

If a certification of surety is furnished in accordance with subdivision 70:07:02:04(1), the maximum bidding capacity rating ~~must conform to~~ may not exceed the bonding limitations established by the surety on the prospective bidder's behalf.

If an audited financial statement is furnished, the ~~per contract bidding capacity is~~ prospective bidder may not bid more than 50 percent of the maximum bidding capacity on any single construction contract.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:07, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:02:10. Effective period of work classification and rating. If the prospective bidder submits an audited statement of financial position in accordance with subdivision 70:07:02:04(2), ~~the~~ any work classification and maximum bidding capacity rating granted by the committee is effective for the period specified by the committee, but not more than 18 months from the date of the balance sheet. If a certification of surety is submitted in accordance with subdivision 70:07:02:04(1), ~~the~~ any work classification and maximum bidding capacity rating expires according to the expiration date as shown on the prospective bidder's surety bond or granted by the committee will expire upon the expiration or rescission of the certification of surety. The prospective bidder shall provide the department with written notice of the rescission of a certification of surety within five days after the prospective bidder receives notice of the rescission. ~~The~~ If requested in writing by the prospective bidder, the committee may grant one extension of extend the effective date of the work classification and maximum bidding capacity rating one time for not more than 60 days to the period that the maximum bidding capacity rating is effective. ~~The prospective bidder shall submit any request for an~~

~~extension to the committee in writing. The prospective bidder must make the request and receive the extension before the opening of any bid affected by the extension.~~

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 8 SDR 98, effective February 24, 1982; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:08, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:02:11. Determination of current bidding capacity of prospective bidders. ~~The department shall give a prospective bidder a current bidding capacity in a specified dollar amount under one or more classifications for which the prospective bidder has qualified. The~~ For any given department letting, a prospective bidder may not submit bids that total more than the bidder's current bidding capacity. The current bidding capacity is arrived at by subtracting from the maximum bidding capacity rating the ~~uncompleted~~ uncompleted dollar amount of all uncompleted bonded work wherever located.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:10, 19 SDR 154, effective April 11, 1993; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:02:12. Allowable deductions for determining maximum bidding capacity rating. ~~The committee may include a deduction for any of the following factors when calculating the maximum bidding capacity rating:~~

~~—— (1) Current ability;~~

~~—— (2) Experience and organization;~~

~~—— (3) Ownership, sufficiency, availability, and condition of major items of equipment;~~

~~—— (4) Quality and timeliness of work performed on previous contracts; and~~

~~—— (5) Independent financial audit concerns, including account and debt records.~~

~~—— Deductions may not exceed 50 percent for any one factor.~~

~~The committee may limit a prospective bidder to a specific number of projects over the \$200,000 prequalification requirement based on any of the criteria in this section Repealed.~~

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:11, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999; 40 SDR 121, effective January 6, 2014.

~~—— **General Authority:** SDCL 31-5-10.~~

~~—— **Law Implemented:** SDCL 31-5-10.~~

70:07:02:13. Ineligibility for violation of laws, rules, or orders. ~~The contractor or~~ If a prospective bidder's violation of bidder violates a state law, a federal law, or a rule, regulation, or order of a federal or state department or agency pertaining to the construction, maintenance, repair, or supervision of highways, or ~~the submission of~~ if the prospective bidder submits a falsified prequalification statement or audited financial statement, the committee may make a contractor or declare the prospective bidder ineligible to be prequalified for up to 36 months, ~~as determined by the committee or as based on federal regulations.~~

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:02:15. Ineligibility following grant of rating. ~~The committee may declare a prospective bidder ineligible before the department receives bids or the commission awards a contract if a development occurs after the granting of a classification or a maximum bidding capacity rating which in the determination of the committee would affect the responsibility of the prospective bidder.~~ Repealed.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:17, 19 SDR 154, effective April 11, 1993; 40 SDR 121, effective January 6, 2014.

~~General Authority: SDCL 31-5-10.~~

~~Law Implemented: SDCL 31-5-10.~~

70:07:02:16. Procedure for review of decision of committee. A prospective bidder may, within 14 days after receipt of notice of a decision of the committee, ask the secretary to review that decision by submitting a request in writing setting forth the decision to be reviewed and the change in the decision being requested, along with any supporting information or documentation. The secretary, or the secretary's designee, shall issue a written decision within five business days following receipt of the request for review and any supporting information or documentation. The decision of the secretary, or the secretary's designee, constitutes final agency action.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:23, 19 SDR 154, effective April 11, 1993; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

Cross-Reference: Classification and rating committee -- Membership -- Powers and duties, § 70:07:02:01.

70:07:02:17. Reclassification procedure. A holder of a work classification and maximum bidding capacity rating may request a ~~reclassification~~ different or additional work classification or a higher maximum bidding capacity rating, or both, by submitting a new prequalification statement and any revised financial documentation to the committee at least 14 days before the ~~day of the bid letting opening of any affected bids, unless a shorter time frame is approved by the committee.~~ A ~~reclassification or an increase in a~~ Any changes to a work classification or maximum bidding capacity rating, or both, are in take effect on the day granted by the committee.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:15, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

Cross-Reference: Time limit for ~~questionnaires~~ statements, § 70:07:02:06.

70:07:02:18. ~~Forfeit Submission of rating supplemental information.~~ The committee may, at any time, require a prospective bidder who holds a work classification and maximum bidding capacity rating to submit a new prequalification statement concerning an existing maximum bidding capacity rating supplemental documentation or other information relating to any of the factors set out in 70:07:02:09. ~~Failure to~~ The prospective bidder shall submit a new prequalification statement the supplemental documentation or information within 14 days of the request ~~forfeits the existing maximum bidding capacity rating, unless a longer time period is specified in writing by the committee.~~

~~—— If a prospective bidder forfeits a maximum bidding capacity rating, the committee shall receive and act upon a new prequalification statement from the prospective bidder before bids may be honored.~~

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:16, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:02:19. Renewal of prospective bidder's prequalification. ~~To retain or revise prequalification status, a prospective bidder shall complete a new prospective bidder prequalification statement based on either the expiration date of the bidder's surety bond, or the expiration date of the bidder's audited financial statement. The prequalification committee shall review the prequalification statement and determine the new status of eligible work types, bidding capacity per contract, maximum bidding capacity, and expiration date.~~ Repealed.

Source: 40 SDR 121, effective January 6, 2014.

~~**General Authority:** SDCL 31-5-10.~~

~~**Law Implemented:** SDCL 31-5-10.~~

70:07:02:20. Prior experience requirements. Only work performed by the prospective bidder in the previous five years shall be considered by the committee, unless the bidder demonstrates, to the satisfaction of the committee, that earlier experience is relevant to the bidder's work classification and maximum bidding capacity rating.

~~The committee may consider an exception for work not performed in the last five years if the prospective bidder provides documentation that the bidder had the equipment, manpower, and experience to perform that work.~~

Source: 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:03:03. Denial of proposal for substandard work. ~~The committee~~ department may ~~direct the department not to accept~~ recommend rejection of a bid proposal from a prospective bidder if the prospective bidder has work under contract and the status of the work is not up to the standard of progress or quality required by the department.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 11 SDR 22, effective August 12, 1984; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:25, 19 SDR 154, effective April 11, 1993; 32 SDR 109, effective December 26, 2005; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:03:05. Award of multiple contracts. If a prospective bidder ~~bids~~ is the lowest competent and responsible bidder on more than one project and the total amount of ~~the low these~~ bids exceeds ~~its~~ the current bidding capacity, the department may only award contracts in an amount up to the current bidding capacity. ~~The department shall select projects to~~ contracts for award ~~that are to the advantage~~ based on the best interests of the department.

Source: 19 SDR 154, effective April 11, 1993; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

CHAPTER 70:07:04

SUSPENSION AND DEBARMENT

Section

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70:07:04:01. Suspension for subcontracting violation. The standard specifications for road and bridge construction included in the construction contract shall contain provisions for subcontracting.

If ~~evidence and investigation establish the~~ secretary determines a contractor has ~~attempted to violate~~ violated subcontracting provisions, the secretary may suspend the bidding qualifications of the ~~prospective bidder~~ contractor for up to 180 days.

Source: SL 1975, ch 16, § 1; 8 SDR 45, effective October 28, 1981; 11 SDR 22, effective August 12, 1984; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:20, 19 SDR 154, effective April 11, 1993; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:02. Suspension of bidder. The secretary 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.

Source: 19 SDR 154, effective April 11, 1993; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:03. Suspension -- Notice and content -- Effective date. The order of suspension shall describe the reason for suspension and the period of suspension. The order shall be sent by certified mail to the ~~person or~~ business suspended.

The order of suspension takes effect on the date the order is mailed. A suspension may not exceed 180 days.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:04. Commencement of debarment proceedings after suspension. ~~The secretary shall start debarment proceedings within 180 days after the mailing of the suspension order.~~ Repealed.

Source: 19 SDR 154, effective April 11, 1993.

~~**General Authority:** SDCL 31-5-10.~~

~~**Law Implemented:** SDCL 31-5-10.~~

~~**Cross Reference:** Debarment procedure, § 70:07:04:10.~~

70:07:04:05. Grounds for debarment -- Contract crime. The commission shall ~~shall~~ 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.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:06. Grounds for debarment -- Violation of antitrust laws. The commission ~~shall~~ may debar a business if the business or a principal or former principal of the business is convicted in any jurisdiction of violating SDCL chapter 37-1, federal antitrust laws, or another state's antitrust laws or if a conviction is imputed to the business as set forth in §§ 70:07:04:07 and 70:07:04:08.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:08. Debarment based on affiliation. The conviction of a person or business for a contract crime in any jurisdiction is imputed to any principal, former principal, successor business or corporation, or any other person who is associated with or formerly associated with ~~a~~ the convicted person or business ~~which is subject to debarment or suspension~~ and who participated in, knew of, or had reason to know of the contract crime.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:09. Reasons for debarment. The commission ~~shall~~ may debar a business for the following reasons:

(1) The business employs a former principal of a debarred or suspended business or person as an officer, director, or manager or in another significant decision-making capacity while the former principal or business is debarred or suspended;

(2) The business is owned by or associated in a joint venture with a debarred or suspended business or is controlled by a principal or former principal of a debarred or suspended business; or

(3) A former principal of a debarred or suspended business has a significant financial interest in the business and the principal has the authority to or will control, direct, manage, or influence activities of the business concerned with the department contract in question.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:10. ~~Debarment procedure~~ Right to hearing on suspension and debarment. The secretary may suspend a business and the commission may debar a business only after a hearing or opportunity for hearing pursuant to contested case procedure in SDCL chapter 1-26 has been provided for the business.

Source: 19 SDR 154, effective April 11, 1993; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:10.1 Notice of suspension or debarment. The secretary shall notify the business of the intent to suspend or debar. This notice shall inform the business of the right to request a hearing prior to imposition of suspension or debarment and shall include an explanation of the procedure for requesting a hearing. The notice shall be sent by certified mail to the address on record with the department. The secretary shall send notice of intent to debar within 60 days after a suspension order.

70:07:04:10.2 Hearing request. To request a hearing, the person shall submit a written request to the secretary. A mailed hearing request must be postmarked or an electronic hearing request must be received within twenty days following the date of the notice to suspend or debar. Upon receipt of a request for hearing, the secretary shall issue a notice of hearing pursuant to SDCL chapter 1-26.

70:07:04:10.3 Failure to respond. Failure to request a hearing within the time specified in 70:07:04:10.2 constitutes a waiver of the right to a hearing. If the right to a hearing on suspension is waived, then the secretary may issue an order of suspension. If the right to a hearing on debarment is waived, then the commission may issue an order of debarment.

70:07:04:11. Debarment period when conviction imputed or based on affiliation. The period of debarment ~~for a person, business, or successor business~~ when a conviction for a contract crime is imputed ~~from a person to the business~~ under § 70:07:04:07 or based on affiliation under § 70:07:04:08 ~~is the same as that of the debarred~~ may not be less than any period of debarment imposed on the convicted person, former principal, or business.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:12. Duration of debarment. A ~~person~~ business may not be debarred for more than ~~one year~~ three years for conduct which gave rise to the grounds for debarment. ~~If new or different grounds arise, a new debarment hearing shall be held.~~

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:14. Time limit for initiating debarment or suspension. A debarment or a suspension must be initiated within three years from the date of the conviction of a person or business for a contract crime.

Source: 19 SDR 154, effective April 11, 1993.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:18. Award of department contracts to debarred or suspended persons business prohibited -- Exception. Except as provided in § 70:07:04:16, the department may not award a department contract to a debarred or suspended ~~person~~ business.

Source: 19 SDR 154, effective April 11, 1993; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:19. Subcontracts with debarred or suspended persons business prohibited -- Exception. Except as provided in § 70:07:04:16, a contractor to whom a department contract has been awarded by the commission may not subcontract with a debarred or suspended ~~person~~ business for performance of the department contract. The department may not approve a debarred or suspended subcontractor, except as provided in § 74:07:04:16.

Source: 19 SDR 154, effective April 11, 1993; 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:20. Suspension of prequalification. The ~~department~~ secretary may ~~deny or~~ suspend a contractor's the prequalification status of any business. ~~A suspension or denial pursuant to this rule prohibits the contractor from bidding on any department construction contract for which prequalification is required. The suspension may be based on a violation of a state or federal law, rule, or regulation; an order of a federal or state department or agency pertaining to the construction, maintenance, repair, or supervision of highways; suspension or debarment by a state or federal agency; or poor or unsatisfactory management, quality and timeliness of work performed on existing or previous contracts; or failure to submit supplemental information as requested by the committee~~

under § 70:07:02:18. A suspension pursuant to this rule prohibits the business from bidding on any department contract for which prequalification is required.

Source: 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:21. Period of suspension. The suspension of ~~a contractor's~~ prequalification status shall be for a specific period of time based on the seriousness of the deficiency, but not to exceed 180 days.

Source: 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.

70:07:04:22. Prequalification requirements following completion of suspension or debarment. ~~A contractor who~~ business that was suspended or debarred and has completed the suspension or debarment period, shall reapply for prequalification status before bidding on a ~~department~~ construction contract for which prequalification is required. ~~The contractor~~ business may submit prequalification application information before the end of the suspension or debarment period, but no prequalification approval is effective until completion of the suspension or debarment period.

Source: 40 SDR 121, effective January 6, 2014.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.