Guidelines for

Developing Bidder Qualifications in Public Works Bid Specifications

by

Michael E. Purdy

The following provides some basic guidelines to assist an Owner in the development of specification language for Bidder Qualifications.

**Definition of Bidder Qualifications:** Bidder Qualifications language in specifications describes the experience, training, and/or certification requirements or qualifications that must be met by the low bidder, their subcontractors, suppliers, or employees in order for the bidder to be considered responsible and thus awarded the project. The low bidder must submit specified documentation after bid opening that is evaluated by the Owner to determine if the bidder has met the qualifications.

**Elements of Bidder Qualifications Language:** The following are important elements to consider in developing and implementing Bidder Qualifications language that will reduce the risk for protests and legal challenges:

- **Necessity for Qualifications:** There must be compelling reasons based on the particular project for including Bidder Qualifications language in the specification. Why is it critical that the determination of responsibility be conditioned on specific Bidder Qualifications instead of simply:
  - Conducting a normal bidder responsibility analysis?
  - Requiring that the contractor awarded the project meet the performance standards of the specifications?

- **Objective Qualifications:** The Bidder Qualification requirements must be specific, clear, and include objective (not subjective) criteria (e.g. “5 projects over $500,000, each completed in the last 3 years, installing for each project at least 2,000 feet of 48” ductile iron watermain pipe.”) It is not appropriate to state something general like: “ability and capability to install watermain pipe” as such a statement is a subjective criterion.

- **Appropriateness of Each Qualification Requirement:** There must be a clear relationship between the Owner’s concerns about obtaining a qualified contractor and each Bidder Qualification requirement. The Owner must be able to demonstrate (and should document in writing, and in advance) the rationale of why a particular Bidder Qualification is appropriate and the methodology used in establishing the requirements. For example, why is it important and necessary that the bidder have completed 5 projects installing a 48” watermain instead of only 4 projects?
Guidelines for Developing Bidder Qualifications in Public Works Bid Specifications

- **List Documentation Required:** The Bidder Qualifications language should describe the specific documentation that must be submitted by the low bidder in order to demonstrate that the bidder meets the Bidder Qualification requirements.

- **Objective Evaluation:** The Owner must be able to objectively evaluate whether the specific documentation submitted by the low bidder(s) meets or doesn’t meet the Bidder Qualification requirements.

- **Reference Checks:** The Owner may conduct reference checks for the bidder whose bid is under consideration for award. In the event that information obtained from the reference checks reveals concerns about the bidder’s past performance on projects identified as meeting the Bidder Qualification requirements, or their ability to successfully perform the work, the Owner may determine that the bidder is not a responsible bidder and may award to the next lowest bidder who meets the Bidder Qualification requirements and whose reference checks validate the ability of the bidder to successfully perform the work. In conducting reference checks, the Owner may include itself as a reference if the bidder has performed work for the Owner, even if the bidder did not identify the Owner as a reference.

- **Relationship Between Qualifications and Documentation:** There should be a one-to-one relationship between the Bidder Qualification requirements and the documentation that must be submitted by the low bidder to demonstrate that they meet the qualifications specified.

- **Bidding Pool:** The Bidder Qualification requirements must not unduly restrict the pool of available bidders. For each Bidder Qualification requirement, the Owner should document in writing a list of the contractors or subcontractors who meet the Bidder Qualifications. If a consultant prepares the Bidder Qualifications, the Owner should document in writing why it believes that the consultant’s recommendation is appropriate.

- **Tailored Language:** Bidder Qualifications language should be written separately for each project, dependent upon the particulars of the project.

- **Project Schedule Impact:** The Owner should be aware that development and evaluation of Bidder Qualifications may add additional time to the project schedule.

**Structure of Bidder Qualifications Language:** The following provides a very basic structure to work from in developing Bidder Qualifications language. There is no one structure that works in all situations, however, and thus the wording for each project must be adapted to meet the specific needs of a project.

**Introduction:**

- Include language that the award is conditioned on meeting the Bidder Qualifications.
- Specify when the documentation must be submitted by the bidder.
- The following is sample wording that may be used or adapted as appropriate for a specific project: “To be awarded this project, the Bidder shall provide satisfactory evidence that the Bidder meets the qualification requirements listed below. Such evidence must be submitted within three days of the Owner’s request.”
Guidelines for Developing Bidder Qualifications
in Public Works Bid Specifications

Qualifications:

- Who does the qualification apply to: contractor, subcontractor, field superintendent, project manager, etc.?
- What specific work of the project is critical and necessitates that the bidder must meet specific qualifications? Reference by section number of specification or other very specific language.
- Describe the specific experience the bidder must have: how many years, doing what, what certifications must they have, how recent must the experience be, etc.
- Language must be specific and objective. Do not use undefined terms such as “recent experience” or “similar work.”

Documentation:

- There must be a one-to-one correspondence between the Bidder Qualifications and the documentation requested. Thus, if the specification requires “5 projects over $500,000, each completed in the last 3 years, installing for each project at least 2,000 feet of 48” ductile iron watermain pipe,” the Owner must ask the bidder to list information about each of these facets of the project. In addition, the Owner should not ask the bidder to document things not included in the Bidder Qualifications language.

- For example, the documentation portion should request the bidder to list the 5 projects, the contract amount, the date of completion of each project, the diameter of the watermain for each project, and the length of the watermain pipe for each project. The Owner may also request more specific project information, such as the name of the owner or contractor, a contact person and telephone number so that the Owner can verify the information. As an example, the Owner should not, however, require the bidder to document whether the watermain installation involved an excavation of a certain depth, unless the specification stated this as a Bidder Qualification.

- The documentation to be submitted must be specific and objective. The Owner (and other bidders) should be able to tell clearly from the documentation whether the bidder meets or doesn’t meet the Bidder Qualifications.

- If the Bidder Qualifications language requires specific qualifications or experience for certain personnel who will be involved with the project, it may be appropriate to request a copy of resumes or certifications, as applicable, to document the specific requirements.

Note: These Guidelines for Developing Bidder Qualifications are the opinions of Michael E. Purdy and do not represent legal opinions or legal advice. The reader is encouraged to evaluate the appropriateness of the guidelines for a particular situation, to make independent judgments as to what course of action to follow, and to consult an attorney as may be appropriate. Upon request, Michael E. Purdy Associates is available to provide consulting advice to assist in the development of Bidder Qualification requirements for specific projects.