

CHAPTER 70:07:04
SUSPENSION AND DEBARMENT

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70:07:04:01. Suspension for ~~subletting~~ subcontracting violation. The standard specifications for road and bridge construction ~~of included in the department construction~~ contract shall contain provisions for ~~subletting~~ subcontracting.

If evidence and investigation establish ~~that an attempt is being made~~ the contractor has attempted to violate ~~subletting~~ subcontracting provisions ~~by a contractor~~, the secretary may suspend the bidding qualifications of the ~~contractor~~ prospective bidder for up to 180 days.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 11 SDR 22, effective August 12, 1984; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:20, 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:04:02. Suspension of bidder. The secretary may suspend a person or business from bidding by order upon receiving notice or learning of a conviction for a contract crime or violation of antitrust law or upon receiving evidence of an affiliation described in § 70:07:04:07, 70:07:04:08, or 70:07:04:09.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:04:10. Debarment procedure. The commission may debar a business only after a hearing or opportunity for hearing ~~conducted by a hearing officer~~ pursuant to contested case procedure in SDCL chapter [1-26](#) has been provided for the business.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:04:13. Effective date of debarment. A debarment takes effect on the date of the ~~mailing of the order for debarment by the~~ final decision by the commission. The order for debarment ~~must~~ shall be sent by certified mail.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:04:15. Term of debarment. ~~The hearing officer shall recommend and the~~ commission shall establish the term of debarment, based on the following:

- (1) The seriousness of the offense;
- (2) Whether restitution has been made;
- (3) Whether the debarred person cooperated in civil or criminal lawsuits;
- (4) The state's need to preserve the competitive bidding process; and
- (5) Whether the business is debarred or has been debarred in another jurisdiction or in this state.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:04:16. Termination of debarment or award during debarment. The commission may terminate a debarment by order or may award a department contract to a debarred or suspended business under any of the following circumstances:

- (1) The business is the sole supplier of a material or service required by the department;
- (2) The commission determines that an emergency exists; or
- (3) The contract is for purchasing materials or renting equipment for routine road maintenance.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:04:18. Award of department contracts to debarred or suspended persons prohibited -- Exception. Except as provided in ~~§ 70:07:04:17~~ [§ 70:07:04:16](#) , the department may not award a department contract to a debarred or suspended person ~~and may not approve a contract under which a debarred or suspended person will serve as a subcontractor.~~

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:04:19. Subcontracts with debarred or suspended persons prohibited --
Exception. Except as provided in ~~§ 70:07:04:17~~ [§ 70:07:04:16](#) , a contractor to whom a department contract has been awarded by the commission may not subcontract with a debarred or suspended person for performance of the department contract. The department may not approve a ~~subcontract with a debarred or suspended subcontractor,~~ except as provided in § 70:07:04:16.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL [31-5-10](#).

Law Implemented: SDCL [31-5-10](#).

70:07:04:20. Suspension of prequalification. The department may deny or suspend a contractor's prequalification status. A suspension or denial pursuant to this rule prohibits the contractor from bidding on any department construction contract for which prequalification is required. The suspension may be based on a violation of a state or federal law, rule, or regulation; an order of a federal or state department or agency pertaining to the construction, maintenance, repair, or supervision of highways; suspension or debarment by a state or federal agency; or poor or unsatisfactory management, quality and timeliness of work performed on existing or previous contracts.

General Authority: SDCL 31-5-10

Law Implemented: SDCL 31-5-10

70:07:04:21. Period of suspension. The suspension of a contractor's prequalification status shall be for a specific period of time based on the seriousness of the deficiency, but not to exceed 180 days.

General Authority: SDCL 31-5-10

Law Implemented: SDCL 31-5-10

70:07:04:22. Prequalification requirements following completion of suspension. A contractor who was suspended and has completed the suspension period, shall reapply for prequalification status before bidding on a department construction contract. The contractor may

submit prequalification application information before the end of the suspension period, but no prequalification approval is effective until completion of the suspension period.

General Authority: SDCL 31-5-10

Law Implemented: SDCL 31-5-10