

Title 7--DEPARTMENT OF TRANSPORTATION
Division 10--Missouri Highways and Transportation Commission
Chapter 18--Contractor Disqualification for Misconduct

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OCT 06 2017

SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED AMENDMENT

7 CSR 10-18.020 Causes for Disqualification. The Missouri Highways and Transportation Commission is amending subsections (1)(B), (1)(F) and (1)(G), and adding new sections (1)(H) and (2).

PURPOSE: This proposed amendment adds safety findings to the list of possible causes of disqualification and authorizes the conduct of officials, employees and other persons and entity associated with a contractor to be imputed to that contractor if certain criteria are met.

(1) Causes for Disqualification. Disqualification may be imposed for any of the following:

(B) **A preponderance of the evidence that shows collusion exists among the bidders.**
[Reason for believing that collusion exists among the bidders;]

(F) Making or receiving kickbacks or payments of currency or any item of value in order to obtain or retain any contract or payment thereunder, or in return for an agreement to make or for the making of any false statements or material misrepresentations or omissions of fact to any federal, state or local governmental agency or private firm relevant to contract compliance; *[or]*

(G) Suspension, debarment, or other disqualification of the contractor, or determination that the contractor is not a responsible bidder for public contracting purposes, by any federal, state or local governmental agency *[.]or*

(H) **Occupational Safety and Health Administration (OSHA) violations categorized as willful, and/or a documented history of serious and/or repeated violations that resulted in serious injury or death per Title 29, Code of Federal Regulations, Sections 1910-1990, which is incorporated herein by reference and made a part of this rule as published by the United State Superintendent of Documents, 732 N Capitol Street NW, Washington D.C. 20402-0001, website: <http://bookstore.gpo.gov>, on July 1, 2017. This rule does not incorporate any subsequent amendments or additions of this rule.**

(2) **Imputed Conduct.** Any contractor that receives payment as a result of a commission contract may not assert as a defense to the department's disqualification action against such contractor that the conduct of any person, officer, director, partner, employee, agent, or individual associated with such contractor in performing work under the contract should not be imputed to such contractor, if such conduct:

(A) Occurred within the course and scope of the person, officer, director, partner, employee, agent or individual's relationship with the contractor during the time such contractor was under contract with the commission; and

(B) Was illegal under any federal, state or local law or illegal under any federal or state rule, or violated the contractor's obligations to the commission under the contract. The contractor's receipt of payment under a commission contract including any illegal or unsatisfactory conduct, or the contractor's intent to obtain payment for such conduct, may be used as evidence by the commission of the contractor's knowledge, approval, or acquiescence of such conduct.

JOINT COMMITTEE ON

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AUTHORITY: Art. IV, section 29, Mo. Const., sections 226.020, 226.150, 227.030, 227.100 and 227.210, RSMo (1994), 226.130, RSMo (Cum. Supp. 1996) and Title 49 Code of Federal Regulations part 29. Original rule filed Dec. 12, 1996, effective June 30, 1997. Amended: Filed October 6, 2017.*

**Original authority: 226.020, RSMo (1939); 226.130, RSMo (1939), amended 1993, 1995; 226.150, RSMo (1939), amended 1977; 227.030, RSMo (1939); 227.100, RSMo (1939), amended 1963, 1967, 1969; and 227.210, RSMo (1939).*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Highways and Transportation Commission, Pamela J. Harlan, Secretary to the Commission, 105 W. Capitol Avenue, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*