

Section 8.5

CONTRACT DELINQUENCY

8.5.1 Purpose

To provide an efficient, uniform method for identifying, monitoring, and acting upon delinquent contracts to encourage Contractors to concentrate their manpower and equipment on their delinquent contracts.

8.5.2 Authority

Sections 20.23 and 334.048(3), Florida Statutes (F.S.)

8.5.3 References

Sections 120.57 and 337.16, F.S.

Rule 14-22.012, Florida Administrative Code (F.A.C.)

Standard Specifications, Section 8-8.2

8.5.4 Definition

Refer to the Introduction section of this *Manual*.

8.5.5 Contractor Delinquency Report

District Level Responsibilities

Delinquent contracts are identified on the **Contractor Delinquency Report**. A preliminary **Contractor Delinquency Report** is emailed to the District Construction Engineers (DCE) each month by the Systems Section of the Office of Construction.

- 1) Each DCE or a designee (Assistant DCE) will review the projects in their District appearing on the **Contractor Delinquency Report**, as well as any additional delinquent District contracts, within three (3) working days of receipt of the preliminary **Contractor Delinquency Report**.
- 2) The District Construction Engineer makes recommendations for agency actions in a memorandum or electronic mail message to the Director, Office of Construction. Recommendations for actions on delinquent District contracts will be included.

8.5.6 Delinquency Notices

Central Office Level Responsibilities

Delinquency Notices for all Department construction contracts, including District contracts, will be prepared by the Office of Construction to ensure uniform and consistent criteria for those actions, and signed by the Secretary of the Department of Transportation since they represent final agency actions. The Secretary of the Department has delegated to the Chief Engineer of Production the authority to sign the **Delinquency Notice**. The **Delinquency Notice** will be sent via Express Mail, "next day delivery", and Email with *Delivery/Read Receipt Requested*.

Delinquency Notices may be issued by the Office of Construction when the contract time for performing the work has expired and the contract work is not complete.

8.5.7 Suspension of Certificate of Qualification

Central Office Level Responsibilities

A **Delinquency Notice** shall inform the Contractor of the Department's intent to suspend the **Certificate of Qualification** of the Contractor and its affiliates to bid on Department projects.

- (1) The written notice shall contain:
 - a) The specific facts which show that the Contractor is delinquent and which justify the suspension.
 - b) A statement that within ten (10) days of receipt of the notice of intent to suspend, the Contractor has the right to request an Administrative Hearing pursuant to **Section 120.57, F.S.**, by filing a written request with the Clerk of Agency Proceedings. The Contractor's request for hearing shall be in writing

and shall be filed with the Clerk of Agency Proceedings, Mail Station 58, Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida 32399-0458 within ten (10) days of receipt of the notice of intent to suspend.

The request for hearing shall include:

- The name and address of the party making the request.
 - A statement that the party is requesting a formal hearing. **Florida Statutes** require a formal proceeding whenever the proceeding involves a disputed issue of material fact, unless waived by all parties. Department policy is not to waive a formal proceeding in any case involving a disputed issue of material fact.
 - All specific facts and circumstances that the Contractor believes legally excuse the unsatisfactory progress on the project.
- c) A statement that the suspension shall be conclusive and final agency action if no request for a hearing is filed with the Clerk of Agency Proceedings within ten (10) days of receipt of the notice of intent to suspend.

If the Contractor fails to file a request for hearing within ten (10) days of receipt of the notice of intent to suspend, the suspension shall become conclusive and final agency action, and the period of suspension of the **Certificates of Qualification** of the Contractor and its affiliates shall begin on the eleventh (11th) calendar day following the Contractor's receipt of the notice of intent to suspend, and shall continue as set forth in **Rule 14-22.012, (F.A.C.)**.

If the Contractor files a timely request for hearing, the hearing shall be held within thirty (30) days after receipt by the administrative law judge of the request for hearing. The recommended order shall be issued within fifteen (15) days after the hearing.

If the Contractor is determined to be administratively delinquent, the **Certificates of Qualification** of the Contractor and affiliates shall be suspended for a period as set forth in **Rule 14-22.012, F.A.C.**, even if the delinquency is cured during the pending administrative proceedings.

The suspension shall begin on the date of the final order and run continuously for the number of days the Contractor is determined to be delinquent as set forth in **Rule 14-22.012, F.A.C.**

8.5.8 Administrative Hearings

District Level Responsibilities

The District Construction Engineer and any necessary support staff will be required to defend the Department's position at any administrative proceeding pertinent to a declaration of delinquency by the Department.

8.5.9 Period of Suspension of Certificate of Qualification

When a Contractor is declared administratively delinquent, the period of suspension of the **Certificates of Qualification** of the Contractor and affiliates to bid on Department projects due to a final declaration of delinquency shall be for a period of time equal to the number of days between the calendar day that the allowed contract time expired and the calendar day of final acceptance of the work by the Department, plus additional days as may be required by **Section 337.16 (1)(c), F.S.**

8.5.10 Conditions of Suspension of Certificate of Qualification

During the period of suspension of the **Contractor's Certificate of Qualification**, the Contractor and affiliates may not bid on any Department contract, regardless of dollar amount, nor be a subcontractor on any Department contract.

8.5.11 Work Progress Schedule

Resident Level Responsibilities

The Project Administrator will ensure that each Contractor submits to the Department, on a prescribed form, an acceptable work progress schedule for the project, showing in detail the working days on which he expects to begin and complete each of the various major items of work.

It is also important that when a contract time extension is granted or a significant amount of time is authorized by Supplemental Agreement, the Contractor be required to submit a revised work progress schedule for acceptance by the District Scheduling Engineer or Resident Engineer.

8.5.12 Contractor Suspension Report

Central Office Level Responsibilities

The Office of Construction has developed and will maintain the Contractor Suspension Application and a copy of the **Contractor Suspension Report** will also be posted on the Office of Construction website. The Suspension Application identifies those Contractors whose Certificate of Qualification to bid on Department projects is currently or has previously been suspended, either due to the delinquent condition of a project or for other reasons which constitute good cause as per **Section 337.16, F.S.**

This historical record of certificate suspensions will be used by the Office of Construction in administering **Section 337.16(1)(c), F. S.**, which provides for an additional period of suspension of a **Contractor's Certificate of Qualification** to bid on Department projects as a result of repeated suspensions.

District and Resident Level

The Contractor Suspension Application allows all Districts to browse the entries and to request a printout of the current **Contractor Suspension Report**.