



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
BOARD FOR LICENSING CONTRACTORS

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<http://tn.gov/commerce/boards/contractors/>

INDEMNITIES

Guaranty Agreement and Bond Information

As a condition of initial licensing, the law requires the owner to supply a financial statement prepared by an independent Certified Public Accountant (CPA), with a **“Reviewed”** opinion (*required for a monetary limit of \$1,500,000 or less*); or **“Audited”** opinion (*required for a monetary limit exceeding \$1,500,000*). There is no exception and one must be supplied in order to obtain a license.

However, upon **renewing** the contractor is not required to supply a reviewed or audited financial statement.

- In lieu of a “Reviewed” statement, a compiled or one prepared by the contractor is acceptable to renew a license with a limit less than \$1,500,000.
- In lieu of an “Audit”, a “Reviewed” statement by the CPA is acceptable to renew a license with a monetary limit in excess of \$1,500,000.

Each license is issued to either a sole proprietor; partnership; corporation; or LLC. In addition, each license is assigned a monetary limit which is based upon 10 times the working capital and net worth (10%); the lesser of the two. This amount is based upon the financial statements assets and liabilities (*the application and renewal forms provide more details on items counted as current and long term*).

Many options are available for a contractor to support their working capital and net worth. If the contractor is lacking working capital, only, for the desired monetary limit, a “Line of Credit” (LOC) may be used at 100% value to supplement working capital, unless, there is a negative working capital or net worth; then only 50% is applied. The LOC does not supplement net worth; only an indemnity may be used to support the net worth, as well as the working capital. Indemnities such as a “Guaranty Agreement (GA)” with a supplemental financial statement may be used at 50% value. Also, a “Contractor’s License Bond” may be obtained in the amount of \$500,000 (for limits less than \$1,500,000); or \$1,000,000 (for limits exceeding \$1,500,000).

Example:

A contractor requesting a monetary limit of \$500,000 is required to show at least \$50,000 in both working capital and net worth (10 times the lesser of working capital and net worth - 10%).

If a contractor has \$40,000 working capital and \$100,000 net worth, the working capital needs to be supplemented. They have the option to either supply a “Line of Credit” in the amount of \$10,000 (*LOC is considered at full value since they are not negative*); or they may supply an indemnity, such as a personal financial statement with a “Guaranty Agreement” showing at least \$20,000 in working capital (*supplemental statements considered at 50% and these are not required to be a review or audit*); then the contractor would qualify for the \$500,000 limit. If they cannot obtain a LOC or GA, then they have the option to obtain a Bond, but the lowest amount is \$500,000.

Pursuant to Rule 0680-01-.13, the following are the typical conditions allowing a contractor to utilize an indemnity:

- **Supplement Working Capital and Net Worth** - Contractors showing a deficiency on their financial statement may provide a supplemental statement to support their CPA prepared statement in lieu of putting more capital into the business.

- **Subsidiaries Obtaining a License** – For those contractors not wanting the parent company to be the holder of the license, the business entity obtaining the license would then need to be indemnified by the owner/parent company of the business entity.
 - An in-house financial statement is acceptable for those subsidiaries without a separate review or audit, as long as a Review or Audit is provided by the owner/parent company.
- **Cash Statements** - Contractors submitting primarily a “cash” only financial statement with no fixed assets.

Guaranty Agreement

The Board may allow a contractor the option to utilize a “*Guaranty Agreement*” indemnity, with a supplemental personal or parent company financial statement (*in addition to a review or audit*). The supplemental statement may be a self-prepared personal statement or a parent company statement. This is in addition to the requirement of a CPA prepared Reviewed or Audited financial statement.

- The guarantee will expire at the time of renewal.
 - If it is needed when renewing, a new “Guaranty Agreement” must be provided.
- Signatures on the Guaranty Agreement
 - Person(s) listed on the personal financial statement would be required to sign as personal guarantor; or
 - The authorized owner/officer of the corporate or parent company statement would be required to sign as a corporate guarantor.
- The Guaranty Agreement is considered part of the financial statement and confidential; cannot be released without a subpoena with a protective order.

Contractor’s License Bond

If there are extenuating circumstances such as legal conflicts preventing the parent company from supplying a “Guaranty Agreement” as the indemnity agreement, the contractor may request to supply the Board with an original “*Contractor’s License Bond*” It must have the original signatures and in the exact format as the Board’s form; no deviation from the language is acceptable. Depending on the financial statement and monetary limit requested, the Board will consider either a \$500,000 (for limits less than \$1,500,000) or \$1,000,000 (for a limit more than \$1,500,000) bond amount. Please note, the “*Contractor’s License Bond*” may be used only in lieu of the “*Guaranty Agreement*” and does not waive any other license requirements.

- The bond must have a “Power of Attorney” attached from the bonding/insurance provider.
- The provider must have an approved rating from “*A.M Best Company, Inc.*”
- The bond cannot be released from liability for one (1) year after the license expiration or replacement of another indemnity (if required based on financial statement).

Confidential

The financial statement is considered confidential and not a matter of public record, pursuant T.C.A. § 62-6-124. In addition, the Board has determined effective *September 25, 2012*, that a “Guaranty Agreement” is considered part of the financial statement and also confidential. Non-public records requests would require a subpoena with a protective order.

(Rev. 9/25/12)

Contractor's License Bond

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, THAT
we, _____ as Principal and
_____ a _____
Corporation, having its principal office in the City of
_____, _____ as Surety, are held and firmly
bound unto the State of Tennessee, Department of Commerce and
Insurance, Board for Licensing Contractors, Nashville, Tennessee,
hereinafter called the Obligee, in the penal sum of five hundred
thousand and no/100 (\$500,000); OR one million and no/100
(\$1,000,000) lawful money of the United States of America to be paid
to said Obligee, for which payment well and truly to be made, we
bind ourselves, our heirs, executors, administrators, successors
and assigns, jointly and severally, firmly by these presents.

WHEREAS, a license has been granted by the Obligee to the above
bounden Principal authorizing the Principal to practice
contracting.

NOW THEREFORE, The conditions of the foregoing obligation are such
that if the Principal shall comply with and be subject to the
provisions of Contractor's License Law and Rules and Regulations
Title 62, then this obligation shall be null and void; otherwise to
remain in full force and effect.

Any person bringing claim against this bond may bring action in a
proper court of law for the amount of damages they may suffer as
the result of such act or omission by the Principal constituting
breach of a construction contract or breach of a contract for the
furnishing of labor, materials or professional services to
construction undertaken by the Principal in the performance of a
construction contract, except that such action must be brought
within one (1) year after the expiration of the license period
during which the act or omission occurred.

The aggregate liability of the Surety hereunder on all claims
whatsoever shall not exceed the penal sum of this bond in any
event.

The Surety may cancel this bond at any time by filing with the Obligee ninety (90) days written notice of its desire to be relieved of liability. The Surety shall not be discharged from any liability already accrued under this bond, or which shall accrue hereunder before the expiration of the ninety (90) day period.

Signed with our hands and sealed with our seals this, the _____ day of _____, 20_____.

Witness

By: _____
(Principal)

Witness

(Surety)

By: _____
Attorney-in-Fact

(Attach Power of Attorney)