

RULE IMPACT STATEMENT

Pursuant to the Administrative Procedures Act, Section 303(D) of Title 75 of the Oklahoma Statutes, the Oklahoma Department of Transportation (“ODOT”) hereby submits the following Rule Impact Statement for the amendment of PERMANENT rules contained in **OAC Title 730:25-3-1. Prequalification.**

Brief Description of the Purpose of the Proposed Rules:

The proposed amendments provide for the prequalification of prospective bidders who are unable to provide the Department with current audited financial statements at the time of application; eliminate the requirement for audited financial statements from fully prequalified contractors for the purpose of renewing their prequalification; require fully prequalified contractors to provide the Department with audited financial statements upon request; establish provisions for conditionally prequalified contractors who are unable to provide the Department with current audited financial statements at the time of applying for renewal of their prequalification to continue bidding at a reduced bidding capacity for a specified period of time; establish provisions for conditionally prequalified contractors whose audited financial statements reveal a negative working capital to continue bidding at a reduced bidding capacity for a specified period of time; and clarify previous errors and omissions.

Description of the classes of persons who most likely will bear the costs of the proposed rule, and any information on cost impacts received by the Agency from any private or public entities:

The proposed amendments may limit the operations of prequalified contractors whose audited financial statements reveal a decline in the company’s capacity and ability to perform work within the categories in which they are prequalified. There is no cost impact to the Agency because nothing is changing regarding the cost of the prequalified contractor process.

Description of the classes of persons who will benefit from the proposed rule:

The Department foresees that the proposed amendments will benefit prequalified contractors by eliminating the requirement and expense of providing audited financial statements in order to continue bidding construction contracts. The Department also foresees that the proposed amendments will benefit contractors who want to become prequalified with the Department but cannot provide the Department with a current audited financial statement at the time of application, or choose not to incur the added expense of obtaining a supplemental audited financial statement. Furthermore, the public, local governments, and the Department will benefit from the proposed amendments as the Department foresees an increase in the pool of prequalified contractors, therefore creating more competition in the bidding of construction contracts for highway construction.

Description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing for all fee changes and, whenever possible, separate justification for each fee change:

The proposed amendments allow the Department to reduce the bidding capacity of prequalified contractors whose audited financial statements reveal a decline in the company's capacity and ability to perform work within the categories in which they are prequalified. Limiting the dollar amount of contracts that can be bid may impact the growth of the contractor.

A determination of whether implementation of the proposed rule will have an economic impact on any political subdivision or require their cooperation in implementing or enforcing the rule:

The proposed amendments will not have an economic impact on any political subdivision and do not require cooperation for implementation or enforcement of the rule changes by any political subdivisions because the rules are fully implemented by ODOT.

A determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The Department does not foresee any adverse economic impact to small businesses as the proposed amendments make provision for prequalified contractors to continue bidding on construction contracts in the event that the contractor is unable to provide the Department with audited financial statements in a timely manner at the time of the contractor's renewal of prequalification.

A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The Department foresees that the proposed amendments will have a positive effect on the public health, safety, and environment because it decreases the costs to contractors, expands our pool of contractors and still retains oversight to protect the public.

A determination of any detrimental effect on the public health, safety and environment if the proposed rules are not implemented:

The Department does not foresee any detrimental effect that the proposed amendments will have on the public health, safety, or environment because the Department is still retaining oversight over contracts and all agency requirements for contractors are still in place.

Date the rule impact statement was prepared, and the date modified:

Prepared: November 29, 2023

Modified: N/A

Prepared by:

Sydney Barrett, Assistant General Counsel for ODOT

Oklahoma Department of Transportation

200 N.E. 21st Street

Oklahoma City, OK 73105

Phone: (405) 521-2630

sbarrett@odot.org