

Department of Transportation

Office of Legal Counsel

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MEMORANDUM

TO: Patricia Saukel

FROM: Karla L. Engle

DATE: January 24, 2018

RE: February 1, 2018, Commission Meeting

The Department of Transportation requests that the Transportation Commission set a hearing date to consider debarment of K&L Construction, Inc. Secretary Bergquist has previously suspended the prequalification status and ability to bid of K&L Construction, Inc. A copy of Secretary Bergquist's letter of suspension is enclosed with this memo.

KLE
Enclosure



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.*

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*.

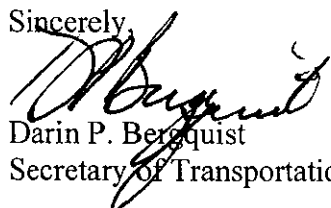
Finally, you should also be aware, as Secretary of Transportation, I am required to commence debarment proceedings before the Commission within 180 days after the mailing of the order suspending your company's ability to bid. *ARSD § 70:07:04:04*. The Commission may debar a company only after an opportunity 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