

**MISSISSIPPI STATE BOARD
of
CONTRACTORS**



CHAPTER 527

**RULES AND REGULATIONS OF THE
STATE BOARD OF CONTRACTORS**

GENERAL LAWS OF MISSISSIPPI 2014

MISSISSIPPI CODE OF 1972
TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS
CHAPTER 3. STATE BOARD OF PUBLIC CONTRACTORS

§ 31-3-1. Definitions

The following words, as used in this chapter, shall have the meanings specified below:

“Board”: The State Board of Contractors created under this chapter.

“Contractor”: Any person contracting or undertaking as prime contractor, subcontractor or sub-subcontractor of any tier to do any erection, building, construction, reconstruction, repair, maintenance or related work on any public or private project; however, “contractor” shall not include any owner of a dwelling or other structure to be constructed, altered, repaired or improved and not for sale, lease, public use or assembly, or any person duly permitted by the Mississippi State Oil and Gas Board, pursuant to Section 53-3-11, Mississippi Code of 1972, to conduct operations within the state, and acting pursuant to said permit. It is further provided that nothing herein shall apply to:

- (a) Any contract or undertaking on a public project by a prime contractor, subcontractor or sub-subcontractor of any tier involving erection, building, construction, reconstruction, repair, maintenance or related work where such contract, subcontract or undertaking is less than Fifty Thousand Dollars (\$50,000.00);
- (b) Any contract or undertaking on a private project by a prime contractor, subcontractor or sub-subcontractor of any tier involving erection, building, construction, reconstruction, repair, maintenance or related work where such contract, subcontract or undertaking is less than Fifty Thousand Dollars (\$50,000.00);
- (c) Highway construction, highway bridges, overpasses and any other project incidental to the construction of highways which are designated as federal aid projects and in which federal funds are involved;
- (d) A residential project to be occupied by fifty (50) or fewer families and not more than three (3) stories in height;
- (e) A residential subdivision where the contractor is developing either single-family or multifamily lots;
- (f) A new commercial construction project not exceeding seventy-five hundred (7500) square feet and not more than two (2) stories in height undertaken by an individual or entity licensed under the provisions of Section 73-59-1 et seq.;
- (g) Erection of a microwave tower built for the purpose of telecommunication transmissions;
- (h) Any contract or undertaking on a public project by a prime contractor, subcontractor or sub-subcontractor of any tier involving the construction, reconstruction, repair or maintenance of fire protection systems where such contract, subcontract or undertaking is less than Five Thousand Dollars (\$5,000.00);
- (i) Any contract or undertaking on a private project by a prime contractor, subcontractor or sub-subcontractor of any tier involving the construction, reconstruction, repair or maintenance of fire protection systems where such contract, subcontract or undertaking is less than Ten Thousand Dollars (\$10,000.00);
- (j) Any contract or undertaking on a private or public project by a prime contractor, subcontractor or sub-subcontractor of any tier involving the construction, reconstruction, repair or maintenance of technically specialized installations if performed by a Mississippi contractor who has been in the business of installing fire protection sprinkler systems on or before July 1, 2000; or
- (k) Any contractor undertaking to build, construct, reconstruct, repair, demolish, perform maintenance on, or other related work, whether on the surface or subsurface, on oil or gas wells, pipelines, processing plants, or treatment facilities or other structures of facilities. Nothing herein shall be construed to limit the application or effect of Section 31-5-41.

“Certificate of responsibility”: A certificate numbered and held by a contractor issued by the board under the provisions of this chapter after payment of the special privilege license tax therefor levied under this chapter.

“Person”: Any person, firm, corporation, joint venture or partnership, association or other type of business entity.

“Private project”: Any project for erection, building, construction, reconstruction, repair, maintenance or related work which is not funded in whole or in part with public funds.

“Public agency”: Any board, commission, council or agency of the State of Mississippi or any district, county or municipality thereof, including school, hospital, airport and all other types of governing agencies created by or operating under the laws of this state.

“Public funds”: Monies of public agencies, whether obtained from taxation, donation or otherwise; or monies being expended by public agencies for the purposes for which such public agencies exist.

“Public project”: Any project for erection, building, construction, reconstruction, repair, maintenance or related work which is funded in whole or in part with public funds.

§ 31-3-2. Declaration of legislative intent

The purpose of Chapter 3, Title 31, Mississippi Code of 1972, is to protect the health, safety and general welfare of all persons dealing with those who are engaged in the vocation of contracting and to afford such persons an effective and practical protection against incompetent, inexperienced, unlawful and fraudulent acts of contractors.

§ 31-3-3. Board composition; terms; vacancies

There is hereby created the State Board of Contractors of the State of Mississippi, which shall consist of ten (10) members who shall be appointed by the Governor. All appointments to the board after July 1, 1980, shall be made with the advice and consent of the Senate. Two (2) road contractors; two (2) building contractors; two (2) residential builders as defined in Section 73-59-1; one (1) plumbing or heating and air conditioning contractor; one (1) electrical contractor; and one (1) water and sewer contractor shall compose the board. From and after July 1, 1992, the Governor shall appoint one (1) additional member who shall be a roofing contractor and whose term of office shall be five (5) years. Each member shall be an actual resident of the State of Mississippi and must have been actually engaged in the contracting business for a period of not less than ten (10) years before appointment. The initial terms of the two (2) residential builders shall be for two (2) and four (4) years, respectively, beginning July 1, 1993.

Upon the expiration of the term of office of any member of the board, the Governor shall appoint a new member for a term of five (5) years, such new appointments being made so as to maintain on the board two (2) building contractors; two (2) road contractors; two (2) residential builders; one (1) plumbing or heating and air conditioning contractor; one (1) electrical contractor; and one (1) water and sewer contractor; and one (1) roofing contractor. The Governor shall fill any vacancy by appointment, such appointee to serve the balance of the term of the original appointee. The Governor may remove any member of the board for misconduct, incompetency or willful neglect of duty.

In the event the Governor fails to appoint a member of the board within twelve (12) months of the occurrence of the vacancy, such vacancy shall be filled by majority vote of the board, subject to advice and consent of the Senate and the requirements of this section.

§ 31-3-5. Organization of board; quorum

The board shall be assigned suitable office space at the seat of government and shall elect one (1) of its members as chairman and one (1) as vice chairman; and each shall perform the usual duties of such offices. The board may adopt a seal. Six (6) members of the board shall constitute a quorum, and a majority vote of those present and voting at any meeting shall be necessary for the transaction of any business coming before the board. Members must be present to cast votes on any and all business. The executive director shall serve as secretary of the board. The board is authorized to employ such personnel as shall be necessary in the performance of its duties including sufficient administrative and clerical staff to process and review applications for certificates of responsibility, to prepare and administer tests therefore, to investigate applications for certificates of responsibility and to inspect work performed by contractors as may be necessary to enforce and carry out the purpose of this chapter.

§ 31-3-7. Board meetings

The board shall have four (4) regular meetings in each year, one (1) on the second Wednesday in January, one (1) on the second Wednesday in April, one (1) on the second Wednesday in July, and one (1) on the second Wednesday in October, at its offices at the seat of government or through the means of teleconference or video conferencing in accordance with Section 25-41-5. If the regular meeting day falls on a legal holiday, the board shall meet on the next day. The board may hold such special meetings as it finds necessary. However, before any special meeting is held, a notice stating the time, place and primary purpose of such meeting shall be sent by certified or registered mail from the chairman or vice chairman of the board to the other members of the board at least five (5) days before such meeting. Certificates of responsibility shall be issued at any time during the course of a calendar year as prescribed by the rules and regulations of the board. All meetings shall be held in the State of Mississippi. At any regular or special meeting the board may recess from time to time to reconvene on a day and time fixed by an order of the board entered upon its minutes.

The holder of a valid certificate of responsibility shall disclose to the owner or other person with whom the holder is contracting at the signing of a contract or the initial agreement to perform work whether the holder carries general liability

insurance. The disclosure shall be written, the structure and composition of which shall be determined by the State Board of Contractors, and shall be placed immediately before the space reserved in the contract for the signature of the purchaser. The disclosure shall be boldfaced and conspicuous type which is larger than the type of the remaining text of the contract.

§ 31-3-9. Compensation; approval of itemized statements

The members of the board shall be entitled to receive a per diem as provided in Section 25-3-69, Mississippi Code of 1972, when actually engaged in the business of the board, together with their actual and necessary traveling and subsistence expenses incurred on behalf of board business, upon itemized statements of same as provided by general law in the case of other state employees. Such statements shall be paid only after the same have been approved by order on the minutes of the board.

§ 31-3-11. Executive secretary; employment; bond; duties

The board shall elect and fix the salary of an executive secretary, and the board may terminate the employment of such executive secretary at any time the board deems the same advisable. The board shall require the executive secretary to file bond in such amount as the board may deem necessary, and shall specify the duties of such employee. The premium on any such bond shall be paid from the funds provided by this chapter.

§ 31-3-13. Board powers and responsibilities; general liability insurance disclosure

The board shall have the following powers and responsibilities:

(a) To receive applications for certificates of responsibility, to investigate and examine applicants for same by holding hearings and securing information, to conduct examinations, and to issue certificates of responsibility to such contractors as the board finds to be responsible. One-fourth (1/4) of the certificates scheduled for renewal on the last day of December 1980 shall be reviewed by the board on the first Tuesday in January 1981. The remaining certificates shall be subject to renewal in the following manner: one-fourth (1/4) on the first Tuesday in April 1981; one-fourth (1/4) on the first Tuesday in July 1981; and one-fourth (1/4) on the first Tuesday in October 1981. The board is authorized to extend the dates of expiration of certificates to coincide with the scheduled date of review of individual contractors. Except for the certificates extended from December 31, 1980, to the first Tuesday in January 1981, the board shall charge fees for the extension of certificates as follows:

- (i) Twenty-five Dollars (\$25.00) if the date of renewal of the extended certificate is the first Tuesday in April 1981;
- (ii) Fifty Dollars (\$50.00) if the date of renewal of the extended certificate is the first Tuesday in July 1981; and
- (iii) Seventy-five Dollars (\$75.00) if the date of renewal of the extended certificate is the first Tuesday in October 1981.

The extended certificates renewed in compliance with this paragraph (a) and all original certificates and renewals thereof issued on or after July 1, 1980, shall expire one (1) year from the date of issuance. Application for renewal of certificates of responsibility, together with the payment of a special privilege license tax as provided under this chapter, shall serve to extend the current certificate until the board either renews the certificate or denies the application.

No certificate of responsibility or any renewal thereof shall be issued until the applicant furnishes to the board his Mississippi state sales tax number or Mississippi state use tax number and his state income tax identification numbers.

Additional fees may be required as provided in Section 31-3-14.

The board shall conduct an objective, standardized examination of an applicant for a certificate to ascertain the ability of the applicant to make practical application of his knowledge of the profession or business of construction in the category or categories for which he has applied for a certificate of responsibility. The board may administer an oral examination to applicants who are unable to take the written examination. The cost of the test and the cost of administering the test shall be paid for by applicants for certificates of responsibility at the time applications are filed. The board shall investigate thoroughly the past record of all applicants, which will include an effort toward ascertaining the qualifications of applicants in reading plans and specifications, estimating costs, construction ethics, and other similar matters. The board shall take all applicants under consideration after having examined him or them and go thoroughly into the records and examinations, prior to granting any certificate of responsibility. If the applicant is an individual, examination may be taken by his personal appearance for examination or by the appearance for examination of one or more of his responsible managing employees; and if a copartnership or corporation or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the executive staff of the applicant's firm, according to its own designation.

(b) To conduct thorough investigations of all applicants seeking renewal of their licenses and of all complaints filed with the board concerning the performance of a contractor on a public or private project.

(c) To obtain information concerning the responsibility of any applicant for a certificate of responsibility or a holder of a certificate of responsibility under this chapter. Such information may be obtained by investigation, by hearings, or by any other reasonable and lawful means. The board shall keep such information appropriately filed and shall disseminate same to any interested person. The board shall have the power of subpoena.

(d) To maintain a list of contractors to whom certificates of responsibility are issued, refused, revoked or suspended, which list shall be available to any interested person. Such list shall indicate the kind or kinds of works or projects for which a certificate of responsibility was issued, refused, revoked or suspended.

(e) To revoke by order entered on its minutes a certificate of responsibility upon a finding by the board that a particular contractor is not responsible, and to suspend such certificate of responsibility in particular cases pending investigation, upon cause to be stated in the board's order of suspension. No such revocation or suspension shall be ordered without a hearing conducted upon not less than ten (10) days' notice to such certificate holder by certified or registered mail, wherein the holder of the certificate of responsibility shall be given an opportunity to present all lawful evidence which he may offer.

(f) To adopt rules and regulations setting forth the requirements for certificates of responsibility, the revocation or suspension thereof, and all other matters concerning same; rules and regulations governing the conduct of the business of the board and its employees; and such other rules and regulations as the board finds necessary for the proper administration of this chapter, including those for the conduct of its hearings on the revocation or suspension of certificates of responsibility. Such rules and regulations shall not conflict with the provisions of this chapter.

(g) The board shall have the power and responsibility to classify the kind or kinds of works or projects that a contractor is qualified and entitled to perform under the certificate of responsibility issued to him. Such classification shall be specified in the certificate of responsibility.

The powers of the State Board of Contractors shall not extend to fixing a maximum limit in the bid amount of any contractor, or the bonding capacity, or a maximum amount of work which a contractor may have under contract at any time, except as stated in paragraph (a) of this section; and the Board of Contractors shall not have jurisdiction or the power or authority to determine the maximum bond a contractor may be capable of obtaining. The board, in determining the qualifications of any applicant for an original certificate of responsibility or any renewal thereof, shall, among other things, take into consideration the following: (1) experience and ability, (2) character, (3) the manner of performance of previous contracts, (4) financial condition, (5) equipment, (6) personnel, (7) work completed, (8) work on hand, (9) ability to perform satisfactorily work under contract at the time of an application for a certificate of responsibility or a renewal thereof, (10) default in complying with provisions of this law, or any other law of the state, and (11) the results of objective, standardized examinations. A record shall be made and preserved by the board of each examination of an applicant and the findings of the board thereon, and a certified copy of the record and findings shall be furnished to any applicant desiring to appeal from any order or decision of the board.

(h) The board shall enter upon its minutes an order or decision upon each application filed with it, and it may state in such order or decision the reason or reasons for its order or decision.

Upon failure of the board to enter an order or decision upon its minutes as to any application within one hundred eighty (180) days from the date of filing such application, the applicant shall have the right of appeal as otherwise provided by this chapter.

The holder of any valid certificate of responsibility issued by the Board of Public Contractors prior to January 1, 1986, shall be automatically issued a certificate of responsibility by the State Board of Contractors for the same classification or classifications of work which the holder was entitled to perform under the State Board of Public Contractors Act. The holder of a valid certificate of responsibility shall disclose to the owner or other person with whom the holder is contracting at the signing of a contract or the initial agreement to perform work whether the holder carries general liability insurance. The disclosure shall be written, the structure and composition of which shall be determined by the State Board of Contractors, and shall be placed immediately before the space reserved in the contract for the signature of the purchaser. The disclosure shall be boldfaced and conspicuous type which is larger than the type of the remaining text of the contract.

§ 31-3-14. Fees for certificates of responsibility

(1) In addition to the fees required for application and renewal for certification and registration of all contractors in Section 31-3-13, all holders of a certificate of responsibility shall pay a fee equal to One Hundred Dollars (\$100.00) at the time of application or renewal of certificates of responsibility. Any residential builder licensed under the provisions of Section 73-59-1 et seq. shall be exempt from the fee imposed under this section. The revenue derived from such additional fees shall be deposited into a fund to be known as the "Construction Education Fund," a special fund created in the State Treasury, and distributed by the State Board of Contractors created in Section 31-3-3, to the Mississippi Construction Education Foundation, public high schools and community colleges that participate in the Mississippi Construction Education Foundation's "school-to-work" program, state universities that have construction technology programs, the Mississippi Housing Institute and certain construction educational trusts approved by the State Board of Contractors in the manner hereinafter provided to offer courses for construction education and construction craft training to meet the needs of the construction industry of the State of Mississippi.

(2) The State Board of Contractors shall, on an annual basis, solicit from the Mississippi state institutions of higher learning, all the public community and junior colleges, the Mississippi Construction Education Foundation, public high schools that participate in the Mississippi Construction Education Foundation's "school-to-work" program and certain construction educational trusts, applications for the use of such funds in construction education and craft training programs in a manner prescribed by the board. The board may appoint a technical advisory committee to advise the board on the most needed areas of construction education and craft training, continuing education or research relating to the construction education and craft training in the state, based on significant changes in the construction industry's practices, economic development or on problems costing public or private contractors substantial waste. The board shall ensure that the monies distributed from this fund are properly spent to promote construction education and craft training in programs in the state which are approved by the board. At least seventy-five percent (75%) of the monies distributed by the board, pursuant to this section, must be used for construction craft training with the exception of the Mississippi Housing Institute.

(3) Each university, junior college, community college, the Mississippi Construction Education Foundation, public high school that participates in the foundation's "school-to-work" program and construction educational trust receiving funds pursuant to this section for construction education or construction craft training programs shall utilize such funds only for construction education and craft training curricula and program development, faculty development, equipment, student scholarships, student assistantships, and for continuing education programs related to construction education and craft training. Such funds shall not be commingled with the normal operating funds of the educational institution, regardless of the source of such funds.

(4) The State Board of Contractors shall ensure the distribution of reports and the availability of construction education programs established pursuant to this section to all segments of the construction industry that are subject to the fee provided under this section. The board shall cause a report to be made to the Legislature in October of each year, summarizing the allocation of funds by institution or program and summarizing the new projects funded and the status of previously funded projects.

(5) All monies deposited into the Construction Education Fund shall be used exclusively for construction education and craft training, and any unspent funds at the end of the fiscal year shall not revert to the General Fund of the State Treasury but shall be available for construction education and craft training in subsequent fiscal years.

(6) All monies deposited into the Construction Education Fund collected from residential builders licensed under the provisions of Section 73-59-1 et seq. shall be used exclusively for licensed home builders' education and professional development and any unspent funds at the end of the fiscal year shall not revert to the General Fund of the State Treasury but shall be available for construction education and craft training in subsequent fiscal years.

(7) All expenditures from the Construction Education Fund shall be by requisition to the State Auditor, signed by the executive secretary of the board and countersigned by the chairman or vice chairman of the board, and the State Treasurer shall issue his warrants thereon.

§ 31-3-15. Certificate of responsibility required

No contract for public or private projects shall be issued or awarded to any contractor who did not have a current certificate of responsibility issued by said board at the time of the submission of the bid, or a similar certificate issued by a similar board of another state which recognizes certificates issued by said board. Any contract issued or awarded in violation of this section shall be null and void.

§ 31-3-17. Special privilege license tax; amount; use of funds

There is hereby levied, in addition to any taxes otherwise provided for by law, a special privilege license tax of One Hundred Dollars (\$100.00) on each contractor who applies for a certificate of responsibility issued under this chapter; and such tax shall be paid to the executive secretary of the board upon making such application in this state. The board may levy an additional special privilege license tax not to exceed Fifty Dollars (\$50.00) for each additional classification for which a contractor applies and is found to be qualified. The executive secretary of the board shall promptly deposit all monies received under this chapter in the State Treasury. Except for the civil penalty provided in Section 31-3-21 which shall be deposited into the State General Fund and the fee provided in Section 31-3-14, all monies received under this chapter shall be kept in a special fund in the State Treasury known as the "State Board of Contractors Fund," and shall be used only for the purposes of this chapter. Such monies shall not lapse at the end of each fiscal year, but all monies in such State Board of Contractors Fund in excess of the sum of fifty percent (50%) of the approved budget for the fiscal year shall be paid over into the General Fund of the State Treasury. All expenditures from the Board of Contractors Fund shall be by requisition to the State Auditor, signed by the executive secretary of the board and countersigned by the chairman or vice chairman of the board, and the State Treasurer shall issue his warrants thereon.

§ 31-3-21. Bidding process and requirements; report following award of contract

(1) It shall be unlawful for any person who does not hold a certificate of responsibility issued under this chapter, or a similar certificate issued by another state recognizing such certificate issued by the State of Mississippi, to submit a bid, enter into a contract, or otherwise engage in or continue in this state in the business of a contractor, as defined in this chapter. Any bid which is submitted without a certificate of responsibility number issued under this chapter and without that number appearing on the exterior of the bid envelope, as and if herein required, at the time designated for the opening of such bid, shall not be considered further, and the person or public agency soliciting bids shall not enter into a contract with a contractor submitting a bid in violation of this section. In addition, any person violating this section by knowingly and willfully submitting a bid for projects without holding a certificate of responsibility number issued under this chapter, as and if herein required, at the time of the submission or opening of such bid shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

(2) All bids submitted for public or private projects where the bid is in excess of Fifty Thousand Dollars (\$50,000.00) shall contain on the outside or exterior of the envelope or container of such bid the contractor's current certificate number, and no bid shall be opened or considered unless such contractor's current certificate number appears on the outside or exterior of said envelope or container, or unless there appears a statement on the outside or exterior of such envelope or container to the effect that the bid enclosed therewith did not exceed Fifty Thousand Dollars (\$50,000.00) with respect to public or private projects. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

(3) In the letting of public contracts preference shall be given to resident contractors, and a nonresident bidder domiciled in a state having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident bidder's state awards contracts to Mississippi contractors bidding under similar circumstances; and resident contractors actually domiciled in Mississippi, be they corporate, individuals, or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state of domicile of the nonresident. When a nonresident contractor submits a bid for a public project, he shall attach thereto a copy of his resident state's current law pertaining to such state's treatment of nonresident contractors. Any bid submitted by a nonresident contractor which does not include the nonresident contractor's current state law shall be rejected and not considered for award. As used in this section, the term "resident contractors" includes a nonresident person, firm or corporation that has been qualified to do business in this state and has maintained a permanent full-time office in the State of Mississippi for two (2) years prior to January 1, 1986, and the subsidiaries and affiliates of such a person, firm or corporation. Any public agency awarding a contract shall promptly report to the State Tax Commission the following information:

- (a) The amount of the contract.
- (b) The name and address of the contractor reviewing the contract.
- (c) The name and location of the project.

(4) In addition to any other penalties provided in this chapter, and upon a finding of a violation of this chapter, the State Board of Contractors may, after notice and hearing, issue an order of abatement directing the contractor to cease all actions constituting violations of this chapter until such time as the contractor complies with Mississippi state law, and to pay to the board a civil penalty to be deposited into the State Board of Contractors' Fund, created in Section 31-3-17, of not more than three percent

(3%) of the total contract being performed by the contractor. In addition to, or in lieu of, such civil penalty, the board may require the performance of community service for a specified number of hours as determined by the board. The funds collected from civil penalty payments shall be used by the State Board of Contractors for enforcement and education.

§ 31-3-23. Appeals and remedies

Any person aggrieved by any order or decision of the board may appeal within ten (10) days from the date of adjournment of the session at which the board rendered such order or decision, and may embody the facts, order and decision in a bill of exceptions which shall be signed by the person acting as chairman of the board. The executive secretary shall transmit the bill of exceptions to the chancery court of the county of residence of the appellant, and the court or chancellor shall hear and determine the same either in termtime or in vacation, on the case as presented by the bill of exceptions, as an appellate court, and shall affirm or reverse the judgment. If the judgment be reversed, the chancery court or chancellor shall render such order or judgment as the board ought to have rendered, and certify the same to the board; and costs shall be awarded as in other cases. The board may employ counsel to defend such appeals, to be paid out of the funds in the State Board of Contractors Fund.

The remedies provided under this chapter for any aggrieved applicant shall not be exclusive, but shall be cumulative of and supplemental to any other remedies which he may otherwise have in law or in equity, whether by injunction or otherwise.

RULES AND REGULATIONS OF THE STATE BOARD OF CONTRACTORS AS APPLIED TO COMMERCIAL CONTRACTORS

30-9-802:1.1. Application for Certificate of Responsibility

Pursuant to the powers and responsibilities of the State Board of Contractors conferred by Miss. Code Ann. §§ 31-3-13(f) (1972), as amended, and in accordance with Sections Miss. Code Ann. §§ 25-43-3.101 - 25-43-3.115 (1972), known as the Mississippi Administrative Procedures Law, the Board hereby adopts, establishes and promulgates the following rules and regulations and directs that same be entered upon its minutes and made available to all applicants for initial or renewed Certificates of Responsibility issued by the Board and all other persons.

1. The Mississippi State Board of Contractors' ("Board") statutory purpose is to protect the health, safety and general welfare of all persons dealing with those who are engaged in the vocation of contracting and to afford such persons an effective and practical protection against incompetent, inexperienced, unlawful and fraudulent acts of contractors. In carrying out its statutory purpose, the Board issues Certificates of Responsibility and renewals thereof to those engaged in the vocation of contracting, subject to the requirements set forth in law and its Rules and Regulations. Anyone may obtain information from, or make submissions or requests to, in writing or orally, the Executive Director of the Board, whose office is located at 2679 Crane Ridge Drive, Suite C, Jackson, MS 39216, telephone no. (601) 354-6161, during regular office hours between 8 a.m. and 5 p.m. Monday through Friday.
2. An applicant for a Certificate of Responsibility or Renewal thereof shall observe the following requirements:
 - a. Certificates or any renewals thereof may be issued at any time during the course of a calendar year by the Executive Director after his determination that the applicant has satisfied all statutory and other requirements prerequisite to the issuance of a certificate or a renewal thereof.
 - b. An application must be filed on a form provided by the Board. No substitute will be accepted.
 - c. The Board's application form must be completed in ink or with a typewriter. Only one copy need be filed.
 - d. All questions must be answered. All schedules must be completed. Write "None" where applicable. No application will be considered unless it is completed as directed on the Board's form.
 - e. Additional information including supplementary or explanatory notes considered necessary may be furnished by inserting schedules where needed.
 - f. All signatures must be affixed where called for and notarized where indicated.

- g. A check in the amount of One Hundred Dollars (\$ 100.00) made payable to the State Board of Contractors should accompany the application but may be submitted separately. No application will be acted upon until such check is received.
- h. The privilege tax levied under this Chapter is an annual tax. The Certificate holder is under a duty to renew his certificate annually, and the failure of the Board to notify the Certificate holder as to the date of the expiration shall not excuse the Certificate holder from renewing his certificate and paying the annual tax.
- i. An applicant for a new certificate shall furnish the Board with at a minimum a reviewed financial statement completed within the prior twelve (12) months on a form prescribed by the Board, prepared and signed by a certified public accountant, stating the assets, liabilities and net worth of the person, firm, partnership, co-partnership, or corporation. Such statement will be used by the Board to determine the financial responsibility of the applicant to perform work in the amount of Fifty Thousand Dollars (\$50,000.00) or more with respect to public and private projects. Assets of applicants for major classifications must include a net worth of at least Fifty Thousand Dollars (\$50,000.00). Assets of all other applicants must include a net worth of at least Twenty Thousand Dollars (\$20,000.00). The financial statement and any information contained therein, as well as any other financial information required to be submitted by an applicant, shall be confidential. All applicants for renewal certificates shall meet the same requirements set forth above except the following applies regarding financial statements: Certificate holders performing work that is equal to or in excess of Two Million Dollars (\$2,000,000.00) per year shall furnish a reviewed financial statement. Certificate holders performing work that is less than Two Million Dollars (\$2,000,000.00) per year shall furnish a balance sheet prepared in accordance with generally accepted accounting principles.
- j. An applicant must provide a certificate of insurance evidencing current minimum coverage of Three Hundred Thousand Dollars (\$300,000) per occurrence and Six Hundred Thousand Dollars (\$600,000) aggregate for general liability purposes. An applicant must also provide a certificate of insurance evidencing current workers' compensation coverage, if such coverage is required by state law. All applicants for new and renewal certificates of responsibility shall supply the information set forth herein.
- k. A foreign corporation or a corporation domiciled outside the State of Mississippi must qualify to do business in this State with the office of the Secretary of State and provide the Board with a Certificate attesting to such qualification. (Applicants may contact the office of the Secretary of State by mail to P. O. Box 136, Jackson, Mississippi 39205, or by telephone at 601/359-1350.)
- l. The qualifying party shall be the owner, or a responsible managing employee, or a responsible managing officer, or a member of the executive staff who appears for and takes examination on behalf of the individual, co-partnership, or corporation seeking a license as referred to in Miss. Code Ann. § 31-3-13(a). The qualifying party is the person who holds the exam scores and must be regularly employed by the Certificate holder and actively engaged in the classification of work for which the person qualifies on behalf of the Certificate holder. The Certificate holder shall furnish proof of employment of the qualifying party upon application and renewal. The qualifying party must have the necessary experience, knowledge and skills to supervise or perform the contracting work in the classification of work for which the person qualifies on behalf of the Certificate holder. When the qualifying party terminates employment with the Certificate holder, the Mississippi State Board of Contractors must be notified in writing immediately, by the qualifying party and the Certificate holder, of the disassociation or the Certificate holder will be subject to suspension or revocation of its Certificate of Responsibility. Another party must qualify within ninety (90) days of the disassociation or the Certificate holder will be subject to suspension or revocation of its Certificate of Responsibility.
- m. An applicant for renewal of a certificate that has been expired for at least one hundred eighty (180) days shall submit all information required for a new certificate.
- n. Any corporation or other legal business entity holding a valid Certificate of Responsibility shall immediately notify the Board of any change of name or corporate structure by filing an application with the Executive Director of the Board outlining the specific change and the impact on the status of the entity. A fee of \$50.00 shall accompany each application filed pursuant to this rule.

- o. The Executive Director may accept and adopt as the requisite objective, standardized examination under Miss. Code Ann. § 31-3-13(a) any comparable examination passed by any applicant that holds a license or certificate in good standing in a comparable classification in another state recognized as a reciprocity state.
3. The Board will classify each applicant and issue a Certificate of Responsibility for the type or types of contracts on which he may bid on the following basis:
 - a. The applicant will not be classified or permitted to bid on or perform a type or types of work not included in his request.
 - b. The applicant shall state on the application the classification of work he desires to perform and contract, such classification to be selected and determined from the following list of major classifications:
 - (1) Building Construction
 - (2) Highway, Street and Bridge Construction
 - (3) Heavy Construction
 - (4) Municipal and Public Works Construction
 - (5) Electrical Work
 - (6) Mechanical Work
 - (7) SPECIALTY - A contractor performing Work other than in the above major classification must qualify as a specialty contractor.
 4. Any person or entity contracting or undertaking as prime contractor, subcontractor or sub-subcontractor of any tier to do any work as a construction manager shall have a certificate of responsibility either in the specialty classification of construction management or the major classification of Building Construction.
 5. Should any information contained in any application or presented at an oral interview for a Certificate of Responsibility be found by the State Board of Contractors to be false, such Certificate of Responsibility so issued or application being considered shall thereupon be terminated and withdrawn. No certificate holder or applicant shall be issued a renewal of or an initial Certificate of Responsibility until a period of five (5) years has expired after the date of such termination or withdrawal.
 6. On proof of qualifications satisfactory to the Board, a Certificate holder may apply for and receive a change in his classification.
 7. There will be a \$50.00 fee charged for each additional classification sought, and a \$50.00 fee for each exam taken. Any waiver of an examination shall require a \$50.00 fee. There will also be a \$50.00 fee for a name change and a \$ 25.00 fee for any specialized information list.
 8. No certificate of responsibility or any renewal thereof shall be issued until the applicant furnishes proof to the Board that the Certificate holder is in good standing with the Mississippi Secretary of State.
 9. The passing score for the examination requirement provided in Miss. Code Ann. § 31-3-13(a) (1972, as amended) is a grade of at least 70%. Any applicant for a Certificate of Responsibility must furnish proof of having taken an objective, standardized examination. The Board may administer an oral examination to an applicant, upon request, if such applicant is unable to take a written exam.
 10. If a Certificate of Responsibility is revoked, lost, mutilated or destroyed, a new license may be issued through the Board's discretion, upon receipt of a written request from the licensee stating the reason for the request, the Certificate of Responsibility number and check in the amount of Fifty Dollars (\$50.00).
 11. The issuance of a certificate of responsibility by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Miss. Code Ann. § 73-50-1.

30-9-802:1.2. Certificate of Responsibility - Public Procurement

1. All agencies having the authority to award a contract involving public funds in the amount of Fifty Thousand

Dollars (\$50,000.00) or more, shall return, unopened, any bids submitted by a contractor not having a Certificate of Responsibility required by Sections 31-3-1 - 31-3-23, Miss. Code Ann. (1972, as amended).

2. For all purposes herein, "bid" is defined as an offer, whether written or verbal, to perform all or part of a contract.
3. When the total cost of a project is at least 50% of a particular classification of work, as determined by the awarding entity or its engineer, architect or other representative, the awarding entity shall allow the holder of the certificate of responsibility in that particular classification to bid on or enter into a contract to perform work on the project in its entirety.
4. In any case in which a holder of a Certificate of Responsibility has bid outside the classification contained in his, her or its Certificate of Responsibility, the Executive Director of the State Board of Contractors shall notify each holder to appear before the Board at its next regular meeting and show cause, if possible, why the holder's Certificate of Responsibility shall not be suspended.
5. When separate bids are received, building contractors having only the classification of "Building Construction" shall not be permitted to bid on or be awarded the Mechanical or Electrical contracts; likewise the Mechanical or Electrical Contractors shall not be permitted to bid on the building portion of a project when the building costs are at least 50% of the project. When combined building, mechanical and electrical bids are received, nothing herein or in any other rule or regulation, shall prohibit the holder of a certificate of responsibility with the classification of building construction from submitting a bid and/or entering into a contract to perform work on a project which consists of at least 50% mechanical, electrical or other classification of work; provided, however, that the holder of a certificate of responsibility with the classification of building construction shall also have the appropriate classification necessary to perform the mechanical, electrical or other classification of work.
6. In the event a contractor bids on a job covered by this act without first having obtained a Certificate of Responsibility from the Mississippi State Board of Contractors, his, her or its application for a Certificate of Responsibility shall not be acted upon until a minimum period of ninety (90) days after receipt.
7. No state recognizes the Certificate of Responsibility issued by this Board. Therefore, no awarding agency of this state shall consider any bid of a contractor who holds a Certificate of Responsibility or license issued by another state, if the respective bidder does not also have a Certificate of Responsibility issued by the Mississippi State Board of Contractors.
8. It shall be unlawful and illegal for a Primary Contractor, Contractor, Owner, Awarding Authority, Subcontractor, or any other person to contract, or subcontract, all of any portion of a public or private construction project regulated by Chapter 527, General Laws of Mississippi - 1988 (Sections 31-3-1 - 31-3-23, Miss. Code Ann. (1972, as amended)), exceeding Fifty Thousand Dollars (\$50,000.00) with respect to public and private projects to any other Contractor, or Sub-Contractor, unless the Contractor, or Subcontractor was duly licensed by this Board as of the date of submission of bids on the work. It is further provided that the Prime Contractor, on or before the date of being awarded the prime contract, shall submit to the awarding agency a list of all subcontracts, exceeding Fifty Thousand Dollars (\$50,000.00) with respect to public and private projects.
9. Either all contractors making up a joint venture or the joint venture itself must hold certificates of responsibility prior to submitting a bid or being awarded a contract. When two or more contractors comprising a joint venture all hold certificates of responsibility, such certificates may be for different classifications of work, but the contract to be awarded should include the classifications of work for which the individual member of the joint venture hold certificates. Further, contractors engaging in a joint venture should not perform work that exceeds the statutory scope of their certificate(s). When a joint venture submits a bid on a public project in excess of Fifty Thousand Dollars (\$50,000.00), and the joint venture itself does not hold a certificate of responsibility, each contractor comprising the joint venture shall place its certificate of responsibility number on the outside of the envelope containing the bid as set forth in Miss. Code Ann. § 31-3-21(2), as amended. If the joint venture itself holds a certificate of responsibility, then it shall place its certificate number only on the outside of the envelope.
10. Any of the foregoing Rules and Regulations of the Board shall not apply to contracts involving federal funds if in violation of federal requirements.

30-9-802:2.1. Complaint & Hearing Procedures

The Board shall act in accordance with the following procedures when issuing a complaint and before imposing a monetary penalty upon any contractor pursuant to Miss. Code Ann. § 31-3-21:

- a. Whenever the Board shall receive a sworn affidavit charging a contractor with an act which is grounds for imposition of a monetary penalty pursuant to § 31-3-21, or whenever the Board or an employee of the Board has reason to believe that a violation has occurred which is grounds for imposition of a monetary penalty pursuant to § 31-3-21, the Board may cause a written complaint to be served upon the alleged violator or violators.
- b. The written complaint shall specify the provisions of such statute, regulation or order alleged to be violated and the facts alleged to constitute a violation thereof and shall require that the alleged violator(s) appear before the Board at a time and place specified and answer the charges complained of. The time of appearance before the Board shall not be less than ten (10) days from the date of the service of the complaint, unless the Board finds that the health, safety and general welfare of all persons dealing with those against whom charges are levied is in imminent danger, requiring that such hearing be held at an earlier date. In no instance, however, shall the Board ever require an alleged violator(s) to appear less than five (5) days after the date of service of the complaint. Service of the complaint may be accomplished by mailing a copy thereof by certified mail, return receipt requested, postage prepaid to the last known mailing or residence address of the alleged violator(s), or by other lawful means of service.
- c. The Board shall afford an opportunity for a fair hearing to the alleged violator(s) at the time and place specified in the complaint. The alleged violator(s) may be represented by counsel, and may call witnesses and present other competent evidence on its behalf. The Board shall conduct an administrative hearing, and shall not be bound by strict rules of civil procedure or strict rules of evidence in the conduct of its proceedings. On the basis of the evidence presented at the hearing, the Board shall make findings of fact and conclusions of law and enter its order. Failure to appear at any such hearing, without prior authorization to do so from the Board, may be taken by the Board as evidence of the facts alleged in the formal complaint.
- d. When a complaint is issued, a notice of hearing shall be issued simultaneously including the date and location of the hearing along with a requirement that the accused contact the Board no later than five (5) days prior to the hearing to schedule a specific time for appearance at the hearing. Failure to contact the Board to schedule a specific time for appearance may result in the accused being heard only after all other scheduled matters have been addressed or not being heard on that scheduled date.
- e. If the accused fails to respond timely to the complaint, then the Board may consider the charges set forth therein and all other available evidence in determining whether the accused has violated the law. In the event the Board finds a violation of the law, then the Board may impose any of the penalties set forth in Miss. Code Ann. § 31-3-21.
- f. Any request for continuance must be made in writing and presented to the Board staff at least five (5) days prior to the scheduled hearing or, upon good cause shown, at any time prior to the hearing. Continuances will not be routinely granted. Instead, a party must show substantial, legitimate grounds for a continuance. Where scheduling conflicts are the basis for requesting a continuance, the party shall provide written proof of such conflicts in a timely manner as set forth herein.
- g. The Board shall render any order in writing and notify the alleged violator(s) of same by certified mail, to the last known mailing or residence address of the alleged violator(s).
- h. At any time before or after being served with a complaint, any alleged violator(s) may waive its right to a hearing before the Board and agree to an imposition of the civil penalty, provided such waiver is in writing.
- i. Any person aggrieved by any order or decision of the board may appeal pursuant to Miss. Code Ann. § 31-3-23, as amended.

30-9-802:2.2. Administrative Penalties

In determining the amount of a monetary penalty, the Board shall consider at a minimum the following:

- (1) The willfulness of the violation;
- (2) Any cost of restoration and abatement;
- (3) Any economic benefit to the violator(s) as a result of noncompliance;
- (4) The seriousness of the violation, including any harm to the environment and any harm to the health and safety of the public; and
- (5) Any prior violation by such violator(s).

30-9-802:3.1. Board Meetings

If a regular or special meeting of the Board has been recessed to reconvene on a day and time fixed and ordered by the Board and entered upon its minutes, the recessed meeting thus held on the subsequent date shall be considered a part of and continuation of the regular meeting or special meeting, as the case may be, the same as if actions and proceedings then taken had been taken at the initial regular meeting date or special meeting date and any action authorized on such an initial date may be taken or continued and passed upon at the later date or dates.

30-9-802:3.2. Executive Director

1. Neither the Executive Director, individually, nor the surety of his official bond shall be held financially liable or responsible for any action taken by the Executive Director when he is acting under direct instructions from the Board as shown by the minutes of the Board.
2. The Executive Director of the Board is hereby granted authority to execute all Orders passed by the Board as set forth in the official minutes of the Board. (05/19/93)

30-9-802:3.3. Miscellaneous

1. Any of the foregoing Rules and Regulations of the Board may be suspended and/or modified by a majority vote of the State Board of Contractors unless such suspension or modification is inconsistent with the general laws governing the Board and its operation. Such change or modification shall not be effective for a period of ninety (90) days after the date of such suspension or modification.
2. If any provision of any section of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provisions of that section or application of the Rules and Regulations which can be given effect without the invalid provisions or application, and to this end the provisions of these Rules and Regulations are declared to be severable.
3. These Rules and Regulations shall become effective thirty (30) days after promulgation and filing with the Secretary of State.