



Rules of
Department of Transportation
Division 10—Missouri Highways and Transportation
Commission
Chapter 18—Contractor Disqualification for Misconduct

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**Title 7—DEPARTMENT OF
TRANSPORTATION**
**Division 10—Missouri Highways and
Transportation Commission**
**Chapter 18—Contractor Disqualification
for Misconduct**

7 CSR 10-18.010 Definitions

PURPOSE: This rule contains the definitions of terms used in this chapter.

(1) Definitions. The following definitions apply to this chapter:

(A) Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other; or a third person controls or has the power to control both. *Indicia* of control include, but are not limited to, the following: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, a business entity organized following the suspension or the termination of a person which has the same or similar management, ownership, or principal employees as the suspended or terminated, ineligible, or voluntarily excluded person, or joint ventures. A successor business entity is also an affiliate for the purpose of this chapter;

(B) Agency. Any federal, state or local public governmental entity (other than a court acting in its judicial capacity) which engages in procurement, purchasing or competitive bidding of public contracts, including the department or the commission, or which possesses the authority to declare a potential bidder or contractor ineligible to bid on or receive publicly-awarded contracts;

(C) Board. See review board;

(D) Chief engineer. The chief engineer of the Missouri Department of Transportation;

(E) Civil judgment. The disposition of a civil action by any state or federal court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation or otherwise, which creates a civil liability or finding for some or all of the wrongful acts alleged; or a final determination of liability in a local, state or federal civil judicial or administrative proceeding, including a proceeding under this chapter, seeking civil penalties or other remedies for making, presenting or submitting any false, fictitious or fraudulent claims or statements to an agency, or causing such to be made, presented or submitted to an agency, including but not limited to those within the Federal Program Fraud Civil Remedies Act (31 U.S.C. sections 3801 to 3812);

(F) Commission. The Missouri Highways and Transportation Commission;

(G) Contract. A written agreement between the contractor and the commission or department, setting forth the obligation of the parties thereunder, including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment. A contract may include two (2) or more different highway projects as part of a required or permissive combination. "Contract" shall also refer to all contracts entered into between the contractor and any subcontractor or supplier at any tier;

(H) Contractor. Contractor means any individual or other legal entity that—

1. Directly or indirectly (for example, through an affiliate), submits offers for or is awarded, a government contract, including a contract for carriage under government or commercial bills of lading, or a subcontract under a government contract; or

2. Conducts business, or reasonably may be expected to conduct business, with the government as an agent or representative of another contractor;

(I) Conviction. An adjudication of guilt of a criminal offense which may be punished by imprisonment, rendered by any state or federal court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of *nolo contendere* or an "Alford" plea, and regardless of whether imposition of a sentence of a fine or imprisonment is suspended or executed. A conviction exists immediately when the adjudication of guilt is entered, even though the date for sentencing or probation has not yet occurred, and even though that adjudication of guilt may be subject to defense motions, withdrawal of the plea, or appeal;

(J) Department. The Missouri Department of Transportation. "Department" includes the chief engineer and all other officers and employees of the department, unless the text of this chapter clearly indicates a contrary construction is intended;

(K) Disqualification. To determine ineligibility or unfitness for contracting or being a subcontractor or supplier under any contract with the commission or the department. A disqualified contractor is considered not responsible for contracting or being a subcontractor or supplier under any contract with the commission or the department. For purposes of this chapter, disqualification may consist of suspension of the contractor, subcontractor or supplier;

(L) Division. Refers to the divisions of construction, design, materials, maintenance, traffic and bridge within the Missouri Department of Transportation;

(M) Indictment. Indictment for a felony or misdemeanor in any state or under federal law. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment;

(N) Ineligible. Excluded from participation in contracts with the commission or the department;

(O) Principal. A person is a principal of a firm if s/he is an officer, director, owner, partner, or other person with that firm who has primary management, supervisory or bidding duties or authority;

(P) Review board. The review board for purposes of this chapter consists of three (3) or more of the following: the assistant chief engineer—operations or the assistant chief engineer—design, chair, as designated by the chief engineer; the appropriate division engineer or director from the following divisions as designated by the chief engineer: design, materials, maintenance, traffic, bridge, audit and business analysis, research development and technology; and construction; and the chief counsel; or any of their designates;

(Q) State. Includes the state of Missouri, as well as all other states, territories and possessions of the United States;

(R) Subcontractor. Any individual, partnership, corporation or a person or firm participating as part of a joint venture, to whom a contractor sublets any part of the work under a commission contract;

(S) Successor. A person, firm or corporation is a successor to another if it is a business entity organized following the disqualification of the other, and it has the same or similar management, ownership or principal employees as the disqualified person, firm or corporation; and

(T) Supplier. A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with the contractor or with any subcontractor to furnish material or equipment to be incorporated in work by the contractor or subcontractor.

AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100 and 227.210, RSMo (1994), 226.130, RSMo (Cum. Supp. 1996) and Title 49 Code of Federal Regulations part 29. Original rule filed Dec. 12, 1996, effective June 30, 1997.*

**Original authority: 226.020, RSMo (1939); 226.130, RSMo (1939), amended 1993, 1995; 226.150, RSMo (1939), amended 1977; 227.030, RSMo (1939); 227.100, RSMo (1939), amended 1963, 1967, 1969; and 227.210, RSMo (1939).*



7 CSR 10-18.020 Causes for Disqualification

PURPOSE: This rule provides for the criteria causing disqualification.

(1) Causes for Disqualification. Disqualification may be imposed for any of the following:

(A) Submitting more than one (1) proposal for the same work from an individual, firm, or corporation under the same or different name. A bidder may, however, submit a proposal as principal and as a subcontractor to some other principal, or may submit a proposal as a subcontractor to as many other principals as s/he desires, and by so doing will not be liable to disqualification in the intent of this specification;

(B) Reason for believing that collusion exists among the bidders;

(C) Conviction of or civil judgment for or finding of any one (1) act, including failure to act, or attempt or conspiracy to act, constituting or furthering any of the following:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, by a contractor;

2. Violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; or

3. Embezzlement, theft, bribery, perjury, assault, false affidavit, false declaration within the meaning of section 576.060, RSMo (1994), false statements or false claims within the meaning of 31 U.S.C. 1020, 31 U.S.C. 3729, 31 U.S.C. 3801 or 49 CFR part 31, obstruction of justice, obstruction of any government operation, false representation or false report;

(D) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency project or program, such as a willful failure to perform in accordance with the terms of one (1) or more public agreements or transactions;

(E) A nonprocurement debarment by any federal, state or local governmental agency taken before October 1, 1988, or a procurement debarment by any federal agency taken pursuant to federal regulations, or debarment disqualification or similar action by any other state, county or local government for an act which would be grounds for disqualification under this section;

(F) Making or receiving kickbacks or payments of currency or any item of value in order to obtain or retain any contract or payment thereunder, or in return for an agreement to make or for the making of any false statements or material misrepresentations or omissions of fact to any federal, state or local governmental agency or private firm relevant to contract compliance; or

(G) Suspension, debarment, or other disqualification of the contractor, or determination that the contractor is not a responsible bidder for public contracting purposes, by any federal, state or local governmental agency.

AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100 and 227.210, RSMo (1994), 226.130, RSMo (Cum. Supp. 1996) and Title 49 Code of Federal Regulations part 29. Original rule filed Dec. 12, 1996, effective June 30, 1997.*

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7 CSR 10-18.030 Notice of Proposed Disqualification

PURPOSE: This rule sets forth the requirements for notifying any person or contractor that disqualification is being considered by the department.

(1) Written Notice of Department's Recommendation. Any contractor who is recommended by the department for disqualification shall be provided written notice of the proposed disqualification by the applicable division engineer or director after concurrence by the chief engineer.

(2) Notice of Proposed Disqualification. The notice of proposed disqualification shall be sent to the contractor by the division engineer or director who is proposing the disqualification. The notice of the proposed disqualification shall advise the contractor of the following:

(A) That disqualification is being considered;

(B) The reasons for the proposed disqualification in terms sufficient to put the person or contractor on notice of the conduct or transaction(s) upon which it is based;

(C) The causes relied upon for proposing disqualification;

(D) The procedures governing disqualification;

(E) The potential effect of a disqualification by the commission;

(F) The contractor's right to appeal the recommendation to the review board; and

(G) That disqualification is only for serious actions and is used only in the public interest and for the state's protection and not for purposes of punishment.

(3) Temporary Suspension Period. For good cause shown, the chief engineer may, at his/her discretion, temporarily suspend a contractor and its affiliates and principals pending final action by the commission.

AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100, and 227.210, RSMo (1994), 226.130, RSMo (Cum. Supp. 1996) and Title 49 Code of Federal Regulations part 29. Original rule filed Dec. 12, 1996, effective June 30, 1997.*

**Original authority: 226.020, RSMo (1939); 226.130, RSMo (1939), amended 1993, 1995; 226.150, RSMo (1939), amended 1977; 227.030, RSMo (1939); 227.100, RSMo (1939), amended 1963, 1967, 1969; and 227.210, RSMo (1939).*

7 CSR 10-18.040 Opportunity to Appeal Proposed Disqualification and Review Board Proceedings

PURPOSE: This rule provides for the contractor to appeal any recommended disqualification and provides the procedures for the review board.

(1) Appeal of Proposed Disqualification. Any contractor who is recommended for disqualification may appeal the decision to the review board and request an informal hearing.

(2) Procedure for Appeals. The contractor shall submit its request in writing for an informal hearing to the Secretary, Missouri Highways and Transportation Commission, P.O. Box 270, Jefferson City, MO 65102. Requests for review shall be submitted by the contractor within thirty (30) calendar days after the date the notice of proposed disqualification was mailed to the contractor. If the contractor requests a timely informal hearing, the department shall advise the contractor of the time, date and place for the informal hearing. This is not a contested case under Chapter 536, RSMo. The rules of evidence shall not apply at the hearing.

(3) Review Board Proceedings. The review board shall review the information received by the department and the contractor regarding



the proposed disqualification. The contractor may submit documentation to support its position at the informal hearing. The contractor may also present any argument regarding the proposed disqualification. Additionally, the review board may request further information or documentation from the contractor or any department employee, and shall be provided with any further information or documents that the appropriate division engineer or director deems relevant to its review. Upon review of all the information provided to the review board, the review board will make its written findings and recommendations to the chief engineer.

(4) Time of Review Board's Proposed Finding and Recommendation. The review board will make its findings and recommendations within thirty (30) days after the conclusion of the review board's review.

(5) Review Board's Written Report. The review board shall make a written report to the chief engineer, summarizing its findings and recommendations regarding whether the contractor should be disqualified. The chief engineer may concur in or modify the review board's findings and recommendations.

(6) Procedures for When No Appeal is Taken on the Department's Recommendation. If the contractor does not timely appeal the department's recommendation, the division engineer or director shall forward the recommendation to the chief engineer for an abbreviated review of the written recommendation for disqualification, setting forth its supporting reasons. The review board will not participate in this review. If the chief engineer does not concur in the recommendation that the contractor be disqualified, s/he shall notify the contractor in writing of its continued status as responsible. If the chief engineer believes disqualification is appropriate after this review, s/he shall inform the contractor of the department's decision that the contractor be disqualified and the length of time for the disqualification.

AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100 and 227.210, RSMo (1994), 226.130, RSMo (Cum. Supp. 1996) and Title 49 Code of Federal Regulations part 29.* Original rule filed Dec. 12, 1996, effective June 30, 1997.

*Original authority: 226.020, RSMo (1939); 226.130, RSMo (1939), amended 1993, 1995; 226.150, RSMo (1939), amended 1977; 227.030, RSMo (1939); 227.100, RSMo (1939), amended 1963, 1967, 1969; and 227.210, RSMo (1939).

7 CSR 10-18.050 Commission Action

PURPOSE: This rule describes the commission's role in determining whether a contractor is to be disqualified.

(1) Commission Action. The chief engineer shall present the proposed recommendations and findings regarding the disqualification of the contractor to the commission. The commission shall act on the proposed findings and recommendations as it deems appropriate under the circumstances, based on the record consisting of the written recommendations of the division engineer or director, the written findings and recommendations, and the written appeal of the contractor. No hearing shall be held by or for the commission on the findings and recommendations. The commission shall either affirm, reject, modify or remand the findings and recommendations.

AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100 and 227.210, RSMo (1994), 226.130, RSMo (Cum. Supp. 1996) and Title 49 Code of Federal Regulations part 29.* Original rule filed Dec. 12, 1996, effective June 30, 1997.

*Original authority: 226.020, RSMo (1939); 226.130, RSMo (1939), amended 1993, 1995; 226.150, RSMo (1939), amended 1977; 227.030, RSMo (1939); 227.100, RSMo (1939), amended 1963, 1967, 1969; and 227.210, RSMo (1939).

7 CSR 10-18.060 Notice of Commission Determination to Disqualify Contractor

PURPOSE: This rule sets forth notification requirements for disqualification (by the commission).

(1) Commission Notice. For decisions of the commission to impose disqualification on a contractor for misconduct, a written notice will be provided to the contractor. Notice will be given of the following:

- (A) The reasons for disqualification;
- (B) The period of disqualification, including effective dates;
- (C) The inability to bid on or participate in any new commission contracts as a contractor or subcontractor; and
- (D) That disqualification and termination are serious actions and are used only in the public interest and for the state's protection and not for purpose of punishment.

(2) Judicial Review of the Commission's Decision. The commission's decision shall be final and conclusive on these issues, subject

to judicial review pursuant to section 536.150, RSMo.

(3) Notice Not to Disqualify. Notice will be given by the commission to the contractor of any decision of the commission not to disqualify.

AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100 and 227.210, RSMo (1994), 226.130, RSMo (Cum. Supp. 1996) and Title 49 Code of Federal Regulations part 29.* Original rule filed Dec. 12, 1996, effective June 30, 1997.

*Original authority: 226.020, RSMo (1939); 226.130, RSMo (1939), amended 1993, 1995; 226.150, RSMo (1939), amended 1977; 227.030, RSMo (1939); 227.100, RSMo (1939), amended 1963, 1967, 1969; and 227.210, RSMo (1939).

7 CSR 10-18.070 Period of Disqualification

PURPOSE: This rule establishes definite periods for disqualification of contractors.

(1) Period of Disqualification. The period of disqualification of the contractor generally should not exceed three (3) years. Where circumstances warrant, a longer period of disqualification may be imposed.

(2) Extension of Period of Disqualification. The chief engineer may extend an existing disqualification for an additional period if the chief engineer determines that an extension is necessary to protect the public interest. The chief engineer shall determine whether an extended period of disqualification is warranted based upon the recommendation forwarded to him/her by the appropriate division engineer or director. The contractor will be notified regarding the chief engineer's decision regarding any extension of the period of disqualification. A disqualification may not be extended solely on the basis of the facts and circumstances upon which the initial disqualification action was based. The chief engineer's decision shall be final and conclusive of these issues, subject to judicial review pursuant to section 536.150, RSMo.

(3) Reversal or Reduction of Disqualification. The contractor may request the chief engineer to reverse the disqualification decision or to reduce the period or scope of disqualification. Such a request shall be submitted in writing to the chief engineer and be supported by documentation. The chief



engineer may grant such a request for reasons including, but not limited to the following:

(A) Significant efforts on the part of the contractor to correct any previous cause for disqualification;

(B) Reinstatement from disbarment by the federal government or by any other state; or

(C) Any other substantive reason as determined by the department.

AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100 and 227.210, RSMo (1994), 226.130, RSMo (Cum. Supp. 1996) and Title 49 Code of Federal Regulations part 29. Original rule filed Dec. 12, 1996, effective June 30, 1997.*

**Original authority: 226.020, RSMo (1939); 226.130, RSMo (1939), amended 1993, 1995; 226.150, RSMo (1939), amended 1977; 227.030, RSMo (1939); 227.100, RSMo (1939), amended 1963, 1967, 1969; and 227.210, RSMo (1939).*

7 CSR 10-18.080 Effect of a Commission Determination that a Contractor is Disqualified

PURPOSE: This rule states the effect of a determination to disqualify with respect to bidding or participating in any new commission contract and further establishes the commission's authority to grant an exception.

(1) Effect of Disqualification. Any contractor that is disqualified may not bid on or participate in any commission contract awarded after the effective date of disqualification as a contractor, subcontractor or supplier during the period of disqualification. The disqualification shall not prohibit the contractor from concluding the work on the commission contracts it previously had obtained prior to the effective date of its disqualification or from participating as a subcontractor on any commission project if it had already been approved by the department to act prior to the effective date of its disqualification, unless the commission terminates any of these contracts for misconduct under the provisions of section 108.13 of the Missouri Standard Specification for Highway Construction.

(2) Effect of Disqualification of Related Persons. Each person, firm, or corporation which is an affiliate, principal, or a successor of a disqualified contractor shall be disqualified to the same extent and for the same time as that contractor, unless the chief engineer grants a specific exception for good cause shown. A request for an exception by the affiliate, principal, or successor must be made in the same

manner as provided in this chapter for reinstatement of a contractor previously declared disqualified, but the request may be made at any time after the contractor is notified of the recommendation for its disqualification. The chief engineer may grant an exception if it finds that an affiliate or principal of the disqualified contractor did not conspire or participate in, and was not aware at the time of the acts which resulted in the disqualification.

AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100 and 227.210, RSMo (1994), 226.130, RSMo (Cum. Supp. 1996) and Title 49 Code of Federal Regulations part 29. Original rule filed Dec. 12, 1996, effective June 30, 1997.*

**Original authority: 226.020, RSMo (1939); 226.130, RSMo (1939), amended 1993, 1995; 226.150, RSMo (1939), amended 1977; 227.030, RSMo (1939); 227.100, RSMo (1939), amended 1963, 1967, 1969; and 227.210, RSMo (1939).*

7 CSR 10-18.090 Procedure for Reinstatement of a Contractor Previously Disqualified

PURPOSE: This rule establishes the procedures for reinstating a contractor who has previously been disqualified.

(1) Reinstatement. After any period of disqualification of a contractor has elapsed, a disqualified contractor may submit to the chief engineer documentation supporting its request for reinstatement as responsible. The chief engineer shall review the documentation and may request further documentation as s/he deems necessary for possible reinstatement of the contractor, its affiliates, principals and successors as responsible. The chief engineer shall decide if the contractor shall be reinstated or not reinstated, and the chief engineer's decision regarding the requested reinstatement shall be final, subject to judicial review pursuant to section 536.150, RSMo.

(2) No Automatic Reinstatement. The disqualified contractor must apply for reinstatement with the chief engineer. Even though the contractor's period of disqualification has elapsed, the contractor cannot contract with the commission or department until the contractor has been formally reinstated by the department.

AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100 and 227.210, RSMo (1994), 226.130, RSMo (Cum. Supp. 1996) and Title 49 Code of Federal Regulations part 29. Original rule filed Dec. 12, 1996, effective June 30, 1997.*

**Original authority: 226.020, RSMo (1939); 226.130, RSMo (1939), amended 1993, 1995; 226.150, RSMo (1939), amended 1977; 227.030, RSMo (1939); 227.100, RSMo (1939), amended 1963, 1967, 1969; and 227.210, RSMo (1939).*

7 CSR 10-18.100 Effect of Reinstatement of a Contractor Previously Disqualified

PURPOSE: This rule sets forth the effect of reinstating a person, contractor, firm or corporation with regard to contracting and subcontracting and with regard to the person's or contractor's status and any subsequent action against the person, contractor, firm or corporation.

(1) Effect of Reinstatement. When the chief engineer reinstates a contractor as responsible pursuant to this chapter, that contractor may then bid on or participate in any current or new contract or project as a contractor, subcontractor or supplier without any restrictions. Any contractor which was disqualified solely because of its status as an affiliate, principal or successor to the person, firm or corporation formerly disqualified shall also be reinstated as responsible automatically, unless the chief engineer specifically excepts a person or firm from reinstatement in its decision reinstating the contractor.

AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100 and 227.210, RSMo (1994), 226.130, RSMo (Cum. Supp. 1996) and Title 49 Code of Federal Regulations part 29. Original rule filed Dec. 12, 1996, effective June 30, 1997.*

**Original authority: 226.020, RSMo (1939); 226.130, RSMo (1939), amended 1993, 1995; 226.150, RSMo (1939), amended 1977; 227.030, RSMo (1939); 227.100, RSMo (1939), amended 1963, 1967, 1969; and 227.210, RSMo (1939).*

7 CSR 10-18.110 Addresses for Written Notification or Appeal

PURPOSE: This rule provides information regarding sending notice to the contractor and the commission.



(1) Written Notice to the Contractor. All writings and notices to a contractor, or its affiliate, principal, or successor, shall be sent to the last known address of that person, firm or corporation. Notice provided to the last known address of the contractor, or its affiliate, principal or successor by United States mail, postage prepaid, will constitute valid service of the notice.

RSMo (1939), amended 1963, 1967, 1969; and 227.210, RSMo (1939).

(2) Written Notice to the Chief Engineer or Commission. All writings and correspondence to the Missouri Highways and Transportation Commission shall be addressed to: Secretary, Missouri Highways and Transportation Commission, 105 West Capitol Avenue, P.O. Box 270, Jefferson City, MO 65102-0270.

AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100 and 227.210, RSMo (1994) and 226.130, RSMo (Cum. Supp. 1996) and Title 49 Code of Federal Regulations part 29. Original rule filed Dec. 12, 1996, effective June 30, 1997.*

**Original authority: 226.020, RSMo (1939); 226.130, RSMo (1939), amended 1993, 1995; 226.150, RSMo (1939), amended 1977; 227.030, RSMo (1939); 227.100, RSMo (1939), amended 1963, 1967, 1969; and 227.210, RSMo (1939).*

7 CSR 10-18.120 Commission Notification Regarding Contractors Who Have Been Disqualified

PURPOSE: This rule provides for commission notification of disqualified contractors to all interested persons.

(1) Commission Notification of Disqualified Contractors. The commission will maintain a current listing of all contractors who have been disqualified by the commission. The commission will provide a copy of the current listing, at no cost, of all disqualified contractors to all interested persons upon request. Requests for this commission contractor disqualification listing shall be submitted in writing to the commission's chief engineer.

AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100 and 227.210, RSMo (1994), 226.130, RSMo (Cum. Supp. 1996), and Title 49 Code of Federal Regulations part 29. Original rule filed Dec. 12, 1996, effective June 30, 1997.*

**Original authority: 226.020, RSMo (1939); 226.130, RSMo (1939), amended 1993, 1995; 226.150, RSMo (1939), amended 1977; 227.030, RSMo (1939); 227.100,*