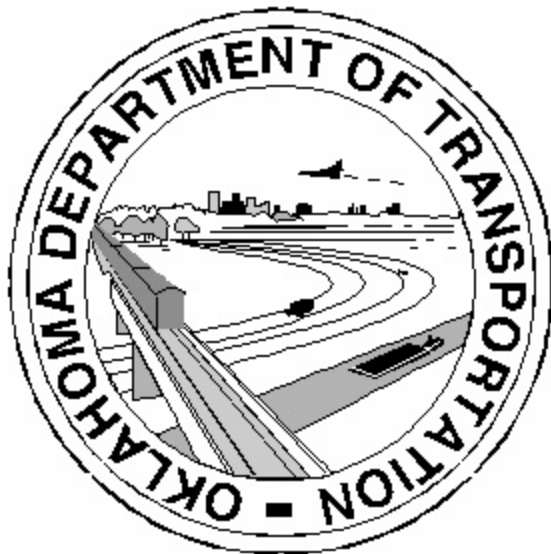


OKLAHOMA DEPARTMENT OF TRANSPORTATION



Contractor's Prequalification Application

Submitted by (Company Name): _____

The name as indicated herein, must conform in all respects to the name of the contractor referred to in the Audited Financial Statement, and the name to be included on potential contractual agreements with the Department.

Federal Employer Identification No. _____

Address _____ City _____

State _____ Zip Code _____

email _____

Telephone No. _____ Fax No. _____

Date of Statement _____ 20 _____

MAIL TO:
OFFICE ENGINEER DIVISION
OKLAHOMA DEPARTMENT OF TRANSPORTATION
200 NE 21ST STREET
OKLAHOMA CITY, OK 73105
(405)521-2625

INSTRUCTIONS FOR FILING PREQUALIFICATION APPLICATION

This application is to be filed with the Office Engineer, Oklahoma Department of Transportation (hereafter called ODOT) for the purpose of qualifying to bid on construction projects. Information contained herein is considered to be strictly confidential and shall not be made public.

The Prequalification Application must be filled out in accordance with all instructions. An incomplete statement may result in rejection of the application. Statements on forms other than those provided by ODOT will not be accepted. Attach supplemental information sheets if the spaces provided are inadequate. Schedules should be assembled using page numbers provided.

The Contractor, as evidenced by the sworn affidavit required herein, guarantees the truth and accuracy of all statements and answers hereinafter made.

In order to qualify to bid on state projects, the bidder shall submit a completed prequalification application to ODOT at least twenty-one (21) days prior to the date set for the opening of bids on the project or projects on which the bidder desires to bid. In order to remain prequalified the contractor shall file a new statement at such times as required in OAC 730:25. Unless otherwise notified, the prequalification shall continue for a period of 2 years from the end date of the last audited financial, or the final acceptance of last project completed, not to exceed five (5) years total from the date of the original prequalification application. Initial Prequalifications remain in effect for the remainder of the contractor's fiscal year plus 120 days.

The Prequalification limit shall determine the maximum bidding limit, that is the total amount of work in dollars allowable in any classifications of ODOT administered construction contracts at the time when a bidding proposal is requested. The Contractor shall indicate in Part 1, the class(es) of work on which the Contractor desires to bid.

Applications for Prequalification will be approved by the ODOT Prequalification Committee. Any bidder not satisfied with the findings of the Prequalification Committee may file an appeal with the Director or the Director's designated representative asking for a review of the Committee's conclusions of the Contractor's application. This appeal must be filed by certified mail within 14 calendar days of notification of findings.

It is necessary that the Contractor list in his application both equipment and experience that would warrant the Committee qualifying the Contractor in the class or classes of work requested. Requested classes of work that are not substantiated by sufficient equipment and experience will not be considered by the Committee.

It is the Contractor's responsibility to resubmit this form to ODOT should there be any changes in company ownership or financial standing. Failure to do so will result in automatic revocation of prequalification.

INDEX OF REQUIRED INFORMATION

PART 1	General Information and Desired Class of Work
PART 2	Financial Statement and Equipment List
PART 3	Integrity and Ethics
PART 4	Experience
PART 5	Performance
Appendix	OAC 730:25

1-1)

Company Name:	Telephone Number:	Fax Number:
Mailing Address:	City, State, Zip Code:	
Physical Address:	City, State, Zip Code:	
Name of Contact:	Telephone Number:	Email Address:
Status: <input type="checkbox"/> Prime Contractor	Federal Tax ID:	
Race/Gender of Owner of Primary Stockholder:	Age of Firm:	Bonding Limit:
Number of Employees (at peak):	% of Business with ODOT:	
Annual Gross Receipts of Firm:	State of Incorporation:	
Business Type: <input type="checkbox"/> Corporation <input type="checkbox"/> Limit Liability Co. <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input type="checkbox"/> Individual		
Disadvantaged Business Enterprise (DBE) Status: <input type="checkbox"/> Check box, if Certified Disadvantaged Business Enterprise (DBE), attach copy of current certification		

PART 1: GENERAL INFORMATION

1-2)

Officers and those having signature authority for your firm:		
Name	President	Signature
Name	Vice Pres.	Signature
Name	Secretary	Signature
Name	Treasurer	Signature

1-3)

Other investors or those having a financial interest in the firm:	
Name	% of ownership

PART 1 - continued

1-6)

DESIRED CLASS OF WORK FOR PREQUALIFICATION
(Indicate All Classes of Work on Which You Desire to be Prequalified)

<p>A. Grading</p> <p><input type="checkbox"/> Grading & General Earthwork - Roadway excavation and embankment.</p> <p><input type="checkbox"/> Erosion Control - Seeding, sodding, top soil, planting, fertilizing, mulching, etc.</p> <p><input type="checkbox"/> R/W Clearance - Demolishing buildings, structures, foundations, or other obstructions in order to clear the R/W.</p> <p><input type="checkbox"/> Fencing - Standard highway fencing (SWF, woven wire, chain link, etc.); noise barrier fences; delineation.</p>
<p>B. Drainage Structures</p> <p><input type="checkbox"/> RCB's - Roadway or Bridge sized reinforced concrete box drainage structures.</p> <p><input type="checkbox"/> Drainage Pipes - Trenching & bedding all types of pipe, arch, or other precast drainage structures.</p> <p><input type="checkbox"/> Sanitary Sewer - Extending or constructing all types of sanitary sewer facilities.</p> <p><input type="checkbox"/> Water lines - Water lines, taps, and fittings; miscellaneous underground utility relocations.</p>
<p>C. Paving</p> <p><input type="checkbox"/> Asphalt - Hot bituminous pavement production and/or replacement.</p> <p><input type="checkbox"/> PC Concrete - Portland cement concrete pavement production and/or placement.</p> <p><input type="checkbox"/> Pavement & Bridge Deck Repair - Pavement or Bridge Deck repair and related work.</p> <p><input type="checkbox"/> Coldmilling or Diamond Grinding - Coldmilling surface removal or any pavement or bridge deck grinding.</p>
<p>D. Bridge</p> <p><input type="checkbox"/> Construction - Constructing all or parts of any span bridge structures, including foundation, sub or superstructure.</p> <p><input type="checkbox"/> Rehabilitation/Joints/Redecking - Rehab of bridge joints or redecking of span bridge structures and related work.</p> <p><input type="checkbox"/> Bridge Painting - Blasting and/or painting of part or all of span bridge structures.</p> <p><input type="checkbox"/> Bridge Waterproofing/Sealing - Concrete sealant application of all types.</p>
<p>E. Traffic Control</p> <p><input type="checkbox"/> Construction Workzone Signing & Striping - Flagging, traffic control supervision, and/or traffic control devices.</p> <p><input type="checkbox"/> Permanent Signing & Striping - All permanent traffic control markings, signs or other devices.</p> <p><input type="checkbox"/> Guardrail - Standard guardrail; concrete barrier; bridge rail; impact attenuator.</p> <p><input type="checkbox"/> Cable Barrier - Construction of cable barrier and all drainage and prep work necessary.</p> <p><input type="checkbox"/> Signals - Traffic signals including all wiring and detectors.</p> <p><input type="checkbox"/> Lighting - Highway lighting including all wiring.</p> <p><input type="checkbox"/> ITS - All cables, wiring, changeable message signs and other devices necessary for ITS system.</p>
<p>F. Other, specify.</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> _____</p>

Note: Experience and references given in this application need to verify the desired class of work indicated.

PART 2: FINANCIAL STATEMENT AND EQUIPMENT LIST

2-1) Guidance for Financial Statements

Audited Financial Statement Check List:

- Year End Audited Financial Statement by a Certified Public Accountant. (Audit must be received by ODOT within 90 days of the year end date.)
- If year end audit is over 90 days old, you must submit the audit, along with a current unaudited financial statement. The financial statement must show the current assets and current liabilities.
- Company must be on file with the Oklahoma Secretary of State. You may contact the Secretary of State at (405)-522-4563 for information on how to register with their agency.

Audited financial statements will be presented in accordance with Generally Accepted Accounting Principles (GAAP). ODOT will utilize this financial information to determine the contractor's current working capital, i.e., current assets less current liabilities. This calculation provides ODOT with an expected value of the liquid assets that are available to the contractor for working capital to complete the awarded project(s). While ODOT requires a listing of production equipment, asset items such as equipment, land, and buildings cannot be readily liquidated so as to provide the contractor with quick and available working capital. As such they will not be counted towards short term assets. This listing of production equipment is utilized by ODOT to provide a partial picture of the contractor's ability to satisfactorily perform the awarded contract in an efficient and safe manner.

PART 3: INTEGRITY & ETHICS

3-1). That, except as noted below, _____ or any person (Prospective Participant) associated therewith in the capacity of owner, partner, director, officer, principle investigator, project director, manager, auditor or accountant, project superintendent, or any person in a position involving the administration of project funds:

a. Is currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal or state agency? No ___ Yes ___ If yes, please explain. _____

b. Has been suspended, debarred, voluntarily excluded or determined ineligible by any federal or state agency within the past 3 years? No ___ Yes ___ If yes, please explain. _____

c. Has a proposed debarment pending? No ___ Yes ___ If yes, please explain. _____

d. Has been indicted, convicted, or had a civil judgement rendered against any of the aforementioned by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years? No ___ Yes ___ If yes, please explain. _____

3-2). Has your firm ever been denied prequalification from this state or any other state, or in any federal project? No ___ Yes ___ If yes, please explain. _____

3-3) Has your firm ever been removed from approved bidders list in this state or any other state, or from the federal government list? No ___ Yes ___ If yes, please explain. _____

3-4) Has any officer, partner, or principal of your organization been an officer, partner, or principal of some other organization that has been denied prequalification, or removed from the approved bidders list from this state or any other state, or the federal government list? No ___ Yes ___ If yes, please explain.

3-5) Has any owner, partner, director, officer, principle investigator, project director, manager, auditor of accountant, project superintendent, or any person in a position involving the administration declared personal or corporate bankruptcy in the past 5 years? No ___ Yes ___ If yes, please explain.

3-6) Has your firm registered with and participated in the "Status Verification System" to verify or ascertain the citizenship or immigration status, as well as the work eligibility status of all company employees? (Registration and participation is mandatory after July 1, 2008.) Yes ___ No ___
E-verify information can be obtained at www.uscis.gov.

PART 4: EXPERIENCE

4-1) **List, projects completed on Oklahoma Highway System or Federal of State Aid Projects in other states in the last two years, or under progress.**

County/Highway	Project or J/P No.	Date Completed	Contract Amount	Owner's Proj Mgr. and phone no.

4-2) **List all other ODOT administered projects completed in the last two years, or under progress.**

Type of Work	Job Piece No.	Date Completed	Contract Amount	Resident Engineer and phone no.

4-3) **Work performed for municipality or other government entity.**

Project Location	Type of Construction	Contract Amount	Owner's Project Manager

PART 4: EXPERIENCE - continued

4-4) **List the construction experience of the key managers of your organization.**

Individuals' Name	Present Position or Office	Years of Construction Experience	Magnitude and Type of Work	In What Capacity?

4-5) **Current Prequalification in other States.**

State	Bidding Capacity	Effective Dates	Class of Work

PART 5: PERFORMANCE

5-1) Has your firm or organization ever defaulted on a surety bond or failed to complete any work awarded to you?

No ___ Yes ___ Explain _____

5-2) Has any officer, partner or other affiliate of your organization ever defaulted on a surety bond or failed to complete a construction contract? No ___ Yes ___ Explain _____

5-3) Has your firm or any officer, partner or other affiliate of your organization failed to complete a construction contract within the time frame allowed in the contract provisions?

No ___ Yes ___ Explain _____

5-4) Has your firm or organization or any officer, partner, or other affiliate of your organization ever filed a formal claim against ODOT or any other public entity?

No ___ Yes ___ Explain _____

5-5) Is your firm or organization or any officer, partner or other affiliate of your organization currently involved in litigation with ODOT or any other public entity?

No ___ Yes ___ Explain _____

Note:

Contractor's Performance will be evaluated upon completion of projects administered by ODOT. Performance ratings will be based upon completion of project in accordance with the Standard Specifications and all contract provisions, state and federal statutes, and within the time frame specified in the contract. Failure of the Contractor to perform satisfactorily, as defined in OAC 730:25-3-5(b)(1), may result in the following progressive disciplinary actions effecting the contractor's prequalification:

- a) Suspension of prequalification for 12 months.
- b) Suspension of prequalification for up to 60 months.
- c) Permanent suspension and/or debarment for repeated violations.

Enforcement of these actions will be in accordance with OAC 730:25-3-5(b) as shown in the Appendix.

**OKLAHOMA DEPARTMENT OF TRANSPORTATION
CONTRACTOR PREQUALIFICATION
AFFIDAVIT**

Name of Organization

STATE OF _____

By _____

COUNTY OF _____

§

Title of Person Signing

_____ being duly sworn deposes and says that he

is _____ of _____

Name of Organization

and that the answers to the foregoing questions and all statements therein contained are true and correct. I further understand that any false, deceptive, or fraudulent statements made in this application are cause for disqualification as a bidder by the Oklahoma Department of Transportation. I further attest that I have read and understand the Oklahoma Administrative Code 730:25 (attached in Appendix)

Sworn to before me this _____ day of _____, 20_____.

seal

Notary Public

My Commission expires _____

My Commission number _____

730:25-3-1. Prequalification

(a) The purpose of contractor qualification is to make an initial determination if a contractor has adequate financial resources, integrity, experience, and proven performance to maintain progress on Department projects and to make timely payments to sub-contractors and material suppliers. Prequalification is the method of qualification which has been adopted by the Commission and the Department. Prequalification provides a method by which the Department may review a contractor's financial resources and technical expertise before a contractor is allowed to bid on projects which have not been exempted from the prequalification requirement. Prequalification is not a license but is rather a procedure used by the Department to evaluate prospective bidders' ability to perform. Prospective bidders must ensure that the prequalification application is accurate and complete in all aspects and fully discloses all information requested by the application form. Prospective bidders will be allowed to submit one (1) application in a 12 month period. The Department may request additional information for clarification of a prospective bidder's application. The owners and officers who comprise a company will be the determinative factor as to the existence of prior prequalification applications not an alteration or change of an organization name.

(b) Except as provided in this subchapter, only prequalified contractors will be permitted to bid on construction and maintenance contracts to be awarded by the Commission on the recommendation of the Department. When projects do not encompass highway construction or maintenance, the Department may waive prequalification when it is in the best interest of the state and to increase competition on individual projects of a special nature including, but not limited to:

- (1) Right-of-Way Clearance
- (2) County Road (CR) projects
- (3) County Bridge (CB) projects (excluding span structures)
- (4) Landscaping
- (5) Wetland creation
- (6) Repair or maintenance of railroad facilities
- (7) Environmental cleanup or mitigation
- (8) Transportation enhancement projects

(c) A prospective bidder may obtain a "sample" copy of the bidding documents for use in preparing bid computations after official advertisement of a project but must submit an application for prequalification not less than twenty-one (21) days prior to the announced bid opening date. The submitted application for prequalification will be considered by a prequalification committee composed of the Office Engineer, along with representatives from the Comptroller Division, the Construction Division, and the General Counsel's Office. Contractors prequalified by the committee may be approved for the classes of work as specified by the applicant on the prequalification application, dependent on personnel, equipment, capital and experience in highway construction.

730:25-3-1, p2 Prequalification

(d) A prospective bidder must submit as part of its Prequalification Application, an Audited Financial Statement which is certified by a Certified Public Accountant. The Audited Financial Statement shall not be dated more than 90 days prior to the date of receipt by the Department of the Prequalification Application. If the prospective bidder's latest Audited Financial Statement was issued more than 90 days prior to the date of application for prequalification, the prospective bidder must submit its most recent Audited Financial Statement and its most recent unaudited quarterly financial statement. Based upon these statements and other materials submitted or subsequently requested by the Department, the Department may, at its discretion; grant the prospective bidder a conditional prequalification. The Department shall impose such additional requirements on a conditionally prequalified contractor as the Department deems necessary and in the best interests of the public. If a conditional prequalification is granted, it is valid only for the remainder of the prospective bidder's fiscal year in which the conditional prequalification is granted, plus an additional period not to exceed 120 days.

(e) No prospective bidder will be qualified unless the prospective bidder's Prequalification Application and the supporting investigation show that the prospective bidder possesses working capital, equipment, experience and personnel sufficient in the judgment of the Department, to indicate that the prospective bidder can satisfactorily perform its contract and meet all obligations incurred therein. The Audited Financial Statement and unaudited quarterly statement must show all liabilities (current, deferred and contingent). The prospective bidder will not be qualified for more than two and one-half (2 ½) times its current working capital as computed by the Department, based on an evaluation of the contractor's Audited Financial Statement.

(f) If the prospective bidder submits cash value of life insurance as an asset, the applicant will support the submission with a letter from the insurance company, showing that the prospective bidder absolutely controls the cash value and that there are no legal encumbrances, preexisting loans or any other impediment which would prevent or interfere with the access of the prospective bidder to that cash value.

(g) A partnership will submit an Audited Financial Statement and as appropriate an unaudited quarterly statement of each member individually, and an Audited Financial Statement and quarterly statement of the partnership which will include all the assets and liabilities of each member.

(h) Prospective bidders will furnish an itemized list of all Secondary Cash Resource items such as marketable securities, stocks and bonds.

(i) Prospective bidders will sign, under oath, all forms submitted to the Department.

(j) The Department will make such investigation of the information submitted as it deems necessary.

(k) The Department will qualify, or refuse to qualify, any prospective bidder for paving, grade and drain, bridge or other Department construction work in accordance with such prospective bidder's experience and financial condition.

(l) Prospective bidders who are initially prequalified or conditionally prequalified will not be permitted to bid on individual projects that, in aggregate, exceed maximum bidding limits. Proposals may be "taken out" without limitation as to aggregate total. Should an initially prequalified or conditionally prequalified contractor be low bidder on contracts totaling, in aggregate, more than the amount for which the contractor is prequalified or conditionally prequalified, the Commission reserves the right to:

- (1) Reject any or all of the contractor's bids and readvertise for new bids as required in the best interests of the state; or,
- (2) Award contract(s) on which the initially prequalified or conditionally prequalified contractor would otherwise be the low bidder to the second lowest bidder; or
- (3) Waive the maximum bidding limit and award all or any of such contracts to the initially prequalified or conditionally prequalified contractor if the Department, in the exercise of sound discretion, shall determine that the contractor has the apparent ability to successfully perform the contract(s) and it is in the best interest of the Department for the award to be made.

(m) Any prospective bidder not satisfied with a rejection of its application for prequalification may appeal to the Director or the Director's designated representative by giving notice of the applicant's objection by certified mail addressed to the Director. The applicant's objection must be mailed within fourteen (14) calendar days after the date such prospective bidder received written notice of the Department's action. The Director shall review the prequalification file and make an independent determination concerning the applicant's prequalifications.

(n) Upon being initially or conditionally prequalified a minimum of one (1) year from the date of the initial prequalification, and satisfactory final completion of either a minimum of three (3) projects or not less than five million dollars (\$5,000,000) of Department projects requiring prequalification, that contractor will be considered by the prequalification committee. If found fully qualified, the Contractor's Certificate of Qualification will be reissued to allow the contractor to bid on and be awarded projects to the extent of their bonding capacity. As an additional condition to full prequalification, a conditionally prequalified contractor must furnish an audited financial statement in compliance with subparagraph (c).

(o) Prequalification shall expire at the completion of two years following issue of the contractor's Certificate of Qualification; however, If the Department awards project(s) requiring prequalification to a contractor within the two year period, the contractor's prequalification shall remain in full force and effect for a period of two years from the date of final completion of the contractor's last completed project requiring prequalification, not to exceed five (5) years total from the date of the original prequalification application. If a contractor is not awarded a project requiring prequalification by the Department within a two year period of the completion date of the contractor's last completed project requiring prequalification, and the contractor has no projects requiring prequalification in progress, the contractor's Certificate of Qualification shall expire. The award of project(s) shall not extend contractor's prequalification beyond five (5) years after the date of the prequalification application. The contractor shall make application for prequalification, using the standard prequalification application, no later than ninety (90) days prior to prequalification expiration.

730:25-3-1, p4 Prequalification

The contractor may make written application for extension of prequalification but such application will be considered only if it is submitted and received prior to the expiration of prequalification. The Department may grant an extension of the expiration of the contractor's Certificate of Qualification for a period of not to exceed ninety (90) days to allow a contractor to obtain and submit an Audited Financial Statement and other documentation required for submission of a prequalification application. . Contractors who are currently prequalified may submit an audited financial statement that is in excess of ninety (90) days old if a current audited financial statement cannot be reasonably obtained. If a current audited financial statement is not submitted with the application and the application is otherwise approved, the contractor will be issued a conditional prequalification at the previously established maximum bidding limit. The contractor must submit a current audited financial statement as quickly as the statement can be obtained. When such statement is submitted, the "conditional" will be removed from the contractor's prequalification. Failure to submit a current audited financial statement within 180 days will result in expiration of the conditional prequalification. Projects not requiring prequalification, for which prequalification has been waived, or work as a subcontractor shall not be considered work as a prequalified contractor and shall not be considered as qualifying for purposes of maintaining active prequalification.

[**Source:** Amended at 11 Ok Reg 587, eff 12-13-93; Amended at 11 Ok Reg 1015, eff 1-3-94 (emergency); Amended at 11 Ok Reg 3579, eff 6-27-94; Amended at 12 Ok Reg 1269, eff 5-11-95; Amended at 18 Ok Reg 1357, eff 5-11-01; Amended at 25 Ok Reg 1710, eff 6-12-08]

730:25-3-3. Non-resident contractors

(a) Every non-resident contractor, including any corporation not incorporated in this state, shall, before it is permitted to transact business with the Department, appoint and maintain a service agent upon whom service of process may be made in any action to which the contractor may be a party. Appointment of an agent for service, properly executed and acknowledged, will be filed with the Secretary of State, and will state the residence address or place of business of the agent and any other information required by law or the Secretary of State. A certified copy of this filing will be furnished to the Department. The service agent shall not be an official, either elective or appointive, of the United States or any political subdivision thereof, a bondsman, surety, subcontractor, or materials supplier.

(b) Every applicant foreign corporation, firm, association, or legal entity will file a certified copy of its Articles of Incorporation, partnership agreement, or joint venture agreement, with the Department.

(c) Every foreign corporation, firm, association, or other legal entity will file with the Department evidence that it has become domesticated in the State of Oklahoma and has been authorized to transact business in the State of Oklahoma.

[**Source:** Amended at 12 Ok Reg 1269, eff 5-11-95]

730:25-3-4. Obtaining Bid Documents (Proposals)

- (a) All bid proposals will be obtained from the Department's Office Engineer in Oklahoma City, Oklahoma.
- (b) Bid proposal blanks will be stamped by the Department with the name of the contractor and the date of issue and NO other proposal blanks will be accepted. The fee for each proposal shall be fifty dollars (\$50.00), which fee is non-refundable.
- (c) No proposal for construction or maintenance projects advertised for bids by the Department will be issued to any contractor within 24 hours prior to the bid opening for that contract.
- (d) The Department reserves the right to refuse issue of bid documents to a contractor who has a current Department project(s) being assessed liquidated damages due to a failure to complete contract work within the prescribed contract time.
- (e) No proposal will be issued to a contractor who has defaulted on a previous Department contract within the preceding five (5) years.
- (f) No proposal will be issued to a contractor who fails to cooperate fully with Department, State or Federal auditors in the review of contractor's records.

[**Source:** Amended at 12 Ok Reg 1269, eff 5-11-95; Amended at 18 Ok Reg 1357, eff 5-11-01; Amended at 25 Ok Reg 1710, eff 6-12-08]

730:25-3-4.1. Right to suspend or debar from bidding

The Commission and Department reserve the right to:

- (1) Suspend or debar, under the provisions of this subchapter, any contractor, subcontractor, material supplier, or officer, agent, employee of such entity, from bidding or participating in contracts awarded by the Commission upon conviction of a crime involving fraud, moral turpitude or offenses against the public contracting laws of the United States or any State of the United States, unsatisfactory performance of project work, or other act or omission as set forth in this subchapter. For purposes of this subsection, a plea of guilty or nolo contendere shall be considered a conviction.
- (2) Suspend or debar under provisions of this subchapter any contractor, subcontractor, or material supplier for failure to register and participate in the "Status Verification System" used to verify or ascertain the citizenship or immigration status as well as the work eligibility status of new employees.
- (3) Suspend or debar contractors for other good cause shown or as may be subsequently listed in the code.
- (4) Refuse to award or approve subcontractors or material suppliers.

[Source: Added at 25 Ok Reg 1710, eff 6-12-08]

730:25-3-5. Debarments and suspensions

(a) **Debarment.** A contractor, any of its directors, officers, agents, or employees, any affiliate of a contractor, any subcontractor, or any material supplier shall be subject to debarment proceeding for the reasons set forth in this section. For purposes of this section, a plea of guilty or nolo contendere shall be considered a conviction.

(1) Debarment may occur for any of the following reasons:

(A) Conviction of a bidding crime which shall be defined as any act prohibited by any State or Federal law committed, by any court in any jurisdiction, when such act involves fraud, conspiracy, collusion, perjury or material misrepresentation with respect to any contract, public or private; or

(B) Conviction of a crime involving fraud, moral turpitude, or offenses against the public contracting laws of the United States or any State of the United States; or

(C) Conviction of any offense indicating a lack of moral and ethical integrity by any court in any jurisdiction, which may reasonably be perceived as relating to or reflection upon the business practices of the company, its officers, or directors; or

(D) Any other cause of a serious and compelling nature affecting the responsibility of the contractor; or

(E) Disqualification or debarment by another state or an agency of this State, or an agency of the Federal Government; or

(F) Failure or refusal to comply with the terms of the contract or State law; or

(G) Failure to fulfill obligations imposed by or as a result of the contract with the state or by state law.

(2) No conviction, whether from bench or jury trial, nor any plea of guilty or nolo contendere which is more than five (5) years old at the time of discovery by the Department shall be used as the sole basis for a debarment.

(3) Upon preliminary determination by the Department that a contractor is subject to debarment under this subchapter, the Director shall cause the contractor or other entity or individual to be notified by certified mail that its prequalification has been suspended or its opportunity to participate in Department contracts is suspended pending determination of whether a debarment should be imposed, and that the contractor has the right to request a hearing.

(4) If the contractor desires a hearing, a Petition for Administrative Appeal shall be filed by certified mail with the Hearing Liaison Officer postmarked within ten (10) days after receipt of the notice of suspension pending debarment (weekends and holidays excluded). Filing may also be made in person by the contractor.

Debarments and suspensions

(5) The hearing shall be held no more than 180 calendar days from the date the request for hearing is received by the Hearing Liaison Officer unless the hearing date is continued by the Presiding Officer at the request of the contractor or by agreement of the parties.

(6) Debarment by the Department for the reasons stated in (a)(1)(A-D) or (a)(1)(F-G) of this section shall be for a period of three (3) years. However, if circumstances warrant, the Department may impose a longer period.

(7) Debarment for the reason stated in (a)(1)(E) of this section shall be for the period of time assessed by the originating agency.

(8) The Director may lift or suspend a debarment at any time if it is in the public interest. The following mitigating circumstances may influence this decision:

(A) Degree of culpability.

(B) Restitution of damages to the State.

(C) Cooperation in the investigation of other bidding crimes.

(D) Disassociation with those involved in bidding crimes or other improper action.

(E) Whether lengthy disqualification and debarment is required for protection of the State.

(9) Debarment shall prohibit the debarred contractor, its owner(s) and all immediate family members who acquire the assets of the company, as well as, all directors, officers, agents, employees and affiliates from acting as a subcontractor, materials supplier, equipment supplier or lessor, labor or services contractor, fee appraiser, contract broker, inspector, real estate agent or broker, consultant, architect, engineer, or attorney on any Department project, as well as denying the privilege of bidding as a prime contractor. Family members who shall have been independently prequalified, prior to the debarment, or those who may acquire the assets and equipment of the debarred contractor, at market value, by public auction or other demonstratable arms length transaction, subsequent to the debarment, shall not be considered subject to the debarment action.

(10) Illegal or improper conduct of any individual may be fully imputed to the business firm with which the individual is or was associated, or by whom the individual was employed, where that conduct was engaged in within the course of the individual's employment, or with knowledge or approval of the business firm, or thereafter ratified by it.

(11) Debarment in no way affects the obligations of a contractor to the Department to complete services already under contract, however the Commission reserves the right to terminate the contracts of a debarred entity if termination is in the best interest of the State.

730:25-3-5, p3

Debarments and suspensions

(12) The Director may, in the public's best interest, suspend or otherwise delay inquiry, review, or any debarment in the event such action may impede, hinder or delay Federal or State investigations.

(13) Any contractor qualified to bid upon contracts to be awarded by the Commission shall have a duty to notify the Department if it is convicted of any bidding crime within thirty (30) days of such conviction. Failure to furnish this notification is a serious and compelling offense sufficient to result in debarment in and of itself.

(b) Performance suspension. A contractor, any of its directors, officers, agents, or employees, any affiliate of a contractor, any subcontractor, or material supplier may be suspended from doing work for the Department or participation in a project funded by the Department.

(1) Performance suspension may occur for any of the following reasons:

(A) If the contractor, person, or entity, including subcontractors, proposed for suspension fails or refuses to prosecute all of the work or any separable part thereof, with such diligence as will ensure its completion within the time specified in the contract, including any extension, or fails to complete the work under any one of the contractor's contracts within the time specified; or

(B) A completed investigation or civil judgment evidences a serious lack of business integrity; the contractor exhibits willful disregard for lawful requirements; there is repeated noncompliance with rules, regulations, contract specifications or the terms of other agreements including failure to honor valid debts incurred in the performance of the project; or

(C) Indictment for crimes involving fraud, moral turpitude, or offenses against the public contracting law of the United States or any State of the United States; or

(D) Indictment for a bidding crime which shall be defined as any act prohibited by any State or Federal law, committed in any jurisdiction, when said act involves fraud, conspiracy, collusion, perjury or any material misrepresentation with regards to any contract, public or private; or

(E) An indictment for crimes or a civil judgment which indicates a reckless disregard for safety of the traveling public or structural integrity of a highway, bridge or fixtures, so that continued involvement of the suspected offender creates a risk to public safety or a potential for structural failures; or

(F) Disqualification or suspension by another State or an agency of this State or an agency of the Federal government; or

(G) A demonstrated lack of proficiency in performing work on Department projects evidenced by performance evaluations of "unsatisfactory" on three (3) ratings in one (1) year, or

(H) Three (3) reports of safety violations in which there were significant risk to the health or life of a person or significant damage to property or one (1) report of a safety violation in which gross neglect or reckless disregard for the health or life of a person occurred.

(2) The Director or his designee may impose performance suspension upon a contractor for a period of not less than twelve (12) months or more than sixty (60) months as may be specified in the final agency order upon:

(A) Failure by the contractor to timely file a Petition for Administrative Appeal after proper notification of proposed performance suspension by the Hearing Liaison Officer.

(B) Conclusion of an administrative review hearing in accordance with 730:25-3-6(e)(3).

(3) Upon preliminary determination by the Department that a contractor is subject to performance suspension under this subchapter, the Hearing Liaison Officer shall notify the contractor by certified mail that his prequalification has been temporarily suspended pending determination of whether a performance suspension should be imposed, and that the contractor has the right to request a hearing as set forth in this section.

(4) If the contractor desires a hearing, a Petition for Administrative Appeal shall be filed by certified mail with the Hearing Liaison Officer postmarked within ten (10) days after receipt of notice of temporary suspension (weekends and holidays excluded). Filing may also be made in person by the contractor.

(5) The hearing shall be held no more than 180 calendar days from the date the request for hearing is received by the Hearing Liaison Officer unless continued by the Presiding Officer at the request of the contractor or by mutual agreement of the parties. Except as otherwise ordered by the Presiding Officer or the Director, the proposed suspension shall be held in abeyance during the time the hearing is pending.

(6) Performance suspension shall prohibit the contractor, all immediate family members who acquire that company assets, as well as, all directors, officers, employees of the contractor and affiliates from acting as a subcontractor, materials supplier, equipment supplier or lessor, labor or services contractor, fee appraiser, contract broker, inspector, real estate agent or broker, consultant, architect, engineer, or attorney of any Department project as well as denying the privilege of bidding as a prime contractor. Family members who shall have been independently prequalified, prior to the suspension, or those who may acquire the assets and equipment of the suspended contractor, at market value, by public auction or other demonstratable arms length transaction, subsequent to the suspension, shall not be considered subject to the suspension action.

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(7) Illegal or improper conduct of any individual may be fully imputed to the business firm with which the individual is or was associated, or by whom the individual was employed, where that conduct was engaged in within the course of the individual's employment, or with knowledge or approval of the business firm, or was thereafter ratified by it.

(8) Performance suspension in no way affects the obligations of a contractor to the Department to complete services already under contract, however the Commission reserves the right to terminate the contracts of a suspended entity if termination is in the best interests of the State.

(c) **Burden of proof.** A proper filing of a Petition for Administrative Appeal by a contractor who has been notified of debarment or performance suspension shall give effect to the notice of hearing and appeals procedures contained in 730:25-3-6. At such hearing on the merits it shall be the burden of the Department to establish by clear and convincing evidence that the contractor did or failed to do those acts or omissions which resulted in the notification of the contractor of debarment or performance suspension.

[**Source:** Amended at 12 Ok Reg 1269, eff 5-11-95; Amended at 18 Ok Reg 1357, eff 5-11-01; Amended at 22 Ok Reg 1367, eff 5-26-05; Amended at 25 Ok Reg 1710, eff 6-12-08]