

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Transportation

RULE CITATION: 19A NCAC 02D .0818

DEADLINE FOR RECEIPT: Thursday, June 8, 2017

NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Paragraph (a), you refer to "non-collusion certification" on lines 6 and 8. When you use the term in (b), line 11, and (c), line 19, it's capitalized and in quotation marks. Is there a reason for this?

In (b), line 11, please set off the website with commas.

In (b)(2), line 16, please state "G.S. 133-24" rather than what you have. As you published it correctly, you do not need to show it as a change; simply do so.

It appears that (b)(3) repeats the statement of lines 8-10. Do you need it both places? If you don't, I recommend removing it from (a) and retaining it in (b)(3).

On line 19, please insert the line under "(c)" Since it was published that way, you do not need to show it as a change, but simply insert the line.

In (c), line 20, what is "debarment status"? Does your regulated public know?

On line 23, what are the guidelines the Department will use to make the determination?

In the History Note, please put the citations in numerical order.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 24, 2017

1 19A NCAC 02D .0818 is adopted as published in 31:17 NCR 1753 as follows:
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3 **19A NCAC 02D .0818 NON-COLLUSION AFFIDAVIT AND CERTIFICATIONS**

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5 (a) Every bidder ~~and subcontractor~~ shall furnish to the Department an unsworn certification made under penalty of
6 perjury under the laws of the United States, a non-collusion ~~affidavit~~ certification at the time of bid, certifying that
7 the bidder has not entered into any agreement, participated in any collusion, or otherwise taken any action in
8 restraint of free competitive bidding in connection with his or her bid on the project. The ~~affidavit~~ non-collusion
9 certification shall also indicate that the bidder intends to do the work with its own employees or subcontractors and
10 is not bidding for the benefit of another contractor.

11 (b) A “Non-Collusion Certification” form means a form provided on the Department’s website www.ncdot.gov for
12 execution by the bidding prequalified contractor certifying that:

- 13 (1) neither the individual, nor any official, agent, or employee has entered into any agreement, participated
14 in any collusion, or otherwise taken any action that is in restraint of free competitive bidding in connection
15 with any bid or contract;
16 (2) the bidder has not been convicted of violating N.C.G.S § 133-24 within the last three years; and
17 (3) the bidder intends to do the work with its own employees or subcontractors and the bid is not for the
18 benefit of another contractor.

19 ~~(b)~~ (c) In the “Non-Collusion Certification” form, the prospective bidder and subcontractors shall also certify his or
20 her debarment status under penalty of perjury under the laws of the United States, furnish executed debarment
21 certification forms to the Department. In the event the prospective bidder ~~or subcontractor~~ cannot certify that he or
22 she is not disbarred, the prospective bidder ~~or subcontractor~~ shall provide a written explanation, which the
23 Department shall review and evaluate to determine if the bidder ~~or subcontractor~~ is ~~still~~ prequalified for bidding,
24 ~~contracting~~ contracting, or subcontracting on Department projects.

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26 *History Note: Authority G.S. 136-18(1); 136-28.1; ~~143-54~~; 133-30;*
27 *Eff. April 3, 1981;*
28 *Recodified from 19A NCAC 2D .0816;*
29 *Amended Eff. July 1, 2017; February 1, 2008; October 1, 1993; November 1, 1991; October 1, 1991;*
30 *July 1, 1982.*