

To Whom It May Concern

**PROPOSED CHANGES TO PRIME CONTRACTOR PERFORMANCE REPORT AND CONTRACTOR  
SUSPENSION CRITERIA**

Date: Thursday, September 6, 2023

The Washington State Department of Transportation has proposed revisions to chapter 468-16 of the Washington Administrative Code. The revisions allow for electronic transmittal of Prime Contractor Performance Reports due to the continuation of telework and remote work practices. Also, changes in the law related to small and veteran business utilization have created revisions to Prime Contractor Performance Report which is shown in the WAC and need to be added to contractor suspension criteria based on sections of the Prime Contractor Performance Report.

Process for Developing New Rule: WSDOT welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. WSDOT has filed a proposal with the office of the code reviser along with a proposed rule making. Those documents are attached to this bulletin. You may submit written comments to the staff person identified below until October 16, 2023.

A public hearing to adopt the proposed rule making will be held on Thursday, October 26, 2023, from 1 – 2 p.m. If you would like to attend the hearing, please contact the staff person listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before adoption by contacting:

Jenna Kemp, Contract Ad & Award Manager  
P.O. Box 47354, Olympia, WA 98504-7354  
Phone: (360) 705-7017  
Email: [kempj@wsdot.wa.gov](mailto:kempj@wsdot.wa.gov)  
Fax: 360-705-6810



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: September 05, 2023

TIME: 12:02 PM

WSR 23-18-082

Agency: Washington State Department of Transportation

Original Notice

Supplemental Notice to WSR \_\_\_\_\_

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 22-20-089 ; or

Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW \_\_\_\_\_.

Title of rule and other identifying information: (describe subject) CH 468-16 Prequalification of Contractors – electronic transmittal of contractor performance reports and performance report form updates.

Hearing location(s):

Date: Time: Location: (be specific) Comment:

October 26, 2023	1:00 pm	Nisqually Conference Room 310 Maple Park Avenue SE Olympia, WA 98501 1st floor room 1D02	
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Date of intended adoption: **October 26, 2023** (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Jenna Kemp  
Address: PO Box 47360, Olympia WA 98504-7360  
Email: kempj@wsdot.wa.gov  
Fax: 360-705-6810  
Other:  
By (date) October 16, 2023

Assistance for persons with disabilities:

Contact Jenna Kemp  
Phone: 360-705-7017  
Fax: 360-705-6810  
TTY: 711  
Email: kempj@wsdot.wa.gov  
Other: PO Box 47360, Olympia WA 98504-7360  
By (date) October 16, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

RCW 47.28.070 authorizes the department to receive a questionnaire and financial statement prior to authorizing a proposal to a bidder. This process of obtaining information to determine that the bidder is qualified is referred to as "prequalification" and follows the process outlined in WAC 468-16. Due to process changes associated with working from home, the WAC needs to be revised to allow for electronic transmittal of performance reports. Also, changes in the law related to small and veteran business utilization have created revisions to Prime Contractor Performance Report which is shown in the WAC and need to be added to contractor suspension criteria based on sections of the Prime Contractor Performance Report.

Reasons supporting proposal: WSDOT supports work from home as well as implementing recent law changes related to small and veteran-owned business utilization.

Statutory authority for adoption: RCW 47.28.070

Statute being implemented: WAC 468-16

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

**Type of proponent:**  Private  Public  Governmental  
**Name of proponent:** (person or organization) Washington State Department of Transportation

Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting:	Jenna Kemp	310 Maple Park Ave SE Room 2D20, Olympia WA 98501	360-705-7017
Implementation:	Jenna Kemp	310 Maple Park Ave SE Room 2D20, Olympia WA 98501	360-705-7017
Enforcement:	Jenna Kemp	310 Maple Park Ave SE Room 2D20, Olympia WA 98501	360-705-7017

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No  
If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name: Jenna Kemp  
Address: PO Box 47360, Olympia WA 98504-7360  
Phone: 360-705-7017  
Fax: 360-705-6810  
TTY: 711  
Email: kempj@wsdot.wa.gov  
Other:

No: Please explain:

**Regulatory Fairness Act and Small Business Economic Impact Statement**  
Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**  
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(3). Check all that apply:
  - [RCW 34.05.310](#) (4)(b)  
(Internal government operations)
  - [RCW 34.05.310](#) (4)(c)  
(Incorporation by reference)
  - [RCW 34.05.310](#) (4)(d)  
(Correct or clarify language)
  - [RCW 34.05.310](#) (4)(e)  
(Dictated by statute)
  - [RCW 34.05.310](#) (4)(f)  
(Set or adjust fees)
  - [RCW 34.05.310](#) (4)(g)  
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(4) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under [RCW 34.05.328](#).

Explanation of how the above exemption(s) applies to the proposed rule: Include a cost-benefit analysis with all requirements of an SBEIS (19.85.025) An agency is not required to prepare a separate small business economic impact statement under RCW 19.85.040 if it prepared an analysis under RCW that meets the requirements of a small business economic impact statement, and if the agency reduced the costs imposed by the rule on small business.

**(2) Scope of exemptions:** *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Date:** 9/5/2023

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**Name:** Jenna Kemp

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**Title:** Contract Ad & Award Manager

**Signature:**



**WAC 468-16-090 Standard questionnaire.** The standard questionnaire and financial statement shall be prepared and transmitted to the secretary, Attn: Contract advertisement and award office. The questionnaire shall include the following information:

(1) The contractor's name, address, phone number, facsimile number, email address, and type of organization (corporation, partnership, sole proprietorship, etc.).

(2) A list of the classes of work for which the contractor seeks qualification.

(3) A statement of the ownership of the firm and, if a corporation, the name of the parent corporation, if any, and the names of any affiliated or subsidiary companies.

(4) A certificate of authority from the office of the secretary of state to do business in Washington state if the applicant is an out-of-state corporation.

(5) A list of officials within the applicant firm who are also affiliated with other firms involved in construction work as a contractor, subcontractor, supplier, or consultant; including the name of the firm and their relationship with the affiliate firm.

(6) A complete list of the highest valued contracts or subcontracts performed in whole or in part within the immediate three years preceding application. The contract amount, contract number, date of completion, class of work; and the name, mailing address, email address, and phone number of the project owner or agency representative must be provided for those projects listed. Only that work completed by the contractor's own organization under its own supervision will be considered for prequalification purposes. A minimum of five completed projects must be listed.

(7) Personnel requirements.

(a) A listing of the principal officers and key employees indicating their years of experience in the classes of work for which prequalification is sought. For qualification in a class of work based on newly acquired personnel rather than the firm's past contract experience, the newly acquired personnel must be available for future employment for the full year for which qualification is sought unless replacement personnel have been approved. The loss of such personnel during the year of qualification, will result in revocation of qualification for the class of work granted pursuant to their acquisition. The department may require resumes of such personnel as deemed proper for making its determination. The firm's performance on department contracts must be currently rated standard or better to be used for qualification purposes.

(b) A firm must have, within its own organization, qualified permanent, full time personnel having the skills and experience including, if applicable, technical or specialty licenses, for each work class for which prequalification is sought. Those firms seeking qualification for electrical work (classes 9 and 16) must provide photocopies of current Washington state electrical licenses. The skills and experience must be substantiated by education and practical experience on completed construction projects.

(c) "Its own organization" shall be construed to include only the contractor's permanent, full time employed office and site supervisory personnel as shown on the most recently submitted or amended prequali-

fication questionnaire. Workers of the organization shall be employed and paid directly by the prime contractor. The term "its own organization," shall also include the equipment owned or rented by the contractor with or without equipment operators. Such term does not include employees or equipment of another contractor, subcontractor, assignee, or agent of the applicant contractor although they are placed on the applicant contractor's payroll.

(8) A financial statement.

For a firm showing a net worth in excess of (~~one hundred thousand dollars~~) \$100,000, the applicant must provide, with the questionnaire, a copy of its financial statement as audited or reviewed for its last fiscal year, prepared in accordance with the standards of the American Institute of Certified Public Accountants. The statement must be prepared by an independent certified public accountant registered and licensed under the laws of any state. Balance sheets, income statements, a statement of retained earnings, supporting schedules and notes, and the opinion of the independent auditor must accompany the financial statement.

(9) A wholly owned subsidiary firm may file the latest consolidated financial statement of its parent corporation in lieu of a financial statement prepared solely for the subsidiary. When a consolidated financial statement is submitted, the requirements of subsection (8) of this section and WAC 468-16-140 (2)(b) must be fulfilled.

(10) The applicant shall list the following occurrences within the previous three years:

(a) Instances of having been denied qualification, or a license, or instances of having been deemed other than responsible by any public agency.

(b) Convictions for felonies listed in WAC 468-16-050.

(c) Failure to complete a contract.

(11) The standard questionnaire shall be processed as follows:

(a) The application for qualification shall be prepared on a standard questionnaire provided by the department and sworn to before a notary public or other person authorized to take oaths.

(b) A standard questionnaire will be reviewed and a written notice provided to the applicant, within (~~thirty~~) 30 days of its receipt, stating whether the applicant has been prequalified or qualification has been denied. The applicant will be advised of lack of receipt of data corroborating project completion and errors or omissions in the questionnaire and a request made for additional information necessary to complete evaluation of the applicant. If the information is not provided within (~~twenty~~) 20 calendar days of the request, the application will be processed, if possible, with the information available or it will be returned to the applicant without further action.

(c) When qualification is denied, the applicant shall be advised in writing by (~~certified mail (return)~~) email (read receipt requested) of the reasons for the denial and of the right to a hearing upon written request.

(d) Applicants not satisfied with the qualification granted may request in writing, a review of their questionnaire and qualification ratings. The request must be filed within (~~thirty~~) 30 calendar days of the date of receipt of the notice of qualification and must specifically state the basis for the request.

(e) The secretary or designee shall advise the applicant of his or her decision on the reconsideration within (~~thirty~~) 30 calendar days of receipt of the request.

(12) Criteria for initial qualification, renewal, and submission of supplemental data:

(a) Qualification may be established in any calendar quarter and must be renewed annually. Information submitted in the questionnaire will be used as a basis for the contractor's initial prequalification, work class ratings, and maximum capacity ratings. Qualification will be valid for the remainder of the applicant's fiscal year plus two calendar quarters as established by the date of the year-end financial statement. Prequalification will be renewed annually thereafter or at other times as designated by the department.

(b) A standard questionnaire from a contractor, not previously qualified under this chapter, must have been received no less than (~~(fifteen)~~) 15 calendar days and prequalification must be granted by the department prior to the scheduled bid opening to receive consideration for issuance of a bidding proposal for that bid opening unless the contract is under (~~(one hundred thousand dollars)~~) \$100,000, in which case the department may waive the (~~(fifteen)~~) 15-day requirement.

(c) The department may, during the period for which the contractor has been prequalified, require the submission of a new standard questionnaire. If the questionnaire is not provided within (~~(thirty)~~) 30 calendar days of the date of request, the notice of qualification held by the contractor will be declared invalid and the contractor will not be permitted to bid with the department until the contractor is again prequalified.

(d) A supplemental questionnaire shall be submitted when a significant change in the structure of the firm occurs, e.g., incorporation, officers, ownership, etc., or when required by the department.

(e) If prequalification has lapsed for more than six months, the applicant will again be required to submit a fully executed standard questionnaire and financial statement.

(f) The applicant shall authorize the department to request and receive such additional information from any sources deemed necessary for the completion of the qualification process.

(g) Inquiries will be made and investigations, if necessary, will be conducted to verify the applicant's statements and to determine eligibility for qualification.

(h) The department may, upon request, require a list of all major items of equipment used to perform those classes of work for which prequalification is sought. The description, quantity, condition, present location, and age of such equipment must be shown. The schedule must show whether the equipment is owned, leased, or rented.

(i) The department may require a personal interview with a principal or principals of the contracting firm when considering its qualification.

(j) Qualified contractors in good standing shall be notified of impending expiration of their qualification and will be provided the necessary questionnaire forms for renewal at least (~~(forty-five)~~) 45 days before the expiration date.

(13) Financial information supplied by, or on behalf of, a contractor for the purpose of qualification under RCW 47.28.070 shall not be made available for public inspection and copying, pursuant to RCW 42.56.270. The foregoing restriction shall not prohibit the department's providing such information in evidence or in pretrial discovery in any court action or administrative hearing involving the department and a contractor. Insofar as permitted by public disclosure statutes, qualification ratings shall be treated as confidential information.

(14) Qualified contractors will be provided with notices which list projects currently being advertised.

AMENDATORY SECTION (Amending WSR 15-01-170, filed 12/23/14, effective 1/23/15)

**WAC 468-16-150 Prime contractor performance reports.** (1) Performance reports described in this section, substantially in the format as that appearing at WAC 468-16-210, will be completed for prime contractors only for projects valued at (~~one hundred thousand dollars~~) \$100,000 or more. Each prime contractor's performance report will be classified as to the primary work class being rated. This shall be stated in Section I of the report by listing the major classes of work performed by the contractor e.g., clearing, grading, surfacing, etc.

(2) Performance will be rated under the following headings: Administration, management, and supervision; quality of work; progress of work; and compliance with laws and contract requirements.

(3) The following adjectival ratings are established for performance reports:

- |                    |         |
|--------------------|---------|
| (a) Superior       | 131-150 |
| (b) Above standard | 101-130 |
| (c) Standard       | 100     |
| (d) Below standard | 70-99   |
| (e) Inadequate     | 50-69   |

(4) The performance report shall be used in evaluating a contractor's prequalification status.

(5) The report shall contain a narrative section which verbally provides the details substantiating the numerical rating. The narrative section shall be based upon documentation prepared during the life of the project, such as the project engineer's diary, the inspector's daily report and other pertinent documents. This documentation shall constitute the major portion of the administrative record to be used for any hearings or litigation that may arise from the rating process.

(6) The performance report will be prepared and discussion held with the contractor by the project engineer. The report will include a numerical rating substantiated by a narrative report which describes the contractor's typical performance. The narrative will reference such documents as will substantiate the given numerical rating.

(7) The report will be endorsed by the region operations engineer or designated assistant who will provide a copy to the contractor.

(8) The contractor may appeal the rating to the region administrator in writing within (~~twenty~~) 20 calendar days of the date the report is received by the contractor. If the report is not delivered to the contractor in person, it shall be forwarded by (~~certified mail~~) email with a (~~return~~) delivery receipt and read receipt requested to the contractor's representative who signed the contract. The appeal must set forth the specific basis upon which it has been made.

(9) The region administrator or designated assistant will review all contractor performance reports after they have been endorsed and



may modify the numerical or narrative rating if such is deemed appropriate. The contractor will be advised of any changes made. The region administrator will be required to make comments thereon only when the contractor's overall performance rating has been rated inadequate, below standard, or superior.

(10) Performance reports, when completed at region level, will be submitted to the secretary, Attn: Manager, contractor prequalification office, not later than (~~forty-five~~) 45 calendar days following final completion of the project.

(11) The region administrator or designated assistant shall review the appeal and provide a written response to the contractor by (~~certified mail (return)~~) email (read receipt requested) within (~~twenty~~) 20 calendar days of its receipt. A copy of the appeal and the response thereto will be forwarded to the secretary, Attn: Contract advertisements and award office.

(12) The contractor may further appeal to the secretary in writing setting forth the specific basis for the appeal. The contractor's appeal shall be made within (~~ten~~) 10 calendar days of the date of receipt of the region administrator's response. When making an appeal, the contractor may also present information in person. The secretary will consider the appeal and respond to it by (~~certified mail~~) email (read receipt requested) within (~~sixty~~) 60 calendar days of its receipt. This determination shall be the final administrative act of the department.

(13) All prime contractor performance reports shall be reviewed by the office of the secretary for completeness, objectivity, and substantiation of numerical ratings. The secretary may modify the report as deemed appropriate as a result of the review. The rated contractor and region administrator shall be given a copy of the modified report. The contractor may appeal the modified report in the manner and within the time allotted in subsection (12) of this section to which the secretary shall respond as cited therein.

(14) A prime contractor performance report shall be considered a preliminary paper until all reviews and appeals have been accomplished and it shall have been stamped and initialed as having been "filed in the office of the secretary."

(15) DOT Form 421-010 is authorized.

AMENDATORY SECTION (Amending WSR 15-01-170, filed 12/23/14, effective 1/23/15)

**WAC 468-16-180 Suspension of qualification.** (1) A suspension may be ordered for cause or for a period pending the completion of investigation and any ensuing legal action for revocation of qualification.

(2) The secretary may, upon determination from reports, other documents, or through investigation that cause exists to suspend the qualification of a contractor, impose suspension upon a contractor.

(3) The secretary may suspend qualification for:

(a) Incompetency found detrimental to timely project completion or to the safety of the public or employees.

(b) Inadequate performance on one or more projects.

(c) Infractions of rules, regulations, specifications, and instructions which may adversely affect public health, welfare, and safety.

(d) Uncompleted work which might prevent the prompt completion of other work.

(e) A finding of noncompliance and refusal to agree to take corrective action, and/or failure to implement agreed upon corrective action to comply with equal employment opportunity, small, women's, minority ((and)), disadvantaged business enterprise, and veteran-owned business requirements or state apprentice utilization requirements.

(f) Repeated findings of noncompliance (two or more) with equal employment opportunity, small, women's, minority, ((and)) disadvantaged business enterprise, and veteran-owned business requirements or state apprentice utilization requirements.

(g) Debarment or suspension from participation in federal or state projects.

(h) Pending completion of debarment proceedings in federal or state projects.

(4) The minimum periods of suspension for acts or deficiencies enumerated above are as follows:

(a) For subsection (3)(a) and (e) of this section - Three months.

(b) For subsection (3)(b), (c), (d), and (f) of this section - Six months.

(c) For subsection (3)(g) of this section - For duration of debarment or suspension by the federal or other state agency.

(d) For subsection (3)(h) of this section - Until a determination is made by the federal or other state agency.

(5) The secretary may reduce the period of suspension upon the contractor's supported request for reasons including, but not limited to:

(a) Newly discovered evidence;

(b) Elimination of causes for which the suspension was imposed.

AMENDATORY SECTION (Amending WSR 93-03-020, filed 1/12/93, effective 2/12/93)

**WAC 468-16-190 Revocation of qualification.** (1) The secretary, upon determination from reports, other documents, or investigation that cause exists to revoke the qualification of a contractor, may revoke the contractor's qualifications for a maximum period of two years.

(2) The secretary may revoke the qualification of a contractor upon a plea by the firm of nolo contendere, conviction, judgment, or admission for any of the following causes:

(a) Existence of any condition cited in WAC 468-16-050.

(b) Intentional falsification with intent to defraud or unauthorized destruction of project related records.

(3) Revocation of qualification may also be imposed for the following reasons:

(a) Default on a contract within three years prior to the date of application for qualification.

(b) Bankruptcy or insolvency.

(c) Breach of contract.

(d) Having been suspended two or more times within a two-year period.

(4) When qualification has been revoked, a contractor shall be required to reapply for qualification upon again reaching eligibility status.

(5) Revocation of qualification shall be final after ~~((twenty))~~ 20 calendar days following the read receipt of the email notification ~~((thereof by certified mail))~~, unless a hearing has been requested.

(6) The secretary may reverse the decision to revoke qualifications upon the contractor's supported request for reasons including, but not limited to:

(a) Newly discovered evidence;

(b) Reversal of the conviction or judgment upon which the revocation was based; and

(c) Elimination of causes for which the revocation was imposed.

AMENDATORY SECTION (Amending WSR 15-01-170, filed 12/23/14, effective 1/23/15)

**WAC 468-16-200 Hearings procedure.** (1) A contracting firm which has been notified by the secretary that the department is contemplating suspending or revoking its qualification, may request in writing within ~~((twenty))~~ 20 calendar days of the date of notification by ~~((certified mail))~~ email, that a hearing be conducted. Unless the department is otherwise prohibited from contracting with the contractor, the suspension or revocation shall not become effective until the final decision of the secretary has been rendered. The hearing shall be conducted in accordance with the procedure set forth in this section.

(2) The secretary shall designate a hearing official to conduct any hearing held under this chapter. The hearing official shall furnish written notice by ~~((certified mail))~~ email with a read receipt of a hearing to the contractor and any named affiliates at least ~~((twenty))~~ 20 calendar days before the effective date of suspension or revocation of qualifications. The notice shall state:

(a) That suspension or revocation of qualification is being considered.

(b) The effective date of the proposed action.

(c) The facts giving cause for the proposed action.

(d) The cause or causes relied upon for proposing the action, i.e., fraud, statutory violations, etc.

(e) If suspension is proposed, the duration of the suspension.

(f) That the contractor may, within ~~((twenty))~~ 20 calendar days of receipt of the notice, submit to the hearing official by ~~((certified mail, return))~~ email, read receipt requested, information and argument in opposition to or in clarification of the proposed action.

(g) When the action is based on a conviction, judgment, or admission, fact-finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the suspension or revocation is based or whether the causes relied upon for proposing suspension or revocation exist.

(h) The time, place, and date of the hearing.

(i) The name and ~~((mailing))~~ email address of the hearing official.

(j) That proposals shall not be issued nor contracts awarded to the contractor subsequent to the dispatch of the notice of hearing pending the final decision of the secretary.

(3) The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended beyond (~~forty-five~~) 45 calendar days from the date of the notice of the hearing. The hearing official shall schedule and conduct the hearing within (~~thirty~~) 30 calendar days of the date of the notice, except when an extension is granted as provided in this subsection.

(4) In the course of the hearing, the hearing official shall:

(a) Regulate the course and scheduling of the hearings;

(b) Rule on offers of proof, receipt of relevant evidence, and acceptance of proof and evidence as part of the record;

(c) Take action necessary to insure an orderly hearing; and

(d) At the conclusion of the hearing, issue written findings of fact and recommended administrative action to the secretary. The hearing officer shall deliver the entire record to the secretary.

(5) The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-examine all witnesses. A transcribed or taped record shall be made of the hearing unless the secretary and the contractor waive the transcript or taping requirement. The transcript or tape shall be made available, at cost, to the contractor and all named affiliates upon request.

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this chapter, that the named contractor has engaged in conduct described in WAC 468-16-050 and the sole issue before the hearing official is the appropriateness of revocation of qualification or the length of suspension of qualification to be recommended to the secretary, prior judicial or administrative decision or findings shall not be subject to collateral attack.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the contractor of his determination in writing.

Upon denial, suspension or revocation of prequalification, the respondent may appeal therefrom to the superior court of Thurston County pursuant to RCW 47.28.070. If the appeal is not made within the time prescribed in that statute, the department's action shall be conclusive.

AMENDATORY SECTION (Amending WSR 15-01-170, filed 12/23/14, effective 1/23/15)

**WAC 468-16-210 Prime contractor performance report.** (1) The evaluation of contractor performance shall be made on a form substantially in the format as illustrated herein.

(2) A *Prime Contractor Performance Report Manual* provides detailed instructions for preparation of the prime contractor performance report.

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## Prime Contractor Performance Report Instructions

The Prime Contractor Performance Report, DOT Form 421-010, consists of two parts — page 1 and page 2. Page 1 consists of Sections I, II, and III. Page 2 consists of Sections IV and V.

### Section I CONTRACTOR DATA

This section denotes the type report being submitted and provides data relating to the contracting firm, its status and supervisors. Interim reports must be submitted annually on the anniversary of the project start date for all projects exceeding a duration of one year.

### Section II PROJECT DATA

This section provides basic project data to assist those reviewing or otherwise using the report to place this evaluation in proper perspective with regard to project size, costs, complexity, and completion time. Under Work Class Performed by Contractor, list that work using the general headings in the description of project documents (e.g., preparation, grading, structure, asphalt concrete paving, etc.)

### Section III NUMERICAL RATING

This section contains the four weighted rating areas of (A) Administration/Management and Supervision, (Q) Quality of Work, (P) Progress of Work, and (C) Compliance with Laws and Contract Requirements. Each area contains statements which are weighted as to their importance within the rating area. The rater must consult the Prime Contractor Performance Report Manual (M 41-40) for criteria used for rating contractor performance. There is only one value for the rating of standard. If more space is needed, use additional blank sheets.

\* Shaded areas indicate the range of Inadequate and Superior ratings. Unshaded areas indicate Below Standard and Above Standard ranges, which are separated by a line representing a standard rating.

### Section IV NARRATIVE RATING

This section is divided into three parts.

- A General Elements — Make any general statements pertinent to reporting the contractor's work activity, e.g., innovativeness in performing the work and any other noteworthy contractor activities.
- B Below Standard Elements — List any actions or activities which substantiate a numerical rating for each statement falling within the range of inadequate or below standard. Each comment must be correlated to identify the rating area and statement number. Each comment must be related to substantiating data reported during the life of the project in the Inspector's Daily Report, Project Engineer's Diary, correspondence, or other pertinent records. This data must be available as a part of the administrative record in the event of hearings or litigation.
- C Superior Elements — Make supportive comments for superior ratings. Substantiation by recorded data should be available in the form of reports, letters, and other documents if not included in diaries and journals.

Comments made in response to B and C above should make reference to documented activities that describe the typical performance of the contractor.

### Section V REVIEW AND AUTHENTICATION

This section provides for the recording of the review and authentication of the report by the rater, endorser, and reviewer. Its purpose is to verify that the contractor has been given a copy of the report and that the contractor is aware of his right to appeal. It also serves the purpose of verifying that the report has been reviewed for the purposes of assuring objectivity in its preparation and for the elimination of the influences of personalities. The report will be reviewed by the Region Administrator. The Region Administrator will enter narrative comments thereon only when the contractor's overall performance has been rated below standard, inadequate, or superior. The completed report is to be forwarded to the Secretary (Attn: Prequalification Branch) to arrive not later than 45 calendar days after project completion.

## Prime Contractor Performance Report Instructions

The Prime Contractor Performance Report, DOT Form 421-010, consists of two parts — page 1 and page 2. Page 1 consists of Sections I, II, and III. Page 2 consists of Sections IV and V. The electronic form is optimized for use with Adobe Acrobat. Do not use AdobeSign to complete or route the form for signature.

1. PE completes Sections I – IV in strict conformance with the Prime Contractor Performance Report Manual (M41-40)
2. PE Send to Contractor and discuss.
3. PE sign electronically and transmit to Region. It is recommended to use Adobe Acrobat for signing. Do not lock the form when signing.
4. Region Operations Engineer review, sign electronically. Do not lock the form when signing. Print and mail to Contractor via Certified Mail. Retain electronic copy for further processing.
5. Wait 20 days. Respond to protests, as necessary. Make adjustments.
  - a. Adjustments made with strikethrough, adding new text and initials of individual making change.
6. Regional Administrator Sign electronically. Do not lock the form when signing. The form must be unlocked for headquarters use.
7. Transmit to Contract Ad and Award electronically. Distribute copies to PE, RA, and Contractor.

DOT Form 421-010 Distribution: Original - Prequalification Branch Copy - Region Administrator Copy - Project Engineer Copy – Contractor  
Revised 07/2022

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# Prime Contractor Performance Report

Section I Contractor Data			Section II Project Data			
Report Type <input type="checkbox"/> Interim <input type="checkbox"/> Final <input type="checkbox"/> Special	Contractor No. (HQ Use Only)		Region	Contract No. Federal-Aid No.	County	SR
Company Name			Project Title			
Address		Phone No.	Auth. Working Days	Working Days Charged	Work Starting Date	Completion Date
Superintendent		Foreman	Contract Award Amount		Contract Completion Amount	
Work Class Performed by Contractor:						
Description of Work:						

Section III Numerical Rating						
	* Inadequate	* Below Std	Standard	Above Std	* Superior	Rating
<b>A Administration / Management / Supervision</b>						
A1. Supervision/Decision Making/Coordination with Subcontractors and suppliers	3	4	6	8	10	
A2. Submission of Documents and Reports	3	4	6	8	10	
A3. Coordination and Cooperation with Department Personnel on Project Matters	3	4	6	8	10	
A4. Relations with General Public, Other Agencies and Adjacent Contractors	2	4	5	6	7	
A5. Maintenance of Employee Safety Standards	1	1.5	2	2.5	3	
<b>Section A Total</b>	12	17.5	25	32.5	40	
<b>Q Quality of Work</b>						
Q1. Adherence to Plans and Specifications	9	12.5	15	18	21	
Q2. Standards of Workmanship	6	8	10	12.5	15	
Q3. Public Safety and Traffic Control	2	3	4	5	6	
Q4. Environmental Compliance	4	5	6	7	8	
<b>Section Q Total</b>	21	28.5	35	42.5	50	
<b>P Progress of Work</b>						
P1. Completion of project within allotted time	6	8	10	12	14	
P2. Baseline scheduling	2.5	3.5	5	7	8.5	
P3. Weekly look ahead schedule & schedule update	1.5	2.5	4	5.5	7.5	
P4. Number of days from Physical Completion Until contract completion	3	4.5	6	8	10	
<b>Section P Total</b>	13	18.5	25	32.5	40	
<b>C Compliance with Laws and Contract Requirements</b>						
C1. Compliance with EEO, On-the-Job Training and D/M/W/SBE Requirements	1.3	3.5	5	6.5	8	
C2. Compliance with Apprenticeship Requirements	1.3	3.5	5	6	7	
C3. Compliance with Laws, Ordinances and Regulations	1.4	3.5	5	5	5	
<b>Section C Total</b>	4	10.5	15	17.5	20	
<b>Project Total</b>	50	75	100	125	150	

\* Explain any Inadequate, Below Standard, and Superior ratings in Narrative Section (IV)

Performance Score

NOTE: An inadequate or below standard rating in any section shall limit the section total to a standard rating.

DOT Form 421-010 EF  
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Distribution: Original - Prequalification Branch

Copy - Region Administrator

Copy - Project Engineer

Copy - Contractor

HQ Use Only

Page 1 of 2



## Prime Contractor Performance Report

Section I Contractor Data			Section II Project Data			
Report Type <input type="checkbox"/> Interim <input type="checkbox"/> Final <input type="checkbox"/> Special	Contractor No. (HQ Use Only)		Region	Contract No. Federal-Aid No.	County	SR
Company Name			Project Title			
Address		Phone No.	Auth. Working Days	Working Days Charged	Work Starting Date	Contract Completion Date
Superintendent		Foreman	Contract Award Amount		Contract Completion Amount	
Work Class Performed by Contractor:						
Description of Work:						

Section III Numerical Rating						
	* Inadequate	* Below Std	Standard	Above Std	* Superior	Rating
<b>A Administration / Management / Supervision</b>						
A1. Supervision/Decision Making/Coordination with Subcontractors and suppliers	3	4	6	8	10	
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A3. Coordination and Cooperation with Department Personnel on Project Matters	3	4	6	8	10	
A4. Relations with General Public, Other Agencies and Adjacent Contractors	2	4	5	6	7	
A5. Maintenance of Employee Safety Standards	1	1.5	2	2.5	3	
<b>Section A Total</b>	<b>12</b>	<b>17.5</b>	<b>25</b>	<b>32.5</b>	<b>40</b>	
<b>Q Quality of Work</b>						
Q1. Adherence to Plans and Specifications	9	12.5	15	18	21	
Q2. Standards of Workmanship	6	8	10	12.5	15	
Q3. Public Safety and Traffic Control	2	3	4	5	6	
Q4. Environmental Compliance	4	5	6	7	8	
<b>Section Q Total</b>	<b>21</b>	<b>28.5</b>	<b>35</b>	<b>42.5</b>	<b>50</b>	
<b>P Progress of Work</b>						
P1. Completion of project within allotted time	6	8	10	12	14	
P2. Baseline scheduling	2.5	3.5	5	7	8.5	
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P4. Number of days from Physical Completion Until contract completion	3	4.5	6	8	10	
<b>Section P Total</b>	<b>13</b>	<b>18.5</b>	<b>25</b>	<b>32.5</b>	<b>40</b>	
<b>C Compliance with Laws and Contract Requirements</b>						
C1. Compliance with Business Utilization Requirements	1.3	3.5	5	6.5	8	
C2. Compliance with Apprentice and On-the-Job Training Requirements	1.3	3.5	5	6	7	
C3. Compliance with Laws, Ordinances and Regulations	1.4	3.5	5	5	5	
<b>Section C Total</b>	<b>4</b>	<b>10.5</b>	<b>15</b>	<b>17.5</b>	<b>20</b>	
<b>Project Total</b>	<b>50</b>	<b>75</b>	<b>100</b>	<b>125</b>	<b>150</b>	<b>0.00</b>

\* Explain any Inadequate, Below Standard, and Superior ratings in Narrative Section (IV)

Performance Score

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Page 1 of 2



**Section IV Narrative Rating**

**A General Elements** Enter comments that describe the contractor's overall performance and provide background data on the project.

**B Below Standard Elements** Enter comments here to substantiate below standard ratings. (See Instructions)

**C Superior Elements** Enter comments here to substantiate superior ratings. (See Instructions)

**Section V Authentication and Review**

I certify that I have objectively prepared this report basing it upon data contained in available project records and discussed the report with the contractor.

\_\_\_\_\_  
Project Engineer's Name (Print)      Project Engineer's Signature      Date

I have reviewed this report for objectivity and accuracy. I have given a copy of this report to the rated contractor and I have advised the contractor that any appeal must be made within twenty (20) calendar days.

\_\_\_\_\_  
Date Copy Given / Mailed to Contractor

\_\_\_\_\_  
Operations Engineer or Designee's Name (Print)      Operations Engineer or Designee's Signature      Date

I have reviewed this Contractor Performance Report and make the following comments and changes as cited herein or on attached sheets.

\_\_\_\_\_  
Region Administrator's Name (Print)      Region Administrator's Signature      Date

<b>Section IV Narrative Rating</b>
<b>A General Elements</b> Enter comments that describe the contractor's overall performance and provide background data on the project.
<b>B Below Standard Elements</b> Enter comments here to substantiate below standard ratings. (See Instructions)
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