

**SUBCHAPTER 30F - STATE BUILDING COMMISSION CONTRACTOR EVALUATION  
PROCEDURES**

**SECTION .0100 - GENERAL PROVISIONS**

**01 NCAC 30F .0101      AUTHORITY**

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by Public Law to perform a multiplicity of duties with regard to the State's Capital Facilities development and management program. In the specific area of state capital improvement project contractor evaluation, the SBC is empowered to develop procedures for accomplishment of such evaluation.

*History Note:      Authority G.S. 143-135.26(4);  
                          Eff. January 1, 1992;  
                          Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22,  
                          2018.*

**01 NCAC 30F .0102      POLICY**

It is the policy of the SBC to evaluate the work performed by prime contractors for capital improvement projects based on criteria contained herein. Further, it is considered of paramount importance that every state capital improvement project be constructed of a level of quality and adherence to a time schedule in keeping with the contract plans and specifications. It is to this end that individual prime contractor's performance on state capital improvement projects should be fairly and consistently evaluated and such evaluations used as a factor in determining qualifications of prime contractors to bid on future state capital improvement projects. If such evaluations lead to a determination that the level of performance by a contractor so warrants, the contractor may be disqualified from bidding on state capital improvement projects for a specified period of time.

*History Note:      Authority G.S. 143-135.26(4);  
                          Eff. December 1, 1991;  
                          Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22,  
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**01 NCAC 30F .0103      DEFINITIONS**

For purposes of this Subchapter, the following definitions shall apply:

- (1) "Capital Projects Coordinator" means the individual authorized by each funded agency to coordinate all capital improvements projects and related matters with the State Construction Office (SCO) and to represent that agency on all matters presented to the SBC. The individual so designated for purposes of these Rules may have other titles within the individual's agency but shall carry out the duties assigned herein to the Capital Projects Coordinator. Whenever the Capital Projects Coordinator is referenced herein, it shall be understood to include a designated assistant or representative. Concerning evaluation of contractors, the Capital Projects Coordinator is responsible for the agency's evaluation of each phase of the project as well as the overall contractor evaluation.
- (2) "Contractor" means any individual, firm, partnership, corporation, association or other legal entity licensed to perform construction in the State of North Carolina. The contractor evaluation procedure applies to a firm designated as a "prime contractor" and may include contractors receiving awards under the single prime or multiple-prime method of contract bidding and award. The prime contractor shall be responsible for performance of all sub-contractors. Accordingly, the evaluation of the prime contractor will include evaluation of the work of all sub-contractors, required by terms of the contract to be listed by the prime contractor, and all material suppliers.
- (3) "Project Designer" means any individual, firm, partnership, corporation, association or other legal entity licensed to practice architecture, engineering, or landscape architecture in the State of North Carolina.
- (4) "Funded Agency" means the department, agency, authority or office that is named in the legislation appropriating funds for the design and/or construction of a project.
- (5) "Owner's Representative" is an individual appointed by the using agency to represent the using agency on all user-related matters.

- (6) "Using Agency" means the sub-division of the funded agency for whose use the project is to provided. If the funded agency is so subdivided for administrative control, the using agency would be a division, geographically self-contained facility, campus, or similar body, as determined by the administrative head of the funded agency.
- (7) "Scope Statement" means a written description of the capital project that is to be designed and constructed. Normally, the scope statement shall reflect the written project description as contained in the project cost estimate validated by the State Construction Office.
- (8) "Contractor Evaluation Form" is the form to be used for all contractor evaluations. The form, approved by the State Building Commission, is the only approved document for this purpose; the form may be reproduced by agencies as required.

*History Note:* Authority G.S. 143-64.31; 143-135.26;  
Eff. January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## **SECTION .0200 - PROJECT AND CONTRACT INFORMATION**

### **01 NCAC 30F .0201 PROJECT DESCRIPTION**

(a) It shall be the responsibility of each Capital Projects Coordinator, for each Capital Improvements project as defined in G.S. 143-135.27 requiring professional services, to provide the State Construction Office with a written description of the professional services desired, the scope of work, schedule requirements, amount of authorized funds and other appropriate information. This phase of the project development is intended to convey project information.

(b) It shall be the joint responsibility of the Capital Projects Coordinator and Office of State Construction, to the best of their belief and knowledge, to ensure that the contract plans and specifications accurately reflect the description of the work to be performed by each prime contractor. This phase of the project development, intended to convey contract information, which is a sub-set of project information, is critical as the evaluation of the prime contractor's performance will depend in part on the contract requirements clearly delineating the work to be performed and establishing an appropriate time frame for contract completion.

*History Note:* Authority G.S. 143-135.26(4);  
Eff. December 1, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **01 NCAC 30F .0202 PRE-BID CONFERENCES AND SITE REVIEWS**

(a) The Capital Projects Coordinator shall evaluate each assigned project to determine if the complexity of a project warrants conducting one or more pre-bid conferences including site visits. The Capital Projects Coordinator shall be responsible for ensuring that the owner's representatives are familiar with the contract requirements and the consequences of the construction work on the owner.

(b) This step is included as attempts may be made by the owner to request that additional tasks be performed by the contractor to meet the owner's special requirements without the capital projects coordinator's and designer's knowledge and the contract plans and specifications do not contain any provision for these special requirements. Development of any special provisions and a general understanding of the contract requirements are a vital part of the contract process prior to the opening of bids.

*History Note:* Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## **SECTION .0300 - EVALUATION OF CONTRACTORS**

### **01 NCAC 30F .0301 DEFINITIONS**

- (a) "Pre-Bid Phase" is the phase of the contract work prior to receipt of bids. If the pre-bid or site visit meeting is utilized, the interest or participation by a contractor in this phase of the construction process does demonstrate a good faith effort by a prime contractor to understand the project requirements and resolve differences prior to bid opening. For this reason, participation by contractors in this phase does clearly demonstrate an effort on the contractor's part to facilitate the construction process and may, therefore, be evaluated. The Capital Projects Coordinator must be involved in this process.
- (b) "Contract Award Phase" is a period during the award process and includes but is not limited to submission of all documents required for award, including Minority Business Enterprise (MBE) data, bonds, insurance documentation, and the executed contract documents.
- (c) "Construction Phase" is the most critical portion of the work and includes not only field execution of the work but also, as a minimum: project/job site mobilization; shop drawing processing; development of job schedule; coordination/cooperation with other contractors, using agency and designer as appropriate; coordination of the activities of sub-contractors; field supervision; prosecution of the works; adherence to quality standards; and timeliness of response to field conditions or modified job requirements including change order management. The Capital Projects Coordinator must be involved in the construction phase to the degree that meaningful evaluations can be prepared for this phase; this involves Capital Projects Coordinator's attendance at monthly progress meetings or more often if necessary. Attendance at and participation in scheduled progress meetings by prime contractors shall be evaluated; an evaluation shall be performed for contractors who have been assigned project coordinator duties as outlined in the contract.
- (d) "Post Construction Phase" includes but is not limited to the development and completion of the job punch list, assembly of all warranty information and product brochures, and provision of "as built" information. The Capital Projects Coordinator must maintain continuing involvement in the project until final close-out to evaluate the contractor's performance in this final phase.

*History Note: Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30F .0302 OVERALL JOB PERFORMANCE**

- (a) The Capital Projects Coordinator shall determine the contractor's overall performance for the completed project. The overall rating is intended to reflect the performance of the prime contractor(s) in fulfilling the terms of their contract.
- (b) The Capital Projects Coordinator will take into consideration the clarity of the project plans and specifications, any owner's special requirements placed on the project, and other factors such as weather and overall difficulty of the construction in assigning the overall evaluation. Obviously, the terms of the contract including project scheduling, cooperation among prime contractors, and other factors shall be considered. Further, the Capital Projects Coordinator will consider the impact of other factors, outside the contractor's control, on job performance such as owner's or designer's failure to promptly process catalog/material submittals, change orders, or detailed inspections which impinge upon job progress.
- (c) The Capital Projects Coordinator must be involved in the project during the construction phase to adequately provide a meaningful evaluation and shall invite input from the owner's representative and the State Construction Office.
- (d) The project designer shall be offered the opportunity to provide an assessment of the prime contractor(s) at job completion.
- (e) On all multiple prime capital improvement projects, each prime contractor shall be offered the opportunity to provide input concerning the prime contractor being evaluated.
- (f) The Capital Projects Coordinator may also evaluate the work performed by a sub-contractor or material supplier required to be named within the terms of the contract when such evaluation will provide clarification or enhancement of the evaluation assigned to the prime contractor. At the discretion of the Capital Projects Coordinator, input may be invited from any or all sub-contractors or material suppliers required to be named within the terms of the contract. If unsolicited input is received by the Capital Projects Coordinator from a sub-contractor or material supplier required to be named within the terms of the contract, such input may be considered in the evaluation process.
- (g) The Capital Projects Coordinator shall be responsible for the final overall rating, which is a number rounded to one significant digit past the decimal (e.g., 2.5, 3.4, etc.) and shall be listed on the bar line noted as "Overall Rating."

The evaluations for sub-phases of the project are to be completed on the rating form but may show as an "X" or a numerical rating on the line for the sub-phase at the option of the Capital Projects Coordinator. This summary evaluation shall not necessarily reflect a precise numerical averaging of scores for the various project phases but will be generally representative of those scores.

(h) Prior to completion of the final contractor evaluation, the Capital Projects Coordinator shall submit the proposed evaluation to the prime contractor for comment. Comments received from the prime contractor shall be considered by the Capital Projects Coordinator.

(i) To be timely, and useful, contractor evaluation data will be accumulated within 30 days of final project acceptance. At this stage, the Capital Projects Coordinator shall prepare the final contractor evaluation, provide a copy to the prime contractor being evaluated, and submit the final evaluation to the Office of State Construction. The form approved by the SBC shall be used for this purpose.

*History Note: Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30F .0303 INTERIM CONTRACTOR EVALUATION**

The prime contractor(s) may request preparation of an interim evaluation form by the Capital Projects Coordinator or the Capital Projects Coordinator may elect to prepare an interim evaluation. The Capital Projects Coordinator shall seek input from the project designer if an interim evaluation is provided. This interim evaluation is intended to reflect performance to date and should be used as a guidance device for correction of performance prior to the final evaluation.

*History Note: Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30F .0304 SUBMISSION OF FINAL EVALUATION**

The Capital Projects Coordinator shall submit the completed final evaluation to the SCO with a copy to the prime contractor. The prime contractor shall have the opportunity to comment on the evaluation to the SCO with a copy to the Capital Projects Coordinator. These final evaluation comments shall become a part of the final evaluation record. The final contractor evaluation shall be completed and presented to the SCO within 60 days of the project's final acceptance. SCO will monitor the completion of all required evaluations and will not close out a project on which all evaluations have not been performed. If the evaluation is not completed within the prescribed time frame, the SBC may advise SCO to process no further contract awards for an agency until the evaluation is complete. Under such circumstances, the SBC will require the Capital Projects Coordinator to appear before the Commission to explain why the evaluation has not been completed.

*History Note: Authority G.S. 143-135.26(4);  
Eff. December 1, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30F .0305 EVALUATION REVIEW**

(a) SCO shall maintain contractor evaluation data. This data shall be maintained on an individual job basis, and shall also be maintained cumulatively by contractor (based on contractor license number). The contractor evaluation data shall be that information prepared by the Capital Projects Coordinator during the evaluation process set forth in this Subchapter. All numerical ratings shall be given pursuant to Rule .0302 of this Section and shall evaluate those phases of the work set out in Rule .0301 of this Section; the form called for in Rule .0103(8) of this Subchapter shall be used exclusively for this purpose.

(b) The data maintained by the SCO shall reflect performance history for a period of five years. All evaluation data on completed projects over five years old shall be removed from SCO files and shall not be used as a factor in the cumulative evaluation.

(c) A contractor whose cumulative evaluation falls below a mark of 3.5 shall be determined to have provided an unsatisfactory level of performance and may not be allowed to bid on or serve as a sub-contractor on State capital improvement projects during a corrective period. All references to pre-bid disqualification status in this Section shall also be considered to apply to disqualification of a prime contractor to serve as a sub-contractor on State capital improvement projects during the disqualification period.

(d) To be utilized for pre-bid disqualification, a prime contractor's cumulative evaluation must be based on a minimum of three evaluations on at least three separate capital projects. Further, if a contractor is assigned a single final evaluation of 2.5 or lower, this action alone shall be sufficient to call the contractor's performance into question and may result in pre-bid disqualification during a corrective period.

(e) In both instances, i.e., a cumulative mark falling below 3.5 or a single evaluation of 2.5 or lower, the SCO shall convene a panel of five persons to review the evaluation and make a recommendation to the SBC. (A single final evaluation of 2.5 or lower, when applied to the cumulative total, shall not initiate further immediate review if it causes the cumulative rating to fall below 3.5.) The panel shall consist of three design/construction professional State employees of which a minimum of one employee shall be a licensed architect or engineer as appointed by the Director of State Construction and two members of the SBC as appointed by the Chairman of the Commission of which a minimum of one shall be a licensed contractor.

(f) The panel may recommend to the State Building Commission either of the following actions as a result of its review:

- (1) disqualification of the contractor from bidding and placement of the contractor in a pre-bid disqualification status for a corrective period of two years;
- (2) rejection of disqualification but issuance of a warning to the contractor that continued poor performance may result in disqualification.

The SCO shall retain file copies of the ratings, disqualifications and warnings.

(g) In all instances, notification of a contractor having been assigned to a pre-bid disqualification status or having been issued a warning shall be by the Chairman of the State Building Commission and only then after review and approval by the Commission of the disqualification or warning action.

(h) The disqualification as approved by the Commission shall be for a period of two years. The two-year period is intended to provide opportunity for a contractor to implement significant corrective action to improve performance. At the completion of the two-year period, the prime contractor may make application for reinstatement to the qualified bidders list; reinstatement shall be subject to action by the SBC. In the application for reinstatement, the contractor shall set out the improvements that have been made to correct the specific areas in which the contractor was scored below 3.5 in its cumulative evaluation. If the improvements listed and the investigation of the contractor made by the SBC are such that the Commission forecasts the contractor's performance would be 3.5 or above if reinstated, then the SBC shall reinstate the contractor to the qualified bidders list. If the SBC approves reinstatement, the contractor's pre-bid disqualification shall be removed, thus allowing the contractor to bid.

(i) Removal of a contractor from the pre-bid disqualification status, upon approval by the SBC, shall involve deletion of all evaluations from the State Construction Office's records.

(j) If a contractor has been removed from the qualified bidders list by virtue of accumulated evaluations falling below 3.5 and routine removal of five-year old evaluations causes the contractor to achieve an overall evaluation score of 3.5 or higher, the contractor shall not be automatically reinstated to the qualified bidders list but rather must remain in a disqualified status for a total of two years with reinstatement considered by the SBC as outlined in this Rule. If after the two-year corrective period the SBC does not approve removal of a contractor from the pre-bid disqualification status, the prime contractor may reapply after a period of 12 months and annually thereafter until the pre-bid disqualification status is removed.

(k) Lists of all contractors who are in a pre-bid disqualification status shall be maintained by the SCO. Prior to bid opening, the project designer shall obtain from the SCO a list of those contractors in a pre-bid disqualification status and shall ensure that no bids for State capital improvement projects shall be read from a contractor in such status.

*History Note: Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;  
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#### **SECTION .0400 - POST-EVALUATION PROCEDURES**

### **01 NCAC 30F .0401 POST-OCCUPANCY EVALUATION**

Following project close-out, the prime contractor is often required to take remedial action to correct discrepancies which fall under product or construction warranty. While this phase of the project normally proceeds without serious difficulty, Capital Projects Coordinators may at their option, submit a special evaluation during the contract warranty period if circumstances dictate. This special evaluation will involve completion of the optional post-occupancy evaluation portion of the form but will not normally involve re-computation of the evaluation(s) assigned for the previous four phases. A new overall contractor evaluation will be assigned which will take into consideration the previously assigned evaluation. If the post-occupancy contractor evaluation is completed, the contractor being evaluated will be afforded the same opportunity to provide input on the evaluation as was provided on the evaluation made at job construction completion.

*History Note: Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30F .0402 AWARDS PROGRAM**

Capital Projects Coordinators who determine that contractor performance on a completed capital improvement project merits special recognition may nominate the contractor for a Certificate of Merit. Nominations will be made by the Capital Projects Coordinator to the SCO which will screen the nominees and will in turn make appropriate recommendations to the SBC. The SCO may also initiate award recommendations. The SBC will consider all nominations and make final approval of all awards. The State Building Commission shall arrange for presentation of the certificates at a suitable ceremony during a time and place of its own choosing; however, these presentations will normally be made during the annual State Construction Conference. The SCO shall provide staff support to the State Building Commission for this program.

*History Note: Authority G.S. 143-135.26(4);  
Eff. December 1, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30F .0403 APPEALS OF ASSIGNED EVALUATIONS: DISQUALIFICATION FROM BIDDING**

- (a) If a prime contractor considers that the assigned final evaluation is incorrect the prime contractor may appeal the action to the SCO. It is emphasized that this appeal is an appeal to an assigned evaluation score and is separate from an appeal resulting from assignment to a pre-bid disqualification status described in Rule .0305 of this Subchapter.
- (b) To evaluate an appeal of an individual final evaluation, the SCO will appoint and convene a rating panel of five persons of which three will be professional State employees and of the State employees at least one member is a licensed professional architect or engineer to hear the appeal and render a decision. The remaining two members, one of which will be a licensed contractor, are to be from the SBC as appointed by the Chairman. The hearing shall involve, at a minimum, the Capital Projects Coordinator and the owner's representative as well as representatives of the prime contractor who shall appear before the panel and which is open to the public. The SCO hearing panel shall issue a report to the SBC on the hearing and the decision reached.
- (c) If the Capital Projects Coordinator or prime contractor desire further recourse to the initial decision by the SCO on an assigned evaluation or a decision by the SBC concerning disqualification to bid on state capital improvement projects or a decision by the SBC to not reinstate a contractor to the bidders list, the decision may be formally appealed to the Office of Administrative Hearings pursuant to N.C.G.S. 150B.

*History Note: Authority G.S. 143-135.26(4);  
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*