

**SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
TRANSPORTATION COMMISSION**

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

**FINAL DECISION
AND ORDER**

A contested case hearing was held in this matter on March 1, 2018. Notice of the hearing was mailed to the South Dakota Department of Transportation (hereinafter referred to as “the Department”) and K&L Construction, Inc. by first class mail, postage prepaid, on February 1, 2018. The notice of hearing was also sent to K&L Construction, Inc. by certified mail on February 1, 2018. Dustin DeBoer, Legal Counsel, appeared at the hearing on behalf of the Department. No representative appeared on behalf of K&L Construction, Inc. The South Dakota Transportation Commission (hereinafter referred to as “the Commission”), having a quorum present, and having considered the presentation of information by the Department and exhibits entered into the record, makes and enters the following Findings of Fact, Conclusion of Law, and Decision.

ISSUES

1. Did the Department properly suspend K&L Construction, Inc.’s prequalification to bid contracts with the Department?
2. Did the Department properly suspend K&L Construction, Inc.’s ability to bid contracts with the Department?
3. Should K&L Construction, Inc. be debarred from prequalification to bid on any contract with the Department for which prequalification is required?
4. If K&L Construction, Inc. is debarred from prequalification to bid, what should the period of debarment be?
5. Should K&L Construction, Inc. be debarred from bidding any contracts with the Department?
6. If K&L Construction, Inc. is debarred from bidding any contracts with the Department, what should the period of debarment be?

FINDINGS OF FACT

1. The Iowa Department of Transportation disqualified K&L Construction, Inc. for thirty-six (36) months, effective October 18, 2016, from bidder qualification and subcontracting privileges on all contracts let through the Iowa Department of Transportation.
2. The Iowa Department of Transportation's reason for disqualifying K&L Construction, Inc. was because Wilson, an officer of K&L Construction, Inc., falsified supplier invoices and/or materials certifications which were then provided to the Iowa Department of Transportation to secure inflated stockpiled materials payments to K&L Construction, Inc. in excess of \$500,000.
3. On August 1, 2017, an Information was filed in the United States District Court, Northern District of Iowa, charging Wilson with making false statements in connection with a highway project in violation of 18 U.S.C. § 1020. Wilson was adjudicated guilty of the offense and was sentenced on January 12, 2018.
4. On September 27, 2017, the Federal Highway Administration (hereinafter the "FHWA") notified the Department that K&L Construction, Inc. was suspended indefinitely from Federal contracting effective September 22, 2017.
5. Department Secretary Bergquist notified Kevin Alexander, President of K&L Construction, Inc., by letter dated October 3, 2017, that K&L Construction, Inc.'s prequalification status was suspended for a period of 180 days and the company's ability to bid on Department contracts was also suspended for 180 days.
6. Department Secretary Bergquist notified K&L Construction, Inc. that its prequalification status was suspended because: (1) the company violated a state, federal law, rule or regulation; (2) the company was subject to an order of a federal or state department or agency pertaining to the construction, maintenance, repair or supervision of highways; and, (3) the company has been suspended or debarred by a state or federal agency. Secretary Bergquist also notified K&L Construction, Inc. that it was suspended from bidding on any Department contract because of Wilson's conviction of a contract crime and her connection to the company.

REASONING

The Secretary of the South Dakota Department of Transportation may suspend a person or business from bidding by order upon receiving notice or learning of a conviction for a contract crime or violation of antitrust law or upon receiving evidence of an affiliation

described in §§ 70:07:04:07, 70:07:04:08, or 70:07:04:09. ARSD 70:07:04:02. The Department may also suspend a contractor's prequalification status based on a violation of state or federal law, rule, or regulation; or an order of a federal or state department or agency pertaining to the construction, maintenance, repair, or supervision of highways; or a suspension or debarment by a state or federal agency. ARSD 70:07:04:20. The suspension pursuant to either ARSD 70:07:04:02 or 70:07:04:20 cannot exceed 180 days. Debarment proceedings must be initiated within 180 days of mailing the suspension order. ARSD 70:07:04:05.

The Commission may debar a business if the business or a principal or former principal of the business is convicted in any jurisdiction of a contract crime or if a conviction is imputed to the business as set forth in §§ 70:07:04:07 and 70:07:04:08. The conviction of a person for a contract crime is imputed to a business when 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 and 70:07:04:11. The period of debarment may not exceed one year for conduct which gave rise to the grounds for debarment. ARSD 70:07:04:12.

CONCLUSIONS OF LAW

1. Wilson's conviction of a contract crime is imputed to K&L Construction, Inc. as the conduct which gave rise to the conviction occurred in connection with Wilson's performance of duties for or on behalf of K&L Construction, Inc. or with the knowledge, approval, acquiescence, or subsequent ratification of Wilson's conduct by K&L Construction, Inc.
2. K&L Construction, Inc. bidding privileges have been suspended by the Iowa Department of Transportation and K&L Construction, Inc. is excluded from Federal contracting.
3. The Department properly suspended K&L Construction, Inc.'s prequalification status and ability to bid on any Department contract as a result of Wilson's conviction of a contract crime which is imputed to K&L Construction, Inc. and as a result of its suspension of contracting privileges by the State of Iowa and the FHWA.

4. K&L Construction, Inc. is subject to debarment by the Commission for up to one year as a result of Wilson's conviction of a contract crime which is imputed to K&L Construction, Inc.
5. Any additional conclusions of law included in the Reasoning section of this Decision are incorporated by this reference.
6. To the extent any of the foregoing are improperly designated and are instead findings of fact, they are hereby redesignated and incorporated herein as findings of fact.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law and the entire record in this proceeding, by the Transportation Commission it is hereby,

ORDERED that the Department properly suspended K&L Construction, Inc.'s prequalification status and its ability to bid Department contracts and the Secretary of Transportation's order of suspension of K&L Construction, Inc.'s prequalification status and its ability to bid Department contracts dated October 3, 2017, is sustained; and,

IT IS FURTHER ORDERED that K&L Construction, Inc. is debarred for one (1) year from the date of this Order from prequalification to bid on any contract with the Department for which prequalification is required; and,

IT IS FURTHER ORDERED that K&L Construction, Inc. is debarred from bidding any contracts with the Department for a period of one (1) year from the date of this Order.

Dated at Pierre, South Dakota, this _____ day of March, 2018.

Kyle White, Chair
South Dakota Transportation Commission

A PERSON WHO IS ADVERSELY AFFECTED BY A FINAL DECISION IS ENTITLED TO JUDICIAL REVIEW UNDER THE REQUIREMENTS OF SDCL CHAPTER 1-26. NOTICE OF APPEAL MUST BE FILED WITH THE STATE CIRCUIT COURT PURSUANT TO SDCL § 1-26-1 WITHIN THIRTY (30) DAYS AFTER THE DATE OF THIS NOTICE.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the _____ day of March, 2018, at Pierre, South Dakota, I sent a true and correct copy of the foregoing ***Findings of Fact, Conclusions of Law and Final Decision and Order*** in the above-entitled matter to each of the following by depositing the same in United States mail with the respective mailings indicated:

K&L Construction, Inc. (First-class mail, postage pre-paid and certified mail)
PO Box 1040
Sergeant Bluff, IA 51054

Dustin W. DeBoer (First-class mail, postage pre-paid)
South Dakota Department of Transportation
5316 West 60th Street North
Sioux Falls, SD 57107

Dated this _____ day of March, 2018.

STATE OF SOUTH DAKOTA
MARTY JACKLEY, Attorney General

By: _____
Karla L. Engle
Special Assistant Attorney General
Office of Legal Counsel
S.D. Department of Transportation
700 East Broadway Avenue
Pierre, South Dakota 57501-2586