

STERLING CONSTRUCTION CO INC
Form PRE 14A
March 17, 2009

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities

Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

Sterling Construction Company, Inc.
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
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- 1) Title of each class of securities to which transaction applies:
- 2) Aggregate number of securities to which transaction applies:
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1) Amount previously paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

STERLING CONSTRUCTION COMPANY, INC.
20810 Fernbush Lane
Houston, Texas 77073
Telephone: (281) 821-9091

NOTICE OF THE 2009 ANNUAL MEETING OF STOCKHOLDERS

Notice is hereby given that the 2009 Annual Meeting of Stockholders of Sterling Construction Company, Inc., a Delaware corporation, will be held as follows:

Date: May 6, 2009

Place: Hotel Valencia Riverwalk
150 East Houston Street
San Antonio, Texas 78205

Time: 9:00 a.m., local time

Purposes: To elect three Class II directors, each to serve for a term of three years and one Class I director to serve for the two-year balance of the Class I term, in each case until his successor is duly elected and qualified.

To approve the adoption of an Amended and Restated Certificate of Incorporation.

To consider the ratification of the selection of Grant Thornton LLP as the Company's independent registered public accounting firm for 2009.

Only the stockholders of record at the close of business on March 9, 2009 are entitled to notice of the meeting and to vote at the meeting or any adjournment of it.

By Order of the Board of Directors
April _____, 2009 Roger M. Barzun, Secretary

You are urged to complete, sign and date the enclosed proxy and to return it in the envelope provided.

The execution of a proxy will not affect a record holder's right to vote in person if present at the meeting.

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE
ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON MAY 6, 2009:

The Proxy Statement, Proxy Card and Annual Report to Stockholders for the fiscal year ended December 31, 2008 are available at our internet website, www.SterlingConstructionCo.com, on the "Investor Relations" page.

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STERLING CONSTRUCTION COMPANY, INC.

Proxy Statement for the 2009 Annual Meeting of Stockholders

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STERLING CONSTRUCTION COMPANY, INC.

20810 Fernbush Lane
Houston, Texas 77073
Tel.: (281) 821-9091

PROXY STATEMENT

FOR THE 2009 ANNUAL MEETING OF STOCKHOLDERS

GENERAL INFORMATION

This Proxy Statement and the enclosed Annual Report on Form 10-K are being sent to stockholders on or about April____, 2009.

In this Proxy Statement, Sterling Construction Company, Inc. is sometimes referred to as the Company, and the Board of Directors of the Company is sometimes referred to as the Board. The Company is furnishing this Proxy Statement to stockholders in connection with the solicitation of proxies by the Board for the 2009 Annual Meeting of Stockholders. The Annual Meeting will be held on May 6, 2009 at 9:00 a.m. local time at Hotel Valencia Riverwalk, 150 East Houston Street, San Antonio, Texas 78205.

The Record Date. The Company has established March 9, 2009 as the Record Date. The persons or entities whose names appear on the records of the Company as holders of the Company's common stock on the Record Date are entitled to notice of the Annual Meeting and to vote at the Annual Meeting or any adjournment of the meeting. On the Record Date, there were 13,189,838 shares of the Company's common stock outstanding.

Methods of Voting. There are two ways that as a record holder you may vote your shares. You may come to the Annual Meeting and vote in person, or you may appoint someone to vote your shares for you by giving that person a proxy. In this Proxy Statement, you are being asked to appoint each of James H. Allen, Jr., the Company's Senior Vice President & Chief Financial Officer, and Roger M. Barzun, the Company's Senior Vice President, Secretary & General Counsel, as your proxy holder to vote your shares in the manner you direct at the Annual Meeting and at any adjournment of the meeting.

Voting by Proxy. Your shares will be voted as you direct if —

- Your proxy is properly signed;
- Your proxy is returned to the Company before the Annual Meeting; and
- Your proxy is not revoked by you before the voting.

If you do not specify on your proxy how you want your shares voted, they will be voted in the following way —

FOR the election of the nominees for director listed on the proxy;

FOR the approval of the Amended and Restated Certificate of Incorporation; and

FOR the ratification of the selection of Grant Thornton LLP as the Company's independent registered public accounting firm.

The Board does not know of any proposal that will be presented for consideration at the Annual Meeting other than those three items.

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Revocation of a Proxy. You may revoke a proxy you have already given in any one of the following three ways:

- By sending to the Secretary of the Company, at the Company's address set forth above, a written statement saying that you wish to revoke your proxy;
 - By submitting another proxy dated later than a previous proxy; or
- By attending the Annual Meeting in person and notifying the chairman of the meeting that you wish to vote in person.

Quorum, Vote Required and Method of Counting.

The Quorum for the Meeting. A quorum must be present in order to hold the Annual Meeting. A quorum consists of the holders of a majority of the shares of common stock issued and outstanding on the Record Date. Holders of shares of common stock who are either present at the Annual Meeting in person or through representation by a proxy (including those who abstain from voting or who do not vote on one or more of the proposals) will be counted for purposes of determining whether there is a quorum present at the meeting.

Vote Required. Each share of common stock entitles the record holder to one vote on each of the matters to be voted on at the Annual Meeting.

In the election of directors (Proposal 1) a nominee who receives more votes for his election than against his election will be elected.

The approval of the Amended and Restated Certificate of Incorporation (Proposal 2) requires the affirmative vote of the holders of at least 75% of the outstanding shares of common stock of the Company.

For the effect of your vote on the ratification of the selection of Grant Thornton LLP as our independent registered public accounting firm for 2009 (Proposal 3) see the information below under the heading Ratification of the Selection of Independent Registered Public Accounting Firm (Proposal 3).

Method of Counting. The Company will not count as votes cast on a proposal either the shares of stockholders who abstain from voting on that proposal, or the shares held in "street" name by brokers or by nominees who indicate on their proxies that they do not have the discretionary authority to vote the shares on the proposal, which are known as broker non-votes. As a result, abstentions and broker non-votes will have no effect on the voting on Proposals 1 and 3. An abstention or broker non-vote on Proposal 2 has the effect of a no vote because of the requirement that the proposal must receive the affirmative vote of the holders of at least 75% of the shares of the Company's outstanding common stock.

The Solicitation of Proxies and Expenses. In addition to sending this Proxy Statement to stockholders, directors, officers and employees of the Company and, if deemed necessary, a third-party solicitation agent may solicit proxies using personal interviews, telephone calls, facsimiles and e-mail. The Company will request banks, brokerage houses and other custodians, nominees and fiduciaries to solicit their customers who are beneficial owners, but not record holders, of common stock and to forward proxy solicitation materials to those beneficial owners. The Company will reimburse them for the reasonable out-of-pocket expenses they incur in doing so and will pay the expenses of preparing, printing and mailing this Proxy Statement, the enclosed form of proxy, the Company's Annual Report on Form 10-K for 2008 and any other solicitation materials.

The 2008 Annual Report. A copy of the Company's Annual Report on Form 10-K for the year ended December 31, 2008, which has been filed with the Securities and Exchange Commission, or SEC, contains financial statements and other information of interest to stockholders. A copy of that Annual Report is enclosed with this Proxy Statement.

ELECTION OF DIRECTORS (Proposal 1)

The Composition of the Board. The Company's Certificate of Incorporation divides directors into three classes. The term of each class is three years and the terms are staggered so that at each Annual Meeting of Stockholders, the term of one of the classes expires. A director holds office until the expiration of his or her term and until a successor is elected and qualified unless the director dies, resigns or is removed from the Board. In that case, the Board has the authority to appoint a replacement. The Bylaws of the Company permit the Board to determine from time to time how many directors the Company will have. The size of the Board is currently set at nine directors. The term of the three Class II directors expires at the 2009 Annual Meeting. Because one of the incumbent Class I directors, David R. A. Steadman, was elected a Class I director in June 2008 to serve only until the next Annual Meeting of Stockholders, the nominee for that directorship will be elected to serve until the 2011 Annual Meeting of Stockholders, when the term of the other Class I directors expires.

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Director Independence.

The following table shows the Company's independent directors at the date of this Proxy Statement and the committees of the Board on which they serve. Each of these directors has in the past and continues to satisfy the Nasdaq Stock Market's definition of an independent director. Each member of the Audit Committee, the Compensation Committee and the Corporate Governance & Nominating Committee also satisfies Nasdaq's independence standards for service on those committees. In addition, the members of the Audit Committee satisfy the independence requirements of the SEC's Regulation §240.10A-3. Independent directors have voted Mr. Abernathy Lead Director. The following shows the independent directors of the Company and their membership on Board committees.

Director's Name	Committee Assignment
John D. Abernathy	Audit Committee (Chairman) Compensation Committee Corporate Governance & Nominating Committee
Robert W. Frickel	Compensation Committee (Chairman) Corporate Governance & Nominating Committee
Milton L. Scott	Corporate Governance & Nominating Committee (Chairman) Audit Committee
Donald P. Fusilli, Jr.	Audit Committee Compensation Committee
David R. A. Steadman	Corporate Governance & Nominating Committee
Christopher H. B. Mills	None

The relationship between Mr. Frickel's accounting firm and the Company is described below under the heading Business Relationships with Directors and Officers.

In determining that Mr. Mills is independent under Nasdaq rules, the Board of Directors considered the fact that Mr. Mills is the Chief Executive Officer of NASCIT, which is a stockholder holding less than 10% of the Company's outstanding common stock and therefore under applicable rules and regulations is not an affiliate of the Company. The Board also considered the payments of interest that the Company made on a promissory note it issued to NASCIT in 2001 in connection with the Company's acquisition of Texas Sterling Construction Co., or TSC, and the fact that the note was paid in full on June 30, 2005. The Board has concluded that under Nasdaq's standards for independence, neither of Mr. Frickel's nor Mr. Mills' relationship to the Company adversely affects his independence. In reaching this conclusion, the Board also relied on the fact that both Messrs. Frickel and Mills were directors at the time that the Company applied for the listing of its common stock on Nasdaq and that they qualified as independent at that time.

The Nominees and Continuing Directors.

The following table lists the nominees for director and the directors whose terms continue after the Annual Meeting. Each of the nominees has stated his willingness to serve if elected. If any nominee is unable to serve, persons named in the enclosed proxy may vote for a substitute nominee. The Board has no reason to believe that any of the nominees will be unable to serve. The enclosed form of proxy cannot be voted by the proxy holders for more persons than the number of nominees named in this Proxy Statement. Information about the number of shares of common stock of the Company owned by the nominees and the continuing directors can be found below under the heading Stock Ownership Information.

Nominees	Current Position	Age	Class
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				Director	Term
				Since	Expires
John D. Abernathy	Director	71	II	1994	2012
Robert W. Frickel	Director	65	II	2001	2012
Milton L. Scott	Director	52	II	2005	2012
David R. A. Steadman	Director	71	I	2005	2011
				Director	Term
Continuing Directors	Current Position	Age	Class	Since	Expires
Donald P. Fusilli, Jr.	Director	56	III	2007	2010
Maarten D. Hemsley	Director	58	III	1998	2010
Christopher H. B. Mills	Director	55	III	2001	2010
Patrick T. Manning	Chairman of the Board of Directors & Chief Executive Officer	63	I	2001	2011
Joseph P. Harper, Sr.	Director, President, Treasurer & Chief Operating Officer	63	I	2001	2011

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The Background of the Nominees.

John D. Abernathy. Mr. Abernathy was Chief Operating Officer of Patton Boggs LLP, a Washington D.C. law firm, from January 1995 through May 2004 when he retired. He is also a director of Par Pharmaceutical Companies, Inc., a New York Stock Exchange-listed company that manufactures generic and specialty drugs, and Neuro-Hitech, Inc., a company that manufactures generic drugs, the shares of which are traded on the over-the-counter market. Mr. Abernathy is a certified public accountant. In December 2005, Mr. Abernathy was first elected Lead Director by the independent members of the Board of Directors.

Robert W. Frickel. Mr. Frickel is the founder and President of R.W. Frickel Company, P.C., a public accounting firm that provides audit, tax and consulting services primarily to companies in the construction industry. Prior to the founding of R.W. Frickel Company in 1974, Mr. Frickel was employed by Ernst & Ernst. Mr. Frickel is a certified public accountant.

Milton L. Scott. Mr. Scott is Chairman and Chief Executive Officer of the Tagos Group, a strategic advisory and services company in supply chain management, transportation and logistics, and integrated supply. He was previously associated with Complete Energy Holdings, LLC, a company of which he was Managing Director until January 2006 and which he co-founded in January 2004 to acquire, own and operate power generation assets in the United States. From March 2003 to January 2004, Mr. Scott was a Managing Director of The StoneCap Group, an entity formed to acquire, own and operate power generation assets. From October 1999 to November 2002, Mr. Scott served as Executive Vice President and Chief Administrative Officer at Dynegy Inc., a public company that was a market leader in power distribution, marketing and trading of gas, power and other commodities, midstream services and electric distribution. From July 1977 to October 1999, Mr. Scott was with the Houston office of Arthur Andersen LLP, a public accounting firm, where he served as partner in charge of the Southwest Region Technology and Communications practice.

David R. A. Steadman. Mr. Steadman is President of Atlantic Management Associates, Inc., a management services and investment group. An engineer by profession, Mr. Steadman served as Vice President of the Raytheon Company from 1980 until 1987 where he was responsible for commercial telecommunications and data systems businesses in addition to setting up a corporate venture capital portfolio. Subsequent to that and until 1989, Mr. Steadman was Chairman and Chief Executive Officer of GCA Corporation, a manufacturer of semiconductor production equipment. Mr. Steadman serves as a director of Aavid Thermal Technologies, Inc., a provider of thermal management solutions for the electronics industry, a privately-held company. Mr. Steadman also serves as Chairman of Tech/Ops Sevcon, Inc., a public company that manufactures electronic controls for electric vehicles and other equipment. Mr. Steadman is a Visiting Lecturer in Business Administration at the Darden School of the University of Virginia.

The Background of the Continuing Directors.

Donald P. Fusilli, Jr. Mr. Fusilli is presently the principal of the Telum Group, a professional consulting firm. From January 2008 to January 2009, he was the Chief Executive Officer of a marine services subsidiary of David Evans and Associates, Inc., a company that provides underwater mapping and analysis services. From May 1973 until September 2006, Mr. Fusilli served in a variety of capacities at Michael Baker Corporation, a public company listed on the American Stock Exchange that provides a variety of professional engineering services spanning the complete life cycle of infrastructure and managed asset projects. Mr. Fusilli joined Michael Baker Corporation as an engineer and over the course of his career rose to president and chief executive officer in April 2001. From September 2006 to January 2008, Mr. Fusilli was an independent consultant providing strategic planning, marketing development and operations management services. Mr. Fusilli is a director of RTI International Metals, Inc., a New York Stock Exchange-listed company that is a leading U.S. producer of titanium mill products and fabricated metal

components. He holds a Civil Engineering degree from Villanova University, a Juris Doctor degree from Duquesne University School of Law and attended the Advanced Management Program at the Harvard Business School.

Maarten D. Hemsley. Mr. Hemsley served as the Company's President and Chief Operating Officer from 1988 until 2001, and as Chief Financial Officer from 1998 until August 2007. From January 2001 to May 2002, Mr. Hemsley was also a consultant to, and thereafter has been an employee of, JO Hambro Capital Management Limited, which is part of JO Hambro Capital Management Group Limited, or JOHCMG, an investment management company based in the United Kingdom. Mr. Hemsley has served since 2001 as Fund Manager of JOHCMG's Leisure & Media Venture Capital Trust, plc, and since February 2005, as Senior Fund Manager of its Trident Private Equity II LLP investment fund. Mr. Hemsley is a director of Tech/Ops Sevcon, Inc., a U.S. public company that manufactures electronic controls for electric vehicles and other equipment, and of a number of privately-held companies in the United Kingdom. Mr. Hemsley is a Fellow of the Institute of Chartered Accountants in England and Wales.

Christopher H. B. Mills. Mr. Mills is a director of JOHCMG. Prior to founding JOHCMG in 1993, Mr. Mills was employed by Montagu Investment Management and its successor company, Invesco MIM, as an investment manager and director, from 1975 to 1993. He is the Chief Executive of North Atlantic Smaller Companies Investment Trust plc, which is a part of JOHCMG and a 3.82% holder of the Company's common stock. Mr. Mills is a director of two U.S. public companies, W-H Energy Services, Inc., a New York Stock Exchange-listed company that is in the oilfield services industry, and SunLink Healthcare Systems, Inc., a publicly-traded, non-urban community healthcare provider for seven hospitals and related businesses in four states in the Southwest and Midwest. Mr. Mills also serves as a director of a number of public and private companies outside of the U.S. in which JOHCMG funds have investments.

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Patrick T. Manning. Mr. Manning joined the predecessor of Texas Sterling Construction Co., the Company's Texas construction subsidiary, which along with its predecessors is referred to as TSC, in 1971 and led its move from Detroit, Michigan into the Houston market in 1978. He has been TSC's President and Chief Executive Officer since 1998 and Chairman of the Board of Directors and Chief Executive Officer of the Company since July 2001. Mr. Manning has served on a variety of construction industry committees, including the Gulf Coast Trenchless Association and the Houston Contractors' Association, where he served as a member of the board of directors and as President from 1987 to 1993. He attended Michigan State University from 1969 to 1972.

Joseph P. Harper, Sr. Mr. Harper has been employed by TSC since 1972. He was Chief Financial Officer of TSC for approximately 25 years until August 2004, when he became Treasurer of TSC. In addition to his financial responsibilities, Mr. Harper has performed both estimating and project management functions. Mr. Harper has been a director and the Company's President and Chief Operating Officer since July 2001, and in May 2006 was elected Treasurer. Mr. Harper is a certified public accountant.

The Executive Officers of the Company. In addition to Messrs. Manning and Harper, the only other executive officers of the Company are James H. Allen, Jr. and Roger M. Barzun.

James H. Allen, Jr. Mr. Allen became the Company's Senior Vice President & Chief Financial Officer in August 2007. He spent approximately 30 years with Arthur Andersen & Co., including 19 years as an audit and business advisory partner and as head of the firm's Houston office construction industry practice. After being retired for several years, he became chief financial officer of a process chemical manufacturer and served in that position for over three years prior to joining the Company. Mr. Allen is a certified public accountant.

Roger M. Barzun. Mr. Barzun has been the Company's Vice President, Secretary and General Counsel since August 1991. He was elected a Senior Vice President from May 1994 until July 2001 and again in March 2006. Mr. Barzun has been a lawyer since 1968 and is a member of the bar of both New York and Massachusetts. Mr. Barzun also serves as general counsel to other corporations from time to time on a part-time basis.

THE AMENDMENT AND RESTATEMENT OF THE CERTIFICATE OF INCORPORATION (Proposal 2)

Adoption of the Amended and Restated Certificate of Incorporation. On March 13, 2009, the Board of Directors adopted, subject to stockholder approval, an Amended and Restated Certificate of Incorporation, or charter. If the Amended and Restated Certificate of Incorporation is approved by stockholders, it will become effective upon filing with the Secretary of State of the State of Delaware.

Reasons for the Adoption of the Amended and Restated Certificate of Incorporation. The amendment and restatement of the charter is designed to bring the charter more in line with current concepts of good corporate governance; to clarify some of its terms; and to conform it more closely to those of other Delaware public corporations. In addition, certain current restrictions and requirements in the charter were designed to protect the Company's substantial book tax loss carryforwards, or tax benefits. The tax benefits have substantially been used up by the Company or have expired, so the Board of Directors has determined that those restrictions and requirements are no longer necessary or appropriate. The full text of the proposed Amended and Restated Certificate of Incorporation is set forth and attached as Exhibit A to this Proxy Statement.

Required Approval. As mentioned above, the approval of the restatement and amendment of the charter requires the approval of the holders of at least 75% of the Company's outstanding shares of common stock. This is because the current charter requires that many, but not all, of the proposed amendments require such a vote. One of the reasons for amending and restating the charter is to eliminate most of those requirements.

Summary. The following is a summary of the proposed amendments contained in the amended and restated charter. It is qualified in its entirety by reference to the full text of the Amended and Restated Certificate of Incorporation, which is attached to this Proxy Statement as Exhibit A. The amended and restated charter does the following:

- Eliminates the requirement for a written ballot in the election of directors.
- Provides that the call of a special meeting requires only the approval of the Board of Directors, which under the Bylaws, may act by majority vote if a quorum of directors is present. In the current charter, only a majority of the total number of authorized directors (currently nine directors) may call a special meeting of stockholders.
- Eliminates in its entirety Article SIXTH, which contains the restrictions on stockholders acquiring more than 4.5% of the Company's common stock that were designed to protect the Company's tax benefits.
- Eliminates the requirement that an amendment to the Company's Bylaws by stockholders requires approval by the holders of at least 75% of the Company's common stock and replaces it with a requirement that an amendment to the Company's Bylaws by stockholders be approved by the affirmative vote of the holders of a simple majority of all classes and series of the Company's outstanding capital stock voting together as a single class. Currently the Company has only one class of capital stock outstanding, common stock.
- Eliminates the requirement that the affirmative vote of the holders of at least 75% of the Company's common stock is required to remove directors and replaces it with a requirement that the removal of directors requires the affirmative vote of the holders of a simple majority of all classes and series of the Company's outstanding capital stock voting together as a single class.
 - Eliminates the requirement that an amendment to the following article