

LCB File R095-04

PROPOSED REGULATION OF THE STATE PUBLIC WORKS BOARD

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the Nevada State Public Works Board

The Nevada State Public Works Board (SPWB) will hold a public hearing at 9:00 am, on June 22, 2004, at the Legislative Building, 401 S Carson Street, Room 3137, Carson City, NV 89701 and at the Grant Sawyer Building, 555 E Washington Street, Room 4401, Las Vegas, NV 89101. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations that pertain to chapter 333 of the Nevada Administrative Code.

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

1. The SPWB is proposing these amendments to clarify certain policies and procedures utilized by the SPWB.
2. The proposed regulation involves setting forth a system of qualification for contractors interested in performance contracting (i.e. energy retrofitting) with the State of Nevada. Setting forth a system of appeal and review of decisions made by the State Public Works Board relating to qualification status.
3. The proposed regulation should have a positive impact on small businesses by providing the opportunity to perform energy retrofit projects to the State of Nevada. Possible adverse effects include appeals to qualification proceedings that may have legal costs and fees associated with them. The proposed regulations should benefit small businesses by ensuring that only qualified contractors engage in energy retrofit projects.
4. The estimated cost to the SPWB will vary depending on the number of contractors seeking qualification through the State Public Works Board. 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 \$10,000 per year, if numerous appeals are made regarding qualification status.
5. The proposed regulations do not overlap or duplicate the regulations of other state or local governmental agencies.

6. Federal law does not require the proposed regulation.
7. The proposed regulations do not include provisions, which are more stringent than federal, state, or local standards regulating the same activity.
8. The proposed regulation does not provide a new fee and does not increase an existing fee.
9. Persons wishing to comment upon the proposed action of the SPWB may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to Nevada State Public Works Board, 505 E. King St., Room 301, Carson City, NV 89701. Written submissions must be received by the SPWB on or before June 14, 2004. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the SPWB may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public. A copy of this notice and the regulation to be Amended will be available at the Nevada State Public Works Board, 505 E. King St., Room 301, Carson City, NV 89701 and Nevada State Public Works Board, 1830 E. Sahara, Ste 204, Las Vegas, NV 89104 and on the State Public Works Board WEB site at www.spwb.state.nv.us and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also 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. This does not apply to a public body subject to the Open Meeting Law.

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

This notice of hearing has been posted at the following location:

Carson City Library
 900 North Roop Street
 Carson City, Nevada 89701

Elko County Library
 720 Court Street
 Elko, Nevada 89801

Churchill County Library
 553 South Maine Street
 Fallon, Nevada 89406

Goldfield Public Library
 Post Office Box 430
 (Fourth & Crook Street)
 Goldfield, Nevada 89013

Las Vegas Library
833 Las Vegas Boulevard North
Las Vegas, Nevada 89101

Douglas County Library
Post Office Box 337
1625 Library Lane
Minden, Nevada 89423

Humboldt County Library
85 East 5th Street
Winnemucca, Nevada 89445

Lincoln County Library
Post Office Box 330
93 Main Street
Pioche, Nevada 89043

Lyon County Library
20 Nevin Way
Yerington, Nevada 89447

Mineral County Library
Post Office Box 1390
(First & A Street)
Hawthorne, Nevada 89415

Tonopah Public Library
Post Office Box 449
171 Central Street
Tonopah, Nevada 89049

Eureka Branch Library
Post Office Box 293
10190 Monroe Street
Eureka, Nevada 89316

Pershing County Library
Post Office Box 781
1125 Central Avenue
Lovelock, Nevada 89419

Storey County Library
Post Office Box 14
95 South R Street
Virginia City, Nevada 89440

Washoe County Library
Post Office Box 2151
301 South Center
Reno, Nevada 89505

White Pine County Library
950 Campton Street
Ely, Nevada 89301

Battle Mountain Branch Library
Post Office Box 141
Battle Mountain, Nevada 89820

LCB File R095-04

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

**PROPOSED ADDITIONS AND AMENDMENTS TO NAC CHAPTER 338
RELATING GENERALLY TO PRE-QUALIFICATION OF
PRIME CONTRACTORS AND SUBCONTRACTORS**

NOTE: Deletions are shown with ~~brackets and strikethrough~~ and additions are *bolded and italicized*. To show context of proposed changes, all provisions involving pre-qualification of bidders, whether they have been amended or not, are shown in this document. The qualification of Subcontractor provisions has been separated into separate sections for clarification. Typographical and numerical errors have been corrected.

Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth in sections 1 to 11 and amending sections 12 to 20 inclusive, of this regulation.

Section 1. *“Administrative Proceeding” defined. “Administrative Proceeding” means there is a notice of hearing in contested case, right to be represented by counsel, opportunity to respond and present evidence, a record, and findings of fact and conclusions of law.*

Sec. 2. *“Business entities associated with the principal personnel” defined. “Business entities associated with the principal personnel” means a business in which a principal personnel is or was a sole proprietor, a partner, a chairman or member of the board of directors, or a shareholder owning 10% or more of outstanding stock.*

Sec. 3. *“Final Completion” defined. “Final Completion” means 100 percent of the work of the contract and general conditions of the contract are satisfied.*

Sec. 4. *“Prime Contractor” defined. “Prime Contractor” means a licensee who has a contractual relationship directly with the owner of the property and is responsible for its construction operations including the work performed by its subcontractors.*

Sec. 5. *“Subcontractor” means the contractor does not have a direct contractual relationship with the owner of the property.*

Sec. 6. *“Substantial Completion” defined. “Substantial Completion” means when construction is sufficiently complete in accordance with the Contractual Documents, so that the Owner can occupy and utilize the Work for its intended use.*

Sec. 7. *“Successfully Completed Project” defined. “Successfully Completed Project” means that the contract or the applicant’s portion of the work was completed within the deadline for completion specified in the contract, as adjusted by any change order or extension of time granted and was completed in compliance with any other contractual requirements*

and any remaining requirements of the contract also including close out documents were satisfied within 90 days of substantial completion of the contract by the applicant.

Sec. 8. Applicant's duty of notification to the board. All Prime Contractors deemed to be qualified shall have the duty to inform the board within 10 days of any changes to or renewals of a license issued pursuant to NRS chapter 624.

Sec. 9. Criteria for qualification of an applicant who is a Subcontractor. (NRS 338.1376(3))

1. If the Manager determines that a subcontractor is required to complete an application pursuant to NRS 338.1376(3), he shall notify the subcontractor in writing through certified mail.

(a) Any subcontractor receiving a notice to complete an application shall return a completed application to the Board within 30 days from the date the notice was received by the subcontractor.

(b) A subcontractor shall be deemed disqualified for 1 year if a completed application is not timely received by the Board.

(c) Nothing herein shall be interpreted to preclude the board from removing a subcontractor pursuant to NRS 338.141(3)(a).

2. The following criteria must be used to determine whether an applicant who is a subcontractor is qualified to participate in a contract for one or more public works projects:

(a) The financial ability of the applicant to perform the contract. The applicant shall include with the application:

(1) A certified original statement of the bonding capacity of the applicant obtained from a surety authorized to issue bid, performance and payment bonds in this state and must have received a rating of "A-" or better and be included on the United States Treasury Circular 570. No rating is required if the insurer is Lloyd's of London. The statement must specify the present single and aggregate limits of the applicant to work on a public work.

(2) Evidence of proper licensure of the applicant pursuant to chapter 624 of NRS.

(3) A statement regarding whether the applicant, principal personnel, or any business entities associated with the principal personnel 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 include in the application submitted pursuant to NAC 338.250 or NRS 338.1376(3) a description of the professional qualifications and relevant experience of the principal personnel employed by the applicant. The applicant shall select from its principal personnel and list:

(1) Up to 10 public works or private construction projects, or any combination thereof, that the principal personnel of the applicant have successfully completed,

(2) The successfully completed projects performed by the principal personnel and the applicant shall be within the cost category for which the applicant is applying for qualification. For each project included on the list, the applicant shall provide:

(I) The name of the project or name of the prime contractor;

(II) Scope of the project or scope of work;

(III) Dollar amount of the project or dollar amount of its portion of the work; and

(IV) Month and year of substantial completion and final completion of the project or its portion of the work.

(c) Whether the applicant, principal personnel, or any business entities associated with the principal personnel, have 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 applicant shall include in the application submitted pursuant to NAC 338.270 or NRS 338.1376(3) 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, principal personnel or any other business entities associated with the principal personnel relating to the action.

(d) Whether the applicant, principal personnel, or any business entities associated with the principal personnel have been disqualified from the award of any contract pursuant to NRS 338.017 or 338.1387, or for pre-qualification under NRS Chapter 338 or NRS Chapter 408 during the 5 years immediately preceding the date of the application.

(e) The past performance history of the applicant, principal personnel or any other business entities associated with the principal personnel during the five years immediately preceding the date of the application. The applicant shall include in the application submitted pursuant to NAC 338.250 or NRS 338.1376(3):

(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 violations; and

(II) Any civil judgment, findings of fact, administrative proceeding, criminal conviction or binding arbitration 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 applicant, principal personnel or any other business entities 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 subcontractor failed to timely complete its portion of the work, as adjusted by any change order or extension of time granted;

(II) The subcontractor failed to complete any remaining requirements of the contract or failed to timely complete its portion of the work within 90 days after substantial completion of the contract; or

(III) The subcontractor failed to complete its portion of the work and the remaining work on the project was performed by another person.

(3) If the application is submitted pursuant to NRS 338.1376(3), a list of up to 10 public works or private construction projects, or any combination thereof, that the applicant, principal personnel, or any other business entities associated with the principal personnel has successfully completed its portion of the work 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 subcontractor seeks qualification. For each project included on the list, the applicant shall provide:

(I) The name of the project;

(II) The location of the project;

(III) *The cost of its portion of the work;*
(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, the architect or engineer of the project, the prime contractor's company name, superintendent's name and phone number.*

3. *In addition to the information provided by an applicant, any other verifiable information relating to the criteria set forth in subsection 2 that is provided to or discovered by the board or its employees regarding the applicant may be used to determine whether an applicant is qualified to participate on one or more contracts for public works.*

4. *The Board shall maintain a public list of subcontractors that have been deemed not qualified to be listed under NRS 338.141.*

5. *Only disqualified Subcontractors shall be required to submit an application to be qualified upon termination of their disqualification period.*

Sec. 10. *Application of an applicant who is a Subcontractor: Requirements for submission; content; grounds for delay, denial or revocation. (NRS 338.1376)*

1. *If a subcontractor is required to complete an application pursuant to NRS 338.1376(3), to be listed as a subcontractor on a bid pursuant to NRS 338.141 on one or more contracts for public works, the applicant must:*

(a) *Submit an application to the manager on a form prescribed and provided by the board.*

(b) *A Subcontractor is qualified to be listed on a bid pursuant to NRS 338.141 unless the subcontractor has been disqualified pursuant to these regulations. The board will not delay the award of bids on a public work pending the determination or appeal of the qualification of a subcontractor who was listed on a bid pursuant to NRS 338.141.*

2. *The board will specify in the application for qualification, the cost categories of:*

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

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

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

for which an applicant may be qualified, which are based on the estimated cost of that portion of the subcontractor's work. If an applicant is qualified as a subcontractor, to be listed pursuant to NRS 338.141 on public works in one of the cost categories specified in this subsection, the applicant is eligible to be listed as a subcontractor pursuant to NRS 338.141, on public works in any lower cost category.

3. *The applicant must indicate on the application the cost category for which the applicant seeks to qualify as a subcontractor to be listed on a bid pursuant to NRS 338.141.*

4. *An application must contain the original signature of the applicant. The board will not accept faxed or photocopied applications.*

5. *The submission of an incomplete or falsified application or the failure of an applicant to disclose information in the application may be grounds for the disqualification of an applicant.*

Sec. 11. *Application of an applicant who is a Subcontractor: Appointment of committee to review and score; determination of qualification; expiration; denial. (NRS 338.1375)*

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 NRS 338.1376(3) to determine whether an applicant is qualified as a subcontractor, to be included*

in a bid pursuant to NRS 338.1376(3) on one or more contracts for public works. Such a determination must be made within 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 Section 9 that are prescribed by the board. In addition to the information provided by an applicant in the application submitted pursuant to NRS 338.1376(3), the committee may consider any other verifiable information relating to the criteria set forth in Section 9 that is provided to or discovered by the board or its employees regarding the application to determine whether the applicant is qualified as a subcontractor, to be included in a bid pursuant to NRS 338.141 on one or more contracts for public works.

3. If, after reviewing and scoring an application, the committee determines that the applicant is:

(a) Qualified, the manager shall provide written notice to the applicant by certified mail within 10 days after that determination.

(b) Not qualified, the manager shall provide written notice to the applicant by certified mail within 10 days after that determination. The notice must include, without limitation, the reasons for the denial of the application and inform the applicant of his right to a hearing pursuant to NRS 338.1381.

4. An applicant who applied for qualification and whose application was denied shall be deemed disqualified for a period of 1 year.

5. Disqualified subcontractors shall be required to submit an application to be qualified upon termination of their disqualification period, and shall remain on the public list of disqualified subcontractors until such time as deemed qualified pursuant to these regulations.

6. The manager shall have the authority to prevent any applicant from withdrawing an application whether it is complete or not. Within 10 days after receipt of notice denying the withdraw of an application, an applicant may appeal the manager's decision by filing a request for a hearing with the board pursuant to NAC 338.270(2) – NAC 338.270(8). The request must set forth the basis for the appeal by the applicant. The applicant may submit with the request copies of any documents that support his appeal at that time.

NAC 338 is hereby amended to read as follows:

NAC 338.150 Definitions. (NRS 338.1375) As used in NAC 338.150 to 338.280, inclusive, unless the context otherwise requires, the words and terms defined in NAC 338.160 to 338.230, inclusive, have the meanings ascribed to them in those sections.

Sec. 12. **NAC 338.160 “Applicant” defined.** (NRS 338.1375) “Applicant” means a ~~[person]~~ *prime contractor* that applies to the board pursuant to NAC 338.250 to be qualified as a bidder, ~~[for one or more contracts for public works]~~ *or a subcontractor that is required to submit an application pursuant to NRS 338.1376(3).*

Sec. 13. **NAC 338.170 “Bidder” defined.** (NRS 338.1375) “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.

NAC 338.180 “Board” defined. (NRS 338.1375) “Board” means the state public works board.

NAC 338.190 “Committee” defined. (NRS 338.1375) “Committee” means the committee appointed pursuant to NAC 338.260.

Sec. 14. **NAC 338.200 “Cost category” defined.** (NRS 338.1375) “Cost category” means the category of public works set forth in paragraph (b) of subsection 2 of NAC 338.250 for which an applicant may apply to be qualified for a 2-year period to submit bids *or, if a subcontractor, to be included in a bid pursuant to NRS 338.141.*

NAC 338.210 “Manager” defined. (NRS 338.1375) “Manager” means the manager of the board appointed pursuant to NRS 341.100.

Sec. 15. **NAC 338.220 “Principal personnel” defined.** (NRS 338.1375) “Principal personnel” means the owner, *partner, [and]* any corporate officer, ~~for~~ *and any* qualified employee listed on the contractor’s license of the applicant.

NAC 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.

Sec. 16. **NAC 338.240 Criteria for qualification of an applicant~~s~~ who is a Prime Contractor.** (NRS 338.1375)

1. The following criteria must be used to determine whether an applicant, *who is a Prime Contractor*, is qualified to bid on a contract for one or more public works:

(a) The financial ability of the applicant to perform the contract. The applicant shall include with the application:

(1) A certified *original* statement of the bonding capacity of the applicant obtained from a surety authorized to issue bid, performance and payment bonds in this state~~;~~ *must have received a rating of “A-“ or better and be classified in a financial category of “VII” or better as determined by A.M. Best Company of Oldwick, New Jersey. No rating is required if the insurer is Lloyd’s of London.* The statement must specify the *present* single and aggregate limits of the applicant to work on a public work.

(2) Evidence of proper licensure *of the applicant* pursuant to chapter 624 of NRS.

(3) A statement regarding whether the applicant, *principal personnel, or any business entities associated with the principal personnel* 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 include in the application submitted pursuant to NAC 338.250 *or NRS 338.1376(3)* a description of the professional qualifications and relevant experience of the Principal personnel employed by the applicant. *The applicant shall select from its principal personnel and list:*

(1) Up to 10 public works or private construction projects, or any combination thereof, that the principal personnel of the applicant have successfully completed,

(2) The successfully completed projects performed by the principal personnel and the applicant shall be within the cost category for which the applicant is applying for qualification. For each project included on the list, the applicant shall provide:

- (I) *The name of the project;*
- (II) *Scope of the project or scope of work;*
- (III) *Dollar amount of the project; and*

(IV) *Month and year of substantial completion and final completion of the project.*

(c) Whether the applicant, *principal personnel, or any business entities associated with the principal personnel*, ~~has~~ have been found to have been 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 include in the application submitted pursuant to NAC 338.270 *or NRS 338.1376(3)* 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, *principal personnel or any other business entities associated with the principal personnel* relating to the action.

(d) Whether the applicant ~~was~~, *principal personnel, or any business entities associated with the principal personnel have been* disqualified from the award of any contract pursuant to NRS 338.017 or 338.1387, *or for pre-qualification under NRS Chapter 338 or NRS Chapter 408* during the 5 years immediately preceding the date of the application.

(e) The past performance history of the applicant ~~on recent, similar contracts~~, *principal personnel or any other business entities associated with the principal personnel during the five years immediately preceding the date of the application*. The applicant shall include in the application submitted pursuant to NAC 338.250 *or NRS 338.1376(3)*:

(1) A description of:

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

(II) Any civil judgment, findings of fact, administrative proceeding, 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 either against or by the applicant or Principal personnel of the applicant during the 5 years immediately preceding the date of the application.~~

(2) A list of all public works and private construction projects undertaken or completed by the applicant, *principal personnel or any other business entities 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 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, failed to complete any remaining requirements of the contract within 90 days after substantial completion of the contract; or

(III) The applicant 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 10 public works or private construction projects, or any combination thereof, that the applicant, *principal personnel, or any other business entities associated with the principal personnel* has

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 seeks qualification to submit bids. For each project included on the list, the applicant shall 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, *principal personnel, or any other business entities 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 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, 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 may be used to determine whether an applicant is qualified to bid on one or more contracts for public works.

Sec. 17. NAC 338.250 Application of an applicant who is a Prime Contractor: Requirements for submission; content; grounds for delay, denial or revocation. (NRS 338.1375)

- 1. To qualify to bid on one or more contracts for public works, an applicant 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 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 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 two year period, the cost categories of:
 - (1) Less than \$1,000,000;
 - (2) One million to \$5,000,000; and
 - (3) More than \$5,000,000,

for which an applicant may be qualified, which are based on the estimated cost of an individual public work. If an applicant is qualified to bid on public works in one of the cost categories

specified in this subsection, the applicant 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 must indicate on the application:

(a) Whether, for the purposes of subsection 2 of NRS 338.1385, the applicant 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 seeks to qualify to submit bids.

4. An application must contain the original signature of the applicant. The board will not accept faxed or photocopied applications.

5. The submission of an incomplete or falsified application or the failure of an applicant to disclose information in the application may be grounds for a delay in the qualification of an applicant or the denial or revocation of the qualification of a bidder.

Sec. 18. NAC 338.260 Application of an applicant who is a Prime Contractor: Appointment of committee to review and score; determination of qualification; expiration; denial. (NRS 338.1375)

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 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 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 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 is:

(a) Qualified, the manager shall provide written notice to the applicant 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 is qualified to bid on public works for which the estimated cost does not exceed the maximum dollar amount for which the applicant is qualified to submit bids.

(b) Not qualified, the manager shall provide written notice to the applicant 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 of his right to a hearing pursuant to NRS 338.1381.

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

5. An applicant 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. Denial of an application for qualification on a specific public work does not prohibit the applicant from submitting an application for qualification for a 2-year period or qualification on another specific public work.

6. The manager shall have the authority to prevent any applicant from withdrawing an application whether it is complete or not. Within 10 days after receipt of notice denying the withdraw of an application, an applicant may appeal the manager's decision by filing a request for a hearing with the board pursuant to NAC 338.270(2) – NAC338.270(8). The request must set forth the basis for the appeal by the applicant. The applicant may submit with the request copies of any documents that support his appeal at that time.

Sec. 19. NAC 338.270 Denial of application: Appeal and hearing. (NRS 338.1375)

1. Within 10 days after receipt of notice denying an application pursuant to NAC 338.260, an applicant 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 request copies of any documents that support his appeal *at that time*.

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.

3. For each 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 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 by the applicant, any party may request from the chairman of the board of appeals 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 the state.

Sec. 20. NAC 338.280 Revocation of application: Grounds; appeal and hearing. (NRS 338.1375)

1. The qualification of ~~[a-bidder]~~ *an applicant* will be revoked if, after an investigation, the committee determines that:

(a) The ~~{bidder}~~ *applicant* no longer meets one or more of the criteria set forth in NAC 338.240; or

(b) The application submitted by the ~~{bidder}~~ *applicant* contained materially false information or the ~~{bidder}~~ *applicant* failed to disclose materially relevant information in the application, unless, pursuant to this section, the ~~{bidder}~~ *applicant* appeals the determination of the committee within the time prescribed for an appeal in subsection 3 and the board of appeals reverses the determination.

2. If the committee determines pursuant to subsection 1 that the qualification of ~~{a-bidder}~~ *an applicant* will 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 ~~{bidder}~~ *applicant* that the qualification of the ~~{bidder}~~ *applicant* has been revoked and that the ~~{bidder}~~ *applicant* may appeal the revocation. Revocation of the qualification of ~~{a-bidder}~~ *an applicant* becomes effective 10 days after the ~~{bidder}~~ *applicant* receives notice of revocation pursuant to this subsection unless the ~~{bidder}~~ *applicant* 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-bidder}~~ *an applicant* may appeal the determination by filing a request for a hearing with the board. A hearing on the appeal of the revocation of qualification will be conducted by the board of appeals appointed pursuant to NAC 338.270.

4. If the board of appeals concurs with the determination of the committee, revocation of the qualification of the ~~{bidder}~~ *applicant* becomes effective upon the decision of the board of appeals.

5. If the qualification of ~~{a-bidder}~~ *an applicant* is revoked, the ~~{bidder}~~ *applicant* may reapply for qualification after the period specified in subsection 5 of NAC 338.260 has elapsed, if applicable.