

## Commercial Contractor Qualifications



### General

**Disclaimer:** The following criteria are offered as suggested guidelines for consideration by a municipality in the solicitation of bids or Requests for Proposals for work performed for a community on a contractual basis. You should review the criteria with your municipal attorney to determine which criteria are appropriate for the work to be performed and to determine whether additional criteria should be considered. THIS DOCUMENT DOES NOT CONSTITUTE LEGAL ADVICE. AN ATTORNEY SHOULD BE CONSULTED WITH RESPECT TO ANY SPECIFIC ISSUES OR CIRCUMSTANCES.

**General Provisions of Bid Documents:** The bid documents, i.e., RFP, RFI and RFQ should include general language that makes it clear that the municipality will review the materials and bids submitted to determine which bidder is best qualified and most suitable to meet the needs of the municipality to complete the work. The municipality should reserve the right to not consider any submission that it determines to be unresponsive and deficient in any of the information requested. The municipality should be given the right to contact references to verify material submitted.

The municipality should also reserve the right to accept any submission, to reject any or all submissions, to waive irregularities and/or informalities in any submission to make the award in any manner the municipality believes to be in its best interest. The municipality should also reserve the rights to negotiate with any bidder for a reduced price, or for an increased price to include any alternates that the bidder may propose and to reduce the scope of the project, and rebid or negotiate with any bidder regarding the revised project.

The bid documents should also make clear that all information in a bidder’s proposal, including any attachments or exhibits, is subject to possible disclosure under the Michigan Freedom of Information Act. Any information submitted in response to an RFP, RFI and RFQ will generally be subject to disclosure at the time that bids are opened.

It is recommended that the municipality include a provision that a dissatisfied bid applicant may request, in writing, a hearing before an appropriate municipal body or committee and that a hearing be conducted within a designated number of days to consider written and oral presentations as may be presented by both the bidder and the municipal representative.

### Contractor History and Qualifications

1. General information about the bidder’s company, its principals, and its history, including state and date of incorporation.
2. A list of the last 5 similar projects completed within the past five (5) years, including dates, clients, contact information, approximate dollar value, and size. Documentation from these previous projects of comparable size/complexity, including but not limited to all costs relating to the bidder’s timeliness, performance, quality of work, extension requests, contractual fines and penalties imposed (including proof of such fines and penalties), liens filed, history of claims for extra work and any contract defaults with an explanation of the reason for the default and how the default was resolved.
3. Provide references from individuals or entities the bidder has worked for within the last five (5) years including

information regarding the records of performance and job site cooperation.

4. Evidence of experience with construction techniques, trade standards, quality workmanship, project scheduling, cost control, management of projects of comparable size/complexity, and building codes by documenting the bidder's ability and capacity to perform the project. The bidder must identify those portions of the project it reasonably believes will be sub-contracted and the names of the sub-contractors.
5. A list of all litigation and arbitrations currently, pending and within the past five (5) years, including an explanation of each. Evidence of satisfactory resolution of claims filed by or against the bidder asserted on projects of the same or similar size within the last five (5) years. Any claim against the bidder shall be deemed to have been satisfactorily resolved if final judgment is rendered in favor of the bidder or any final judgment rendered against the bidder is satisfied within ninety (90) days of the date the judgment became final.
6. Consider whether to include a clause which gives preference to a bidder whose work force is drawn significantly from area residents, to reduce the GHG and energy impacts of commuting long distances.
7. Disclosure of any debarment by any federal, state or local governmental unit and/or findings of non-responsibility or non-compliance with respect to any public or private construction project performed by the bidder
8. Verification that the *Immigration and Nationality Act* will be fully complied with and that only individuals authorized to work will be hired.

**Liability and Safety**

1. Documentation of an on-going MIOSHA-approved safety-training program for employees used on the proposed job site.
2. Disclosure of any violations of any state, federal or local laws, including OSHA violations, violation of any state or federal prevailing wage laws, worker's compensation or unemployment compensation laws, rules or regulations, issued to or against the bidder within the past five years
3. Evidence of a worker's compensation Experience Modification Rating ("EMR"). Preference could be given to contractors and subcontractors who exhibit an EMR of 1.1 or less.
4. Evidence of any quality assurance program used by the bidder and the results of any such program on the bidder's previous projects.
5. Proof of insurance, including certificates of insurance, confirming existence and amount of coverage for liability, property damage, workers' compensation, and any other insurances required by the proposed contract. See Contract Provisions/Insurances below.

**Financial Capacity**

1. Audited financial information current within the past twelve months, such as a balance sheet, statement of operations, and bonding capacity. Evidence that the applicant has financial resources to start up and follow through on the project(s) and to respond to damages in case of default as shown by written verification of bonding capacity equal to or exceeding the amount of the project. The written verification must be submitted by a licensed surety company rated ( "B+" or better is recommended) in the current A.M. Best Guide and qualified to do business within the State of Michigan.
2. Consider using the following table as a guide for your community in developing financial guidelines for Prequalification, Financial Statements, Bonding, or Line of Credit information for your Contractors and Subcontractors:

Project Amount	Bidder/Contractor				Subcontractors		
	Prequal Required	Financial Statement*	Bonding **	Line of Credit Info	Prequal Required	Financial Statement	Bonding **
Up to \$10,000	Yes / No	Yes / No	Yes / No	Yes / No	Yes / No	Yes / No	Yes / No
\$10,001 – 49,999	Yes / No	Yes / No	Yes / No	Yes / No	Yes / No	Yes / No	Yes / No
\$50,000 – 200,000	Yes / No	Yes / No	See MCL 129.201	Yes / No	Yes / No	Yes / No	See MCL 129.201
\$200,001 – 500,000	Yes / No	Yes / No	See MCL 129.201	Yes / No	Yes / No	Yes / No	See MCL 129.201
Over \$500,000	Yes / No	Yes / No	See MCL 129.201	Yes / No	Yes / No	Yes / No	See MCL 129.201

\* Certified Public Accountant (CPA) prepared financial statement, i.e. compilation, review, or audit. Require respondents to submit all report pages.

\*\*Incorporate MCL 129.201 et seq re: Payment and Performance Bonds for Public Buildings and Public Works.

3. Require every bidding contractor to provide a DUNS number so you can pull a credit report from Dun & Bradstreet to check credit worthiness and view detailed information on how the contractor takes care of its credit. D&B reports will rank your contractor credit (higher D&B scores tend to reflect organizations that are financially stable) and also include metrics on how timely they pay their subcontractors.
4. For goods and services that can be easily secured from other sources on short notice, (office supplies for example) you may decide to forego intense vetting. Alternatively, if specifications for a project require hard-to-find materials or custom-made components, consider carefully vetting your contractor’s qualifications on the front end.

**Licenses and Certifications**

1. Trade categories and information regarding the state and local licenses and license numbers held by the applicant.
2. A confirmation that all sub-contractors, employees and other individuals working on the construction project will maintain current applicable licenses with the Michigan Bureau of Construction Codes and Fire Safety and/or the Bureau of Commercial Services for all licensed occupations and professions. The following occupations require licenses:
  - a. Asbestos Abatement (W01)
  - b. Architect (RA)
  - c. Burglar Alarms (Security Systems) ( W17)
  - d. Demolition (Residential Builders) (V01)
  - e. Electrical (Building, Line Work) (Q, R)
  - f. Elevator (W03H)
  - g. Professional Engineer (PE)
  - h. Fire Alarm systems (Building Spec.) (W28)
  - i. Fire Protection (Building Spec.) (W03I)
  - j. HVAC (T)
  - k. Licensed Underground Contractor (U)
  - l. Plumbing (W03I)
  - m. Refrigeration & Air Conditioning (T)
  - n. Residential Builder (Residential Demolition Only) (VO1)
  - o. Sidewalk Contractor (c )
  - p. Sign installer
  - q. Toxic Waste Hauler (W06C)
3. The following certifications (where applicable) should be considered in determining 1) whether applicable certifications are to be minimum requirements for award of a contract or 2) whether preference will be afforded those who have obtained such certification.

- a. Alternative Energy Installers
  - i. North American Board of Certified Energy Practitioners (NABCEP)
    - 1. PV Entry Level Exam Program
    - 2. PV Installer Certification
    - 3. Solar Thermal Installer Certification
  - ii. Electronics Technicians Association (ETA)
    - 1. Alternative Energy Integrator
    - 2. Alternative Energy Installer
- b. Building Energy Management / Operation
  - i. Association of Energy Engineers (AEE) – Professional Based: Minimum 4 year degree
    - 1. Certified Energy Manager (CEM)
    - 2. Certified Sustainable Development Professional (CSDP)
    - 3. Certified Carbon Reduction Manager (CRM)
    - 4. Certified Energy Auditor (CEA)
    - 5. Certified Building Commissioning Professional (CBCP)
    - 6. Certified Business Energy Professional (BEP)
    - 7. Measurement and Verification (CMVP)
    - 8. Energy Procurement (CEP)
    - 9. Lighting Efficiency (CLEP)
    - 10. Distributed Generation (DGCP)
    - 11. Green Building Engineer (GBE)
    - 12. GeoExchange Designer (CGD)
    - 13. Power Quality Professional (CPQ)
    - 14. Certified Renewable Energy Professional (REP)
    - 15. Existing Building Commissioning Professional (EBCP)
    - 16. Certified Building Energy Simulation Analyst (BESA)
  - ii. Building Performance Institute: Building Analyst Professional
    - 1. Multifamily
      - a. Analyst
      - b. Operations
      - c. Hydronic Heating
      - d. Advanced Heating
  - iii. Building Operators Certification (BOC)
- c. HVAC/Heating
  - i. North American Technician Excellence (NATE)
    - 1. Installer Technician
    - 2. Service Technician
    - 3. Senior Technician: HVAC Efficiency Analyst
  - ii. HVAC Excellence
    - 1. Professional Level Certifications
    - 2. Master Specialist Hands On Certification
- d. Lighting
  - i. National Council on Qualifications for the Lighting Professions
    - 1. Lighting Certified (LC) Professional
- e. Design/Build
  - i. U.S. Green Building Council
    - 1. LEED Green Associate
    - 2. LEEP AP
    - 3. LEED Fellow

#### **Assurances/Contractor Policies**

1. Assurance that all construction work for this project shall proceed economically, efficiently, continuously and without interruption.
2. Assurance that Contractor has the ability to and will comply with all applicable contract provisions of the

proposed contract for work.

- 3. Contractors must comply with the lien fund act, including use of sworn statements and lien waivers. This is especially important for complex jobs with many subcontractors working under a general contractor.

**Provisions to be included contract awarded following bid process**

The municipality should consider inclusion of the following provisions in any contract awarded or entered into with any contractor/subcontractor:

Termination for Convenience—provision allowing municipality to terminate the contract without cause for any reason at any time by giving written notice. Alternatively, consider provision allowing municipality to terminate based on availability of funding or at any time by giving 30 days’ notice.

Limitation of Damages--provision limiting liability to a contractor for any consequential damages or any loss of any business opportunities under contract.

Insurances--

- 1. Comprehensive general liability with minimum limits of liability in the amount of \$ 1,000,000 per occurrence to cover bodily injury to persons other than employees, and for damage to property, including loss of use, including the following exposures:
  - a. All premises and operations
  - b. Explosion, collapse and underground damage
  - c. Contractor’s Protective coverage for independent contractors or subcontractors
  - d. Contractual liability for the obligation assumed in the Indemnification or Hold Harmless agreement assumed by the contractor
  - e. Personal Injury Liability endorsement with no exclusions pertaining to employment
  - f. Products and Completed Operations coverage. This coverage shall extend through the contract guarantee period.
  - g. Pollution occurrence rider for asbestos and lead (older commercial buildings)
- 2. Comprehensive automobile liability insurance with minimum limits of liability in the amount of \$ 1,000,000 per occurrence to cover bodily injury and property damage arising out of the ownership, maintenance, or use of any motor vehicle, including owned, non-owned, and hired vehicles and including Michigan “no fault” (PIP and PPI) coverage.
- 3. Workers’ compensation insurance, including Employer’s Liability (Coverage B) in the minimum amount of \$500,000, as established by statute to cover employee injuries or disease compensable under the Michigan workers’ compensation statutes.
- 4. Owner’s and contractor’s protective (OCP) liability in an amount not less than \$ 1,000,000 per occurrence for injuries, including death, to person, and property damage, including loss of use thereof. Municipality shall be the named insured under OCP.
- 5. Professional liability (for professional services, such as architects, engineers, attorneys, etc) providing coverage for acts, errors, or omissions committed or alleged to have been committed with minimum limits of liability in the amount of \$ 1,000,000 per occurrence.
- 6. Excess or umbrella policy with minimum limits of liability in the amount of \$ 1,000,000 per occurrence. Certificates of insurance should indicate that not less than 20 days notice shall be given to the municipality if insurance is canceled, materially reduced, or not renewed. All insurance should be endorsed indicating coverage is issued upon an “occurrence,” and not on “claims made” basis.

Indemnity and Duty to Defend—provisions that contractor releases, covenants not to sue the municipality and its agents, officers and employees, to the fullest extent permitted, shall protect, indemnify and hold harmless the municipality, its agents, officer and employees from and against all liabilities, actions, damages, claims,

demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees and shall defend the municipality, its agents, officers, employees, (including appeals) for personal injury or death or for loss, theft or damage to property arising out of the acts or omissions of the contractor, its employees, agents, contractors or anyone whose acts may be liable under the contractor's obligations under the agreement.

Time of Completion/Liquidated Damages—provision for damages in the event of any delay in scheduled date for completion of project.

Maintenance and Guarantee Bond—designed to insure that the work/project functions and operates as per the plans and specifications. This is in addition to the Performance and Payment Bonds.

Choice of Law and Venue—Michigan and appropriate county or federal court

Default/Breach/Termination—provisions dealing with breach (material and otherwise) of agreement

Express and Implied Warranties (general and otherwise) re: condition of goods and services

Incorporation of all statements and provisions contained in bid documents and proposals by reference

Subject to all applicable federal, state and local laws and ordinances, including safety, nondiscrimination, unfair labor practices, illegal influence, etc.

**Contract Provisions** (*specific to Energy Efficiency and Conservation Block Grant provisions of the American Recovery and Reinvestment Act of 2009*)

Any contract financed by or paid with EECBG funds must incorporate provisions that are required by the Grant Contract between the municipality and the State of Michigan Department of Energy, Labor & Economic Growth, (non-entitlement communities) or the Department of Energy (entitlement communities). Such provisions may include:

1. National Policy Assurances
2. Davis Bacon provisions
3. Buy American provisions
4. Whistle Blower Protection
5. Historic Preservation Provisions
6. Waste Management Plan
7. Nondiscrimination clauses
8. Buy Michigan provisions
9. Competitive Bid Compliance (Bureau of Energy Systems Policy #01-012)

See also the State of Michigan Bureau of Energy Systems website: [http://www.michigan.gov/dleg/0,1607,7-154-25676\\_25770--,00.html](http://www.michigan.gov/dleg/0,1607,7-154-25676_25770--,00.html). You should review the required provisions with the municipal attorney.

*The EECBG Program funds provided through the Recovery Act represent an unprecedented Federal investment in energy efficiency and renewable energy activities designed and implemented by the States, Territories, units of local government, and Indian tribes. Concomitant with this investment, the President has pledged that transparency and accountability will be central aims throughout the grant process. Furthermore, DOE will effectively monitor and report the return on investment of EECBG funds in terms of jobs created and energy saved. Pursuant to these objectives, new reporting requirements have been put in place for all Federal Recovery Act programs.*

**Authors and Sources**

1. Michigan Energy Options: <http://www.michiganenergyoptions.org/>
2. WARM Training Center: <http://www.warmtraining.org/gov/>
3. Michigan Municipal League: <http://www.mml.org/home.html>
4. West Michigan Construction Alliance *Sample School Responsible Contractor Policy:*

<http://www.wmconstructionalliance.org/>

5. City of Grand Rapids: [http://www.grand-rapids.mi.us/index.pl?page\\_id=2499](http://www.grand-rapids.mi.us/index.pl?page_id=2499)
6. Center on Wisconsin Strategy *Greener Pathways Report*: <http://www.cows.org/greenerpathways/>
7. Michigan Saves: <http://www.michigansaves.org/>
8. State of Michigan: [http://www.michigan.gov/dleg/0,1607,7-154-10575\\_17409--,00.html](http://www.michigan.gov/dleg/0,1607,7-154-10575_17409--,00.html)

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