

CHAPTER 70:07:02

CLASSIFICATION AND BIDDING CAPACITY RATING

[70:07:02:01](#) Classification and rating committee -- Membership -- Powers and duties.

[70:07:02:02](#) Committee to keep record of proceedings.

[70:07:02:03](#) Classification and maximum bidding capacity rating.

[70:07:02:04](#) Procedure for obtaining classification and capacity rating.

[70:07:02:05](#) Financial records confidential.

[70:07:02:06](#) Time limit for statements.

[70:07:02:07](#) Preference for work classification.

[70:07:02:08](#) Work classifications.

[70:07:02:09](#) Maximum bidding capacity rating.

[70:07:02:10](#) Effective period of rating.

[70:07:02:11](#) Determination of current bidding capacity of prospective bidders.

[70:07:02:12](#) Allowable deductions for determining maximum bidding capacity rating.

[70:07:02:13](#) Ineligibility for violation of laws, rules, or orders.

[70:07:02:14](#) Ineligibility for false statements.

[70:07:02:15](#) Ineligibility following grant of rating.

[70:07:02:16](#) Procedure for appeal from decision of committee.

[70:07:02:17](#) Reclassification procedure.

[70:07:02:18](#) Forfeit of rating.

[70:07:02:19](#) Renewal of prospective bidder prequalification.

[70:07:02:20](#) Prior experience requirements.

70:07:02:01. Classification and rating committee -- Membership -- Powers and duties. The classification and rating committee consists of four persons from the department selected by the commission. The committee may act for the commission on all matters specified in this chapter. The secretary may appoint a temporary alternate if a committee member is unavailable.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 10 SDR 30, effective October 4, 1983; 13 SDR 129, 13 SDR 134, effective July 1, 1987; 15 SDR 142, effective March 26, 1989; transferred from § 70:01:05:22, 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL 31-5-10

70:07:02:02. Committee to keep record of proceedings. The committee shall keep a record of its proceedings relating to all prospective bidders ~~or bidders and the department shall maintain a complete list of proposals granted or denied in any given letting.~~

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:24, 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:03. Classification and maximum bidding capacity rating. A prospective bidder ~~must~~ shall obtain a classification and maximum bidding capacity rating granted by the committee pursuant to this chapter before bidding on a state highway construction ~~projects~~ contract unless the amount being bid is less than ~~\$100,000~~ \$200,000.

Source: SL 1975, ch 16, § 1; 6 SDR 109, effective May 29, 1980; 8 SDR 45, effective October 28, 1981; 8 SDR 170, effective June 21, 1982; 13 SDR 159, effective May 3, 1987; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:02, 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:04. Procedure for obtaining classification and capacity rating. To obtain a classification and maximum bidding capacity rating a prospective bidder shall submit a prequalification statement to the committee, on a form approved by the department, ~~a contractor's prequalification statement, under oath.~~ The ~~statement~~ prospective bidder shall include in the prequalification statement the ~~contractor's~~ prospective bidder's equipment, organization, prior experience, and any debarment or pending debarment by a state or federal agency from bidding on ~~highway~~ construction projects. At its discretion, the committee may request additional information.

In addition to the ~~contractor's~~ prospective bidder's prequalification statement, the ~~applicant~~ prospective bidder shall furnish audited financial details in accordance with either of the following:

(1) The ~~applicant~~ prospective bidder may furnish a certification of surety from a bonding firm authorized to do business in this state stating the maximum bonding coverage the surety will issue on the ~~applicant's~~ prospective bidder's behalf for both a single contract and for all of the ~~applicant's~~ prospective bidder's work including uncompleted contracts; or

(2) The ~~applicant~~ prospective bidder may submit a separate statement of financial position audited by an independent certified public accountant ~~or public accountant licensed to practice in this state.~~ The opinion page of the audit statement shall include the audit firm's name, address, telephone number, and ~~original~~ signature of a member of the firm.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 8 SDR 98, effective February 24, 1982; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:03, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:05. Financial records confidential. A financial statement submitted under this chapter is a confidential record exempt from disclosure pursuant to SDCL subdivision 1-27-1.6(2).

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:21, 19 SDR 154, effective April 11, 1993 .

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:06. Time limit for statements. ~~If a contractor is prequalified at the time plans are requested, the contractor is prequalified for the letting of those plans unless action is taken by the committee to disqualify the contractor based on subsequent events.~~ A prospective bidder shall be prequalified before the bid opening. ~~If a contractor's prospective bidder's prequalification rating expires before plans are requested~~ the bid opening, ~~or the contractor prospective bidder is requesting initial prequalification, the contractor prospective bidder shall submit a completed prequalification statement to the committee. The prequalification statement must be received by the committee at the Department of Transportation building Becker-Hansen Building at 700 East Broadway Avenue in Pierre at least 14 days before the day of the letting, counting the day of the letting, to be eligible for the bidding in that letting. A prequalification rating must be approved by the committee before the bid opening for the contractor to be awarded a contract.~~

Requests to add work types or modify bidding capacity are considered a new prequalification statement submission and must meet the 14-day requirement.

A line of credit submitted to increase bidding capacity must be received by the committee before 11:00 a.m. of the last working day of the week preceding the letting. If the Legislature or the Governor declares any part of the last working day of the week preceding the letting to be a holiday, the request must be received before 11:00 a.m. of the preceding day.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 8 SDR 170, effective June 21, 1982; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 0:01:05:04, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

Cross-References: Ineligibility following grant of rating, § 70:07:02:15; Reclassification procedure, § 70:07:02:17.

70:07:02:07. Preference for work classification. ~~Completed~~ Each completed prospective bidder prequalification ~~statements~~ statement must indicate the classification or classifications of work requested, but the indication is not binding upon the committee.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:05, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:08. Work classifications. Types of work are classified as follows:

~~(1) A: Grading (includes M and N);~~

~~(2) B: Portland cement concrete paving (includes E, F, and O);~~

- ~~(3) C: Asphalt concrete paving and microsurfacing (includes D, E, and F);~~
 - ~~(4) D: Asphalt surface treatment, including asphalt crack sealing;~~
 - ~~(5) E: Gravel or crushed rock surfacing and base course (includes F);~~
 - ~~(6) F: Crushing, stockpiling, and salvage in-place asphalt surfacing;~~
 - ~~(7) G: Bridges and bridge rehabilitation (includes H);~~
 - ~~(8) H: Minor structures including cast-in-place box culverts, precast multi-beam deck bridges, and retaining walls;~~
 - ~~(9) I: Lighting and signals;~~
 - ~~(10) J: Signing, delineation, and pavement marking;~~
 - ~~(11) K: Rest area buildings;~~
 - ~~(12) L: Bituminous recycling, milling, and salvaging;~~
 - ~~(13) M: Underground utilities including storm sewer, sanitary sewer, waterline, drainage pipe, and precast box culverts;~~
 - ~~(14) N: Incidental construction, such as fencing, guard rails, railroad crossings, and erosion control;~~
 - ~~(15) O: Miscellaneous concrete construction, such as concrete pavement rehabilitation, pavement grinding, pile jacketing, and sidewalk, curb, and gutter.~~
- (1) Major grading;
 - (2) Minor grading;
 - (3) Portland cement concrete paving;
 - (4) Portland cement concrete repair (spall repair, joint repair, or pavement grinding);
 - (5) Asphalt concrete paving and microsurfacing;
 - (6) Asphalt surface treatment and asphalt crack sealing;
 - (7) New bridge construction;
 - (8) Bridge rehabilitation (deck overlays, fatigue retrofit, steel and concrete repair, epoxy chip seal, or rail retrofit);

(9) Minor structure construction (cast in place box culverts, pre-cast multi-beam deck bridges, or mechanically stabilized earth (MSE) large panel retaining walls);

(10) Lighting and signals;

(11) Signing, delineation, and pavement marking;

(12) Underground and utilities (storm sewer, sanitary sewer, waterline, drainage pipe, or precast box culvert);

(13) Incidental construction (fencing, guardrail, railroad crossings, MSE modular block retaining walls, gravel surfacing, base course, landscaping, or erosion control);

(14) Miscellaneous concrete construction (sidewalk, bike path, multi-use path, or curb and gutter);

(15) Bridge painting.

~~Classifications may be approved for~~ The committee may approve a prospective bidder in
one or more types of work.

~~A contractor may be prequalified~~ The committee may prequalify a prospective bidder on
a project by project basis for specialty work not specifically covered by the foregoing
classifications.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:06, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:09. Maximum bidding capacity rating. The criteria for determining
maximum bidding capacity ratings are as follows:

- (1) The prospective bidder's ability to finance the work as shown by the prospective bidder's audited financial statement and , surety statement, surety bond or supplementing supplemental documents;
- (2) The amount, condition, and availability of the prospective bidder's equipment;
- (3) The experience of the prospective bidder's personnel; and
- (4) The prospective bidder's previous record with the department and other awarding authorities.

A maximum bidding capacity rating may not exceed ten times the amount of a prospective bidder's working capital as shown on the bidder's audited financial statement. A The committee may honor a bank line of credit to increase the prospective bidder's working capital may be honored by the committee. The prospective bidder shall state the line of credit must be stated on a form furnished by the committee and is valid for the period of the prospective bidder's prequalification. The committee may declare the prospective bidder ineligible for prequalification if the prospective bidder has been deficient, as determined by the committee, in any of the criteria listed in this section.

If a certification of surety is furnished in accordance with subdivision 70:07:02:04(1), the maximum bidding capacity rating ~~will~~ must conform to the bonding limitations established by the surety on the ~~contractor's~~ prospective bidder's behalf.

If an audited financial statement is furnished, the per contract bidding capacity is 50 percent of the maximum bidding capacity.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:07, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:10. Effective period of rating. If the prospective bidder submits an audited statement of financial position ~~is submitted~~ in accordance with subdivision 70:07:02:04(2), the classification and maximum bidding capacity rating is effective for not more than 18 months from the date of the balance sheet. If a certification of surety is submitted in accordance with subdivision 70:07:02:04(1), the classification and maximum bidding capacity rating expires ~~on June 30 of each year,~~ according to the expiration date as shown on the prospective bidder's surety bond or upon ~~recission~~ the expiration or rescission of the certification of surety. The ~~contractor~~ prospective bidder shall provide the department with written notice of the ~~recission~~ rescission of a certification of surety within ~~5~~ five days after the ~~contractor~~ prospective bidder receives notice of the ~~recission~~ rescission. The committee may grant one extension of not more than ~~30~~ 60 days to the period that the maximum bidding capacity rating is effective. The prospective bidder shall submit any request for an extension must be received to the committee in writing ~~by the committee~~.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 8 SDR 98, effective February 24, 1982; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:08, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:11. Determination of current bidding capacity of prospective bidders. The department shall give a prospective bidder a current bidding capacity in a specified dollar

amount under one or more classifications for which he prospective bidder has qualified. The current bidding capacity is arrived at by subtracting from the maximum bidding capacity rating the uncompleted dollar amount of all ~~contracts~~ bonded work wherever located. ~~The latest current estimate of the awarding authority shall determine the amount of the uncompleted work.~~

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:10, 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:12. Allowable deductions for determining maximum bidding capacity rating. ~~The following deductions may be included in~~ The committee may include a deduction for any of the following factors when calculating the maximum bidding capacity rating:

- (1) Current ability;
- (2) Experience and organization;
- ~~(3) Current conduct;~~
- ~~(4) Account and claim records;~~
- ~~(5) (3) Ownership, sufficiency, availability, and condition of major items of equipment;~~
and
- ~~(6) (4) Quality and timeliness of work performed on previous contracts; and~~
- (5) Independent financial audit concerns, including account and debt records.

Deductions may not exceed 50 percent ~~in any one class of deductions~~ for any one factor.

The committee may limit a ~~contractor~~ prospective bidder to a specific number of projects over the ~~\$100,000~~ \$200,000 prequalification requirement based on any of the criteria in this section.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:11, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:15. Ineligibility following grant of rating. ~~The commission or the committee~~ may declare a ~~contractor~~ prospective bidder ineligible before the ~~commission~~ department receives bids or the commission awards a contract if ~~developments occur~~ a development occurs after the granting of a classification or a maximum bidding capacity rating which in the determination of the committee would affect the responsibility of the ~~contractor~~ prospective bidder.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:17, 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:16. Procedure for appeal from review of decision of committee. ~~A person aggrieved by a decision of the committee shall file a notice in writing with the secretary that sets forth the basis of appeal. Within 15 days after receipt of the notice the secretary shall set a time and place for hearing the appeal. The hearing shall be not later than 60 days after the filing of the appeal. The notice of the time and place of the hearing shall be served on the appellant at least 5 days before the date of the hearing. The hearing shall be conducted by the commission or a hearing officer appointed by the commission. The commission shall make the final decision on such appeal.~~ A prospective bidder may, within 14 days after receipt of notice of a decision of

the committee, ask the secretary to review that decision by submitting a request in writing setting forth the decision to be reviewed and the change in the decision being requested, along with any supporting information or documentation. The secretary, or the secretary's designee, shall issue a written decision within five business days following receipt of the request for review and any documentation. The decision of the secretary, or the secretary's designee, constitutes final agency action.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:23, 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:17. Reclassification procedure. A holder of a classification and maximum bidding capacity rating may request a reclassification or a higher maximum bidding capacity rating, or both, by submitting a new prequalification statement to the committee at least 14 days before the day of the bid letting. A reclassification or an increase in a maximum bidding capacity rating, or both, are in effect on the day granted.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:15, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

Cross-Reference: Time limit for questionnaires, § 70:07:02:06.

70:07:02:18. Forfeit of rating. The committee may require a prospective bidder to submit a new prequalification statement concerning an existing maximum bidding capacity

rating. Failure to submit a new prequalification statement within ~~the period of time specified in the demand~~ 14 days of the request forfeits the existing maximum bidding capacity rating.

If a prospective bidder forfeits a maximum bidding capacity rating, the committee ~~must~~ shall receive and act upon a new prequalification statement from the prospective bidder before its bids may be honored.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:16, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:02:19. Renewal of prospective bidder's prequalification. To retain or revise prequalification status, a prospective bidder shall complete a new prospective bidder prequalification statement based on either the expiration date of the bidder's surety bond, or the expiration date of the bidder's audited financial statement. The prequalification committee shall review the prequalification statement and determine the new status of eligible work types, bidding capacity per contract, maximum bidding capacity, and expiration date.

General Authority: SDCL [31-5-10](#)

Law Implemented: SDCL [31-5-10](#)

70:07:02:20. Prior experience requirements. Only work performed by the prospective bidder in the previous five years shall be considered by the committee.

The committee may consider an exception for work not performed in the last five years if the prospective bidder provides documentation that the bidder had the equipment, manpower, and experience to perform that work.

General Authority: SDCL 31-5-10

Law Implemented: SDCL 31-5-10

