

CONSTRUCTION—REGISTRATION AND BONDING

CHAPTER 150

CONSTRUCTION CONTRACTOR REGISTRATION

[Prior to 10/21/98, see 347—Ch 150]

875—150.1(91C) Scope. This chapter implements Iowa Code chapter 91C. The rules in this chapter apply to all construction contractors, except for a person who earns less than \$2,000 annually or who performs work or has work performed on the person's own property.

875—150.2(91C) Definitions.

"Commissioner" means the labor commissioner of the division of labor services of the workforce development department or the commissioner's designee.

"Construction" means new work, additions, alterations, reconstruction, installations, repairs and demolitions. Construction activities are generally administered or managed from a relatively fixed place of business, but the actual construction work is performed at one or more different sites which may be dispersed geographically. Examples of construction activities, adopted by reference, are in 871—23.82(96) for purposes of the Iowa employment security law. For work on structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, "construction" includes asbestos abatement.

"Contractor" means a person who engages in the business of construction as the term is defined in 871—23.82(96), for purposes of the Iowa employment security law, including subcontractors and special trade contractors. Also included are persons who conduct or perform construction on an incidental or occasional basis, regardless of whether the person is classified as being engaged in construction by the unemployment insurance services division of the workforce development department.

"Contract price" means the total pretax price of the contractor's project less the amount of all subcontracts. Contract price does not include the sales price of a product if the manufacturer installs the product and the price of the product is separately listed in the contract.

"Division" means the division of labor services of the workforce development department.

"File" means deliver to the division.

"Out-of-state contractor" means a contractor whose principal place of business is in another state, and who contracts to perform construction in this state.

"Principal place of business" means the state in which a substantial part of the contractor's business is transacted and from which the centralized supervision is exercised. Factors to be reviewed include:

1. State designated as home office on documents filed with governmental agencies.
2. State where payroll is prepared.
3. State where business transactions are performed.
4. State where officers, owners, or partners reside and work.
5. State in which bank accounts are located.
6. State in which fixed business property is located.
7. State where management decisions are made.

"Same phase of construction" means in the same type of construction operations or trade, such as, but not limited to, electrical work; masonry, stonework, tile setting and plastering; roofing; sheet metal work; excavation work; concrete work; glasswork; painting, paper hanging and decorating; plumbing, heating and air conditioning work; carpentry work; and miscellaneous special trade contractors.

"Working days" means Mondays through Fridays but shall not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

875—150.3(91C) Registration required. Before performing any construction work in this state, a contractor shall be registered with the division. A joint venture is an independent entity and shall be registered independently.

875—150.4(91C) Application. Each contractor shall file an application with the division for a registration number on forms provided by the division. The application shall contain the information specified in this rule.

150.4(1) Name. The name of the contractor.

150.4(2) Place of business. The complete mailing address of the principal place of business of the contractor.

150.4(3) Telephone number. The business telephone number of the contractor.

150.4(4) Business classification. The type of business entity of the contractor (i.e., corporation, partnership, sole proprietorship, trust, etc.).

150.4(5) Ownership information.

a. If the contractor is a corporation, the name, address, telephone number, and position of each officer of the corporation.

b. If the contractor is other than a corporation, the name, address, and telephone number of each owner.

150.4(6) Workers' compensation coverage information.

a. A certificate of insurance from the insurer showing proof of workers' compensation insurance, the effective dates of coverage, and listing the division of labor as a certificate holder;

b. Employer's release from the insurance requirements under workers' compensation law form provided to self-insured employers by the commissioner of insurance under Iowa Code section 87.11; or

c. A statement that the contractor is not required to carry workers' compensation coverage.

150.4(7) Account number. The employer account number or special contractor number issued by the unemployment insurance services division of the workforce development department prior to making application for a contractor's registration number.

150.4(8) Business description. A description of the business to include:

a. The employer's North American Industry Classification System (NAICS) code; or

b. The principal products and services provided.

150.4(9) Fee exemption. An exemption from fee may be requested if the contractor meets the requirements of and provides information specified in subrule 150.6(3).

150.4(10) Social security number. The contractor, if a natural person, shall include the contractor's social security number.

875—150.5(91C) Amendments to application.

150.5(1) A contractor shall report to the commissioner any change in the information originally reported on or with the application within 15 working days of the change, except that the contractor shall notify the commissioner of changes to workers' compensation coverage within ten days prior to any change in coverage.

150.5(2) After the time specified in subrule 150.5(1), with good cause shown the commissioner may determine that an amendment may be made to correct an application.

150.5(3) Amendments to applications shall not be permitted where a change occurs in the business classification, such as, but not limited to, a change from a sole proprietorship to a corporation.

875—150.6(91C) Fee.

150.6(1) Application. Each application shall be accompanied by a biennial fee of \$25. A fee is not required where a permissible amendment to an application is requested.

150.6(2) Exemption from fee. A contractor shall not be required to pay the fee if the application contains an affidavit which shows the contractor is self-employed, does not pay more than \$2,000 annually to employ other persons in the business, and does not work with or for other contractors in the same phase of construction. At any time that a contractor no longer meets the provision for an exemption from the fee, the fee shall be paid to the division.

150.6(3) Application attachment. To apply for a fee exemption, the contractor shall attach to the application an affidavit which contains:

a. A statement that the contractor is self-employed;

- b. A list of all employees employed in the past 12-month period and the amount paid to each employee; and
- c. A list of all current employees.

875—150.7(91C) Registration number issuance. Within 30 days of receipt of a completed application, the commissioner will issue to the contractor a registration number. The registration number will consist of the letter “C” followed by six unique digits.

875—150.8(91C) Workers’ compensation insurance cancellation notifications.

150.8(1) Insurance company coverage. The division shall be notified by the insurance company carrying the contractor’s workers’ compensation insurance at the time of cancellation. The notice shall contain:

- a. The name of the insurance carrier;
- b. The name of the insured contractor; and
- c. The date the workers’ compensation coverage cancellation is effective.

150.8(2) Self-insured contractors. The contractor shall notify the division ten days prior to any cessation in self-insurance.

150.8(3) Noninsured contractors. The contractor shall notify the division whenever the required notice is not posted or in any change in insurance status.

875—150.9(91C) Investigations and complaints.

150.9(1) Investigations. Investigations may take many forms to determine if there is compliance with the law. Investigations shall take place at the times and in the places as the commissioner may direct. The commissioner may interview persons at the work site and utilize other reasonable investigatory techniques. The conduct of the investigation shall be such as to preclude unreasonable disruption of the operations of the work site. Investigations may be conducted without prior notice by correspondence, telephone conversations, or review of materials submitted to the division. At the initiation of an investigation at the contractor’s establishment, the investigator shall present credentials, explain the nature and purpose of the investigation, and seek the consent of the owner, operator or agent in charge of the establishment. In the event the investigator is not permitted to fully conduct an investigation, the commissioner may seek an administrative warrant, if necessary.

150.9(2) Complaints. Complaints in which the complainant provides a name and address made to the commissioner in writing shall receive a written response as to the results of the investigation. A complainant’s name and other identifying information shall not be released if the complaint was included as a part of another complaint where the complainant’s identity would be protected under other statutes or rules (i.e., a complaint filed under both Iowa Code chapters 88 and 91C).

875—150.10(91C) Citations/penalties and appeal hearings.

150.10(1) Citations. The commissioner shall issue a citation to a contractor where an investigation reveals the contractor has violated:

- a. The requirement that the contractor be registered;
- b. The requirement that the contractor’s registration information be substantially complete and accurate; or
- c. The requirement that an out-of-state contractor file a bond with the division.

150.10(2) Penalties. If a citation is issued, the commissioner shall notify the contractor by certified mail of the proposed administrative penalty, if any. The administrative penalties shall be not more than \$500 in the case of the first violation and not more than \$5,000 per violation in the case of a second or subsequent violation. In proposing a penalty, due consideration will be given to knowledge of the alleged violation, knowledge of requirements of the law, and nature and extent of the alleged violation.

150.10(3) Appeal. The contractor shall have 15 working days within which to file a notice of contest of the citation or proposed penalty. The notice of contest shall be filed with the commissioner who shall forward it to the employment appeal board.

150.10(4) *Appeal procedures.* The rules of procedure of the employment appeal board shall apply to administrative hearings on citations and penalties.

875—150.11(91C) Revocation of registrations and appeal hearings.

150.11(1) *Reason for revocation.* The commissioner shall seek revocation of a contractor's registration where an investigation reveals the contractor failed to meet the conditions of registration at the time of issuance or no longer meets the conditions.

150.11(2) *Notice of revocation.* The commissioner shall serve a notice of intent to revoke on the contractor by personal service or by restricted certified mail to the address listed in the application or by other service as permitted in the Iowa Rules of Civil Procedure. The notice shall set the time for a fact-finding hearing conducted in accordance with Iowa Code chapter 17A.

150.11(3) *Hearing.* The purpose of the fact-finding hearing is to ensure the contractor is not in compliance before the registration is revoked. All hearings shall be held in the offices of the division. A telephone interview may be conducted upon request.

150.11(4) *Hearing procedures.* Administrative hearing rules at 875—Chapter 1 shall be applicable to the fact-finding hearings.

150.11(5) *Decision.* The commissioner shall serve the decision on the contractor by certified mail to the address listed on the application or to another address provided by the contractor. If the certified mail is returned unclaimed or undelivered, the commissioner shall send the decision to the address by first-class mail.

150.11(6) *Effective date of revocation.* Revocations shall become effective 21 days after certified mailing of the decision.

150.11(7) *Suspension.* The division and the commissioner find the public health, safety or welfare imperatively requires emergency action where a construction contractor fails to maintain compliance with the laws of this state relating to workers' compensation as required in subrule 150.4(6) due to the financial impact upon the public and any worker who might be injured. Therefore, a construction contractor's registration may be suspended effective upon issuance of the subrule 150.11(2) notice of revocation. Upon application showing good cause and proof of compliance with the workers' compensation laws as required in subrule 150.4(6), the commissioner may alter the finding and temporarily reinstate a registration number pending hearing on the revocation. In cases of suspension pending a revocation hearing, the hearing shall be instituted and determined promptly.

150.11(8) *Appeal.* The contractor shall have 15 working days from receipt of the decision issued pursuant to subrule 150.11(5) to file a notice of contest of decision. The notice of contest shall be filed with the commissioner who shall forward it to the employment appeal board.

150.11(9) *Appeal procedures.* The rules of procedure of the employment appeal board shall apply to appealed decisions.

150.11(10) *Effect of revocation.* A contractor whose registration is revoked may reapply for a new registration number if all requirements for registration eligibility are met.

150.11(11) *Relinquishing registration certificate.* A contractor shall return the original registration certificate to the division when a revocation or suspension becomes final.

875—150.12(91C) Concurrent actions. Actions under rules 875—150.10(91C) and 150.11(91C) may proceed at the same time against a contractor.

875—150.13(91C) Out-of-state contractor bonds.

150.13(1) *Project size.* Before commencing a contract for a project in Iowa with a contract price in excess of \$5,000 in value, an out-of-state contractor shall file a valid original project or blanket surety bond with the division.

150.13(2) *Information.* The division bond forms shall be used. The bond shall include the identification of the contractor including the name and address, and a valid power of attorney from the surety company shall be attached. If the Iowa construction contractor registration number has been issued, it shall be included on the bond.

150.13(3) Surety company. The bond shall be executed by a surety company authorized to do business in this state.

150.13(4) Time. The bond shall be continuous in nature until canceled by the surety or for the two-year registration period in the case of a blanket bond.

150.13(5) Cancellation. The surety shall give the commissioner and the contractor 30 days' written notice indicating the desire to cancel the bond.

150.13(6) Federal preemption. Rules 875—150.13(91C) to 150.15(91C) shall be suspended to the extent necessary to prevent any inconsistency with the requirements of federal law or to prevent the denial of federal funds. In addition, contractors performing work undertaken on a federal aid project shall submit to the division a letter of legal justification for the suspension or a letter from the contracting agency that the requirements of this rule are inconsistent with the federal requirements.

875—150.14(91C) Project bonds.

150.14(1) Information. In addition to the requirements in subrule 150.13(2), the following shall be included on the bond:

- a. The name of the person for whom the construction work will be performed; and
- b. The identification of the contract including the project name, contract number or identification, address where the work will be performed and a copy of the contract.

150.14(2) Amount. The bond shall be in the amount of \$1000 or 5 percent of the contract price, whichever is greater. A separate bond is required for each contract. An increase in the bond may be required by the department of revenue pursuant to Iowa Code chapter 91C.

875—150.15(91C) Blanket bonds. A blanket bond shall be in an amount not less than \$50,000. The commissioner may increase the bond after a hearing conducted pursuant to 875—Chapter 1.

875—150.16(91C) Bond release.

150.16(1) Notifications. Prior to releasing a bond, the commissioner will notify the department of revenue, the unemployment insurance services division of the workforce development department, and applicable state subdivisions of the intent to release the bond. The commissioner shall provide ten days for the filing of objections to the release of the bond. The commissioner may deem any failure to respond to the notice within the time provided as an approval of the release.

150.16(2) Conditions for release. A bond shall not be released until the contractor has made payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and fees, which may accrue to the state of Iowa or its subdivisions on account of the execution and performance of the contract or approval for the release is obtained from the appropriate agencies.

These rules are intended to implement Iowa Code chapter 91C as amended by 2006 Iowa Acts, chapter 1176.

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[◇] Two or more ARCs

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