

Sterling Ranch Community Authority Board

Rules for Prequalification of Construction Contractors

Effective February 17, 2021

RULES FOR PREQUALIFICATION OF CONSTRUCTION CONTRACTORS

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RULES FOR PREQUALIFICATION OF CONSTRUCTION CONTRACTORS

SECTION 1. INTRODUCTION

1.01 Purpose of the Rules for Prequalification of Construction Contractors

These Rules are adopted to review whether companies bidding and proposing on CAB construction contracts have the experience, skill, financial resources and integrity to perform the type and size of work requested by using a system of Contractor prequalification to identify *responsible* bidders.

Prequalification is not a conclusive determination of *responsibility*, and a prequalified bidder may be rejected as *not responsible* on the basis of subsequently discovered information. Further, the CAB reserves the right to establish additional qualification criteria and requirements for specific projects, as determined appropriate in the CAB's discretion.

1.02 Legal Authority for Adoption of the Rules

The CAB was organized to timely schedule, phase, and configure public improvements and facilities to adequately and economically provide for the needs of the Sterling Ranch Community, and is authorized under § 32-1-1001(1)(m), C.R.S. to adopt rules and regulations to carry on the business, objects and affairs of the CAB, which includes but is not limited to the provision of public improvements and bidding of construction contracts.

1.03 Definitions

- a. "Applicant" – sometimes referred to as "you" – means a Contractor or Joint Venture that wants to bid or propose as the prime Contractor on a CAB construction Contract that has an estimated construction value of \$250,000.00 or more or for which prequalification is required for a contract-specific reason.
- b. "Bid" includes a proposal, "bidding" includes submitting a proposal, and "invitation for bids" includes "request for proposals," unless the context in which the word appears clearly shows a contrary intent.
- c. "Bidder" includes a proposer, unless the context in which the word appears clearly shows a contrary intent.
- d. "CAB" means the Sterling Ranch Community Authority Board created by the Second Amended and Restated Sterling Ranch Community Authority Board Establishment Agreement dated March 18, 2020, with an original effective date of January 6, 2014, as amended from time to time.
- e. "CPA" means a licensed certified public accountant.
- f. "Certified Audited Financial Statement" means a financial statement which has been audited by a CPA in accordance with audit standards published by the American Institute of Certified Public Accountants, and is signed by the CPA, in which the CPA expresses his opinion on the fairness with which the statement represents the financial position, results of operations and changes in financial position of the audited company, and includes current assets, current liabilities, income and expenses during the fiscal year covered by the statement, current value of plant and equipment, and all

- of the CPA's notes.
- g. "Committee" means the prequalification board established under Section 10 of these Rules
 - h. "Contract" means a construction contract.
 - i. "Contractor" means a corporation, limited liability company, partnership, sole proprietorship or other type of business entity which is in the construction business.
 - j. "Day" means calendar day, unless noted otherwise.
 - k. "Debt" means an amount owed to a person or organization for funds borrowed. Debt can be represented by a loan, note, bond, mortgage or other instrument stating repayment terms and, if applicable, interest requirements. These different instruments all imply intent to pay back an amount owed by a specific date, which is set forth in the repayment terms.
 - l. "Design-Build" means a Contract for a CAB project under which the Contractor will be responsible for both design and construction of the project.
 - m. "Joint Venture" means an association of two or more Contractors which combines their property, capital, efforts, skills and knowledge for the purpose of bidding on and performing CAB Contracts, and where each of the Contractors is jointly and severally liable for all of the duties and obligations associated with performing any CAB Contract.
 - n. "Manager" means the CAB's General Manager.
 - o. "Net Worth" means the difference between total assets and total liabilities.
 - p. "Quick Assets" means cash plus accounts receivable, minus current liabilities.
 - q. "Reviewed financial statement" means a financial statement which is reviewed and signed by a CPA in accordance with review standards published by the American Institute of Certified Public Accountants.
 - r. "Revocation" means the termination of a Contractor's or Joint Venture's prequalification to submit bids to the CAB for Contracts where prequalification is required.
 - s. "Suspension" means the temporary termination, for a stated period, of a Contractor's or Joint Venture's prequalification to submit bids to the CAB for Contracts where prequalification is required.
 - t. "Working Capital" means current assets minus current liabilities.

SECTION 2. GENERAL

2.01 Contractor Prequalification

Under these Rules, Contractor prequalification is a status allowing the Contractor to bid on the CAB's construction contracts listed in Rule 2.02. Prequalification is granted as to categories of work and financial levels, based on a Contractor's experience, qualifications and financial capability. Prequalification is not a conclusive determination of *responsibility* or qualifications by the CAB, however, and a prequalified bidder may be rejected as *not responsible* or not qualified on the basis of subsequently discovered information. Prequalification status is only one factor considered by CAB in determining the award of a specific Contract.

In addition to prequalification being required in order to bid on the CAB's construction contracts, prequalified bidders will receive written notification of pending construction projects before the project is published for bid to allow for potential bidders to plan for the demand associated with the construction project, including allocation of manpower, equipment, and other resources. Notification of pending construction projects is not a promise of award and all projects will still be bid, reviewed and awarded in accordance with state and local law and CAB's rules and regulations.

2.02 Prequalification under the Rules

- a. A Contractor or a Joint Venture must be prequalified to bid on:
 - a construction Contract let by the CAB with an estimated total value at time of Bid or proposal of \$250,000.00 or more, or
 - any Contract, regardless of amount, for which Contract-specific prequalification requirements have been established by the CAB.
- b. A Contractor or Joint Venture must be prequalified if it is included as the proposed primary or lead construction Contractor for a Design-Build CAB project with an estimated total dollar amount of \$250,000.00 or more, unless the CAB has waived or modified the prequalification requirements for that project (see Rule 2.05).

2.03 Notification of Prequalification Requirements for Bidding

CAB will determine and include in the Contract documents the prequalification requirements for the Contract, including the category or categories of work and the financial level of prequalification.

2.04 Non-Prequalified Companies at Bid Advertisement

If the Contract requires prequalification for bidders, the Contract documents will state the number of days prior to bid opening that is the deadline for Contractors not then prequalified to submit applications for prequalification. If no deadline is stated in the notice, applications must be received by the Committee ten days prior to bid opening.

2.05 Exceptions to Prequalification Rules

- a. When the CAB conducts a competitive selection process specifically waiving the requirement for prequalification for a construction or Design-Build Contract.
- b. For construction Contracts that are immediately required to address an emergency

threatening the public health, safety, and welfare of the CAB, its residents and property owners.

- c. Regardless of Contract value, the Manager may establish special Contract-specific bidder prequalification requirements for projects which present special circumstances related to public health, welfare or safety. Those Contract-specific prequalification requirements will be stated in the Contract documents.

2.06 Construction Contracts Not Requiring Prequalification

Prequalification is usually not required for Contracts with an estimated value of less than \$250,000.00. See Rule 2.05 for exceptions.

2.07 Subcontractors and Prequalification

Prequalification is not required for subcontractors on a CAB project, unless Contract-specific prequalification requirements are stated for subcontractors.

2.08 Prequalification Procedures for Contractors

A Contractor must submit a complete prequalification application. The application must demonstrate that the Contractor is *responsible*, i.e. has the ability, integrity, and financial capability to perform work as a prime Contractor in the category and at the financial level for which prequalification is granted.

2.09 Prequalification Procedures for Joint Ventures

Section 7 explains prequalification for Joint Ventures. A Joint Venture must apply separately for prequalification for each Contract on which it seeks to bid; any prequalification which is granted to a Joint Venture applies only to that Contract.

SECTION 3. WORK CATEGORIES FOR PREQUALIFICATION

3.01 Work Categories for Prequalification

The main categories of work for which a Contractor may be prequalified are set out in the following table:

<p>1. CIVIL</p>
<p>1A. Heavy Civil Projects with work in at least three disciplines included in the CIVIL categories (1B – 1G). To qualify, the category value of the work done in each of the three disciplines must be between 10% and 49% of the final Contract amount; otherwise, the project shall be classified based on the predominant (>49%) category.</p>
<p>1B. Excavation and Grading Excavating and grading within or on areas adjacent to the public right-of-way. Excavation includes: trenching, ditch construction, earth moving, mass excavation, import/export and complete in place. Grading includes: cut and fill of slopes, soil leveling, land shaping, over lot grading, construction pads, roadway shoulders, intersection grading, backfill for structures and foundations and minor surface drainage. Category 1B does not include landscape grading specific to work covered under 1C or work covered under 1E(3) specific to channel and ponds.</p>
<p>1C. Landscape</p>
<p>1C. Landscape Improvements Improvement of parks, trails, athletic fields, courts, irrigation systems, playgrounds and open spaces. Includes minor demolition, excavation and grading, drainage, restoration and planting associated with minor structures, walks, plazas, parking lots, fencing and installations of site amenities.</p>
<p>1D. Utilities (Other than Sewer)</p>
<p>1D. Traffic Signals, Lighting and ITS Construction, operation and maintenance of traffic signal, lighting and intelligent transportation systems.</p>
<p>1E. Sanitary and Storm Sewer</p>
<p>1E(1). Pump Stations and Force Mains Storm and sanitary sewer pump/lift stations, force mains, wet wells and associated infrastructure. This category does not include gravity storm or sanitary sewer work, or any potable and reuse water line or associated infrastructure.</p>
<p>1E(2). Sewer Rehabilitation Sanitary or storm sewer infrastructure rehabilitation using trenchless technology. Includes: cured-in-place-pipe (CIPP), slip lining, thermoformed pipe, pipe bursting, spin casting and other rehabilitation methods specific to storm and sanitary infrastructure utilizing materials such as resin, epoxy, cementitious and fiberglass products.</p>
<p>1E(3). Sewer Open Channel and Pond</p>

<p>Open channel drainage, detention ponds, water quality features, boulder rundowns, outfalls, channel edging and appurtenances. Includes work associated with storm water improvements/ connections to rivers, gulches, open channels and detention/ retention ponds.</p>
<p>1E(4). Piped Sewer Piped public, gravity sewer systems (rigid or flexible pipe) and appurtenances. Includes storm and/or sanitary systems installed using open cut or tunneling and jacking methods and associated infrastructure. This category does not include potable and reuse water line or associated facilities work, or wastewater treatment plants or forced/pressure sewer systems that are covered under 1E(1).</p>
<p>1F. Roadway and Paving</p>
<p>1F(1). Asphalt Paving and milling, including heater repaving, of streets, alleys, parking lots and/or related paving. Also includes laying of asphalt curb, driveways, construction of curb cuts and the installation of minor drainage structures and all incidental work necessary by said paving, including minor excavation and grading.</p>
<p>1F(2). Concrete Roadway Paving Concrete streets, alleys, parking lots and/or related paving systems and concrete panel replacement. This includes associated excavation, base course and surface prep work.</p>
<p>1F(3). Concrete Sidewalk, Curb, Gutter and ADA Ramps New concrete sidewalk, curb, gutter and/or handicap ramps. Also includes cross pans, gutter overlay, driveways, construction curb cuts, installation of minor drainage structures, minor excavation and grading and incidental work necessitated by the concrete work.</p>
<p>1F(4). Asphalt Pavement Rehabilitation Chip seal, slurry seal, hot-in-place recycling, cape seal, patching, curb repair, utility cut repair, driveway approach repair and modification and crack sealing.</p>
<p>1F(5). Concrete Pavement Rehabilitation Concrete pavement diamond grinding, spall repairs, hydraulic panel leveling, route and seal, partial panel replacement, sidewalk repair and panel replacement, curb and gutter repair and replacement, joint sealing, surface sealing, joint repair and replacement. Experience in the use of CDOT Class E concrete (6hr, 12hr, ...) in panel replacement.</p>
<p>1G. Water</p>
<p>1G. Water Main and Trunk Lines Main water distribution lines (excluding water lines providing water directly to an end user, i.e. service lines), pressure reducing valves, valves, fire hydrants, water meters.</p>
<p>2. BUILDINGS</p>
<p>2A. General Building - Unoccupied Buildings Existing or new public buildings that are unoccupied throughout construction but will be occupied once construction is complete.</p>

<p>2B. General Building - Occupied Buildings Public buildings in which the predominate portion must remain functional throughout construction. Functional activities include, but are not limited to: facility access, security, uninterrupted utilities, sequencing and/or transitioning of current and future occupants and all emergency response functions.</p>
<p>2C. Building Demolition Demolition of buildings and associated facilities.</p>
<p>2D. Electrical Constructing, installing, replacing and renovating electrical systems.</p>
<p>2E. Mechanical Constructing, reconstructing, modifying, installing and replacing mechanical systems in public structures.</p>
<p>2F. Roofing Installing and replacing roofing.</p>
<p>2G. Parking Structures - Occupied Parking structures in which the predominate portion must remain functional throughout construction.</p>
<p>3. SPECIALTY CATEGORY</p>

3.02 Specialty Category

A specialty prequalification category is for work not included in a regular category or subcategory. The Committee may create a specialty category when required for a specific contract. The Committee will issue a brief written statement of the work and the criteria for prequalification in that specialty, which will be available on request from the Committee’s office. A specialty prequalification category will exist only until the Contract for which it was established has been awarded. The Committee does not intend to maintain prequalification of Contractors in specialty categories not needed for CAB construction projects. However, at the Committee’s direction, it may maintain a specialty category for a specific period beyond Contract award when it appears likely that future CAB construction projects will require bidders to be prequalified in that specialty within the next six months.

3.03 Non-exclusivity of Categories

The Committee may in its discretion create, modify and delete special prequalification subcategories within the general categories. If it does so, it will prepare a brief written statement of the work applicable to that subcategory. A copy of each such statement will be available on request from the Committee. Nothing in this Rule requires the Committee to create special subcategories.

3.04 Conditions to Prequalification for Environmental Remediation Work?

Because of the critical health and safety issues involved in the work of environmental assessment and remediation, the Committee and Manager may waive in whole or in part prequalification requirements or impose additional requirements or criteria to be met, as determined by the Committee and Manager and as necessary to comply with applicable environmental laws, regulations, and orders.

3.05 Prequalification in Multiple Categories

A Contractor may be prequalified in more than one category if its application shows that it meets the prequalification criteria and has successfully performed work in each category. See Rule 4.04 about financial limits for multiple-category Contractors.

SECTION 4. FINANCIAL LEVELS FOR PREQUALIFICATION

4.01 Financial Level Assignments

A Contractor who is granted prequalification will be assigned a financial level. Contractors will be permitted to bid on contracts whose advertised prequalification category financial level does not exceed the Contractor’s assigned financial level, in the category for which the Contractor has been prequalified. The prequalified financial level is not a cap or limit to a bid amount; thus, a Contractor may submit a Bid for a Contract that exceeds the prequalified financial level assigned to the Contract.

The following table lists the financial levels for which prequalification may be granted, correlated to the type of financial statement which is required to be submitted for such levels:

FINANCIAL LEVELS	TYPE OF FINANCIAL STATEMENT:
\$ 250,000	Reviewed Statement or Certified Audited Statement
\$ 500,000	
\$ 1,000,000	Certified Audited Statement only
\$ 2,000,000	
\$ 4,000,000	
\$ 6,000,000	
\$10,000,000	
\$20,000,000	

4.02 Determination of Financial Levels

The financial level assigned to a prequalified Contractor reflects its financial capability, as determined under Rule 5.02.

4.03 No Combination of Work Performed to Determine Financial Levels

The total amount of work performed by a Contractor is not combined over a period of time to determine financial capability, because the ability to manage a series of small contracts as a prime contractor is different from the ability to manage a single large job as a prime contractor. The determination of financial levels includes several factors, and contractors who are successfully completing increasingly larger contracts will be able to bid on accordingly larger sized CAB construction Contractors.

4.04 Financial Levels in Multiple Categories

Each category will have a financial level assigned which is determined in accordance with these Rules, including the Applicant’s experience with work in that category.

4.05 Prequalification and Reviewed Financial Statements

A Contractor may be prequalified to bid on projects less than \$1,000,000 without submitting Certified Audited Financial Statements, if it submits reviewed financial

statements and otherwise meets the criteria for such prequalification. A Contractor's prequalification level may not be adjusted to an amount higher than \$1,000,000, nor may a Contractor be granted project specific permission to bid on a project requiring prequalification above \$1,000,000, without having submitted a Certified Audited Financial Statement.

4.06 Prequalified Contractors and Project Specific Permission

- a. A Contractor that is prequalified in the category required for a CAB Contract, but at a financial level lower than the Contract requires, may request project specific permission to bid on the Contract. Project specific permission is granted only for categories of work for which the Contractor is prequalified.
- b. For each contract over \$20,000,000, each bidder must: (1) be prequalified in the required category at the \$20,000,000 level and (2) request, and receive, project specific permission to bid on the Contract.
- c. In determining whether to grant project specific permission, the Board will review the Contractor's bonding capacity, financial condition, and size of completed projects in the work category. The purpose in granting project specific permission to bid is to maximize the number of potential bidders on a CAB construction Contract without jeopardizing the project's success by allowing bidding by Contractors who lack the capacity to successfully complete the work if awarded the Contract. Therefore, a Contractor may be granted project specific permission to bid on a project in an amount that is reasonably larger than the Contractor's largest completed projects in that work category, if the Contractor's bonding capacity, work history and financial condition indicate that the Contractor may be able to successfully complete a Contract in the larger amount. Generally, project specific permission may be granted to allow bids on Contracts in an amount that is one financial level above the Contractor's current prequalification financial level; however, the Committee may recommend project specific permission for a Contractor at higher financial levels if the Contractor's recent project history and financials indicate that a Contractor has the capability to successfully complete the work if awarded the Contract.
- d. A Contractor who has not submitted certified audited financial statements may not receive project specific permission to bid any job over \$1,000,000, regardless of its bonding capacity, size of jobs or other circumstances.
- e. Each request for project specific permission must be received by the Committee no later than ten (10) days prior to Bid opening, or within the time specified by the contract documents to submit prequalification applications. The Manager or his/her designee under whose authority the contract is let will grant or deny project specific permission under this Rule 4.06; matters relevant to this decision include the Contractor's bonding capacity and the size of relevant projects which the Contractor has performed in the past five years. A Contractor who is denied project specific permission to bid is not entitled to appeal such denial.

4.07 Changes to a Contractor's Prequalification Financial Level

The Committee may adjust a Contractor's prequalification level at any time if it determines that special conditions or circumstances warrant such an adjustment. The Committee may require a Contractor at any time to supply additional information which

the Committee determines is reasonably required to satisfy itself that the Contractor retains the ability to prosecute CAB construction Contracts successfully.

4.08 Prequalification for Contracts Under \$250,000

If a Contract has a total estimated dollar value of less than \$250,000, but the Committee establishes specific Contract-related prequalification requirements, applications for prequalification for such Contract will be subject to all provisions of these Rules except those concerning financial qualifications; reviewed or certified audited financial statements will not be required. However, the Committee may consider the Applicant's financial condition, responsibility and capacity when reviewing an application for prequalification for contracts under \$250,000 in value. Applicants must submit such evidence of financial condition, as the Committee may require in order to determine that the Applicant has the qualifications and financial capability to perform the Contract work.

SECTION 5. PREQUALIFICATION CRITERIA

5.01 Prequalification Criteria

The Committee may prequalify a Contractor or renew a Contractor's prequalification if the Contractor has met all of the criteria listed in this Section 5. These Rules require Applicants to submit information including five-year histories and lists of no more than ten (10) projects, as a means of obtaining recent and relevant information about the Applicants' qualifications. An Applicant that has been in business for less than five years or which has completed fewer than ten (10) projects, is eligible for prequalification.

5.02 Applicant Financial Capabilities

The Applicant must be financially capable of performing the size and type of work for which prequalification is sought. In evaluating financial capability, the Committee will consider, among other things:

- (1) The amount of the Applicant's Quick Assets or Working Capital, as shown on the financial statements submitted with the application.
- (2) The ratio of the Applicant's debts to its net worth, as shown on the financial statements submitted with the application.
- (3) The type and size of Contracts completed in a satisfactory manner by the Applicant in the previous five years.
- (4) The Applicant's bonding capacity.
- (5) Whether the CPA's opinion on the Applicant's financial statements is subject to any qualifications or cites any special circumstances.
- (6) Past performance history on CAB projects (including factors listed in 5.04).

5.03 Applicant Organization, Staff, and Key Personnel

The Applicant must have an organization and staff with the size, training, and experience required to complete the work. The size and type of work which the Applicant has performed during the past five years will be considered in this evaluation.

5.04 Applicant Demonstration of Adequate, Safe and Reliable Contract Performance

The Applicant's performance on public and private projects during the past five years must have been reliable, safe, and adequate as to skill and integrity. The factors that the Committee may consider in evaluating the adequacy, reliability and safety of an Applicant's performance of construction work may include, but not be limited to, the following:

- a. The Applicant's demonstrated ability to perform contractual obligations on previous projects, including the ability to:
 - (1) effectively prepare and meet computerized Critical Path Method (CPM) and other types of schedules;
 - (2) supervise the work;
 - (3) process accurate and timely change orders, payroll submittals, and other paperwork;
 - (4) perform high quality work;
 - (5) complete and close out contracts in a manner satisfactory to the parties who contracted with the Applicant;
 - (6) effectively schedule, administer and manage the work performed by its subcontractors and material suppliers;
 - (7) make timely payments to its subcontractors and suppliers;
 - (8) work effectively and cooperatively with owners, other contractors, subcontractors, construction managers, project managers, designers and other parties involved in construction projects;
 - (9) minimize claims for injury and property damage during its performance of contracts;
 - (10) comply with local, state, and federal laws, rules and programs related to:
 - workplace safety; and
 - environmental protection.
- b. The Applicant's history of cooperation and compliance with CAB requirements as a prime Contractor or subcontractor on CAB projects, including but not limited to prompt payment of subcontractors and suppliers, programs related to workplace safety and environmental protection.
- c. The basis, nature, extent and outcome of the Applicant's past and pending administrative cases and litigation related to its bids or its performance of contract work.
- d. The nature, extent and resolution of the Applicant's claims and litigation, if any, against the CAB, the CAB's consultants, or any other parties, on previous work performed for the CAB.
- e. The nature, classification, fine and final outcome of the Applicant's OSHA violations, other safety or regulatory violations, if any.
- f. The reasons for the termination, if any, of any of Applicant's contracts and the outcome of any dispute arising out of any termination. Also, any instances where the

Applicant failed to complete a contract and the reasons therefor.

- g. Any references, written or oral evaluations obtained by the CAB from entities with whom the Applicant has contracted, of the adequacy of its previous and current performance on construction contracts.
- h. Any explanation of the circumstances under which and the reasons why Applicant's surety performed any of the work included in one of its contracts.
- i. Any construction failure attributable to the Applicant that occurred during the past five years regardless of when the work involved in the construction failure was performed.
- j. The Applicant's Experience Modification Rate Factors (EMRF) from the National Council on Compensation Insurance, Inc. (NCCI; www.ncci.com), or a similar regulatory body for non-NCCI states, for each of the past five years, as follows:
 - (1) An average EMRF for the past five years of 1.5 or greater will render an Applicant ineligible for prequalification.
 - (2) An average EMRF for the past five years of 1.2 to 1.49 may be considered as a reason for denying prequalification or for granting prequalification at a lower financial level than the Applicant might otherwise obtain.
 - (3) An Applicant who has not been in business for five years shall submit EMRF scores for each year in which it has been in business, and the average EMRF score for purposes of this section will be calculated using the number of years for which scores have been issued.

5.05 Applicants in Arrears or Default in a CAB Obligation?

- a. An Applicant may not be in arrears to the CAB with an existing CAB obligation.
- b. If an Applicant is in default of any obligation to the CAB, or otherwise in breach of a contract with the CAB, the CAB may deny prequalification or limit the financial level of prequalification previously granted.
- c. If the Applicant has cured any prior defaults or breaches and demonstrates to the Committee's satisfaction that it has taken reasonable actions to prevent repetition of the conduct involved with such breach, default or faulty performance, the Committee may grant prequalification without limiting the financial level on account of any factors under this Rule 5.05.

5.06 Applicant with History of Debarment, Suspension or Revocation?

- a. The Applicant shall disclose whether it, or any of its owners, principals, personnel, subsidiaries, divisions or affiliates have been debarred, suspended or revoked from entering into contracts with any federal, state or local government entity during the past five years. Any such history will be considered in determining whether the Applicant is presently qualified and capable of performing as a prime Contractor on a CAB Contract with the required level of skill and integrity.

5.07 Applicants with a History of Criminal Convictions

- a. An Applicant shall disclose whether it or any of its officers or employees, its subsidiary companies and officers thereof, or any of the Applicant's owners or

- affiliates or officers thereof, is currently a party to a court action or has been convicted of crimes related to bids, labor, taxes, wages, safety, fraud, or performance of construction contracts, within the past five years in any jurisdiction.
- b. “Crimes” means any offense subject to any term of imprisonment upon conviction or plea of guilty or nolo contendere, and includes petty offenses, misdemeanors and felonies.
 - c. Any such history will be considered in determining whether the Applicant is presently qualified and capable of performing as a prime Contractor on a CAB Contract with the required level of skill and integrity. The existence of such a conviction will not be an absolute bar to prequalification, but the Applicant must demonstrate that it has taken reasonable steps to prevent any future repetition of the conduct which led to such criminal convictions, in order to be eligible for prequalification.

5.08 Accurate and Complete Data

The Applicant must submit current, complete, accurate and valid data and information in its application.

SECTION 6. APPLICATIONS

6.01 Application Forms for Prequalification

Applicants are required to use CAB's application form. Prequalification application forms and a copy of these Rules may be obtained at the Committee's office and on the CAB's website. Completed applications must be submitted to the Committee's office, as specified on the application form.

6.02 Incomplete Applications

The Committee is not required to consider or take action on an incomplete application. An application is not complete unless all required information is provided, including all attachments, enclosures and continuation pages, and all questions and inquiries of the Committee have been answered. If an application remains incomplete for 45 days after the later of (i) the date of its submission or (ii) the date of the last inquiry or communication to the Applicant from the Committee, it will be considered abandoned and a new application for prequalification must be provided.

6.03 Colorado Open Records Act

The CAB is subject to the Colorado Open Records Act, §§ 24-72-201, *et seq.*, C.R.S. (the "Act"). Applications are public records subject to the Act. The Applicant's name, address and other basic information, including whether prequalification was granted and its designated category and level of prequalification, are subject to public inspection. The Act prohibits the CAB from disclosing confidential commercial or financial information supplied to it by others. Each Contractor shall specifically mark each page of an application that it believes contains confidential commercial or financial information which would be exempt from public inspection under the Act, as "CONFIDENTIAL" or with a similar notation. If a Contractor does not mark a page, it will be assumed that the Contractor does not claim that information on that page is confidential and exempt from inspection under the Act.

6.04 Required Information

The following information is required to be supplied with the application as necessary.

- a. Identifying information: The Applicant's essential identifying information, including:
 - (1) Name, including actual business entity name and if different, the name under which Applicant does business.
 - (2) Office address and telephone number
 - (3) Name and email address of the contact person for application matters
 - (4) The company's web address
 - (5) The type of Applicant's business entity (including but not limited to corporation, partnership, limited liability company, limited partnership, or proprietorship)
 - (6) Number of years the organization has been in business
 - (7) Former names under which Applicant has done business
 - (8) Date and state of incorporation (or date of formation, as applicable to the business entity type)

- b. Registered agent: The name, address and telephone number of the registered agent of a corporation, limited liability company, or other form of business entity, as required by Colorado statute.
- c. Parent and affiliates: A statement identifying the Applicant’s parent company and all subsidiaries and affiliates, if any.
- d. Organization and personnel: A simple organization chart identifying your personnel who supervise construction work and provide financial and administrative support for Applicant’s construction projects. If requested by the Committee, Applicant will also submit brief résumés providing names and qualifications of its personnel who supervise the performance of its construction contracts.
- e. Work category: The category or categories of work listed in these rules for which you seek prequalification, and for each category a list of three completed contracts performed during the past five years which demonstrate that you are qualified to perform the work described in those categories. The listed contracts must be identified on the list of Applicant’s largest completed contracts. This information must be provided in a form provided or specified by the Committee.
- f. Construction contracts: The lists of Applicant’s construction contracts performed during the past five (5) years as described in the table below. Each list must be provided in a form provided or specified by the CAB and include the following information:

	Description	Information Required	
		Basic	Specific
<u>Largest Completed Contracts</u>	Applicant’s ten (10) largest public and private construction contracts completed during the past five years.	Name, address and phone number of the project’s owners and architects or engineers. Type of work performed. Initial contract amount. Percentage of work performed by your own employees	Final contract amount. Date of completion. Liquidated damages.
<u>Contracts in Progress</u>	All public and private construction contracts currently in progress.		Current contract amount. Percentage completed at time of application. Expected completion date
<u>Contracts Failed to Complete</u>	A list of each contract that Applicant failed to complete within the past five years.		N/A

- g. Litigation: Disclosure of pending or completed court, arbitration, mediation or administrative cases during the past five years where Applicant is or was a party, as described in the following table:

Cases Required to Disclose	Information Required for Each
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<ul style="list-style-type: none"> • Cases in which Applicant was were alleged to have violated any local, state or federal statute, ordinance, rule or regulation, for example but not limited to: OSHA violation citations; citations for wage law violations; and citations for environmental violations. • Cases in which Applicant’s bid was involved. • Cases with an amount in controversy over \$75,000 in which Applicant’s performance of any public or private construction work was involved, including but not limited to claims that Applicant breached a contract or failed to pay subcontractors or suppliers. 	<p>Date commenced.</p> <p>Docket or citation number.</p> <p>Name of the court, administrative or arbitration forum.</p> <p>Names of the parties.</p> <p>A statement of the subject matter and dollar amount in controversy.</p> <p>The outcome or current status if not closed.</p>
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- h. Debarment, suspension or revocation: A statement as to whether Applicant or its owners, principals, personnel, divisions or affiliates presently, or in the past five years, are or have been debarred, suspended or revoked from entering into contracts with any federal, state or local governmental entity, or have been proposed for such debarment, suspension or revocation. Include a description of the reasons for such action having been taken, the effective dates thereof and the governmental agency so acting.
- i. Criminal convictions: A statement of whether Applicant or any of its officers or employees, its subsidiary companies and officers thereof, or any of Applicant’s owners or affiliates or officers thereof, have within the past five years in any jurisdiction been convicted of crimes related to bids, labor, taxes, wages, safety, fraud or the performance of construction work, and the current status of any such individual or business entity.
- j. Financial statement: A statement of financial condition of the Applicant which covers its most recently completed fiscal year, in accordance with the following.
- (1) The statement must be a Certified Audited Financial Statement or a reviewed financial statement. Applicant will not be granted prequalification at a level higher than \$1,000,000 if a reviewed financial statement is submitted, regardless of bonding capacity or size of current or completed projects.
 - (2) Except for prequalification at the level of \$1,000,000 or below, and as noted below, only a Certified Audited Financial Statement for the business entity applying for prequalification will be acceptable. Consolidated Certified Audited Financial Statements for corporations and their subsidiaries are not acceptable unless the financial condition of the parent corporation (if the Applicant is the parent) or subsidiary (if the Applicant is a subsidiary) can be accurately determined from that statement.
 - (3) The following circumstances will be exceptions as to the financial statement requirements in subsections (1) and (2) above.
 - (a) Any Joint Venture member may satisfy this requirement by submitting a reviewed financial statement if: (i) its participation in the Joint Venture is not more than \$1,000,000; or (ii) it holds less than a fifty percent (50%) ownership interest in the Joint Venture and the owner of the majority Joint

Venture interest possesses sufficient financial capability to qualify in its own right to bid on the contract in question.

- (b) If an Applicant is a wholly owned subsidiary of another corporation, and certifies to the Committee in writing that there does not exist a certified audited financial statement meeting the requirement of this Rule 6.04 showing only the financial condition of the Applicant, the Applicant may submit: (1) a consolidated Certified Audited Financial Statement for itself and its parent corporation, and (2) a statement in a form acceptable to the CAB and signed by a duly authorized corporate officer of the parent corporation, that if a CAB contract is awarded to the Applicant the parent corporation will guarantee the Applicant's performance of the contract. The application will be reviewed on the basis of the consolidated Certified Audited Financial Statement, and the Committee may require the parent corporation to submit additional information in order to evaluate the application.
- k. Bonding capacity: A letter from the Applicant's surety company confirming its bonding capacity for construction contracts.
- l. EMRF: Your Experience Modification Rate Factors for each of the past five years as determined by NCCI or similar regulatory body for non-NCCI states.

6.05 Applications for Environmental Remediation Work

As noted in Rule 3.04, because of the critical health and safety issues involved in the work of environmental assessment and remediation, the Committee may waive in whole or in part prequalification requirements or impose additional requirements or criteria to be met, as determined by the Committee and as necessary to comply with applicable environmental laws, regulations, and orders.

6.06 Application Information Must be Current

The information contained in the application must be current at the time it is filed except for the statement of financial condition. The Applicant must certify that no significant changes in its financial condition have occurred since the date of its financial statement which was included with its application, or, in the alternative, shall include a detailed written description and explanation of the change.

6.07 False Statements or Omissions

Any materially false statement in a prequalification application or failure to disclose requested material information will be cause to deny prequalification, and may, at the discretion of the Committee, be cause for determining that a Bid is non-responsive or for terminating any Contract awarded by the CAB to the Contractor or Joint Venture in which the Contractor is a member.

6.08 Notice of Application Approval or Denial

The CAB will notify Applicants by mail or email of the action taken on their applications. If the application is granted, the notice will state the category or categories of work and the financial level for which prequalification was granted. If the application is denied, the Applicant will be informed. Denials of prequalification may be reviewed as provided in Section 9.

SECTION 7. JOINT VENTURES

7.01 Joint Venture Prequalification

If two or more Contractors wish to form a Joint Venture to bid on a CAB Contract, the Joint Venture itself must be prequalified to submit the Bid, even if all of the members are already individually prequalified. Unless otherwise determined by the Committee, Joint Ventures are prequalified on a contract-by-contract basis. A Joint Venture's prequalification expires when the Contract for which prequalification was obtained has been executed, whether or not the Joint Venture was awarded the Contract.

7.02 Application process for a Joint Venture

The Joint Venture's application must be received by CAB within the time stated in the contract documents for submitting prequalification applications. The Joint Venture's application must be filed on a form obtained from the CAB and must be accompanied by a statement by each Joint Venture member stating:

- The date when the member was individually prequalified;
- The category and limits of such prequalification; and
- That its financial condition has not changed significantly from the date of its last audited financial statement, or, if such financial condition has significantly changed, that the application includes a detailed written description and explanation of the change.

7.03 Joint Venture Agreement

The Joint Venture's application must include a copy of the Joint Venture agreement. This agreement must include all of the following:

- (1) Provisions setting out the scope and extent of each member's responsibility for performing the work described in the Contract;
- (2) Provisions stating each Contractor's duties and obligations as a Joint Venture member;
- (3) A statement of the percentage of each member's ownership interest in the Joint Venture;
- (4) A provision that each of the members will be jointly and severally liable for all duties and obligations of the Joint Venture; and
- (5) A provision that all purchase orders for equipment and materials, and all subcontracts, must be signed by all Joint Venture members or by a person with the written authority to legally bind all of the members.

7.04 Joint Venture Members and Prequalification

At least one member of the Joint Venture must be prequalified individually. Another Joint Venture member must be individually prequalified only if:

- (1) Its participation in the Joint Venture exceeds 250,000; and
- (2) Its financial capability, in terms of its prequalification limits, is being considered in determining the amount of the contract upon which the Joint Venture may be

prequalified to bid.

Although not every member of a Joint Venture is required to be prequalified, complete information on each member of the Joint Venture must be submitted for review in order for the Joint Venture to be prequalified. If any of the Joint Venture members are not currently prequalified, a completed prequalification application for each non-prequalified member must be attached to the Joint Venture's application. Financial statements as required by Rule 6.04 must be submitted as part of such application, if available.

7.05 Criteria for Joint Venture Prequalification

In determining whether the Joint Venture possesses the ability, including financial capability, to perform the contract for which it seeks to bid, the Committee may consider and rely upon the information set forth in the Joint Venture's application and those of all the Joint Venture members, including experience, references, assets and key personnel, as well as any other relevant information presented to the Committee about such Joint Venture and its members. No Joint Venture is eligible for prequalification if one of its members has been debarred, suspended or revoked from entering into contracts with any federal, state or local government entity.

7.06 Financial Capability of a Joint Venture

If a Contractor who is a Joint Venture member and who holds at least a fifty-one percent (51%) ownership interest in the Joint Venture, can be prequalified in its own right to bid on a Contract in the amount of the Contract for which the Joint Venture seeks to bid, then the Joint Venture may be prequalified, as to Contract amount, based on such member's financial capability alone. Accordingly, the maximum dollar amount of a Contract on which the Joint Venture may be prequalified to bid will be determined as follows:

- An amount equal to the sum of the current limits for each of the members in the Joint Venture which are individually prequalified hereunder; or
- An amount not greater than the current prequalification limit of the Contractor who is a Joint Venture member and whose ownership interest in the Joint Venture is at least fifty-one percent (51%).

SECTION 8. PREQUALIFICATION TERM; RENEWAL

8.01 Prequalification Duration

- a. The prequalification of a Contractor will remain in effect only through the date that is the earlier of either:
 - twelve (12) months after the last day of the month in which the prequalification certification was issued; or
 - eighteen (18) months after the closing date in the Contractor's reviewed or audited financial statement submitted with the application.
- b. Prequalification of a Joint Venture is on a contract-by-contract basis, and unless otherwise determined by the Committee, expires when the Contract for which prequalification was obtained has been executed, regardless of whether the Joint Venture was awarded the Contract.

8.02 Renewal of Prequalification

A prequalification application terminates and does not automatically renew upon expiration of the prequalification period set forth in Rule 8.01. To maintain prequalification without a lapse in status, renewal applications must be received by the Committee's on or before the last day of the Contractor's prequalification period.

8.03 Prequalification Renewal Standards

The Committee applies the same standards for the renewal of a prequalification application as it does to all prequalification applications, regardless of whether the Contractor has previously been prequalified. There are no different standards for a prequalification renewal.

8.04 Application for Renewal and Timing

If a complete application is received by the Committee's on or before the last day of the Contractor's prequalification period, the Contractor's prequalification status remains in effect, and unchanged, until action is taken on the application.

8.05 Change of Prequalification Status

During the term of prequalification, a Contractor's status will not change without notice to the Contractor. Any time the Committee, Manager, or CAB deems it necessary, it may review the qualifications of a prequalified Contractor. If this occurs, they may require the Contractor to submit additional information. A previously prequalified Contractor may have their prequalification status revoked at any time as set forth in Rule 9.02. A prequalified Contractor may request a change to its financial level or work category and must submit the additional information required by the Committee to consider the change.

8.06 Reporting Requirements During Prequalification

A prequalified Contractor must promptly notify the CAB of any material decrease in its fiscal or performance qualifications, or of any action taken in any jurisdiction against it or its subsidiaries or affiliates which revokes or limits its ability to bid on, perform work for, or otherwise in any manner participate in contracts of that jurisdiction.

SECTION 9. DENIAL, SUSPENSION AND REVOCATION

9.01 Denial of Prequalification Application

The Committee may deny an application for prequalification if the information available to the Committee, including but not limited to the application, shows that the Applicant does not meet the criteria for prequalification under Section 5 or for any of the reasons set out in this Section 9 for revoking or suspending prequalification.

9.02 Revocation or Suspension of Prequalification

The Committee may suspend or revoke a Contractor's prequalification at any time for any of the following reasons:

- a. The Contractor or any of its subsidiaries is declared to be in default on any contract with the CAB.
- b. The Contractor has made false, deceptive or fraudulent statements, including the

- failure to disclose material and relevant information, in its application for prequalification, in any documents connected with a bid, in any other information submitted to the CAB, or in the course of any hearing associated with the Contractor's prequalification or its performance of contract work for the CAB.
- c. The Contractor has failed to report any decrease in its fiscal or performance qualifications as required by Rule 8.06.
 - d. Actions or inactions by the Contractor evidence a lack of integrity in contract or construction related matters.
 - e. The Contractor no longer meets the prequalification criteria contained in Section 5.
 - f. Conviction of the Contractor, its officers or employees of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
 - g. Conviction of the Contractor, its officers or employees under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property.
 - h. Conviction of the Contractor, its officers or employees under state or federal antitrust statutes arising out of the submission of bids or proposals.
 - i. Debarment or suspension of the Contractor by another governmental entity.

9.03 Procedures for Denial, Suspension or Revocation

The following procedures govern any denial of an application for prequalification and any suspension or revocation of a Contractor's or Joint Venture's prequalification.

- a. If the Committee determines that a prequalification application should be denied or becomes aware of information warranting suspension or revocation of prequalification, as set forth in Rule 9.02, it may determine that the application be denied, or that a Contractor's or Joint Venture's prequalification be suspended or revoked. If such a determination is made by the Committee, written notice of the determination will be sent to the Contractor or Joint Venture. The notice will include a written statement of the reasons for the denial, suspension or revocation and will describe the Contractor's or Joint Venture's right to appeal the decision to the CAB. If the Committee suspends prequalification, the notice will set forth the period of such suspension. The Committee's decision will be effective on the date stated therein.
- b. If the Contractor or Joint Venture elects to appeal the decision to deny, suspend or revoke prequalification, any such appeal must be in writing and must be received by the CAB not later than 30 calendar days after the date the Contractor or Joint Venture received the notice of denial, suspension or revocation.
- c. If no request for a hearing is received within the 30-day period, the Committee's decision will be final.

9.04 Exceptions to Rule 9.03 Procedures

There is one exception to the procedures described in Rule 9.03:

- a. An Applicant which submits either of the following is not eligible for prequalification and will have no right to appeal the denial of its prequalification application:

- (1) Financial statement showing negative working capital; or
- (2) An application showing that its EMRF average is 1.5 or greater (see Rule 5.04j).

9.05 Reapplication upon Denial or Suspension

If the Committee denies a prequalification application or revokes a Contractor's prequalification, the denial or revocation will remain in effect for at least one year from the date it takes effect. If the Contractor whose application is denied or whose prequalification is revoked desires to be prequalified after that time, it must submit a complete, new application to the Committee. The application must demonstrate that the reasons for denial or revocation no longer exist or that they have been adequately addressed or resolved. Nothing herein prohibits a Contractor from requesting prequalification in a category previously not sought within one year from denial in a different category.

SECTION 10. ADMINISTRATION; PREQUALIFICATION COMMITTEE

10.01 Administration of Rules

- a. The CAB delegates to the Committee and its Manager the authority to enforce and administer these Rules.
- b. The Committee and Manager may from time to time establish additional rules for the unified administration of these Rules. Any material changes to the Rules must be approved and adopted by CAB.
- c. The Committee, in coordination with the Manager, shall carry out the day-to-day administration of construction Contractor prequalification under these Rules. When these Rules provide for documents to be submitted to the CAB or obtained from the CAB, they must be submitted to or obtained from the Committee. The location of the office may be changed from time to time by written designation signed by the Manager.

10.02 Duty and Power of Prequalification Committee

- a. The Committee reviews all prequalification applications. The Committee has the authority to grant or deny a prequalification application, grant or deny a request for project specific permission to bid under Rule 4.06, or suspend or revoke any prequalification previously granted to any Contractor.
- b. In reviewing applications, the Committee may make inquiries about or investigations of Applicants as it deems appropriate. When reviewing a prequalification application, the Committee may consider any information about the Applicant obtained from such inquiries or investigations. The Committee may also conduct inquiries or investigations into circumstances involving a prequalified Contractor when the Committee has cause to believe that facts may exist which would be reason for a change in or suspension or revocation of such Contractor's prequalification. In conducting any such inquiries or investigations, the Committee may use the services of CAB employees, consultants, Contractors or vendors.
- c. All decisions of the Committee are subject to review by the CAB for review, which decision can be referred to the CAB by any committee member. The CAB may confirm, reverse, or modify the Committee's determination, which such

determination shall be final.

10.03 Prequalification Committee Composition

- a. The Prequalification Committee shall be the CAB's Construction Committee, established by separate resolution of the CAB.
- b. The Manager may designate employees, consultants or other persons to provide technical support to the Committee, including but not limited to financial analysis. Persons providing these services will not be appointed to the Committee but may attend Committee meetings as necessary or appropriate.

10.04 Committee Operations

- a. The Committee may adopt its own rules of organization and procedure.
- b. The Committee will hold meetings, as needed, to review applications and to consider other matters involving the administration or implementation of these Rules as set forth in the resolution establishing the Construction Committee.

[END OF PREQUALIFICATION RULES]