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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24VAC30-340
VAC Chapter title(s)	Debarment or Suspension of Contractors
Date this document prepared	9/21/2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CTB means the Commonwealth Transportation Board.
CFR means the Code of Federal Regulations.
FHWA means the Federal Highways Administration.
U.S.C. means the United States Code.
VDOT means the Virginia Department of Transportation.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The CTB adopted its current policy, describing the procedures and criteria it intends to use in considering the debarment of contractors, in 1981 and revised said policy in 1983. That policy is incorporated by reference as the current regulation. However, in 1982, the General Assembly enacted the Virginia Public Procurement Act which provided that a state agency designated by the Governor may adopt procedures for the debarment of contractors. In 2001, the then-Governor designated/directed, via executive order, the Department of General Services (DGS) to adopt procedures for the debarment of contractors that were to be used by state agencies. DGS has since adopted procedures for the debarment of contractors. Section 2.2-4321 of the Code of Virginia authorizes the debarment of contractors pursuant to procedures established in writing by DGS.

For Federal-Aid projects, 23 U.S.C. 315, 2 C.F.R. 180, 2 C.F.R. Part 1200, and Federal Executive Order 12549, and FHWA Order 2000.2B, Suspension and Debarment Process, require VDOT to follow a process for determining that contractors who are suspended or debarred are excluded from participating in Federal-Aid projects. The CTB has established other rules concerning the establishment of proof of competency and responsibility of those wishing to submit bids pursuant to Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia, known as the Virginia Public Procurement Act, which public bodies must follow in awarding public contracts.

The Office of the Attorney General has previously identified this regulation as exempt from the Administrative Process Act pursuant to § 2.2-4002(B)(2) of the Code of Virginia.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The CTB adopted its current policy, describing the procedures and criteria it intends to use in considering the debarment of contractors, in 1981. That policy is incorporated by reference as the current regulation, and has been amended several times including, most recently, in 1995. Although the policy explains the procedures and criteria the CTB intends to use in consideration of the debarment of individual contractors, the CTB is unaware of any instances in which it debarred a contractor pursuant to that policy since 1987. Debarment acts to deny contractors the ability to bid on certain construction contracts due to prior violations of the law or terms of contract. Section 2.2-4321 of the Code of Virginia, authorizing debarment, authorizes the written procedures to be adopted by DGS. The CTB believes it can achieve the same purpose of the regulation through adoption of its policy as a guidance document or by following the DGS procedures for debarment.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No public comments were received during the comment period.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Although the regulation is clearly written and easily understandable, the regulation is not necessary for the protection of public health, safety, and welfare because it merely provides guidance to the CTB in making future determinations on debarment, which ensure that VDOT does not conduct business with a person or firm that has an unsatisfactory record of integrity and business ethics. Because DGS has adopted procedures for debarment which apply to all state agencies, the CTB's regulation is not necessary.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation)

The CTB recommends repeal of 24VAC30-340, Debarment or Suspension of Contractors. The CTB recommends further that VDOT review the current policy to ensure that it continues to satisfy requirements of Virginia law and federal rules.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

- (1) There is not a continuing need for the regulation. Because DGS has adopted procedures for debarment which apply to all state agencies, the CTB's regulation is not necessary.
- (2) The CTB has received no complaints concerning the regulation.
- (3) The regulation is not overly complex.
- (4) The regulation is not necessary in light of the procedures for debarment adopted by DGS.
- (5) The decision to repeal the regulation will have no impact on small business given that the CTB may follow the procedures adopted by another state agency. The policy was last updated in 1995.