

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
SOUTH DAKOTA TRANSPORTATION COMMISSION
NOTICE OF PUBLIC HEARING

Pursuant to the authority vested in them by SDCL 1-26, the South Dakota Transportation Commission will hold a public hearing in the Commission Room of the Becker Hansen Building at 700 East Broadway Avenue in Pierre, South Dakota on **November 21, 2013**, at 9:05 am (CDST) to consider the proposed amendments or additions to the following rules:

70:07:01:01 – A definition of construction contract is being added to replace the definition for department contract. A definition for prospective bidder is also being added.

70:07:02:01 – The rule is being amended to allow the Secretary of Transportation to appoint a temporary alternate to the classification and rating committee if a member is unavailable.

70:07:02:02 – The requirement for the department to maintain a list of all bidding proposals for every letting is being eliminated.

70:07:02:03 - Is being amended to increase the threshold for requiring prequalification of bidders from \$100,000 to \$200,000 to attract more bidders for smaller projects.

70:07:02:04 – The rule prescribing procedure for obtaining prequalification is being amended to change the terms “contractor” and “applicant” to “prospective bidder.”

70:07:02:05 – A rule making financial records confidential is being amended to cite the specific statutory exemption from disclosure.

70:07:02:06 – A rule prescribing the time limits for obtaining prequalification is being amended to reflect the new term “prospective bidder” in place of “contractor.”

70:07:02:07– The rule requiring prospective bidders to indicate the work classifications sought in the prequalification statement is being amended to reflect the new term “prospective bidder.”

70:07:02:08 – The rule establishing the work classifications is being amended to simplify, clarify, and bring in line with new technology the work types and add a classification for Bridge Painting.

70:07:02:09 – A rule establishing criteria for determining maximum bidding capacity is being amended to reflect the new term “prospective bidder,” and to establish the maximum per contract bidding capacity when an audited financial statement is submitted.

70:07:02:10 – A rule setting the effective period for a bidding capacity rating is being amended to coincide with the expiration date of the surety bond or expiration of the certificate of surety, to reflect the new term “prospective bidder,” and to increase from 30 to 60 days the permissible extension period.

- 70:07:02:11** – A rule requiring a reduction in bidding capacity for uncompleted work on other contracts is being amended to specify the reduction is for bonded work.
- 70:07:02:12** – A rule identifying allowable deduction factors for determining maximum bidding capacity is being amended to clarify those factors and how deductions may be applied.
- 70:07:02:13** – A rule prescribing the term of ineligibility for violation of a law, rule or order is being amended to increase the maximum possible period of ineligibility and conform to federal requirements.
- 70:07:02:14** – A rule prescribing ineligibility for classification after submitting a false prequalification statement or financial information is being amended to define the potential maximum period of ineligibility.
- 70:07:02:15** – A rule prescribing ineligibility from bidding for events occurring after being prequalified is being amended to reflect the new term “prospective bidder,” and make additional clarification.
- 70:07:02:16** – A rule establishing the procedure for appealing a decision of the classification and rating committee is being amended to provide for appeal by a timely request to the Secretary to review a determination of the classification committee, and a decision within 5 days thereafter, rather than a formal ch. 1-26 hearing process.
- 70:07:02:17** – A rule prescribing the reclassification procedure is being amended to clarify when the new prequalification statement must be received.
- 70:07:02:18** – A rule authorizing the forfeiture of a bidding capacity rating for failure to submit a new prequalification statement if requested by the committee is being amended to clarify the time period for submission of the new statement.
- 70:07:02:19** – A new rule is being proposed to establish the process for a prospective bidder to retain or revise their prequalification status.
- 70:07:02:20** - A new rule is being proposed to clarify what prior work experience will be considered by the committee when establish a bidding capacity rating.
- 70:07:03:01** – A rule establishing the procedure for requesting bid proposals is being updated to eliminate superfluous provisions, and include Region lettings.
- 70:07:03:03** – A rule authorizing denial of a bid proposal due to other substandard work is being amended to reflect the new term “prospective bidder.”
- 70:07:03:04** – A rule prescribing preference for selecting among multiple bid proposals from the same prospective bidder is being repealed because it is addressed elsewhere in the rules.
- 70:07:03:05** – A rule addressing the award of multiple contracts to a prospective bidder is being amended to reflect the new term “prospective bidder.”

70:07:03:06 – A rule voiding a bid proposal submitted by someone other than the prospective bidder to whom the proposal was originally entered is being repealed as unnecessary due to the new electronic bidding system.

70:07:04:01 – A rule authorizing suspension of bidding qualification for a contractor's violation of subcontracting procedures is being amended to update the language as reflected in the new definitions.

70:07:04:02 – A rule authorizing suspension of a bidder for commission of a contract crime is being amended to clarify the suspension is from bidding construction contracts.

70:07:04:10 – A rule prescribing procedure for debarment by the transportation commission is being amended to eliminate reference to a hearing officer.

70:07:04:13 - A rule prescribing the effective date of debarment is being amended to clarify when it takes effect.

70:07:04:15 – A rule prescribing the term of debarment is being amended to eliminate reference to a hearing officer.

70:07:04:16 – A rule establishing the three circumstances under which a debarred contractor may be awarded a contract is being amended to clarify that only one of the circumstances need apply in a particular situation.

70:07:04:18 – A rule providing an exception to the prohibition on awarding a contract to a debarred contractor is being amended to correct a reference to another rule, and to remove the restriction on subcontracting to conform to other rules.

70:07:04:19 – A rule providing an exception to the prohibition on a debarred contractor subcontracting work is being amended to correct a reference to another rule, and to conform to other rules.

70:07:04:20 – A new rule is being proposed to establish the factors for which the department can suspend or deny a contractor's prequalification status.

70:07:04:21 – A new rule is being proposed to establish the period of suspension of a contractor's prequalification status.

70:07:04:22 – A new rule is being proposed to establish the procedure by which a suspended contractor may restore their prequalified status following the suspension period.

70:07:05 – Chapter 70:07:05, which prescribes certain construction contract requirements is being repealed because it simply repeats the requirements in the STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES which is expressly made a part of every construction contract.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Department of Transportation, 700 East Broadway Avenue, Pierre, South Dakota

57501-2586. Material sent by mail must reach the Department of Transportation by **November 20, 2013**, to be considered.

After the hearing, the commission will consider all written and oral comments it receives on the proposed rules. The Commission may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Any individuals with disabilities who will require a reasonable accommodation in order to participate in the hearing should submit a request to the department's ADA Coordinator at 605-773-3540 or 1-800-877-1113 (Telecommunication Device for the Deaf).

Copies of the proposed rules may be obtained without charge from:

Secretary of Transportation
Becker-Hansen Building
700 East Broadway Avenue
Pierre, South Dakota 57501-2586

Published at the approximate cost of \$_____.