

Prequalification (PQC) System – review and sanctions process

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(Department of Housing and Public Works)

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1.0 Introduction

This guideline forms part of the [Capital Works Management Framework \(CWMF\)](#). The CWMF is the Queensland Government's key policy for managing risks associated with the planning and delivery of building programs and projects and gives effect to the whole-of-government Prequalification (PQC) System.

The PQC System provides clear and consistent performance requirements and guidelines for the selection of building industry contractors and consultants for government building projects.

It applies to:

- building industry contractors engaged for government building contracts exceeding \$1,000,000 in value, and
- building industry consultants engaged for government building commissions exceeding \$60,000 in value, or for those commissions that have been determined to be high risk, regardless of value.

It is essential to the integrity of the PQC System that prequalified contractors and consultants are able to satisfactorily undertake and complete any government building project (as defined in the *Capital Works Management Framework*) for which they tender in accordance with the contract or commission and all other applicable requirements. The PQC System also requires the early identification and resolution of performance and non-compliance issues involving building industry contractors and consultants.

Accordingly, if a prequalified contractor or consultant (a registrant) demonstrates an inability or unwillingness to meet the requirements of the PQC System at any stage, or if there is a reasonable perception of such inability or unwillingness, the Department of Housing and Public Works (on behalf of the State) may:

1. take immediate action against a registrant in specific circumstances (outlined in Section 2.0), or
2. undertake a formal review of a registrant's prequalification status on the PQC Database (outlined in Section 3.0).

This guideline provides an overview of the review process that applies to registrants while prequalified on the PQC Database and, in particular, while working on government building projects procured through the PQC Database. It also describes the range of possible outcomes and decisions that can flow from a review and the appeals process available to registrants dissatisfied with decisions that affect them.

2.0 Failure to meet minimum prequalification requirements

If, at any time, the PQC Registrar (which is a role within the Department of Housing and Public Works) considers that a registrant has failed to meet minimum prequalification requirements (as outlined below), the PQC Registrar may immediately make the registrant's prequalification status "inactive" in the PQC Database, without reference to the review and sanction processes covered in this guideline.

The action of making a registrant's prequalification status "inactive" in the PQC Database means that the registrant is ineligible to tender for, or be awarded, a contract or commission for a government building project procured through the PQC Database.

The PQC Registrar may take this action in the following specific circumstances where:

- it has been determined that a contractor does not meet the minimum financial requirements as outlined in the *Prequalification (PQC) System – contractor financial requirements* guideline following a financial capacity assessment undertaken on the contractor; or

- a contractor’s building/trade licence (e.g. Queensland Building and Construction Commission licence; electrical contractor’s licence; security licence) has been suspended or cancelled by the relevant licensing body, or the licence has expired; or
- a consultant’s licence (e.g. Queensland Building and Construction Commission licence for project management services) or professional registration (e.g. registered architect with the Board of Architects of Queensland) has expired; or
- a consultant’s Professional Indemnity or Public Liability insurances have expired; or
- a registrant is unable to trade, due to:
 - being placed in administration
 - going into receivership
 - going into liquidation.

The PQC Registrar will subsequently advise the registrant in writing that its prequalification status has been made “inactive” in the PQC Database. The registrant will be requested to provide advice to the PQC Registrar on what steps it will take to meet minimum prequalification requirements, where applicable (e.g. improving financial capacity to meet financial requirements or renewing an expired licence). If the PQC Registrar is satisfied that the registrant has rectified its position to meet minimum prequalification requirements, the registrant’s prequalification status will be made “active” again in the PQC Database with the registrant advised of this in writing by the PQC Registrar.

In these circumstances, if a registrant is not satisfied with a decision made by the PQC Registrar in relation to its prequalification status being made “inactive”, the registrant may appeal the decision. An appeal must be in writing and addressed to the Director, Building Contract Management, Department of Housing and Public Works (refer page 2 for address details). An appeal is to be made by the registrant within 10 business days of the date of the advice that notified the registrant that its prequalification status has been made “inactive”. The Director, Building Contract Management will assess the action taken by the PQC Registrar and advise the registrant of whether the original decision is to be upheld or overturned within 10 business days of receipt of the appeal. The decision of the Director, Building Contract Management will be final in the case of an appeal of a registrant’s prequalification status being made “inactive”¹.

3.0 Review of a registrant’s prequalification status

The Department of Housing and Public Works (on behalf of the State) may review, at any time, a registrant’s prequalification status on the PQC Database and downgrade, suspend or cancel such registration at its discretion.

3.1 Triggers for reviews

Triggers for conducting a formal review of a registrant’s prequalification status include, but are not limited to:

- an unsatisfactory performance report relating to the registrant’s performance
- a written report/s of unsafe work practices on a site/s or failure to rectify safety non-conformances identified by an Accredited Auditor (Construction) in accordance with the *Prequalification (PQC) System – managing occupational health and safety on government building projects for contractors guideline*

¹ Appeal provisions in relation to the formal review and sanction processes following in this guideline are referenced in Section 7.

- professional or ethical misconduct by a consultant or its personnel (officer, director, employee or agent of the consultant) in regards to behaviours or work practices that are in conflict with those outlined in the relevant profession's or registration board's code of conduct
- allegations of dishonest, improper, unethical, collusive, fraudulent or corrupt conduct by a registrant or its personnel (officer, director, employee or agent of the registrant)
- a registrant exhibiting behaviour/s which may be an indication it is under financial or managerial stress (for further information refer **Attachment 1** of this document in relation to a consultant or [policy advice note](#) in relation to a contractor)
- a reasonable suspicion, allegation or evidence that the level of skill or expertise, technical or management capability claimed by a registrant has been significantly overstated
- suspected or actual breaches of a statutory or contractual nature (in relation to a contract or commission) - such breaches may be identified by regulating bodies, a superintendent (or equivalent) under a contract or a project manager under a commission
- suspected or actual breaches of the Conditions of Prequalification, particularly in relation to the *Queensland Code of Practice for the Building and Construction Industry* or other government policies that apply to registrants
- written advice from Building and Asset Services (BAS), Department of Housing and Public Works that it has taken action against a registrant that is also registered on the register maintained by BAS, or written advice from an Australian jurisdiction that it has taken action against a registrant in relation to a prequalification system maintained by that jurisdiction, or
- written complaints from affected or interested parties.

3.2 Review process and outcomes

The following process is to be followed when undertaking a formal review of a registrant's prequalification status.

1. A report is to be prepared by the PQC Registrar outlining the relevant issue/alleged breach in relation to the registrant and the reasons why a formal review of their prequalification status is warranted. Such report is to be approved by the Director, Building Contract Management before the review is initiated.
2. When a review is initiated, the PQC Registrar will arrange for a "seek advice" flag to be recorded against the registrant's prequalification details on the PQC Database. This flag indicates to any user of the PQC System that they should seek advice from the PQC Registrar about the relevant circumstances before including the registrant on a select list or considering the registrant for award of a contract or commission for any government building project.

Additionally, and dependent on the circumstances and seriousness of the matters raised concerning the registrant, the PQC Registrar may also apply an "interim suspension" against the registrant's prequalification status pending the outcome of the review process. The application of an "interim suspension" must be approved by the Director, Building Contract Management. An "interim suspension" cannot exceed a period of three months (however, this period may be extended by the Director, Building Contract Management if the registrant applies for and is granted an extension of time in regards to responding to a show cause notice, if issued as an outcome of the review). The PQC Registrar will advise the registrant in writing if this action is taken. During the period of suspension, the registrant will be ineligible to tender for, or be awarded, a government building contract or commission procured through the PQC Database.

Appeal provision – interim suspension

If a registrant is dissatisfied with an interim suspension being applied against their prequalification status, they may appeal in writing within ten business days, to the Executive Director, Building Contract Management (ED, BCM) - refer page 2 for address details.

The ED, BCM will assess the appeal and may appoint a senior departmental officer to investigate the matter. This officer must be independent of the actions that has led to the interim suspension being applied.

The ED, BCM will provide a written response to the registrant advising of the outcome of the appeal within ten business days of the completed investigation. The ED, BCM's decision will be final in these matters.

3. Based on the report compiled by the PQC Registrar, the Manager, Building Contract Management (who has responsibility for managing the PQC System) will undertake the review and compile a brief outlining the circumstances of the case along with a recommendation of the proposed action to be taken against the registrant. The outcome of each review will depend on the particular circumstances of the case. The options typically include:
 - no action to be taken
 - a warning being issued
 - a show cause notice being issued
 - a sanction being applied.

Required approval points

The issue of a **warning** must be approved by the Director, Building Contract Management.

The issue of a **show cause notice** must be approved by an appropriate senior officer of the Department of Housing and Public Works (this would typically be the Executive Director, Building Contract Management).

The application of a **sanction** (i.e. downgrade, suspension², cancellation) must be approved by an appropriate senior officer of the Department of Housing and Public Works, other than the officer who approved any show cause notice (this would typically be the General Manager, Asset Management Policy and Strategy).

A summary record of the review process will be kept by the Manager, Building Contract Management and include the date of relevant approval points activated during the process.

The review process is illustrated in **Attachment 2**.

4.0 Warnings

A warning may be issued to a registrant by the Director, Building Contract Management in the following instances:

- independently of the formal review process (outlined in section 3.2), and dependent on the circumstances and seriousness of the behaviour exhibited by the registrant
- as a possible outcome of a formal review (outlined in section 3.2) of a registrant's prequalification status.

² Does not include an "interim suspension" applied pending the outcome of the review process, which can be approved by the Director, Building Contract Management.

The warning will clearly state the relevant issue/alleged breach in relation to the registrant's behaviour and may require the registrant to:

- provide a written response to the Director, Building Contract Management outlining the reasons for its behaviour, or
- provide a written response to the Director, Building Contract Management as to the steps it will take to improve/rectify the situation, or
- undertake certain action/s within a specified timeframe.

If the registrant fails to improve or rectify the behaviour (in relation to a warning issued independently of the formal review process), a formal review may then be initiated and a show cause notice may be issued or a sanction applied (in accordance with the review process outlined in section 3.2).

However, the issue of a warning is not a prerequisite step to commencing a formal review of a registrant's prequalification status.

5.0 Show cause notices

As a result of a formal review, a registrant may be required to show cause in writing why a sanction (refer section 6.0 for types of sanctions) should not be applied to its prequalification status on the PQC Database. A show cause notice would typically be issued by the Executive Director, Building Contract Management.

The reasons for a show cause notice being issued include, but are not limited to:

- a proven statutory breach
- a contractual breach or a breach of a contractual requirement of a commission
- a concern expressed by a regulatory body
- a serious case of poor quality of work
- an unsatisfactory performance report
- unsafe work practices on a site where the registrant is either the principal contractor or is a subcontractor on whom notices are served, or if the registrant fails a second site inspection on a project in accordance with the *Prequalification (PQC) System – managing occupational health and safety on government building projects for contractors guideline*
- the Department of Housing and Public Works has information that suggests that the registrant or its personnel (officer, director, employee or agent of the registrant) have engaged in dishonest, improper, unethical, collusive, fraudulent or corrupt conduct
- the registrant has committed a breach of legislation or failed to comply with policies that apply to registrants (e.g. *Queensland Government Building and Construction Training Policy, Queensland Code of Practice for the Building and Construction Industry*)
- the registrant has committed a breach of the Conditions of Prequalification
- the Department of Housing and Public Works considers that the registrant has exhibited financial or managerial stress.

A show cause notice is to be issued to a registrant by registered post, courier, hand delivery, facsimile, or email. Where the registrant has multiple offices, service on the registrant's head office is sufficient.

The show cause notice should advise the registrant of the relevant breach/issue and requires a written response from the registrant within 20 business days of the date of issue of the show cause notice, with any submissions, documents or other information the registrant wishes the Department of Housing and Public Works to consider.

In the case of extenuating circumstances, and at the sole discretion of the Department of Housing and Public Works, an extension of time may be granted if sought by the contractor.

If the registrant fails to respond within the nominated time frame, the department may apply a sanction immediately, with the contractor notified in writing of such action. Similarly, if the contractor does not provide a response satisfactory to the Executive Director, Building Contract Management, the department may apply a sanction immediately, with the contractor notified in writing of such action.

6.0 Sanctions

As a result of a formal review, a sanction may be applied either directly or following the issue of a show cause notice, depending upon the event/incident.

A sanction may be applied directly (i.e. without the issue of either a warning or a show cause notice), if a registrant:

- commits a substantial (not minor) statutory, contractual or policy (that apply to registrants) breach, which has been validated, or
- fails a third site inspection on a project in accordance with the *Prequalification (PQC) System – managing occupational health and safety government building projects for contractors* guideline, or
- develops a poor workplace, health and safety record across a number of sites or contracts, or
- has engaged in dishonest, improper, unethical, collusive, fraudulent or corrupt conduct (including by an officer, director, employee or agent of the contractor) which has been validated.

The General Manager, Asset Management Policy and Strategy will notify a registrant in writing that a sanction has been applied to its prequalification status and any applicable timeframe associated with the sanction.

The types of sanctions which may be applied are as follows:

1. **downgrade** – the scope, size, value, location or nature of services a registrant is prequalified to provide is reduced, as appropriate to the circumstances. For example, in the case of a contractor, it may be restricted to Traditional (lump sum) construction services when it was previously registered to provide Design and Construction Management services, or the contractor's Maximum Contract Value in the PQC Database may be reduced.
2. **suspension** – a registrant remains on the PQC Database but is denied opportunities to tender or be awarded a contract or commission during the period of suspension.
3. **cancellation** – a registrant's prequalification is cancelled in the PQC Database.

A "downgrade" or "suspension" sanction will be in force:

- for a specified period of time as determined by the General Manager, Asset Management Policy and Strategy, and further
- until such time as the registrant demonstrates to the PQC Registrar's satisfaction its fitness for registration, with respect to the issues that gave rise to the sanction.

A "cancellation" sanction will be in force for a period of three years. After this time, a registrant may re-apply for prequalification and must demonstrate to the satisfaction of the PQC Registrar its fitness for re-registration. The Department of Housing and Public Works is not obliged to approve an application for re-registration.

Importantly, where a contract or commission between a registrant and the State (through the Department of Housing and Public Works or any other government department) has been terminated, a sanction in the form of suspension or cancellation of prequalification may be applied directly.

The application of a sanction under the PQC System does not in any way affect a registrant's obligations with respect to current construction contracts or commissions with the State.

6.1 Ethical Supplier Mandate

Separate to the review process outlined in this document, a sanction may also be imposed on a registrant by the Procurement Penalties and Sanctions Committee (PPSC) in accordance with the Ethical Supplier Mandate (ESM).

Where a registrant does not comply with their contractual obligations and the requirements of the Queensland Procurement Policy, the PPSC may issue demerit points to the registrant. A sliding scale of demerit points will be used dependant on the seriousness of the non-compliance i.e. 2 points for a minor non-compliance; 5 points for a moderate non-compliance; and 10 points for a major non-compliance.

If a registrant accumulates 20 demerit points within a 12 month period, the PPSC may sanction the registrant e.g. suspend the registrant's prequalification status in the PQC Database for a defined period of time. The registrant will not be eligible to tender on, or be awarded, a government building project procured through the PQC System during this period.

Appeals (sanctions applied by the PPSC)

In the case of a sanction applied to a registrant by the PPSC, the registrant can appeal to the Director-General of the procuring agency if they believe the process outlined in the EMS has not been followed, or the PPSC failed to take extenuating circumstances into account.

Refer [Ethical Supplier Mandate](#) for further information.

6.2 Ethical Supplier Threshold

The Ethical Supplier Threshold expresses the wage and entitlement standards expected of a registrant who wishes to do business with the Queensland Government. A registrant may be sanctioned if it breaches the Threshold.

Refer [Ethical Supplier Threshold](#) for further information.

7.0 Appeal provision (sanctions applied by the PQC Registrar)

If a registrant is dissatisfied with a sanction being applied against their prequalification status, they may appeal in writing within ten business days, to the Director-General, Department of Housing and Public Works (refer page 2 for address details).

However, where an appeal relates to a sanction that was imposed following the issue of a show cause notice, a registrant will only have the right to appeal the sanction if they can provide evidence that:

- the review process was not followed correctly, or
- the department failed to take into account any extenuating circumstances the registrant raised in its response to the show cause notice.

As such, the appeal process is not an opportunity for a registrant to revisit the matters that gave rise to the show cause notice being issued in the first place.

The Director-General, Department of Housing and Public Works, will assess the appeal and may appoint a senior departmental officer to investigate the matter. This officer must be independent of the review and sanctions process outlined in this guideline.

The Director-General will provide a written response to the registrant advising of the outcome of the appeal within ten business days of the completed investigation. The Director-General's decision will be final in these matters.

However, in the event that the Director-General has had direct involvement in matters that factor in the review and sanctions process (which may present a conflict of interest situation), the Director-General will appoint a senior departmental officer to both investigate the appeal and to make a decision (which will be final) in relation to the matter.

Attachment 1: Indicators a consultant may be under financial or managerial stress

Financial stress refers to circumstances and conditions that are likely to adversely impact or which have adversely impacted on the consultant's ability to deliver services and meet financial obligations associated with their participation on government building projects.

While the incidence of financial stress is relatively low among consultants, project managers administering consultant commissions and other project stakeholders should remain alert to indicators of such stress, including:

- complaints from suppliers, sub-consultants, and other involved parties regarding non-payment of accounts and wages;
- outputs slowing and/or deliverables not being completed on time; and
- requests for progress payments at dates earlier than agreed.

Managerial stress refers to circumstances and conditions that are likely to adversely impact or have adversely impacted the consultant's ability to resource tasks and activities with the appropriate personnel.

Indications of managerial stress may include:

- nominated personnel for a project who lack the experience or skill necessary to successfully complete the required task e.g. staff experiencing difficulty on complex or difficult project tasks;
- insufficient personnel allocated to meet the demands of a commission, possibly evidenced by slow progress or poor quality project deliverables; and
- changes to trading and business structures that adversely impact on project resourcing e.g. an organisational restructure that results in disruption to the project.

Note: Please refer to the policy advice note ["Identifying the signs of contractors under financial or managerial stress"](#), in regards to contractors.

Attachment 2: PQC review and sanctions process

