

## Section 8.7

### CONTRACTOR NON-RESPONSIBILITY FOR CONSTRUCTION CONTRACT

#### 8.7.1 Purpose

To provide guidance for complying with Florida Administrative Code Rule 14-22.0141, Contractor Non-responsibility.

#### 8.7.2 Authority

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

#### 8.7.3 References

Section 337.16(2), F.S.

Rule 14-22.0011 and 14-22.0141, Florida Administrative Code (F.A.C.)

#### 8.7.4 General

The Department considers Contractor performance on construction contracts to be a critical issue. On construction contracts of \$250,000 or less, all Contractors are presumed to be responsible Contractors and allowed to bid if and only if they comply with requirements that are included in the bid package. Contractors who demonstrate an inability or unwillingness to comply with contract requirements in a timely and proficient manner on a project will be declared non-responsible, and their bidding privileges suspended. The Department will review the performance of each Contractor on construction contracts of \$250,000 or less and prepare a **Contractor Past Performance Report, Form No. 700-010-25**. If a Contractor is deemed deficient in performance, that Contractor will be suspended from bidding on all Department projects for a specified period of time.

#### 8.7.5 Declaration of Contractor Non-Responsibility

The Contractor may be declared non-responsible and bidding privileges suspended and, if applicable, Certificate of Qualification revoked when, it is determined by the Department that one of the following applies:

- (a) The Contractor becomes insolvent or is the subject of a bankruptcy proceeding;
- (b) The Contractor defaults on any Department contract or the contract surety takes over any Department contract from the Contractor;
- (c) The Contractor is suspended for good cause from qualification to bid or denied qualification to bid by any public agency;
- (d) The Contractor or affiliate(s) has been convicted of a contract crime within the jurisdiction of any state or federal court within the previous three years;
- (e) The Contractor made or submitted to the Department false, or fraudulent statements, documents, or other submittals in any bid proposal to the Department, any application for a Certification of Qualification, any certification of payment pursuant to **337.11(11), F.S.**, or in any administrative or judicial proceeding;
- (f) The Contractor fails to comply with contract requirements, in terms of payment or performance record, or to timely furnish contract documents as required by the contract or by any state or federal statute or regulation;
- (g) The Contractor wrongfully employs or otherwise provides to any employee or officer of the Department compensation or any pecuniary or other benefit with the intent to influence the employee or officer's official action or judgment;
- (h) The Contractor is an affiliate of a Contractor whose certification of qualification has been suspended or revoked and the affiliate is dependent upon such Contractor for personnel, equipment, bonding capacity or finances;
- (i) The Contractor fails to register motor vehicles that he/she operates in this state pursuant to **Chapter 320, F.S.**; or
- (j) The Department documents instances of poor or unsatisfactory performance, deficient management resulting in project delay or poor quality workmanship as evidenced by a score of 69 or less on the Contractor Past Performance Report.

## **8.7.6 Determination**

### **(A) Resident Level Responsibilities**

If any of the conditions enumerated in 8.7.4 (a) through (j) occur, the Resident Engineer or his designee will review the project circumstances and facts and make a recommendation of non-responsibility to the District Construction Engineer.

### **(B) District Level Responsibilities**

The District Construction Engineer shall review the recommendation made by the Resident Engineer and in the event of concurrence, shall make recommendations for non-responsibility actions to the Director, Office of Construction with all the project circumstances and facts included.

### **(C) Central Office Level Responsibilities**

The Office of Construction shall review the project circumstances and facts and make a recommendation of non-responsibility. The suspension period for non-responsibility shall be determined in accordance with Rule **14-22.012, F.A.C.**

Non-Responsibility 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 Chief Engineer, or in his absence his delegate (Director, Office of Construction). Non-Responsibility notices will be sent via Certified Mail, "next day delivery", Return Receipt Requested.

During the period of suspension the Contractor and affiliates shall not bid on any Department contracts, regardless of dollar amount, nor be a subcontractor or a material supplier on any Department contract.

Any decision by the Department to suspend a Contractor(s) bidding privileges will be provided to the Contractor in accordance with **Rule 28-106.111, F.A.C.** The Department's action will become final unless a timely petition for a hearing is filed in accordance with Rules **28-106.104, 28-106.201, and 28-106.301, F.A.C.**