



Department of Transportation

Office of Legal Counsel

700 East Broadway Avenue

Pierre, South Dakota 57501-2586 605/773-3262

FAX: 605/773-4442

MEMORANDUM

TO: Patricia Saukel

FROM: Becky A. Janssen

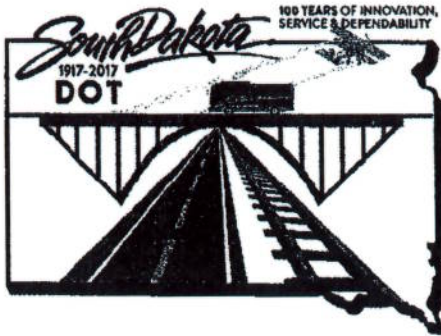
DATE: February 22, 2018

RE: In the Matter of the Debarment of K&L Construction, Inc.

This matter has been set for hearing before the Transportation Commission at 9:00 a.m. on Thursday, March 1, 2018. The Department of Transportation will be requesting that the Transportation Commission uphold Secretary Bergquist's suspension of K&L's prequalification status and its ability to bid on Department contracts. In addition, the Department of Transportation will be requesting that the Transportation Commission enter a final decision and order of debarment against K&L Construction, Inc.

A copy of the Order of suspension issued by Secretary Bergquist and a copy of the Notice of Hearing is enclosed with this memo.

BAJ
Enclosures



**Department of Transportation
Office of the Secretary**

Becker-Hansen Building
700 E. Broadway Ave.
Pierre, SD 57501
Phone: 605-773-3265
FAX: 605-773-3921

October 3, 2017

Sent via First Class and Certified Mail on October 3, 2017

Mr. Kevin Alexander, President
K & L Construction, Inc.
PO Box 1040
Sergeant Bluff, IA 51054

RE: Order of suspension of prequalification status and ability to bid

Dear Mr. Alexander:

The South Dakota Department of Transportation has learned of three related incidents which will affect the prequalification status and ability to bid of K&L Construction, Inc., also known as K&L, Inc. These incidents are:

On October 14, 2016, the Iowa Department of Transportation (IDOT) provided official notice it had disqualified your company from bidder qualification and subcontracting privileges as a result of activity by your company in performance of IDOT Contract ID 97-0296-246. Jenna D. Wilson, an officer of your company, submitted falsified supplier invoices or material certifications.

On August 1, 2017, Ms. Wilson entered a plea of guilty to a federal contract crime (18 USC § 1020: Making False Statements in Connection with a Highway Project) in U.S. District Court for the Northwest District of Iowa (Western Division).

On September 27, 2017, the South Dakota Department of Transportation was provided notice by the Federal Highway Administration that your company and Ms. Wilson have been suspended indefinitely from federal contracting effective September 22, 2017.

Pursuant to Administrative Rules of South Dakota (ARSD), the Department is suspending your company's prequalification status based on three separate grounds: (1) a violation of a state or federal law, rule or regulation; (2) an order of a federal or state department or agency pertaining to the construction, maintenance, repair or supervision of highways; and (3) suspension or debarment by a state or federal agency. ARSD § 70:07:04:20. This suspension prohibits your company from bidding on any Department construction contract for which prequalification is required. *Id.*

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Kevin Alexander
October 3, 2017

The Department is also suspending your company's ability to bid Department contracts as a result of Ms. Wilson's conviction for a contract crime and the nature of her affiliation with your company. *ARSD § 70:07:04:02*. Regarding her affiliation with your company, Ms. Wilson's conviction for a contract crime is imputed to your company as "the conduct which gave rise to the conviction occurred in connection with the person's performance of duties for or on behalf of that business in the course of employment or with the knowledge, approval, acquiescence, or subsequent ratification of the person's conduct by the business." *ARSD § 70:07:04:07*.

This letter serves as my order of suspension. The period of suspension begins today and will continue for 180 consecutive days. Department contracts in existence at the time of suspension are not terminated by the suspension. *ARSD § 70:07:04:17*. The Department may not award a Department contract to a suspended person or company. *ARSD § 70:07:04:18*. In addition, a contractor to whom a Department contract has been awarded by the South Dakota Transportation Commission (Commission) may not subcontract with a suspended person or company for performance of the Department contract. *ARSD § 70:07:04:19*.

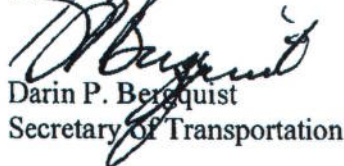
Finally, you should also be aware, as Secretary of Transportation, I am required to commence debarment proceedings before the Commission within 180 days after the mailing of the order suspending your company's ability to bid. *ARSD § 70:07:04:04*. The Commission may debar a company only after an opportunity for hearing has been provided to you. At the hearing, you may contest the suspension and dispute whether debarment should occur. Under our state administrative rules, the Commission may not debar a person or company for more than one year for conduct which gave rise to the grounds for debarment. *ARSD § 70:07:04:12*.

Please contact Dustin DeBoer, legal counsel for the Department, to discuss scheduling the hearing before the Transportation Commission. His contact information is as follows:

Dustin DeBoer
Special Assistant Attorney General
5316 W. 60th St. N.
Sioux Falls, SD 57107-6464
Phone: 605-367-4970, Extension 1802014
E-mail: Dustin.DeBoer@state.sd.us

If you do not wish to contest the suspensions and debarment, please let Mr. DeBoer know and he will prepare documents for your signature that will allow you to waive the hearing and agree to the suspensions and debarment.

Sincerely,



Darin P. Bergquist
Secretary of Transportation

cc: Dustin DeBoer

SOUTH DAKOTA TRANSPORTATION COMMISSION

**IN THE MATTER OF DEBARMENT
OF K&L CONSTRUCTION, INC.**

NOTICE OF HEARING

TO: Kevin Alexander, President
K&L Construction, Inc.
PO Box 1040
Sergeant Bluff, IA 51054

Dustin DeBoer
Special Assistant Attorney General
South Dakota Department of Transportation
5316 W. 60th St. N.
Sioux Falls, SD 57107-4970

PLEASE TAKE NOTICE that a contested case hearing in the above-entitled matter will be held before the South Dakota Transportation Commission on Thursday, March 1, 2018, at 9:00 a.m. at the Becker-Hansen Building, 700 E. Broadway Avenue, Pierre, South Dakota, 57501, or as soon thereafter as the parties can be heard.

This hearing is held pursuant to the South Dakota Transportation Commission's authority and jurisdiction granted by SDCL 31-5-10 and SDCL Chapter 1-26, and the provisions of ARSD Chapter 70:07:04.

The purpose of the hearing is to: (1) allow K&L Construction, Inc., also known as K&L, Inc., an opportunity to contest the suspension of its prequalification to bid and ability to bid for contracts with the South Dakota Department of Transportation ("DOT"); (2) determine whether K&L Construction, Inc., will be debarred from prequalification to bid on any contract with DOT for which prequalification is required and debarred from submitting bids on any DOT contracts; and (3) determine the time period of any debarment.

The issues for hearing are:

Did DOT properly suspend K&L Construction, Inc.'s prequalification to bid contracts with DOT?

Did DOT properly suspend K&L Construction, Inc.'s ability to bid contracts with DOT?

Should K&L Construction, Inc. be debarred from prequalification to bid on any contract with DOT for which prequalification is required?

If K&L Construction, Inc., is debarred from prequalification to bid, what should the period of debarment be?

Should K&L Construction, Inc., be debarred from bidding any contracts with DOT?

If K&L Construction, Inc., is debarred from bidding any contracts with DOT, what should the period of debarment be?

This hearing is a contested case as that term is defined in SDCL 1-26-1(2) and is an adversary proceeding to be conducted in accordance with the provisions of SDCL chapter 1-26. As such, each party has the right to be present at the hearing and to be represented by a lawyer, to introduce evidence and compel its production, to call witnesses to testify and to compel the attendance thereof, and to cross-examine all witnesses present. These and other due process rights will be forfeited if not exercised at the hearing. If you do not appear at the scheduled time of the hearing, the matter may be dismissed or it may be decided based on evidence presented by the other party at the hearing. Following the hearing, the Transportation Commission will issue a decision upholding or terminating the suspension of prequalification status and the ability to bid DOT contracts. The Transportation Commission will also issue a decision regarding whether K&L Construction, Inc. will be debarred from prequalification to bid on any DOT contract for which prequalification is required and debarred from submitting bids for any DOT contracts. If the Transportation Commission issues a debarment order, the commission will also establish the period of debarment. The Transportation Commission may not debar a person or company for more than one year.

If the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL Section 1-26-17.

Dated this 1st day of February, 2018, at Pierre, South Dakota.


Ronald Rosenboom, Chair
South Dakota Transportation Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of February, 2018, at Pierre, South Dakota a true and correct copy of this Notice of Hearing was mailed by United States first-class mail and by certified mail, postage prepaid, to the party listed below:

Kevin Alexander, President
K&L Construction, Inc.
PO Box 1040
Sergeant Bluff, IA 51054

The undersigned further certifies that on the 1st day of February, 2018, at Pierre, South Dakota, a true and correct copy of this Notice of Hearing was sent by U.S. first class mail, postage pre-paid, to:

Dustin DeBoer
Special Assistant Attorney General
South Dakota Department of Transportation
5316 W. 60th St. N.
Sioux Falls, SD 57107-4970

and sent by electronic mail to Dustin DeBoer at:

dustin.deboer@state.sd.us



Karla L. Engle
Special Assistant Attorney General