

810-3-73.1-.02 Compliance Requirements and Procedures Concerning Provisional Construction Employers.

(1) A provisional construction employer is defined in Section 40-18-70, Code of Alabama 1975, and Rule 810-3-70-.03. For purposes of this regulation, the party contracting with a provisional construction employer shall be referred to as the contractor.

(2) Section 40-18-73.1, Code of Alabama 1975, and Rule 810-3-73.1-.01 require a provisional construction employer to provide a bond to the Alabama Department of Revenue and specify the proper format and the required amount of the bond.

(3) The bond must be transmitted to the Alabama Department of Revenue with a coversheet, which provides:

(a) The legal name and doing business as (dba), if applicable, of the construction employer deemed a provisional construction employer;

(b) The mailing address of the provisional construction employer;

(c) The Federal Employer Identification Number of the provisional construction employer;

(d) The Alabama withholding tax account number of the provisional construction employer;

(e) The type of bond instrument being provided and the amount;

(f) The name and address of the surety or financial institution, whichever is applicable, named on the accompanying bond instrument;

(g) The name and address of the contractor with which the construction employer has entered into a contract, resulting in the construction employer being deemed a provisional construction employer;

(h) The amount of the contract;

(i) The anticipated period of performance for the contract; and

(j) The number of employees anticipated to be working in Alabama on the contract.

(4) The bond coversheet must provide a statement, signed by the owner, partner, corporate officer or member of the provisional construction employer which authorizes the Alabama Department of Revenue to disclose the Alabama withholding tax filing,

reporting, and payment compliance of the provisional construction employer to either the contractor, surety or financial institution named on the bond coversheet, as required in order to administer Section 40-18-73.1, Code of Alabama 1975.

(5) Provided the provisional construction employer has registered for a withholding tax account number and upon receiving an acceptable bond instrument and a properly completed bond coversheet from the provisional construction employer, the Alabama Department of Revenue will issue a Notice of Compliance to the provisional construction employer.

(6) The provisional construction employer shall provide the contractor with the Notice of Compliance prior to the contractor making the first withdrawal or payment to the provisional construction employer.

(7)(a) Any construction employer that does not fall under the provisional construction employer requirements shall be required to provide the contractor with an Affidavit of Provisional Construction Employer Exemption prior to the contractor making the first withdrawal or payment to the construction employer.

(b) If a construction employer executes an Affidavit of Provisional Construction Employer Exemption on the basis that 50 or more employees will not be employed within the first twelve months of a construction contract but underestimates and employs 50 or more within the first year period, the construction employer must notify the Department of Revenue. Notification must be made within 30 days of employing 50 employees in Alabama in a construction contract, the cost of which is part of the capital cost of a qualifying entity as defined in Section 40-9D-3, Code of Alabama 1975. The Department of Revenue may require the construction employer to provide a bond to the Department of Revenue.

(8) The contractor will be required to retain all affidavits and compliance notices as required by Departmental Rule 810-3-70-.02 and shall make the contractor records available to the Alabama Department of Revenue.

(9) If the construction employer does not provide the contractor with a Notice of Compliance or Affidavit of Provisional Construction Employer Exemption, the contractor must retain from the payments made to the construction employer an amount equal to ten percent of the contract amount. Unless an extension is approved by the Alabama Department of Revenue, the retained amount must be remitted to the Alabama Department of Revenue for the payment of Alabama withholding taxes owed by the construction employer within thirty days of the effective date of the contract entered into between the contractor and the construction employer.

(10) The Alabama Department of Revenue will periodically review the Alabama withholding tax reporting, filing, and payment compliance of the provisional construction employer during the twelve months following the issuance of the Notice of Compliance.

(a) At the completion of the twelve months following the issuance of the Notice of Compliance, the Alabama Department of Revenue will notify the construction employer that the Alabama withholding tax payment and reporting requirements have been complied with according to law and that the employer will no longer be deemed a provisional construction employer, or

(b) The Alabama Department of Revenue will notify the provisional construction employer and the contractor, as named on the bond coversheet, that the payment and reporting requirements of the Alabama withholding tax laws have not been met and that the employer will continue to be deemed a provisional construction employer until such time the construction employer reports and pays all withholding taxes due the State, including past withholding taxes, interest and penalties due, for the twelve month period following the issuance of the Notice of Compliance.

(11) If the bond instrument is cancelled, expires, or is deemed unacceptable by the Commissioner of Revenue prior to the construction employer no longer being deemed a provisional construction employer, and a replacement bond instrument is not received by the Department within 15 days of the cancellation or expiration of the bond instrument, the provisional construction employer will be deemed in noncompliance of Section 40-18-73.1, Code of Alabama 1975 and the Notice of Compliance will be revoked. The provisional construction employer and the contractor will be notified of the revocation of compliance and the contractor will be required to retain an amount equal to ten percent of the remaining total contract amount, as stated in the contract between the contractor and the provisional construction employer, for payment of the provisional construction employer's Alabama withholding taxes, interest and penalties due the State of Alabama. Unless an extension is approved by the Alabama Department of Revenue, the retained amount must be remitted to the Alabama Department of Revenue within thirty days of receiving the revocation of notice of compliance from the Commissioner of Revenue.

(12) If the Department of Revenue determines that a construction employer falls under the provisional construction employer requirements, and is not in compliance with Section 40-18-73.1, Code of Alabama 1975, the Department of Revenue will notify the construction employer and the contractor that the construction employer is not in compliance with the bond requirements. Upon receipt of a notice of noncompliance from the Department of Revenue, the contractor will be required to retain an amount equal to ten percent of the remaining total contract amount, as stated in the contract between the contractor and the provisional construction employer, for payment of the provisional construction employer's Alabama withholding taxes, interest and penalties due the State of Alabama. Unless an extension is approved by the Alabama Department of Revenue, or the Department notifies the contractor that the provisional construction employer has come into compliance, the retained amount must be remitted to the Alabama Department of Revenue within thirty days of receiving a notice of noncompliance from the Commissioner of Revenue.

(13) If the provisional construction employer fails to comply with the requirements of filing and remitting all withholding taxes, interest and penalties, when due and demanded by the Alabama Department of Revenue, the department will make demand on the surety or financial institution for the payment of the amount of unpaid withholding taxes, interest and penalties due by the provisional construction employer.

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Authority: Sections 40-18-73.1 (Act 2007-199) and 40-2A-7(a)(5), Code of Alabama 1975

History: New rule: Filed June 6, 2008, effective July 11, 2008.