



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

October 10, 1984

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

Dear Secretary Manchin:

Be advised that this letter constitutes notice of agency approval of modifications to Series III, Section 12, "Disqualification and Suspension of Prequalified Contractors," to comply with the Legislative Rule-Making Review Committee's recommendations.

Enclosed are only those pages that were modified. Please stamp and return one copy this office.

Very truly yours,

Philip A. Shucet
Executive Secretary -
Planning Manager

PAS:h

Enclosures

1984 OCT 12 AM 10:00
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FILED



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1900 Washington Street, East
Charleston, West Virginia
25305

John D. Rockefeller IV
GOVERNOR

Fred VanKirk
STATE HIGHWAY ENGINEER
ACTING COMMISSIONER

August 14, 1984

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

Dear Secretary Manchin:

Be advised that this letter constitutes notice of agency approval of changes to Series III, Section 12, Disqualification and Suspension of Prequalified Contractors, as a result of comments adduced at the public hearing held on July 18, 1984.

These proposed rules were submitted to the Legislative Rulemaking Committee on July 20, 1984.

A fiscal note is attached indicating there will be no impact to the Department or general public as a result of these rules.

I hereby certify that the enclosed rules are true and accurate copies of Series III, Section 12, Disqualification and Suspension of Prequalified Contractors.

Please stamp and return one copy to this office.

Sincerely yours,

Philip A. Shucet
Executive Secretary-
Planning Manager

PAS:r

Enclosure

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

THIS DATE Aug. 14, 1984
Administrative Law Division

EQUAL OPPORTUNITY EMPLOYER

STATEMENT OF ECONOMIC IMPACT OF PROPOSED RULES OR REGULATIONS

Agency Department of Highways

Amendments to Existing Rules
& Regulations-Addition of
Subject Disqualification and
Suspension of Prequalified
Contractors

Rule No. _____

1. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

No impact on the highway construction industry.

C. Economic Impact on Citizens/Public at Large.

None

Date July 18, 1984

Agency Department of Highways

Signature of Agency Head

Signature of Authorized Representative

Fred Van Hook Al Hunt

FISCAL NOTE FOR PROPOSED RULES

Rule No. _____ Subject Amendments to Existing Rules & Regulations-
Addition of Disqualification and Suspension
of Prequalified Contractors

Type of Rule: Legislative Interpretive Procedural

Agency Department of Highways Address 1900 Washington St., East
Charleston, WV 25305

Authorized Representative Philip A. Shucet Phone 348-2425

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Others					

These amendments will not increase or decrease costs to the State of West Virginia.

2. Explanation of above estimates.

These amended rules cover only the administration of highway contracts.

3. Date July 18, 1984 Agency Department of Highways

Signature of Agency Head

Fred Van Nul

Signature of Authorized Representative

Philip Shucet

Section 12. Disqualification and Suspension of Prequalification

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 awarded by the Department of Highways.

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

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
FILED

12.06. Period of Disqualification. --

(1) The Commissioner may disqualify a prequalified contractor for a period of three months to three years.

(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 so long as
there is compliance with the procedures set forth in these regulations.

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.

THIS DATE 8-14-84
Administrative Law Division

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.

(11) Hearing Examiner - A person designated by the Commissioner to conduct a hearing as set forth in Series III, Section 12.05.

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 at a mutually agreeable date, but 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;

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