

CHAPTER 25. HIGHWAY CONTRACTORS

[**Authority:**25 O.S., § 1313; 61 O.S., §§ 1 and 101 et seq.; 69 O.S., §§ 101, 301, 303, 304, 312, 622, 1101, and 4006; 75 O.S., §§ 302 and 309 et seq.]
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SUBCHAPTER 1. GENERAL PROVISIONS

730:25-1-1. Purpose

The purpose of this chapter is to issue guidance and procedures for the uniform and equitable treatment of individuals, partnerships, and corporations that are either desiring to, or are doing business with the Department through construction or maintenance contracts.

[**Source:** Amended at 12 Ok Reg 1269, eff 5-11-95]

SUBCHAPTER 3. CONTRACTOR PREQUALIFICATION AND PROPOSALS

[**Source:**Amended at 43 Ok Reg, Number 20, effective 7-13-26; Amended at 41 Ok Reg, Number 21, effective 7-26-24]

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 sub-contractors 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.5(1)(h).

(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 prospective bidder cannot provide a current Audited Financial Statement with their Prequalification Application, then the prospective bidder may provide their most recent Audited Financial Statement. 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, or his designee, 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 prequalification committee will consider upgrading the contractor's status from conditionally prequalified to fully prequalified. 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) A conditionally prequalified contractor's certificate 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 a conditionally prequalified 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 Department shall limit the potential bidder's bidding capacity to an amount not to exceed the company's working capital as determined by the contractor's most recent audited financial statement or financial review until such time that the contractor can provide the Department with a current audited financial statement or financial review.

(p) When a previously fully prequalified contractor re-applies for prequalification within two years of the expiration of their prequalification, upon approval the Department may, at its sole discretion, reinstate the contractor to fully prequalified status, provided that:

(1) the contractor was in good standing with the Department at the time that the contractor's prequalification expired,

(2) the contractor submits current audited financial statements that indicate financial resources equal to or greater than its last financial statements submitted to the Department, and

(3) it is demonstrated that such reinstatement of the contractor to fully prequalified status is in the best interests of the Department.

(q) The Department will consider a contractor to be in good standing if:

(1) The contractor was demonstrating satisfactory performance on contracts which the contractor was awarded by the Department;

(2) The contractor had settled all debts and obligations owed to the Department;

(3) The contractor had made all necessary payments to subcontractors in accordance with its subcontract agreements;

(4) The contractor had made all necessary payments to suppliers for materials to be used on Department contracts;

(5) The contractor had settled all claims against the contractor;

(6) The contractor was not in the process of being suspended or debarred by the Department, or any other government entity, and the action and/or decision was later upheld;

(7) The contractor was not party to any criminal suit against the contractor in which the contractor was later convicted.

(r) The Department may request a fully prequalified contractor's audited financial statement or financial review at any time for the purpose of evaluating the contractor's working capital. If the contractor fails or refuses to provide the requested document(s) to the Department within 30 days of its request, the Department may reimpose a bidding limit upon the contractor of an amount not to exceed two and one-half times its working capital as computed by the Department, based on an evaluation of the contractor's most

recent audited financial statement on file with the Department. The Department shall impose such additional requirements on a fully prequalified contractor as the Department deems necessary and for the best interest of the public.

(s) 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 judgment of the Department. If the Department's review determines that the contractor has insufficient or negative working capital, the contractor's bidding capacity will be limited to the company's working capital as determined by the contractor's most recent audited financial statement or financial review until such time that the contractor can demonstrate to the Department that either:

(1) The contractor has sufficient working capital, or

(2) The contractor, in the judgment of the Department, has a viable financial recovery strategy to develop positive working capital which can be determined from the contractor's next year-end audited financial statement. The contractor's anticipation of obtaining future construction contracts with the Department will not be considered as part of the contractor's financial recovery strategy.

(t) If the Department determines the contractor's working capital is sufficient or the contractor's recovery strategy is approved, the contractor will have one and one-half years from the contractor's expiration date to demonstrate the company's positive working capital. If the contractor cannot demonstrate the company's positive working capital within the one and one-half year period, the contractor's prequalification status will cease and the contractor will not be eligible to submit bid proposals to the Department at that date.

[Source: Amended at 11 Ok Reg 587, eff 12-13-93; Amended at 11 Ok Reg 1015, eff 1-3-94 (emergency); Amended at 11 Ok Reg 3579, eff 6-27-94; Amended at 12 Ok Reg 1269, eff 5-11-95; Amended at 18 Ok Reg 1357, eff 5-11-01; Amended at 25 Ok Reg 1710, eff 6-12-08; Amended at 36 Ok Reg 1066, eff 7-25-19; Amended at 39 Ok Reg 2354, eff 9-11-22; Amended at 43 Ok Reg, Number 20, effective 7-13-26; Amended at 41 Ok Reg, Number 21, effective 7-26-24]

730:25-3-2. Prior bonding; Letter of Credit in lieu of bond [REVOKED]

[Source: Revoked at 12 Ok Reg 1269, eff 5-11-95]

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, eff 5-11-95]

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 stamped 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, eff 5-11-95; Amended at 18 Ok Reg 1357, eff 5-11-01; Amended at 25 Ok Reg 1710, eff 6-12-08]

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 material suppliers.

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

730:25-3-5. Debarments and suspensions

(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.

- (1) 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 indicating 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 (5) 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 (10) days after receipt of the notice of suspension pending debarment (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 the hearing date is continued by the Presiding Officer at the request of the contractor or by agreement of the parties.

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

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

(8) 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.

(9) 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 demonstratable 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.

(1) 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 (3) 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 (1) 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 (12) months or more than sixty (60) 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 (10) 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 demonstratable 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, eff 5-11-95; Amended at 18 Ok Reg 1357, eff 5-11-01; Amended at 22 Ok Reg 1367, eff 5-26-05; Amended at 25 Ok Reg 1710, eff 6-12-08]

730:25-3-6. Notice, hearings, and appeals for debarments or suspensions

(a) **Definitions.** The following terms and procedures shall apply to the conduct of hearings for debarments and suspensions as set forth in this section and such other hearings as the Department may determine. The following words and terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **"Administrative appeal"** means the complete procedure that takes place, including the filing of a petition, to conduct an administrative review of a decision of the Department of Transportation when such decision is reviewable under this chapter or as otherwise provided.

(2) **"Administrative head"** means the Director of the Oklahoma Department of Transportation or a person officially designated by the Director to issue final agency orders in administrative appeals under this section.

(3) **"Affidavit"** mean a written statement of facts, made voluntarily, confirmed by the oath or affirmation of the party making such written statement and which is taken before a person with statutory authority to administer such oath or affirmation.

(4) **"Allegation"** means the claim of a party which that party expects to prove in the administrative hearing.

(5) **"Allege"** means to state, assert or charge; to make an allegation.

(6) **"Appellant"** means the party who files a petition for hearing.

(7) **"Burden of proof"** means the obligation of a party to establish alleged fact(s) by clear and convincing evidence.

(8) **"Continuance"** means a postponement of a status conference, prehearing or hearing to a future date. Continuances shall be granted at the discretion of the Presiding Officer for good cause shown.

(9) **"Cross-examination"** means the questioning of a witness by a party other than the party calling the witness. Cross-examination may only involve the issues covered in direct examination.

(10) **"Deposition"** means a form of discovery in which the testimony of a party or witness is taken and recorded prior to an administrative hearing. Depositions shall be taken before a court reporter in response to a subpoena unless otherwise taken by agreement of the parties.

(11) **"Direct examination"** means the questioning of a witness by a party calling the witness.

(12) **"Discovery"** means the process of determining relevant information for use at an administrative hearing. Discovery is conducted prior to an administrative hearing and upon order of the Presiding Officer unless otherwise agreed to by the parties.

(13) **"Dismiss"** means to close an administrative hearing without further consideration.

(14) **"Evidence"** means relevant documents or testimony that tends to prove or disprove the existence or non-existence of a fact.

- (15) **"Ex parte communications"** means improper communication of a material nature between the Presiding Officer and only one party or a witness, concerning the factual or legal issues of an administrative hearing which could affect the outcome of the hearing.
- (16) **"Director"** means the Chief Operating Official of the Oklahoma Department of Transportation.
- (17) **"Exhibit"** means document(s) or other physical thing(s) formally introduced as evidence at an administrative hearing.
- (18) **"Filing"** means the formal delivery of documents to the office of the Hearing Liaison Officer of the Oklahoma Department of Transportation.
- (19) **"Final agency order"** means a written determination made by the Director or his designee to decide an individual proceeding.
- (20) **"Hearing"** means an open, formal meeting conducted by a Presiding Officer to decide an appeal. The meeting is to provide each party with an opportunity to present evidence in support of the party's side of the case.
- (21) **"Hearing examiner"** means a person appointed by the Director to hold hearings and as required render proposed orders.
- (22) **"Hearing liaison officer"** means the person appointed by the Director to act as the official repository of the records of all hearings conducted under this subchapter and to perform such other duties as may be set forth herein.
- (23) **"Interrogatories"** means a form of discovery consisting of a set of written questions about the subject matter of the appeal which are submitted to the other party or a witness. Answers to interrogatories shall be made in writing under oath upon order of the Presiding Officer unless otherwise agreed to by the parties.
- (24) **"Intervenor"** means a person or agency permitted to voluntarily enter an administrative appeal as a party.
- (25) **"Issue"** means a disputed point or question on which the parties to an administrative appeal seek a resolution.
- (26) **"Motion"** means a request from a party for a ruling or order to be made by the Presiding Officer.
- (27) **"Notice"** means a written announcement of an action or proposed action.
- (28) **"Order"** means a command or directive given by the Presiding Officer in an administrative appeal.
- (29) **"Party"** means a person or agency by whom or against whom an administrative appeal is filed and includes a person or agency permitted to intervene in an administrative appeal.
- (30) **"Petition for appeal"** means the formal document filed by a person with the Hearing Liaison Officer whereby the person requests a hearing and seeks a remedy.
- (31) **"Petition for reconsideration or rehearing"** means a formal application filed after the final agency order has been made by the Presiding Officer requesting a rehearing or reconsideration of the case. A petition for reconsideration or rehearing shall state specifically each fact upon which the party relies to request reconsideration or rehearing and shall further state each legal theory citing specific authority which the party contends mandates rehearing or reconsideration.
- (32) **"Prehearing conference"** means a meeting conducted by the Presiding Officer with the parties or their representatives to identify the issues for hearing, present final list of documents, final witness lists and to entertain motions not previously ruled upon. The Presiding Officer will issue a prehearing order which will guide the Presiding Officer and the parties in the conduct of the administrative hearing.
- (33) **"Preponderance of evidence"** means information or evidence which is more convincing or believable than the information or evidence offered in opposition.
- (34) **"Presiding officer"** means the Director, his designee to issue final agency orders, or Hearing Examiner who will actually conduct the administrative hearing.
- (35) **"Proposed order"** means the order prepared by the Hearing Examiner at the conclusion of the hearing which is submitted to the parties for their consideration.
- (36) **"Relevant"** means directly related to the issue or issues of the administrative appeal.

(37) **"Remedy"** means corrective action sought by the appellant, offered by the respondent, or ordered as a result of the hearing.

(38) **"Representative"** means an agent acting on behalf of a party.

(39) **"Respondent"** means the party to an administrative hearing against whom the petition for administrative hearing is filed.

(40) **"Status conference"** means a meeting conducted by the Presiding Officer with the parties to establish discovery schedules, motion and briefing schedules, resolve procedural issues and to expedite the hearing process.

(41) **"Stipulation"** means a voluntary agreement between the parties which establishes a fact.

(42) **"Subpoena and subpoena duces tecum"** means an order to appear at a certain time and place to give testimony. A Subpoena Duces Tecum additionally requires the person who is ordered to appear to produce books, papers and other documents or tangible things. A subpoena or subpoena duces tecum shall only issue, or be of any force and effect, when approved in writing by the Presiding Officer.

(43) **"Sustain"** means to grant a request or to grant the remedy requested in an administrative appeal.

(44) **"Testimony"** means statements given by a witness under oath or affirmation.

(b) General provisions.

(1) **Initiation of appeal.** The administrative hearing process conducted under this procedure begins with the filing of a petition for the administrative review of an action or proposed action by the Department under this subchapter. The petition shall be filed with the Department's designated Hearing Liaison Officer. The petition must be filed with the Hearing Liaison Officer within the time period provided in the section relating to the action or proposed action. Filing of a petition within the period provided is a jurisdictional prerequisite. Upon receipt of a petition for an administrative hearing, the Hearing Liaison Officer shall immediately notify the Director and the Office of the General Counsel and provide them with a copy of the petition. The Director shall file with the Hearing Liaison Officer a written designation of the Presiding Official for the administrative appeal. The Hearing Liaison Officer shall provide a copy of this designation to the Appellant and the Office of the General Counsel. The Office of the General Counsel shall file with the Hearing Liaison Officer a copy of the notice of the action or proposed action which is the subject of the appeal.

(2) **Form of petition.** The petition for an administrative appeal shall be in general conformance with the example provided as Appendix A to this chapter. The petition shall be notarized. The Hearing Liaison Officer shall not accept for filing an unnotarized petition.

(3) **Answer.** The Department shall, within twenty (20) days of the receipt of the petition by the Hearing Liaison Officer, file with the Hearing Liaison Officer an answer to the Appellants petition which states the basis upon which the Department proposes the appealed action. A copy of the Answer shall be mailed to the Appellant or its designated representative by the Hearing Liaison Officer.

(4) **Representation of parties.** Parties shall have the right to counsel at all stages in an administrative appeal so long as the person is willing and available to serve. Counsel must be duly licensed to practice law in the State of Oklahoma by the Oklahoma Supreme Court. The parties shall designate their representatives, if any, in the petition for appeal or response except as otherwise provided in this section. A change in representation must be submitted to the Hearing Liaison Officer in writing.

(5) **Ex parte communications.** Ex parte communications with the Presiding Officer are prohibited from the time the parties involved know that the administrative appeal will be scheduled for hearing until a final decision has been issued. This prohibition applies only to communications which involve the merits of the case or those which violate requirements for written communications. This provision does not apply to communications authorized or required by the law nor matters not related to the administrative appeal.

(6) **Intervenors.** Any person, having a valid demonstrable interest in the outcome of an administrative appeal proceeding may request permission to intervene in an administrative appeal. A motion to intervene and proposed order must be made in writing at the earliest possible time and

must include a showing that the outcome of the administrative appeal would directly affect the person requesting leave to intervene. The motion with brief shall be filed with the Hearing Liaison Officer and copies shall be served on all parties to the administrative appeal. Intervenor will be considered full parties and will have the same rights and duties as an original party, except that intervenors do not have an independent right to an administrative hearing and may only participate on the issues affecting them as stated in the order granting intervention.

(7) Dismissal and penalties.

(A) The Presiding Officer may dismiss an appeal if;

(i) the appeal is clearly moot or is without merit; or

(ii) the Petitioner fails or refuses to appear for a scheduled hearing, a pre-hearing conference, or other conferences ordered by the Presiding Officer, or to accept a settlement offer which affords the relief the Petitioner could reasonably expect if he or she prevailed in the administrative hearing.

(iii) the Presiding Officer may dismiss an administrative appeal because it was not properly filed or is not within the scope of the Department's authority or jurisdiction.

(B) If the appeal has been scheduled for administrative hearing, the Presiding Officer will issue a notice of proposed dismissal including the basis for such decision to all parties.

Responses from the parties must be received by the Hearing Liaison Officer within fifteen (15) calendar days. If the Presiding Officer is the Director or designee to issue final agency orders, and no responses are received, the proposed order becomes final on the date the proposed order of dismissal is issued. If the Presiding Officer is a Hearing Officer not designated to issue final agency orders, the record shall be forwarded to the Director with the response, if any, and the Director may issue the dismissal as a final agency order.

(C) The Director may issue orders, including dismissal of appeal or denial of relief, as may be warranted for failure or refusal to comply with an order.

(8) Duties of the Hearing Examiner. Hearing Examiners shall conduct fair and impartial hearings and take all necessary actions consistent with fairness to the parties to avoid delay in the disposition of the administrative appeal. The Hearing Examiner shall have all powers necessary to that end except as otherwise limited by law. A Hearing Examiner must withdraw from any case in which he or she cannot accord a fair and impartial administrative hearing. The Hearing Examiner shall state on the record the reasons for withdrawing and shall immediately notify the Director who shall appoint a new Hearing Examiner.

(9) Conduct of hearings and burden of proof. All administrative hearings shall be conducted by a Presiding Officer in accordance with the provisions of this section. Administrative appeals filed under this section will unless otherwise specified, be decided based on a preponderance of the evidence. No administrative hearing shall be held in closed or executive session; provided however, on motion of a party, the Presiding Officer may close parts of a hearing wherein evidence of a confidential nature, as determined under the Oklahoma Open Records Act, is to be introduced. In debarment and performance suspension proceedings the Department shall have the burden of proof and shall present its case first. In other matters the Petitioner shall have the burden of proof and must present his or her case first. The Respondent may respond. The burden of proof as to each material fact in an administrative hearing shall rest upon the Petitioner.

(c) Status conferences and prehearing conferences.

(1) Status conferences. The Presiding Officer may schedule one or more status conferences after the filing of a petition. At a status conference the Presiding Officer may establish a schedule for discovery and a discovery cut-off date, a schedule for briefing and motions and enter such additional orders as necessary to resolve procedural issues and expedite the administrative hearing process.

(2) Prehearing conferences. The Presiding Officer shall schedule a prehearing conference on any administrative appeal which has been set for hearing. The conference will serve to clarify, isolate and dispose of further procedural issues as well as factual and legal issues upon which the parties agree. The parties shall provide to the Presiding Officer and to each other a final list of witnesses which shall include a synopsis of the witnesses' testimony; a final list of proposed exhibits, and

documents to be offered into evidence; a statement of stipulations agreed and proposed; and a statement of the factual and legal issues to be determined in the hearing. The prehearing conference will be conducted by the Presiding Officer, who shall take an active part in the conference. On his own initiative, or the request of a party, the Presiding Officer may disqualify any representative for conflict of interest or other good cause shown. A request for disqualification must be submitted in writing to the Hearing Liaison Officer as soon as the party becomes aware of a reason that justifies the request.

(3) Consolidation and joinder.

(A) The Presiding Officer may order:

- (i) the consolidation of administrative appeals and joinder of parties if to do so would expedite the processing of the administrative appeal and not adversely affect the interests of the parties;
- (ii) an additional party joined as a party of record and to appear in a hearing; and
- (iii) an administrative appeal dismissed as to one or more parties of record where such dismissal is supported by the relevant law and facts.

(B) On request of any party, the Presiding Officer may order the actions cited in (A) of this paragraph. Such orders will be served on the parties by certified mail or personal service.

(4) Motions and applications for orders. Motions and applications for orders must be in writing and must state the specific reasons for the request and the authority upon which the request is based. Unless otherwise provided in a status conference order all motions shall be filed prior to the prehearing conference. All motions shall be accompanied by a brief except for motions for extension of time, continuances, to amend or file supplemental pleadings to compel discovery, or to issue subpoenas. Each motion or application shall be accompanied by a proposed order. Motions and applications must be filed with the Hearing Liaison Officer with copies provided to the Presiding Officer and all other parties. Oral motions may be made during the hearing.

(5) Witnesses. Each party to an administrative appeal may call witnesses to testify and offer evidence in support of that parties' contentions.

(A) **Witness lists.** All parties shall submit a list of witnesses expected to be called during the hearing. The list must include a brief statement describing the testimony to be offered. This list shall be provided to the Presiding Officer and all parties at the prehearing conference or at least seven (7) working days prior to the hearing if no prehearing conference is held. A copy shall also be filed with the Hearing Liaison Officer.

(B) **Witnesses.** Employees of the Department appearing as witnesses pursuant to a subpoena shall be released from duty without loss of pay or time and without effect on their service ratings. The Presiding Officer or any party may request the attendance of employees or other persons as witnesses when their testimony will aid in establishing the facts in the proceeding. The cost of securing the attendance of witnesses who are not Department employees or employees of the Petitioner or any other party, shall be computed as provided for in civil cases in Oklahoma District Courts and shall be paid directly to the witness by the party producing the witness at the administrative hearing.

(6) Subpoenas. Any party may request the Presiding Officer to issue an order and subpoenas for the production of documents or attendance of witnesses. A Subpoena Duces Tecum may additionally require a witness to produce books, records, accounts, papers and other instruments and tangible objects, which shall be reasonably described.

(A) **Request for subpoena.** A motion for an order and subpoena must be submitted at the prehearing conference or, if no conference is held, no less than seven (7) working days before the administrative hearing. The motion must be supported by a showing of general relevance and reasonable scope and a statement of the facts expected to be proven. The motion shall be accompanied by a proposed order and proposed subpoenas to be issued.

(B) **Service of subpoena.** The service of a subpoena is the responsibility of the party who requests the subpoena. The subpoena may be served by any person who is eighteen (18) years of age or older. The person serving the subpoena shall provide a notarized, written statement showing the person served and the time and manner of service. (This may be satisfied by filling out an affidavit of service on the subpoena form.) Service may be made

by personal service to the individual subpoenaed or by certified mail. In either case, a subpoena must be served at least (72) hours before the administrative hearing. The attendance of a witness shall not be required unless the original subpoena, with affidavit of service or notarized written statement of service, is on file with the Hearing Liaison Officer at the time of the administrative hearing.

(C) Quashing or limiting subpoenas. The Presiding Officer may quash or limit a subpoena on the motion of any party, or at the request of the witness, if:

- (i) it appears the subpoena was used primarily as a means of harassment;
- (ii) the testimony or documents sought are cumulative;
- (iii) the testimony or documents sought are not relevant or material;
- (iv) to respond to the subpoena would be unduly burdensome; or
- (v) for other good cause shown, basic fairness dictates that the subpoena be quashed or limited.

(7) Continuances. Every continuance of an administrative hearing or a prehearing conference shall be to a day certain. Any continuances granted shall not exceed sixty (60) calendar days except for good cause shown. The Presiding Officer may continue or adjourn an administrative hearing for good cause at any time. The cause must be stated in the record and will become part of the official record of the administrative hearing.

(d) Discovery. Discovery is the process, apart from the administrative hearing itself, whereby a party may obtain relevant information from another person or an agency. This information is obtained for the purpose of assisting the parties in developing, preparing and presenting their cases. Discovery may be undertaken when it is agreed to by the parties; required by law; or ordered by the Presiding Officer upon proper application of a party as set forth in this section.

(1) Depositions. The manner of taking depositions and the attendance of witnesses shall be governed by the laws relating to taking of depositions for use in the Oklahoma District Courts, except that, the attendance of a witness not a party or employee of a party for deposition shall be required only in the county of his or her residence. The order of the Presiding Officer authorizing the taking of a deposition and issuance of a subpoena shall state the time and place the deposition will be taken. The party requesting the deposition shall serve a copy of the order by regular mail on each party and on the witness to be deposed at least five (5) calendar days before the scheduled taking of the deposition. A deposition may be offered in evidence at the administrative hearing by any party.

(2) Production of documents. An order of the Presiding Officer may require a party or any person to produce documents or tangible objects for inspection by parties or to be offered into evidence. The order shall direct production at the hearing and/or prehearing conference, unless some other place is stated in the order.

(A) The party applying for the order shall serve a copy of the order on each party and any other person or agency ordered to produce documents at least ten (10) calendar days prior to the date upon which production is required.

(B) An order may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the administrative appeal, or which may reasonably lead to such evidence. Business records are not privileged as such; however confidential business records and information will be protected from disclosure except where directly relevant to the issues in the appeal.

(C) The order shall identify the documents or objects to be produced individually or by categories, and shall include enough detail to permit easy identification by the party or person ordered to make production. Burdensome requests for records may be denied in full by the Presiding Official. An exact photographic copy of a document may be substituted for the original, if permitted by the Presiding Official.

(3) Interrogatories (written questions). An order of the Presiding Officer may require a party or other person to answer written questions attached to the order. The party or a person authorized to make the answer must answer the questions in writing under oath. Unless otherwise ordered, the answers shall be submitted at the prehearing conference. The party applying for the order shall serve a copy of the order, with interrogatories attached, on each party. The party applying for the

order must deliver the order by mail or personal service at least ten (10) calendar days before the date on which answer is required. The party propounding the Interrogatories shall file a copy of the answers with the Hearing Liaison Officer.

(4) **Protective orders.** Protective orders relating to discovery may be issued by the Presiding Officer as necessary or appropriate for the protection of the parties and others, and to prevent hardship to and excessive burden on a party or other person. The orders may:

- (A) limit the scope of questions;
- (B) prohibit questions or subjects of inquiry;
- (C) limit or excuse, in whole or in part, production of documents or answers to questions; and
- (D) shorten or extend the time within which any act may be performed.

(5) **Admission of facts and genuineness of documents.** The Presiding Officer may order a party or any other person to respond to requests for admissions of the genuineness of any relevant documents or the truth of any matters of fact or application of law to the facts. Within ten (10) calendar days or in the time period ordered by the Presiding Officer, the party must submit a response to a request for Admissions to each party and file a copy with the Hearing Liaison Officer. The statement must specifically deny, admit or express a lack of knowledge about the matters on which an admission is requested; otherwise, the statement must include an objection to the request for admission in whole or in part because the admission requested is privileged, irrelevant or otherwise improper. Any admission or part of an admission not denied or properly objected to shall be deemed admitted for the purposes of the administrative hearing.

(6) **Stipulations.** The parties may stipulate or agree on any matter of fact. Such an agreement will satisfy a party's burden to prove the fact alleged. Stipulations shall be presented to the Presiding Officer at the prehearing conference and shall be filed with the Hearing Liaison Officer.

(7) **Enforcement of discovery.** Orders issued by the Presiding Officer shall be done in conformance with the provision of 75 O.S., Section 315 and may be enforced in accordance with that section. The Presiding Officer may additionally impose such sanctions including dismissal of the appeal as necessary to promote justice.

(e) **Appeal hearing.** The administrative hearing to appeal an action or proposed action of the Department shall be conducted in general conformance with the rules of evidence used in the Oklahoma district courts, and trial proceedings shall be conducted in general conformance with the rules and procedures governing non-jury civil trials.

(1) **Record.** The hearing record shall as a minimum include:

- (A) Petitioner's petition for an administrative appeal; respondents response, and all pleadings, motions, and intermediate rulings;
- (B) evidence received or considered at the individual proceeding;
- (C) a statement of matters officially noticed;
- (D) questions and offers of proof, objections, and rulings thereon;
- (E) proposed findings and exceptions only if requested by the Presiding Officer; no proposed findings are required under this section;
- (F) any decision, opinion, or report by the Presiding Officer conducting the hearing;
- (G) all other evidence or data submitted to the Presiding Officer in connection with the consideration of the case provided all parties have access to such evidence.

(2) **Transcripts of hearings.** The Presiding Officer will make a record of all administrative hearings by audio tape recording or by use of a court reporter. If the administrative hearing record is taken by audio tape recording, no written transcript of the tape recording will be prepared except on written application to the Presiding Officer. The cost of transcribing the recording shall be charged to the party requesting the transcription. The Presiding Officer shall advise the parties at the prehearing conference if held or ten (10) days prior to the hearing if no prehearing conference is held whether the Department will provide a court reporter. Any party requesting that the administrative hearing be recorded by a court reporter in lieu of a tape recording must make the necessary arrangements for the service. The party requesting the recording services shall bear the expense and costs. The Presiding Official may designate the court reporter's transcript to be the official record of the hearing.

(3) Issuance of decisions. The record shall be closed when all parties have had an opportunity to be heard and to present evidence and argument.

(A) If the Presiding Officer at the hearing is the Director, or designee to issue final agency orders, the Presiding Officer will file the final decision with the Hearing Liaison Officer.

(B) The final decision shall include findings of fact and conclusions of law, separately stated. The Hearing Liaison Officer shall send the decision to the Petitioner, the Respondent, and all other parties, by certified mail or deliver the decision by personal service within five (5) calendar days after it is filed.

(C) The decision of the Director or designee to issue final orders, shall be the Final Agency Order and conclusive except as provided for in the Administrative Procedure Act and this chapter, concerning petitions to rehear or reconsider cases.

(D) If the Presiding Officer is a designated Hearing Examiner and the Director is to issue the Final Agency Order after reading the record of the individual proceeding, the Hearing Examiner shall make this known to the parties on the record at the beginning of the hearing. At the conclusion of the hearing the Hearing Examiner shall direct preparation of the transcript of the hearing, which when complete, shall be forwarded to the Director with the complete record of the individual proceeding. The Director shall issue the decision as set forth in this section.

(E) If the Presiding Officer is a designated Hearing Examiner and the Director has not heard the case nor will the Director read the record of the proceeding, the Hearing Examiner shall prepare a proposed order which shall be served upon the parties. The proposed order shall contain a statement of the reasons therefore and of each issue of fact or law necessary to the proposed order. The Hearing Examiner shall allow not less than fifteen (15) days for the parties to provide briefs concerning the proposed order. At the request of any party, the Hearing Examiner shall allow for oral argument concerning the proposed order.

(F) The Hearing Examiner shall, through the Hearing Liaison Officer, after full consideration of the law and facts and the arguments of the parties, issue to the parties and the Director the final proposed order of the Hearing Examiner. The final proposed order shall be served on the parties at least fifteen (15) days prior to the hearing at which the Director shall consider the proposed order. At the hearing the parties may present briefs and oral arguments. The Director may issue the final proposed order as the Final Agency Order or may take the matter under advisement and issue the Final Agency Order after further consideration.

(f) Petitions to rehear or reconsider cases.

(1) Submission of petition. A party adversely affected by Final Agency Order of the Department may petition for rehearing or reconsideration of the Final Agency Order. The party must file the petition with the Hearing Liaison Officer within ten (10) calendar days after the issue date of the Final Agency Order and shall serve copies of the petition on all other parties.

(A) The petition must be filed in accordance with the provisions of Section 317 of Title 75 of the Oklahoma Statutes (Oklahoma Administrative Procedures Act). It must identify the specific law or evidence which should be considered. The request must include any new evidence and verification that such evidence is true.

(B) Any party to the case may file a response in support of, or in opposition to, the petition. Written responses must be filed with the Hearing Liaison Officer within ten (10) calendar days after the petition is filed. Copies of the response must be served by the responding party on all other parties.

(C) Petitions will be scheduled for consideration by the Presiding Officer on the earliest possible date. All parties will be notified of the date, time and location of the hearing on the petition to rehear or reconsider.

(2) Consideration of petition.

(A) The petitioning party must be present when a petition for rehearing or reconsideration is considered. All other parties are encouraged to attend.

(B) The Director or designee to issue final orders will consider the petition and any response(s) to it. The Director or designee to issue final orders may permit oral arguments from the parties and may request information from any agency or person.

(C) When a petition is granted or denied, the Director or designee to issue final orders will state the grounds upon which rehearing or reconsideration of the matter is granted or denied. If a rehearing or reconsideration is granted, the rehearing or reconsideration will be confined to those grounds upon which the petition was granted. An order granting rehearing or reconsideration is not a Final Agency Order.

(D) The filing of a petition pursuant to this section or a petition for judicial review does not automatically stay the original decision.

(3) **Final agency order.** If a petition for reconsideration or rehearing is denied, the Final Decision of the Director or designee to issue final orders and the decision to deny rehearing or reconsideration shall constitute the Final Agency Order.

(g) **Procedures generally applicable.** The procedures set forth herein shall be applicable to all hearings conducted in matters of debarment or performance suspension and may be applied in such other administrative hearings as may be conducted by the Department when such hearings require a full due process hearing.

[Source: Amended at 22 Ok Reg 1367, eff 5-26-05; Amended at 18 Ok Reg 1357, eff 5-11-01; Amended at 12 Ok Reg 1269, eff 5-11-95]

SUBCHAPTER 5. CONSTRUCTION CONTRACTS

[Source: Amended at 41 Ok Reg, Number 21, effective 7-26-24]

730:25-5-1. Public Competitive Bidding Act

Construction and maintenance contracts to be awarded by the Commission shall be advertised and awarded in accordance with the Public Competitive Bidding Act of 1974, as amended.

[Source: Amended at 12 Ok Reg 1269, eff 5-11-95]

730:25-5-2. Opening of bids

Unless otherwise ordered, bids shall be opened and read at least seven (7) days prior to the regular Commission meeting date. The Director shall cause the bids on each project to be reviewed and analyzed and shall have prepared a recommendation for awards.

[Source: Amended at 12 Ok Reg 1269, eff 5-11-95]

730:25-5-3. Award preparation

After the bids are received, the Director shall cause to be prepared a statement for the Commission which shall show the contractors who are apparent low bidders on more than one contract and the amount of work involved in each contract. The Director shall determine whether any contractor is low bidder on an amount of work which exceeds his prequalification or bonding limitation and shall recommend to the Commission which contracts, if any, should be awarded to this contractor, based on his qualifications and experience record.

[Source: Amended at 12 Ok Reg 1269, eff 5-11-95]

730:25-5-4. Pre-advertisement prohibited

No contract shall be advertised for bids or awarded by the State Transportation Commission until the Director has determined that the plans have been completed, required approvals from the United States Department of Transportation have been obtained in the case of federal aid projects, and no notice to proceed shall be issued to a contractor until all rights-of-way have been secured, and utility removals have been completed or arranged.

[Source: Amended at 12 Ok Reg 1269, eff 5-11-95; Amended at 18 Ok Reg 1357, eff 5-11-01]

730:25-5-5. Surety company and insurance company

(a) No surety company shall act as surety on an Oklahoma Department of Transportation contract in an amount which exceeds the bonding limitation as published in the Federal Register, Treasury Circular 570 or ten percent (10%) of capital and surplus as found in the Annual Report and Directory of Insurance Companies published by the Oklahoma Insurance Commission.

(b) In the event that any surety company shall fail or refuse to honor the terms and conditions of a bond provided to the Department, the Department shall so notify the Department of Central Services and the State Insurance Commission and may further refuse to accept bonds from the surety company until the bond obligation has been fulfilled.

[Source: Amended at 12 Ok Reg 1269, eff 5-11-95; Amended at 18 Ok Reg 1357, eff 5-11-01]

730:25-5-6. Release of engineers estimate; prohibition [REVOKED]

[Source: Added at 12 Ok Reg 1269, eff 5-11-95; Revoked at 18 Ok Reg 1357, eff 5-11-01]

730:25-5-7. Highway Construction Materials Technician Certification

Applicants seeking certification as a construction materials technician shall pay the required fees set forth below. Fees are established and administered through the Department of Transportation.

- (1) Applicants shall pay the following training fees (when applicable):
 - (A) No more than \$450.00 for modules with a duration of five (5) days or less.
 - (B) Fees for modules with a duration exceeding five days shall be based upon a rate of not more than \$90.00 per day.
- (2) Applicants shall pay the following certification fees (when applicable):
 - (A) Three-Day Certification Examinations in Sampling and Testing of Asphalt: \$975.00 each
 - (B) Two-Day Certification Examinations in Sampling and Testing of Soils: \$650.00
 - (C) One-Day Certification Examinations in Sampling and Testing of Concrete: \$325.00
 - (D) One-Day Certification Examinations in Sampling and Testing of Aggregates: \$325.00
 - (E) One-Day Certification Examinations in Profilograph Operation: \$375.00
 - (F) One-Day Certification Examinations to Supplement American Concrete Institute Certification: \$325.00
 - (G) Three-Day Certification Examination in Field Testing of Concrete and Sampling of Soils, Aggregates, Asphalt, and Concrete: \$975.00
 - (H) One-Day Certification Examination in Sampling Only of Asphalt: \$325.00
 - (I) Re-Certification Examinations: Same as the Applicable Certification Fee except the Fee shall be \$100.00 when the practical examination is omitted.
 - (J) Temporary Certification: Same as applicable certification fee (to be applied toward full certification fee if applicant is certified at the next available certification module.)
 - (K) Apprentice Certification: \$100.00 in each area (to be applied toward full certification fee(s) if applicant is certified within one year after beginning each apprenticeship.)
 - (L) Fees for applicants seeking certification through reciprocity shall be one-half (1/2) the applicable certification examination fee(s).
 - (M) Fees for new or modified certifications will be based on a rate not to exceed \$325.00 per day.
- (3) Administrative Fee for returned checks: \$25.00
- (4) Duplicate certificate fee: \$15.00

[Source: Added at 41 Ok Reg, Number 21, effective 7-26-24]

SUBCHAPTER 7. SETTLEMENT OF DISPUTES

730:25-7-1. Settlement of disputes over questions in fact [REVOKED]

[Source: Revoked at 12 Ok Reg 1269, eff 5-11-95]

730:25-7-2. Settlement of disputes arising during performance of construction or maintenance contracts; mediation and binding arbitration

The Department shall develop and implement a binding procedure for the settlement of Contractor claims which may arise in the course of the performance of construction or maintenance contracts.

(1) **Procedure development.** The procedure developed by the Department shall generally provide the following:

(A) The Contractor shall provide a written notice of the claim to the Resident Engineer prior to the beginning of work upon which the claim will be based.

(B) Submission by the Contractor to the Resident Engineer of detailed information concerning the work performed and each element of additional compensation requested.

(C) A time limit, from the receipt of all the Contractor's supporting information, in which the Department shall make a written response to the Contractor's claim.

(D) Appeal by the Contractor from the decision of the Resident Engineer to the Division Engineer. The Division Engineer's decision must be recommended to and approved by the Director of Operations.

(E) Provisions for the mediation of the Contractor's claim if the Contractor is dissatisfied with the final decision of the Director or Assistant Director of Operations. The mediation shall be performed under the auspices of the American Arbitration Association or other independent dispute resolution organization.

(F) Upon mutual consent of the Department and the contractor and upon order of the District Court in Oklahoma County, disputes arising from construction or maintenance contracts and relating to work performed or conditions under which work was performed under the contract may be referred to binding arbitration which shall be performed under the auspices of the American Arbitration Association or other independent dispute resolution organization.

(2) **Implementation.** The Department will present its proposed procedure for settlement of contractor claims to the Commission for approval. The approved procedure shall thereafter be incorporated in each proposal for construction or maintenance contracts advertised by the Department.

(3) **Procedure review.** The Department shall periodically review the procedure set forth in this section with highway construction industry and propose recommended changes to the Commission to insure the fair and efficient handling of Contractor claims.

[Source: Amended at 12 Ok Reg 1269, eff 5-11-95; Amended at 18 Ok Reg 1357, eff 5-11-01; Amended at 42 Ok Reg, Number 20, effective 7-11-25]

APPENDIX A. Example Form of Petition

Figure 1

OKLAHOMA DEPARTMENT OF TRANSPORTATION

IN RE: ADMINISTRATIVE APPEAL)
OF (NAME OF APPELLANT); PROPOSED) No.
(state proposed action).)

PETITION FOR ADMINISTRATIVE APPEAL

COMES NOW the Appellant (Name of Appellant) and requests an administrative hearing be set concerning the proposed (state proposed action) of Appellant by the Department.

1. Notice of the proposed action was received by Appellant on (state date notice was received).

2. Appellant contests the proposed action for the following reasons;
to-wit:

- A. (State in separate paragraphs each ground and supporting facts upon which Appellant contests the proposed Department action.)**

B.

C.

D.

- 3. (State the relief Appellant requests.)**

4. (State the name, address, and telephone number of Appellants representative, if any. If none, so state.)

Figure 2

I have read and understand this Petition For Administrative Appeal and state that the facts and contentions set forth herein are true and correct to the best of my knowledge and belief.

(Signature of Appellant)

(Typed Name)
(Office)

Subscribed and sworn to before me this ____ day of _____, 19__.

Notary Public

My Commission Expires:

[Source: Added at 12 Ok Reg 1269, eff 5-11-95]