

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).

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 or 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.