

Readopt with amendment Env-C 500, effective 7-22-14 (Document #10644), to read as follows:CHAPTER Env-C 500 PREQUALIFICATION OF ***LICENSED ENGINEERING FIRMS*** FOR CERTAIN PROJECTS

Statutory Authority: RSA 485-A:4, XIII; RSA 485-A:6, V

PART Env-C 501 PURPOSE AND APPLICABILITY

Env-C 501.01 Purpose. The purpose of the rules in this chapter is to establish the procedures and criteria for ~~consulting-licensed~~ ***licensed engineering firms*** to be listed on the roster of prequalified ***licensed engineering firms*** maintained by the department for ***licensed engineering services firms that provide consulting services for engaged in the planning, design and construction of public*** water supply projects or water pollution control projects, or both, ~~that receive state or federal financial assistance.~~

Env-C 501.02 Applicability. The rules in this chapter shall apply to ~~individuals and consulting~~ ***licensed*** engineering firms that:

- (a) Wish to become prequalified and listed on the roster of prequalified ~~consulting~~ ***licensed*** engineering firms as maintained by the department; or
- (b) Wish to renew a listing on the roster.

PART Env-C 502 DEFINITIONS

Env-C 502.01 “Applicant” means the ~~individual or business organization~~ ***licensed engineering firm*** that is seeking to be listed on the roster or to have an existing listing renewed.

Env-C 502.02 “Board” means the board of professional engineers established by RSA 310-A:3.

Env-C 502.03 “Business organization” means ***any enterprise, whether corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust, or other form of organization; organized for gain or profit, carrying on any business activity within the state, as defined in RSA 310-A:2, I-a*** ~~a general or limited partnership, corporation, limited liability corporation, professional corporation, professional association, or other legal entity that is authorized to do business in the State of New Hampshire.~~

~~Env-C 502.04 “Consulting engineering firm” means a business organization that holds a certificate of authorization from the board under RSA 310-A:20 and is registered with the New Hampshire secretary of state to conduct an engineering services business in the state.~~

Env-C 502.054 “Debarment” means removal of a listed ***licensed engineering firm*** from the roster, including by refusing to renew a listing.

Env-C 502.065 “Department” means the department of environmental services.

Env-C 502.076 “Engineering services” means the report preparation, technical design, construction administration, and resident engineering work that require the ***consulting*** services of a licensed ~~professional~~ ***engineering firm***.

Env-C 502.087 “Firm” means a ~~consulting~~ ***licensed*** engineering firm.

Env-C 502.08 “Licensed engineering firm” means a business organization that holds a certificate of authorization from the board under RSA 310-A:20, reprinted in Appendix B.

Env-C 502.09 “Licensed professional engineer” means an individual who has been licensed by the board under RSA 310-A:18, ***reprinted in Appendix B.***

Env-C 502.10 “Listed ~~engineer~~***firm***” means ~~an individual or~~ ***licensed engineering*** firm that is on the roster.

Env-C 502.11 “New listing” means the inclusion on the roster of ~~an individual or~~ firm that is not on the roster as of the date of the application, regardless of whether the ~~individual or~~ firm has been on any past roster.

Env-C 502.12 “Principal of the applicant” means:

~~(a) For a sole proprietorship, the individual whose business it is;~~

~~—(b) For a general or limited partnership, one of the general partners;~~

~~(c)~~ ***(e)*** For a corporation, including limited liability corporations and professional corporations, the president or a vice president; and

~~(d)~~ ***(e)*** For any other business entity, the individual who has controlling authority or is otherwise equivalent to the chief executive officer.

Env-C 502.13 “Professional competence” means ~~that at least one principal of the applicant meets all of the following criteria:~~

~~(a) Is a licensed professional engineer with a civil or sanitary engineering designation;~~ ***The firm is a multi-disciplinary licensed engineering firm that specializes in providing consulting engineering services for public water supply projects, public water pollution projects, or both as applicable to one or more of the categories set out in Env-503.04(b), below, for which prequalification is sought;***

~~(b) The firm employs at least two full-time qualified project engineers as defined in Env-C 502.14 who have~~ ***Has*** actively practiced engineering in each category for which prequalification is sought for at least ~~the 5 of the 8~~ years immediately prior to filing the application under this chapter;

~~(c) Has at least 5 years of relevant experience;~~

~~(d)~~ ***(e)*** In the last 5 years, ***the firm and its qualified project engineers*** ~~has~~ ***have*** not been subject to disciplinary action by the board for conduct or activities arising from the applicant’s work on projects in any category for which prequalification is sought;

~~(e)~~ ***(f)*** ***The firm and its qualified project engineers*** ~~have~~ ***Has*** not provided any false, incomplete, or misleading information as part of an application for an initial listing as specified in Env-C 503.01 or a renewal listing as specified in Env-C 503.057~~(b)~~;

~~(f)~~ ***(g)*** In the last 5 years, ***the firm*** has not failed to appoint a qualified project engineer for the management of a water supply project or water pollution control project;

~~(g)~~ ***(h)*** In the last 5 years, ***the firm*** has not failed to fulfill the terms of an engineering services contract;

~~(h)~~ ***(i)*** In the last 5 years, ***the firm or its qualified project engineers*** ~~has~~ ***have*** not engaged in unethical conduct as defined by the rules of conduct of the board;

~~(i)~~ ***(j)*** ***The firm*** ~~has~~ ***Has*** submitted all required renewal fees and updated engineer questionnaire forms;

(i) ~~The firm is~~ ***The firm*** is not the subject of a pending enforcement action taken by the department or by the NH department of justice; and

(j) ~~The firm has~~ ***The firm*** has complied with all terms and conditions of any orders, settlement agreements, consent decrees, or other similar documents issued by the department or resulting from an action initiated by the department or by the NH department of justice.

Env-C 502.14 “Qualified project engineer” means a ~~licensed~~ professional engineer, ***as defined in RSA 310-A:2, II, reprinted in Appendix B***, with a civil, ***environmental***, or sanitary engineering designation who holds a bachelor’s degree in engineering and has:

- (a) At least 7 years of relevant experience;
- (b) One year of graduate study in engineering and 6 years of relevant experience; or
- (c) Two years of graduate study in engineering and 5 years of relevant experience.

Env-C 502.15 “Qualifying project” means a project on which ***a qualified project engineer*** ~~the principal of the applicant~~ worked that is represented by the ***as-built project*** plans and specifications ***that include the PE stamp of the qualified project engineer*** submitted with an application to demonstrate the applicant’s capabilities to work in the category for which prequalification is sought.

Env-C 502.16 “Relevant experience” means experience in the design, construction, inspection, and oversight of ***public*** water supply projects or ***public*** water pollution control projects, ***or both***, as applicable to the category for which prequalification is sought.

Env-C 502.17 “Renewal” means the inclusion on the roster of ~~an individual or firm~~ that is on the roster as of the date the renewal application is submitted.

Env-C 502.18 “Roster” means the list maintained by the department that identifies the ~~individuals and firms~~ who have been prequalified pursuant to this chapter ~~and in~~ the particular category for which the ~~individuals and firms~~ are prequalified.

PART Env-C 503 ROSTER: INITIAL LISTING; RENEWAL; DEBARMENT

Env-C 503.01 Requirements for New Listing. An applicant for a new listing shall ***provide*** ~~submit~~ the following to the department:

(a) ***Complete and submit electronically the "NHDES Roster of Prequalified Licensed Engineering Firms Application - New and Renewals" form, NHDES-W-09-005, March 2024, available at <https://onlineforms.nh.gov/?formtag=NHDES-W-09-005>*** ~~The original and 2 copies of a completed prequalification application as specified in Env-C 503.02 that has been signed as specified in Env-C 503.03;~~

(b) ***At least one qualifying project per each qualifying project engineer, minimum two per set of plans, specifications, and reports related to a successfully completed project in each category for which the applicant is applying;***

(c) ***Project promotion sheets for all projects submitted pursuant to Env-C 503.01(b), above;***

(d) ***Professional resumes for each qualifying project engineer listed;***

(e) The application fee required by RSA 485-A:4, XIII, ***as reprinted in Appendix B*** ~~which if paid by check or money order shall be payable to “Treasurer, State of New Hampshire”;~~ and

~~(d)~~ For an applicant that is a business organization, a copy of:

~~(1)~~ The firm's certificate of good standing from the New Hampshire secretary of state; ~~and~~

~~(2g)~~ The ***firm's*** certificate of registration issued by the board pursuant to RSA 310-A:20 which authorizes the firm as an engineering services business ***organization*** in New Hampshire; ~~and-~~

(h) The applicant shall sign the application as specified in Env-C 503.02.

~~Env C 503.02 Application for New Listing.~~

~~—(a) The applicant for a new listing shall provide the following information on a form obtained from the department:~~

~~(1) The full legal name of the applicant;~~

~~(2) Whether the applicant is an individual or business organization and, if a business organization, the type of business organization;~~

~~(3) The category, as listed in Env C 503.06(b), for which the applicant is seeking to be prequalified;~~

~~(4) The following contact information:~~

~~a. The location of the applicant's office, by number, street, suite number, city, and state;~~

~~b. The applicant's mailing address, including zip code;~~

~~c. The applicant's daytime telephone number, including area code;~~

~~d. The applicant's fax number, including area code, if any;~~

~~e. The applicant's email address, if any;~~

~~f. If the applicant is not an individual, the name and information specified in b. through e., above, for a principal of the applicant;~~

~~(5) The following information about the applicant's business:~~

~~a. Whether the applicant has a web site and, if so, the URL of the web site;~~

~~b. The name and title of each principal of the applicant; and~~

~~c. The name, title, N.H. professional engineer registration number, and number of years of relevant experience of each principal or employee of the applicant who is qualified to be a qualified project engineer; and~~

~~(6) Subject to (b), below, for the project represented by the plans, specifications, and reports submitted pursuant to Env C 503.01(b), the:~~

~~a. Location of the project;~~

- ~~b. Type of project;~~
- ~~c. Year completed; and~~
- ~~d. Construction cost of the project.~~

~~— (b) The department shall accept the information specified in (a)(6), above, for one or more projects not related to the project represented by the plans, specifications, and reports submitted pursuant to Env-C 503.01(b) if the applicant demonstrates that the information on the project submitted is not available due to the work having been done by a firm with which the applicant is no longer associated.~~

Env-C 503.032 Signature Required.

(a) A principal of the applicant shall ~~print his or her name on,~~ sign, and date the prequalification application or renewal application, as applicable.

(b) The signature shall constitute certification that:

(1) The information ~~provided on or with the application form~~ is true, complete, and not misleading ***to the best of the applicant's knowledge and belief***~~to the knowledge and belief of the signer;~~

(2) The signer ~~understands~~ ***firmly acknowledges*** that:

a. ~~The~~ submission of false, incomplete, or misleading information is grounds for denying the application, ***renewal***, or ***for*** revoking any roster listing that is made based on such information; ~~and~~

b. ~~The applicant is subject to the penalties for making unsworn false statements specified in RSA 641:3 or any successor New Hampshire statute; and~~

(3) If the applicant is added to or continued on the roster, the applicant will comply with Env-C 500, ***ENG 501 Ethical Standards, and Env-Wq 500, Env-Wq 700, and Env-Dw 400 rules as applicable*** and all other applicable requirements relative to submittal of plans to the department for approval; ***and***

(4) The applicant will only provide consulting services for which its qualifying project engineers have demonstrated professional competence.

Env-C 503.043 Review of Applications for New Listing; Decisions.

(a) Upon receiving an application for a new listing, the department shall review it to determine whether it contains everything required by Env-C 503.01.

(b) If the submission does not contain everything required by Env-C 503.01, the department shall notify the applicant ~~in writing~~ within 150 ~~working~~ ***calendar*** days of what is missing.

(c) The department shall:

(1) ~~Review~~ each application for a new listing within ~~30~~ ***calendar*** ~~working~~ days of receipt of a complete application; ~~and~~

(2) ~~Meet with the principal of the applicant who signed the application to review the application and the information provided.~~

~~—(d) The department shall notify the applicant for a new listing in writing of its decision on the application within 20 days of the meeting held pursuant to (c)(2), above.~~

(~~d~~e) The department shall approve the application for a new listing if, based on the information provided by the applicant or otherwise available to the department:

- (1) The applicant demonstrates professional competence in each category for which prequalification is sought; and
- (2) The department is not aware of any basis for debarment as specified in Env-C 503.407.

(~~e~~f) If the department denies the application, the written notice shall specify the reason(s) for the denial.

Env-C 503.054 Roster.

(a) The department shall:

- (1) Maintain a current roster; and
- (2) Publish the ***current*** roster on its website ~~at least twice each year.~~

(b) The roster shall list the ~~consulting engineering~~ firms as being prequalified for one of the following 4 categories:

- (1) Category 1, water supply engineering, including water treatment;
- (2) Category 2, water pollution control engineering, including wastewater treatment;
- (3) Category 3, water or wastewater piping systems, including pumping; and
- (4) Category 4, all of the foregoing 3 categories.

(c) The categories above are broad and as such listed firms must act ethically and only accept and perform work in which its qualifying project engineers have demonstrated professional competence.

Env-C 503.065 Duration of Listing; Renewal Application.

(a) ~~An individual or~~ firm whose application for a new listing is approved shall be listed on the roster for the time period specified in table ~~6503-1~~, below:

Table 6503-1: Duration of New Listing

Application Approved:	Listing Valid For:
January 1 through June 30	Remainder of calendar year in which approved
July 1 through December 31	Through December 31 of calendar year following year of approval

(b) To remain on the roster, a listed ~~engineer~~***firm*** shall ~~provide~~***submit*** to the ***following to the*** department, by October 31 of the year in which ~~the~~***its*** listing will expire:

- (1) ***Complete and submit electronically the "NHDES Roster of Prequalified Licensed Engineering Firms Application - New and Renewals" form, NHDES-W-09-005, March 2024, available at <https://onlineforms.nh.gov/?formtag=NHDES-W-09-005>*** ~~The original and 2 copies of~~

a completed application for renewal of listing as specified in Env-C 503.08 that has been signed as specified in Env-C 503.03;

~~(2) If the listed engineer is seeking to be pre-qualified in an additional category, a set of plans, specifications, and reports related to a successfully completed project in the new category;~~

~~(3) The **renewal** fee required by RSA 485-A:4, XIII, **as reprinted in Appendix B** which if paid by check or money order shall be payable to "Treasurer — State of New Hampshire"; and~~

~~(43) For an applicant that is a business organization, a copy of:~~

~~a.—The firm's certificate of good standing from the New Hampshire secretary of state; and~~

~~(4)b. The **firm's** certificate of registration issued by the board pursuant to RSA 310-A:20 which authorizes the firm as an engineering services business **organization** in New Hampshire; and~~

~~(5) **The applicant shall sign the application as specified in Env-C 503.02.**~~

(c) If the firm is seeking to be pre-qualified in an additional category, a new application shall be submitted in accordance with Env-C 503.01, above.

~~— Env-C 503.07 Application for Renewal of Listing.~~

~~— (a) The applicant for a renewal of an existing listing shall provide the following information on a form obtained from the department:~~

~~(1) The full legal name of the applicant;~~

~~(2) Whether the applicant is an individual or business organization and, if a business organization, the type of business organization;~~

~~(3) The category(ies) for which the applicant currently is listed and any changes the applicant wishes to make to those categories;~~

~~(4) The following contact information:~~

~~a. The location of the applicant's office, by number, street, suite number, city, and state;~~

~~b. The applicant's mailing address, including zip code;~~

~~c. The applicant's daytime telephone number, including area code;~~

~~d. The applicant's fax number, including area code, if any;~~

~~e. The applicant's email address, if any;~~

~~f. If the applicant is not an individual, the name and information specified in b. through d., above, for a principal of the applicant;~~

~~(5) The following information about the applicant's business:~~

~~a. Whether the applicant has a web site and, if so, the URL of the web site;~~

~~b. Any changes in the name(s) and title(s) of the principal(s) of the applicant; and~~

~~c. Any changes in the name, title, N.H. professional engineer registration number, and number of years of relevant experience of each principal or employee of the applicant who is qualified to be a qualified project engineer; and~~

~~(6) Subject to (b), below, if the applicant is seeking to be prequalified in an additional category, the following information for the project represented by the plans, specifications, and reports submitted pursuant to Env-C 503.07(b)(2):~~

~~a. Location of the project;~~

~~b. Type of project;~~

~~c. Year completed; and~~

~~d. Construction cost of the project.~~

~~—(b) The department shall accept the information specified in (a)(6), above, for one or more projects not related to the project represented by the plans, specifications, and reports submitted pursuant to Env-C 503.07(b)(2) if the applicant demonstrates that the information on the project submitted is not available due to the work having been done by a firm with which the applicant is no longer associated.~~

Env-C 503.086 Review of Applications for Renewal Listing; Decisions.

(a) Upon receiving an application to renew a listing, the department shall review it to determine whether it contains everything required by Env-C 503.057(b).

(b) If the submission does not contain everything required by Env-C 503.057(b), the department shall notify the applicant in writing within 150 ~~calendar~~*working* days of what is missing.

(c) The department shall review each application to renew a listing within 130 ~~calendar~~*working* days of receipt of a complete application to renew a listing.

(d) The department shall renew the applicant's listing if:

(1) The information submitted by the applicant demonstrates that the applicant continues to be qualified to be listed on the roster; and

(2) The department is not aware of any basis for debarment as specified in Env-C 503.407.

(e) If the department becomes aware of any basis for debarment as specified in Env-C 503.407 after receiving a renewal application but prior to making a decision on the application, the department shall ~~notify the applicant by commencing a proceeding in accordance with Env-C 503.10~~*refuse to renew the applicant on the roster.*

Env-C 503.097 Debarment.

(a) Any listing on the roster shall be based on the presumptions that:

(1) The information submitted to obtain the listing ~~is~~*remains* true, complete, and not misleading; and

(2) The applicant ***continues to*** meets the criteria for professional competence as specified in Env-C 502.13.

(b) After listing ~~an individual or firm on the roster or while an application to renew a listing is pending~~, if the department receives information indicating that the information upon which the listing was based was false, incomplete, or misleading or that the ~~individual or firm~~ no longer meets the criteria of Env-C 502.13, the department shall initiate an adjudicative proceeding pursuant to the applicable provisions of RSA 541-A and Env-C 200 to determine whether the ~~individual or firm~~ should be debarred or suspended from being listed.

(c) The department shall debar the ~~individual or firm~~ if, as a result of the adjudicative proceeding, the department determines that:

(1) The ~~individual or firm~~ would not have been listed on the roster if the information submitted had been true, complete, and not misleading because information that was true, complete, and not misleading would not have supported a finding that the applicant met the criteria for professional competence; and

(2) The ~~individual or firm~~ cannot cure the deficiencies so as to demonstrate professional competence.

(d) The department shall remove the ~~individual or firm~~ from the roster subject to reinstatement as specified in (f), below, if the department determines that:

(1) The ~~individual or firm~~ would have been listed on the roster if the information submitted had been true, complete, and not misleading because information that was true, complete, and not misleading would have supported a finding that the applicant met the criteria for professional competence; and

(2) The ~~individual or firm~~ can cure the deficiencies so as to demonstrate professional competence.

(e) The department shall notify the ~~individual or firm~~ in writing of its decision. If the decision is to suspend, revoke, or refuse to renew the listing, the department shall specify the reason(s) for the decision.

(f) If a listing is suspended pursuant to (d), above, the department shall reinstate the ~~individual or firm~~ on the roster upon receiving proof from the ~~individual or firm~~ that ~~the deficiencies have been cured~~ ***it can demonstrate professional competence.***

(g) Any ~~individual or firm~~ debarred pursuant to this section may apply to be listed on the roster no sooner than 3 years from the date of debarment.

Env-C 503.408 Appeal.

(a) Any ~~individual or firm~~ whose application for a new listing is denied may appeal the decision as a permitting decision under RSA 21-O:14.

(b) Any listed ~~engineer who~~ ***firm that*** is debarred ***or suspended*** pursuant to Env-C 503.407 may appeal the decision as an enforcement decision under RSA 21-O:14.

PART Env-C 504 PROCUREMENT OF ENGINEERING SERVICES FOR CERTAIN PROJECTS

Env-C 504.01 Procedures. The procedures for procuring engineering services for projects that obtain state or federal funding for a water supply project or a water pollution control project shall be as specified in:

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- (a) Env-Dw 1100 for water supply projects; and
- (b) Env-Wq 500 for water pollution control projects.

APPENDIX A: STATUTES IMPLEMENTED

Rule Section(s)	State Statute(s) Implemented
Env-C 500	RSA 485-A:4, XIII

APPENDIX B: RELEVANT STATUTES

RSA 485-A:4 Duties of Department. – It shall be the duty of the department and the department is authorized:

...

XIII. To establish rules governing the prequalification of consulting engineers employed in the planning and construction of public water supply and pollution control projects. Any licensed engineering firm seeking initial prequalification shall pay to the department a fee of \$200. Prequalification shall be renewed annually and shall be accompanied by a \$50 renewal fee. These fees shall be deposited with the state treasurer as unrestricted revenue. The department is further empowered to prescribe the contract award procedures to be followed in the awarding of construction contracts involving state financial assistance.

RSA 310-A:2 Definitions. – As used in this subdivision:

...

I-a. "Business organization" means any enterprise, whether corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust, or other form of organization; organized for gain or profit, carrying on any business activity within the state.

II. "Professional engineer" means a person who by reason of advanced knowledge of mathematics and the physical sciences, acquired by professional education and practical experience, is technically and legally qualified to practice engineering, and who is licensed by the board or otherwise authorized by this subdivision to engage in the practice of engineering.

RSA 310-A:18 Certificates; Seals. – The board shall issue a license, upon payment of the registration fee established by the office of professional licensure and certification, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this subdivision. Licenses shall show the full name of the licensee and have a serial number. The issuance of a license by the board shall be prima facie evidence that the person named in the license is entitled to all the rights and privileges of a licensed professional engineer while the license remains valid. Each licensee shall upon licensure obtain a seal of the design authorized by the board, bearing the registrant's name and the legend, "Licensed Professional Engineer." All papers or documents involving the practice of engineering under this subdivision, when issued or filed for public record, shall be dated and bear the signature and seal of the licensed professional engineer who prepared or had responsibility for and approved them. It shall be a class B misdemeanor for the licensee to stamp or seal any documents with such seal after the license of the licensee has expired or has been revoked, unless such license shall have been renewed or reissued.

Text deleted from existing rules shown ~~struck through~~

RSA 310-A:20 Engineering Certificates for Business Organizations. –

I. The practice of or offer to practice professional engineering for others by individual engineers licensed under this subdivision through a business organization as officers, partners, associates, employees, or agents is permitted, subject to the provisions of this subdivision; provided that:

(a) One or more of the corporate officers, of a corporation or one or more general partners, or associates is designated as being responsible for the engineering activities and engineering decisions of the business organization, and is a licensed engineer under this subdivision.

(b) All personnel of the business organization who act in its behalf as professional engineers are licensed under this subdivision.

(c) The business organization has been issued a certificate of authorization by the board, as provided in this section.

II. The requirements of this subdivision shall not affect a business organization or its employees in performing services for such business organization or its subsidiary or affiliated business organizations. All final drawings, specifications, plans, reports, or other engineering papers or documents involving the practice of engineering, when issued or filed for public record, shall be dated, and bear the signature and seal of the professional engineer who prepared them or under whose direct supervisory control they were prepared.

III. A business organization desiring a certificate of authorization shall file with the board an application, using a form provided by the board, listing the names and addresses of all officers and board members, general and limited partners, associates, and any individuals duly licensed to practice engineering in this state who shall be in responsible charge of the practice of engineering in this state through the business organization, and any other information required by the board. The same form, giving the same information, must accompany the annual renewal fee. If there is a change in any of these persons during the year, such change shall be designated on the same form and filed with the board within 30 days after the effective date of such change. If all requirements of this section are met, the board shall issue a certificate of authorization to such business organization, and such business organization shall be authorized to contract for and to collect fees for furnishing engineering services.

IV. No business organization shall be relieved of responsibility for the conduct or acts of its agents, employees, officers, or partners, by reason of its compliance with the provisions of this section, nor shall any individual practicing engineering be relieved of responsibility for engineering services performed by reason of such individual's employment by or relationship with such business organization.

V. The secretary of state shall not issue a certificate of incorporation to an applicant for incorporation or for registration as a foreign business organization which includes the words "Engineer" or "Engineering" or any modification or derivative thereof in its corporate or business name or which includes the practice of engineering among the objects for which it is established unless the board shall have issued, with respect to such applicant, a certificate of authorization or eligibility for authorization, a copy of which shall have been presented to the secretary of state. Similarly, the secretary of state, after a reasonable transition period, shall decline to register any trade name or service mark which includes such words or modifications or derivatives thereof in its firm or business name except to partnerships, sole proprietorships and associations holding certificates of registration or authorization issued under the provisions of this subdivision, a copy of which shall likewise have been presented to the secretary of state. However, the requirements of this subdivision shall not apply to any business formed and registered with the secretary of state prior to January 1, 1999, which uses the words "Engineer" or "Engineering" or any modification or derivative thereof in its corporate or business name, and which does not perform or require the services of a professional engineer.

VI. A professional engineer who renders occasional, part-time or consulting engineering services to or for a business organization may not, for the purposes of this subdivision, be designated as being responsible for the engineering activities and decisions of such business organization.