

BUSINESS COMMITTEE

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.05.01 - RULES OF THE PUBLIC CONTRACTORS LICENSE BOARD

DOCKET NO. 07-0501-0802

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2009 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-1907 and 67-2601A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 1 of the October 1, 2008 Idaho Administrative Bulletin, Vol. 08-10, pages 103 through 106.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 23rd day of October, 2008.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that

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this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1907 and 67-2601A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Amendments to Section 54-1904, Idaho Code, provided for a new Class Unlimited License resulting in the need to account for the Class Unlimited License in various sections of the rules. The proposed rule changes would establish the necessary financial requirements and documentation required for applications for Class Unlimited licenses, as well as an exemption to bid cost requirements for Class Unlimited licenses.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

110. APPLICATION FOR LICENSURE -- DOCUMENTATION; APPRAISALS; REFERENCES; BONDING; AND FINANCIAL STATEMENTS.

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01. Application Documentation. To obtain a license, the applicant shall submit to the administrator, on such forms as the administrator shall prescribe, accompanied by the required fee for the class of license applied for, a written, notarized application for such license. All of the information submitted by the applicant shall specifically pertain to work that is similar in scope and value to that for which licensure is being requested or which is being requested in a petition to change or add types of construction. The information contained in such application forms shall include: (3-20-04)

a. A complete statement of the general nature of applicant's contracting business, including a concise description of the applicant's experience and qualifications as a contractor and a list of clients for whom work has been performed; (3-20-04)

b. A description of the value and character of contract work completed and for whom performed during the three (3) year period prior to filing the application; (3-20-04)

c. A general description of applicant's machinery and equipment; and (3-30-07)

d. An annual financial statement, as herein defined, that was issued no more than twelve (12) months prior to the date of submission of the application, indicating compliance with such financial requirements as the Board may prescribe by rule. The applicant's financial statement may be supplemented with: (3-30-07)

i. Bonding. As authorized by Section 54-1910(e), Idaho Code, a letter from applicant's bonding company, not an insurance agent, stating the amount of the applicant's bonding capability per project and in the aggregate, including supporting documentation; (3-30-07)

ii. Guaranty. Documentation, satisfactory to the administrator, of the existence of a written guaranty agreement between the applicant and a third-party in which the third-party guarantor agrees to assume financial responsibility for payment of any obligations of the applicant for any particular project as may be determined by a court of competent jurisdiction. The guaranty agreement, along with financial statements meeting the requirements of Paragraph 110.01.e. of this rule, shall be submitted with the license application. (3-30-07)

e. For Class A, AA, ~~and~~ AAA and Unlimited license applications, financial statements shall be accompanied by an independent auditor's report or be reviewed. For Class B license applications, financial statements must be accompanied by an independent audit report or be reviewed or compiled by a certified public accountant. For Class C and Class D license applications, financial statements must be accompanied by an independent audit report or be reviewed, compiled, or on the form provided by the administrator, and include such additional information as may be required by the administrator to determine the applicant's fitness for a license. ~~(3-20-04)~~(____)

f. The name, social security number, and business address of an individual applicant or, if the applicant is a partnership, its tax identification number, business address, and the names and addresses of all general partners; and if the applicant is a corporation, association, limited liability company, limited liability partnership, or other organization, its tax identification number, business address, and the names and addresses of the president, vice president, secretary,

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treasurer, and chief construction managing officers, or responsible managing employee. (3-20-04)

g. Applicants requesting a licensing class higher than that for which the applicant is currently licensed shall provide documentation, satisfactory to the administrator, of having performed projects, similar in scope and character to those for which license is requested. The monetary value of those jobs must fall within a range not less than thirty percent (30%) below that for which the applicant is currently licensed. (4-11-06)

02. Application for Change in Licensing Class. Requests for a licensing class higher than that for which the applicant is currently licensed shall be accompanied by the information in Subsection 110.01 of these rules, and the applicable fee. Licenses granted under Subsection 110.02 of these rules shall be valid for a period of twelve (12) months from the date of issuance. (4-11-06)

03. Extension of Time to File Financial Statement. The administrator may grant an extension of time to file the annual financial statement if the licensee provides an interim compiled balance sheet and income statement for the applicant's fiscal year-to-date, duly certified as true by the applicant, and if a partnership, limited liability company, or limited liability partnership by a member thereof, and if a corporation, by its executive or financial officer. Such renewal application shall be filed prior to the first day of such renewal licensing period. In the event an extension is granted, the renewal license shall be valid for a period of twelve (12) months from the date of the issuance of the renewal license. (3-20-04)

04. Appraisals. The administrator may require submission of an independent appraisal of any real or chattel property reported by an applicant or licensee. Such appraisals shall be conducted by a disinterested person or firm established and qualified to perform such services. (3-20-04)

05. References. The administrator may require an applicant for an original or renewal license to furnish such personal, business, character, financial, or other written references as deemed necessary and advisable in determining the applicant's qualifications. (3-20-04)

111. FINANCIAL REQUIREMENTS.

The financial requirements for obtaining and maintaining a license under this Act shall be as follows: (4-11-06)

01. Heavy, Highway, Building, and Specialty Construction Class Unlimited License. An applicant requesting a Class Unlimited license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of one million dollars (\$1,000,000) with six hundred thousand dollars (\$600,000) in working capital. ()

~~02.~~ Heavy, Highway, Building, and Specialty Construction Class AAA License. An applicant requesting a Class AAA license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of six hundred thousand dollars (\$600,000) with two hundred thousand dollars (\$200,000) in working capital. (3-19-99)

~~03.~~ Heavy, Highway, Building, and Specialty Construction Class AA License. An

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applicant requesting a Class AA license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of four hundred fifty thousand dollars (\$450,000) with one hundred fifty thousand dollars (\$150,000) in working capital. (3-19-99)

034. Heavy, Highway, Building, and Specialty Construction Class A License. An applicant requesting a Class A license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of three hundred thousand dollars (\$300,000) with one hundred thousand dollars (\$100,000) in working capital. (3-19-99)

045. Heavy, Highway, Building, and Specialty Construction Class B License. An applicant requesting a Class B license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of one hundred fifty thousand dollars (\$150,000) with fifty thousand dollars (\$50,000) in working capital. (3-19-99)

056. Heavy, Highway, Building, and Specialty Construction Class C License. An applicant requesting a Class C license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of twenty-five thousand dollars (\$25,000) with seven thousand five hundred dollars (\$7,500) in working capital. (3-19-99)

067. Heavy, Highway, Building, and Specialty Construction Class D License. An applicant requesting a Class D license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of ten thousand dollars (\$10,000) with three thousand dollars (\$3,000) in working capital. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

199. LIMITATIONS.

01. One License. A licensee will be permitted to hold only one (1) class of license at any given time. (3-20-04)

02. Previous License Null and Void. When a licensee of one class has been issued a license of another class, the previous license shall be null and void. (3-20-04)

03. Total Bid Cost. The total of any single bid on a given public works project, or the aggregate total of any split bids, or the aggregate total of any base bid and any alternate bid items, or the aggregate total of any separate bid by a licensee of any class, except Class ~~AAA~~ Unlimited, shall not exceed the estimated cost or bid limit of the class of license held by the licensee. The aggregate total of bids shall include all bids of the subcontractors. Subcontractor bids shall not be considered a separate bid for the purposes of computing the bid on a given public works project. ~~(3-20-04)~~(____)

04. Two or More Licensees. Two (2) or more licensees of the same class or of different classes shall not be permitted to combine the estimated cost or bid limit of their licenses to submit a bid in excess of the license held by either licensee. (3-20-04)

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05. Type 4 License Holder. The holder of a license for Type 4, Specialty Construction, shall be entitled to bid a public works project as a prime contractor or as a subcontractor, if more than fifty percent (50%) of the work to be performed by him on such project is covered by a category or categories listed on the license held by the licensee. (3-20-04)