

# DIT Prequalification System



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## 1 TERMS AND CONDITIONS OF PREQUALIFICATION

### 1.1 General

Contractors<sup>1</sup> seeking prequalification (“Applicants”) and prequalified contractors (“Contractors”) are required to comply with the terms and conditions and associated procedures described in this document and the DIT Prequalification Guidelines.

Unless approved otherwise, contractors wishing to tender for DIT contracts must be prequalified by the time that DIT issues a Request for Tender.

### 1.2 No Guarantee of Work

Prequalification is not to be construed as a guarantee of work. Prequalification only determines a Contractor’s eligibility to tender for work, subject to meeting any local legislative/regulatory requirements. DIT will apply SA Government procurement principles, including value-for-money, in the assessment and selection of tenders.

### 1.3 Application Requirements

To become prequalified, an Applicant must select one or more prequalification categories that it believes to be commensurate with its capabilities and submit an Application Form with supporting information that addresses all specified criteria.

In submitting its application, the Applicant gives permission to DIT to carry out such investigations as are considered necessary to evaluate the application and to determine whether it meets the relevant prequalification criteria. These investigations include a company search, bank reference checks and referee checks on key personnel.

In undertaking its assessment, DIT may take into account other information in its possession, or information provided by other government agencies or clients. In considering applications from subsidiary companies DIT reserves the right to examine the resources of the parent company or entity, or other related entities, if considered warranted.

### 1.4 Confidentiality

DIT may refer an Applicant’s documentation to its external assessors for assessment. External assessors are required to maintain confidentiality of all information received. However, in lodging an application, Applicants agree to provide the necessary authority to enable searches and enquiries to be carried out for the assessment.

Information submitted in an application for prequalification will be treated as commercial-in-confidence and will not be disclosed to any party outside DIT and its assessors unless DIT is legally required to do so, for the purposes of obtaining legal or financial advice, or in relation to appeals regarding prequalification decisions.

Once prequalified, a Contractor’s details, including details of its performance on specific contracts, may be shared with other government agencies for the purpose of monitoring performance and to determine continued eligibility for prequalification. A list of prequalified contractors will be made publicly available by DIT.

### 1.5 Change of Circumstances

Contractors have an obligation to advise DIT of any change in circumstances that may be material to their prequalification status, including any convictions or breaches of legislation or statutory regulations.

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<sup>1</sup> For the purpose of these Conditions of Prequalification, a reference to “contractor” includes a consultant.

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## 1.6 Governing Law

DIT and the Applicant / Contractor submits to the exclusive jurisdiction of the Courts in South Australia.

## 1.7 Publication of Prequalification Status

A list of the prequalified companies will be disclosed to others on the following web site: [https://www.dit.sa.gov.au/contractor\\_documents/prequalification](https://www.dit.sa.gov.au/contractor_documents/prequalification).

While a company may communicate its DIT prequalification status to others, it must not represent that this prequalification necessarily means that they are competent to undertake work for organisations other than DIT. No responsibility is accepted for any consequences arising from the use of the prequalification scheme other than for DIT contracts.

## 1.8 Disclaimer

The decision to approve or reject, with or without conditions, any application for prequalification is at the absolute discretion of DIT. DIT is not liable for any costs or damage incurred in the exercise of such discretion or the discretion to rescind or downgrade any prequalification.

While other organisations may reference this prequalification system, DIT:

- assumes no responsibility whatsoever to any other party in any matter associated with this prequalification system;
- has developed this system solely for its internal purposes; and
- does not represent or warrant that any of the prequalified companies are technically capable, financially sound or suitable for any non-DIT project.

Any organisation seeking to deal with prequalified companies must rely on its own enquiries and bears all risks associated with the use of this prequalification system.

## 2 AGREEMENT

By submitting an Application for prequalification, the Applicant / Contractor:

- agrees to be bound by these terms and conditions of prequalification;
- acknowledges and accepts that these terms and conditions may be varied from time to time;
- must ensure that all particulars provided to DIT are true and correct in every detail; and
- accepts full responsibility for any consequences arising from promoting its prequalification status for any other purpose.

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## 3 MAINTENANCE OF A CONTRACTOR'S PREQUALIFICATION STATUS

### 3.1 Introduction

Where there is a material change to a Contractor's circumstances or a matter of concern is identified, DIT may:

- request a meeting with the senior management of the Contractor;
- undertake a review of the Contractor;
- issue a warning to the Contractor regarding the matter; or
- issue a "Show Cause" notice and / or suspend, downgrade or cancel the prequalification.

Any of the following may result in a review, suspension (for a period determined by DIT), downgrading or cancellation of a Contractor's prequalification status or the issue of a warning letter:

- where conditional prequalification has been granted subject to a review being carried out following completion of the first contract under the conditional arrangement;
- where DIT reasonably considers a Contractor's performance to be unsatisfactory;
- following changes to a Contractor's organisational structure, or technical, financial or management capacity which, in the opinion of DIT, may have an adverse effect on the Contractor's performance;
- where restrictions on a licence/registration to practise are imposed, or third party certification of a management system is withdrawn or has expired;
- for failure to comply with the terms and conditions of prequalification;
- failing to comply with the subcontracting requirements of a contract under which the Contractor is engaged by the Minister for Infrastructure and Transport, /Commissioner of Highways or Rail Commissioner (as applicable);
- failure to comply with the requirements of a contract under which the Contractor is engaged by the Minister for Infrastructure and Transport, Commissioner of Highways or Rail Commissioner (as applicable) to:
  - be a local provider;
  - meet targets for engagement (by the Contractor or its subcontractors) of:
    - local workers; and/or
    - apprentices and trainees, Aboriginal people and long term unemployed persons;
- where DIT is unsatisfied with the Contractor's response to a show cause notice.

In exercising its rights under this Section of these Guidelines, DIT will not act capriciously or act with bias.

### 3.2 Letter of Warning

Where a Contractor's performance has been unsatisfactory or a matter of concern is identified, DIT may issue a letter of warning to the Contractor. This will outline the matter of concern and may require to undertake remedial / corrective action or advise that a reoccurrence of the events will lead to the issue of a formal "Show Cause" Notice.

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## 3.3 Show Cause Notice

If DIT is considering the suspension, downgrading or cancellation of a Contractor's prequalification, the Contractor will be issued with a formal "Show Cause" Notice and given the opportunity to respond to the issues raised in the notice. If the matter is serious, it is not necessary for a letter of warning to be issued beforehand.

The Show Cause Notice will:

- state that it is a notice under these Prequalification System terms and conditions;
- specify the alleged breach;
- require the Contractor to show cause in writing why DIT should not exercise the right to cancel, suspend or downgrade the Contractor's prequalification status; and
- specify the time and date (not more than 3 weeks by which the Contractor must show cause).

If by the time specified in a Show Cause Notice the Contractor fails to respond or to show reasonable cause why DIT should not adjust the prequalification status, DIT may cancel, suspend or downgrade the prequalification status without further notice to the Contractor.

## 3.4 Suspension for short-term issue

In addition to DIT's right to suspend the Contractor's prequalification status under clause 3.1, a Contractor's prequalification may be suspended (for a period determined by DIT) where there is a temporary or short term issue affecting their ability to satisfy the prequalification criteria specified in these guidelines. Any such suspension will be in place until the later of the nominated suspension period ending or the temporary problem is remedied and the Contractor is again able to satisfy all of the criteria corresponding to the level of prequalification granted.

## 3.5 Downgrading

If, in the reasonable opinion of DIT, the Contractor no longer satisfies the requirements for a particular category of prequalification, but is capable of satisfying the requirements for a lower category, their prequalification may be downgraded. Examples of breaches that may give rise to downgrading of a Contractor's prequalification status include:

- repeated minor contractual or prequalification system non-compliances where, in the opinion of DIT, there is an unacceptable risk in allowing the Contractor to remain prequalified at their current prequalification level; or
- an adverse change in the organisation's management systems or technical capability (including availability of key personnel), but the Contractor can demonstrate that requirements for a lower level of prequalification are met.

## 3.6 Cancellation

Examples of breaches that may give rise to cancellation of a Contractor's prequalification status include:

- unsatisfactory performance on one or more contracts;
- the Contractor has been placed into voluntary administration or involved in a compromise or other arrangements with creditors;
- an adverse change in the Contractor's management systems or technical capability (including availability of key personnel) such that the Contractor no longer fully meets the requirements for prequalification at any level;

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- where a Contractor has been granted conditional prequalification subject to it meeting certain requirements and it fails to meet those requirements within the stipulated timeframes; or
- where the Contractor is experiencing financial problems, as verified by DIT.

## 4 REVIEWS AND APPEALS

### 4.1 Reviews

If an Applicant / Contractor is not satisfied with any decision made by DIT, the Applicant / Contractor may request a review of the decision by original assessors, providing sufficient additional information is submitted to warrant a review. Any request for a review must be lodged with DIT within 20 business days of the date of the letter advising of the prequalification decision.

### 4.2 Appeals

If an Applicant / Contractor is not satisfied with the outcome of a review, the Applicant / Contractor may lodge an appeal with DIT within 20 business days of the date of the letter advising of the prequalification decision.

Unless the parties agree on an alternative binding process, the appeal will be heard by a specially convened appeals panel, which will generally comprise of the following:

- a DIT senior executive such as a General Manager (Chairperson);
- a senior officer from a South Australian Government agency with a background in the appropriate industry who was not a member of the Assessment Panel which reached the decision under appeal; and
- an independent private sector representative (determined by agreement between DIT and the Applicant) who has not been previously involved with the assessment process.

DIT staff may attend as non-voting member(s) for reference and to provide background on the appeals panel's decision.

The appeals panel:

- will convene within 10 business days of lodgement of the appeal (which may be by teleconference or video link);
- will review the original decision, including the information provided by the applicant and the assessment by the authority
- may consider or request new or additional information;
- will act impartially; and
- will provide written reasons for its decision within 20 business days of the hearing.

The appeals panel decision will be final and binding on DIT and the appellant. If the appeals panel reasonably considers the appeal to be frivolous or vexatious, DIT reserves the right to recover any external costs incurred by DIT in the appeal process.