# **18 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

**554 BUREAU OF GENERAL SERVICES**

**Chapter 11: RULES GOVERNING QUALIFICATION OF PROFESSIONALS FOR SINGLE SOURCE PROCUREMENT OF SERVICES THAT DO NOT EXCEED $25,000**

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**PART I. GENERAL**

**§ 1 – Purpose and Scope**

**Summary:** This section states the purpose and scope of the Bureau of General Services’ Rules governing qualification of professionals for single source procurement by the Bureau for services involving expenditures not exceeding $25,000.

Title 5, subsection 1742(6) of the Maine Revised Statutes Annotated governs the process by which the Bureau of General Services (BGS, Bureau) selects professionals for the planning, design, and monitoring of public improvements. Subsection 1742(6) authorizes the Bureau to prepare a list of professionals that are eligible for single source procurement when the cost of services does not exceed $25,000.

The purpose of this Chapter is to implement the Bureau’s statutory authority to qualify professionals for single source selection. The Chapter sets forth requirements and procedures for eligibility, as well as application procedures, the standards for qualification of professionals, and contractual considerations.

This Chapter does not apply to the Bureau’s selection of professionals through the issuance of a request for qualifications. Selection of such service providers through the issuance of a request for qualifications is governed by Chapter 001 of the Bureau’s rules.

**NOTE:** This Chapter applies only when the cost of the services is $25,000 or less and will be performed by a qualified professional; Chapter 001 applies in all instances when the cost of the services exceeds $25,000. When the cost of services does not exceed $25,000, however, the Bureau may select a professional *either* (1) by single source selection under this Chapter, *or* (2) by issuance of a request for qualifications under Chapter 001.

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**§ 2 – Definitions**

**Summary:** This section defines terms used in this Chapter. Statutory definitions relating to the subject matter of this Chapter are contained in 5 M.R.S.A. § 1741.

As used in this Chapter, unless the context otherwise indicates, the following terms have the following meanings:

**1. Applicant.** “Applicant” means an individual or organization applying to be included on the Bureau’s list of qualified professionals.

**2. Bureau.** “Bureau” means the Bureau of General Services within the Department of Administrative and Financial Services.

**3. Commissioner.** “Commissioner” means the Commissioner of the Department of Administrative and Financial Services.

**4. Director.** “Director,” when no modifier is used, means the Director of the Bureau of General Services.

**5. Director of Construction.** “Director of Construction” means the Director of Construction of the Bureau of General Services.

**6. Individual.** “Individual” means a person providing services as a sole proprietorship.

**7. Key Employee.** “Key employee” means an individual or organization without whom the individual or organization either would fail to qualify for placement on the Bureau’s list of qualified professionals or, in the Bureau’s judgment, would lose the capability to provide effective architectural, engineering, or other services.

**8. List.** “List” means the record of qualified licensed or otherwise credentialed professionals, prepared by the Bureau pursuant to 5 M.R.S.A. § 1472(6) and section 11 of this Chapter.

**9. Organization.** “Organization” means a corporation, partnership, limited liability company, or unincorporated association that provides services.

**10. Professional.** “Professional” means an individual or organization licensed or otherwise credentialed to perform architectural, engineering, or other services that in the normal course of BGS operations are likely to be utilized by the Bureau in the planning, design, and monitoring of the construction of public improvements.

**11. Qualified; qualification.** “Qualified” means having been selected by the Bureau for placement on a list of professionals determined by the Bureau to be eligible for single source contracts not to exceed $25,000 relating to the planning, design, or monitoring of the construction of public improvements. “Qualification” means the state of being qualified.

**12. Schedule.** “Schedule” means the roll of services that in the normal course of BGS operations are likely to be utilized by the Bureau in the planning, design, and monitoring of the construction of public improvements. Such services include, but are not limited to, the following:

.1 Acoustical

.2 Air emissions modeling

.3 Property appraisal

.4 Archeological

.5 Architectural design

.6 Civil engineering

.7 Commissioning

.8 Cost estimating

.9 Drafting

.10 Electrical engineering

.11 Energy evaluation and design

.12 Energy auditing

.13 Facilities master planning

.14 Environmental phase 1, 2, and 3 site assessment

.15 Environmental engineering

.16 FF&E consulting

.17 Field representative

.18 Fire alarm design

.19 Geological

.20 Geotechnical

.21 Hazardous materials assessment

.22 Historic preservation

.23 HVAC design

.24 Hydrology

.25 Indoor air quality investigation

.26 Landscape design and architecture

.27 Land surveying

.28 Licensing and permitting

.29 Lighting design

.30 Marine architecture and engineering

.31 Materials testing

.32 Mechanical engineering

.33 Moving coordination

.34 Owner’s representative

.35 Project cost management

.36 Sanitary engineering

.37 Safety and security systems design

.38 Signage/graphic design

.39 Site evaluation and septic

.40 IAQ consulting

.41 Specifications writing

.42 Sprinkler system design

.43 Structural engineering

.44 Telecommunications design

.45 Third-party inspection

.46 Title search

.47 Traffic engineering

Individuals or organizations not providing services stated on the list above may apply for qualification by using the Bureau-supplied application materials and marking “Other” under the list of services that will appear on the materials.

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**PART II. ELIGIBILITY AND APPLICATION FOR QUALIFICATION**

**§ 11 – Eligibility for Qualification**

**Summary:** This section establishes the procedure for the Bureau’s preparation of a list of qualified professionals and establishes requirements for eligibility for qualification.

**1. Schedule of Categories**

After adoption of this Chapter, pursuant to 5 M.R.S.A. § 1742(6), the Bureau shall prepare a schedule of the categories of services that in the normal course of BGS operations are likely to be utilized by the Bureau in the planning, design, and monitoring of the construction of public improvements. The Bureau shall review that schedule at least every two years. The Bureau may amend the schedule if the Bureau determines that amendment is necessary to carry out the purposes of 5 M.R.S.A. § 1742(6).

**2. List of Qualified Professionals**

After preparing the schedule described in § 11(1), the Bureau shall solicit applications through the means of publication and application described in § 12, infra, from licensed or otherwise credentialed professionals interested in being included on the list of qualified professionals. To be eligible for qualification, an individual or organization must:

A. Be a professional;

B. Apply for qualification in accordance with 5 M.R.S.A. § 1742(6) and this Chapter; and

C. Satisfy the qualification standards established by paragraph 21(2)(A), infra, of this Chapter.

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**§ 12 – Application for Qualification**

**Summary:** This section establishes the requirements for an application for qualification.

**1. Advertisement**

**A. Timing.** At least every two years the Bureau shall review and, at its discretion, amend the schedule prepared pursuant to section 11(1), supra. The Bureau then shall publish one or more advertisements that it is accepting applications for qualification in accordance with 5 M.R.S.A. § 1742(6). The Bureau shall not accept an application for qualification unless the application is received in response to and in accordance with the advertisement referred to in this subsection.

**B. Publication.** The Bureau shall publish the advertisement in the Kennebec Journal, the Maine Sunday Telegram, the Bangor Daily News, and the Lewiston Sun Journal. The Bureau also may publish the advertisement on an appropriate State web site, as well as in professional journals or other publications that the Bureau determines would be an effective means of communicating the notice that it is accepting applications.

**2. Application Required**

An individual or organization seeking qualification shall submit to the Bureau, in response to the advertisement referred to in subsection 12(1), a completed application in accordance with the provisions of 5 M.R.S.A. § 1742(6) and this Chapter.

**3. Form of Application**

Applications for qualification must be on a form or forms made available by the Bureau. Applications will be designed to elicit information relevant to the various fields of expertise listed in the schedule and be sufficient to permit the Bureau to determine whether the applicant satisfies, for the particular service applied for, the standards prescribed by section 21(2), infra, of this Chapter. The Bureau shall reject any application that the Bureau determines is incomplete or non-responsive.

**4. Application for Qualification in More than One Profession**

An individual or organization that submits an application for qualification may indicate on that same application interest in providing one or more additional services the applicant claims to be capable of performing. For each such service, however, the applicant must provide sufficient information and, to be qualified, meet the standards prescribed in section 21(2), infra, of this Chapter. At its discretion, the Bureau may opt to not consider a service indicated on the application if incomplete or non-responsive information is provided with respect to such service.

**5. Time for Filing Application**

An individual or organization shall submit to the Bureau an application for qualification within the time specified in the advertisement. The Bureau shall reject any application received after the time specified.

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**PART III. SELECTION FOR QUALIFICATION**

**§ 21 – Selection for Qualification**

**Summary:** This section establishes procedures and standards for the Bureau’s selection of applicants for qualification.

**1. Selection by Bureau**

 The Bureau shall select applicants for qualification in accordance with the procedures and standards of this section.

At or before the deadline for submission of applications for qualification under this Chapter, the Director of Construction shall appoint a team from among the Bureau’s Professional Services staff to review the applications, determine whether each applicant is qualified to provide the services the applicant has applied to perform, and recommend to the Director of Construction whether the application should be approved or denied. Based on the recommendation of the team and the Director of Construction’s review of the application, the Director of Construction shall make a final determination as to whether the applicant is eligible for qualification to provide such services.

**2. Standards and Basis for Selection**

A. Standards. In determining whether an applicant is capable of performing a particular service for which the applicant seeks qualification, the Bureau may request from the applicant information about the following:

1. Licensure, certification, and/or registration, as applicable;

2. Competency;

3. Experience;

4. Training;

5. Financial and bonding capacity;

6. Insurance;

7. Personnel;

8. Liability and claims experience.

B. Basis. The Bureau’s evaluation must be based on the information contained in the application, any additional, related information submitted by the applicant or requested by the Bureau, any written information obtained from another public agency, any experience the Bureau has had with the applicant, and any other information deemed relevant by BGS.

**3. Notification of Bureau’s Decision**

 After the Director of Construction decides whether an applicant is a qualified professional, the Bureau shall seasonably notify the applicant of the decision in writing.

**4. Appeal**

If the Director of Construction determines that an applicant is not eligible for qualification under subsection 11(2), supra, of this Chapter, the applicant may appeal that decision to the Commissioner of the Department of Administrative and Financial Services within fifteen (15) days of the Construction Director’s decision. The Commissioner shall complete the appeal process and issue a decision within fifteen (15) days of the filing of the appeal. The decision of the Commissioner is final.

**5. No Obligation**

The Bureau’s selection of an applicant for qualification under this Chapter does not in any way require the Bureau to contract with the applicant to perform services.

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**§ 22 – Term of Qualification**

**Summary:** This section makes clear that a professional may remain on the Bureau’s list until the Bureau issues a new list. The section also authorizes the Bureau to remove an individual or organization from the list upon or after the occurrence of specified events.

**1. Length of Term**

An individual or organization may remain on the Bureau’s list of qualified professionals until the Bureau issues a new list, pursuant to sections 12 and 21, supra, of this Chapter, or until the Bureau removes the individual or organization from the list, pursuant to subsection 22(2).

**2. Removal from the List of Qualified Professionals**

A. **Removal.** The Bureau may remove an individual or organization from its list of qualified professionals upon or after the occurrence of any of the following:

1. Conviction of a State or federal crime by the individual or organization, or by an employee of the organization;

2. A material misrepresentation on the individual’s or organization’s application for qualification;

3. A filing by the individual or organization for bankruptcy or insolvency;

4. A material, unresolved breach of contract with any public agency by the individual or organization;

5. Loss by an organization of a key employee, or an adverse material change in the organization or personnel;

6. Loss by a key employee of an organization, an individual, or an organization, of a license or certification that is necessary for him or her to perform a particular service, or the lapsing of a registration that is necessary for a key employee to perform a particular service; or

7. Initiation of a regulatory enforcement action against an individual or organization.

B. **Notice of Removal.** If the Bureau removes an individual or organization from its list of qualified professionals pursuant to this subsection, the Bureau shall seasonably notify the individual or organization in writing.

C. **Re-Application.** An individual or organization removed from the Bureau’s list of qualified professionals pursuant to this subsection may re-apply for qualification when the Bureau next places an advertisement soliciting applications for qualification.

D. **Appeal.** An individual or organization removed from the Bureau’s list of qualified professionals pursuant to this subsection may appeal that decision in writing to the Director within fifteen (15) days of the Bureau’s decision. The Director shall complete the appeal process and issue a decision within fifteen (15) days of the filing of the appeal. The decision of the Director is final.

**3. Reporting**

 Whenever a representative of the Bureau communicates, orally or in writing, with a qualified professional to engage the professional’s services on a project within the scope of this Chapter, the qualified professional shall notify the Bureau, in writing, if it has experienced or been involved in any of the events described in paragraphs 22(2)(A)(1)-(7). In any case, a qualified professional must promptly furnish written notice if it experiences or is involved in any of the events described in paragraphs 22(2)(A)(1)-(7).

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**PART IV. CONTRACTING WITH QUALIFIED PROFESSIONALS**

**§ 31 – Contracting with Qualified Professionals**

Summary: This section contains requirements relating to contracts entered into between the Bureau and qualified professionals.

**1. Confirmation of Information**

 Before the Bureau enters into a single source contract with a qualified professional pursuant to this Chapter, the qualified professional shall inform the Bureau whether any information contained in the application submitted by the qualified professional, pursuant to section 12, supra, of this Chapter, has changed.

**2. Fees**

Fees shall be determined for all professional services by the Bureau’s acceptance of a negotiated, detailed written fee proposal submitted by the professional.

**3. Reimbursable Expenses**

In entering into a contract under this Chapter, the Bureau and the qualified professional shall agree upon a maximum dollar amount, where applicable, for reimbursable, or so-called “out of pocket,” expenses.

**4. Additional Services**

 The Bureau may contract with more than one licensed or credentialed qualified professional to perform work on a single project. Further, on a single project, the Bureau may enter into more than one contract with a qualified professional, so long as the value of the contracts for that single project do not exceed $25,000 in the aggregate.

**5. No Obligation**

The Bureau’s entering into negotiations to contract with a qualified professional under this Chapter does not in any way require the Bureau to in fact contract with that qualified professional.

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