

**RULES
OF
STATE BUILDING COMMISSION**

**CHAPTER 1390-1-1
UNACCEPTABILITY FOR EMPLOYMENT ON
STATE BUILDING COMMISSION PROJECTS**

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1390-1-1-.01 CIRCUMSTANCES TO WHICH CHAPTER APPLIES.

- (1) For the purposes of this Chapter, the term “contract crime” shall mean fraud, bribery, collusion or conspiracy involving violation of federal or state criminal statutes in connection with any public contract.
- (2) For purposes of the Chapter, the term “employment on any contract” shall mean performing services or providing materials to the State of Tennessee on a State Building Commission project, as defined herein, or being a subcontractor of a person performing such services or providing such materials.
- (3) For purposes of this Chapter, the term “State Building Commission project” is any project over which the State Building Commission has the power to approve and supervise as set forth in Public Chapter No. 741 of the Acts of 1980, Section 3.
- (4) This Chapter applies to any person, firm or corporation or assets of any corporation as of the date of the convening of the federal grand jury in the United States District Court for the Middle District of Tennessee on August 20, 1979, which is convicted of, admits to or pleads guilty or nolo contendere to any contract crime or which assets thereof are utilized or involved in any contract crime.
- (5) This Chapter may apply to any corporation or its assets as of the date of the convening of the federal grand jury in the United States District Court for the Middle District of Tennessee on August 20, 1979, if any of its officers, directors, shareholders active in management or person holding any similar executive position in the corporation is convicted of, admits to or pleads guilty or nolo contendere to any contract crime or which assets thereof are utilized or involved in any contract crime.
- (6) This Chapter may apply to any partnership or assets of any partnership as of the date of the convening of the federal grand jury in the United States District Court for the Middle District of Tennessee on August 20, 1979, if any partner is convicted of, admits to or pleads guilty or nolo contendere to any contract crime or which assets thereof are utilized or involved in any contract crime.
- (7) This Chapter may apply to any joint venture, other association, person, legal entity or the assets of any joint venture, association, person or legal entity as of the date of the convening of the federal grand jury in the United States District Court for the Middle District of Tennessee on August 20, 1979, if any joint venturer, any managing agent, person entitled to share in the proceeds and engaged in the active management thereof, or any person holding an executive position thereof is convicted of, admits to or pleads guilty or nolo contendere to any contract crime or which assets thereof are utilized in any contract crime.
- (8) This Chapter may apply to any corporation or assets of any corporation as of the date of the convening of the federal grand jury in the United States District Court for the Middle District of Tennessee on August 20, 1979, if the illegal acts of any of its officers, directors, shareholders active in management or person holding any similar executive position in it were directly or indirectly responsible for a

(Rule 1390-1-1-.01, continued)

conviction, admission, plea of guilty or nolo contendere to a contract crime by any other firm, corporation, joint venture, person or legal entity or which assets thereof are utilized or involved in any contract crime by any other firm, corporation, joint venture, person or legal entity.

- (9) This Chapter may apply to any partnership or assets of any partnership as of the date of the convening of the federal grand jury in the United States District Court for the Middle District of Tennessee on August 20, 1979, if the illegal acts of any partner were directly or indirectly responsible -for a-conviction, admission, plea of guilty or nolo contendere to a contract crime by any other firm, corporation or joint venture, person or legal entity or which assets thereof are utilized or involved in any contract crime by any other firm, corporation, joint venture, person or legal entity.
- (10) This Chapter may apply to any joint venture, association, person, legal entity or assets of any joint venture. association, person or legal entity as of the date of the convening of the federal grand jury in the United States District Court for the Middle District of Tennessee on August 20, 1979, if the illegal acts of any joint venturer, managing agent, person entitled to share in the proceeds and engaged in the active management thereof, or person holding an executive position were directly or indirectly responsible for a conviction, admission, plea of guilty or nolo contendere to a contract crime by any other firm, corporation or joint venture, person or legal entity or which assets thereof are utilized or involved in any contract crime by any other firm, corporation, joint venture, person or legal entity.
- (11) For the purposes of this Chapter, the term “person” shall mean any person, firm, corporation, partnership, association, joint venture or legal entity.

Authority: T.C.A. §§4-15-104 and 4-15-102. **Administrative History:** Original Rule filed March 31, 1981; effective June 29, 1981.

1390-1-1-.02 PROCEDURE.

- (1) All invitations to bid shall require each respondent to state whether or not such respondent, its employees, agents, independent contractors and proposed subcontractors have been convicted of or have pled guilty or nolo contendere to any contract crime.
- (2) In the event that the State Building Commission shall learn, in whatever manner, that any person is subject to this rule, the State Building Commission shall immediately notify such person in writing. The notice shall advise such person
 - (a) Of the nature of this rule and its application to such person;
 - (b) That such person is unacceptable for employment on any contract involving a State Building Commission project for a period of 60 days from receipt of notice;
 - (c) That if such person is currently providing services to the State Building Commission under any contract, the obligations under such contracts are not affected;
 - (d) That such person may within 15 days provide to the State Building Commission such information and state. ments as such person desires the State Building Commission to consider in determining whether such person should be debarred from contracting with the state on State Building Commission projects and the length of the debarment to be imposed under this Chapter;
 - (e) That such person within sixty (60) days request a hearing before the State Building Commission to show cause why such person should not be debarred from employment on any contract on any State Building Commission project or to present evidence for consideration by the State

(Rule 1390-1-1-.02, continued)

Building Commission as to the length of the debarment to be imposed hereunder. An expedited hearing shall be held within a reasonable time with the Uniform Administrative Procedures Act, as amended, Section 4-5-101, et seq., used as a guideline for questions of procedure and admissibility of evidence, with the period of unacceptability set out in Rule 1390-1-1-.02(b) (2) being extended until such time as the State Building Commission or a Court having proper jurisdiction rules otherwise; and

- (f) Of the length of debarment which will automatically be imposed for failure to comply with either of the procedures outlined in Rule 1390-1-1-.02(b)(4) and (5).
- (3) The State Building Commission shall conduct such investigation as it shall deem necessary and proper and shall in any event consider any information and statements submitted.

Authority: T.C.A. §§4-15-104 and 4-15-102. **Administrative History:** Original Rule filed March 31, 1981; effective June 29, 1981.

1390-1-1-.03 PENALTY.

- (1) Failure of any person receiving notice hereunder to respond as set forth in either Rule 1390-1-1-.02(b)(4) or (5) shall result in automatic debarment of such person from employment on any contract on any State Building Commission project for a period of five (5) years commencing with the termination of the sixty (60) day period set out in rule 1390-1-1-.02(b)(2).
- (2) In the situation where any person receiving notice hereunder responds pursuant only to Rule 1390-1-1-.02(b)(4), the State Building Commission, after considering the results of the investigation and any information and statements submitted, shall within sixty (60) days of the notice required by Rule I 390-1-1-.02(b) notify in writing such person either that the State Building Commission deems such person not subject to this chapter or that such person is unacceptable for employment on any contract on any State Building Commission project for a period determined in the sole discretion of the State Building Commission, but not less than one (1) year nor more than five (5) years.
- (3) Should any person receiving notice hereunder respond pursuant to Rule 13904-1-.02(b)(5), the State Building Commission, after considering the entire record, shall within sixty (60) days of the hearing issue its final decision or order in writing notifying such person either that the State Building Commission deems such person not subject to this Chapter or that such person is unacceptable for employment on any contract on any State Building Commission project for a period determined in the sole discretion of the State Building Commission, but not less than one (1) year nor more than five (5) years.
- (4) In any event, the period for which a person is unacceptable for employment on a contract on a State Building Commission project may be increased or decreased in individual cases at any time, if in the judgment of the State Building Commission compelling reasons warrant such action.

Authority: T.C.A. §§4-15-104 and 4-15-102. **Administrative History:** Original Rule filed March 31, 1981; effective June 29, 1981.

1390-1-1-.04 NO LIMITATION.

This Chapter in no way limits the discretion of the State Building Commission to accept or reject bids in order to insure that accepted bids are fair and reasonable to the State.

Authority: T.C.A. §§4-15-104 and 4-15-102. **Administrative History:** Original Rule filed March 31, 1981; effective June 29, 1981.