



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Contractor Licensing Board

TITLE-SERIES: 28-04

RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Written Contracts for Services

CITE STATUTORY AUTHORITY: §30-42-10(c)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 08/16/2021 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Brooke M. Farber

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Any person licensed pursuant to the West Virginia Contractor Licensing Act must have a written contract with a customer for any contracting work with an aggregate value (including all materials and labor) of \$10,000 or more.

The proposed procedural rule includes the Contractor Licensing Board's minimum requirements that must be included in a written contract and a standard contract form that may be used by licensees when performing contracting work with an aggregate value of \$10,000 or more.

The proposed rule also includes a section on the Contractor Licensing Board's suggested written contract provisions, a section on a licensee's obligation to execute written contracts when required pursuant to the Contractor Licensing Act, a section on a licensee's obligation to provide copies of written contracts to the Board upon the Board's request, and a section that exempts contractor licensees of the West Virginia Board of Manufactured Housing Construction and Safety from compliance with the written contract requirements for the initial installation of a HUD-Code manufactured home.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

HB 2006, passed during the 2021 Regular Legislative Session and effective June 15, 2021, transferred administration and enforcement of the West Virginia Contractor Licensing Act from the Division of Labor to regulation under the provisions of professions and occupations in W. Va. Code Chapter 30, and created a new article, §30-42-1 et seq.

To incorporate the changes effected by passage of HB 2006 into the proposed rule, references to the repealed statutory code citations under Chapter 21 have been replaced with current statutory code citations under Chapter 30. Other changes, consistent with HB 2006, include technical corrections due to grammatical errors and reformatting, and language that is inconsistent with HB 2006 has been struck.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed rule will have no fiscal impact on revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed rule will have no fiscal impact on special revenue accounts.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

The proposed rule will have no fiscal impact on the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

NA

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Mitchell E Woodrum -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 28
PROCEDURAL RULE
WEST VIRGINIA CONTRACTOR LICENSING BOARD

SERIES 4
WRITTEN CONTRACTS FOR SERVICES

§28-4-1. General.

1.1. Scope. -- This procedural rule establishes minimum requirements that a licensee must include in a written contract for construction projects with an aggregate value of ~~\$10,000.00~~ \$10,000 or more. Pursuant to its responsibilities as set forth in W. Va. Code ~~§21-11-10(c)~~ 30-42-10(c), the Board has adopted a written contract form, attached to this rule as Appendix A, which can be downloaded from the ~~Division's~~ Division of Labor's website and/or the Board's website. A licensee may modify the provisions of the contract form as needed, as long as the modified contract includes the required provisions set forth in section ~~4-1 4~~ 4 of this rule.

1.2. Authority. -- W. Va. Code ~~§21-11-10(c)~~ 30-42-10(c).

1.3. Filing Date. -- ~~Technical change filed April 24, 2018.~~

1.4. Effective Date. -- ~~April 16, 2018.~~

§28-4-2. Definitions.

In addition to the definitions in this section, the definitions in W. Va. Code ~~§21-11-3~~ 30-42-3 are incorporated herein by reference.

2.1. "Act" means the West Virginia Contractor Licensing Act, W. Va. Code ~~§21-11-1~~ 30-42-1 *et seq.*

2.2. "Aggregate value" means the total combined cost of materials and labor for an entire construction project, including the cost of materials and labor furnished by a licensee and subcontractors, and the cost of materials furnished by the owner, if any.

2.3. "Board" means the West Virginia Contractor Licensing Board ~~or~~ and its authorized representatives.

2.4. "Construction project" means the entire undertaking as defined in 2.10 of this section.

2.5. "Contracting work" means and includes submitting a bid to perform construction work for another, the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor, or subcontractor) in fulfillment of a contract for the construction, alteration, repair, decoration, or improvement of a new or existing building or structure, or any part thereof, or for the alteration, capital improvement, or development of real property, or performing activity governed by any or all state building codes and the National Fire Protection Association Code and the National Electrical Code or its successor. The terms "contractor" and "contracting" are synonymous.

~~2-4.~~ 2.6. "Days" means business days unless otherwise stated.

~~2.5. "Division" means the West Virginia Division of Labor or its authorized representatives.~~

2.7. "License" means a license to engage in business in this state as a contractor in one of the classifications set out in the Act and 28 CSR 2.

~~2.6. 2.8. "Licensee" means a contractor who has been issued a valid contractor license pursuant to the provisions of the Act~~ the person to whom a license is issued. As used in this rule, "licensee" also means the principal or general contractor.

~~2.7. 2.9. "Owner" means the person for whom the licensee performs construction~~ contracting work.

2.10. "Undertaking" means the entire construction project, including the cost of all labor and materials required to accomplish it.

§28-4-3. Written Contracts Required.

Pursuant to the provisions of W. Va. Code ~~§21-11-10(b), prior to performing construction work on a project with an aggregate value of \$10,000.00 or more, a licensee shall have a written contract with an owner and with any subcontractor that the licensee hires to work on the project~~ 30-42-10(b), prior to performing contracting work on a construction project with an aggregate value of \$10,000 or more, a licensee shall have a written contract with an owner and with any subcontractor that the licensee hires to work on the project.

§28-4-4. Contract Form; Required Contract Provisions; Required Change Orders; Suggested Contract Provisions.

4.1. While there is no required format for a written contract, the written contract shall include at least the following provisions:

~~4.1.a. 4.1.1.~~ The licensee's name and business address;

~~4.1.b. 4.1.2.~~ The owner's name, address, and construction project address or location if different from the owner's address;

~~4.1.c. 4.1.3.~~ A description of the work to be performed by the licensee, including a description of the materials to be furnished by the licensee;

~~4.1.d. 4.1.4.~~ A description of the work to be performed by any subcontractors the licensee anticipates hiring, including a description of the materials to be furnished by the subcontractors;

~~4.1.e. 4.1.5.~~ A description of materials the owner intends to furnish, if any;

~~4.1.f. 4.1.6.~~ The total cost of the construction project and the terms of payment, including specification of a payment schedule;

~~4.1.g. 4.1.7.~~ The ~~project~~ construction project's start and completion dates;

~~4.1.h.~~ 4.1.8. A statement requiring the licensee and owner to sign and date a written authorization for any additions, modifications, or changes to the description of work to be performed, to the contract price, or to any other changes to the terms and conditions of the contract;

~~4.1.i.~~ 4.1.9. A statement requiring the licensee and owner to confirm licensee's disclosure regarding whether licensee has a valid and current general liability insurance policy;

~~4.1.i.~~ 4.1.10. Statement that licensee will enter into a written contract with any subcontractor that licensee hires to work on the project, and that the written contract between licensee and subcontractor will include all relevant provisions, terms and conditions as the contract between licensee and owner A statement that the licensee will enter into a written contract with any subcontractor that the licensee hires to work on the construction project, and that the written contract between the licensee and subcontractor will include all relevant provisions, terms, and conditions, including a statement requiring the licensee, subcontractor, and owner to confirm subcontractor's disclosure regarding whether subcontractor has a valid and current general liability insurance policy, as the contract between licensee and owner;

~~4.1.j.~~ 4.1.11. Licensee's The licensee's contractor license number and classifications;

~~4.1.k.~~ 4.1.12. A statement that all employees on the project, including employees of any subcontractor, are legally authorized to work in the United States;

~~4.1.l.~~ 4.1.13. Licensee's The licensee's workers' compensation policy number and unemployment insurance account number;

~~4.1.m.~~ 4.1.14. Description A description of any additional provisions, terms, or conditions of the contract;

~~4.1.n.~~ 4.1.15. Authorized licensee's signature, printed name, title, date, taxpayer ID number, business telephone number and email address; and

~~4.1.o.~~ 4.1.16. Authorized owner signature, printed name, title, date, email address and telephone number.

4.2. The Board recommends that a licensee include at least the following additional provisions in a written contract:

~~4.2.a.~~ 4.2.1. If any permits or licenses are required for the construction project, specification of who is responsible for obtaining and paying for them;

~~4.2.b.~~ 4.2.2. A description of the licensee's warranties, if any;

~~4.2.c.~~ 4.2.3. A statement regarding the licensee's and owner's responsibilities with regard to liens and lien waivers;

~~4.2.d.~~ 4.2.4. A description of the licensee's responsibilities for construction site maintenance, storage of equipment, materials and supplies, normal hours of work, and hours of work for loud construction activities; and

~~4.2.e.~~ 4.2.5. A description of the licensee's responsibilities with regard to any subcontractors that are hired by the licensee.

§28-4-5. Licensee's Failure to Execute a Written Contract.

A licensee who fails to execute a written contract as required by W. Va. Code ~~§21-11-10(b)~~ 30-42-10(b) and this rule may be subject to disciplinary action by the Board as provided for in W. Va. Code ~~§21-11-14~~ 30-42-15.

§28-4-6. Licensee's Obligation to Provide the Board ~~or Division~~ With a Copy of a Written Contract.

6.1. Upon request by the Board ~~or Division~~, a licensee shall submit copies of its written contracts.

6.2. If a licensee fails to submit copies of the requested contracts within 10 days of the Board's ~~or Division's~~ request, the licensee may be subject to disciplinary action by the Board as set forth in W. Va. Code ~~§21-11-14~~ 30-42-15.

§28-4-7. Exemption of ~~Manufactured Housing Construction and Safety Standards Board Licensees For the Initial Installation of a HUD-Code Manufactured Home~~ Board of Manufactured Housing Construction and Safety Licensees for the Initial Installation of a HUD-Code Manufactured Home.

Licensees of the West Virginia ~~Manufactured Housing Construction and Safety Standards Board~~ are exempt from compliance with this Board's written contract requirements for the initial installation of a ~~HUD-Code manufactured home~~ Board of Manufactured Housing Construction and Safety are exempt from compliance with this Board's written contract requirements for the initial installation of a HUD-Code manufactured home.

APPENDIX A - CONSTRUCTION CONTRACT

This contract is made between _____, Licensee, whose
Printed Name of Licensee
 principal place of business is located at _____
Address

and _____, Owner, whose address is _____
Printed Name of Owner Address

1. Work or Construction Project Location (if different from Owner's address above).

Street Address or Location

County Town or City

2. Services to Be Performed. Describe in detail and attach additional pages if needed.

2A. Licensee will furnish the following materials and equipment and perform the following work:

2B. Licensee, at Licensee's discretion, anticipates hiring subcontractors to furnish the following materials and equipment and perform the following work: _____

2C. If the Owner furnishes materials the following conditions will apply: _____

2D. Licensee and Owner agree that any additions or modifications to the description of services to be performed must be authorized by a written change order or written addendum and signed and dated by Licensee and Owner.

3. Contract Price.

3A. Licensee and Owner agree that the total cost of materials and work set forth in Article 2A and

2B above is \$ _____, _____
Dollar Amount Dollar Amount Written Out

3B. Licensee and Owner agree that any additions or deductions from this contract price must be authorized by a written change order or written addendum and signed and dated by Licensee and Owner.

4. Terms of Payment.

Licensee and Owner agree to the following payment schedule: _____

5. Construction Project Start Date and Completion Date.

5A. Licensee will start work on _____, and will complete work by _____
Date Date

5B. Licensee will promptly notify Owner of any changes to the start or completion date.

6. Permits and Approvals.

Licensee will be responsible for determining which permits are necessary for performing the specified work, and for obtaining and paying for all required permits.

7. Licensee's Warranties.

7A. Licensee warrants that all work will be completed in a good workman-like manner and in compliance with building codes or other applicable laws or ordinances.

7B. Licensee agrees to correct any defective work at no cost to Owner.

7C. Licensee's warranty under this section will be in effect for one year from the date of completion of the work.

8. Liens and Lien Waivers.

8A. Licensee represents and warrants that there will be no liens for labor, materials, equipment or appliances against the work covered by this Contract.

8B. Contingent upon payment from Owner, Licensee agrees to hold Owner free and harmless from and against any all liens and claims for labor, materials, equipment, services, or appliances furnished or used in connection with the work covered by this Contract.

8C. To protect Owner against liens being filed by Licensee, subcontractors, and material or equipment suppliers, Licensee agrees that final payment under Section 4 will be withheld by Owner until Licensee presents Owner with lien waivers, lien releases, or receipts acknowledging full payment from each subcontractor and materials and equipment suppliers.

9. Site Maintenance.

9A. Licensee will remove all construction debris from the construction site and leave the premises in "broom clean" condition.

9B. Licensee will perform the work covered by this Contract during the following hours:

_____.

9C. Licensee agrees that disruptively loud construction activities will be performed only at the following times: _____.

9D. At the end of each day's work, Licensee's equipment, materials and supplies will be stored in the following location(s): _____.

_____.

10. Subcontractors; Written Contract Between Licensee and Subcontractor.

10A. If Licensee engages subcontractors to perform services as set forth in Section 2B, Licensee will remain ultimately responsible for making sure that all work under this Contract is completed properly.

10B. Licensee warrants that Licensee is responsible for paying any subcontractor engaged to work on this project.

10C. Licensee warrants that any subcontractor engaged to perform work on any part of the project has a current West Virginia Contractor License and is licensed in the proper classification(s) for the scope of work to be performed by the subcontractor.

10D. Licensee warrants that Licensee will enter into a written contract with any subcontractor engaged to perform work under this Contract and that the contract between the Licensee and a subcontractor will include all the relevant terms, provisions and conditions, including Licensee's, subcontractor's, and Owner's confirmation of subcontractor's disclosure regarding whether subcontractor has a valid and current general liability insurance policy, as this Contract between the Licensee and Owner.

11. Compliance with Federal, State and Local Laws.

11A. Licensee represents and warrants that Licensee is in compliance with all federal, state and local laws applicable to the work to be performed under this Contract.

11B. Licensee warrants that Licensee has a current West Virginia Contractor License and is licensed to perform work in the following classification(s) under the following contractor license number:

_____.

Indicate the classification(s) and Contractor License Number

11C. Licensee warrants that all employees on the project, including employees of any subcontractor, are legally authorized to work in the United States.

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11D. Licensee warrants that Licensee's employees are covered by the following workers' compensation policy and unemployment insurance account:_____

Workers' Compensation Policy Number

Unemployment Insurance Account Number and State (if other than West Virginia)

11.E. Licensee has disclosed to Owner, and Owner has confirmed Licensee's disclosure, regarding whether Licensee has a valid and current general liability insurance policy.

12. Additional Provisions, Terms and Conditions.

Licensee and Owner agree to the following additional provisions, terms and conditions:

_____.

By their signatures below, the Licensee and Owner agree to be bound by the terms and conditions of this Contract.

The Licensee and Owner shall execute two (2) original Contracts, and two (2) original change orders or addenda, if any, so that the Licensee and the Owner shall each have a signed original Contract, change order or addendum.

LICENSEE:

_____ Authorized Signature	_____ Printed Name
_____ Title	_____ Date
_____ Taxpayer ID Number	_____ Business Telephone
_____ Email Address	

OWNER:

_____ Authorized Signature	_____ Printed Name
_____ Title	_____ Date
_____ Email Address	_____ Telephone