



CONSULTANT PREQUALIFICATION SCHEME

SCM1191 Scheme Conditions

For construction and related works

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More information

Contact the NSW Procurement Service Centre

- Telephone: 1800 NSW BUY (1800 679 289)
- Email: nswbuy@treasury.nsw.gov.au

If you are already a prequalified consultant, please send your queries to consultantprequal@finance.nsw.gov.au

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What's changed

This scheme has been extended to 31 December 2022. This document has been transferred to a new template, but none of the scheme conditions have been changed.

All references to Department of Finance, Services and Innovation (DFSI) have been changed to Department of Planning, Industry and Environment (DPIE).

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SCHEME CONDITIONS

The Scheme requires consultants to comply with the following conditions:

1. Code of Practice for Procurement

The NSW Government Code of Practice for Procurement sets the framework for all business relationships by:

- establishing the standards of behaviour expected from government agencies (as clients),
- employer and industry associations and unions; and
- requiring a strong commitment to continuous improvement and best practice performance by all participants in the supply chain.

Lodgement of an application will be evidence of the applicant's agreement to comply with the Code. Failure by a consultant to comply with the Code will be taken into account when considering the consultant for future business opportunities with the NSW Government.

Consultants must have a satisfactory record of compliance with the Code. This also includes ensuring that Consultants and their Sub-consultants, and suppliers comply with their legal obligations regarding their business and employees.

2. Legal Entity and Business Operations

DPIE only prequalifies Consultants that are recognised and acceptable legal entities having appropriate financial assets. DPIE will not prequalify a Business Name, Trust or an entity that is under any form of external administration. Consultants trading under a Trustee company arrangement must demonstrate that they meet the Scheme requirements.

Prequalification of a Consultant does not extend to its related, associated or subsidiary business entities owned or controlled by the Consultant or joint ventures to which the consultant is a party.

DPIE will not prequalify:

- related, associated or subsidiary business entities for the same category of work and financial range unless the business relationships between the applicant entities and an already prequalified entity or entities satisfy the NSW Government Code of Practice for Procurement — Standards of Behaviour such as no anti-competitive practices; or
- a joint venture for the same category of work and financial range as any of the parties to the joint venture.

The purpose of not prequalifying related, associated or subsidiary business entities for the same category of work and financial range is to ensure such entities are not eligible to compete against each other in the tendering process.

Consultants applying for prequalification for engagements over \$150,000 must have traded in Australia successfully for two (2) years prior to the date of their application.

3. Compliance with laws and policies

Consultants prequalified under this Scheme must comply with all relevant laws and NSW Government policies. In submitting an application, applicants declare that they are not subject to an ICAC inquiry or similar inquiry in another jurisdiction.

4. Changes to Consultant's Status

Consultants prequalified under the Scheme must immediately inform DPIE of any substantial change in their financial capacity, technical capacity, capability, ownership status, contact details or address. Consultants must advise of a change in status by writing to:

Email: Consultantprequal@finance.nsw.gov.au

A change in a consultant's status may include achieving or renewing accreditation with the Federal Safety Commission (FSC) for WHS Management Systems. In the case of a change of ABN, Consultants must apply with a new application as a new entity.

5. Performance Monitoring, Tracking & Management by the Consultant

Prequalified Consultants should have in place a system for the monitoring, tracking and management of the firm's own performance on contracts procured through the NSW Government Procurement System for Construction.

The system is to enable the Consultant to:

- Arrange to schedule proactively and attend face to face quarterly Consultant
- Performance meetings with the Client's Project Manager (who are prequalified Project Managers and Project Directors on this Scheme). Prequalified Project Managers and Project Directors will follow this process by meeting directly with the Client to discuss the firm's performance.
- Manage the receipt and storage of completed of Consultant Performance Reports (CPR) signed by the Client. Similarly, Project Managers and Project Directors will manage the receipt of Project Manager Performance Reports and Project Director Performance Reports respectively, which have been provided by the Client.
- The Consultant is to request the completion of any outstanding or incomplete CPRs from the Client's Project Manager. (Note that the Client's Project Manager is required to promptly provide copies of CPRs to the Consultant on request as a condition of their prequalification with DPIE under the Consultant Prequalification Scheme.) Similarly, the Project Manager and Project Director are to request the completion of any outstanding or incomplete CPRs directly from the Client.
- Consultants are advised to follow-up with Client's Project Manager to send the completed and signed CPRs to: cpr@finance.nsw.gov.au
- Review performance status and trends of all contracts at an executive level including analysis of performance status and trends on individual contracts.
- Identify performance issues requiring resolution and/or improvement including deciding on and implementing corrective actions.
- Review of Consultant's own system for performance monitoring, tracking and management by the executive including the implementation of improvements.
- DPIE may request further information from the Client in case project details could not be verified from the contract register.

6. Monitoring Consultant Performance by DPIE

Consultants seeking or achieving prequalification under the Scheme are to be aware that the firm will be subject to a process of continuous monitoring and review in all matters related to the Scheme, including the Consultant's performance and project outcomes.

The monitoring is not exclusive to work undertaken using the NSW Government Procurement System for Construction. Government agencies have agreed to exchange information on the performance of Consultants.

This monitoring may include, but not be limited to:

- Consultant Performance Reports (CPR's)
- Project Manager Performance Reports
- Project Director Performance Reports
- The Code of Practice for Procurement
- Tendering Performance on contracts including whether the consultant has:
 - declined tendering opportunities offered without providing valid reason
 - failed to submit a tender without providing any valid reason after having
 - accepted the tendering opportunity
 - submitted late tenders
 - submitted qualified, non-complying or uncompetitive tenders.
- The preparation of proper and conclusive accident and incident reports on any of the Consultant's contracts in NSW
- The level of appropriateness of corrective actions implemented by the consultant following the report of a serious WHS event related to the Consultant's work
- Results of any Quality Assurance Audit, or Environmental Management System Audit, or WHS Management System Audit conducted for, or on behalf of, any NSW government agency or by any properly credentialed Auditor or Auditor Group.
- Industrial relations issues that have resulted in a significant disruption to the works progress on the Consultant's contracts
- Aboriginal Participation in Construction
- Project outcomes
- Client satisfaction
- Business management systems
- Project Management systems
- Ethical business practices
- Training and Development
- Financial Performance.

7. Benchmark for Positive Consistent Performance

Consultants must demonstrate positive consistent performance. The average weighted Performance Report score (including Consultant Performance Reports, Project Manager Performance Reports and Project Director Performance Reports) achieved by a Consultant, on each contract as well as on each individual performance report, will be compared with a required minimum benchmark score. This will apply to all contracts undertaken during the life of the Scheme. The minimum benchmark score required is 65%.

8. Temporary Suspension

DPIE may suspend a prequalified Consultant from receiving the benefits of Prequalification under the Scheme, including receiving tendering opportunities, for up to three months if DPIE considers from the monitoring of performance that:

- Consultant has not complied with the requirements of the Scheme.

- Before the Prequalification status of a Consultant is suspended, DPIE will advise the
- Consultant of the matters prompting the proposed action and will give the Consultant the opportunity to give reasons why its Prequalification should not be suspended.
- Consultants suspended from the Scheme must inform DPIE when the actions required to address the reasons for the suspension have been implemented.
- DPIE will regularly review the status of a suspended Consultant.
 - If the action taken by the Consultant are considered to be insufficient by DPIE, the suspension period may be extended and the Consultant will be notified accordingly.
 - Alternatively, DPIE will revoke the suspension if it is satisfied that the Consultant has taken appropriate action to address the reasons for the suspension.

9. Downgrading of Status

DPIE may downgrade a Consultant's prequalification under the Scheme when DPIE considers that a Consultant has:

- demonstrated unsatisfactory tendering performance with tenders under the Scheme, for example: declining tendering opportunities without providing valid reasons, accepting a tendering opportunity but not lodging a tender, lodging late tenders or lodging uncompetitive tenders;
- experienced an adverse change in capacity; or
- experienced an adverse change in business status.

Before the prequalification status of a Consultant is downgraded, DPIE will advise the Consultant of the matters prompting the proposed action and will give the Consultant the opportunity to give reasons why it's prequalification should not be downgraded.

10. Removal of Prequalification

DPIE may remove a Consultant's prequalification when DPIE considers that the Consultant has not met one or more of the scheme requirements including:

- breached any of the conditions for prequalification
- failure to meet financial requirements
- been the subject of substantiated reports of unsatisfactory performance for other NSW government agencies
- been determined by DPIE as not suitable for future work
- unsatisfactory tendering performance with tenders under the NSW Government Procurement System for Construction
- experienced an adverse change in capacity or capability
- experienced an adverse change in business status
- failure by the Consultant to resolve promptly and adequately the reasons for a temporary suspension from the Scheme
- serious accidents and WHS incidents on any of the Consultant's contracts in NSW
- convictions for WHS law breaches
- a pattern of unsatisfactory results of WHS Management System audits or Quality Management System audits or Environmental Management System audits conducted for, or on behalf of, any NSW government agency. (Note: There is no suggestion or requirement that audits for each of the above three separate disciplines are to be done concurrently)

- the Consultant's project outcomes, business management systems, client satisfaction and ethical business practices do not meet the standards required of a consultant prequalified under the Scheme

Before the prequalification of a Consultant is removed, DPIE will advise the Consultant of the matters prompting the proposed action and will give the Consultant the opportunity to give reasons why its prequalification should not be removed.

11. Reviews

If a Consultant is not satisfied with a decision made in relation to its Prequalification, the Consultant may request a formal review and feedback on the decision.

The request for a review must be sought, in writing, within 20 business days of the date of receipt of the notice advising of the original decision. The request for a review must provide full details of the reasons for the request and any additional information upon which the Consultant wishes to rely.

The request for the review is to be made by email to:

consultantprequal@finance.nsw.gov.au

12. Publicity

The NSW Waratah logo is a registered trademark and the property of the NSW Government. It is no longer permitted for use by prequalified consultants. However, consultants are allowed to use text acknowledging prequalification status such as "Prequalified Consultants under NSW Government Scheme SCM1191"

13. Applicant's Acknowledgment

In applying for prequalification, the Applicant agrees that it accepts the Scheme conditions.

14. Disclaimer

DPIE reserves the absolute discretion to:

- accept a prequalification application with or without conditions; or
- reject a prequalification application; or
- suspend a consultant's prequalification; or
- downgrade a consultant's prequalification; or
- remove the prequalification of a Consultant.

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

15. No Guarantee of Work

The receipt of prequalification by a Consultant does not guarantee:

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

16. Review and Development of the Scheme

The Scheme will be monitored by DPIE to assess whether the objectives and intent of the Scheme are being met. Modifications to the Scheme, including to work categories and contract value ranges, may be made at the sole discretion of DPIE at any time during the life of the Scheme to cater for:

- changes to government policies and government agency circumstances;
- an increase in consultancy work available beyond that anticipated at the commencement of the Scheme;
- significant vacancies developing in a panel; or
- new requirements which necessitate the creation of sub-categories and additional panels within those categories.