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MEMORANDUM

TO: Joel Jundt
FROM: Karla L. Engle
DATE: August 18, 2022
RE: August 25, 2022, Commission Meeting

The Department of Transportation requests that the Transportation Commission set a hearing date to consider amendments to the following administrative rules:

- 70:01:02:02 – Pennington County speed zone rule;
- 70:01:02:57 – Spink County speed zone rule;
- Article 70:07 – Highway Construction Contracts.

I enclose a copy of the proposed rule revisions with this memo. Thank you.

KLE
Enclosure

70:01:02:02. Pennington County. The following are the maximum speeds on certain highways in Pennington County:

(1) Old U.S. Highway 16 through Rockerville between its two junctions with present U.S. Highway 16 westbound, 40 miles per hour;

(2) ~~Repealed;~~

~~(3)~~ State Trunk Highway 44, beginning at the intersection of Cambell Street, then 3.6 miles southeast, 45 miles per hour; then east 0.52 ~~mile~~, 55 miles per hour;

~~(4) Repealed;~~

~~(5)~~(3) Interstate Highway 90 service road beginning on the north side of Interstate Highway 90 at the intersection with the crossover road at interstate ~~milepost~~ mileage reference marker 60.87, then east 3.46 miles, 45 miles per hour;

~~(6)~~(4) The crossroad over Interstate Highway 90 at interstate ~~milepost~~ mileage reference marker 60.87 beginning at the junction with Edwards Street, then north 0.25 mile, 35 miles per hour;

~~(7) Repealed;~~

~~(8) Repealed;~~

~~(9) Repealed;~~

~~(10)~~(5) U.S. Highway 16A beginning at the junction with U.S. Highway 16, then southerly for 0.43 mile, 35 miles per hour; then southerly for 1.69 miles, 45 miles per hour; then southerly for 0.35 mile, 35 miles per hour; then southerly for 0.86 mile, 25 miles per hour, except from June 1 to August 31 of each year from Swanzy Street to Winter Street, 20 miles per hour; then south and east for 0.58 mile, 35 miles per hour; then southeasterly to the Pennington-Custer county line,

including that portion of U.S. Highway 16A which loops back into Pennington County for 0.8 mile, 25 miles per hour;

~~(11)(6)~~ State Trunk Highway 240 beginning at the junction with Interstate Highway 90 in Wall, then south for 0.3 mile, 35 miles per hour; the south for 6.67 miles, 55 miles per hour;

~~(12) Repealed;~~

~~(13)(7)~~ State Highway Maintenance Route 231 beginning at the intersection of West Chicago Street with Sturgis Road, then easterly for 1,200 feet, 35 miles per hour; then easterly for 4,070 feet, 50 miles per hour; then easterly to the intersection of Mt. View Road, 40 miles per hour;

~~(14)(8)~~ U.S. Highway 16 beginning at the intersection of Mt. Rushmore Road and Omaha Street, then southerly to the intersection of Mt. Rushmore Road and Kansas City Street, 25 miles per hour; then southerly to the intersection of Mt. Rushmore Road and Columbus Street, 30 miles per hour; then southerly to the intersection of Cathedral Drive, 35 miles per hour;

~~(15)(9)~~ State Trunk Highway 44 beginning at the intersection of Omaha Street and Mt. View Road, then easterly to the intersection of Omaha Street and Twelfth Street, 40 miles per hour; then easterly to the intersection of Omaha Street and LaCrosse Street, 35 miles per hour; then easterly to the intersection of Omaha Street and Cambell Street, 40 miles per hour;

~~(16)(10)~~ State Trunk Highway 87 beginning at the junction with U.S. Highway 385 to the south boundary line of Pennington County, 45 miles per hour;

~~(17)(11)~~ State Highway Maintenance Route 231 beginning at the Pennington-Meade county line, then southeast for 3.08 miles, 50 miles per hour; then southeast for 0.62 mile, 45 miles per hour; then southeast for 0.35 mile to the intersection with Chicago Street, 35 miles per hour;

~~(18)~~(12) U.S. Highway 16 B beginning at the intersection of U.S. Highway 16 south of Rapid City, then northeasterly for 0.53 mile to Mile Reference Marker 64.72, 45 miles per hour; then northeasterly for 5.08 miles to Mile Reference Marker 69.80, 60 miles per hour; then north for 2.93 miles to Mile Reference Marker 72.73, 55 miles per hour; then north for 0.47 miles to Interstate Highway 90, 45 miles per hour;

~~(19)~~(13) The crossroad over Interstate Highway 90 at interstate milepost 64.16 beginning at the junction of the service road on the north side of the interstate highway and extending 0.2 mile south, 35 miles per hour;

~~(20)~~(14) U.S. Highway 385 beginning at the intersection of U.S. Highway 16 at Three Forks, then north for 16.85 miles to the Lawrence County Line, 55 miles per hour;

~~(21)~~(15) U.S. Highway 16 and U.S. Highway 385 beginning 3.7 miles south of the junction with State Trunk Highway 244, at the Custer County line, then northerly for 3.25 miles, 60 miles per hour; then northerly to a point 0.35 mile north of the junction with State Trunk Highway 244, 45 miles per hour; then northerly for 2.42 miles, 55 miles per hour;

~~(22)~~(16) State Trunk Highway 244 beginning at the junction with U.S. Highway 16 and 385, then easterly for 0.65 mile, 40 miles per hour; then easterly for 4.74 miles, 50 miles per hour; then easterly for 2 miles to the west entrance of the Mt. Rushmore Memorial, 40 miles per hour; then easterly for 0.57 mile, 35 miles per hour; then easterly for 1.09 miles, 25 miles per hour; then easterly for 1.34 miles to the junction with U.S. Highway 16A, 35 miles per hour;

~~(23)~~(17) Highway 16 service road beginning at the crossover approximately 200 feet south of the Pine Lawn Memorial Cemetery south of Rapid City, then south for 2.1 miles, to the end of the service road, 35 miles per hour;

~~(24)~~(18) U.S. Highway 16 beginning 5.72 miles east of the U.S. Highway 385 junction of Three Forks, then westerly for 5.28 miles, 55 miles per hour; then westerly for 1.54 miles through the Three Forks junction, 45 miles per hour; then westerly for 1.62 miles, 50 miles per hour;

~~(25)~~(19) Truck speed for eastbound trucks with dual tires on the driver axle on U.S. Highway 16 beginning at a point 2 miles west of the junction with Cathedral Drive in Rapid City, then east 2 miles to the junction of Cathedral Drive, 35 miles per hour;

~~(26)~~(20) State Trunk Highway 44 beginning at the junction with U.S. Highway 385, then easterly for 4.26 miles, 50 miles per hour; then easterly for 0.54 miles, 40 miles per hour; then easterly for 7.72 miles, 50 miles per hour; then easterly for 0.95 miles, 45 miles per hour; then easterly for 0.47 miles, 40 miles per hour; then easterly for 3.1 miles to the intersection of Mountain View Road and Omaha Street in Rapid City, 35 miles per hour;

~~(27)~~(21) State Trunk Highway 40 beginning 8.9 miles northwest of the south junction with State Trunk Highway 79 at Hermosa, then southeast for 2.42 miles to the Pennington-Custer county line, 55 miles per hour;

~~(28)~~(22) Interstate Highway 90 crossover road at Exit 78 (New Underwood Road) beginning 0.07 mile south of the centerline of Interstate Highway 90, then north 0.16 mile, 45 miles per hour;

~~(29) Repealed;~~

~~(30)~~(23) The crossroad over Interstate Highway 90 at Exit 84 (Pennington County Road 497) beginning 0.09 mile south of the centerline of Interstate Highway 90, then north 0.19 mile, 25 miles per hour;

~~(31)~~(24) The crossroad over Interstate Highway 90 at Exit 88 (Pennington County Road 473) beginning 0.11 mile south of the centerline of Interstate Highway 90, then north 0.25 mile, 25 miles per hour;

~~(32)~~(25) The crossroad over Interstate Highway 90 at Exit 107 (Pennington County Road 506) beginning 0.19 mile south of the centerline of Interstate Highway 90, then north 0.38 mile, 35 miles per hour;

~~(33)~~(26) State Trunk Highway 79 beginning 500 feet south of the junction of Minnesota Avenue in Rapid City then south to the junction of State Trunk Highway 16B, 55 miles per hour; then south on State Highway 79 for 1.29 miles, 55 miles per hour; then south to the Custer County line, 70 miles per hour;

~~(34) Repealed;~~

~~(35) Repealed;~~

~~(36) Repealed;~~

~~(37)~~(27) U.S. Highway 16 beginning at milepost 40.3 at the south edge of Hill City, then northeasterly for 0.20 mile to south junction of U.S. Highway 16 Truck Route, 35 miles per hour; then northerly for 0.55 mile to north junction of U.S. Highway 16 Truck Route, 25 miles per hour; then northeasterly for 0.53 mile, 35 miles per hour; then northeasterly for 0.44 mile, 45 miles per hour; and on U.S. Highway 16 Truck Route from south junction with U.S. Highway 16 northerly 0.6 mile to north junction with U.S. Highway 16, 35 miles per hour;

~~(38)~~(28) U.S. Highway 16 eastbound lanes beginning at Cathedral Drive, then southerly 0.3 mile, 35 miles per hour; then southerly for 1.35 miles, 50 miles per hour; then southerly for 4.47 miles, 60 miles per hour;

~~(39)~~(29) U.S. Highway 16 westbound lanes beginning at Cathedral Drive, then southerly for 1.65 miles, 50 miles per hour; then southerly for 4.47 miles, 60 miles per hour;

~~(40)~~(30) State Highway 445 (Deadwood Avenue) beginning at the terminals of the west bound ramps of Interstate Highway 90 at Exit 55, then southeast for 2.3 miles to the junction with West Chicago Street, 45 miles per hour.

(31) The crossroad over Interstate Highway 90 at interstate mileage reference marker 59.19 (LaCrosse Street) beginning 0.1 mile south of the intersection with the eastbound ramps, then north to 0.1 mile north of the intersection with the westbound ramps, 25 miles per hour.

Source: SL 1975, ch 16, § 1; 1 SDR 29, effective October 6, 1974; 1 SDR 48, effective January 1, 1975; 2 SDR 29, effective October 16, 1975; 3 SDR 75, effective May 1, 1977; 4 SDR 60, effective March 26, 1978; 6 SDR 5, effective July 30, 1979; 6 SDR 85, effective February 24, 1980; 6 SDR 109, effective May 29, 1980; 7 SDR 89, effective March 30, 1981; 9 SDR 35, effective September 19, 1982; 9 SDR 76, effective December 23, 1982; 9 SDR 111, effective February 27, 1983; 9 SDR 132, effective April 24, 1983; 10 SDR 7, effective July 31, 1983; 11 SDR 62, effective November 4, 1984; 11 SDR 112, effective February 25, 1985; 11 SDR 156, effective May 26, 1985; 12 SDR 138, effective February 23, 1986; 12 SDR 174, effective May 5, 1986; 13 SDR 52, effective November 6, 1986; 13 SDR 129, 13 SDR 134, effective July 1, 1987; 14 SDR 111, effective February 28, 1988; 16 SDR 88, effective November 12, 1989; 16 SDR 102, effective December 20, 1989; 16 SDR 152, effective March 28, 1990; 17 SDR 34, effective September 9, 1990; 17 SDR 62, effective November 5, 1990; 17 SDR 82, effective December 20, 1990; 17 SDR 127, effective March 3, 1991; 17 SDR 151, effective April 8, 1991; 18 SDR 78, effective November 4, 1991; 22 SDR 165, effective June 2, 1996; 22 SDR 183, effective June 30, 1996; 24 SDR 132, effective April 5, 1998; 25 SDR 108, effective March 1, 1999; 27 SDR 15,

effective August 30, 2000; 30 SDR 89, effective December 7, 2003; 32 SDR 183, effective May 10, 2006; 33 SDR 125, effective January 29, 2007; 34 SDR 279, effective May 8, 2008; 40 SDR 58, effective October 9, 2013; 44 SDR 17, effective August 8, 2017; 44 SDR 95, effective December 5, 2017; 44 SDR 184, effective June 25, 2018; 46 SDR 26, effective September 2, 2019.

General Authority: SDCL 32-25-7, 32-25-7.1.

Law Implemented: SDCL 32-25-7, 32-25-7.1.

70:01:02:57. Spink County. The following are the maximum speeds on certain highways in Spink County:

(1) U.S. Highway 212 beginning ~~at the east city limits of Redfield, then west to the intersection of Fourth Street and Seventh Avenue, 35 miles per hour; then west to a point 0.2 mile east of the west city limits, 30 miles per hour; then west for 0.4 mile, 45 miles per hour~~ 0.11 mile west of Fourth Avenue West in Redfield, then east 0.4 mile, 45 miles per hour; then east 0.9 mile, 30 miles per hour; then east 0.69 mile, 35 miles per hour; then east 0.27 mile, 45 miles per hour;

(2) State Trunk Highway 20 beginning 0.1 mile east of the northwest corner of section 5, township 120 north, range 64 west of the fifth principal meridian in Northville and ending 0.4 mile west of that corner, 50 miles per hour;

(3) State Trunk Highway 26 beginning at the section line common to sections 7 and 18, township 115 north, range 65 west of the fifth principal meridian, then northeast 3 miles, 45 miles per hour;

(4) U.S. Highway 281 beginning ~~at the south city limits of Redfield, then north to the intersection with Ninth Avenue, 35 miles per hour; then north and east to the east junction with U.S. Highway 212, 30 miles per hour; then north to the intersection with Second Avenue, 35 miles per hour; then north 0.75 mile, 50 miles per hour~~ 0.32 mile south of 174th Street in Redfield, then

north 0.26 mile, 45 miles per hour; then north 0.6 mile, 35 miles per hour; then north 0.1 mile, 30 miles per hour;

(5) U.S. Highway 281 beginning at the east junction of U.S. Highway 212 and U.S. Highway 281 in Redfield, then north 0.41 mile, 35 miles per hour; then north 0.75 mile, 50 miles per hour;

~~(5)~~(6) U.S. Highway 212 and State Trunk Highway 37 beginning 0.33 mile west of the east junction of U.S. Highway 212 and State Trunk Highway 37 at Doland, then east 0.2 mile, 50 miles per hour; then east 0.13 mile, 35 miles per hour; then east on U.S. Highway 212, 0.44 mile, 35 miles per hour; then east 0.2 mile, 50 miles per hour; then north on State Trunk Highway 37, 0.5 mile, 35 miles per hour; then north 0.2 mile, 50 miles per hour;

~~(6)~~(7) U.S. Highway 281 at Tulare beginning at Spink County Highway 24, then north 0.55 mile, 50 miles per hour;

~~(7)~~(8) Beginning 0.2 mile south of the north junction of State Trunk Highway 20 and State Trunk Highway 37, then north on State Trunk Highway 20 and State Trunk Highway 37, 0.2 mile, 55 miles per hour; then north on State Trunk Highway 37, 0.6 mile, 55 miles per hour;

~~(8)~~(9) U.S. Highway 281 beginning 0.4 mile north of the junction of U.S. Highway 281 and State Trunk Highway 20, then north to the Brown County line, 70 miles per hour;

~~(9)~~(10) State Trunk Highway 20 beginning 0.52 mile east of U.S. Highway 281, then east 0.58 mile, 50 miles per hour.

Source: SL 1975, ch 16, § 1; 4 SDR 20, effective October 3, 1977; 7 SDR 25, effective September 22, 1980; 7 SDR 100, effective April 27, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; 19 SDR 61, effective October 26, 1992; 22 SDR 165, effective June 2, 1996; 22 SDR 183, effective June 30, 1996; 23 SDR 64, effective November 4, 1996; 32 SDR 53, effective

October 10, 2005; 39 SDR 172, effective April 29, 2013; 47 SDR 58, effective November 30, 2020.

General Authority: SDCL 32-25-7, 32-25-7.1.

Law Implemented: SDCL 32-25-7, 32-25-7.1.

70:07:01:01. Definitions. As used in chapters 70:07:01 to 70:07:04:

(1) "Awarding authority" means a public or private authority that awards construction contracts;

(2) "Business" means a natural person or sole proprietorship that performs work as a contractor or subcontractor or a partnership, association, corporation, or other entity formed for the purpose of performing work as a contractor or subcontractor;

(3) "Commission" means the South Dakota Transportation Commission;

(4) "Committee" means the classification and rating committee established by § 70:07:02:01;

(5) "Construction contract" means the written agreement between the department and the contractor setting forth the obligations of the parties for the performance of the prescribed work, including the invitation for bids, proposal, contract form, contract bond, standard specifications, supplemental specifications, special provisions, general and detailed plans, and notice to proceed and any addendum, change order and agreement that is required to complete construction of the work, including any authorized extension of the contract, all of which constitute one instrument, for the improvement of the highway system;

(6) "Contract crime" means a violation of 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 to fraud, theft, embezzlement, bribery, forgery, misrepresentation,

making false statements, falsification or destruction of records, or any other criminal offense in connection with obtaining, attempting to obtain, or performing a public or private contract or subcontract;

(7) "Contractor" means a business to whom the commission has awarded a department construction contract;

(8) "Conviction" means any of the following accepted and recorded by a court:

(a) A plea of guilty;

(b) A verdict of guilty by a jury or a finding of guilt by a court; or

(c) A civil verdict or civil judgment against a person in which a civil penalty is imposed on the person as a result of a contract crime;

(9) "Current bidding capacity" means the maximum dollar amount of work for which a prospective bidder may submit bids receive contract awards at any given bid letting;

(10) "Debar" means to disqualify from entering into or being awarded a department construction contract or from serving as a contractor or subcontractor under a department construction contract;

(11) "Department" means the South Dakota Department of Transportation;

(12) "Maximum bidding capacity rating" means the maximum dollar amount of work a contractor may have under contract at any one time, either as principal or subcontractor, regardless of whom the work is for or where it is located, as authorized by the committee;

(13) "Person" means a natural person;

(14) "Prequalified" means possessing the requisite classification and bidding capacity rating to bid on a department construction contract;

~~(14)~~ (15) "Principal" means an officer, director, or partner of a business or an employee or shareholder engaged in management of the business;

~~(15)~~ (16) "Prospective bidder" means a person proposing to bid or bidding on a department construction contract;

~~(16)~~ (17) "Secretary" means the secretary of the South Dakota Department of Transportation;

~~(17)~~ (18) "Suspend" means to temporarily disqualify from entering into or being awarded a department construction contract or from serving as a contractor or subcontractor under a department construction contract;

~~(18)~~ (19) "Working capital" means the difference between a contractor's current assets and current liabilities as classified on the contractor's audited financial statement plus 80 percent of the book value of the construction equipment listed in the contractor's prequalification statement and financial statement, plus committee-approved lines of credit.

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 § 70:01:05:01, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999; 40 SDR 121, effective January 6, 2014; 47 SDR 38, effective October 6, 2020.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10, 31-5-10.1, 31-5-10.2, 31-5-10.3.

CHAPTER 70:07:02

CLASSIFICATION AND BIDDING CAPACITY RATING

Section

70:07:02:01 Classification and rating committee -- Membership -- Powers and duties.

- 70:07:02:02 Committee to keep record of proceedings.
- 70:07:02:03 Classification and maximum bidding capacity rating.
- 70:07:02:04 Procedure for obtaining or renewing classification and capacity rating.
- 70:07:02:05 Financial records confidential.
- 70:07:02:06 Time limit for statements.
- 70:07:02:07 Preference for work classification.
- 70:07:02:08 Work classification.
- 70:07:02:09 ~~Work~~ Assignment of work classification and maximum bidding capacity rating.
- 70:07:02:10 Effective period of work classification and rating.
- 70:07:02:11 Determination of current bidding capacity of prospective bidders.
- 70:07:02:11.1 Obligation to inform department of changes to certification of surety.
- 70:07:02:12 Repealed.
- 70:07:02:13 Ineligibility for ~~violation of laws, rules, or orders~~ assignment and classification
rating.
- 70:07:02:14 Repealed.
- 70:07:02:15 Repealed.
- 70:07:02:16 Procedure for review of decision of committee.
- 70:07:02:17 Reclassification procedure.
- 70:07:02:18 Submission of supplemental information.
- 70:07:02:19 Repealed.
- 70:07:02:20 Prior experience requirements.

70:07:02:04. Procedure for obtaining or renewing classification and capacity rating.

To obtain or renew a work classification and maximum bidding capacity rating, a prospective

bidder shall submit a prequalification statement to the committee, on a form approved by the department. In the prequalification statement, the prospective bidder shall include a description of the prospective bidder's equipment, organization, prior experience, and any suspension or debarment or proposed suspension or debarment by any governmental agency. At its discretion, the committee may request additional information.

In addition to the prospective bidder's prequalification statement, the prospective bidder shall furnish financial documentation in accordance with either of the following:

(1) The prospective bidder may furnish a certification of surety from a bonding firm authorized to do business in this state stating the maximum bonding coverage the surety will issue on the prospective bidder's behalf for both a single contract and for all of the prospective bidder's work including uncompleted contracts; or

(2) The prospective bidder may submit a separate statement of financial position audited by an independent certified public accountant. The opinion page of the audit statement shall include the audit firm's name, address, telephone number, and signature of a member of the firm.

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 § 70:01:05:03, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999; 40 SDR 121, effective January 6, 2014; 47 SDR 38, effective October 6, 2020.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10, 31-5-10.1, 31-5-10.2, 31-5-10.3.

70:07:02:09. ~~Work~~ Assignment of work classification and maximum bidding capacity rating. The committee may assign a work classification and maximum bidding capacity rating based on the following factors:

(1) The prospective bidder's ability to finance the work as shown by the prospective bidder's audited financial statement, surety statement, surety bond, independent audit, or debt records and other financial documents;

(2) The ownership, sufficiency, condition, and availability of the prospective bidder's equipment;

(3) The work abilities and experience of the prospective ~~bidder's~~ bidder and its personnel; and

(4) The quality and timeliness of the prospective bidder's work on ~~previous~~ contracts with the department and other awarding authorities.

A maximum bidding capacity rating may not exceed ten times the amount of a prospective bidder's working capital. The committee may consider a bank line of credit to increase the prospective bidder's working capital. The prospective bidder shall describe the line of credit on a form furnished by the committee. ~~The committee may declare the prospective bidder ineligible for prequalification if the committee determines that the prospective bidder is deficient in any of the factors listed in this section.~~

If a certification of surety is furnished in accordance with subdivision 70:07:02:04(1), then: (1) the maximum bidding capacity rating may not exceed the maximum bonding limitations established by the surety on the prospective bidder's behalf coverage for all the prospective bidder's work; and (2) the prospective bidder may not submit a bid for more than the maximum bonding coverage for a single contract.

If an audited financial statement is furnished, the 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; 47 SDR 38, effective October 6, 2020.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10; 31-5-10.1, 31-5-10.2, 31-5-10.3.

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), 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), any work classification and maximum bidding capacity rating granted by the committee must 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.~~ If requested in writing by the prospective bidder, the committee may extend the effective date of the work classification and maximum bidding capacity rating one time for not more than 60 days. 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; 47 SDR 38, effective October 6, 2020.

General Authority: SDCL 31-5-10, 31-5-10.1, 31-5-10.2, 31-5-10.3.

Law Implemented: SDCL 31-5-10.

70:07:02:11. Determination of current bidding capacity of prospective bidders. For any given department bid letting, the contracts awarded to a ~~propsective~~ 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 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; 47 SDR 38, effective October 6, 2020.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10, 31-5-10.1, 31-5-10.2, 31-5-10.3.

70:07:02:11.1 Obligation to inform department of changes to certification of surety. If a prospective bidder submits a certification of surety to comply with the financial documentation requirements of 70:07:02:04 or 70:07:02:04.01, then the prospective bidder shall notify the department of the rescission of the certificate or any reduction in the amount of bonding coverage issued by the surety. The prospective bidder shall provide the department with written notice within five days after the prospective bidder receives notice of the rescission or reduction in coverage.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10, 31-5-10.1, 31-5-10.2, 31-5-10.3.

70:07:02:13. Ineligibility ~~for violation of laws, rules, or orders~~ for assignment of classification and rating. ~~If a prospective 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 if the prospective bidder submits a falsified prequalification statement or audited financial statement, the~~ The committee may declare ~~the a~~ prospective bidder ineligible to be prequalified if the prospective bidder:

(1) 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;

(2) submits a falsified prequalification statement, audited financial statement, or certification of surety; or

(3) is deficient in any of the factors listed in 70:07:02:09.

The period of ineligibility may be up to 36 months.

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 § 70:01:05:18, 19 SDR 154, effective April 11, 1993; 40 SDR 197, effective May 27, 2014; 47 SDR 38, effective October 6, 2020.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10, ~~31-5-10.1, 31-5-10.2, 31-5-10.3.~~

CHAPTER 70:07:03

BID PROPOSALS

Section

70:07:03:01 Procedure for ~~requesting~~ accessing bid proposals.

70:07:03:01.01. Optional Combination Bidding.

70:07:03:02 Repealed.

70:07:03:03 ~~Denial of proposal for substandard work, Repealed.~~

70:03:03:04 Repealed.

70:07:03:05 Award of multiple contracts.

70:07:03:06 Repealed.

70:07:03:01. Procedure for ~~requesting~~ accessing bid proposals. A prospective bidder may ~~download bidding~~ access bid proposals from the department's website for each letting. If the bid letting is held at a department region office, the bidding instructions for obtaining the bid proposals ~~may be mailed or emailed to prospective bidders, along with plans and specifications~~ will be advertised on the department's website.

Source: SL 1975, ch 16, § 1; 6 SDR 109, effective May 29, 1980; 8 SDR 45, effective October 28, 1981; 13 SDR 129, 13 SDR 134, effective July 1, 1987; transferred from § 70:01:05:09, 19 SDR 154, effective April 11, 1993; 25 SDR 145, effective May 30, 1999; 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, 31-5-10.1, 31-5-10.2, 31-5-10.3.

70:07:03:01.01. Optional Combination Bidding. The department may issue bid proposal forms for multiple projects to be bid in combination or separately, so that prospective bidders may elect to submit bids on the combination of projects, one or more separate projects, or both the combination of projects and one or more separate projects. If one or more responsive bids are submitted for the combination of projects and all of the separate projects, contract awards may be made on the combination bid or separate project bids that result in the lowest total cost for all projects. If no responsive bids are received on the combination of projects, contracts may be awarded for any of the separate projects. If one or more responsive bids are received only on the combination of projects, contract awards may be made on the combination bid. If one or more

responsive bids are submitted for the combination of projects and no responsive bids are received on at least one of the separate projects, contract awards may be made on the combination bid but all separate bids will be rejected.

General Authority: SDCL 31-5-10;

Law Implemented: SDCL 31-5-10, 31-5-10.1, 31-5-10.2, 31-5-10.3.

~~**70:07:03:03. Denial of proposal for substandard work.** The department may 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 Repealed.~~

~~**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; 47 SDR 38, effective October 6, 2020.~~

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

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

70:07:04:20. Suspension of prequalification. The secretary may suspend the prequalification status of any business 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; poor or unsatisfactory management, quality, and timeliness of work performed on existing or previous contracts; inability to finance the work; lack of equipment or capable and experienced personnel; or failure to submit supplemental information as requested by the committee under

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

Source: 40 SDR 121, effective January 6, 2014; 47 SDR 38, effective October 6, 2020.

General Authority: SDCL 31-5-10.

Law Implemented: SDCL 31-5-10.