

OKLAHOMA DBE ADVISORY BOARD

AGENDA

Friday, June 28, 2019

Oklahoma Department of Transportation

200 NE 21st Street

Commission Room

1:00 pm – 3:00 pm

Oklahoma City, OK 73105

- I. ODOT Director's Report
- II. FHWA Division Administrator's Report
- III. Old Business
- IV. Requested Agenda Items
 - a. DBE Review - Comments/Questions from Board Members
 - b. Insurance requirements from Prime Contractors
- V. New Business
- VI. Confirm next meeting

Oklahoma DBE Advisory Board Meeting Notes

Friday, June 28, 2019

The following individuals attended the meeting on June 28, 2019, in ODOT's Commission Room. The meeting was from 1:00 pm – 3:00 pm.

DBE Firms	ODOT	FHWA
Haley Norman	LaTashia Thompson	Carl Selby
Kevan Parker	Jenny Allen	Steve Duskin
Alma Pickle	Anthony Delce	
Kori Disney	Dawn Sullivan	

Observers

- Darren Saliba
- Brian Taylor
- Kimberly Hyden
- Gary Hyden

I. ODOT Director's Report – Presented by Brian Taylor

- Brian validated the importance of the board and expressed the Director's interest and concerns in making the board successful.

II. FHWA Division Administrator's Reports – Provided by Carl Selby

- Carl shared the high priority Basharat places on this board and the importance of the program. He addressed the time the charter has been in place (9 – 12 months), the progression of the federal report and ways to keep the advisory board relevant and moving forward.

III. Old Business: A request was made to have the Action items provided to the group, from the federal report. It was noted that the Action items were a part of the Agenda items and will be distributed to the group during this meeting.

IV. Requested Agenda Items:

- a. DBE Review- Comments/ Questions from Board Members:
 - A handout was given to everyone regarding approximately 88 questions submitted by a DBE from the last DBE Advisory Board meeting. It was noted that responses related to the Civil Rights Division were included but other answers were "pending" until further clarification. An opportunity for feedback was given. A brief discussion was held regarding some of the questions needing to become a part of the open records

request. A time frame was requested on when to have responses completed; no date was given. Clarification was provided on the open records process, informing members that some questions are subject to the open records request.

- Everyone was provided with a copy of the Oklahoma Department of Transportation (ODOT) Action Plan, in response to the federal report.
 - The discussion began with deadline dates for the Commercial Useful Function (CUF), which is set for July 1, 2019. The group was notified that the revised form is on-line and updated. A brief discussion of all other time frames for the Action items were set for October 1, 2019. A question regarding primes having a meeting to discuss the CUF form was posed. It was discovered through conversation that the primes will not be using the form directly. It will be used by ODOT field inspectors. No training will be needed for the primes. It was also noted that a certified signature block was placed on the form for the Residency and Inspectors to sign and verify work completed on the CUF form.
 - It was pointed out to the group that sub-contracts will be collected. It was noted the responsibility of the Civil Rights (CR) division to review the federal requirements within all the contracts.
 - The development of the American Association of State Highway Transportation Officials (AASHTO) Civil Rights system was discussed and the development of each of the modules was shared. The AASHTO team will host monthly on-site meetings.
 - A question arose regarding return of retainage and monitoring payments in the system. Those items have not been addressed at this time. The next topic of discussion was the Prompt Payment and the Prompt Payment Review process. The group was informed that prompt payment spot checks are taking place and contractors are reviewed for 6 months if issues of payments arise. The group was informed the processes will address payments or the lack of payments randomly. Members of the group shared their industry experiences and praised the CR division of its hard work in making those processes happen. The 45-day process for addressing complaints were discussed and identified in the action plan (#8 page 2).
 - Action plan will not be submitted to D.C. but will be submitted internally at the local level.
 - Members requested to have all documents prior to the meeting for review. It was agreed that all documents will be provided prior to the meeting with the agenda moving forward. It was noted that questions or concerns can be addressed with the CR division immediately and do not have to wait until the next meeting.
 - A discussion was held regarding the Sanctions process. Logs will be kept for tracking and some cases will be forwarded to General Counsel and/or Construction Division to address. Time constraints will be considered and bonding information can also be provided to subcontractors.

- Action items #16 and #17 in regards to the replacement/termination of a DBE firm was emphasized. The DBE Form 4 will be used for this process and those documents will be validated and verified through CR division.
- b. Insurance Requirements from the Prime Contractors:
 - a. Insurance from OTA on the Gilcrease project was revised for subcontractors. The changes will only require the amount of insurance per the ODOT Spec. book, which has no minimal requirements.

V. **New Business:**

- Proposed Goal Methodology for Federal Fiscal Years 2020, 2021 and 2022 is set at 9.33% (5.78% race-neutral and 3.55% race conscious). The comment period is on-line if you have comments.
- Prequalification of primes: As of July 25, 2019, the new rules will be included for prequalification. All current pre-qualified firms will be grandfathered in (see attachment).
- House Bill 2305 was introduced and signed into law regarding the bonding process (see attachment).
- Additional discussions regarding breaking down barriers and revisiting creating a new pay item for non traditional DBE firms was brought up. These conversations will be on-going and research will be done to address the use of a new pay item or best practices to accomplish both goals.
- Discussion surrounding the lack of African American females on project was brought to the attention of the group. The group became aware that ODOT has already processed the paperwork for a new disparity study to be conducted after the new state Fiscal Year.
- Group was reminded that DBE board members that are absent from three meetings will have resigned their term.

VI. **Confirm Next Meeting**

October 15, 2019



MEMORANDUM

TO: ODOT Prequalified Contractors
FROM: Anthony Delce, Office Engineer Division
SUBJECT: Proposed Changes to ODOT Contractor Prequalification Process
DATE: July 6, 2018 (revised October 17, 2018)

In an effort to update and simplify the contractor prequalification process, ODOT is proposing the following changes to the Oklahoma Administrative Code for contractor prequalification (OAC 730:25):

1. First time applications will require a financial audit without exception, including re-applications after expiration.
2. Renewals will require either an audit or review, even for those contractors whose prequal status is conditional.
3. The renewal process will become biennial. Renewal dates will be established by the year-end-date of the audit/review. Contractors will have 180 days beyond their expiration date in order to complete the renewal process (application + audit/review).
4. A "current financial statement" will be considered either an audit or review which is received by ODOT within 180 days of the year-end-date of the financial statement (previously 90 days).
5. The status of "Initially Prequalified" will be no more. Contractors will be either conditional (i.e. approved with a bidding limit) or fully prequalified (i.e. approved up to their bonding capacity).
6. The current requirement to become fully prequalified is the completion of three (3) ODOT projects and/or \$5 million in ODOT projects. The new requirement will require the contractor to achieve both milestones (not just one or the other), or the successful completion of one ODOT project requiring prequalification equaling or exceeding \$10 million.
7. Conditionally prequalified contractors involved in a joint venture will be credited a proportional share of the work toward satisfying the requirement for full prequalification, not to exceed the contractor's bidding capacity.
8. A contractor's prequalification status will no longer be extended by securing new projects. Consequently, a contractor's status can lapse while currently working on an ODOT project.
9. A conditionally prequalified contractor's bidding limit can be adjusted upon completion of ODOT projects.



Benefits to the Contractor:

1. Once prequalified, contractors will have the option of submitting either an audit or review, whichever works best for their operation.
2. For contractors who already obtain annual audits or reviews, the proposed changes to the prequalification process should have little to no financial impact on their operation.
3. Where contractors once had varying renewal deadlines, and varying dates for when audits were considered “current,” the proposed process offers a single, consistent 180 day grace period based on the contractor’s year-end-date, thereby simplifying the process for all parties involved.
4. The confidentiality of all information obtained through the process will be maintained. The information will not be made public, nor will it be subject to the Open Records Act.

An Act

ENROLLED HOUSE
BILL NO. 2305

By: Frix of the House

and

Pemberton of the Senate

An Act relating to public buildings and public works; amending 61 O.S. 2011, Section 2, as amended by Section 2, Chapter 241, O.S.L. 2012 (61 O.S. Supp. 2018, Section 2), which relates to filing of bonds; providing for filing of claim; authorizing certain action if prior claim has been filed; prohibiting action on bond within certain period following performance of labor; and providing an effective date.

SUBJECT: Public buildings and public works

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 61 O.S. 2011, Section 2, as amended by Section 2, Chapter 241, O.S.L. 2012 (61 O.S. Supp. 2018, Section 2), is amended to read as follows:

Section 2. A. Bonds shall be filed in the office of the agency, institution, department, commission, municipality or government instrumentality that is authorized by law and does enter into contracts for the construction of public improvements or buildings, or public or private improvements or buildings on a public-private partnership project, or repairs to the same; and the officer with whom the bond is filed shall furnish a copy thereof to any person claiming any rights thereunder. Any person to whom there is due any sum for labor, material or repair to machinery or equipment, furnished as stated in Section 1 of this title, the heirs or assigns of such person, may file a claim or bring an action on the bond for the recovery of the indebtedness, provided that no

action shall be brought on the bond after one (1) year from the day on which the last of the labor was performed or material or parts furnished for which the claim is made unless a prior claim has been filed within one (1) year from the day on which the labor was performed or material or parts furnished, in which case, no action shall be brought on the bond after two (2) years from the day on which the last of the labor was performed or material or parts furnished for which the claim is made.

B. Any person having direct contractual relationship with a subcontractor, regardless of tier, performing work on the contract, but no contractual relationship express or implied with the contractor furnishing the payment bond, shall have a right of action upon the payment bond only upon giving written notice to the contractor and surety on the payment bond within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or parts for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material or parts were furnished or supplied or for whom the labor was done or performed. The notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business, together with a copy thereof to the surety or sureties on the payment bond.

C. 1. The bond or irrevocable letter of credit issued to the Department of Transportation or the Oklahoma Turnpike Authority, pursuant to this section, shall also provide that the contractor shall pay all state and local taxes accruing as a result of the contract, any liquidated damages as provided by the contract and any overpayment of progressive estimates resulting in a balance due and owing the Department of Transportation or the Oklahoma Turnpike Authority.

2. A claim against the bond or irrevocable letter of credit for delinquent taxes shall be made by the public entity to which the tax was payable. The claim shall be made within six (6) months from the date on which the tax became delinquent. Notice of the delinquent tax shall be sent by certified mail to the surety, and a copy of the notice shall be sent to the contractor. Nothing in this paragraph shall be construed to release, at any time, the contractor from responsibility for full payment of all taxes.

3. A claim against the bond or irrevocable letter of credit for overpayment on progressive estimates shall be made by the public entity within one (1) year from the date of final acceptance of the project. Notice of the overpayment shall be sent by certified mail to the surety and a copy of the notice shall be sent to the contractor. Nothing in this paragraph shall be construed as to release, at any time, the contractor from the responsibility of refunding any amount overpaid on progressive estimates which are due and owing the Department of Transportation.

SECTION 2. This act shall become effective November 1, 2019.

Passed the House of Representatives the 9th day of May, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the 17th day of April, 2019.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____