

**PROPOSED REGULATION OF
THE OFFICE OF ECONOMIC DEVELOPMENT**

LCB File No. R102-13

November 5, 2013

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-10, NRS 231.1408.

A REGULATION relating to economic development; adopting provisions governing the certification of local emerging small businesses by the Office of Economic Development; interpreting certain provisions relating to reports concerning local emerging small businesses submitted to the Office; adopting provisions governing the establishment of goals for the participation of local emerging small businesses in certain contracts relating to purchasing and public works; and providing other matters properly relating thereto.

Section 1. Chapter 231 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. 1. *The Office will certify as a local emerging small business a business that satisfies the requirements set forth in this section and NRS 231.1405 and 231.14055.*

2. To obtain certification as a local emerging small business, a business must;

(a) Submit a complete application to the Office on a form prescribed and provided by the Office.

(b) Attest on the application that the business satisfies the criteria to be certified as a local emerging small business, as set forth in NRS 231.1405.

(c) Submit to the Office the documentation required by the Office to establish that the business satisfies the criteria set forth in NRS 231.1405.

3. A business may submit to the Office an application to obtain certification as a local emerging small business and the supporting documentation required by subsection 2 by using the Office's online application process or by mail or in person at the address provided on the application form.

4. Upon receipt of a complete application, the Office will review the application and supporting documentation submitted by the applicant and determine whether the applicant satisfies the requirements to obtain certification as a local emerging small business, as set forth in this section and NRS 231.1405 and 231.14055.

5. The Office may delay or deny the certification of an applicant for certification as a local emerging small business if the applicant fails to disclose information required by the application or submits a materially incomplete application.

6. The Office will provide each applicant for certification as a local emerging small business written notification of its determination of whether the Office has determined to certify the applicant as a local emerging small business.

Sec. 3. For the purpose of determining whether a business satisfies the criteria for certification as a local emerging small business, as set forth in NRS 231.1405, the Office interprets the requirement that a business:

1. Maintain its principal place of business in this State to mean that the address identified on the state business license of the business must be a physical address located in this State.

2. Be operated for profit to mean that the normal business operations of the business are intended to earn a profit and that the income or profit of the business is distributable to its owners.

Sec. 4. *For the purpose of determining whether a business satisfies the criteria for certification as a Tier 1 business or a Tier 2 business pursuant to NRS 231.1405, the Office:*

1. Interprets the term “annual gross receipts” to mean the total amount of sales by the business during a fiscal year as reported on the business’s federal income tax return.

2. Will determine that a business is “involved in providing construction services” if the business:

(a) Is a person who is licensed pursuant to chapter 624 of NRS and who provides labor, materials, equipment or supplies for the construction, repair or reconstruction of any building, highway, road, railroad, excavation or other structure, project, development or improvement;
or

(b) Employs as an employee of the business a design professional as defined in NRS 338.010.

3. Will determine that a business is “involved in the sale of goods” if the business sells goods as defined in NRS 104.2105.

Sec. 5. *An applicant for certification as a local emerging small business and each local emerging small business certified by the Office shall notify the Office of any change in its business address, electronic mail address or telephone number and of any other change which may affect its eligibility to be certified as a local emerging small business.*

Sec. 6. *1. A certification as a local emerging small business is valid until 2 years after the last day of the month in which it is issued or renewed, unless the certification is renewed.*

2. Not less than 60 days before the expiration of the certification of a local emerging small business, the Office will send to the local emerging small business a written notice of the expiration of the certification and an affidavit on a form prescribed by the Office which the

local emerging small business may complete and return to the Office to renew its certification. The failure of a local emerging small business to receive a notice does not excuse it from the requirement to comply with the provisions of subsection 3.

3. To renew its certification, a local emerging small business must submit to the Office, at least 10 days before the expiration of the certification, the completed affidavit provided by the Office pursuant to subsection 2 and all supporting documentation required by the Office to establish that the local emerging small business continues to satisfy the criteria set forth in NRS 231.1405. The affidavit and documentation required by this subsection may be submitted to the Office through the Office's online renewal process or by mail or in person to the address identified on the affidavit.

4. If a local emerging small business submits an affidavit and all supporting documentation required by the Office at least 10 days before the expiration date of the certification, the certification of the local emerging small business is valid until the Office determines whether the local emerging small business satisfies the requirements for certification set forth in NRS 231.1405.

5. The Office may delay or deny the renewal of a certification as a local emerging small business if the local emerging small business fails to comply with the requirements of this section.

Sec. 7. 1. Any individual, firm or agency who believes that a local emerging small business does not satisfy the criteria to be certified as a local emerging small business, as set forth in section 2 of this regulation and NRS 231.1405 and 231.14055, may file a complaint with the Office.

2. Upon receipt of a complaint, the Office will investigate the allegations made in the complaint.

3. The Executive Director shall appoint a panel of three individuals who must not be employees of the Office to review the information, documentation and other materials obtained during the Office's investigation and to make a determination of whether the local emerging small business that is the subject of the complaint satisfies the criteria to be certified as a local emerging small business.

4. The Office will issue to the complainant and the local emerging small business that is the subject of the complaint written notice of the determination of the panel appointed pursuant to subsection 3.

5. The Office may revoke the certification of a local emerging small business if the panel appointed pursuant to subsection 3 determines that the local emerging small business does not satisfy the criteria to be certified as a local emerging small business, as set forth in section 2 of this regulation and NRS 231.1405 and 231.14055.

Sec. 8. 1. The Office may conduct investigations to determine whether a local emerging small business satisfies the criteria to be certified as a local emerging small business, as set forth in section 2 of this regulation and NRS 231.1405 and 231.14055.

2. The Office may revoke the certification of a local emerging small business if the Office determines that the local emerging small business does not satisfy the criteria to be certified as a local emerging small business, as set forth in section 2 of this regulation and NRS 231.1405 and 231.14055.

Sec. 9. 1. For the purposes of the reports required to be submitted to the Office pursuant to NRS 332.201, 333.177 and 338.1427, the Office interprets the term "solicited to

submit a bid or proposal” to mean issuing an invitation to participate in a bid or proposal for a local purchasing contract, state purchasing contract or contract for a public work, as applicable.

2. As used in this section, “contract for a public work” means a written contract between a contractor and a public body for the provision of labor, materials, equipment or supplies for a public work and a written contract between a design professional and a public body who is not a member of a design-build team for the provision of services in connection with a public work. As used in this subsection, “contractor,” “design professional,” “design-build team,” “public body” and “public work” have the meanings ascribed to them in NRS 338.010.

Sec. 10. *1. The Office will meet with authorized representatives of the Purchasing Division of the Department of Administration and the State Public Works Division of the Department of Administration to receive input and provide advice concerning the establishment and achievement of the goals required to be established pursuant to subsection 1 of NRS 231.1407.*

2. The Office will meet with authorized representatives of the governing body of each local government in a county whose population is 100,000 or more to receive input and provide advice concerning the establishment and achievement of goals for the award of local purchasing contracts and contracts for public works of the local government to local emerging small businesses.