repair project by the governmental entity.
 - c. Permit bidders to submit history or experience with projects of similar size, scope, or complexity.
- (4) Clearly state the assessment process of the criteria to be used.
- (5) Establish a process for a denied bidder to protest to the governmental entity denial of prequalification, which process shall be completed prior to the opening of bids under G.S. 143-129(b) and which allows sufficient time for a bidder subsequently prequalified pursuant to a protest to submit a bid on the contract for which the bidder is subsequently prequalified.
- (6) Outline a process by which the basis for denial of prequalification will be communicated in writing, upon request, to a bidder who is denied prequalification.

(d) If the governmental entity opts to prequalify bidders, bids submitted by any bidder not prequalified shall be deemed nonresponsive. This subsection shall not apply to bidders initially denied prequalification that are subsequently prequalified pursuant to a protest under the governmental entity's prequalification policy.

(e) Prequalification may not be used for the selection of any qualification-based services under Article 3D of this Chapter, G.S. 143-128.1A, G.S. 143-128.1B, G.S. 143-128.1C, or the selection of the construction manager at risk under G.S. 143-128.1.

(f) For purposes of this section, the following definitions shall apply:

- (1) Governmental entity. – As defined in G.S. 143-128.1B(a)(6).
- (2) Prequalification. – A process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources, and ability necessary to the faithful performance of a contract for construction or repair work. (1995, c. 367, s. 8; 2014-42, s. 1.)