

## **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.

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 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.

The Prequalification limit shall determine the maximum bidding limit, which 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 fourteen 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.

The contractor's prequalification expires after a two-, year term at the completion of the contractor's fiscal year. At that time, the contractor will have 180 days to submit audited financial statements or a financial review of the contractor's business operations in order to renew the contractor's prequalification. NOTE: A financial review will be accepted for a renewal of the contractor's prequalification. The contractor shall remain prequalified during this 180 day period. The contractor's prequalification status shall cease after this 180 day period if the contractor does not submit adequate financial information to ODOT.

## **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) Please fill in the following information about your company.
- (1-2) Majority Ownership, entity or individual owning more than 50 percent of the company.
- (1-3) Officers and those having signature authority must be on this form.
- (1-4) Other investors or those having financial interest in the firm. Please include name and percentage of ownership.
- (1-5) List all company principals, officers, partners, or other companies or organizations owning any part of the applicant's firm.
- (1-6) Questions and Answers, Please check yes or no and explain.
- (1-7) Check each box that indicates all classes of work on which you desire to be prequalified.

## Section 2

- (2-1) Guidance for Financial Statements

### Audited Financial Statement Check List for Initial and Renewal Applicants:

#### **INITIAL APPLICANTS:**

- Year End Audited Financial Statement by a Certified Public Accountant. The audit must express an opinion with initial application.  
(Audit must be received by ODOT within 180 days of the year end date.)
- The applicants fiscal year end audited financial statement shall not be dated more than 180 days prior to the date of receipt by the Department of the Prequalification application.
- Company must be on file and in good standing with the Oklahoma Secretary of State. You may contact the Secretary of State at (405)-522-4563 or [www.sos.ok.gov](http://www.sos.ok.gov) for information on how to register with their agency.

#### **RENEWAL APPLICANTS:**

- Year End Audited Financial Statement or a Financial Review by a Certified Public Accountant.
- Contractor Prequalification will not be renewed and prequalification status will cease if year-end audit or review is over 180 days old. The renewal applicant's fiscal year end audited financial statement or review, shall not be dated more than 180 days prior to the date of receipt by the Department of the Prequalification application.

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.

NOTE: A financial review will only be accepted for the renewal of the contractors prequalification.

(2-2) Please provide a list of equipment with the age, present location and whether it is leased, owned or rented. Provide leasing company information.

### Part 3: Integrity and Ethics

(3-1) Questions and Answers, Please check yes or no and explain.

### Part 4: Experience

(4-1) List projects completed on Oklahoma Highway System or Federal or State Aid Projects in other states in the last two years, or under progress. (Please attach and upload as a .pdf file.)

(4-2) List all other ODOT administered projects completed in the last two years, or under progress. (Please attach and upload as a .pdf file.)

(4.3) List work performed for municipality or other government entity. (Please attach and upload as a .pdf file.)

(4-4) List the construction experience of the key managers of your organizations. (Please attach and upload as a .pdf file.)

(4-5) List current Prequalifications in other States. (Please attach and upload as a .pdf file.)

### Part 5 Performance

Questions and Answers, Please check yes or no and explain.

#### Note:

Contractor's Performance will be evaluated upon completion of project 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 prequalifications:

- 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 730:25-35 (b).

**TITLE 730. DEPARTMENT OF TRANSPORTATION**  
**CHAPTER 25. HIGHWAY CONTRACTORS**  
**SUBCHAPTER 3. CONTRACTOR PREQUALIFICATION AND PROPOSALS**

**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 Oklahoma Department of Transportation projects and to make timely payments to subcontractors and material suppliers. Prequalification is the method of qualification which has been adopted by the Oklahoma Transportation Commission and the Department pursuant to the Public Competitive Bidding Act at Title 61 OS § 118. 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 their prequalification application is accurate and complete in all aspects, and fully discloses all information requested in the application form. Prospective bidders will be allowed to submit one application in a twelve 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. The prequalification application and all financial information submitted to the Department by a contractor for the purpose of prequalification shall be held in confidence by the Department and shall not be an open record pursuant to the Oklahoma Open Records Act at Title 51 OS §24A.3(1)(d).

(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 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) Landscaping
- (3) Wetland creation
- (4) Repair or maintenance of railroad facilities
- (5) Environmental cleanup or mitigation
- (6) 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 days prior to the announced bid opening date to the Office Engineer Division and obtain a Certificate of Qualification in order to submit a bid proposal to the Department. 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, Director of Operations, and the General Counsel's Office. Contractors prequalified by the committee may be approved for the classes of work specified by the applicant on the prequalification application, dependent on personnel, equipment, capital and experience in highway construction.

(d) A prospective bidder must submit as part of their Prequalification Application, an Audited Financial Statement in which a Certified Public Accountant has expressed an opinion. The prospective bidder's fiscal year end Audited Financial Statement shall not be dated more than 180 days prior to the date of receipt by the Department of the Prequalification Application. 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 180 days.

(e) No prospective bidder will be qualified unless the prospective bidder's Prequalification Application and the Department's review of that Application determines 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 must show all liabilities (current, deferred and contingent). The prospective bidder will not be qualified for more than two and one-half times its current working capital as computed by the Department, based on an evaluation of the contractor's Audited Financial Statement. When a conditionally prequalified contractor receives a notice of project completion on a project, that notice may be submitted to the Department for removal of that project from its bidding limit.

(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) When a partnership is being considered, an Audited Financial Statement of the partnership, which will include all the assets and liabilities of each member, will be required.

(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 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 a conditionally prequalified contractor be low bidder on contracts totaling, in aggregate, more than the amount for which the contractor is conditionally prequalified, the Commission reserves the right to:

- (1) Reject any or all of the contractor's bids and re-advertise for new bids as required in the best interests of the state; or,
- (2) Award contract(s) on which the 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

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 Department's Executive Director or the Executive Director's designated representative by giving notice of the applicant's objection by certified mail addressed to the Executive 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 Executive Director shall review the prequalification file and make an independent determination concerning the applicant's prequalification.

(n) Upon being conditionally prequalified a minimum of one (1) year from the date of the initial prequalification, and satisfactory final completion of either:

(1) A minimum of three (3) projects and not less than Five Million Dollars (\$5,000,000) of Department projects requiring prequalification as a prime contractor...,  
OR,

(2) A single project in excess of Ten Million Dollars (\$10,000,000.00) as a prime contractor, the 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 a fully prequalified contractor. A conditionally prequalified contractor that completes a project as a joint venture with a fully prequalified contractor shall receive credit for its proportional share of the project and contract amount, limited to its bidding capacity.

(o) Prequalification shall expire after a two year term at the completion of the contractor's fiscal years following issue of the contractor's Certificate of Qualification. After the expiration date of the contractor's Certificate of Qualification, the contractor shall have a period of 180 days to submit audited financial statements, or a financial review of the contractor's business operations. During this 180 day period the contractor shall remain prequalified under its current Certificate of Qualification. If the contractor does not submit audited financial statements or a financial review of its operations within the 180 day period following the expiration date of the contractor's Certificate of Qualification, the contractor's prequalification status will cease and the contractor will not be eligible to submit bid proposals to the Department at that date. The contractor's audited financial statement or financial review of its operations must demonstrate that the contractor has a positive amount of working capital that is sufficient to satisfactorily perform its contract in the judgment of the Department. The Department will renew the contractor's Certificate of Qualification if the contractor's working capital is sufficient in the opinion of the Department. If the Department's review determines that the contractor has insufficient working capital, the contractor's Certificate of Qualification will not be renewed and will expire at that time.

### **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, eff5-11-95]

#### **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 issued 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, eff5-11-95; Amended at 18 Ok Reg 1357, eff5-11-01; Amended at 25 Ok Reg 1710, eff6-12-08]

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

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

(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.

(I) 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 indication 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 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 days after receipt of the notice of suspension pending debarment (weekends and holidays excluded). Filing may also be made in person by the contractor.

(2) 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.

(3) 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 years. However, if circumstances warrant, the Department may impose a longer period.

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

(5) 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.

(6) 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 demonstrable 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.

(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.

(I) 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 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 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 months or more than sixty 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 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 demonstrable arms length transaction, subsequent to the suspension, shall not be considered subject to the suspension action.

(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, eff5-1 1-95; Amended at 18 Ok Reg 1357, eff5-1 1-01; Amended at 22 Ok Reg 1367, eff5-26-05; Amended at 25 Ok Reg 1710, eff6-12-08]