

**LCB File No. R014-02**

**PROPOSED REGULATION OF THE  
STATE CONTRACTORS' BOARD**

**NOTICE OF INTENT TO ACT UPON A REGULATION**

**Notice of Hearing for the Adoption, Amendment or Repeal of Regulations  
of the State of Nevada Contractors' Board**

The State of Nevada Contractors' Board ("Board") will hold a public hearing at the Board's Reno Office located at 9670 Gateway Drive, Suite 100, Reno, Nevada 89511 on Friday, April 19, 2002. The hearing will begin at 10:00 a.m. The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment or repeal of regulations that pertain to Chapter 624 of the Nevada Administrative Code. The Board conducted a workshop on the proposed regulation on March 1, 2002. As a result of the workshop changes were made to the proposed regulation.

The following information is provided pursuant to the requirements of NRS 233B.060 and 233B.0603:

**1. The need for and purpose of the proposed regulation or amendment.**

The purpose of the proposed regulations are to provide Rules of Practice for Board proceedings and to amend the regulation that provides for preference in bidding on certain public works projects to comply with legislation passed by the 2001 session.

**2. Either the terms or the substance of the regulations to be adopted, amended or repealed or a description of the subjects and issues involved.**

The proposed regulation set forth the standards by which persons appearing before the board must comply. In addition, the regulation concerning preference in bidding on public works projects is being amended to comply with recent legislative change. A copy of the proposed regulations may be obtained by writing to the Board's offices at 9670 Gateway Drive, Reno, Nevada 89511.

**3. The estimated economic effect of this proposed regulation on the business which it is to regulate and on the public.**

**(a) Adverse and beneficial effects.**

There should be no economic effect on either the construction business or the public.

**(b) Both immediate and long-term effects.**

There should be no immediate or long-term effects.

**4. The estimated cost to the Agency for enforcement of the proposed regulation.**

The cost for enforcement of the proposed regulation will be minimal.

**5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary.**

The proposed regulation does not overlap or duplicate any regulation of other state or local governmental entities.

**6. If the regulation is required pursuant to federal law, a citation and description of the federal law.**

Does not apply.

**7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

Does not apply.

**8. Whether proposed regulation establishes a new fee or increases an existing fee.**

Does not apply.

Persons wishing to comment upon the proposed action of the Board may appear at the scheduled public hearings or may address their comments, data, views or arguments, in written form to the Executive Officer of the Nevada State Contractors' Board, 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 or in Reno at 9670 Gateway Drive, Suite 100, Reno, Nevada 89511. Written submissions must be received by the Board on or before Wednesday, April 17, 2002. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted, amended or repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notices and the regulation to be adopted will be available at the State Contractors' Board, 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 and 9670 Gateway Drive, Suite 100, Reno, Nevada 89511. In all counties in which an office of the Board is not maintained, a copy of this notice and the text of the proposed regulation will also be available for public inspection and copying at the main public library during business hours. This notice and the text of the proposed regulation will be available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the Board, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been mailed to all persons on the agency's mailing list of administrative regulations and posted at the following locations:

Washoe County Court House  
Washoe County Library  
Reno City Hall  
Las Vegas City Hall  
Sawyer State Building  
Clark County Library  
Offices of the State Contractors' Board in Reno and Las Vegas

Dated: March 18, 2002

# **PROPOSED REGULATION OF THE STATE CONTRACTORS' BOARD**

## **Proposed Rules of Practice and Procedure Before the Nevada State Contractors' Board**

### ***DEFINITIONS***

*NAC 624.XXX Answer: Document, drafted by the Respondent, responding to the allegations in the Complaint.*

*NAC 624.XXX Board: The Nevada State Contractors' Board.*

*NAC 624.XXX Complaint: Charging document, issued by the Executive Officer of the Board or designee, containing a short and plain statement of the acts or omissions alleged to violate a statute or rule.*

*NAC 624.XXX Decision and Order: Written document containing the discipline to be imposed by the Board against the Respondent.*

*NAC 624.XXX Default Order: A judgment entered against the Respondent who has failed to plead or otherwise defend against the Board's allegations..*

*NAC 624.XXX Notice of Complaint and Requirement to Answer: Document, issued by the Executive Officer of the Board or designee, notifying a Licensee that the Board's staff have initiated a complaint against the Licensee and that the Licensee is required to Answer the Complaint.*

*NAC 624.XXX Notice of Hearing: Written document containing the date, time, place, and nature of the hearing to be held and a statement of the legal authority and jurisdiction under which the hearing is to be held.*

*NAC 624.XXX Parties: Means the subject of the hearing and any other person the Board determines will be treated as a party in a matter before the Board.*

*NAC 624.XXX Respondent: The Licensee or Applicant charged in the Complaint with a violation of a statute or rule.*

### ***PROCEEDINGS***

*NAC 624.XXX Applicability:*

*1. The provisions of this chapter govern practices before the commission. The Board will liberally construe the provisions of NAC 624 to determine all matters before the Board in a just, speedy and economical manner.*

2. *To the extent that any action before the board is not covered by these provisions, the board may follow the applicable rule in the Nevada Rules for Civil Procedure.*

3. *The Board may permit deviation from these Regulations if the deviation would not have a material adverse affect on the substantial interests of the parties; and good cause for the deviation appears; and*

*NAC 624 XXX. Receipt of communications and documents. A written communication or document is considered officially received by the board only if it is:*

1. *Filed at the board's office in Las Vegas or Reno and addressed to the Executive Officer of the board; or*

2. *Presented to the board during a hearing.*

*NAC 624.XXX Informal Disposition:*

1. *Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, or other disposition that does not require a full Board hearing. If an informal disposition is made, the Respondent may waive the requirement for formal Findings of Fact and Conclusions of Law.*

2. *(NAC 624.XXX Service: Service of any document by the Board upon the Respondent is effective upon the document's deposit in the U.S. Postal Service, by certified mail, return receipt requested, addressed to the Respondent's address on file with the Board, or by personal service as provided for in the Nevada Revised Statutes for service in civil actions. There is a rebuttable presumption that a document has been received upon the expiration of 10 days after the document has been deposited in the United States mail. Once such service is given, it will thereafter be the responsibility of the Respondent to become acquainted with subsequent hearing dates*

*NAC 624.XXX Commencement of a Contested Case, Complaint:*

1. *Commencement And Service: A contested case is commenced by serving a copy of the Complaint and Notice of Complaint and Requirement to Answer upon the Respondent. in 2. Causes of Action: The Executive Officer shall have the authority to add or dismiss any disciplinary cause of action against a Respondent prior to Board hearing on that cause of action.*

2. *Address of Respondent: The address of a Respondent, which is on file with the Board, shall be deemed to be his correct address. A Respondent shall provide to the Board, within 30 days, written notice of any change in his address*

3. *Waiver of Notice: Any contention that improper notice was given will be deemed waived unless it is raised by the Respondent at the Board Hearing or prior to the introduction of any evidence into the record.*

4. *Amendment of Complaint: The Complaint may be amended at any time.*

(a) *Prior to the hearing: An Amended Complaint will be filed and served in the same manner as an original Complaint. The 30 day notice requirement is waived when the Board files an Amended Complaint. A continuance may be granted whenever the amendment materially alters the Complaint.*

5. *Withdrawal of Complaint: A Complaint may be withdrawn at any time prior to the hearing by the Executive Officer or designee. After the hearing has begun, a Complaint may be withdrawn only upon motion and approval by the Board.*

***NAC 624.XXX Continuances:***

***1. A Respondent or the Respondent's authorized representative may request a Continuance of a Hearing for a showing of good cause. Requests for Continuances must be submitted to the Executive Officer of the Board in writing on the form prescribed by the Board. The request must be received by the Executive Officer 10 days prior to the date of the Hearing.***

***2. Requests for continuances must specify the reasons constituting good cause for the grant of the continuance. A request for continuance received less than 10 days prior to the Hearing must show the request to be of an emergency nature which arose within the 10 days prior to the Hearing.***

***3. The Executive Officer or designee has the discretion to grant a continuance, prior to a hearing. The Board may grant a continuance in its discretion at any hearing.***

***NAC 624.XXX Form of Papers: All papers filed or submitted to the Board in a contested case will be typewritten on one side only, on 8 1/2 by 11-inch white paper. The first page of each document will name the parties to the contested case and any file number that may have been assigned by the Board.***

***NAC 624.XXX Answer:***

***1. Requirement to Answer: In all contested cases, the Respondent will file an Answer by the date noticed in the Requirement to Answer. The Answer will be in writing, signed by the Respondent and/or his representative, and will contain a specific response to each allegation in the Complaint. The response will either admit or deny the allegation, or will state that the Respondent has insufficient information to admit or deny the allegation***

***2. Failure to Answer: If the Respondent has not filed an Answer or otherwise properly responded to the Complaint, the Respondent is subject to Default.***

***NAC 624.XXX Witness Interviews: Witness interviews may be scheduled by the Board's staff to review evidence and testimony. ..***

***NAC 624.XXX Notice Before Disciplinary or Licensing Hearing, Service: The time and place for the hearing shall be fixed by the Board, and notice of the time and place of hearing shall be served on the parties at least 30 days before the date fixed for the hearing. A proof of service must be attached to the original of any document served by mail.***

***NAC 624.XXX Joinder: The Board may consolidate two or more proceedings into one hearing whenever it appears that the issues are substantially the same and the interests of the parties will not be prejudiced by such consolidation. The order of procedure at any consolidated hearing will be determined by the presiding officer.***

***NAC 624.XXX Motions:***

***1. Motions will be made in writing, unless otherwise allowed by the Board during the course of the hearing.***

***2. All written motions must set forth the nature of the relief sought and the grounds therefor.***

***3. A party desiring to oppose a motion may serve and file a written response to the motion.***

*4. The moving party may serve and file a written reply only if an opposition to the motion has been served and filed.*

*A decision on a motion will be rendered without oral argument unless the Board requests oral argument.*

*NAC 624.XXX Subpoenas:*

*1. Issuance: The chairman Executive Officer or designee may issue subpoenas requiring the attendance of witnesses production of books, records, documents, or other evidence. (NRS 624.170(2)(c)).*

*2. Request for Subpoena by Party: A party may request the issuance of a subpoena in writing stating the facts, which purport to demonstrate that the subpoena is required. Such request must be sent to the Board sufficiently in advance of the Hearing for which the subpoena is issued.*

*(a) The party requesting the subpoena shall serve the subpoena and shall be responsible for the payment of witness fees and expenses.*

*NAC 624.XXX Hearings:*

*1. Testimony must be under oath. All testimony to be considered by the Board in a formal hearing, except matters noticed officially or entered by stipulation, must be sworn testimony.*

*2. Hearing Time Limit: The Board retains the right to establish and enforce time limits to hear all matters. Such time limits may be established on a case by case basis.*

*3. Oaths and Affirmations: Unless limited by a specific statute, any person authorized to preside over a hearing in a contested case may administer oaths or affirmations to witnesses appearing in the hearing. (NRS 233B.1233)*

*4. Representation of Parties :*

*(a) Parties appearing before the Board may appear on their own behalf or may be represented by an attorney in good standing and admitted to practice in Nevada. Non-attorneys may not represent any party in a legal capacity.*

*(b) Service upon attorney. The Board may serve any party who is represented by an attorney in a proceeding solely through the offices of the representing attorney.*

*(c) Withdrawal of attorney. Any attorney of record wishing to withdraw from a proceeding before the board, must immediately notify the board, the party whom he represented and all other parties to the proceeding.*

*(c) Persons appearing before the Board shall conform to the recognized standards of ethical and courteous conduct. Failure by a party to behave in a manner conducive to proper functioning of the Board will authorize the Board to:*

*(1) Exclude the party or their representative from the hearing; or*

*(2) Terminate the hearing.*

*5. Failure to Appear: Failure to appear at the time and place set for hearing will be deemed a waiver of the right to present evidence. After presentation to the Board of an offer of proof that the respondent was given proper notice, and upon a determination by the Board that proper notice was given to the Respondent, the Board may proceed to hear evidence without the participation of the absent party and may make its decision based on such evidence.*

*6. Order of Proceedings: The sequence to be followed for all contested cases is as follows:*

*(a) The Hearing is called to order and the parties are introduced on the record.*

*(b) Notice of Complaint and Requirement to Answer, Complaint, Notice of Hearing, Answer, and the investigator's file are placed in evidence.*

*(c) Any preliminary motions, stipulations, or agreed orders are entertained. Any administrative details are attended to.*

*(d) The Board staff presents its case.. The Respondent is entitled to cross-examination. Board members have the right to question any witness at any time.*

*(e) Respondent presents its case.. The Board staff is entitled to cross-examination. Board members have the right to question any witness at any time.*

*(f) If permitted by the Board, closing arguments are presented.*

*(g) Deliberations are subject to the Nevada Open Meeting Law. Deliberation may take place at this time, at the discretion of the Board.*

*(k) This procedure may be modified at the discretion of the board including taking witnesses out of order to expedite or ensure the fairness of the proceeding.*

*8. Transcription: Oral proceedings, or any part thereof, will only be transcribed upon the request of a party. The party requesting the transcript shall be required to pay the costs of the transcription. (NRS 233B.121(7))*

#### *NAC 624.XXX Evidence:*

*1. Irrelevant, immaterial or unduly repetitious evidence may be excluded. Evidence may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent men and women in the conduct of their affairs.*

*2. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available.*

*3. Every witness will declare, by oath or affirmation, that he or she will testify truthfully.*

*4. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues in the case even though such matter was not covered in the direct examination, impeach any witness regardless of which party first called the witness to testify, and rebut the evidence.*

*5. Official notice may be taken of cognizable facts and of generally recognized technical or scientific facts within the Board's specialized knowledge. The Board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.*

#### *NAC 624.XXX Adverse Witness:*

*1. Any party or witness may be called as an adverse witness. In such a case, examination of the witness will be allowed as if under cross-examination.*

*2. Upon a showing that a witness was called in good faith, and that the party calling the witness has been surprised by the testimony, examination of the witness may proceed as if under cross-examination.*

#### *NAC 624.XXX Formal Findings of Fact, Conclusions of Law, and Decision And Order:*

*1. A Decision And Order, excluding Default Orders, adverse to a Respondent in a contested case shall be in writing or stated on the record. Except as provided in subsection 5 of NRS 233B.121, a final decision shall include Findings of Fact and Conclusions of Law, separately stated.*

*2. A Respondent has the right to waive formal Findings of Fact and Conclusions of Law. Should a Respondent waive such right:*



*(a) The matter remains a contested hearing and*

*(b) The Board is not required to adopt formal Findings of Fact and Conclusions of Law.*

*3. Findings of Fact, Conclusions of Law, and Decision and Orders shall be based upon substantial evidence.*

*4. Findings of Fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.*

*5. If, in accordance with agency regulations, a party submitted proposed Findings of Fact and Conclusions of Law,*

*(a) The Board will distribute the proposed Findings of Fact and Conclusions of Law to all parties;*

*(b) Each party may comment on the proposed Findings of Fact and Conclusions of Law;*

*(c) Upon presentation to the Board, the Board will review each Finding of Fact and Conclusion of Law and all comments.*

*6. The Proposed Findings of Fact and Conclusions of Law are set on the agenda for Board consideration, discussion, motion, and adoption. The Board's decision shall include a ruling upon each proposed finding.*

*7. Parties shall be notified either personally or by certified mail of the adoption of any Findings of Fact, Conclusions of Law, and Decision and Order. Upon request a copy of the Findings of Fact, Conclusions of Law, and Decision and Order shall be delivered or mailed forthwith to each party and to the Respondent's attorney of record, if any. (NRS 233B.125)*

*8. Parties shall be notified of their right to appeal any Findings of Fact, Conclusions of Law, or Decision and Order of the Board. This notification is given to the Respondent at the time of the disciplinary or licensing hearing before the Board. (NRS 233B.130(1)(B))*

*9. The Decision and Order shall be final and binding 30 days after notification to the Respondent of the Decision and Order.*

*NAC 624.XXX Reconsideration, Vacation, Modification, Rehearing: Unless otherwise provided by law:*

*1. A petition for reconsideration, vacation, modification or rehearing of any Decision and Order, issued by the Board, shall be served on all parties within 15 days after the date of service of the final Decision and Order.*

*2. Responses, if any, will be served 5 days after the receipt of the petition for reconsideration or rehearing.*

*3. Any petition motion for reconsideration, vacation, modification or rehearing shall state the specific grounds upon which relief is requested.*

*(a) If a Respondent petitions for a reconsideration, vacation, or modification of the final Decision and Order, the Board's evaluation will be based on evidence submitted to the Board at the previous hearings.*

*(b) If a Respondent petitions for a rehearing and seeks to present new evidence, the Respondent must provide to the Board a statement of the reason for the Respondent's failure to introduce the proposed new evidence in the original proceeding and a detailed description of the new evidence proposed to be introduced.*

*5. The Board may designate one of its members to decide petitions for reconsideration, vacation, modification, or rehearing. Such decision will be made within 15 days after the filing of the petition. If a new hearing is required, the decision on the petition for*

*reconsideration or rehearing will state the time, date, and place of the new hearing and the basis for requiring a new hearing.*

*6. The Board will review the request to determine whether there is good cause for reconsideration of the order. If the Board determines that good cause for reconsideration exists, the Board shall schedule a hearing and notify the Respondent, in writing, of the time and place of the hearing.*

*7. Any order by the Board granting or denying the petition will be served on all parties at least 5 days before the expiration of the time for filing the petition for judicial review. 8. If a motion for rehearing is granted by the Board, the Respondent shall bear the costs for such rehearing.*

## **GENERAL PROVISIONS**

*NAC 624.XXX Computation of Time: Except as otherwise provided by law, in computing time periods under these Regulations, the first day on which any act occurs which causes a time period to begin to run is not counted, and the last day of the period is, unless the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the next day which is not a Saturday, Sunday, or legal holiday.*

*NAC 624.XXX Additional Time After Service by Mail: Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper, other than process, upon the party and the notice or paper is served upon the party by mail, 3 days shall be added to the prescribed period.*

*NAC 624.XXX Severability If any part of these Regulations are held to be invalid by a court of competent jurisdiction, the holding will not affect the remaining parts of the Regulations.*