

Oklahoma Turnpike Authority

Administrative Rules

Chapter 1: Administrative Operations

Section 731:1-1-1 : Purpose

(a) The provisions of this Chapter have been adopted for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. § 250.1 et seq., and to facilitate the administration and operation of the Oklahoma turnpike system.

(b) In particular, the purpose of Subchapter 1 is to set out a general description of the Oklahoma Transportation Authority, review the functions performed by the Authority, and briefly present an overview of the statutory role of the Authority, its organization and structure. [**Source:** Added at 17 Ok Reg 1711, eff 5-25-00]

Section 731:1-1-2 : General description of the Oklahoma Transportation Authority

The Oklahoma Transportation Authority is a body corporate and politic and an instrumentality of the State of Oklahoma created pursuant to 69 O.S. § 1701, et seq., as amended. The Authority was created for the purpose of constructing, maintaining and operating toll roads (turnpikes). The Authority is further authorized and empowered to construct, maintain and operate inter-modal transportation transfer facilities and infrastructure related thereto, including, without limitation, warehouses and utility facilities and intercity rail transit projects. In addition, the Authority is empowered to provide wayports, aviation transfer centers and aviation hubs. Ten turnpikes are currently operated by the Authority. The total length of existing turnpikes is 563.9 miles. Turnpike extensions presently under construction will increase the total length by approximately 49 miles. All funds collected from turnpike toll operations, concessions, investments and bond sales are used for the sole purpose of constructing, maintaining and operating the Oklahoma turnpike system. No tax monies are received or spent to operate this system. The Authority consists of the Governor, who is an ex officio member of the Authority and six (6) members appointed by the Governor by and with the consent of the Senate. Authority members serve for fixed terms of eight (8) years and such members are eligible for reappointment. The general administrative offices of the Authority are located at 3500 Martin Luther King Avenue, Oklahoma, Oklahoma 73136, 405/425-3600. The public may obtain information or make submissions or requests to the Authority at such general administrative offices during regular business hours between 7:30 a.m. and 4:30 p.m. Monday through Friday. [**Source:** Added at 17 Ok Reg 1711, eff 5-25-00]

Section 731:1-1-3 : Public records

(a) All public records of the Authority shall be made available for public inspection at the general administrative offices of the Authority during regular business hours. Copies of public records of the Authority may be obtained upon payment of applicable fees approved by the Authority.

(b) The chief administrative officer of the Authority is the Director. The Authority functions through eight divisions as follows: General Administration, Human Resources, Toll Operations, Maintenance, Engineering, Controller, Finance and Revenue and Information Technology. Each such division is managed by a division director. [Source: Added at 17 Ok Reg 1711, eff 5-25-00]

Section 731:1-1-4 : Filing and disposition of petitions for declaratory rulings

(a) An interested person may petition the Authority for declaratory rulings as to the applicability of any rule or order of the Authority. The petition shall be in writing, signed by the petitioner or an authorized agent of the petitioner, setting forth the petitioner's interest in the subject matter and the reasons why the petition should be granted. The petition shall be filed at the general administrative offices of the Authority. The Authority or its authorized representative may request additional information from the petitioner as deemed necessary to issue a declaratory ruling. Failure to provide the requested information shall result in denial of the petition to issue the declaratory ruling.

(b) The Authority shall consider and act upon the petition promptly. A declaratory ruling shall apply only to the fact situation stated in the declaratory ruling petition and shall apply only to the petitioner. A declaratory ruling shall cease to be binding if a pertinent change is made in the applicable law by the Legislature, if a pertinent change is made in the Authority's rules, if a pertinent change in the interpretation of the law is made by a court of law or if the actual facts are determined to be materially different from the facts set out in the petitioner's declaratory ruling petition. The Authority, in its discretion, may deny a petition for declaratory ruling for good cause. In such instance, the Authority will indicate in writing the reason(s) for refusing to issue the declaratory ruling. Good cause includes, but is not limited to, the following:

- (1) The petition does not substantially comply with the information required by this section;
- (2) The petition involves hypothetical situations or alternative plans;
- (3) The petitioner requests the Authority to interpret or apply a statute, or requests a determination as to whether a statute is constitutional under the Oklahoma Constitution or the United States Constitution;
- (4) The facts or issue(s) presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue the declaratory ruling;
- (5) The issue about which the declaratory ruling is requested is primarily one of fact;
- (6) The issue is presently being considered in a rulemaking proceeding, protest proceeding or other agency or judicial proceeding that may definitively resolve the issue;
- (7) The issue cannot be reasonably resolved prior to the issuance of rules;

(8) The issue is the subject of investigation, administrative proceeding or litigation;

(9) The issue relates to the application of the law to members of a business, trade, professional or industrial association or other similar group(s); or

(10) The petitioner is not identified or is anonymous.

(c) The petitioner may withdraw the petition for a declaratory ruling, in writing, prior to the issuance of the declaratory ruling. [Source: Added at 17 Ok Reg 1711, eff 5-25-00]

Section 731:1-1-5: Request for promulgation, amendment or repeal of rules

(a) An interested person may request the Authority to promulgate, amend, or repeal a rule. Such request must be in writing and must state the reasons supporting the proposed rule, amendment or repeal. The request must also state whether the proposal conflicts with any existing rule. Further, the request must state what statutory provisions, if any, are involved. The request must be signed by the requester. Such requests must be submitted to the Authority's general administrative offices, either in person or by mail. Requests shall be considered and acted upon by the Authority within a reasonable time.

(b) The adoption, amendment or repeal of any rule shall be in accordance with the provisions of 75 O.S. § 303. [Source: Added at 17 Ok Reg 1711, eff 5-25-00]

Section 731:1-1-6: Forms and where available

The Authority utilizes a variety of forms in the construction, maintenance and operation of the Oklahoma turnpike system. The forms are subject to frequent change because of changes in the law and for administrative reasons. The Authority attempts to make a wide distribution of the commonly used forms needed by customers and vendors for which there is a current, valid mailing address available. Current Authority forms are available at the general administrative offices of the Authority. [Source: Added at 17 Ok Reg 1711, eff 5-25-00]

Section 731:1-1-7: Practices and procedures

(a) The conduct of an individual proceeding as defined by 75 O.S. § 301 shall be in accordance with the provisions of 75 O.S. § 309. The Authority may admit evidence and shall allow cross-examination and right to counsel as provided by 75 O.S. § 310.

(b) The Authority shall have power to require the furnishing of such information, the attendance of such witnesses and the production of such books, records, papers or other objects as may be necessary, and proper for the purposes of any proceeding in accordance with the provisions of 75 O.S. § 315. [Source: Added at 17 Ok Reg 1711, eff 5-25-00]

Chapter 10: Prequalification to Bid, Suspension and Debarment of Contractors, Affiliates and Others

Section 731:10-1-1: Purpose

The provisions of this Chapter have been adopted for the purpose of compliance with the provisions of the Oklahoma Administrative Procedures Act, 75 O.S. § 250.1 et seq., and the Oklahoma Public Competitive Bidding Act, 61 O.S. § 118(B), in order to provide for the safety and welfare of the traveling public using the Oklahoma turnpike system by making provision for the prequalification to bid and for the suspension or debarment of contractors, affiliates of contractors, subcontractors, material suppliers or any director, officer, agent or employee of any such entity from bidding or participating in public construction contracts awarded by the Authority. [Source: Added at 17 Ok Reg 1713, eff 5-25-00]

Section 731:10-1-2: Prequalification

(a) Except as provided in this Rule, only prequalified contractors will be permitted to bid on public construction contracts to be awarded by the Authority.

(b) Except as provided in this Rule, before a prospective bidder may obtain bidding documents from the Authority, the prospective bidder shall be prequalified. Prospective bidders not currently prequalified may seek to become prequalified by submitting to the Authority's Director of Engineering a completed Prequalification Application which may be obtained from the Authority's Division of Engineering at the Authority's general administrative offices.

(c) The first time applicant contractor must submit as part of its Prequalification Application an audited financial statement which is certified by a Certified Public Accountant. The audited financial statement shall not be dated more than 90 days prior to the date of submission of the Prequalification Application to the Authority. In the event that the applicant's audited financial statement was issued more than 90 days prior to the submission of the Prequalification Application, but not more than 270 days prior to application, the applicant may submit its most recent audited financial statement and its most recent unaudited quarterly financial statements. Based upon these documents the Authority may, in its discretion, grant the applicant a conditional prequalification. In a conditional prequalification the Authority shall impose such additional requirements, not inconsistent with the laws of this State and this Rule, as the Authority deems necessary and in the best interests of the public. A conditional prequalification shall be valid only for a period not to exceed 120 days beyond the end of the applicant's fiscal year. Work performed during conditional prequalification shall not form the basis for prequalification. No applicant may be granted a conditional prequalification more frequently than once every three years.

(d) No first time applicant contractor will be qualified unless the applicant's Prequalification Application and the supporting investigation show that the applicant possesses working capital sufficient to indicate that the applicant can satisfactorily perform its contracts and meet all obligations incurred therein. The audited financial statement and unaudited quarterly statements must show all liabilities (current, deferred and contingent).

(e) If the first time applicant contractor submits cash value of life insurance as an asset, the applicant will support the submission with a letter from the insurance company, showing that the applicant absolutely controls the cash value.

(f) A partnership will submit an audited financial statement and, as appropriate, unaudited quarterly statements of each partner individually, and an audited

financial statement and quarterly statements of the partnership which will include all the assets and liabilities of each partner.

(g) First time applicants will furnish an itemized list of all secondary cash resource items such as marketable securities, stocks and bonds.

(h) First time applicants will sign all forms submitted to the Authority in the manner in which the applicant intends to sign bid proposals.

(i) The Authority's Director of Engineering will make such investigation of the information submitted as necessary and make a determination as provided in subsection (j) below within thirty (30) days following receipt of the completed Prequalification Application.

(j) The Authority's Director of Engineering will qualify, or refuse to qualify, any first time applicant contractor for paving, grading and drainage, bridge or other Authority construction work in accordance with such contractor's experience and financial condition and notify the applicant in writing within ten (10) days following such determination.

(k) First time applicant contractors will not be permitted to bid on individual projects that exceed prequalification amounts. Proposals may be "taken out" without limitation as to aggregate total. Should a contractor be low bidder on contracts totaling more than the amount it is capable of bonding, the Authority reserves the right to:

- (1) reject any or all of the contractor's bids and readvertise for new bids as required in the best interests of the State; or
- (2) revoke the award of any of the contractor's projects; or
- (3) proceed to do the work otherwise, when the best interests of the State will be promoted thereby.

(l) Any first time applicant contractor not satisfied with a rejection of its application for prequalification may appeal to the Authority by giving written notice of the applicant's objection by certified mail addressed to the Director. The applicant's objection must be mailed within fourteen (14) calendar days after the date such contractor receives written notice of the Authority's Director of Engineering action. The Authority shall review the prequalification file and make an independent determination concerning the applicant's prequalifications which shall constitute a final agency order and notify the applicant thereof within thirty (30) days of receipt of the applicant's written objection.

(m) Upon successful completion as determined by the Authority and final acceptance of a first time applicant's first project for the Authority (excluding any work performed pursuant to conditional prequalification), the contractor shall be considered fully prequalified and may bid on and be awarded projects to the extent of the contractor's bonding capacity.

(n) Prequalification shall remain in full force and effect for a period of two years from the date of final acceptance of the contractor's last project. If, for a period of two years from the date of final acceptance of the contractor's last project, the contractor does not receive a contract or perform work for the Authority as a prequalified contractor, the prequalification shall expire unless extended by the Director. Prior to the expiration of the contractor's prequalification, the Director may, upon written request of the contractor, extend

the contractor's prequalification for a period of not to exceed one additional year. An expired prequalification may not be extended. Projects not requiring prequalification, on which prequalification has been waived, or work as a subcontractor, shall not be considered work as a prequalified contractor. [**Source:** Added at 17 Ok Reg 1713, eff 5-25-00]

Section 731:10-1-3: Non-resident contractors

(a) Every non-resident contractor, including any corporation not incorporated in this state, shall, before it is permitted to transact business with the Authority, appoint and maintain a service agent upon whom service of process may be made in any action to which the contractor may be a party. Appointment of an agent for service, properly executed and acknowledged, will be filed with the Oklahoma Secretary of State, and will state the residence address or place of business of the agent and any other information required by law or the Oklahoma Secretary of State. A certified copy of this filing will be furnished to the Authority. The service agent shall not be an official, either elective or appointive, of the United States or any political subdivision thereof, a bondsman, surety, subcontractor, or materials supplier.

(b) Every applicant foreign corporation, firm, association, or legal entity will file a certified copy of its Articles of Incorporation, partnership agreement, or joint venture agreement, with the Authority.

(c) Every applicant foreign corporation, firm, association, or other legal entity will file with the Authority evidence that it has become domesticated in the State of Oklahoma and has been authorized to transact business in the State of Oklahoma. [**Source:** Added at 17 Ok Reg 1713, eff 5-25-00]

Section 731:10-1-4: Proposals; right to suspend or debar from bidding

(a) All proposal blanks will be obtained from the offices of the Authority's design engineer for the particular project whose address may be obtained from the Authority at the Authority's general administrative offices.

(b) Proposal blanks will be stamped with the name of the contractor and the date of issue and no other proposal blanks will be accepted. The fee for each proposal shall be twenty-five dollars (\$25.00), which fee is non-refundable.

(c) No proposal for public construction projects advertised for bids by the Authority will be issued to any contractor within 24 hours of the bid opening for any contract.

(d) Right to Suspend or Debar. The Authority reserves the right to suspend or debar, under the provisions of this Rule, any contractor, affiliate of a contractor, subcontractor, material supplier, or any director, officer, agent or employee, of any such entity from bidding or participating in public construction contracts awarded by the Authority based upon (1) proof of a bidding crime (as hereinafter defined), (2) unsatisfactory performance of project work, or (3) other act or omission as set forth in this Rule. [**Source:** Added at 17 Ok Reg 1713, eff 5-25-00]

Section 731:10-1-5 Debarments and suspensions

(a) **Debarment.** A contractor, any affiliate of a contractor, any subcontractor, material supplier or any director, officer, agent, or employee of any such entity who commits any bidding crime in the performance of a public construction contract awarded by the Authority, or for any of the reasons set forth in this Rule shall be subject to debarment proceedings. The term "bidding crime" as used herein means any act prohibited by any state or federal law committed in any jurisdiction, such act involving fraud, conspiracy, collusion, perjury or material misrepresentation with respect to bidding on any contract, public or private.

(1) Debarment may occur for any of the following reasons:

(A) Conviction of a bidding crime resulting from a bench or jury trial, any plea of guilty or nolo contendere, any public admission of a bidding crime or any presentation as an unindicted co-conspirator admitting guilt of a bidding crime; or

(B) Conviction of any offense indicating a lack of moral and ethical integrity which may reasonably be perceived as relating to or reflecting upon the business practices of the entity or individual; or

(C) Any other cause of a serious and compelling nature affecting the responsibility of the entity or individual; or

(D) Disqualification or debarment by another state or an agency of this State, or an agency of the Federal government.

(E) Unsatisfactory performance of work on an Authority project.

(2) No conviction, whether from bench or jury trial, nor any plea of guilty or nolo contendere which is more than five (5) years old at the time of discovery by the Authority shall be used as the sole basis for a debarment.

(3) Upon preliminary determination by the Authority's Director of Engineering that an entity or individual is subject to debarment hereunder, the Director of Engineering shall cause the entity or individual to be notified by certified mail, return receipt requested, as provided in 75 O.S. § 309, with a copy of such notification to the Chairman of the Authority, and the procedures set forth in the Administrative Procedures Act for individual proceedings shall govern. Upon receipt of such notification, the Chairman of the Authority shall appoint a hearing examiner to conduct the individual proceeding and promulgate a proposed order pursuant to 75 O.S. § 311. A copy of such proposed order, together with a statement of the reasons therefor and of each issue of fact or law necessary to such proposed order shall be sent by certified mail, return receipt requested, to the entity or individual which is the subject of such proposed order at least fifteen (15) days prior to a meeting at which the Authority is to consider or render a decision on the proposed order. Such party shall be afforded the opportunity to file exceptions and present briefs and oral argument to the Authority at the meeting at which the Authority is to consider or render a decision on the proposed order as provided in 75 O.S. § 311. The Authority shall meet and consider or render a decision on the proposed

order and promulgate a final agency order and provide notice thereof pursuant to 75 O.S. § 312.

(4) If after reasonable notice and on opportunity for hearing the entity or individual fails to appear, the Authority may impose debarment without further notice.

(5) Debarment for the reasons stated in (a)(1)(A), (a)(1)(B), or (a)(1)(C) of this Section 5 shall be for a period of not less than three (3) months.

(6) Debarment for the reasons stated in (a)(1)(D) or (a)(1)(E) of this Section 5 shall be for the period of time assessed by the Authority.

(7) The Director of the Authority may lift or suspend a debarment at any time if it is in the public interest. The following mitigating circumstances may influence this decision:

(A) Degree of culpability.

(B) Restitution of damages to the State.

(C) Cooperation in the investigation of other bidding crimes.

(D) Disassociation with those involved in bidding crimes or other improper action.

(E) Whether lengthy disqualification and debarment is required for protection of the State.

(8) Debarment shall prohibit the debarred entity or individual and all affiliates from acting as a subcontractor, material supplier, equipment supplier or lessor, labor or services contractor, fee appraiser, contract broker, inspector, real estate agent or broker, consultant, architect, engineer, or attorney on any Authority project, as well as denying the privilege of bidding as a prime contractor.

(9) Illegal or improper conduct of any individual may be fully imputed to the business entity with which the individual is or was associated, or by whom the individual was employed, where that conduct was engaged in within the course of the individual's employment, or with knowledge or approval of the business entity, or thereafter ratified by it.

(10) Debarment in no way affects the obligations of an entity or individual to complete services already under contract, however the Authority reserves the right to terminate the contracts of a debarred entity or individual if termination is in the best interests of the State.

(11) The Director of the Authority may, in the public's best interest, suspend or otherwise delay inquiry, review, or any debarment in the event such action may impede, hinder or delay any federal or state investigation.

(12) Any entity or individual qualified to bid on contracts to be awarded by the Authority shall have a duty to notify the Authority if it is convicted of any bidding crime within thirty (30) days of such conviction. Failure to furnish this notification is a serious and compelling offense sufficient to result in debarment in and of itself.

(b) **Performance Suspension.** A contractor, any affiliate of a contractor, any subcontractor, material supplier or any director, officer, agent, or employee of any thereof may be suspended from doing work for the Authority or participation in a project funded by the Authority.

- (1) Performance Suspension may occur for any of the following reasons:
 - (A) If the entity or individual fails or refuses to prosecute all of the work or any separable part thereof, with such diligence as will insure its completion within the time specified in the contract, including any extension, or fails to complete the work under any one of the entity or individual's contracts within the time specified; or
 - (B) A completed investigation or civil judgment evidences a serious lack of business integrity; the entity or individual exhibits willful disregard for lawful requirements; or there is repeated noncompliance with rules, regulations, contract specifications or the terms of other agreements including failure to honor valid debts incurred in the performance of the project; or
 - (C) An indictment for a crime or a civil judgement which indicates a reckless disregard for safety of the traveling public or structural integrity of a highway, bridge or fixtures, so that continued involvement of the entity or individual creates a risk to public safety or a potential for structural failure; or
 - (D) Unsatisfactory performance of work on an Authority project.
- (2) A performance suspension shall be for the period of time assessed by the Authority.
- (3) Upon preliminary determination by the Authority's Director of Engineering that an entity or individual is subject to performance suspension under this hereunder, the Director of Engineering shall notify the entity or individual by certified mail, return receipt requested, as provided in 75 O.S. § 309, with a copy of such notification to the Chairman of the Authority, and the procedures set forth in the Administrative Procedures Act for individual proceedings shall govern. Upon receipt of such notification, the Chairman of the Authority shall appoint a hearing examiner to conduct the individual proceeding and promulgate a proposed order pursuant to 75 O.S. § 311. A copy of such proposed order, together with a statement of the reasons therefor and of each issue of fact or law necessary to such proposed order shall be sent by certified mail, return receipt requested, to the entity or individual which is the subject of such proposed order at least fifteen (15) days prior to a meeting at which the Authority is to consider or render a decision on the proposed order. Such party shall be afforded the opportunity to file exceptions and present briefs and oral argument to the Authority at the meeting at which the Authority is to consider or render a decision on the proposed order as provided in 75 O.S. § 311. The Authority shall meet and consider or render a decision on the proposed order and promulgate a final agency order and provide notice thereof pursuant to 75 O.S. § 312.
- (4) If after reasonable notice and an opportunity for hearing the entity or individual fails to appear, the Authority may impose the performance suspension without further notice.

(5) Performance suspension shall prohibit the entity or individual and all affiliates from acting as a subcontractor, materials supplier, equipment supplier or lessor, labor or services contractor, fee appraiser, contract broker, inspector, real estate agent or broker, consultant, architect, engineer, or attorney on any Authority public construction project as well as denying the privilege of bidding as a prime contractor.

(6) Illegal or improper conduct of any individual may be fully imputed to the business entity with which the individual is or was associated, or by whom the individual was employed, where that conduct was engaged in within the course of the individual's employment, or with knowledge or approval of the business entity, or was thereafter ratified by it.

(7) Performance suspension in no way affects the obligations of an entity or individual to the Authority to complete services already under contract, however the Authority reserves the right to terminate the contracts of a suspended entity or individual if termination is in the best interests of the State. [Source: Added at 17 Ok Reg 1713, eff 5-25-00]