

WAC 468-15-060 Hearings procedure. (1) Whenever the department believes that grounds exist to deny the contractor placement on a small works roster or to suspend or remove the contractor from the roster, notice of such grounds shall be given to the contractor by first-class mail. If the contractor fails to object or request a hearing within twenty calendar days after the mailing of said notice, then the denial, suspension or removal shall be made effective. If the contractor requests a hearing by certified mail within twenty calendar days after the mailing of the notice, a hearing shall be conducted in accordance with the procedure set forth in this section. Unless the department is otherwise prohibited from contracting with the contractor, the denial, suspension or revocation shall not become effective until the final decision of the secretary has been rendered.

(2) The secretary shall designate a hearing official to conduct any hearing held under this section. The hearing official shall furnish written notice by certified mail of a hearing to the contractor and any named affiliates at least twenty calendar days before the effective date of suspension or revocation or denial of qualification for placement on the small works roster. The notice shall state:

(a) That suspension or revocation or denial of qualification for placement on the small works roster is being considered.

(b) The effective date of the proposed action.

(c) The facts giving cause for the proposed action.

(d) The cause or causes relied upon for proposing the action, i.e., fraud, statutory violations, etc.

(e) If suspension is proposed, the duration of the suspension.

(f) That the contractor may, within twenty calendar days of receipt of the notice, submit to the hearing official by certified mail, return receipt requested, information and argument in opposition to or in clarification of the proposed action.

(g) When the action is based on a conviction, judgment, or admission, fact finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the denial, suspension or revocation is based or whether the causes relied upon for proposing suspension or revocation exist.

(h) The time, place, and date of the hearing.

(i) The name and mailing address of the hearing official.

(j) That proposals shall not be issued nor contracts awarded to the contractor subsequent to the dispatch of the notice of hearing pending the final decision of the secretary.

(3) The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended beyond forty-five calendar days from the date of the notice. The hearing official shall schedule and conduct the hearing within thirty calendar days of the date of the notice, except when an extension is granted as provided in this subsection.

(4) In the course of the hearing, the hearing official shall:

(a) Regulate the course and scheduling of the hearings;

(b) Rule on offers of proof, receipt of relevant evidence, and acceptance of proof and evidence as part of the record;

(c) Take action necessary to insure an orderly hearing; and

(d) At the conclusion of the hearing, issue written findings of fact and recommended administrative action to the secretary. The hearing officer shall deliver the entire record to the secretary.

(5) The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-ex-

amine all witnesses. A transcribed or taped record shall be made of the hearing unless the secretary and the contractor waive the transcript or taping requirement. The transcript or tape shall be made available, at cost, to the contractor and all named affiliates upon request.

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this chapter, that the named contractor has engaged in conduct described in WAC 468-15-050 and the sole issue before the hearing official is the appropriateness of revocation of qualification or the length of suspension of qualification to be recommended to the secretary, prior judicial or administrative decision or findings shall not be subject to collateral attack.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the contractor of his determination in writing.

Upon denial, suspension or revocation of qualification for placement on the small works roster, the respondent may appeal there from to the superior court of Thurston County pursuant to RCW 47.28.070. If the appeal is not made within the time prescribed in that statute, the department's action shall be conclusive.

[Statutory Authority: RCW 47.01.101, 39.04.155. WSR 03-03-012, § 468-15-060, filed 1/7/03, effective 2/7/03.]