

15.01 QUALIFICATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR PERFORMING WORK ON STATE OF TENNESSEE PROJECTS SUBJECT TO STATE BUILDING COMMISSION APPROVAL

A. PURPOSE

1. It is the intent of the State Building Commission that construction contracts for projects under its supervision be procured through procedures promoting competition to the greatest extent possible.
2. Whereas the competitive sealed bid process is used, it is the intent of the State Building Commission to award contracts to a responsible bidder submitting the lowest responsive bid.
3. As used in subparagraph A (2) herein, "responsible" refers to the qualifications required of a contractor or subcontractor as determined by the Commission, including but not limited to considerations of the skill and ability for the performance of the work called for in the particular project and whether the contractor or subcontractor is disqualified pursuant to this policy.
4. As used in subparagraph A(2) herein, "responsive" refers to the form and content of the bid meeting any and all requirements of the bidding documents.

B. POLICY

1. Requirements Contained in Bid Documents
 - a. Bidding documents, primarily the specifications, may include requirements for contractors and subcontractors to possess certain qualifications to perform the work.
 - b. If a contractor does not meet the requirements as contained in the bid documents then said bid shall be rejected. If a subcontractor is required to be listed in the bid, and no substitution has otherwise been authorized by the State Building Commission, and such listed subcontractor does not meet the requirements contained in the bid documents for the work they are to perform, then the contractor's bid shall be rejected. Failure of a contractor or subcontractor to meet the requirements contained in the bid documents shall not be the only grounds to reject a bid.
 - c. Rejection by the State Architect of a bid for failure to meet any requirement under this Section B(1) shall be final and binding. The contractor or subcontractor rejected under this Section B(1) shall not be entitled to the procedures specified in Section B(5) herein.
2. Disqualification Due to Failure to Have Requisite License
 - a. An unlicensed contractor or subcontractor shall be disqualified to bid on or be awarded a contract for any State Building Commission project and any bid containing an unlicensed contractor or subcontractor as a required listed subcontractor shall be rejected. As used in this Section B(2), unlicensed means failure to be licensed or improperly licensed pursuant to the

Tennessee Contractors Licensing Act, T.C.A. Sections 62-6-101 et seq., as it may be amended, if applicable, or pursuant to any other Tennessee statute which requires a license for the work to be performed.

- b. If a bid is rejected by the State Architect under this Section B(2), subsequently obtaining the requisite license shall not in any way affect a rejected bid.
 - c. The State Architect shall notify the contractor or subcontractor in writing if a bid is rejected solely due to failure to be adequately licensed. If a contractor or subcontractor disagrees with this finding, it must present written evidence of adequate licensure to the State Architect within seven days of receipt of notice from the State Architect. If the State Architect then determines the contractor or subcontractor is adequately licensed, the bid may then be considered.
 - d. The period of disqualification to bid on or be awarded contracts for State Building Commission projects under this Section B(2) shall continue until the requisite license is obtained.
 - e. Rejection by the State Architect of a bid due to absence of the requisite license under this Section B(2) shall be final and binding. The contractor or subcontractor whose bid is rejected under this Section B(2) shall not have available the procedures specified in Section B(5) herein.
3. Disqualification Pursuant to T.C.A. Section 12-4-601 et seq.
- a. Contractors or subcontractors shall be disqualified to bid on or be awarded contracts for any project under the supervision of the State Building Commission if it is unlawful for any contractor or subcontractor which submitted the bid to solicit employment on any contract associated with the State pursuant to T.C.A. Section 12-4-601 et seq., as it may be amended and any bid so submitted shall be rejected. If a subcontractor which may not solicit employment with the State pursuant to T.C.A. Section 12-4-601 et seq., is nevertheless included in a bid as a required listed subcontractor and no substitution has been authorized by the State Building Commission then the bid shall be rejected as non-responsive. If a subcontractor which may not solicit employment with the State pursuant to T.C.A. Section 12-4-601 et seq., is included in a bid and is not a required listed subcontractor then the bid may be accepted but the affected subcontractor shall be rejected and the contractor must substitute an acceptable subcontractor at no change in cost under the contract.
 - b. The period of disqualification to bid on projects under the supervision of the State Building Commission or to be included in a bid on such projects under this Section B(3) shall extend to the period of time specified in T.C.A. Section 12-4-601 et seq., as it may be amended.
 - c. The State Architect shall notify the contractor or subcontractor in writing if a bid is rejected under Section B(3). If a contractor or subcontractor disagrees

with this finding, it must present its position in writing to the State Architect within seven days of receipt of notice from the State Architect. If the State Architect determines disqualification is not appropriate under this Section B(3), then the bid may be considered.

- d. Rejection of a bid by the State Architect under this Section B(3) shall be final and binding. The contractor submitting a bid which has been rejected under this Section B(3) or the subcontractor rejected under this Section B(3) shall not have available the procedures specified in Section B(5) herein.

4. Disqualification Pursuant to Unsatisfactory Performance

- a. A contractor or subcontractor that has demonstrated unsatisfactory performance on current or past State projects may be disqualified by the State Building Commission, from bidding on or being allowed to work on future projects under the supervision of the State Building Commission.
- b. The period of disqualification may continue for a period of time determined by the State Building Commission. However, said period of time may not exceed three (3) years. Said period of disqualification shall be deemed to begin upon the date the State Building Commission finds a contractor or subcontractor to be disqualified.
- c. A contractor or subcontractor may be deemed to have demonstrated unsatisfactory performance on current or past State projects if any one of the following criteria is met:
 - (1) Performance of work without proper licenses from the State;
 - (2) Non-payment of prevailing wages or unemployment insurance;
 - (3) Non-payment of, or failure to promptly pay monies due subcontractors or material suppliers unless there exists a good faith dispute regarding the amount owed;
 - (4) Failure to timely meet the financial requirements of a contract (including but not limited to insurance requirements);
 - (5) Use of unlicensed or improperly licensed subcontractors;
 - (6) Use of subcontractors which is inconsistent with the bid documents or subcontractors who were unapproved in accordance with requirements of the contract documents;
 - (7) Providing false or incomplete information on qualification, bidding, or contract documents (including subsequent documentation required by the contract) either when the contractor or subcontractor actually knew the information was false or incomplete or with the exercise of reasonable diligence should have known said information was false or incomplete;
 - (8) Requesting or obtaining State funds on current or past contracts which the contractor or subcontractor knew were not due under the

contract or with the exercise of reasonable diligence should have known were not due under the contract;

(9) Acting in any manner, whether willful or negligent, including but not limited to misrepresentation or failure to act, which allows contractors or subcontractors, State personnel, design professionals or any other party associated directly or indirectly with a State project to obtain funds from the State which were not properly due under a contract;

(10) Failure to submit or adhere to contractually required schedules when failure is fault of contractor or subcontractor;

(11) Failure to cooperate in accordance with terms of contract; or

(12) Unsatisfactory performance of work on State or other projects, including but not limited to, refusal to correct workmanship not in accordance with the contract documents, termination for cause, or failure to provide supervision required by the contract documents.

- d. The foregoing list contained in subsection B(4)(c) is not an exhaustive enumeration of instances of unsatisfactory performance by a contractor or subcontractor. The State Architect and CQRP may recommend and the State Building Commission may disqualify a contractor or subcontractor from bidding on future projects under its supervision if the Commission determines that the contractor or subcontractor has not performed satisfactorily on current or past State projects although the basis for disqualification is not enumerated in subsection B(4)c) above.
- e. A Contractor's Evaluation Report (Form CER-1), will be completed by the contracting agency on all finished projects under the supervision of the State Building Commission and kept on file. However, a CER-1 must be initiated and maintained as soon as it has come to the attention of a State department or agency that a contractor or subcontractor has performed unsatisfactorily on a State project. Such reports are to be produced by anyone having reasonable knowledge of or familiarity with the project involved, such as State facility managers, project managers, and design professionals. Completed CER-1 forms should be sent immediately to the State Building Commission in care of the State Architect for action. A copy of completed CER-1 forms shall be kept on file in the State Architect's Office and available for review by interested parties.
- f. Failure for State personnel to timely initiate, maintain, complete, or submit a CER-1 form shall not affect whether the State Building Commission may disqualify a contractor or subcontractor under this policy.
- g. The State Architect, CQRP, and State Building Commission may consider information regarding the performance of a contractor or subcontractor on projects not involving the State, such as documented pre-qualification submittals, reference checks, and documented performance on other than State projects.

5. Disqualification Procedures

- a. If the State Architect has received information which leads the State Architect to conclude that a contractor or subcontractor should be disqualified from work on future State projects pursuant to Section B(4) herein, the State Architect shall prepare a recommendation of disqualification to the Contractor Qualifications Review Panel (CQRP). The information referred to in this subsection (a) may be derived in whole or in part from CER-1 forms or may be derived in whole or in part from other sources. The State Architect may not recommend disqualification if such recommendation is solely based upon a CER-1 form completed more than one year prior to the notice required in subsection B(5)(d) of these Disqualification Procedures. Failure of the State Architect to act promptly upon receipt of information regarding possible disqualification shall have no effect upon the recommendation of disqualification and any subsequent disqualification.
- b. The CQRP will be composed of the following:
 - (1) A representative of State government, selected by RPA. Such representative shall have no direct relationship to the incidences relied upon by the State Architect for the initiation of disqualification procedures against the contractor or subcontractor.
 - (2) A volunteer representative of the contracting community of Tennessee, who has no direct or indirect interest in the outcome of these proceedings, in the parties involved, or in the situation or events relied upon by the State Architect for his or her disqualification recommendation. The selection of this representative will be the responsibility of the representative professional associations of the Tennessee building contracting industry.
 - (3) A volunteer representative of the professional design community of Tennessee who has no direct or indirect interest in the outcome of the proceedings, in the parties involved, or in the situation or events relied upon by the State Architect for his or her disqualification recommendation. The selection of this representative will be the responsibility of the representative professional associations of the Tennessee design profession.
- c. It will be the responsibility of the State Architect to contact RPA and industry organizations to provide their representatives for the purpose of empanelling a CQRP, convene meetings of the CQRP and set date, time and place for each.
- d. The State Architect shall notify the contractor or subcontractor in writing of any recommendation, and the grounds therefore, to be presented to the CQRP and the State Building Commission regarding its disqualification from bidding State work. Said notice shall include copies of all completed CER-1 forms that are relied upon by the State Architect's recommendation. The

contractor or subcontractor shall be provided other documentation relied upon by the State Architect upon request.

- e. The contractor or subcontractor may file written objections to the State Architect's recommendation within ten (10) working days from receipt of the notification in subsection B(5)(d) hereof. Upon written request within said ten (10) day period by the contractor or subcontractor and for good cause shown, a reasonable extension of time to file written objections shall be granted provided an agreed upon extension of time must be in writing and signed by the State Architect.
- f. If timely objections are filed by the objecting party, the State Architect shall, within ten (10) working days of receiving the objection, notify the objecting party in writing of its opportunity to present its position to the State Architect regarding the recommendation of disqualification. Presentation of the objecting party's position to the State Architect shall be held as soon as is practical. The time, place, and manner of the objecting party's presentation to the State Architect shall be determined by the State Architect but in no event shall it be held more than twenty (20) working days after receipt by the State Architect of the party's objections, unless the objecting party and the State Architect agree on a later date.
- g. Any failure by the State Architect to give notice within the time periods specified in subsection B(5)(f) shall not affect the recommendation of disqualification by the State Building Commission but such information will be available to the State Building Commission for consideration. Failure of the contractor or subcontractor to present timely written objections to the State Architect's recommendation or failure of the objecting party to present evidence to the State Architect at the time and place as required in subsections (e) and (f) above shall have the following consequences:
 - (1) The State Architect is not required to notify the contractor or subcontractor of the scheduled CQRP or State Building Commission meeting at which the recommended disqualification of the contractor or subcontractor is an agenda item;
 - (2) The State Architect shall present his or her recommendation to the CQRP at its next meeting and notify the panel that there is no objection to the recommendation of disqualification; and
 - (3) The contractor or subcontractor recommended for disqualification shall have waived any and all objections to the disqualification and shall not present objections to the CQRP or State Building Commission.
- h. If the contractor or subcontractor presents written objections and makes a presentation to the State Architect as permitted under subsections (e) and (f) above, the State Architect may withdraw his or her proposed recommendation of disqualification to the CQRP if he or she determines disqualification would not be appropriate. Such withdrawal is to be at the discretion of the State Architect.

- i. If the contractor or subcontractor has complied with subsections (e) and (f) herein and the State Architect has not withdrawn his or her recommendation of disqualification, the State Architect shall give the objecting party ten (10) calendar days' prior written notice of the next CQRP meeting and the State Architect shall present his or her recommendation to the panel for consideration at that meeting. Upon written request by the contractor or subcontractor and for good cause shown the presentation before the CQRP may be postponed for a reasonable period of time. The objecting party shall present its objections to the panel at the meeting specified in the notice in whatever manner the panel allows; provided, however, that the State Architect and contractor or subcontractor shall be entitled to present witnesses and to cross-examine adverse witnesses. Failure of the contractor or subcontractor to present its objections to the CQRP shall operate as a waiver of any recommendation by the State Architect or CQRP to the State Building Commission. The CQRP, after consideration of all evidence and arguments presented, may recommend approval, disapproval or modifications to the recommendations of the State Architect. If the CQRP unanimously rejects the recommendation for disqualification, the State Architect shall file a written report of the action with the State Building Commission; and if the State Building Commission accepts the recommendation, then no further action shall be taken. If the CQRP recommends disqualification, or if the CQRP fails to act unanimously, or if the Building Commission rejects the CQRP's unanimous recommendation not to disqualify then the action of the CQRP, including the tally of votes, will be presented at the next scheduled meeting of the State Building Commission. The objecting party will be notified in writing of this meeting ten (10) days in advance and may present its objections to the Commission at that meeting in whatever manner the Commission allows; provided, however, upon written request of the contractor or subcontractor the presentation before the Building Commission may be postponed for a reasonable period of time and the Building Commission may hear the presentation at a special meeting if it chooses to do so in its discretion.
- j. In the proceeding before the Commission, the following shall apply:
 - (1) the State Architect and contractor or subcontractor are entitled but not required to submit a written summary of their respective positions to each member of the Commission, and said summary submitted by the contractor or subcontractor shall be delivered to the State Architect for distribution to the Commission not less than five (5) days before the Commission meeting and said summary submitted by the State Architect shall be delivered to the contractor or subcontractor not less than five (5) days before the Commission meeting;
 - (2) The proceeding before the Commission shall be recorded by a court reporter or tape recorded with the expense of said reporter to be borne by the unsuccessful party;

(3) The State Architect and contractor or subcontractor shall be entitled to submit relevant information on the issue of disqualification and length thereof; the Commission shall determine the relevancy of any information;

(4) If requested, the contractor or subcontractor may be represented by counsel; and

(5) The State Architect and contractor or subcontractor are entitled to present witnesses and to cross-examine adverse witnesses.

k. The State Building Commission shall act upon the recommendations of the State Architect and CQRP based upon the record of the presentation. A vote by a majority of the Commission shall be sufficient to disqualify a contractor or subcontractor. Within forty-five (45) days of the presentation, the State Building Commission shall submit to the State Architect and contractor or subcontractor its written findings and conclusions regarding whether it finds adequate evidence to disqualify the contractor or subcontractor and the effective dates of any disqualification, provided, however, said period of disqualification shall not exceed three (3) years. The decision of the Commission is final and binding.

l. After State Building Commission action affirming disqualification, it shall be the responsibility of the State Architect, on behalf of the Commission, to notify those State departments, agencies or other entities involved in letting or funding State or other State entity contracts of those contractors or subcontractors disqualified from bidding on, or being awarded contracts for, projects under the supervision of the Commission and the extent of their disqualification.

m. Succeeding or related corporations, partnerships, joint ventures or other business organizations which have substantial factual or legal connections, continuity or identity with contractors or subcontractors that have been disqualified by the Commission shall be likewise disqualified from bidding, being awarded or performing work under, contracts for projects under the supervision of the State Building Commission. Whether an entity has "substantial factual or legal connections, etc." shall be determined based upon the procedures under Section B(5) provided that the CQRP shall not be involved.

6. Miscellaneous

a. The State Architect shall maintain a list of all contractors or subcontractors who have been disqualified from working on State Building Commission projects pursuant to Sections B(3), B(4) and B(5) herein. Such list, as is in effect on the date of advertisement for receipt of bids of any State Building Commission project, shall be included in the bidding requirements whenever practicable. A list of disqualified contractors or subcontractors for State Building Commission projects is a matter of public record and will be kept on file in the State Architect's office. Any contractor which submits a bid for a project under the supervision of the State Building Commission shall not

include in its bid any contractor or subcontractor disqualified pursuant to this policy. Furthermore, any contractor performing work on a project under the supervision of the State Building Commission shall not allow any contractor or subcontractor disqualified pursuant to this policy to perform work on said project.

- b. If any bid is accepted which contains a contractor who has been disqualified pursuant to Sections B(3), B(4) and B(5) said bid may be reviewed and rejected by the State Architect at any time before the contract between the State and contractor is executed and delivered to the contractor.
- c. If any contractor is disqualified pursuant to Sections B(3), B(4) and B(5) after the contract between the State and contractor is executed and delivered to the contractor, said disqualification shall not affect the contract with the contractor and said contract shall remain in full force and effect.
- d. The conduct of the officers, directors, stockholders, employees, partners, joint venturers, or other individuals associated with the contractor or subcontractor may be imputed to the contractor or subcontractor if the conduct occurred on behalf of such party, or with its knowledge, approval or acquiescence.
- e. It is not the intent of this policy to create any sort of property interest on behalf of contractor or subcontractor whether express or implied and it shall not be interpreted to create any such interest.