



West Virginia Division of Highways Policy: **Revocation of Pre-Qualified Contractors**

Issued by the Commissioner of Highways

Policy No: DOH 1.12

Issue Date: 07/01/2023

Revised: 07/01/2023

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1.0 PURPOSE

The purpose of this policy is to set forth the appeals process to be followed when the West Virginia Division of Highways (WVDOH) revokes a contractor's prequalification status for failure to comply with the written confirmation requirements as set forth in the Special Provision for Disadvantaged Business Enterprise (DBE) Utilization (Special Provision).

2.0 SCOPE

This policy applies only to the revocation of a contractor's prequalification status for failure to comply with the Special Provision's deadlines for submitting contractor's DBE written confirmations. This policy applies only to the WVDOH and does not apply to any other West Virginia Department of Transportation agency.

3.0 DEFINITIONS

- 3.1 **DBE:** means a firm that is certified as a disadvantaged business enterprise in accordance with the provisions of 49 CFR §26, by the WVDOH's DBE Unified Certification Program.
- 3.2 **DBE Participation Plan:** means a fully completed form provided in Section C, entitled "Contractor's Plan for DBE Participation", submitted electronically with the bid.
- 3.3 **DBE Written Confirmation:** means a signed quote from the DBE(s) listed on the DBE Participation Plan.
- 3.4 **Days:** means calendar days. When computing time, the day of the act, event, default, or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, a legal holiday, or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or designated day off. Similarly, in circumstances where WVDOH offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.
- 3.5 **SP:** means the Special Provision for Disadvantaged Business Enterprise, dated November 22, 2022, which are incorporated into this policy.

4.0 POLICY

- 4.1 The SP requires that "All bidders are required to submit their DBE Participation Plan with their bid on www.Bidx.com..." and "...the DBE Written Confirmation from each listed DBE firm that is participating in the contract in the kind and amount of work provided in the apparent lowest responsible bidder's commitment must be submitted to the Civil Rights Compliance Division via email at dot.eeo@wv.gov

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within five (5) days after bid opening...” The SP further states, “The apparent lowest responsible bidder who does not submit the required DBE Written Confirmation within five (5) days after the bid opening will be in breach of this Special Provision, and the WVDOH shall revoke the bidder’s prequalification status for a period of 12 months.”

- 4.2 If that should occur, the next apparent lowest bidder, upon notification by the Contract Administration Division, will be given five (5) days to submit their required DBE Written Confirmation. In the event that the next apparent lowest responsible bidder fails to submit their required DBE Written Confirmation, they will be in breach of the SP, and 157 CSR 3-13 and the WVDOH shall revoke the bidder’s prequalification status for a period of 12 months.
- 4.3 The WVDOH may then, in its sole discretion, proceed to each successively remaining apparent lowest responsible bidder and consider awarding the contract, readvertise the work, or otherwise proceed as the WVDOH in its sole discretion determines is appropriate. In each case, upon notification, if the next successive apparent lowest responsible bidder fails to submit their required DBE Written Confirmation within five (5) days, they will be in breach of the SP, and the WVDOH shall revoke the bidder’s prequalification status for a period of 12 months.
- 4.4 Nothing in the SP precludes any bidder, including one who is not the initial apparent lowest responsible bidder, from submitting their DBE Written Confirmation in advance of the contract being awarded.
- 4.5 Furthermore, Pursuant to W. Va. Code St. R. § 157-3-13.2, deliberate and repeated violation of this policy could result in the contractor’s ultimate disqualification; which, pursuant to that Rule, could be for a period of up to three (3) years.

5.0 APPEALS PROCESS

In the event that a contractor’s pre-qualification status is revoked pursuant to the above rules, the WVDOH will promptly notify the contractor in writing and provide them with an opportunity to appeal the decision. The appeal will follow the hearing procedures set forth in W. Va. Code St. R. § 157-1-3. Pursuant to W. Va. Code St. R. § 157-3-13.3, the contractor’s pre-qualification status will be suspended during a WVDOH investigation to determine if revocation is applicable or an ensuing legal challenge to the revocation.

- A. Within 30 days of the notice that the contractor’s pre-qualification status has been revoked, the contractor may send a written informal appeal to Contract Administration Division at DOHContractProcure@wv.gov or to WVDOH, Commissioner of Highways (c/o Contract Administration Division), Building Five, Room A109, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305.
- B. Within 20 days of receipt of the informal appeal, the Director of Contract Administration Division, or designee, will review the request and make a determination whether to uphold the decision or grant the appeal.

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- C. The Director of Contract Administration, or designee, will present the determination and any associated documents or recommend additional terms to be imposed to the Commissioner for approval.
- D. Within 30 days of receipt of the informal appeal, the contractor will be notified in writing by the Contract Administration Division Director, or designee, of the determination, and any other terms set forth.
- E. Should the contractor not agree with the determination or the terms set forth by the Director of Contract Administration Division, the contractor may request in writing a formal hearing to be presided over by the Commissioner, or designee, in accordance with the provisions for contested cases, W. Va. Code §29A-5-1et seq.
- F. The decision of the Commissioner is final. It may be appealed in accordance with the provisions for contested cases, W. Va. Code §29A-5-1et seq.

6.0 CHANGE LOG

July 1, 2023 –

- New policy created.

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Approved by:



Jimmy D. Wriston, P.E.
Secretary of
Transportation
Commissioner of
Highways



Date

*The Secretary of the West Virginia Department of Transportation or the Commissioner of Highways may, pursuant to the authority vested with the Secretary and Commissioner in W. Va. Code §5F-2-2, §17-2A-1 *et seq.*, and §17-2-1 *et seq.*, waive the requirements of this policy if the circumstances, in the Secretary or Commissioner's sole discretion, warrant such action.