

## UNDERSTANDING THE TxDOT SANCTION PROCESS

By R. Carson Fisk (as seen in *Texas Construction* January 2008)

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Working for TxDOT can be lucrative and the projects can be challenging. Any contractor engaged in such work should have a basic understanding of TxDOT's sanction process, which seeks to help protect the health, welfare and safety of the traveling public as well as the state's investment in the highway system. Basically, the goal of the sanction process is to ensure construction, maintenance and building contracts with TxDOT are completed by responsible contractors in an efficient and timely manner. TxDOT's rules regarding sanctions are available at [www.sos.state.tx.us/tac](http://www.sos.state.tx.us/tac).

There are three sanctions that can be issued: (1) a reduction in bidding capacity; (2) debarment; and (3) suspension. A reduction in bidding capacity refers to a decrease in the maximum dollar value that a contractor may have under contract with TxDOT at any given time. Debarment is the disqualification of a contractor from bidding on or entering into a construction, maintenance or building contract with TxDOT, from participating as a subcontractor under such a contract and from participating as a supplier of materials or equipment to be used in construction or maintenance of state highways. Generally, a debarred contractor cannot enter into any new contracts as either a general contractor, subcontractor or supplier and cannot continue performing as a subcontractor/supplier under existing contracts. A suspension has the same effect as a debarment except that, unlike a debarment, it is effective while a contractor contests the sanction and ends only when a final order is entered as to such a challenge.

Sanctions can be issued for: (1) convictions, pleas or admissions associated with bidding crimes; (2) the commission of or conviction for an offense indicating a lack of moral or ethical integrity if the offense reflects on the contractor's business practices; (3) the disqualification of the contractor by a state or a federal government agency; (4) the failure to execute a contract with TxDOT after a bid is awarded; (5) the rejection of a bid because of a contractor error twice in a three-year period; (6) the failure to promptly notify TxDOT of a conviction of a bidding crime or debarment; or (7) a declaration of default on a contract with TxDOT.

If TxDOT seeks to impose sanctions, various mitigating circumstances will be considered. After such consideration, the executive director of TxDOT will determine which one of the four sanction levels will apply: (1) a fifty percent reduction in bidding capacity for up to one year; (2) debarment for up to one year; (3) debarment of the contractor for up to three years; or (4) permanent debarment. A lesser sanction may be imposed instead of the maximum allowed. For example, debarment may be ordered for a shorter time, bidding capacity may be reduced by a lesser percentage or a reduction in bidding capacity may be ordered instead of debarment. The executive director is permitted to reduce, eliminate or modify sanctions at any time if it is in the public interest.

Once a contractor receives the required notice that sanctions have been issued, they have the right to a contested hearing. Within ten days after receipt of notice, the contractor may seek to initiate a contested case by filing an original and one copy of a detailed petition. It is generally in a contractor's best interest to challenge the issuance of sanctions. Although the odds are stacked against the contractor as the procedural rules greatly favor TxDOT and there is limited review of any final order, the contested case process may result in lesser sanctions. It is also the only means to challenge the sanctions. Again, another advantage of challenging sanctions is that enforcement of sanctions, other than a suspension, is put on hold until a final order is entered. This allows contractors to work while in the challenging process.

A basic understanding of sanctions is necessary as they not only affect the contractor but also any affiliates, which includes business owned by immediate family members of the contractor's owners. A contractor will want to ensure that employees are trustworthy as firms may be held responsible for the conduct of those acting on its behalf. While sanctions can be reduced, eliminated or modified at any time, there is no set procedure for reinstatement.