

**ADOPTED REGULATION OF THE  
STATE PUBLIC WORKS BOARD**

**LCB File No. R095-04**

Effective December 15, 2004

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

AUTHORITY: §§1-9 and 33, NRS 338.1375 and 338.1376; §§10-21, NRS 338.1376; §§22-32, NRS 338.1375.

A REGULATION relating to public works; establishing criteria that a subcontractor must meet to be qualified to be included in a bid on a public work; providing a procedure for the submission of an application for qualification by a subcontractor; requiring the Manager of the State Public Works Board to appoint a committee to review and score applications for qualification submitted by subcontractors; establishing the period for which a subcontractor determined not to be qualified to be included in a bid on a public work will be disqualified; providing a procedure pursuant to which a subcontractor may appeal a determination of disqualification; authorizing the Manager to deny requests to withdraw applications for qualification submitted by subcontractors; providing for the revocation of a determination that a subcontractor is qualified to be included in a bid on a public work; revising the criteria that prime contractors must meet to become qualified to bid on a public work; authorizing the Manager to deny requests to withdraw applications to qualify to bid on public works submitted by prime contractors; and providing other matters properly relating thereto.

**Section 1.** Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 24, inclusive, of this regulation.

**Sec. 2.** *As used in NAC 338.150 to 338.280, inclusive, and sections 2 to 24, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Administrative proceeding” means a hearing for which there is:*

- 1. A notice of hearing in a contested case;*
- 2. A right to be represented by counsel;*

3. *An opportunity to respond and present evidence;*

4. *A record of the proceeding; and*

5. *A finding of fact and a conclusion of law.*

Sec. 4. *“Board” means the State Public Works Board.*

Sec. 5. *“Final completion” means that 100 percent of the work of the contract and general conditions of the contract are satisfied.*

Sec. 6. *“Manager” means the Manager of the Board appointed pursuant to NRS 341.100.*

Sec. 7. *“Prime contractor” has the meaning ascribed to it in NRS 338.010.*

Sec. 8. *“Public work” means a public work, as defined in NRS 338.010, that is under the jurisdiction of the Board.*

Sec. 9. *“Substantial completion” means that the construction of a public work is, in accordance with the contract documents, sufficiently complete that the owner can occupy and utilize the public work for its intended use.*

Sec. 10. *As used in sections 10 to 21, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 11 to 16, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 11. *“Business entity associated with the principal personnel” means a business entity in which the principal personnel of a subcontractor is or was the sole proprietor, a partner, the chairman or a member of the board of directors, or a shareholder owning 10 percent or more of outstanding stock in the business entity.*

Sec. 12. *“Committee” means the committee appointed pursuant to section 19 of this regulation.*

**Sec. 13.** *“Cost category” means the category of public works set forth in section 18 of this regulation for which a subcontractor may be required to apply for qualification.*

**Sec. 14.** *“Principal personnel” means the owner and any corporate officer or qualified employee listed on the contractor’s license of the subcontractor.*

**Sec. 15.** *“Subcontractor” has the meaning ascribed to it in NRS 338.010.*

**Sec. 16.** *“Successfully completed project” means that the construction or the portion of the construction for which the subcontractor was responsible was completed:*

*1. Within the deadline for completion specified in the contract, as adjusted by any change order or extension of time granted; and*

*2. In compliance with any remaining contractual requirements, including close-out documents, within 90 days after substantial completion of the contract.*

**Sec. 17.** *1. The following criteria will be used to determine whether a subcontractor who submits an application for qualification is qualified pursuant to NRS 338.1376 to be included in a bid:*

*(a) The financial ability of the subcontractor to perform the contract. The subcontractor must include with his application for qualification:*

*(1) A certified original statement of the bonding capacity of the subcontractor obtained from a surety which is authorized to issue bid, performance and payment bonds in this State and which:*

*(I) Has received a rating of “A-” or better, as determined by A.M. Best Company of Oldwick, New Jersey; and*

*(II) Is included on the list of approved sureties in Circular 570 of the Department of the Treasury.*

↳ *The requirements of sub-subparagraphs (I) and (II) do not apply if the surety is Lloyd's of London. The certified original statement must specify the present single and aggregate limits of the subcontractor to work on a public work.*

*(2) If the subcontractor is going to be performing work for which he is required to be licensed pursuant chapter 624 of NRS, evidence that the subcontractor is properly licensed pursuant to that chapter.*

*(3) A statement regarding whether the subcontractor, principal personnel or any business entity associated with the principal personnel has filed as a debtor under the United States Bankruptcy Code during the 5 years immediately preceding the date of the application.*

*(b) The qualifications of the principal personnel of the subcontractor. The subcontractor must include in his application for qualification a description of the professional qualifications and relevant experience of the principal personnel of the subcontractor and list not more than 10 public works and private construction projects, or any combination thereof, within the cost category for which the subcontractor is applying for qualification that have been successfully completed by the principal personnel. For each successfully completed project included on the list, the subcontractor must provide:*

- (1) The name of the project or the name of the prime contractor on the project;*
- (2) The scope of the project or the scope of the portion of work within the project for which the principal personnel was responsible;*
- (3) The dollar amount of the project or the dollar amount of the portion of work within the project for which the principal personnel was responsible; and*
- (4) The month and year of substantial completion and final completion of the contract or portion of work for which the principal personnel was responsible.*

*(c) Whether the subcontractor, the principal personnel or any business entity associated with the principal personnel has been found to be in breach of contract by a court of competent jurisdiction or through binding arbitration during the 5 years immediately preceding the date of the application. For each such action, the subcontractor must include in the application for qualification a description of:*

- (1) The circumstances surrounding the action;*
- (2) Whether any liquidated damages were imposed in connection with the action; and*
- (3) Any judgment entered against the subcontractor, principal personnel or business entity associated with the principal personnel relating to the action.*

*(d) Whether the subcontractor, the principal personnel or any business entity associated with the principal personnel has been disqualified from the award of any contract pursuant to NRS 338.017 or 338.13895 during the 5 years immediately preceding the date of the application.*

*(e) The past performance history of the subcontractor, the principal personnel and each business entity associated with the principal personnel during the 5 years immediately preceding the date of the application. The subcontractor must include in the application for qualification:*

- (1) A description of:
  - (I) Any civil judgment, findings of fact, administrative proceeding, criminal conviction or binding arbitration relating to a violation of any law pertaining to wage and hour standards, prevailing wage rates or licensing either against or by the subcontractor, principal personnel or business entity associated with the principal personnel; and**

*(II) Any civil judgment, findings of fact, administrative proceeding, criminal conviction or binding arbitration either against or by the subcontractor, principal personnel or business entity associated with the principal personnel relating to a violation of any law pertaining to discrimination in employment with respect to construction work.*

*(2) A list of all public works and private construction projects undertaken or completed by the subcontractor, principal personnel or business entity associated with the principal personnel during the 5 years immediately preceding the date of the application for which the cost exceeded \$25,000 and for which the subcontractor, principal personnel or business entity associated with the principal personnel failed to complete:*

*(I) Its portion of the work in a timely manner, as adjusted by any change order or extension of time granted;*

*(II) Any remaining requirements of the contract or failed to complete its portion of the work within 90 days after substantial completion of the contract; or*

*(III) Its portion of the work and the remaining work on the project was performed by another person.*

*(3) A list of not more than 10 public works and private construction projects, or any combination thereof, on which the subcontractor and the principal personnel, and, if applicable, any business entity associated with the principal personnel, have successfully completed their portion of the work during the 5 years immediately preceding the date of the application which is within the cost category for which the subcontractor seeks qualification. For each project included on the list, the subcontractor must provide:*

*(I) The name of the project;*

*(II) The location of the project;*

*(III) The cost of the portion of the work for which the subcontractor, the principal personnel and each business entity associated with the principal personnel were responsible;*

*(IV) A brief explanation of the type of work performed on the project; and*

*(V) The name, address and telephone number of:*

*(i) The owner of the project;*

*(ii) The owner's project manager;*

*(iii) The architect or engineer of the project;*

*(iv) The prime contractor for the project; and*

*(v) The superintendent of the prime contractor for the project.*

*2. In addition to the information provided by the subcontractor pursuant to subsection 1, any other verifiable information relating to the criteria set forth in subsection 1 that is provided to or discovered by the Board or its employees regarding the subcontractor may be used to determine whether the subcontractor is qualified to be included in a bid pursuant to NRS 338.141.*

*3. The Board will maintain a public list of subcontractors that have been determined not to be qualified to be included in a bid pursuant to NRS 338.141.*

**Sec. 18.** *1. If, pursuant to subsection 3 of NRS 338.1376, a subcontractor is required to submit an application for qualification to be included in a bid pursuant to NRS 338.141, the Manager shall notify the subcontractor of that fact in writing by certified mail. The subcontractor must submit a completed application for qualification to the Manager, on a form provided by the Board, not later than 30 days after the date on which the subcontractor received the notice. If a completed application for qualification from the subcontractor is not timely received by the Board, the subcontractor shall be deemed to be disqualified for 1 year*

*commencing on the 31st day after the date on which the subcontractor received the notice. This subsection does not preclude the Board from removing a subcontractor pursuant to paragraph (a) of subsection 5 of NRS 338.141.*

*2. The Board will specify in each application for qualification the cost categories of:*

*(a) Less than \$1,000,000;*

*(b) One million dollars to \$5,000,000; and*

*(c) More than \$5,000,000,*

*↳ for which a subcontractor may be qualified, which are based on the estimated cost of that portion of the work for which the subcontractor will be responsible. If a subcontractor is qualified to be included in a bid pursuant to NRS 338.141 in one of the cost categories specified in this subsection, the subcontractor may be included in a bid pursuant to NRS 338.141 in any lower cost category.*

*3. A subcontractor must indicate on his application for qualification the cost category for which the subcontractor seeks to be qualified to be included in a bid pursuant to NRS 338.141.*

*4. An application for qualification must contain the original signature of the subcontractor. The Board will not accept a faxed or photocopied application.*

*5. The submission of a materially incomplete or falsified application for qualification by a subcontractor and the failure of the subcontractor to disclose information required in the application may be grounds for the disqualification of the subcontractor.*

*6. The Board will not delay the award of bids on a public work pending the determination or appeal of the determination of the qualification of a subcontractor who was included in a bid.*

**Sec. 19. 1. The Manager shall appoint a committee consisting of a deputy manager and at least two other employees of the Board to review and score applications for qualification submitted pursuant to NRS 338.1376 to determine whether a subcontractor is qualified to be included in a bid pursuant to NRS 338.141. Such a determination must be made within 45 days after the date on which the Board receives the completed application for qualification.**

**2. The committee shall calculate the scores of applications for qualification based on the weights of the criteria set forth in section 17 of this regulation that are prescribed by the Board. In addition to the information provided by a subcontractor in an application for qualification, the committee may consider any other verifiable information relating to the criteria set forth in section 17 of this regulation that is provided to or discovered by the Board or its employees regarding the application for qualification to determine whether the subcontractor is qualified to be included in a bid pursuant to NRS 338.141.**

**3. If, after reviewing and scoring an application for qualification, the committee determines that a subcontractor is:**

**(a) Qualified to be included in a bid pursuant to NRS 338.141, the Manager shall provide written notice to the subcontractor by certified mail within 10 days after that determination.**

**(b) Not qualified to be included in a bid pursuant to NRS 338.141, the Manager shall provide written notice to the subcontractor by certified mail within 10 days after that determination. The notice must include, without limitation, the reasons on which the determination that the subcontractor was not qualified was based and must inform the subcontractor of his right to appeal the disqualification pursuant to NRS 338.1381 and section 20 of this regulation.**

*4. A subcontractor who is determined not to be qualified to be included in a bid pursuant to NRS 338.141 shall be deemed to be disqualified for 1 year commencing on the date on which the determination is made or, if the subcontractor appeals the determination, the date on which the appeal of the determination is denied.*

*5. A subcontractor who has been disqualified from participating on a public work and who wishes to be included in a bid pursuant to NRS 338.141 after his period of disqualification has ended must submit an application for qualification and be determined to be qualified by the Board in accordance with NRS 338.1376 and sections 10 to 21, inclusive, of this regulation before the subcontractor may be included in a bid pursuant to NRS 338.141.*

*6. The Manager may prevent a subcontractor from withdrawing his application for qualification regardless of whether the application is complete. Within 10 days after receipt of notice denying the withdrawal of his application for qualification, a subcontractor may appeal the decision by the Manager to deny the withdrawal of the application by filing a request for a hearing with the Board pursuant to section 20 of this regulation. The request must set forth the basis for the appeal. The subcontractor may, at the time he files the request, submit copies of any documents that support his appeal.*

**Sec. 20. 1.** *Within 10 days after receipt of notice that he has been disqualified by the committee from participating on a public work pursuant to section 19 of this regulation, a subcontractor may appeal the determination by filing a request for a hearing with the Board. The request must set forth the basis for the appeal. The subcontractor may, at the time he files the request, submit copies of any documents that support his appeal.*

*2. The Board shall appoint a board of appeals consisting of three of its members to conduct hearings on appeals filed pursuant to sections 10 to 21, inclusive, of this regulation, and shall designate one of the members of the board of appeals to serve as chairman.*

*3. For each such appeal, the board of appeals shall, in accordance with NRS 338.1381:*

*(a) Set the matter for a hearing;*

*(b) Provide notice of the hearing; and*

*(c) Hold the hearing at a time and place prescribed by the board of appeals.*

*4. The board of appeals shall call a hearing to order and act upon any preliminary matters. Unless modified by the board of appeals, the evidence will be presented first by the subcontractor and then by the committee, or a representative thereof. The board of appeals may allow the presentation of additional testimony and evidence from other interested parties.*

*5. An appeal will be considered submitted for decision after the taking of evidence and oral argument.*

*6. In conducting the hearing, the board of appeals is not bound by any technical rules of evidence.*

*7. If a party fails to appear at a hearing and did not request in writing or was not granted a continuance in writing, the board of appeals may hear evidence from those persons present at the hearing and make a decision based on the available record.*

*8. At any time after a request for a hearing is filed by a subcontractor, any party to the matter may request that the chairman of the board of appeals issue a subpoena to compel the attendance of witnesses to testify before the board or for the production of related books, papers and documents.*

*9. The board of appeals is not bound by the recommendation of the committee formed pursuant to section 19 of this regulation or any technical scoring conducted by the committee and may, when rendering its decision, take into consideration such facts and circumstances as may be in the best interests of this State.*

*Sec. 21. 1. The committee shall revoke its determination that a subcontractor is qualified to be included in a bid pursuant to NRS 338.141 if, after an investigation, the committee finds that:*

*(a) The subcontractor no longer meets one or more of the criteria set forth in section 17 of this regulation; or*

*(b) The application for qualification submitted by the subcontractor contained materially false information or the subcontractor failed to disclose materially relevant information in the application.*

*2. If the committee determines pursuant to subsection 1 that the qualification of a subcontractor must be revoked, the committee shall notify the Manager, in writing, of its determination. After receipt of such notification, the Manager shall provide written notice by certified mail to the subcontractor that the qualification of the subcontractor has been revoked and that the subcontractor may appeal the revocation. Revocation of the qualification of a subcontractor becomes effective 10 days after the subcontractor receives notice of revocation pursuant to this subsection unless the subcontractor appeals the determination within the time prescribed for an appeal in subsection 3.*

*3. Within 10 days after receipt of notice of the revocation of his qualification pursuant to subsection 2, a subcontractor may appeal the determination by filing a request for a hearing*

*with the Board. A hearing on the appeal of the revocation of qualification must be conducted by the board of appeals appointed pursuant to section 20 of this regulation.*

*4. If the board of appeals concurs with the determination of the committee, revocation of the qualification of the subcontractor becomes effective upon the decision of the board of appeals.*

*5. If the qualification of a subcontractor is revoked, the subcontractor may reapply for qualification after the period of disqualification specified in subsection 4 of section 19 of this regulation has elapsed.*

**Sec. 22.** *“Business entity associated with the principal personnel” means a business entity in which a principal personnel of a prime contractor is or was the sole proprietor, a partner, the chairman or a member of the board of directors, or a shareholder owning 10 percent or more of outstanding stock in the business entity.*

**Sec. 23.** *“Successfully completed project” means that the contract or the portion of the contract for which the prime contractor was responsible was completed:*

*1. Within the deadline for completion specified in the contract, as adjusted by any change order or extension of time granted; and*

*2. In compliance with any remaining contractual requirements, including close-out documents, within 90 days after the substantial completion of the contract.*

**Sec. 24.** *A prime contractor who has been determined to be qualified as a bidder shall inform the Board within 10 days after any change to, or renewal of, any license issued to the prime contractor pursuant to chapter 624 of NRS.*

**Sec. 25.** NAC 338.150 is hereby amended to read as follows:

338.150 As used in NAC 338.150 to 338.280, inclusive, *and sections 22, 23 and 24 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC ~~338.160 to 338.230,~~ *338.170 to 338.220*, inclusive, *and sections 22 and 23 of this regulation* have the meanings ascribed to them in those sections.

**Sec. 26.** NAC 338.170 is hereby amended to read as follows:

338.170 “Bidder” means ~~an applicant~~ *a prime contractor* who has been determined to be qualified to bid on one or more contracts for public works pursuant to NAC 338.260.

**Sec. 27.** NAC 338.200 is hereby amended to read as follows:

338.200 “Cost category” means the category of public works set forth in paragraph (b) of subsection 2 of NAC 338.250 for which ~~an applicant~~ *a prime contractor* may apply to be qualified for a 2-year period to submit bids.

**Sec. 28.** NAC 338.220 is hereby amended to read as follows:

338.220 “Principal personnel” means the owner, *partner* and any corporate officer ~~or~~ *and any* qualified employee listed on the contractor’s license of the ~~applicant~~ *prime contractor*.

**Sec. 29.** NAC 338.240 is hereby amended to read as follows:

338.240 1. The following criteria must be used to determine whether ~~an applicant~~ *a prime contractor* is qualified to bid on a contract for one or more public works:

(a) The financial ability of the ~~applicant~~ *prime contractor* to perform the contract. The ~~applicant shall~~ *prime contractor must* include with the application submitted pursuant to NAC 338.250:

(1) A certified *original* statement of the bonding capacity of the ~~applicant~~ *prime contractor* obtained from a surety *which is* authorized to issue bid, performance and payment bonds in this State ~~and~~ *and which:*

*(I) Has received a rating of “A-” or better, as determined by A.M. Best Company of Oldwick, New Jersey; and*

*(II) For a contract that:*

*(i) Is more than \$5,000,000, is classified in a financial size category of “VII” or better, as determined by A.M. Best Company of Oldwick, New Jersey, and is included on the list of approved sureties in Circular 570 of the Department of the Treasury; or*

*(ii) Is \$5,000,000 or less, is included on the list of approved sureties in Circular 570 of the Department of the Treasury.*

*↪ The requirements of sub-subparagraphs (I) and (II) do not apply if the surety is Lloyd’s of London. The certified original statement must specify the single and aggregate limits on and the available bonding capacity of the [applicant] prime contractor to work on a public work.*

(2) Evidence ~~[of proper licensure]~~ *that the prime contractor is properly licensed* pursuant to chapter 624 of NRS.

(3) A statement regarding whether the ~~[applicant,]~~ *prime contractor, principal personnel or any business entity associated with the principal personnel has* filed as a debtor under the United States Bankruptcy Code during the 5 years immediately preceding the date of the application.

(b) The qualifications of the principal personnel of the ~~[applicant. The applicant shall]~~ *prime contractor. The prime contractor must* include in the application submitted pursuant to NAC 338.250 a description of the professional qualifications and relevant experience of the principal personnel ~~[employed by the applicant.]~~ *of the prime contractor and list not more than 10 public works and private construction projects, or any combination thereof, within the cost category for which the prime contractor is applying that have been successfully completed by the*

*principal personnel. For each such successfully completed project included on the list, the prime contractor must provide:*

- (1) The name of the project;*
- (2) The scope of the project or work done;*
- (3) The dollar amount of the project; and*
- (4) The month and year of substantial completion and final completion of the project.*

(c) Whether the ~~[applicant]~~ *prime contractor, the principal personnel or any business entity associated with the principal personnel* has been found to ~~[have been]~~ *be* in breach of contract by a court of competent jurisdiction *or through binding arbitration* during the 5 years immediately preceding the date of the application. For each such action, the ~~[applicant shall]~~ *prime contractor must* include in the application submitted pursuant to NAC 338.250 a description of:

- (1) The circumstances surrounding the action;
- (2) Whether any liquidated damages were imposed in connection with the action; and
- (3) Any judgment entered against the ~~[applicant]~~ *prime contractor, principal personnel or business entity associated with the principal personnel* relating to the action.

(d) Whether the ~~[applicant was]~~ *prime contractor, the principal personnel or any business entity associated with the principal personnel has been* disqualified from the award of any contract pursuant to NRS 338.017 or ~~[338.1387]~~ *338.13895* during the 5 years immediately preceding the date of the application.

(e) The past performance history of the ~~[applicant on recent, similar contracts. The applicant shall]~~ *prime contractor, the principal personnel and each business entity associated with the*

*principal personnel during the 5 years immediately preceding the date of the application. The prime contractor must* include in the application submitted pursuant to NAC 338.250:

(1) A description of:

(I) Any civil judgment, ~~settlement,~~ findings of fact, administrative proceeding, ~~or~~ criminal conviction *or binding arbitration* relating to a violation of any law pertaining to wage and hour standards, ~~or~~ prevailing wage rates *or licensing* either against or by the ~~applicant,~~ ~~or~~ *prime contractor*, principal personnel ~~[of the applicant during the 5 years immediately preceding the date of the application;]~~ *or business entity associated with the principal personnel;* and

(II) Any civil judgment, findings of fact, administrative proceeding, ~~or~~ criminal conviction *or binding arbitration* relating to a violation of any law pertaining to discrimination in employment with respect to construction work performed by the ~~applicant]~~ *prime contractor* either against or by the ~~applicant or~~ *prime contractor*, principal personnel ~~[of the applicant during the 5 years immediately preceding the date of the application.]~~ *or business entity associated with the business personnel.*

(2) A list of all public works and private construction projects undertaken or completed by the ~~applicant]~~ *prime contractor, principal personnel or business entity associated with the principal personnel* during the 5 years immediately preceding the date of the application for which the cost exceeded \$25,000 and for which:

(I) The ~~applicant]~~ *prime contractor, principal personnel or business entity associated with the principal personnel* failed to substantially complete the contract within the deadline for completion *of the project* specified in the contract, as adjusted by any change order or extension of time granted;

(II) The ~~{applicant}~~ *prime contractor, principal personnel or business entity associated with the principal personnel* failed to complete any remaining requirements of the contract within 90 days after substantial completion of the contract; or

(III) The ~~{applicant}~~ *prime contractor, principal personnel or business entity associated with the principal personnel* failed to complete the contract and the remaining work on the project was performed by another person.

(3) If the application is for qualification for a 2-year period, a list of ~~{at least a total of}~~ *not more than* 10 public works ~~{or}~~ *and* private construction projects, or any combination thereof, that the ~~{applicant has}~~ *prime contractor and the principal personnel, and, if applicable, any other business entity associated with principal personnel have* successfully completed during the 5 years immediately preceding the date of the application and for which the cost of each of those projects is within the cost category for which the ~~{applicant}~~ *prime contractor* seeks qualification to submit bids. For each project included on the list, the ~~{applicant shall}~~ *prime contractor must* provide:

(I) The name of the project;

(II) The location of the project;

(III) The cost of the project;

(IV) A brief explanation of the type of work performed on the project; and

(V) The name, address and telephone number of the owner of the project, the owner's project manager, and the architect or engineer of the project.

(4) If the application is for qualification on a specific public work, a list of all public works and private construction projects undertaken or completed by the ~~{applicant}~~ *prime contractor, principal personnel or business entity associated with the principal personnel*

during the 5 years immediately preceding the date of the application for which the level of complexity or special requirements of the project were similar to the complexity or special requirements specified by the Board in the application for the specific public work. For each project included on the list, the ~~{applicant shall}~~ *prime contractor must* provide:

- (I) The name of the project;
- (II) The location of the project;
- (III) A brief explanation of the type of work performed on the project; and
- (IV) The name, address and telephone number of the owner of the project, the owner's

project manager, and the architect or engineer of the project.

2. In addition to the information provided by ~~{an applicant,}~~ *a prime contractor*, any other verifiable information relating to the criteria set forth in subsection 1 that is provided to or discovered by the Board or its employees regarding the ~~{applicant}~~ *prime contractor* may be used to determine whether ~~{an applicant}~~ *the prime contractor* is qualified to bid on one or more contracts for public works.

**Sec. 30.** NAC 338.250 is hereby amended to read as follows:

338.250 1. To qualify to bid on one or more contracts for public works, ~~{an applicant}~~ *a prime contractor* must:

- (a) Submit an application to the Manager on a form prescribed and provided by the Board.
- (b) Be qualified before bids are required to be submitted for a public work on which the ~~{applicant}~~ *prime contractor* wishes to bid. The Board will not delay the opening of bids on a public work pending the determination or appeal of the qualification of ~~{an applicant}~~ *a prime contractor* who wishes to bid on the public work.

2. The Board will specify:

(a) In the application for a specific public work, any special requirements for the specific public work that the Board prescribes.

(b) In the application for qualification for a 2-year period, the cost categories of:

- (1) Less than \$1,000,000;
- (2) One million *dollars* to \$5,000,000; and
- (3) More than \$5,000,000,

↪ for which ~~{an applicant}~~ *a prime contractor* may be qualified, which are based on the estimated cost of an individual public work. If ~~{an applicant}~~ *a prime contractor* is qualified to bid on public works in one of the cost categories specified in this subsection, the ~~{applicant}~~ *prime contractor* is eligible to bid on public works in any lower cost category.

3. If the application is for qualification for a 2-year period, the ~~{applicant}~~ *prime contractor* must indicate on the application:

(a) Whether ~~{, for the purposes of subsection 2 of NRS 338.1385, the applicant}~~ *the prime contractor* is interested in receiving offers to bid on public works for which the estimated cost is more than \$25,000 but less than \$100,000; and

(b) The cost category for which the ~~{applicant}~~ *prime contractor* seeks to qualify to submit bids.

4. An application must contain the original signature of the ~~{applicant.}~~ *prime contractor who is submitting the application*. The Board will not accept *a* faxed or photocopied ~~{applications.}~~ *application*.

5. The submission of ~~{an}~~ *a materially* incomplete or falsified application or the failure of ~~{an applicant}~~ *a prime contractor* to disclose information in the application may be grounds for a

delay in the qualification of ~~{an applicant}~~ *the prime contractor* or the denial or revocation of the qualification of a bidder.

**Sec. 31.** NAC 338.260 is hereby amended to read as follows:

338.260 1. The Manager shall appoint a committee consisting of a deputy manager and at least two other employees of the Board to review and score applications submitted pursuant to NAC 338.250 to determine whether ~~{an applicant}~~ *a prime contractor* is qualified to bid on one or more contracts for public works. Such a determination must be made within ~~{30}~~ *45* days after receipt of the *completed* application by the Board.

2. The committee shall calculate the scores of applications based on the weights of the criteria set forth in NAC 338.240 that are prescribed by the Board. In addition to the information provided by ~~{an applicant in the}~~ *a prime contractor in his* application submitted pursuant to NAC 338.250, the committee may consider any other verifiable information relating to the criteria set forth in NAC 338.240 that is provided to or discovered by the Board or its employees regarding the application to determine whether the ~~{applicant}~~ *prime contractor* is qualified to bid on one or more contracts for public works.

3. If, after reviewing and scoring an application, the committee determines that the ~~{applicant}~~ *prime contractor* is:

(a) Qualified, the Manager shall provide written notice to the ~~{applicant}~~ *prime contractor* by certified mail within 10 days after that determination. If the application was for qualification to bid for a 2-year period, the notice must indicate the date on which the qualification expires and that, for the period of qualification, the ~~{applicant}~~ *prime contractor* is qualified to bid on public works for which the estimated cost does not exceed the maximum dollar amount of the cost category for which the ~~{applicant}~~ *prime contractor* is qualified to submit bids.

(b) Not qualified, the Manager shall provide written notice to the ~~[applicant]~~ *prime contractor* by certified mail within 10 days after that determination. Pursuant to subsection 3 of NRS 338.1379, the notice must include, without limitation, the reasons for the denial of the application and inform the ~~[applicant]~~ *prime contractor* of his right to a hearing pursuant to NRS 338.1381 ~~[.]~~ *and NAC 338.270.*

4. Except as otherwise provided in this subsection and NAC 338.280, the qualification of ~~[an applicant]~~ *a prime contractor* to bid on contracts for public works expires 2 years after the date on which the committee determines that the ~~[applicant]~~ *prime contractor* is qualified. The qualification of ~~[an applicant]~~ *a prime contractor* for a specific public work expires upon completion of that public work.

5. ~~[An applicant]~~ *A prime contractor* who applied for qualification for a 2-year period and whose application was denied may not reapply for qualification for a 2-year period until 1 year after the date on which the application was denied ~~[.]~~ *or, if the prime contractor appeals the denial of the application, 1 year after the date on which the board of appeals appointed pursuant to NAC 338.270 denies the appeal.* Denial of an application for qualification on a specific public work does not prohibit the ~~[applicant]~~ *prime contractor* from submitting an application for qualification for a 2-year period or qualification on another specific public work.

6. *The Manager may deny a request by a prime contractor to withdraw his application regardless of whether the application is complete. Within 10 days after receipt of notice that his request to withdraw the application has been denied, the prime contractor may appeal the decision of the Manager to deny the request to withdraw the application by filing a request for a hearing with the Board pursuant to NAC 338.270. The request for a hearing must set forth*

*the basis for the appeal. The prime contractor may, at the time he files the request for a hearing, submit copies of any documents that support his appeal.*

**Sec. 32.** NAC 338.270 is hereby amended to read as follows:

338.270 1. Within 10 days after receipt of notice ~~[denying an application]~~ pursuant to NAC 338.260 ~~[, an applicant]~~ *that he has been determined to be not qualified, a prime contractor* may appeal the determination by filing a request for a hearing with the Board. The request must set forth the basis for the appeal. ~~[by the applicant. The applicant may submit with]~~ *The prime contractor may, at the time he files* the request, *submit* copies of any documents that support his appeal.

2. The Board shall appoint a board of appeals consisting of three of its members to conduct hearings on appeals filed pursuant to ~~[this section.]~~ *NAC 338.150 to 338.280, inclusive, and sections 22, 23 and 24 of this regulation, and shall designate one of the members of the board of appeals to serve as chairman.*

3. For each *such* appeal, ~~[filed pursuant to this section,]~~ the board of appeals shall, in accordance with NRS 338.1381:

- (a) Set the matter for a hearing;
- (b) Provide notice of the hearing; and
- (c) Hold the hearing at a time and place prescribed by the board of appeals.

4. The board of appeals shall call a hearing to order and act upon any preliminary matters. Unless modified by the board of appeals, the evidence will be presented first by the ~~[applicant]~~ *prime contractor* and then by the committee, or a representative thereof. The board of appeals may allow the presentation of additional testimony and evidence from other interested parties.

5. An appeal will be considered submitted for decision after the taking of evidence and oral argument.

6. In conducting the hearing, the board of appeals is not bound by any technical rules of evidence.

7. If a party fails to appear at a hearing and did not request *in writing* or was not granted a continuance  *in writing*, the board of appeals may hear evidence from those persons present at the hearing and make a decision based on the available record.

*8. At any time after a request for a hearing is filed by a prime contractor, any party to the matter may request that the chairman of the board of appeals issue a subpoena to compel the attendance of witnesses to testify before the board or for the production of related books, papers and documents.*

*9. The board of appeals is not bound by the recommendation of the committee formed pursuant to NAC 338.260 or any technical scoring conducted by the committee and may, when rendering its decision, take into consideration such facts and circumstances as may be in the best interests of this State.*

**Sec. 33.** NAC 338.160, 338.180, 338.210 and 338.230 are hereby repealed.

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**TEXT OF REPEALED SECTIONS**

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**338.160 “Applicant” defined. (NRS 338.1375)** “Applicant” means a person that applies to the Board pursuant to NAC 338.250 to be qualified as a bidder for one or more contracts for public works.

**338.180 “Board” defined. (NRS 338.1375)** “Board” means the State Public Works Board.

**338.210 “Manager” defined. (NRS 338.1375)** “Manager” means the Manager of the Board appointed pursuant to NRS 341.100.

**338.230 “Public work” defined. (NRS 338.1375)** “Public work” means a public work, as defined in NRS 338.010, that is under the jurisdiction of the Board.

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R095-04**

The State Public Works Board adopted regulations assigned LCB File No. R095-04 which pertain to chapter 338 of the Nevada Administrative Code on August 24, 2004.

**Notice date:** 3/12/2004 & 3/19/2004

**Hearing date:** 4/6/2004, 4/27/2004, 5/5/2004, 6/22/2004, 7/28/2004, 8/24/2004

**Date of adoption by agency:** 8/24/2004

**Filing date:** 12/15/2004

**INFORMATIONAL STATEMENT**

       **Description of how comment from public and affected businesses was solicited.**

Notices were posted in the following newspapers of general circulation on March 12 and March 19, 2004 (for items “a” through “k”): Reno Gazette Journal, Las Vegas Review Journal, and the Carson City Appeal. Notices were posted in the following newspapers of general circulation on March 19 and March 26, 2004 (for items “k” through “n”): Reno Gazette Journal, Las Vegas Review Journal, and the Carson City Appeal. Notices were also faxed to the following trade organizations: Nevada State AFL-CIO, Ironworkers 118, Southwest Regional Council of Carpenters, Laborers 169, David Kersh (Carpenters), Jim Roletti (Carpenters), Charlie Nahorniak (Carpenters), Sandra Maloney (Carpenters), Jaun Gonzales (Carpenters), Steve Muchicko (Regional Counsel of Carpenters), Cheryl Blomstrom (AGC), Jeanette Belz (AGC), Steve Holloway (AGC), Tom Skjellstad (ABC North), Warren Hardy (ABC South), Richard Legion, IBEW-NECA-LMCC, James Thompson, Bob Nard/Julie Nicoson (Southern Nevada Bldg. & Const. Trades Counsel), Ross Far (NECA), Mickey Miles (IBEW 357), Gary Pitts (IBEW 357). Notices were posted at Nevada State Public Library and Archives, Legislative Building, Blasdell Administrative Building, Court Clerk Office, State Public Works Board Offices, Grant Sawyer Building and on the State Public Works Board Website.

       **A statement indicating the number of persons who attended each meeting, testified at each meeting, and submitted written statements regarding the proposed regulation.**

Meetings/Workshop	# SPWB in attendance	# public attendance	# persons who testified	# written statements
4-6-04 workshop	8	42	8	2
4-27-04	6	2	1	1
5-5-04 workshop	9	13	3	0
6-22-04 adoption delayed	7	22	3	2
7-28-04 adoption delayed	7	20	3	1
<b>8-24-04 Adoption</b>	20	8	1	1

**\_\_\_\_\_ Summary of response from public and affected businesses.**

April 6<sup>th</sup> workshop:

- Questioned number of days needed to determine status of application: 30 or 45.
- Clarification of “presumptive prequalification” and criteria used in process of qualification or disqualification.
- It was asked about the necessity to look at “other business entities associated with the principal personnel” and it was explained that this is a policy decision the Board had made in order to look at the full history of the applicant.
- It was suggested to have separate sections for prime contractor and sub-contractor.

April 27<sup>th</sup> Board meeting:

- There was concern that “safety, labor relations and employment laws” should remain on the application, but the last workshop determined that this was under another entity’s jurisdiction and not needed here.
- It was suggested that the heading of section 13 be “Criteria of Applicants.”

May 5<sup>th</sup> workshop:

- Further discussion and clarification of criteria used in pre-qualification process.
- It was asked why reference to labor relations and license violations weren’t included in the application.

June 22<sup>nd</sup> 2004 Board meeting:

- It was recommended to use the Treasury Circular 570 and to retain the AM Best private rating service of “A” or “A-“ for both prime and subcontractors
- It was also pointed out that in the past co-surety and re-insures were allowed for those with a “VII” rating or better.

July 28<sup>th</sup> Board meeting:

- Clarification was needed regarding the meaning of “a list of not more than 10 projects.”
- It was asked why an applicant is not allowed to withdraw an application.
- It was asked why the Board of Appeals is not bound by the technical scoring of the committee, and it was explained that it was to the applicant’s benefit that while it is considered it is not bound by the committee’s scoring which disqualified him.

August 24<sup>th</sup> Board Meeting:

- The surety business representatives expressed their agreement with changes made to the draft of the proposed regulation.

**\_\_\_\_\_ Explanation of how interested persons may obtain a copy of summary.**

Board meeting minutes from all regulation workshops including the testimony given are posted on the SPWB website: [www.SPWB.state.nv.us](http://www.SPWB.state.nv.us).

**\_\_\_\_\_ If regulation was adopted without change, summary of reasons for adopting without change.**

The regulation was changed based on testimony received.

**\_\_\_\_\_ Estimated economic effect on public and businesses affected: adverse and beneficial, immediate and long-term.**

The proposed regulations should have minimal impact on small businesses. Possible adverse effects include the requirements of certain subcontractors being required to submit qualification applications to the State Public Works Board. Such applications would have a beneficial impact to the industry as a whole in ensuring that only qualified subcontractors perform public works projects. Certain prime contractors may be adversely affected if they have employed, as a “principle personnel” an individual that was associated with a contracting entity in the past that had performance issues. Again, such a requirement ensures the construction industry that only qualified contractors are performing public works projects. Applicants challenging adverse rulings on qualification applications may incur legal expenses.

**\_\_\_\_\_ Cost of enforcing the regulations.**

The estimated cost will vary depending on the number of subcontractors required to complete applications for qualification. At this juncture, the State Public Works Board believes that increased costs for administration and/or enforcement could amount to \$25,000 per year based upon the number of applicants and/or appeals. Increased legal fees could amount to \$20,000 per year.

**\_\_\_\_\_ Explanation of any other regulations that this regulation duplicates or overlaps and why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, a statement of the name of the federal agency.**

The proposed regulations do not include provisions, which are more stringent than federal, state, or local standards regulating the same activity.

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

The proposed regulations do not include provisions, which are more stringent than federal, state, or local standards regulating the same activity.

**\_\_\_\_\_ If the regulation provides a new fee or increases an existing fee, a statement indicating the total amount the agency expects to collect and the manner in which the money will be used.**

The proposed regulation does not provide a new fee and does not increase an existing fee.

**\_\_\_\_\_ If the Legislative Commission objected to rule based on lack of conformity with statutory authority and legislative intent.**

**Rule revised and resubmitted on:**

**Decision not to review rule made on:**

**Comments:**

\_\_\_\_\_ **Regulation adopted on:** 8-24-04

\_\_\_\_\_ **Statement, if any to interested persons explaining principal reasons for and against adopting regulation and reason(s) for overruling the consideration urged against its adoption. NRS 233B.064(2).**

\_\_\_\_\_ **Copy of regulation, Informational Statement, Form for Filing Administrative Regulations, and Notice of Adoption of Regulation sent to legislative counsel on:**

\_\_\_\_\_ **Filed with Secretary of State on:**

\_\_\_\_\_ **Copy bearing Secretary of State's seal filed with State Librarian on:**

\_\_\_\_\_ **Regulation effective on:**

\_\_\_\_\_ **Regulation expires on: (by its own terms or because it is a temporary or emergency regulation)**

\_\_\_\_\_ **Copy of adopted regulation sent to legislative counsel (temporary regulation) on:**

\_\_\_\_\_ **Regulation scheduled for review on:**