

The logo features a dark blue rectangular box containing the words "PROCUREMENT" and "CONSTRUCTION" stacked vertically in white, uppercase, serif font. This box is centered between the words "AUSTRALASIAN" on the left and "AND COUNCIL" on the right, all in a smaller, dark blue, uppercase, serif font. A thin, dark blue arc is positioned above and below the central box, curving around it.

AUSTRALASIAN **PROCUREMENT
CONSTRUCTION** AND
COUNCIL

National Prequalification System for Non-residential Building (NPS) Guidelines

The National Prequalification System for Non-residential Building (NPS) aims to create certainty and consistency, and streamline the process of prequalification for contractors working in multiple jurisdictions. It applies to non-residential government building contracts where the construction cost estimate is \$50 million and above in Participating Jurisdictions. This seamless process for mutual recognition of prequalification status for contractors across all jurisdictions commenced on 1 January 2011 and will be reviewed annually. For details of participating jurisdictions and participating agencies please refer to the APCC website.

NOTE: Commonwealth agencies are unlikely to process prequalification applications. Where a Commonwealth agency decides to seek tenders from prequalified contractors, it will recognise relevant prequalification status awarded by States and Territories under the APCC National Prequalification System.

NPS Documents

Applicants should access the full set of NPS documents before undertaking their applications.

1. NPS Guidelines (this document)
2. NPS Application Form and Referee Report (application for prequalification)
3. NPS Registration for Mutual Recognition Form (for recognition in multiple jurisdictions)
4. NPS Contractor Performance Report (review of performance and compliance)

All documents can be downloaded from www.apcc.gov.au

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1. Introduction

Generally contractors wishing to tender above certain thresholds for non-residential government building contracts with Commonwealth, State and Territory building agencies must be prequalified.

A National Prequalification System for Non-residential Building (NPS) commenced on 1 January 2011 and will be reviewed annually.

Note: Prior to the commencement of the NPS contractors prequalified (for non-residential government building projects \$50 million and above) under a local jurisdictional prequalification system were transitioned to the NPS with no effect on their prequalification status for that jurisdiction.

However all such contractors wishing to achieve the benefit of mutual recognition and all new entrants to prequalification will need to apply under the NPS.

1.1. Overview

Where prequalification is used as part of the procurement process, Participating Agencies will use the NPS for applications to non-residential government building contracts where the construction cost estimate is \$50 million and over, and apply it to contractors seeking to tender for contracts for those projects from 1 March 2011.

This NPS covers the building of non-residential government buildings as defined by the Australian Bureau of Statistics. This includes hospitals, schools, office buildings, sporting facilities, courts and police stations. It does not apply to the construction of civil engineering assets such as roads and bridges which are addressed in the companion Austroads National Prequalification System for Civil (Road and Bridge) Construction refer: www.austroads.com.au.

Prequalification of contractors is a continuous process of review comprising:

- an initial assessment of a contractor's technical capabilities and financial capacity at the time of application (including its operational management systems)
- financial and/or technical checks from time to time
- assessment of a contractor's performance during, and at the completion of the contract, and at other times when a review may be warranted
- periodic re-assessment and renewal of prequalification via submission of updated information at the discretion of the Assessing Agency.

Eligible contractors prequalified under the NPS in one jurisdiction may apply for mutual recognition in any other jurisdiction at any time.

Eligibility requirements are detailed in these Guidelines, along with the conditions of prequalification and the process that will be undertaken by the relevant Participating Agency to assess and review prequalification applications.

1.2. Background

The NPS was developed by the Australasian Procurement and Construction Council (APCC) in conjunction with State and Territory jurisdictions.

As jurisdictions have their own prequalification requirements and processes, the NPS was developed to avoid duplication of effort and reduce administrative burden for both agencies and contractors.

The APCC acknowledges that the NPS is an adaptation of the National Prequalification System for Civil (Road and Bridge) Construction developed by Austroads. Where practicable to do so, the APCC has endeavoured to reflect elements of the Austroads system in the NPS.

The intent of the NPS is to benefit Participating Agencies and contractors by meeting the following objectives:

- harmonise prequalification systems of Participating Agencies
- provide mutual recognition of contractor prequalification by Participating Agencies
- reduce barriers to entry for contractors seeking to tender for non-residential government building contracts across different jurisdictions
- encourage mobility of contractors across State and Territory borders
- reduce the time and cost to contractors applying for prequalification in multiple jurisdictions
- reduce red tape
- provide for information-sharing on contractor performance across Participating Agencies
- reduce the administrative burden on individual Participating Agencies.

1.3. Scope

The scope of the NPS has been built upon the following:

- Within the participating jurisdictions, the NPS applies to the government agencies and/or entities required to comply with non-residential building policies and prequalification systems of the relevant Participating Jurisdiction.
- Participating Agencies (and other government agencies and/or entities within their jurisdictions that would normally use the NPS) are not bound to use prequalification in all instances. They also have the option to use alternative forms of tendering (for example, open tenders or expressions of interest) for specific contracts.
- Participating Agencies will manage the prequalification and contractor performance aspects of the NPS within their respective jurisdictions.
- While the intent is to maintain contractor prequalification nationally, there may be instances when a contractor is ineligible to tender in a jurisdiction despite its prequalification status having been recognised in another jurisdiction due to a lack of compliance with jurisdiction specific requirements (e.g. local legislation, local policy requirements).

1.4. Mutual Recognition

Parameters of mutual recognition

Mutual recognition under the NPS means a contractor's prequalification status will be recognised when the contractor seeks to register with any other Participating Agency in another jurisdiction. Key features of the NPS include:

- contractors prequalified by the Assessing Agency may apply for mutual recognition by any Participating Agency
- mutual recognition by another Participating Agency is a more streamlined process which will usually only require the prequalified contractor to provide evidence of prequalification with the Assessing Agency plus minimal information such as company details, a contact person (a local contact person where applicable) and acknowledgement to comply with jurisdiction specific government requirements and legislation.

(For more details, please refer to separate Registration for Mutual Recognition Form, available from www.apcc.gov.au.)

Note: To be eligible for prequalification or mutual recognition in some jurisdictions a contractor must hold an appropriate building license as required by the legislation applicable in the jurisdiction.

Exclusions

- Prequalified partnerships, trust arrangements, Public Private Partnerships (PPPs), Private Financed Partnerships (PFPs) and Alliances are not eligible to access the mutual recognition benefits of the NPS, except in the jurisdictions where those entities are currently able to be prequalified, at the sole discretion of the relevant Participating Agency.
- New South Wales:

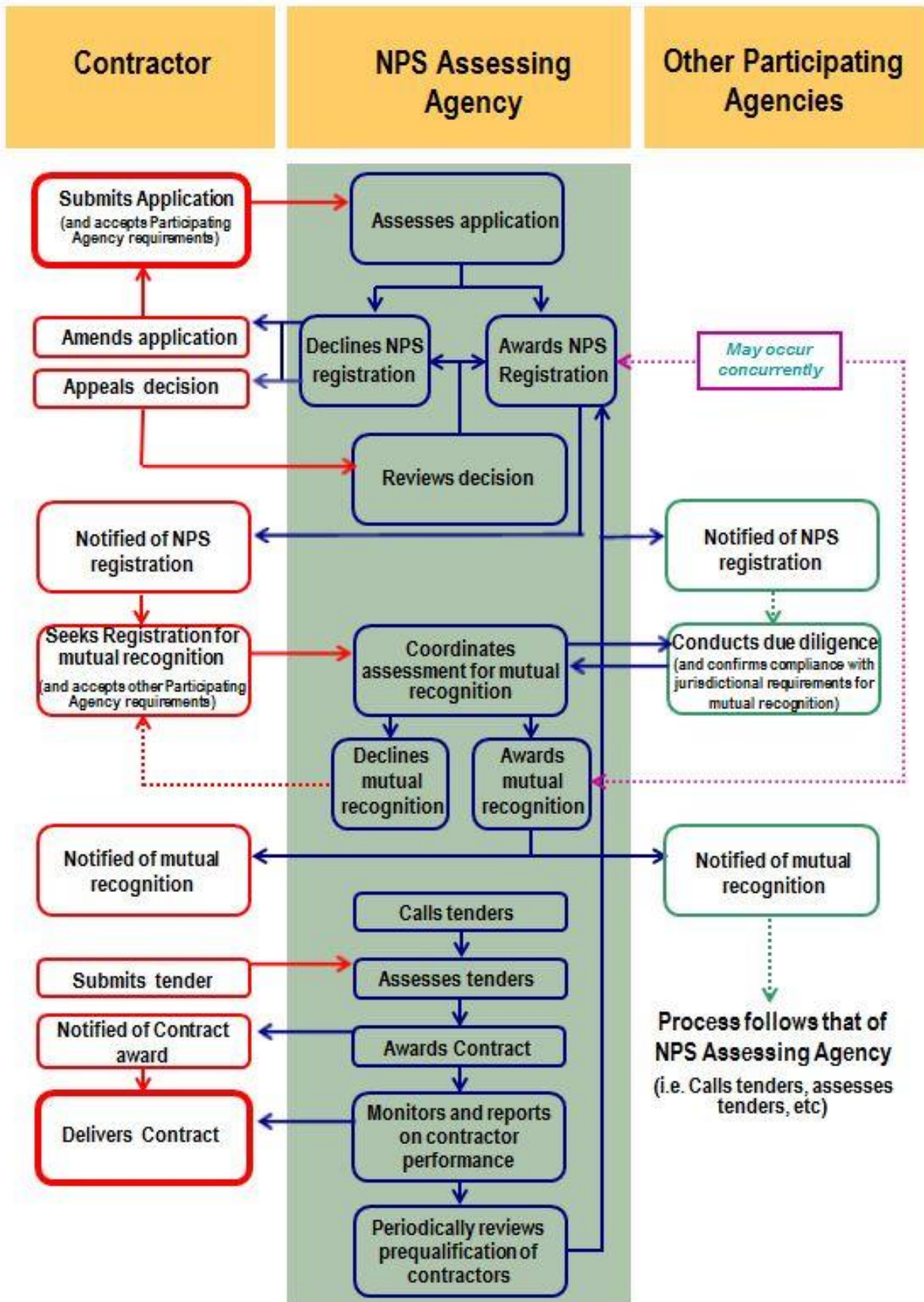
NSW has a devolved prequalification regime, consequently mutual recognition is only available to contractors awarded \$50m or above prequalification. In such cases, the contractor may seek mutual recognition under the NPS.

1. The jurisdiction where mutual recognition is being sought becomes the Assessing Agency under the NPS
2. NSW to provide all assessment materials to the Assessing Agency - Financial and Technical
3. The Assessing Agency applies the NPS financial assessment criteria to determine the Maximum Contract Value under the NPS
4. NPS is awarded. Jurisdictional local financial due diligence applies as would normally occur. It is noted that many jurisdictions either undertake a financial assessment at mutual recognition stage as part of their due diligence and/or at tender stage.

An overview of the Application Process under the National Prequalification System is presented in Figure 1.

2. Conditions of Prequalification

Figure 1 – Overview of the Application Process under the National Prequalification System and Conditions of Prequalification.



2.1. General

Applicants for prequalification and prequalified contractors are required to comply with the conditions and associated procedures described in this Section.

2.2. No Guarantee of Work

Prequalification is not to be construed as a guarantee of work or of an invitation to tender. Prequalification only determines a contractor's eligibility to tender for work. Participating Agencies apply relevant jurisdictional procurement principles, including value-for-money, in the assessment and selection of tenders.

2.3. Application Requirements

To become prequalified, a contractor ("the Applicant") must select one or more contract types that it believes to be commensurate with its capabilities, and submit the NPS Application Form to the Assessing Agency.

In submitting an application, the Applicant gives permission to the Assessing Agency to carry out such investigations as it considers necessary to determine whether the Applicant meets the relevant prequalification criteria. These investigations may include, but are not limited to, referee reports, a building licence check where relevant, a company search and bank reference checks.

In undertaking the assessment, the Assessing Agency may also take into account other information in its possession, or information provided by other Participating Agencies or government agencies.

In considering applications from eligible entities, the Participating Agency reserves the right to examine the resources of any parent or related entity.

2.4. Confidentiality and Exchange of Information

Information submitted in an application for prequalification will be treated as confidential and will not be disclosed to any party outside the Participating Agencies and their assessors, unless legally required to do so, or to obtain legal or financial advice, or as required for the purpose of appeals regarding prequalification decisions.

The Assessing Agency may refer the Applicant's documentation to its external assessors for assessment. External assessors are required to maintain confidentiality of all information received.

In lodging an application, the Applicant agrees to provide the necessary authority to enable searches and enquiries to be carried out.

Once prequalified, the Contractor's details, including its performance on specific contracts, may be shared with other Participating Agencies and government agencies for the purpose of monitoring performance and to determine continued eligibility for prequalification.

By submitting an application, the Applicant authorises any Participating Agency to gather, monitor, assess, and communicate to other Participating Agencies information about the Applicant's financial position and its performance for the purposes of administering the jurisdictional roles and obligations under the NPS.

2.5. Change of Circumstances

Prequalified contractors have an obligation to advise the Assessing Agency and any other Participating Agency which has recognised their prequalification, without delay, of any change in any circumstance that may be material to their prequalification status. This includes, but is not limited to, change of ownership, change of management control (such as company director, company secretary, key technical personnel) any convictions for breaches of legislation or statutory regulations, changes in financial status and acts of insolvency.

2.6. Conditional Assessment and Mutual Recognition

NPS and Mutual Recognition is available to entities who have recently changed their ABN or ACN, with no change in key personnel. At the point of assessment, the entity will be asked for written evidence of material changes and an explanation as to the reason for ABN or ACN change. Applications will be assessed on a case-by-case basis.

2 years after the date of ABN or ACN change, only projects under the new entity will be assessed under the NPS.

2.7. Requirements for Mutual Recognition

The applicant must indicate its ability and intention to comply with any government procurement requirements, codes regulation or legislation current in the jurisdiction of any Participating Agency in which the Contractor is registered under the NPS. These are listed in the Registration for Mutual Recognition Form used by each Participating Agency and may be amended from time to time.

2.8. The Applicant's Undertaking

Acceptance of conditions of prequalification

In making an application for prequalification the Applicant is deemed to have accepted the conditions of prequalification and to have acknowledged and accepted that these conditions may be varied from time to time.

1. The Applicant acknowledges that the Assessing Agency will rely upon information provided by the Applicant in granting prequalification.
2. The Applicant agrees that the Assessing Agency may make enquiries of any person or persons regarding:
 - a) the information provided by the Applicant in support of its initial application or any subsequent application to vary its prequalification status
 - b) information from any source relating to the Applicant
 - c) the performance and financial standing of the Applicant.
3. The Applicant agrees to make available to the Assessing Agency, upon request, all necessary documentation held, or reasonably obtainable, by the Applicant, supporting its initial or any subsequent application for prequalification.
4. The Applicant agrees that the Assessing Agency may release the Applicant's prequalification details, in accordance with section 2.3 of these Guidelines to other Participating Agencies, Participating Jurisdictions or government agencies.
5. The Applicant agrees to participate in performance reporting processes for all government building projects under the NPS on which the Applicant has been contracted. (Please refer to the separate document, Contractor Performance Report, downloadable from www.apcc.gov.au.)
6. The Applicant accepts that, in the event of entering into a contract with any Participating Jurisdiction, it will not breach any contractual or legal requirements of the jurisdiction, including but not limited to:
 - a) any codes of practice for the building and construction industry
 - b) workplace health and safety, industrial relations, workers compensation and any environmental legislation
 - c) the provisions of any licensing legislation or regulations for the building and construction industry

- d) government policies developed from time to time that specifically apply to the building and construction industry.
7. The Applicant agrees that it will keep financial records as required by the provisions of the NPS and that it will provide such records promptly to the Assessing Agency upon request.
8. The Applicant acknowledges that, where prequalification is used as part of the procurement process, it will only be entitled to tender for non-residential building projects in the jurisdiction(s) in which it is prequalified under the NPS.
9. Any prequalification status accorded shall not be regarded, taken or held out as any warranty or undertaking as to the performance of the Applicant on any building project nor as any basis for liability by the Assessing Agency to make payments to the Applicant or any of its suppliers or subcontractors.
10. The Participating Jurisdictions and Participating Agencies give no warranties or undertakings of any nature to any third party or person external to government by reason of prequalification as to the Applicant's competency, ability or fitness to undertake building work of any nature whatsoever.
11. The Participating Jurisdictions and Participating Agencies do not accept any liability for any loss of any nature whatsoever occasioned by any third party or person acting or refraining from acting in reliance upon any statement, advice or information in any way connected or associated with prequalification.
12. A breach of any of these conditions of prequalification may result in the Participating Agency reviewing, downgrading, suspending, or cancelling the Applicant's registration.

2.9. Use of Prequalification Status for Advertising and Promotion

The Applicant agrees not to use any information relating to its prequalification status or contract performance in its advertising or promotional material or publish such information in any form.

3. Prequalification Categories and Financial Levels

3.1. Overview

Applicants are approved for prequalification based on an assessment of their capacity to undertake projects of varying technical and financial complexity and risk.

3.1 a) Applicants may seek to be prequalified for:

- a range of contract types (described in the following section 3.2)
- financial limits on the value of non-residential government building contracts where the construction cost is estimated at \$50 million and above.

3.1 b) To provide a pathway for contractors wishing to become NPS prequalified and are yet to have experience with a building contract over \$50 million however can demonstrate financial capability above \$50 million, may seek to be assessed in accord with the following Guidelines:

- The contractor is required to demonstrate capability and capacity to perform over \$50M. This may include previous building contracts completed concurrently; however each building contract must be not less than \$45M for the construction cost
- The Assessing Agency has full jurisdiction over the application and adjudicating capability and capacity

- A successful applicant would be granted prequalification for a probationary period until the first building contract over \$50M was successfully completed and reflected in Contractor Performance Reporting
- While on probation, the contractor is limited to bidding for tenders up to 20% uplift from the highest value completed building contract construction cost, for example previous highest completed building contract construction cost is \$45 million, the contractor is limited to bidding for a tender up to \$54 million.

Applicants are required to complete the prequalification matrix on contract types included in the NPS Application Form.

3.2. Contract Types

Applicants may seek to be prequalified for one or more of the following contract types. (The term 'Principal' refers to the client who awards the contract.)

A. Construct/Construct Only:

The Principal under the terms of the contract provides the contractor with the documentation which fully describes the work to be undertaken. The contractor then builds the works according to the project documentation prepared by the principal's consultants. The contractor may be responsible for carrying out some design documentation to the extent specified by the contract. The contract can be based on a lump sum, a schedule of rates and lump sums or bill of quantities.

B. Design and Construct:

The Contractor is responsible for all or some of the design, including schematic design, design development, documentation and design coordination, as well as construction.

C. Managing Contractor:

The Managing Contractor may be engaged on a project brief, to commission, manage and accept responsibility for consultants that design the works and subcontractors that construct the works. The Principal may also engage a project manager or project director to manage the Managing Contractor contract and to support and advise the Principal. A Managing Contractor contract usually involves the payment of actual reasonable costs (up to a guaranteed or target construction sum(s), where agreed for construction work, or a guaranteed price for all the work) plus fees.

D. Design, Construct and Maintain:

The Contractor is provided with a project brief, generally including some concept designs and the quality and performance requirements of the asset are specified. The Contractor is responsible for the preparation or completion of the concept design, development of the design, preparation of construction documentation, construction of the asset and maintenance for a specified period (say 10 years). Asset condition monitoring indicators are specified, by which the performance of the completed asset will be measured during the maintenance period.

E. Relationship:

This contract type includes early contractor (or tenderer) involvement (ECI), and relationship contracts. ECI enables the Principal to effectively work with a contractor to better identify and allocate risks prior to, or as part of, a tender process to establish a fixed contract price. It enables contractors to commence the pricing phase with a full understanding of the contract requirements. It also enables the Principal to monitor contractor performance against Key Performance Indicators (KPIs) and effectively work with the Contractor to resolve issues in advance, settling the price, time and other parameters of the contract. ECI may be an effective early component of all the above contracting types aligned with cooperative contracting.

3.3. Financial Levels

Applicants should note that each Participating Agency reserves the right to:

- require an updated financial assessment to be undertaken at any time
- impose a financial limit on the value of a contract that can be undertaken by a contractor within its jurisdiction.

4. Prequalification Requirements

Applicants for prequalification are required to meet eligibility criteria and demonstrate sufficient achievement across the five overarching criteria against which applications are assessed (company profile, financial capacity, company experience, external client referee reports and technical capacity).

4.1. Eligibility for Prequalification

Construction companies and other legal entities that possess relevant experience in non-residential building are eligible to apply for prequalification.

Related entities

Prequalification does not extend to related or subsidiary companies or entities of a prequalified contractor. Any such company or entity must apply for prequalification in its own right.

Joint ventures

Incorporated joint ventures

An incorporated joint venture applying for prequalification must meet the criteria for prequalification in its own right.

Unincorporated joint ventures

Prequalification applications from unincorporated joint ventures must include:

- a copy of the joint venture agreement
- a description of the structure of the joint venture
- details of key personnel from each of the joint venture parties and their roles and responsibilities
- details of the management systems to be used by the joint venture.

While it is acceptable to nominate the certified management systems of one of the joint venture parties for use by the joint venture, a statement should be provided to demonstrate how the system will be integrated across the group and how other joint venture parties will be made familiar with the system details.

Note: Prequalification of unincorporated joint ventures is at the sole discretion of each Participating Agency.

4.2. Restrictions

A company acting as trustee for (on behalf of) another are not eligible to apply for prequalification under the NPS in that capacity. However, contractors operating under a trust that were prequalified with one or more Participating Agencies immediately prior to introduction of the NPS on 1 January 2011 will have a four-year grace period to restructure and re-apply for prequalification with that agency. A Trust will need to rearrange their business structure into an acceptable form of legal entity to remain prequalified. From 1 January 2015, a trust will not be eligible to apply for prequalification under the NPS.

In the case where a company is partly or fully owned by a trust, however operates in its own right and has sufficient unencumbered assets in it, such company is eligible to apply for prequalification under the NPS.

4.3 Assessment Criteria

Applications for prequalification will be assessed against the four criteria listed below.

1. Company profile

The Applicant's organisational capacity will be assessed to determine its suitability for prequalification, including the following areas:

- organisational structure
- stability of organisation
- senior management.

2. Technical capacity

The Applicant must demonstrate that it has the technical capacity to undertake contracts using the particular contract types covered in these Guidelines and in the Application Form.

In particular, the Applicant must have:

- evidence of appropriately qualified key personnel
- evidence of relevant licences to practice
- third party certified and/or jurisdictional second party (acceptance of second party will be at the sole discretion of the Participating Agency) certified management systems for quality management, occupational health and safety and environmental management.

Where third party certification or verification of a management system is required, the third party certification organisation must be accredited, to the relevant standard, by the Joint Accreditation System for Australia and New Zealand (JAS-ANZ).

3. Company experience

The Applicant must be able to demonstrate successful completion of at least two contracts in the last three years in the contract type for which they are seeking prequalification. The maximum contract capacity will be based on the highest value of any successfully completed contract.

The Applicant must provide a minimum of two external client referee reports for each contract type on completed projects to demonstrate experience and capability in the type of work relevant to the particular contract type. The details of the external client referee reports are covered in the accompanying document, the NPS Application Form.

In addition, the Applicant's demonstrated experience in the following areas will be assessed to determine suitability for prequalification:

- project management
- relationship management
- management systems.

4. Financial capacity

To be considered for prequalification and to maintain prequalification status, applicants must demonstrate strong business viability. However, any jurisdiction-specific builder's licensing financial requirements and associated prequalification requirements will take precedence over these requirements for that jurisdiction. Applicants must produce externally audited (ASIC Certificate of Registration) accounting statements for the last three years.

The following criteria for financial capacity will be assessed to determine suitability for NPS prequalification.

The Applicant (the legal entity seeking NPS prequalification) must have:

- a) as a minimum, a current ratio of 1
- b) net tangible assets that are not less than 5% of the Applicant's average previous three years' financial turnover

The maximum financial capacity will be based on the lesser of the following:

- a) 100% of the Applicant's average previous three years' financial turnover
- b) 10 times working capital

In calculating the above financial criteria and maximum financial capacity, assets and liabilities will be allowed where it can be demonstrated that they can be relied upon for the purpose of supporting the entity in the event of default or insolvency (at the sole discretion of the Assessing Agency). Examples of these assets and liabilities may include all contingent assets, all shareholder loans, all related entity loans and all related entity investments.

However, under the financial requirements of Queensland's Prequalification (PQC) System for building industry contractors related entity loans and investments are excluded from net tangible assets. Other exclusions are detailed at:

http://www.works.qld.gov.au/downloads/bpu/contractor_pqc_finreq.pdf. In this context prequalification under the NPS in Queensland will be limited by the particular requirements of Queensland's PQC System.

In the case where an Applicant is assessed by Queensland, and the Applicant has requested mutual recognition by other jurisdictions, the NPS financial assessment criteria will apply for the purposes of mutual recognition.

In some cases, a Participating Agency may allow mutual recognition where the Applicant provides a letter of undertaking or acceptable Deed of Company Guarantee from a related or other company in a form approved by the Participating Agency. The requirement and nature of the letter of undertaking or Deed of Company Guarantee will be at the sole discretion of each Participating Agency.

The rules applicable to calculating net tangible assets apply to the calculation of working capital.

Determining Maximum Contract Value

The maximum contract value for which the Applicant will be prequalified to tender will be determined on the basis of the lesser of:

- the highest value of any successfully completed contract – as per Criterion 3; and
- the contractor's financial capacity – as per Criterion 4.

5. Assessment Process

5.1. Assessment of Applications

The Assessing Agency will assess each application for prequalification to determine whether it meets the requirements of the prequalification category or categories and financial levels sought by the Applicant. Applicants will cooperate with internal and external assessors, including other government agencies.

Applicants will only be considered for prequalification for the types of work, and values, appropriate to their demonstrated experience and capacity.

Assessment of applications will be based on the following:

- information contained in the completed Application Form and attached supporting documentation, together with any additional information sought by the Assessing Agency from the applicant
- external client referee reports undertaken by a referee independent from the Applicant and based on the standard template provided in the NPS Application Form
- documented evidence held by the Assessing Agency regarding the Applicant's previous performance
- information available from other Participating Agencies or government agencies regarding the Applicant's previous performance.

The Assessing Agency may consider any information in the assessment as it deems necessary.

5.2. Notification

Applicants will be notified in writing of the outcome of their application for prequalification.

5.3. Varying Prequalification Status

A prequalified contractor may apply for a variation of its prequalification status at any time by completing and submitting a new Application Form. This includes Contractors wishing to upgrade their prequalification status. The application must be lodged with the original Assessing Agency.

If the application for variation is approved by the Assessing Agency, the Contractor may apply to other Participating Agencies for recognition of the varied prequalification. In submitting an application for a variation to contract types or financial level, the Contractor must be able to demonstrate that its circumstances have changed sufficiently since its last prequalification application was assessed. As such, it may not be necessary for the Contractor to complete the entire form. However, sufficient details supporting the request for a variation must be provided.

6. Maintenance of Prequalification Status

Only the Assessing Agency can cancel NPS prequalification. Participating Agencies can suspend Mutual Recognition in their jurisdiction.

6.1. Provision of Updated Information

To maintain prequalification status, the Contractor must submit to the original Assessing Agency for review or upgrade, full updates of information to support its ongoing financial capacity, technical capacity, and experience, annually, or as requested, or following a significant change in any of these areas.

6.2. Contractor Performance Reports

The Participating Agency will monitor and assess the ongoing performance of each prequalified contractor in relation to work in that agency's jurisdiction. Each contractor's prequalification status will depend on the Contractor maintaining an acceptable level of performance in its delivery of each Participating Agency's contracts.

A Contractor Performance Report will be prepared upon completion of each contract. Reports may also be prepared during the course of a contract. (Please refer to the separate document, Contractor Performance Report, which can be downloaded from www.apcc.gov.au.)

The reports will be used to promote the process of continuous improvement, to assist in the assessment of contractor applications for variations in prequalification status, to support the Contractor's ongoing prequalification status, and to establish a common understanding of expectations for both parties regarding the contracts.

6.3. Review of a Contractor's Prequalification Status

For contractors operating in a single jurisdiction

The Assessing Agency may review a contractor's prequalification status at any time. A review may be initiated, inter alia, for any one of the following reasons:

- where performance on a contract is considered unsatisfactory
- following changes to a contractor's organisational structure, or technical, financial or management capacity which, in the opinion of the Assessing Agency, may have an adverse effect on a contractor's performance
- where restrictions on a licence/registration to practice are imposed, or third party certification of a management system is withdrawn; or
- failure to comply with the terms and conditions of prequalification.

As a result of a review, the Assessing Agency may, at its discretion, downgrade, suspend or cancel a contractor's prequalification status. If any such action is proposed, the Contractor will first be given the opportunity to show cause why its prequalification status should not be adjusted.

This will be undertaken via a formal 'Show Cause Notice' to the Contractor which will:

- state that it is a notice under the prequalification terms and conditions
- specify the issue that gave rise to the Show Cause Notice
- require the Contractor to show cause in writing why the Assessing Agency should not exercise the right to downgrade, suspend or cancel the Contractor's prequalification status; and
- specify the time and date (not less than 20 business days or within the timeframe indicated) by which the Contractor must show cause.

The Assessing Agency may make further enquiries to verify the Contractor's responses.

If, by the time specified in a Show Cause Notice the Contractor fails to respond or to show reasonable cause why the Assessing Agency should not adjust the prequalification status, the agency may downgrade, suspend or cancel the prequalification status without further notice to the Contractor.

The Assessing Agency will provide written notification of all decisions.

For contractors operating in multiple jurisdictions

In addition to the process above, contractors operating in multiple jurisdictions under mutual recognition will be subject to the following review process:

- a Participating Agency which has mutually recognised the Contractor may give a Show Cause Notice to the Contractor for work carried out in the agency's jurisdiction; the procedure for issue of, and dealing with, such a notice will be the same as if the Contractor was originally prequalified by that agency
- the Show Cause Notice will only be relevant to the jurisdiction where the Participating Agency has issued the notice; and
- the Assessing Agency will be kept informed of any Show Cause Notices issued by Participating Agencies.

6.4. Downgrading, Suspension or Cancellation of Prequalification

Downgrading of Status

Downgrading means a reduction in the number of contract types and/or the assessed financial capacity of a contractor.

A Participating Agency may downgrade a contractor's NPS mutual recognition in relation to projects within the agency's jurisdiction when the agency considers that the Contractor has:

- experienced an adverse change in the organisation's management systems or technical capability (including availability of key personnel) from that upon which the prequalification level was assessed, however the Contractor can demonstrate that requirements for a lower level of prequalification are met
- or*
- shown evidence of a reduction in financial capacity
- or*
- committed repeated minor contractual or prequalification system non-compliances where, in the opinion of the Participating Agency, there is an unacceptable risk in allowing the Contractor to remain prequalified at their current prequalification level, however the Contractor is able to demonstrate that it can fully comply with the prequalification requirements for a lower level of prequalification
- or*
- demonstrated unsatisfactory tendering performance in terms of the Participating Agency's tender policies and requirements.

Before the NPS mutual recognition status of a contractor is downgraded the Participating Agency will issue a Show Cause Notice in accordance with Clause 6.3 of these Guidelines.

Suspension

Suspension means the temporary removal of a Contractor's prequalification or NPS mutual recognition either for a nominated period of time or until the Contractor has met specified requirements for the reinstatement of prequalification.

A Participating Agency may suspend a contractor's NPS mutual recognition, including eligibility for tendering with the Participating Agency under the terms of the NPS, if the agency considers from the monitoring of performance that the Contractor has not complied with the NPS requirements.

The Participating Agency will advise the Contractor of the reasons for the suspension, the duration of the suspension (where relevant) and of the actions required by the Contractor to have the suspension lifted. A contractor suspended from the NPS must inform the Participating Agency when the actions required to address the reasons for the suspension have been implemented.

The Participating Agency will regularly review the status of a suspended contractor. If the action taken by the Contractor is considered by the Participating Agency to be insufficient, the suspension period may be extended and the Contractor will be notified accordingly. The Participating Agency will revoke the suspension once it is satisfied that the Contractor has taken appropriate action to address the reasons for the suspension.

Cancellation of Prequalification

After following natural justice processes, the Assessing Agency or a Participating Agency, as the case may be, may cancel a contractor's prequalification or mutual recognition under the NPS in relation to projects within the agency's jurisdiction when the agency considers that the Contractor has not met one or more of the NPS conditions and requirements, or one or more of the following has occurred:

- failure to meet financial requirements
- failure to comply with relevant legislation or jurisdictional policies and codes
- substantiated reports of unsatisfactory performance from other Participating Agencies
- unsatisfactory tendering performance in terms of the Participating Agency's tender policies and requirements
- an adverse change in capacity or capability of the organisation's management systems or technical capability (including availability of key personnel) from that upon which the prequalification level was assessed
- failure by the Contractor to promptly and adequately resolve the reasons for a temporary suspension from the NPS
- convictions for OHS law breaches
- evidence of a fundamental failure of an OHS Management System, Quality Management System or an Environmental Management System.

Before the NPS mutual recognition of a contractor is cancelled, the Participating Agency will advise the Contractor of the matters prompting the proposed action, and will give the Contractor the opportunity to give reasons why it's prequalification should not be cancelled.

Cancellation of prequalification status under NPS by the Assessing Agency will extinguish any mutual recognition arrangements that a contractor may have in place with other participating agencies.

6.5. Effect of a Decision to Downgrade, Suspend or Cancel

A decision to downgrade, suspend or cancel the NPS mutual recognition status of a contractor by a Participating Agency will only be relevant to the jurisdiction of the Participating Agency that makes the decision.

A Participating Agency that has made a decision to downgrade, suspend or cancel the prequalification status of a contractor will advise other Participating Agencies of its decision, together with the basis for the decision.

6.6. Reviews

If a contractor is not satisfied with a decision made in relation to its prequalification status, the Contractor may request a review of the decision by the Participating Agency which made the decision.

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

The Contractor will be informed in writing of the outcome of the review, within 20 business days of the request.

6.7. Appeals

If a contractor is not satisfied with the outcome of a review, the Contractor may appeal the original decision and/or the decision on the review to an independent reviewer or appeal panel within the Participating Agency.

An appeal must be lodged, in writing, with the Participating Agency within 20 business days of the date of the letter from the Participating Agency advising of the decision on the review. The Contractor must provide full details of the reasons for the appeal and any additional information upon which it wishes to rely.

The appeal will be assessed by an independent reviewer or a specially convened independent appeal panel consisting of three senior members of the Participating Agency. Any person (or subordinate of that person) involved in the making of the original decision or the review of that original decision is prevented from participation on the appeal panel. Further, any person involved in the investigation of the breach of the NPS or performance issue that gave rise to the original decision is prevented from participation on the appeal panel.

The appeal process will be convened within 10 business days of lodgement of the appeal and will be determined by the reviewer or a majority decision of any panel based on its review and analysis of:

- any information which guided and formed the basis of the original decision and/or the review decision; and
- any new or additional information submitted by the Contractor.

An appropriately delegated officer of the jurisdiction has the power to change the original decision by substituting a new or varied decision, based on the recommendation of the reviewer or the appeal panel.

The delegated officer will advise the Contractor and, where relevant, other Participating Agencies in which the Contractor is mutually recognised, in writing of the determination and if the appeal has been unsuccessful, provide written reasons of its decision within 20 business days of the assessment.

7. Definitions

In this document, unless the context precludes it, the following terms have these meanings:

Applicant: refers to the legal entity lodging the application.

Application: refers to the completed submission (“Application Form”), lodged by the Applicant to be prequalified in one or more categories and financial levels, and includes an application to renew or vary an existing prequalification.

Assessing Agency: is a Participating Agency that undertakes an assessment of the Applicant’s request for prequalification under the NPS. (Also see Participating Agency.)

Australasian Procurement and Construction Council (APCC): refers to the body that developed this NPS.

Contractor: refers to any person or entity seeking registration or registered on the NPS.

Contractor Performance Report: refers to a performance report undertaken by a referee based on standard evaluation criteria using the approved template in the NPS Application Form.

Current Ratio = Current Assets / Current Liabilities.

Guidelines: refers to this document.

National Prequalification System (NPS): refers to the National Prequalification System for Non-residential Building developed by the APCC.

Net Tangible Assets = Total Assets – Intangible Assets – Total Liabilities.

Participating Agency: is any Commonwealth, State or Territory agency or an agent (where a Participating Agency has outsourced the prequalification function) that has granted mutual recognition to a contractor which has been prequalified under the NPS. Also includes the Assessing Agency.

Participating Jurisdiction: is the Commonwealth and any State or Territory which, through its Participating Agency, assesses or mutually recognises a contractor under the NPS.

Tender: includes quotation, proposal or registration/expression of interest.

Working capital = Current Assets – Current Liabilities.

Useful links

Australasian Procurement and Construction Council
Austroads

www.apcc.gov.au
www.austroads.com.au