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**DEPARTMENT OF TRANSPORTATION**

CHAPTER 63

Statutory Authority: 1976 Code Section 57‑5‑1650

63‑306. Disqualification and Suspension from Participation in Contracts with the South Carolina Department of Transportation.

**Synopsis:**

South Carolina Department of Transportation (SCDOT) proposes to amend Regulation 63‑306 by revising the definition of “affiliate” in Regulation 63‑306(B)(1) to delete the reference to “contractor score.” A contractor’s score is not relevant to the disqualification and suspension process addressed in Regulation 63‑306. Contractor score is addressed in Regulation 63‑307.

A Notice of Drafting for the proposed amendments to Regulation 63‑306 was published in the *State Register* on September 27, 2019. The proposed amended regulations were published in the *State Register* on October 25, 2019. No comments were received nor was a hearing requested. Therefore, the amendments have been promulgated and submitted for General Assembly review and approval.

**Instructions:**

Replace Regulation 63-306 as shown below.

**Text:**

63‑306. Disqualification and Suspension from Participation in Contracts with the South Carolina Department of Transportation.

 A. Policy Statement. Recognizing that preserving the integrity of the public contracting process is vital to the development of a balanced and efficient transportation system and is a matter of interest to all people of the State, it is hereby declared:

 1. The procedures for bidding and qualification of bidders on contracts involving the South Carolina Department of Transportation exist to secure the quality of public works.

 2. The opportunity to bid on contracts, to participate as subcontractor or to supply goods or services to the Department is a privilege, not a right.

 3. In order to preserve the integrity of the public contracting process, the privilege of transacting business with the Department should be denied to persons involved in criminal and/or unethical conduct.

 4. Therefore, as a means of maintaining the integrity of the public contracting process and protecting the public at large, persons engaging in criminal and/or unethical conduct will not be allowed to transact business with the Department during the period of any suspension or disqualification.

 B. Definitions.

 1. Affiliate: Any business entity having direct or indirect control over, or which is controlled directly or indirectly, by any person who has been disqualified or suspended. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interest among family members; shared facilities and equipment; common use of employees; or any business entity organized following the suspension or disqualification of a person which has the same or similar management, ownership, or principal employees of the disqualified or suspended person.

 2. Business Entity: A corporation, partnership, limited partnership, association or sole proprietorship.

 3. Civil Judgment: The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation or otherwise, creating civil liability for the wrongful acts complained of.

 4. Commission: The Commission of the South Carolina Department of Transportation.

 5. Contractor’s Certificate: A Prequalification Certificate issued by the Department to qualified contractors as a necessary condition to bid on contracts with the Department.

 6. Conviction: A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of non contendere.

 7. Department: South Carolina Department of Transportation.

 8. Disqualification: An action taken in accord with these regulations to exclude a person from participating as a contractor, subcontractor, supplier, or in any other role under any contract with the Department during the period of disqualification.

 9. Secretary: The Secretary of Transportation of the State of South Carolina.

 10. Person: Any individual, corporation, partnership, limited partnership, association, sole proprietorship or any other business entity.

 11. Principal: Officer, director, owner, partner, key employee or any other person within a business entity with primary management or supervisory responsibilities; or a person who has critical influence on or substantial control over the actions or conduct at issue, whether or not employed by the business entity.

 12. Suspension: An action taken in accord with these regulations that immediately excludes a person from participating in any contracts with the Department for a temporary period.

 13. Unlawful payment or gratuity: Transfer of anything of value to a Department employee in violation of state statute or regulatory law or Departmental policy.

 C. Disqualification. Any person who violates any of the standards of conduct identified below may be subject to disqualification or suspension. Disqualification may be imposed for:

 1. Conviction of any crime reflecting a lack of business integrity or business honesty, including but not limited to, crimes involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statement, receiving stolen property, anti‑trust violations, making false claims, making any unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

 2. Civil judgment for any acts or omissions reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti‑trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

 3. Final administrative decisions by any governmental agency responsible for supervising or regulating public contracts, standards of ethical conduct or licensure for any acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti‑trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

 4. Any act or omission reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti‑trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of a debarment agreement, violation of the ethical standards or conspiracy to commit any of the above.

 5. Willful violation of any provision of a contract with the Department, or any regulatory or statutory provision relating to such contract, while serving as a contractor, subcontractor or supplier.

 6. Persistent failure to perform or incompetent performance on one or more contracts with the Department as a contractor, subcontractor or supplier; or

 7. Knowingly allowing any person disqualified or suspended pursuant to this regulation, or by any other governmental or regulatory agency, to serve as a subcontractor or supplier or to play any other role under any contract with the Department without prior written authorization from the Secretary.

 8. Failure to cooperate fully and completely with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person’s actions in the matter under investigation. Assertion of Fifth Amendment right against self‑incrimination shall not be construed as a failure to cooperate under this regulation.

 D. Suspension. In the event the Department finds that the public health, safety or welfare imperatively requires emergency action, a suspension may be implemented immediately pending a hearing, which shall be promptly provided on the issue of suspension. The grounds for a suspension shall be in accord with the standards for disqualification enumerated above.

 E. Procedures.

 1. Notice of disqualification, suspension, or sanctions may be issued by the Secretary and shall include:

 (a) A reference to the particular sections of the statutes, regulations, and rules involved;

 (b) A short and plain statement of the matters asserted.

 2. The SCDOT shall have broad equitable powers in the impositions of civil sanctions, with the goal of preserving the integrity of the public contracting process and protecting the public at large. Any civil sanction imposed shall be remedial in nature and may include, but not limited to:

 (a) disqualification for a specific period of time;

 (b) monetary penalty;

 (c) restitution and reimbursement to the Department for the cost of any investigation or proceedings relating to the circumstances leading to any sanctions; and

 (d) conditions which must be met prior to restoration of a Contractor’s Certificate.

 3. A person may seek relief from the disqualification or suspension by requesting a contested case hearing before an Administrative Law Judge pursuant to S. C. Code Section 1‑23‑600 and the rules of procedure for the Administrative Law Judge Division. The request for a hearing must be made within thirty (30) days of receipt of SCDOT’s Notice of Disqualification or Suspension.

 F. Scope of Disqualification.

 1. In the event a person is suspended or disqualified under this regulation, such person, and any affiliate of such person, shall be disqualified from serving as a contractor, subcontractor or supplier or performing any other service or role under any contract with the Department during the period of suspension disqualification.

 2. A violation of the terms of any suspension/disqualification may be the basis of further sanction.

 3. In the event that a person disqualified under this regulation is performing or providing services or materials on a Department project at the time of said disqualification, the Department may, in its discretion, allow the disqualified person to complete its obligation under the contract when such completion is in the public interest.

 4. In the event a person which is a business entity is disqualified or suspended under this regulation, such disqualification or suspension shall be applicable to any principal of said business entity.

 G. Duty of Disqualified/Suspended Persons. A disqualified or suspended person shall cooperate fully with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person’s actions in the matter under investigation. In the event a disqualified or suspended person fails to cooperate, as required by this paragraph, further remedial measures may be taken against the person, up to and including permanent disqualification. Assertion of Fifth Amendment right against self‑incrimination shall not be construed as a failure to cooperate under this regulation.

 H. Reinstatement of Contractor’s Certificate. Any person disqualified or suspended under this regulation shall immediately lose its Contractor’s Certificate. The disqualified or suspended person may apply for the reinstatement of the Contractor’s Certificate upon completion of the period of suspension or disqualification and satisfaction of all conditions imposed by any final order or settlement. Any application for the reinstatement of a Contractor’s Certificate shall be subject to the then existing statutory and regulatory provisions and Departmental policies relating to pre‑qualification of bidders.

**Fiscal Impact Statement:**

There should be no costs to the State or its political subdivisions to comply with the proposed amendments to the regulations.

**Statement of Rationale:**

The reference in Regulation 63‑306 (B)(1) to a contractor being “prevented from bidding because of a contractor’s score” should be eliminated. Contractor performance scores are determined by the process set forth in Regulation 63‑307. Contractor scores can prevent a contractor from bidding on specific projects, but do not disqualify the contractor from participation in all contracts with SCDOT. Therefore, the reference to contractor score in 63‑306 (B)(1) is erroneous.