

Oklahoma Department of Transportation

Unsatisfactory Performance by the Contractor
Construction Control Directive No. **20141024**

October 24, 2014

Scope: To establish a procedure to determine unsatisfactory performance by the Contractor on a construction project and identify the appropriate actions required of the Resident Engineer.

In view of the number of contracts on which performance appears to be of inadequate quality and/or completion will not be within the time specified, withholding the ability for a Contractor to bid future work must be an option considered by the Department. The following procedure has been developed to conform to the requirements of the Standard Specifications Section 102.04 "Refusal of Proposals" and of the Oklahoma Administrative Code 730:25-3-4 "Obtaining Bid Documents (Proposals)".

Due to factors specific to the project such as the shape of the project's S-Curve, disputes, or uncontrollable delays, it may not be necessary to report these issues on some specific projects. The Resident Engineer should discuss these special circumstances with the Construction Division prior to initiation of this procedure.

Procedure:

This procedure should be considered any time the Contractor has demonstrated unsatisfactory performance. Performance may be considered unsatisfactory when one of the following conditions occurs:

- a) Inadequate Progress of the Work - The percent of work completed lags behind the percentage of revised time used by 20% or more (Attachment 1 depicts a typical S-Curve for a project and illustrates the lag in performance which would trigger this procedure) or if the Contractor has other current projects with ODOT in liquidated damages. This procedure will not be initiated until 30% or more of the revised contract time has been used.
- b) Demonstrated Incompetence - Evidenced by substandard ongoing project evaluation(s) (as provided for in Construction Control Directive 20141023), or municipal/citizen complaints.
- c) Failure to Promptly Pay Bills - Evidenced by subcontractor complaint(s), requests for bonding information, or write-up(s) in Contract Compliance Reviews.
- d) Latent Defects on Past Projects - Evidenced by field division complaint(s) or materials lab results.

All evidence must be presented in written form in order to proceed.

Step 1

Upon having a project falling within the unsatisfactory conditions described above, and it has been decided to begin this procedure, the Contractor shall be notified in writing by the Resident Engineer indicating the Department's concern regarding their performance (A sample letter from the Resident Engineer to the Contractor is shown in Attachment 2). The letter shall be sent by certified mail and shall state that not later than 15 days from the receipt of the Resident Engineer's letter to the Contractor, the Contractor shall arrange for a meeting with the Field Division Engineer. At the meeting with Field Division Engineer, the Contractor shall present any information in response to the allegations. In the case of untimely completion, the Contractor must present a schedule which indicates how the Contractor intends to complete the remaining work in the allotted time. If the Field Division Engineer is satisfied with this presentation, the Contractor may continue to maintain its ability to bid on future work. If the information presented at the meeting is not satisfactory or if the actions agreed upon are not implemented within 30 calendar days from the date of the meeting, the issue will be elevated to the Construction Division.

Step 2

Unsatisfactory performance issues which cannot be resolved at the Field Division level shall be elevated to the Construction Division. The State Construction Engineer shall review the information presented by the Field Division Engineer and arrange for a meeting with the Contractor to discuss the withholding of bidding documents in accordance with OAC 730-25-3-4 and Section 102.04 of the Standard Specifications. The Contractor shall be notified in writing by the Director of the outcome of this meeting (A sample letter to the Contractor is shown in Attachment 3).

Step 3

For instances where the Department has decided to withhold bidding documents, the Contractor must resolve the ongoing issues with the Field Division in order to resume bidding status. Upon resolution, the Contractor shall notify the Construction Division of their desire to resume receiving bidding documents. If Construction Division verifies that issues have been resolved satisfactorily, the Office Engineer will be notified that the Contractor may again receive proposals. Office Engineer will prepare a letter for the Director's signature allowing the Contractor to once again obtain bidding documents (A sample letter from the Director to the Contractor is shown in Attachment 4).

Roles and Responsibilities:

Resident Engineers will review the Contractor's performance and report to the Field Division Engineer those firms falling within the unsatisfactory performance range. The Resident Engineer, in consultation with the Field Division Engineer, may initiate a letter to the applicable Contractor, giving notice of the Department's concern regarding their performance.

If the issue is elevated beyond the Field Division Engineer, Construction Division will arrange for a meeting with the Contractor and notify the Office Engineer of the results of that meeting.

If the meeting between the Contractor and Construction Division does not resolve the problem of unsatisfactory performance, then the Office Engineer will prepare correspondence notifying the Contractor that they will not be issued bidding documents until such time as the issues with ongoing work are resolved. All correspondence shall be signed by the Director and copied to General Counsel.

It is the responsibility of the Contractor to notify the Construction Division once the ongoing issues have been resolved through the Field Division and that they request to be eligible to receive bidding documents.

A handwritten signature in black ink, appearing to read "G. Raymond". The signature is stylized with a large, looped initial "G" and a long, sweeping underline.

George Raymond, P.E.
Construction Engineer