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**CHAPTER 70
CONTRACTORS**

SOURCE: This Chapter was added by P.L. 14-51, and later amended. The original enactment was to add §§ 19599 et seq. to the Government Code. The Chapter is placed here because of its relationship to prior Chapters of this Title. The entire Chapter was repealed and reenacted by P.L. 30-011:1 (Apr. 17, 2009).

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§ 70100. Definitions.

As used in this Chapter:

- (a) *Board* means the Contractors License Board.

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(b) *Contractor* means any person who undertakes to construct, alter, repair, add to, subtract from, improve, move, wreck *or* demolish any building, highway, road, railroad, excavation *or* other structure, project development or improvement *or* do any part thereof, including the erection of scaffolding *or* other structure of works in connection therewith for another person for a fee.

(c) Contractor includes a subcontractor and a specialty contractor.

(d) *Person* means an individual, partnership, joint venture, corporation *or* any combination thereof. Corporation includes an association, business trust *or* any organized group of persons.

(e) *Self-construction* means a project *or* operation performed by the owner for personal needs on personal premises; a self-constructed/performed project or operation *shall* otherwise be deemed performed by a contractor.

(f) *Investigator* means an employee with the Contractors License Board who conducts thorough investigations of applicants applying for a contractor's license and who inspects, regulates, and enforces the laws, rules and regulations of the Licensing Board for Contractors.

(g) *Responsible Management Employee* means the individual responsible for the direct management of the contracting business of the licensee.

§ 70101. Exemptions.

This Chapter *shall not* apply to:

(a) An officer *or* employee of the United States, the Territory *or* any political subdivision, *if* the project *or* operation is performed by employees thereof;

(b) Any person acting as a receiver, trustee in bankruptcy, administrator *or* executor, *or* any other person acting under any order *or* authorization of any court;

(c) A person who sells *or* installs any finished products, materials *or* articles *or* merchandise which are *not* actually fabricated into and *do not* become a permanent fixed part of the structure, *or* to the construction, alteration, improvement *or* repair of personal property;

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(d) Any project *or* operation for which the aggregate contract price for labor, materials and all other items is *less than* Two Thousand Five Hundred Dollars (\$2,500). This exemption *shall not* apply in any case wherein the undertaking is by a licensed contractor *or* is only part of a larger *or* major project *or* operation, whether undertaken by the same *or* a different contractor *or* in which a division of the project *or* operation is made in contracts of amounts *less than* Two Thousand Five Hundred Dollars (\$2,500) for the purpose of evading this Chapter *or* otherwise;

(e) A registered architect *or* professional engineer acting *solely* in a professional capacity;

(f) Any person who engages in the activities herein regulated as an employee with wages as *sole* compensation;

(g) Any person who undertakes either personally *or* through his *or* her employees, any project *or* operation for himself or herself; and

(h) Any co-partnership *or* joint venture *if* all members thereof hold licenses issued under this Chapter *or if* the person *or* persons who have direct management of the contracting business thereof hold a license for purposes of requiring additional contractor's licenses for the copartnership *or* joint venture.

§ 70102. Contractors License Board.

(a) There *shall* be a Contractors License Board compose of seven (7) members; two (2) of which *shall* be appointed by *I Maga 'lahi* from the construction industry; three (3) of which *shall* be appointed by *I Maga 'lahi* from the general public and who *shall* have no interest in the construction industry; the Director of Revenue and Taxation, ex-officio; and the Director of Public Works, ex-officio. Those members appointed by *I Maga 'lahi* are subject to confirmation by *I Liheslatura*. Their terms *shall* be four (4) years.

(b) The concurrence of four (4) members of the Board *shall* be necessary for the validity of any of its actions.

(c) Organization, Records, Reports. Immediately upon the appointment and qualifications of the original members, and annually thereafter, the Board *shall* organize by the election of one (1) member as Chairman and one (1) member as Vice-Chairman. The Board *shall* keep a complete record of all its proceedings and *shall* present annually to the Governor through the Executive Director a detailed statement of the

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previous year, proceedings and such recommendations as the Board may deem proper.

(d) Compensation. Members of the Board *shall* receive the sum of Fifty Dollars (\$50) for each attendance at the meetings of the Board, provided, however, that *no* member *shall* receive more than One Hundred Dollars (\$100) per month.

§ 70103. Powers and Duties of Board.

In addition to any other duties and powers granted by this Chapter, the Contractors License Board *shall*:

(a) Grant licenses to contractors pursuant to this Chapter;

(b) Make, amend *or* repeal such rules and regulations as it may deem proper to fully effectuate this Chapter and carry out the purpose thereof, which purpose is the protection of the general public. All such rules and regulations *shall* be adopted pursuant to the Administrative Adjudication Law. The rules and regulations may forbid acts *or* practices deemed by the Board to be detrimental to the accomplishment of the purpose of this Chapter. The rules and regulations may require contractors to make reports to the Board containing such items of information as will better enable the Board to enforce this Chapter and rules and regulations, *or* as will better enable the Board from time to time to amend the rules and regulations more to fully effectuate the purposes of this Chapter. The rules and regulations may require contractors to furnish reports to owners containing such matters of information as the Board deems necessary to promote the purpose of this Chapter. The enumeration of specific matters which may properly be made the subject of rules and regulations *shall not* be construed to limit the Board's general power to make all rules and regulations necessary to fully effectuate the purpose of this Chapter;

(c) Enforce this Chapter and rules and regulations adopted pursuant thereto;

(d) Suspend *or* revoke any license for any cause prescribed by § 70116 *or* for any cause for suspension *or* revocation prescribed by the rules and regulations, and refuse to grant any license for any cause which would be grounds for revocation *or* suspension of a license;

(e) Publish and distribute pamphlets and circulars containing such information as it deems proper to further the accomplishment of the purpose of this Chapter; and

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(f) Contract professional testing services as deemed necessary to prepare, administer, and grade applicant examinations as may be required for the purpose of this Chapter.

§ 70104. Executive Director; Other Assistants.

(a) The Contractors License Board *shall* employ an Executive Director. The Executive Director *shall* be employed with due regard to his *or* her fitness, thorough administrative ability and knowledge of and experience in the business of contracting. The Executive Director *shall* act only with the advice and consent of the Board and *shall* be responsible to the Board. The Executive Director *shall* devote his *or* her entire time to the duties of the office and *shall not* be actively engaged *or* employed in any other business, vocation *or* employment, *nor* have any pecuniary interest, direct *or* indirect, in any contracting enterprise *or* enterprises conducted *or* carried on within the Territory.

(b) The Executive Director *shall*, under the supervision of the Board, administer this Chapter and the rules and regulations and orders established thereunder and perform such other duties as the Board may require; *shall* attend but *not* vote at all meetings of the Board; and *shall* be in charge of the offices of the Board and responsible to the Board for the preparation of reports and the collection and dissemination of data and other public information relating to contracting.

(c) The Board may, by written order filed in its office, delegate to the Executive Director such of its powers *or* duties as it deems reasonable and proper for the effective administration of this Chapter, *except* the power to make rules *or* regulations. The delegated powers and duties may be exercised by the Executive Director in the name of the Board.

(d) Subject to the Personnel Law, the Executive Director may employ and remove such administrative and clerical assistants as may be required, and prescribe their powers and duties.

§ 70105. Place of Meeting.

The Executive Director *shall* provide suitable quarters for meetings of the Contractors License Board and for the transaction of its other business.

§ 70106. Classification.

(a) For the purpose of classification, the contracting business includes any *or* all of the following branches:

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- (1) General Engineering Contracting;
- (2) General Building Contracting;
- (3) Specialty Contracting; and
- (4) Responsible Management Employee (R.M.E.).

(b) A *General Engineering Contractor* is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions *or* subjects: irrigations, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric projects, levees, river control and reclamation works, highways, streets and roads, tunnels, airports and airways, sewer, sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and other liquid *or* gaseous substances, parks, playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, land leveling and earth-moving projects, excavating, grating, trenching, paving and surfacing work and cement and concrete works in connection with the above-mentioned fixed works.

(c) A *General Building Contractor* is a contractor whose principal contracting business is in connection with any structure built, being built *or* to be built, for the support, shelter and enclosure of persons, animals, chattels *or* movable property of any kind, requiring in its construction the use of more than two (2) unrelated building trades *or* crafts, *or* to do *or* superintend the whole *or* any part thereof.

(d) A *Specialty Contractor* is a contractor whose operations as such are the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades *or* crafts.

(e) A *Responsible Management Employee* is an individual responsible for the direct management of the contracting business of the licensee and has proved contracting knowledge by both written examination, as administered by the Board, and the fulfillment of requirements, as stated in Part II Section 2.2 of the Guam Contractors License Board Rules and Regulations.

§ 70107. Powers to Classify and Limit Operations.

(a) The Contractors License Board may adopt rules and regulations necessary to effect the classification of contractors and *shall* require a written examination in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which the licensed contractor is classified and qualified to engage, as defined in § 70106.

(b) A licensee may make application for classification and be classified in more than one (1) classification *if* the licensee meets the qualifications prescribed by the Board for such additional classification. For qualifying *or* classifying in additional classifications, the licensee *shall* pay the appropriate application fee but *shall not* be required to pay any additional license fee.

(c) This Section *shall not* prohibit a specialty contractor from taking and executing a contract involving the use of two (2) *or* more crafts *or* trades, *if* the performance of the work in the crafts *or* trades, other than in which the specialty contractor is licensed, is *less than* thirty-five percent (35%) and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

§ 70108. Licenses Required.

No person within the purview of this Chapter *shall* act, *or* assume to act, *or* advertise, as general engineering contractor, general building contractor *or* specialty contractor without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Contractors License Board.

§ 70108.1. Advertising.

(a) A Contractor may advertise in print *or* broadcast medium *only if* the contractor includes in the advertisement *or* listing the contractor's applicable and current license number, and provides proof of the number's validity to the publisher *or* producer of the advertising medium. Violation of this Section may be subject to the provisions of § 70116 and/or § 70121.

§ 70109. Investigation Permitted.

The Contractors License Board may investigate, classify and qualify applicants for contractor's licenses, and investigate for compliance with the

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rules and regulations of the Board and the provisions of this Chapter.

§ 70109.1. Investigation Citation Authority.

(a) In addition to any other remedy available, the investigator of the Contractors License Board may issue citations to acting contractors, licensed *or* unlicensed, in violation of the provisions of this Chapter and rules promulgated.

(b) Each citation *shall* be in writing and *shall* describe the basis of the citation, including the statutory provisions alleged to have been violated. The citation *shall* also contain an order to cease and desist from the violation, and an assessment of civil penalties *no less than* Two Hundred Dollars (\$200) but *not to exceed* fifty percent (50%) of the value of the project.

(c) Recipients of contractual work *shall* be notified of each violation in a timely manner.

§ 70109.2. Immediate Cease Work Order Permitted.

The investigator may issue an immediate cease work order to any person's construction activity where serious safety concerns are present.

§ 70109.3. Cease Work Order Permitted.

The Executive Director may issue a cease work order to any person's construction activity *if* found to be in violation of this Chapter and/or of any Contractors License Board rules and regulations.

§ 70110. No License Issued When.

No license hereunder *shall* be issued to:

- (1) Any person unless said person has filed an application and paid the applicable fees therefore;
- (2) Any person who *does not* possess a good reputation for honesty, truthfulness, financial integrity and fair dealing;
- (3) Any co-partnership *or* joint venture who *does not* actively participate in at least one (1) construction job in the course of the license year in the contracting business and thereof *does not* hold an appropriate license;
- (4) Any corporation, unless the contracting business thereof is under the direct management of an officer *or* employee thereof, and

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unless the officer *or* employee holds an appropriate Responsible Management Employee license;

(5) Any individual, unless eighteen (18) years of age *or* more; and

(6) Any person who employs other individuals as employees unless satisfactory proof is submitted by the person of a current workers' compensation insurance policy.

§ 70111. Application: Fees.

(a) Every applicant for a license under this Chapter *shall* file an application with the Contractors License Board in such form and setting forth such information as may be prescribed *or* required by the Board, and *shall* furnish such additional information bearing upon the issuance of the license as it *shall* require. Every application *shall* be sworn to before an officer authorized to administer oaths. In the case of a co-partnership, joint venture *or* corporation, any member *or* officer thereof may sign the application and verify the same on behalf of the applicant.

(b) Every application, in the case of an individual, *shall* be accompanied by sworn certificates of *not less than* two (2) persons who have known the applicant for a period of *not less than* six (6) months certifying that the applicant bears a good reputation for honesty, truthfulness and fair dealings.

(c) Every application for a license hereunder *shall* be accompanied by an application fee of Fifty Dollars (\$50.00)

§ 70112. Form of Licenses.

The form of every license *shall* be prescribed by the Contractors License Board and *shall* be issued in the name of the Board.

§ 70113. Place of Business and Posting of License.

A licensed contractor *shall* have and maintain a definite place of business in the Territory and *shall* display therein a personal contractor's license.

§ 70114. Fees; Annual.

(a) The annual fees for each license thereof prescribed by this Chapter *shall* be as follows:

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- (1) License Fee
 - License to act as specialty contractor.....\$400
 - License to act as general engineering contractor \$400
 - License to act as general building contractor..... \$400
- (2) License Fee for Responsible Management Employee (RME)
 - License to act as RME in specialty Contracting ...\$400
 - License to act as RME in general engineering contracting\$400
 - License to act as RME in general building contracting..... \$400
- (3) Reissuance of a license or issuance of a certified copy of license \$20
- (4) Application:\$50
- (5) Application for Additional Classifications \$50
- (6) Letter of Good Standing \$50
- (7) Study Guide\$75
- (8) Inactive license fee (in lieu of renewal fee)\$50
- (9) Exam Fee..... \$50

(b) The annual fee *or* inactive license fee *shall* be paid on *or* before June 30 of each year for a license year beginning on July 1. Failure, neglect *or* refusal of any licensee to pay the annual fee before such date *shall* constitute a forfeiture of license. Any such license may be restored upon written application, therefore, within one (1) year from such date and the payment of the required fee plus an amount equal to ten percent (10%) thereof.

(c) Upon written request by a contractor, and for good cause, the Board *shall* place an active license in an inactive status. The license, upon payment of the annual inactive license fee, may continue inactive for a period of three (3) years after which time it must be reactivated *or shall* automatically become forfeited. The license may be reactivated at any time within the three (3)-year period by fulfilling the requirements for renewal, including the payment of the appropriate renewal fee.

§ 70115. Action on Application.

Within forty-five (45) days after the filing of a proper application for a license and the payment of the required fees, the Contractors License Board *shall*:

(a) Conduct an investigation of the applicant and in such investigation may post pertinent information, including, but *not limited to*, the name and address of the applicant, and *if* the applicant is associated in any partnership, corporation *or* other entity, the names, addresses and official capacities of associates; and

(b) Either issue a license to the applicant *or* else notify the applicant in writing by registered mail of the Board's decision *not* to grant the license and specifically notify applicant of the right to have a hearing within fifteen (15) days from the receipt of the Board's decision. The hearing *shall* be conducted in accordance with § 70117.

§ 70116. Revocation, Suspension and Renewal of Licenses.

(a) The Contractors License Board may revoke any license issued hereunder, *or* suspend the right of the licensee to use such licenses, *or* refuse to renew any such license for any of the following causes:

(1) Conviction of any felony *or* misdemeanor involving moral turpitude;

(2) Any dishonest *or* fraudulent *or* deceitful act as a contractor which causes a substantial damage to another;

(3) Pursuing a continued and flagrant course of misrepresentation *or* of making false promises through advertising *or* otherwise;

(4) Abandonment of any construction project *or* operation without reasonable *or* legal excuse;

(5) Willful departure from *or* willful disregard of plans *or* specifications in any material respect without consent of the owner *or* ~~his~~ duly authorized representative, which is prejudicial to a person entitled to have the construction project *or* operation completed in accordance with such plans and specifications;

(6) Willful violation of any law of the Territory *or* of any political subdivision thereof, relating to building, including any violation of any applicable rule *or* regulation of the Department of

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Public Health, *or* of any applicable safety *or* labor law;

(7) Failure to make and keep records showing all contracts, documents, records, receipts and disbursements by a licensee of all ~~his~~ transactions as a contractor for a period of *not less than* three (3) years after completion of any construction project *or* operation to which the records refer *or* to permit inspections of such records by the Board;

(8) When the licensee being a co-partnership *or* a joint venture permits any member of such co-partnership *or* joint venture who *does not* hold a license to actively participate in the contracting business thereof;

(9) When the licensee being a corporation permits any officer *or* employee of such corporation who *does not* hold a license to have the direct management of the contracting business thereof;

(10) Misrepresentation of a material fact by an applicant in obtaining a license;

(11) Failure of a licensee to complete in a material respect any construction project *or* operation for the agreed price *if* such failure is without legal excuse;

(12) Willful failure in any material respect to comply with this Chapter *or* the rules and regulations promulgated pursuant thereto;

(13) Willful failure *or* refusal to prosecute a project *or* operation to completion with reasonable diligence;

(14) Willful failure to pay when due a debt incurred for services of materials rendered *or* purchased in connection with ~~his~~ operations as a contractor when the individual has the ability to pay *or* when the individual has received sufficient funds therefor as payment for the particular operation for which the services *or* materials were rendered *or* purchased;

(15) The false denial of any debt due *or* the validity of the claim therefor with intent to secure for licensee, employer *or* other person, any discount of such debt *or* with intent to hinder, delay *or* defraud the person to whom such debt is due;

(16) Failure to secure *or* maintain workmen's compensation insurance;

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(17) Knowingly entering into a contract with an unlicensed contractor involving work *or* activity for the performance of which licensing is required under this Chapter; *or*

(18) When the Responsible Management Employee and/or the majority stockholders have, under another corporate *or* company structure, caused the non-payment of employees wages and/or the abandonment of alien workers to become a burden on the Government.

(19) Willful failure to pay when due a debt *or* penalty incurred for damaging a public utility operated by the Guam Power Authority, the Guam Telephone Authority *or* the Guam Waterworks Authority and the Department of Public Works.

(20) Knowingly taps into any power, water, sewer line, *or* facility belonging to the Guam Power Authority and/or the Guam Waterworks Authority without first obtaining permission through the established service rules and regulations of each respective governmental agency.

(b) *No* license *shall* be suspended for longer than two (2) years and *no* person whose license is revoked *shall* be eligible for a new license until the expiration of two (2) years.

(c) For purposes of this Section, the Contractors License Board in cooperation and in conjunction with the Department of Public Works, Department of Revenue and Taxation and the Department of Labor may have investigative powers for purposes of carrying out the intent of this Section.

§ 70117. Hearings.

(a) In every case where it is proposed to refuse to grant a license *or* to revoke *or* suspend a license *or* to refuse to renew a license, the Contractors License Board *shall* give the person concerned notice and hearing in conformity with the Administrative Adjudication Law. The notice *shall* be given in writing by registered *or* certified mail with return receipt requested *at least* fifteen (15) days before the hearing.

(b) In all proceedings before it, the Board, and each member thereof, *shall* have the same powers with respect to administering oaths, compelling the attendance of witnesses and the production of documentary evidence and examining witnesses as are possessed by circuit judges at chambers. In case of disobedience by any person of any order of the Board, *or* any member thereof, *or* any subpoena issued by it, *or* the person, *or* the refusal

of any witness to testify to any matter regarding which the individual may be questioned lawfully, any judge of the Superior Court, on application by the Board thereof, *shall* compel obedience as in the case of disobedience of the requirements of a subpoena issued by the Superior Court, *or* a refusal to testify therein.

§ 70118. Appeal to Superior Court.

An applicant who has been refused a license and every licensee whose license has been suspended, revoked *or not* renewed may appeal the Contractors License Board's decision to the Superior Court in the manner provided in the Administrative Adjudication Law.

§ 70119. Disposition of Fees, Refunds.

(a) Notwithstanding the Central Accounting Act, all fees and money collected under the provisions of this Chapter *shall* be deposited in a special fund known as the *Contractors License Board Fund*. This Fund *shall* be kept in a bank licensed to do business on Guam and funds *shall* be paid out only upon a request for payment *or* requisition submitted by the Executive Director *or* its personnel and countersigned by the Chairman of the Board. All monies in this Fund *shall* require legislative appropriation.

(b) The Board may request the Treasurer of Guam to have any fee erroneously paid to it under this Chapter refunded when the Board deems it just and equitable.

§ 70120. Death *or* Dissociation.

No co-partnership, joint venture *or* corporation *shall* be deemed to have violated any provision of this Chapter by acting *or* assuming to act as a contractor after the death *or* dissociation of a licensee who had the direct management of the contracting business thereof prior to final disposition by the Contractors License Board of an application for a license made within thirty (30) days from the date of the death *or* dissociation.

§ 70121. Violation, Penalty.

Any person who violates *or* omits to comply with any of the provisions of this Chapter *shall* be fined an amount *no less than* Two Hundred Dollars (\$200) but *not to exceed* fifty percent (50%) of the value of the project.

§ 70122. Injunction.

The Contractors License Board may, in addition to any other remedies

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available, apply to a judge of the Superior Court for a preliminary *or* permanent injunction restraining any person from acting *or* assuming to act *or* advertising as general engineering contractor, general building contractor *or* specialty contractor, without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Board and upon hearing and for cause shown, the judge may grant the preliminary *or* permanent injunction.

§ 70123. Exemptions for Prior Licensees.

Any contractor who obtained a valid contractor's license under the existing license statute prior to July 1, 1977, *shall* be *exempt* from the provisions of this Chapter relative to application, investigations and examinations. Any contractor with a valid license issued prior to July 1, 1977, with a classification different from those enumerated in § 70106, *shall* be automatically placed in the appropriate classification without the necessity of complying with the application, investigation and examination provisions of this Chapter. All other provisions *shall* apply.
