

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

AGENCY: RHODE ISLAND DEPARTMENT OF TRANSPORTATION

DIVISION: N/A

RULE IDENTIFIER: 290-RICR-10-00-2

REGULATION TITLE: *RULES AND REGULATIONS OF THE RHODE ISLAND
DEPARTMENT OF TRANSPORTATION REGARDING CONTRACTOR AND
SUBCONTRACTOR, DEBARMENT, SUSPENSION AND SANCTIONS*

RULEMAKING ACTION: *Direct Final*

Direct Final: If no formal objection is received on or before **December 20, 2017** Rhode Island Department of Transportation will file the **repeal** without opportunity for public comment.

TYPE OF FILING: *REPEAL*

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public notice date: November 20, 2017

End of comment period: December 20, 2017

SUMMARY OF PROPOSED RULE: The regulation addresses debarment, suspensions and sanctions regarding contractors and subcontractors.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **December 20, 2017** to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address: **SIOBHAN L. STEPHENS-CATALA, ESQ.**

SENIOR LEGAL COUNSEL

RIDOT

2 CAPITOL HILL, PROVIDENCE, RI 02903

Email Address: Siobhan.catala@dot.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

**Mailing Address: Rhode Island Department of Transportation
2 Capitol Hill
Providence, RI 02903**

FOR FUTHER INFORMATION CONTACT:

Siobhan L. Stephens-Catala, Esq., Senior Legal Counsel
RIDOT, 2 Capitol Hill
Providence, RI 02903

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

Any changes in societal costs are de minimus. For full regulatory analysis or supporting documentation see agency contact person above.

Authority for This Rulemaking: *Federal Statute*

Regulatory Findings:

In the development of the proposed **repeal** consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment:

Rhode Island Department of Transportation proposes to repeal 290-RICR-10-00-2 as follows:

(Attach Full Proposed Regulation with Mark-Ups in RICR format)

~~RULES AND REGULATIONS OF
THE RHODE ISLAND DEPARTMENT OF TRANSPORTATION
REGARDING CONTRACTOR AND SUBCONTRACTOR, DEBARMENT,
SUSPENSION AND SANCTIONS~~

~~I. — AUTHORITY~~

~~Pursuant to the provisions of Rhode Island General Laws, Section 42-13-1, the Rhode Island Department of Transportation proposes to adopt the within rules and regulations concerning the debarment, suspension and sanction of contractors and/or subcontractors who are, or seek to be, parties to Rhode Island Department of Transportation contracts.~~

~~II. — PURPOSE~~

~~The purpose of these rules and regulations is to set forth standards and procedures to be followed by the Rhode Island Department of Transportation in debarring, suspending or sanctioning contractors, and/or subcontractors in reference to Rhode Island Department of Transportation projects, in order to safeguard the State of Rhode Island's interest in the solicitation, execution and administration of all Rhode Island Department of Transportation contracts and to comply with applicable Federal Regulations.~~

~~III. — DEFINITIONS~~

~~The following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise:~~

~~A. — "Adequate evidence" — means evidence sufficient to form the reasonable relief that a particular act or omission occurred. In addition, a conviction, judgment, or an admission shall constitute adequate evidence.~~

~~B. — "Admission" — means an oral or written statement made by a contractor or subcontractor in a court or before any public body or public official, that the contractor or subcontractor committed a certain act or omitted to perform a certain act.~~

~~C. —“Affiliates” — two business entities are affiliates if they are so closely connected or associated that one of them, either directly or indirectly, controls or has the power to control the other, if a third party controls or has the power to control both of them, or if they have been so closely allied through an established course of dealings, including but not limited to the lending of financial assistance, engaging in joint ventures, etc., as to create a public perception that the two firms are a single entity.~~

~~D. —“Antitrust case” — a legal proceeding against one or more defendants alleging one or more violations of the state or federal antitrust laws.~~

~~E. —“Bidding crime” — any act prohibited by state or federal law, committed in any jurisdiction, and involving fraud, conspiracy, collusion, perjury or material misrepresentation with respect to bidding on any public contract.~~

~~F. —“Conviction” — means a judgment or conviction or imposition of probation for a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction or probation entered upon a plea of nolo contendere.~~

~~G. —“Debar/Debarment” — to disqualify (the disqualification of) a contractor from bidding on and/or entering into contracts with the state that are the responsibility of the department, or from participating as a subcontractor under any such contract.~~

~~H. —“Department” — Rhode Island Department of Transportation.~~

~~I. —“Director” — means the Director of the Rhode Island Department of Transportation or an authorized representative or employee.~~

~~J. —“Hearing Panel” — means an impartial Board composed of the Assistant Director of Transportation/Public Works, or his/her designee, the Associate Deputy Director of Transportation or his/her designee and the Assistant Administrator, State Equal Employment Opportunity, or his/her designee.~~

~~K. “Judgment” means a judgment in a civil action by any court of competent jurisdiction.~~

~~L. “Sanction” any dollar penalty assessed against a contractor or subcontractor.~~

~~M. “Subcontractor” an individual, partnership, corporation, or other business entity to which the prime contractor sublets, or proposed to sublet any portion of a highway improvement contract.~~

~~N. “Suspension” means an exclusion or bar from contracting with or bidding on contracts or in reference to any contracts let by the Director for a temporary period of time, pending the completion of legal or debarment proceedings.~~

~~IV. APPLICABILITY~~

~~These rules shall govern the eligibility of prospective contractors and/or subcontractors who submit bids for the construction and/or maintenance and repair of all Rhode Island Department of Transportation contracts.~~

~~V. CONDITIONS~~

~~The Department at its sole discretion may debar a contractor, and/or subcontractor or impose sanctions from bidding on or entering into a contract let by the Department, or from participating as a subcontractor on any such contract if that entity has engaged in prohibited conduct. Prohibited conduct is defined as any of the following:~~

~~A. Conviction of a bid-related or contract-related crime including a plea of guilty or nolo contendere by a contractor or subcontractor.~~

~~B. Any admission of a bid-related or contract-related crime by a contractor subcontractor.~~

~~C. — Violation of relevant antitrust laws covering bid rigging, collusion or restraint of free competition among bidders as governed by the Sherman Antitrust Act, 15 USC sec. 1 et seq. And Section 6040101, C.R.S. 1973, et seq.~~

~~D. — Conviction of the contractor or subcontractor of any offense, including but not limited to the bribery of or the payment of kickbacks or secret rebates to officials, employees or agents of any state agency, which indicates a lack of moral or ethical integrity and which reasonably relates to or reflects on the business practices of the contractor or subcontractor.~~

~~E. — Falsification of information, or submission of deceptive or fraudulent statements in connection with prequalification, bidding or performance of a contract.~~

~~F. — Violation of any of the rules and regulations of the Department, including but not limited to the “Standard Specifications for Road & Bridge Construction”.~~

~~G. — Violations of Federal rules and regulations including but not limited to 49 CFR 23.~~

~~H. — Violation of the terms of any contract with the Department, or any subcontract of any contract involving the Department.~~

~~I. — Willful wrongdoing reflecting a lack of integrity in bidding upon or performing any public service or construction contract.~~

~~J. — Debarment by some other state or federal agency for any of the reasons listed above.~~

~~VI. — PROCEDURES~~

~~A. — The Director or an authorized representative shall designate a hearing Panel to conduct any hearing held under these rules. The Panel upon determining from the Director’s reports, investigations and other documents that cause exists to debar a~~

~~contractor and/or subcontractor shall furnish written notice of a hearing to the contractor and/or subcontractor. The notice shall state:~~

- ~~1. — that debarment and/or sanction are being considered;~~
- ~~2. — the facts giving rise to the proposed debarment and/or sanction;~~
- ~~3. — the cause or causes relied upon for proposing debarment and/or sanctions;~~
- ~~4. — that the contractor and/or subcontractor may, within thirty (30) days of receipt of the notice, submit to the hearing officer, in writing, information and argument in opposition to, or clarification of, the proposed debarment and/or sanctions;~~
- ~~5. — the time, place, and date of the hearing;~~
- ~~6. — the name and mailing address of the Panel;~~
- ~~7. — if a suspension is not in effect before the notice being sent, that contracts shall not be awarded to the contractor or subcontractor by the Department pending the decision by the Panel.~~

~~B. — The Panel shall schedule and conduct the hearing within forty five (45) days of sending the notice. The Panel may extend the date of any hearing upon request of the contractor or subcontractor but the initial hearing shall not be extended to later than sixty (60) days from the date the notice initially was sent. During the course of the hearing, the Panel shall:~~

- ~~1. — regulate the course and scheduling of the hearings;~~
- ~~2. — rule on offers of proof and receive relevant evidence and make the proof and evidence part of the record;~~
- ~~3. — take action necessary to insure an orderly hearing; and~~
- ~~4. — at the conclusion of the hearing, issue to the Director or his/her designee, the record written findings of fact and recommend actions for administrative action.~~

~~C. — The contractor or subcontractor shall have the opportunity to be present, to be represented by counsel, and to submit evidence, present witnesses, and cross examine~~

~~all witnesses presented by the Department. A transcribed record shall be made of the hearing. The transcript shall be available to the contractor and/or subcontractor, at cost, upon request.~~

~~In actions involving conviction, judgment or admission, the sole issue before the Panel shall be the appropriate length of debarment and/or the amount of sanctions to be imposed. In these cases, the Panel shall not receive evidence relating to the merits of prior judicial or administrative decisions or findings.~~

~~The Director, or his designee, after receiving the record, findings of fact, and recommendations of the Panel shall determine the administrative action to be taken.~~

~~The Director or his/her designee shall notify the named contractor or subcontractor of his or her determination in writing. If the determination is to impose debarment, he or she shall set forth the period of time the contractor or subcontractor shall be debarred from bidding on contracts or subcontracts of the Department and the reasons for debarment.~~

~~D. — Period — The Director shall impose debarment for a period commensurate with the seriousness of the causes, but this period shall not exceed thirty six (36) months. The Director may reduce the period upon the contractor and/or subcontractor's request, supported by documentation, for reasons, including but not limited to:~~

- ~~1. — newly discovered evidence;~~
- ~~2. — reversal of the conviction or judgment upon which the debarment was based; and~~
- ~~3. — elimination of other causes for which the debarment was imposed.~~

~~E. — Sanctions:~~

- ~~1. — Contractors: The amount of sanctions shall be determined by contract.~~
- ~~2. — Subcontractors: The amount of sanctions shall be determined by the subcontract amount.~~

~~F. Scope The determination made by the Director may include the contractor or subcontractor, him or herself, and all known affiliates of the contractor or subcontractor, provided that each decision to include an affiliate is made only after allowing the affiliate to participate in the hearing, with all procedural rights of a contractor.~~

~~G. Suspension~~

~~1. Cause. The Director may impose suspension on a contractor and/or subcontractor when:~~

- ~~a) adequate evidence exists so as to raise a reasonable suspicion that any of the causes set forth in these rules and regulations are present; and~~
- ~~b) the decision of the Director is in the best interests of the State.~~

~~2. Procedures:~~

~~a) The Director may, upon determining from reports, investigations, or other documents that cause exists to suspend a contractor and/or subcontractor, impose suspension upon the contractor and/or subcontractor and any named affiliates. The Director shall furnish written notice to the contractor and/or subcontractor at least five (5) days before the effective date of suspension. The notice shall state:~~

- ~~i. that a suspension has been imposed;~~
- ~~ii. the effective date of the suspension;~~
- ~~iii. the facts giving rise to the suspension;~~
- ~~iv. the cause(s) relied upon for the suspension;~~
- ~~v. the suspension is for a temporary period pending the completion of an investigation and any ensuing legal or debarment proceeding;~~

~~(b) Within thirty (30) days after receipt of the notice, the contractor or subcontractor will submit to the Director, in~~

~~writing, information and argument in opposition to, or clarification of, the suspension;~~

- ~~(c) — Except when the suspension is based on a conviction, judgment or admission, a hearing shall be conducted if the Director determines that the contractor's submission raises a genuine dispute over material facts upon which the suspension is based. The Director shall determine whether this hearing is necessary within ten (10) days from receipt of the contractor's submission.~~
- ~~(d) — If the Director determines a hearing should be held, the hearing shall be held in accordance with the procedure outlined above except that the hearing shall be for suspension and not for debarment.~~

~~H. — Period — A suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless sooner terminated by the Director. A suspension shall not continue for more than six (6) months from its effective date, unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment/sanction proceedings have been initiated. The suspension continues until the legal or debarment/sanction proceedings are completed.~~

~~I. — Effect on Current Contracts:~~

- ~~1. — The Director may continue contracts or subcontracts in existence at the time a contractor and/or subcontractor is debarred or suspended. A decision as to termination by the Director shall be made only after review of all the facts and circumstances surrounding the debarment or suspension as they affect the responsibility of the contractor and/or subcontractor.~~
- ~~2. — Contracts shall not be renewed or otherwise voluntarily extended by the Director once the contractor and/or subcontractor has been debarred or suspended.~~

~~J. — List — The Director shall maintain a list of all persons, partnerships, corporations, or associations who have been debarred or suspended in accordance with the procedures prescribed in this article. This list shall be made available for public inspection.~~

~~VII. SEVERABILITY~~

~~If any provision of these rules and regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not effect the provisions or application of the rules and regulations which can be given effect, and to this end the provisions of these rules and regulations are declared to be severable.~~

~~VIII. APPLICATION~~

~~These rules and regulations will take effect following filing with the Secretary of State.~~

~~I hereby certify that the above is a true copy.~~

William D. Ankner, Ph.D.
DIRECTOR

Date: _____

Revised: 12/01