



WEST VIRGINIA DEPARTMENT OF HIGHWAYS

1900 Washington Street, East
Charleston, West Virginia
25305

John D. Rockefeller IV
GOVERNOR

Fred VanKirk
STATE HIGHWAY ENGINEER
ACTING COMMISSIONER

August 15, 1984

Emergency

Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Manchin:

On February 24, 1984, the West Virginia Department of Highways filed in the State Register emergency legislative rules relating to the filing of Series III, Section 12, "Disqualification and Suspension of Prequalified Contractors" which provides for the disqualification of contractors from bidding on contracts let by the Department of Highways if their past conduct or action indicates that they are not responsible bidders.

In accordance with the provisions of West Virginia Code 29A-3-15(b), we are today filing notice of extension of these emergency legislative rules for an additional period of 180 days.

Very truly yours,

Philip A. Shucet
Executive Secretary-
Planning Manager

PAS/h

Attachment: Notice of Extension

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE Aug. 15, 1984
Administrative Law Division

NOTICE OF EXTENSION
OF
EMERGENCY REGULATIONS

August 15, 1984

Pursuant to the provisions of Chapter 29A, Article 3, Section 15, Subsection (6) of the Code of West Virginia, 1931, as amended, the West Virginia Department of Highways desires to extend the effective period an additional 180 days for emergency rules heretofore filed in the office of the Secretary of State on February 24, 1984, pertaining to Series III, Section 12, "Disqualification and Suspension of Prequalified Contractors."

The West Virginia Department of Highways has complied with all provisions of Section 15 regarding this procedure.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 8-15-84
Administrative Law Division



WEST VIRGINIA DEPARTMENT OF HIGHWAYS

1900 Washington Street, East
Charleston, West Virginia
25305

Emergency

JOHN D. ROCKEFELLER IV
GOVERNOR

CHARLES L. MILLER
COMMISSIONER

February 24, 1984

Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Manchin:

I, Charles L. Miller, Commissioner of Highways, hereby submit three (3) copies of West Virginia Administrative Regulations Chapter 17, Article 2A, Series III, Section 12, 1984 and three (3) copies of a Statement of Emergency. These regulations are promulgated under the authority of Chapter 17, Article 2A, Section 8 (2A) and (27) and Chapter 17, Article 4, Section 19, of the West Virginia Code, 1931, as amended.

These regulations are filed as emergency regulations under Chapter 29A, Article 3, Section 15 of the West Virginia Code, 1931, as amended.

I hereby certify that the enclosed regulations are true and accurate copies of Series III, Section 12 of the Department of Highways Rules and Regulations that are to be filed as emergency regulations. Please stamp and return one copy to this office.

Sincerely yours.

Charles L. Miller

Charles L. Miller
Commissioner

CLM:Sm

ATTEST:

[Signature]

Executive Secretary -
Planning Manager

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE *Feb. 24, 1984*
Administrative Law Division

Enclosures

EQUAL OPPORTUNITY EMPLOYER

STATEMENT OF EMERGENCY

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE *Feb. 24, 1984*

Administrative Law Division

Under Chapter 29A, Article 3, Section 15, an emergency exists when the promulgation of a rule is necessary to prevent substantial harm to the public interest. This series of regulations provides for the disqualification of contractors from bidding on contracts let by the Department of Highways if their past conduct or action indicates that they are not responsible bidders.

These regulations will protect the public interest by not allowing these contractors to bid on contracts let by the Department. They will help ensure that public contracts are let only to responsible bidders and that the work done under these contracts is performed properly and in accordance with the specifications of the public contract.

Recent investigations of the Department have indicated the need for these regulations in that contractors have not followed the specifications of the contracts nor have they supplied adequate materials under the contracts. In addition, contractors in numerous states have been convicted of bidding crimes and the Federal Highway Administration has strongly urged the states to provide for debarment or disqualification in instances such as these to protect the integrity of the federal-aid highway programs. These regulations are designed to protect the public interest until such time as permanent rules and regulations can be adopted.

Section 12. Disqualification and Suspension of Prequalified Contractors

12.01. General Purposes. -- This section of rules and regulations provides procedures regarding the Department of Highways' disqualification and suspension of prequalified contractors in instances where there is cause to believe that a prequalified contractor is not complying with laws or regulations that pertain to the competition for or the performance of contract work for the Department.

12.02. Definitions. --

(1) Suspension - An exclusion or bar from contracting with or bidding on contracts let by the Department for a temporary period of time, pending the completion of an investigation or legal or disqualification proceedings.

(2) Disqualification - The debarment of a contractor by the revocation of the contractor's Certificate of Qualification that is necessary for contracting with or bidding on contracts let by the Department for a specified period of time.

(3) Debarment - An exclusion or bar from contracting with or bidding on contracts let by the Department.

(4) Prequalified Contractor - Any individual person, partnership, corporation or other legal entity, including its directors and officers, holding a valid

Certificate of Qualification, which submits bids for, is awarded, or reasonably may expect to submit bids for or be awarded a contract for labor, services or material or any combination of these by the Department.

(5) Department - The West Virginia Department of Highways, a corporation.

(6) Commissioner - West Virginia Commissioner of Highways or an authorized representative or employee.

(7) Admission - A statement made by a contractor in a court, or an official statement before any public body or official, that the contractor committed a certain act or omitted to perform a certain act.

(8) Conviction - A judgment or conviction of criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

(9) Judgment - A judgment in a civil action by any court of competent jurisdiction.

(10) Bidding Crime - Any act prohibited by state or federal law committed in any jurisdiction involving fraud, conspiracy, collusion, lying or material misrepresentation with respect to bidding on any contract public or private.

12.03. Disqualification. -- The Commissioner may, in his sole discretion, disqualify a prequalified contractor or its

affiliates from bidding on Department contracts for any of the following causes:

(1) Conviction, judgment or admission of a bidding crime. This paragraph includes any admission in the presentation of testimony of an unindicted co-conspirator or any admission in testimony protected by a grant of immunity to the contractor in any jurisdiction.

(2) Conviction, judgment or admission of any other crime for an illegal act(s) that pertains to competition for or performance of contract work for the Department.

(3) Debarment by the Federal Highway Administration.

(4) Deliberate and repeated violation of regulations promulgated by the Commissioner in accordance with the West Virginia Code.

(5) Any other cause affecting the performance of contract work for the Department that is of a serious and compelling nature.

12.04. Suspension. --

(1) The Commissioner may, in his sole discretion, suspend the Certificate of Qualification of a prequalified contractor where there is reasonable belief that any of the reasons set forth in Section 12.03 for disqualification is present. If the Commissioner determines a

suspension is proper he shall furnish written notice by registered mail to the contractor and any named affiliates stating:

- (a) that a suspension has been imposed;
- (b) the effective date of the suspension;
- (c) the cause or causes giving rise to the

suspension;

- (d) that the suspension is for a temporary period pending the completion of an investigation and any ensuing legal or disqualification proceedings;

- (e) that the prequalified contractor may within ten (10) days of receipt of the notice, request in writing an informal hearing, which will be held no later than sixty (60) days subsequent to the receipt of the prequalified contractor's request for an informal hearing.

(2) A suspension shall be for a temporary period pending the completion of investigation or any ensuing legal or disqualification proceeding unless terminated by the Commissioner. A suspension shall not continue for more than six (6) months from its effective date, unless civil or criminal action regarding the alleged violation has been initiated within that period, or unless disqualification proceedings have been initiated. The suspension may continue until the legal or disqualification proceedings are completed.

12.05. Disqualification Procedures. --

(1) After determining that cause exists under Section 12.03 to disqualify a prequalified contractor, the Commissioner or his duly authorized representative shall furnish written notice of a hearing to the prequalified contractor and any named affiliates. The notice shall state:

(a) that disqualification is being considered;

(b) the facts giving rise to the proposed disqualification;

(c) the cause or cause under Section 12.03 relied upon for proposing disqualification;

(d) the time, place and date of the hearing;

(e) the name and mailing address of the hearing examiner;

(f) if a suspension is not in effect before the notice is sent, that contracts may not be awarded to the contractor by the Department pending the decision of the hearing examiner.

(2) The hearing will be conducted in accordance with Series I, Section 3 of the West Virginia Department of Highways Rules and Regulations. The hearing examiner may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended to later than sixty (60)

days from the date the notice was sent. A transcribed record of the hearing shall be made unless the Commissioner and the contractor waive that requirement. At the conclusion of the hearing, the hearing examiner shall issue to the Commissioner and the contractor and all named affiliates written findings of fact and the recommended administrative action.

(3) The Commissioner after receiving the record, findings of fact and recommendations of the hearing official shall determine the administrative action to be taken. The Commissioner shall notify the named contractor or contractors of his determination in writing. If the determination is to impose disqualification, the determination shall set forth the period of time for which disqualification is imposed.

(4) The determination made by the Commissioner may include all named affiliates of the contractor, provided that each decision to include an affiliate is made only after allowing the affiliate to participate in the hearing with the same procedural rights afforded the contractor.

12.06. Period of Disqualification. --

(1) The Commissioner may disqualify a prequalified contractor for a period commensurate with the seriousness of the causes.

(2) At the sole discretion of the Commissioner the disqualification may be reduced, lifted or suspended at any

time, if it is in the public interest to do so. Any mitigating circumstances may be considered in the decision to impose, reduce, lift or suspend disqualification and may include, but shall not be limited to:

(a) the degree of culpability of the disqualified contractor;

(b) restitution by the disqualified contractor to the Department for any overcharges or other damages;

(c) cooperation by the disqualified contractor with any investigation undertaken by appropriate State agencies or other sovereign bodies;

(d) elimination of the causes for which the disqualification was imposed.

12.07. Effect of Disqualification or Suspension by Other Jurisdictions. -- The Commissioner shall not be bound by the disqualification or suspension of a contractor by other jurisdictions, but may consider any and all information available from whatever source to determine if a contractor lacks the qualities of moral and/or ethical integrity.

12.08. List of Disqualified or Suspended Contractors. -- The Commissioner shall maintain a list of all contractors and affiliates who have been disqualified or suspended in accordance with these rules and regulations.

12.09. Notice to Contractors. -- A copy of these rules
and regulations shall be mailed to each prequalified contractor.