

## WSR 21-08-042

## PROPOSED RULES

## DEPARTMENT OF TRANSPORTATION

[Filed April 1, 2021, 1:54 p.m.]

Continuance of WSR 20-19-123.

Preproposal statement of inquiry was filed as WSR 20-01-107.

Title of Rule and Other Identifying Information: WAC 468-16-180.

Suspension of qualification.

Date of Intended Adoption: May 20, 2021.

Submit Written Comments to: Denys Tak, 310 Maple Park Ave S.E., Olympia, WA 98504, email DOTConstruction@wsdot.wa.gov, by May 15, 2021.

Assistance for Persons with Disabilities: TTY 711, by May 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 468-16 WAC creates the rules for prequalification of contractors for highway construction contracts required by RCW 47.28.070. This revision involves adding new grounds for suspending a contractor's prequalification.

Reasons Supporting Proposal: Ensuring that contractors on Washington state department of transportation (WSDOT) projects are meeting the requirements of Title VII of the Civil Rights Act of 1964 and the Washington law against discrimination.

Statutory Authority for Adoption: RCW 47.01.101, 47.28.030, 47.28.070.

Statute Being Implemented: RCW 47.01.101, 47.28.030, 47.28.070.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [None supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Denys Tak, 310 Maple Park Avenue S.E., Room 2D05, Olympia, WA 98504, 360-705-7833; Implementation and Enforcement: Jenna Fettig, 310 Maple Park Avenue S.E., Room 2D20, Olympia, WA 98504, 350-705-7017.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. WSDOT is not a list agency under RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

March 31, 2020

Shannon Gill

Interim Director

Risk Management and Legal Services

OTS-2037.5

AMENDATORY SECTION (Amending WSR 15-01-170, filed 12/23/14, effective 1/23/15)

**WAC 468-16-180 Suspension of qualification.** (1) A suspension may be ordered for cause or for a period pending the completion of investigation and any ensuing legal action for revocation of qualification.

(2) The secretary may, upon determination from reports, other documents, or through investigation that cause exists to suspend the qualification of a contractor, impose suspension upon a contractor.

(3) The secretary may immediately suspend qualification for:

(a) Incompetency found detrimental to timely project completion or to the safety of the public or employees.

(b) Inadequate performance on one or more projects.

(c) Infractions of rules, regulations, specifications, and instructions which may adversely affect public health, welfare, and safety.

(d) Uncompleted work which might prevent the prompt completion of other work.

(e) A finding of noncompliance and refusal to agree to take corrective action, and/or failure to implement agreed upon corrective action to comply with equal employment opportunity, women's, minority and disadvantaged business enterprise requirements or state apprentice utilization requirements.

(f) Repeated findings of noncompliance (two or more) with equal employment opportunity, women's, minority, and disadvantaged business enterprise requirements or state apprentice utilization requirements.

(g) Debarment or suspension from participation in federal or state projects.

(h) Pending completion of debarment proceedings in federal or state projects.

(i) A finding of noncompliance and refusal to agree to take corrective action, and/or failure to implement agreed upon corrective action to comply with all requirements of Title VII of the Civil Rights Act of 1964 and the Washington law against discrimination.

(j) Repeated findings of noncompliance (two or more) with the requirements set forth in subsection (3)(i) of this section.

(4) The periods of suspension for acts or deficiencies enumerated above are as follows:

(a) For subsection (3)(a) and (e) of this section - Three months.

(b) For subsection (3)(b), (c), (d), and (f) of this section - Six months.

(c) For subsection (3)(g) of this section - For duration of debarment or suspension by the federal or other state agency.

(d) For subsection (3)(h) of this section - Until a determination is made by the federal or other state agency.

(e) For subsection (3)(i) of this section - A minimum of one year.

(f) For subsection (3)(j) of this section - A minimum of two years.

(5) The secretary may reduce the period of suspension upon the contractor's supported request for reasons including, but not limited to:

(a) Newly discovered evidence;

(b) Elimination of causes for which the suspension was imposed.

[Statutory Authority: RCW 47.01.101, 47.28.030, and 47.28.070. WSR 15-01-170, § 468-16-180, filed 12/23/14, effective 1/23/15; WSR 97-09-045 (Order 168), § 468-16-180, filed 4/15/97, effective 5/16/97; WSR 94-05-004, § 468-16-180, filed 2/2/94, effective 3/5/94; WSR 93-03-020 (Order 134), § 468-16-180, filed 1/12/93, effective 2/12/93; WSR 91-04-014 (Order 128), § 468-16-180, filed 1/28/91, effective 2/28/91.]