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**IDAPA 38
TITLE 04
CHAPTER 06**

**38.04.06 - RULES GOVERNING PREQUALIFICATION OF CONTRACTORS
ON CAPITOL BUILDING PROJECTS**

000. LEGAL AUTHORITY.

The following rules are promulgated in accordance with Section 67-5711C(4), Idaho Code. (3-30-07)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 38.04.06, "Rules Governing Prequalification of Contractors on Capitol Building Projects." (3-30-07)

02. Scope. Pursuant to Section 67-5711C(4), Idaho Code, contractors may be required to be prequalified to submit a competitive sealed bid to the Division of Public Works under Section 67-5711C, Idaho Code. These rules govern the prequalification process. (3-30-07)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. Any such documents are available for public inspection and copying at the office of this agency. (3-30-07)

003. ADMINISTRATIVE APPEALS.

The provisions found in Sections 031 through 045 of these rules shall govern administrative appeals on prequalification. (3-30-07)

004. EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.

Pursuant to Section 67-5206(5), Idaho Code, except as provided in these rules, the procedures contained in Subchapter B, "Contested Cases," of the rules promulgated by the Attorney General as IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 100 through 799, do not apply to prequalification determination appeals. (3-30-07)

005. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.

To prevent unnecessary delays and increased costs in the capitol restoration and expansion construction project, the rules of procedure in this chapter are adopted to promote the speedy resolution of prequalification determinations. (3-30-07)

006. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (3-30-07)

007. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS.

The Division of Public Works is located at 502 N. 4th Street, Boise, Idaho, 83720-0072. The mailing address is P.O. Box 83720, Boise, Idaho 83720-0072. Office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. (3-30-07)

008. PUBLIC RECORDS ACT COMPLIANCE.

All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act (Title 9, Chapter 3, Idaho Code). (3-30-07)

009. -- 010. (RESERVED).

011. DEFINITIONS.

01. Administrator. The administrator of the Division of Public Works. (3-30-07)

- 02. Contractor.** The person or entity seeking prequalification under these rules. (3-30-07)
- 03. Director.** The director of the Department of Administration. (3-30-07)
- 04. Restoration.** All work done to restore, renovate, refurbish, repair, modernize, improve, expand, update or upgrade the existing capitol building. (3-30-07)

012. -- 015. (RESERVED).

016. PREQUALIFICATION.

With respect to any contract to be entered for any capitol building restoration project or projects, and any part thereof, when it is deemed to be in the best interest of the state, the Administrator may require any or all contractors, including general, prime, specialty or subcontractors, to be prequalified. If prequalification is used, the following conditions shall apply: (3-30-07)

01. License. Only contractors properly licensed in Idaho to perform public works' contracts shall be eligible for prequalification. (3-30-07)

02. Notice of Prequalification. Notice of the prequalification requirement shall be given in the same manner that notice of open competitive bidding is provided. Notice must describe criteria to be used to evaluate contractors for prequalification. (3-30-07)

03. Criteria for Prequalification. The Administrator shall establish the procedures to be used for prequalification and the minimum criteria for prequalification. The criteria shall be relevant to the contractor's abilities to perform under a contract, its competence, experience, resources and performance history, and may address, but not be limited to, the following areas: (3-30-07)

- a.** Financial status; (3-30-07)
- b.** Prior experience with the state and on other public works or private sector construction projects, including but not limited to the size, complexity and scope, and timely performance of the firm's prior projects; (3-30-07)
- c.** Reviews of previous public works or private sector construction projects within the last ten (10) years; (3-30-07)
- d.** Overall performance history based on the contractor's entire body of work; (3-30-07)
- e.** References; (3-30-07)
- f.** Civil judgments and criminal history of the contractor and its principals; (3-30-07)
- g.** Any debarment or suspension by any government agency; (3-30-07)
- h.** Any revocation or suspension of a license; (3-30-07)
- i.** Any bankruptcy filings or proceedings; and (3-30-07)
- j.** Organization, including resumes of the management, key personnel and professional staff. (3-30-07)

04. Minimum Score. The prequalification criteria may provide for submissions to be scored numerically and require a minimum score be attained for prequalification. (3-30-07)

05. Statement Under Oath. The Division of Public Works may require a statement under oath regarding the financial ability, responsibility, available nonfinancial resources, equipment, personnel, organization, ownership, relationships, prior experience and any other facts as may be deemed necessary. (3-30-07)

06. Independent Inquiries. In addition to consideration of the submission by the contractor in the prequalification process, the Division of Public Works may conduct independent inquiries relevant to a contractor's ability, competence, experience, resources and performance history, including contacting regulatory agencies and prior clients or customers, and the results of such may be considered in the prequalification determination. (3-30-07)

07. Prequalification Review Committee. The Administrator may establish a prequalification review committee to review contractor submissions and make a non-binding recommendation to the Administrator on prequalification. (3-30-07)

08. Prequalification Determinations. Prequalification determinations shall be made by the Administrator or his designee based on the established criteria. Contractors shall be notified in writing of the prequalification determinations. Any contractor denied prequalification shall be informed of the basis for such denial. (3-30-07)

09. Competitive Sealed Bidding. Competitive sealed bidding among only those prequalified to bid shall then be accomplished under, and award shall be made, to the lowest responsive and responsible bidder in accordance with Section 67-5711C, Idaho Code. (3-30-07)

017. -- 030. (RESERVED).

031. APPEALS OF PREQUALIFICATION DETERMINATIONS.
The following rules apply to appeals of prequalification determinations. (3-30-07)

032. FILING OF APPEAL.
The notice of appeal must be in writing, signed by the disqualified contractor or his representative, and must be received at the office of the Director, 650 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0003, no later than seven (7) days from the date the notice of disqualification was given. The notice must explain in detail why the prequalification determination is considered erroneous. (3-30-07)

033. HEARING OFFICER.
The Director shall appoint a hearing officer to conduct a contested case hearing in accordance with Chapter 52, Title 67, Idaho Code. (3-30-07)

034. NOTICE OF HEARING.
A notice of hearing shall be provided to the disqualified contractor, giving at least ten (10) days' advance notice of the hearing. The hearing will be held in Ada County, at such place as may be designated in the hearing notice. Upon concurrence of the parties and the hearing officer, hearings may be conducted telephonically. (3-30-07)

035. BRIEFS AND MEMORANDA.
Any party may make a request in writing to the hearing officer to file briefs, memoranda, proposed orders or statements of position and the hearing officer shall grant or deny such request as the hearing officer deems appropriate under the circumstances of a particular case. The hearing officer may request briefs, memoranda, proposed orders or statements of position. (3-30-07)

036. RULES OF EVIDENCE.
The hearing officer shall control the hearing and direct the order or presentation. A party shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the conduct of the proceedings. (3-30-07)

037. ADMISSION OF EVIDENCE.
The admission of evidence at hearings shall be governed by Sections 600 through 609 of the IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-30-07)

038. TESTIMONY.
Testimony to be considered by the hearing officer in the hearing shall be by sworn testimony, except for matters noticed or entered by stipulation. (3-30-07)

039. DISCOVERY.

Discovery may be conducted in the manner and to the extent allowed by the Idaho Rules of Civil Procedure only if first formally agreed to by the parties, or by order of the hearing officer after an application has been filed and a showing that discovery is required to clarify issues, identify witnesses or preserve testimony. The order may limit the scope of discovery and the method of discovery as the hearing officer deems appropriate under the circumstances of a particular case. (3-30-07)

040. RECORDING AND TRANSCRIPTION.

The hearing will be recorded by electrical device. A written transcript will be produced by the department upon request of either party. A disqualified contractor requesting such transcript shall be responsible for the cost of the transcript. Any party wishing to have the hearing recorded by a qualified court reporter must request such no less than five (5) business days in advance of the date set for hearing. The requesting party shall pay the cost of the reporter's fees and shall provide a copy to the hearing officer. The non-requesting party may pay for an additional copy for its own use. (3-30-07)

041. WITNESSES AND EVIDENCE.

The hearing officer, on its own or upon application of the disqualified contractor or the Department of Administration, may issue subpoenas for the attendance of witnesses and production of documents. (3-30-07)

042. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Once the matter is fully submitted, the hearing officer shall issue findings of fact, conclusions of law and preliminary order. The hearing officer shall uphold the Administrator's prequalification determination unless he finds it arbitrary, capricious or an abuse of discretion. Copies shall be provided to all parties. (3-30-07)

043. FINAL ORDER.

Upon receipt thereof, the Director shall issue a final order, affirming, modifying or reversing the original prequalification determination. Copies shall be provided to all parties. (3-30-07)

044. MOTIONS FOR RECONSIDERATION.

Motions for reconsideration of the hearing officer's preliminary order or of the Director's final order are not allowed. (3-30-07)

045. APPEALS.

Appeals from the final order shall be taken in accordance with Section 67-5270, Idaho Code. (3-30-07)

046. -- 999. (RESERVED).

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