

LCB File R096-04

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 341 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 improve the efficiency and effectiveness of SPWB operations. In addition, these amendments clarify certain policies and procedures utilized by the SPWB.
2. The proposed regulation involves:
 - a. Developing a system for selection of “at-risk construction managers” (retained to guarantee a set price for the cost of the work), and construction managers (retained to assist with construction work but that do not guarantee the cost of the work.)
 - b. Discussion of Board powers and those powers to be delegated to the manager including consultant selection, termination of contracts, solicitation of bids, final acceptance of construction work, acceptance of programming money, delegation of Board powers to other agencies, requiring 100% performance and payment bonds of contractors, allowing prime or subcontractors to appeal to the Board to lower the percentage amount of bonds required of subcontractors, procedures for dealing with emergency contracts, procedures for resolving bid protests, procedures for contractor and consultant mediations.
 - c. Setting a time-limit for the length of time that a bid bond may be required to be left open by contractors.
 - d. Setting procedures and limitations on service of Board officers.
 - e. Modifying the adopted building codes of the Board, including a discussion as to whether those building codes should be amended, and a discussion of fee schedules to be adopted by the Board for review of agency projects. This will also include a discussion of adopting seismic codes and procedures for investigating seismic issues.
 - f. Setting forth a procedure to appeal building code decisions made by the manager.

- g. Setting forth a procedure for reviewing amendments to the Uniform Plumbing Code.
 - h. Allowing the manager authority to waive minor errors and omissions of retained consultants.
 - i. Deleting the exemption allowing school plan review under \$25,000 to be conducted without Board review. Clarifying wording of when the Board will review plans for alterations or additions to school buildings. Clarifying that school plans, including alterations and additions, must be designed according to the Americans with Disabilities Act. Clarifying that school plans will be reviewed by the Board according to state adopted codes and not those of local jurisdictions.
 - j. Replacing the AM Best size category for sureties of subcontractors with the surety being listed on the Treasury Circular (and retaining an AM Best "A-" rating.)
 - k. Defining the term "scope of work" for purposes of NRS 341.145(7) (important to determine whether the SPWB must seek legislative approval or whether a change can be made without such approval.)
 - l. Defining the term "structure" (important to determine whether the SPWB has jurisdiction over a building code issue.)
 - m. Setting up an appeals process for persons challenging the decision of the SPWB Manager to issue a stop work order (i.e. a red tag) and setting forth a sequence of fines for working over a red tag.
 - n. Setting up direct select (i.e. selection without a formal process) for design professionals or construction managers.
3. The proposed regulations should benefit construction managers as they set forth a system of construction manager selection. The proposed regulations will also generally benefit the professional consulting industry in that they grant additional authority to the Manager to make consultant selections. The proposed regulations should also benefit the professional consulting industry in that they allow the Manager to waive certain minor errors and omission issues (i.e. design issues). The proposed regulations would benefit both subcontractors and prime contractors by deleting the requirement for subcontractors to have insurance with an AM Best size rating. In addition, both subcontractors and prime contractors may petition to allow the subcontractor to carry less than 100% performance and payment bonds. The regulations will benefit the construction industry by setting forth procedures for bid protests. The regulations will benefit the design and construction industry by creating an appeals board for decisions made by the Manager as the state building official. The regulations will benefit both the design and construction industry by adopting more updated building codes. The regulations will benefit the construction industry by setting forth a procedure to challenge stop work orders issued by the manager and to challenge fines issued by the Manager for working over stop work orders. The State Public Works Board does not see any negative impacts to small businesses based upon the regulations.
4. The estimated cost to the SPWB will vary depending on the number of contractors seeking appeals of building official decisions and/or decisions relating to stop work orders issued by the Manager. At this juncture, the State Public Works Board believes that the estimated cost to the agency for enforcement will be minimal. With delegation to the Manager for an increased role in consultant selection, money may be saved. Increased legal fees could

amount to \$15,000 per year, if numerous appeals are made regarding building official appeals and/or stop work issues.

5. The proposed regulations do not 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 includes the adoption of a fee schedule for building permits, plan reviews and other services.
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

Churchill County Library
553 South Maine Street
Fallon, Nevada 89406

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

Elko County Library
720 Court Street
Elko, Nevada 89801

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

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 R096-04

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

PROPOSED ADDITIONS AND AMENDMENTS TO NAC CHAPTER 341

CONSTRUCTION MANAGERS

Chapter 341 of NAC is hereby amended by adding thereto the new provisions as set forth in sections 1 to 5, inclusive, of this regulation:

Section 1. *“At-Risk Construction Manager” shall mean a contractor properly licensed pursuant to NRS chapter 624 and retained by the Board to comply with the provisions of NRS 341.161 wherein the contractor guarantees a final price for the project that will not be exceeded. An at-risk construction manager shall not be required for Board projects utilizing inmate labor pursuant to NRS 338.130(2) or for self-performed Board projects pursuant to NRS 338.1386.*

Sec. 2. *“Construction Manager” shall mean a contractor properly licensed pursuant to NRS chapter 624 retained by the Board to assist in projects utilizing inmate labor under NRS 338.130(2) or projects wherein the Board is self-performing the work as set forth in NRS 338.1386. A Construction Manager shall not be deemed an At-Risk Construction Manager as set forth in NRS 341.161.*

Sec. 3. *For construction managers, regardless of amount, and for at-risk construction managers in an amount over \$100,000, the manager shall:*

(a) Appoint a 3-person committee, with 2 members being employed by the board, and 1 member being employed by the agency for which the project is to be designed or constructed.

(b) The 3-person committee shall review applications and form a short list of prospective candidates.

(c) The manager shall then appoint a new committee of 5 different members whom shall review the short list and conduct interviews. The committee shall consist of 3 employees who are employed by the board, and 2 employees employed by the agency for which the project is to be designed or constructed. After conducting interviews, the committee shall make a recommendation to the manager.

(iv) The manager shall then make a final recommendation for selection to the board.

Sec. 4. *The manager shall have authority to direct select at-risk construction managers, in conformance with the provisions of NRS 338.13862, for contract amounts below \$100,000.*

Sec. 5. *The Board may direct select either an at-risk construction manager or a construction manager without complying with any solicitation requirements if the Board determines that an emergency affecting the health, safety, or welfare of the public exists.*

**STOP WORK ORDERS; APPEALS; FINES;
AUTHORITY FOR DIRECT SELECT OF CERTAIN PROFESSIONALS**

Chapter 341 of NAC is hereby amended by adding thereto the new provisions as set forth in sections 1 to 6, inclusive, of this regulation:

Section 1. *“Person” defined. “Person” means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization, and includes a government, governmental agency or political subdivision of a government.*

Sec. 2. *In addition to any other penalty provided by law, any person who knowingly refuses to comply or any person who willfully encourages another person to refuse to comply with an order to compel the cessation of work, as specified in NRS 341.105(1), and issued by the manager shall, at the discretion of the manager, be subject to the following administrative assessments:*

1. For a first offense up to \$250 for each day that a person violates an order as set forth in this section.

2. For a second offense occurring within 7 years of a first offense up to \$750 for each day that a person violates an order as set forth in this section.

3. For a third offense occurring within 7 years of a second offense up to \$1000 for each day that a person violates an order as set forth in this section.

Sec. 3. *If the manager believes, based upon substantial evidence, that a person has violated Section 2, he shall send by certified mail a notice of intent to impose a fine pursuant to Section 2 and a notice of a right to request a hearing.*

Sec. 4. *If the person does not file an appeal, as set forth in section 5, the decision of the manager to impose the administrative assessment is final and the manager may proceed with collection procedures as specified in NRS chapter 353C or as otherwise allowed by law.*

Sec. 5. *Within 10 days after receipt of notice the notice specified in Section 3, the person may file a written appeal to the determination of the Manager to a three person subcommittee appointed by the Board. The request for a hearing shall set forth the basis for the appeal by the appellant. The appellant may submit with the request for a hearing, copies of any documents that support his appeal.*

1. For each appeal filed pursuant to this section, the subcommittee of the Board shall hold a contested case, and:

a. Set the matter for hearing to take place within 45 days of the receipt of the request for a hearing.

b. Provide notice of the hearing.

c. Hold the hearing at a time and place prescribed by the subcommittee of the Board.

2. The Chairman of the subcommittee of the Board shall have discretion to compel the parties to enter into settlement negotiations.

3. The Chairman of the subcommittee of the Board shall have authority to mediate and order the parties to provide discovery.

4. *All parties shall, within 5 working days of the scheduled hearing, serve upon the subcommittee of the Board and the opposing party a pre-hearing statement setting forth factual elements of the case and legal issues surrounding the case. Attached to the pre-hearing statement delivered to the opposing party shall be 1 copy of documents intended to be introduced at the hearing, and attached to the pre-hearing statement delivered to the subcommittee of the Board shall be 5 copies of documents intended to be introduced at the hearing. The pre-hearing statement shall also include a witness list that shall state the address and telephone number of a witness, if known, and a short and plain statement as to the proposed testimony of the witness.*

5. *The subcommittee of the Board shall call the hearing to order and act upon preliminary matters, and evidence shall be presented first by the appellant and then by the administrative body. The applicant shall have the burden to prove his case by substantial evidence.*

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

7. *In conducting the hearing, the subcommittee of the Board is not bound by any technical rules of evidence.*

8. *If a party fails to appear at a hearing and was not granted a continuance or did not enter into a stipulation for a continuance, the subcommittee of the Board may hear evidence from those present at the hearing and make a decision based on the available record.*

9. *Issues surrounding the admissibility of evidence at the hearing shall be determined by a majority vote of the subcommittee of the Board.*

10. *The subcommittee of the Board shall issue its decision in public after the submission of the case and shall serve upon the parties by certified mail a written decision within 20 days after the conclusion of the hearing.*

Sec. 6. *In determining whether to direct select an architect, engineer, construction manager, or other professional consultant, the Board and Manager may consider whether the professional consultant has had experience with the same or a similar project, has specialized technical knowledge or experience, has ownership under copyright laws to a certain design or prototype, has such experience or expertise necessary to complete the project in a more timely manner than other professional consultants, or any other factor that the Board determines relevant to the health, safety, or welfare of the public.*

BUILDING CODE BOARD OF APPEALS

Chapter 341 of NAC is hereby amended by adding thereto the new provisions as set forth in sections 1 to 7, inclusive, of this regulation:

Section 1. *The chairman of the board shall appoint one expert in the fields of engineering, architecture, disability issues, and construction to serve on an appeals board pursuant to Sections 1 through 7, inclusive and in conformance with Section 112, Board of Appeals, of the 2003 International Building Code. The experts appointed herein shall serve for a period of 2 years, but nothing herein shall be construed to prevent reappointment of an expert at the discretion of the chairman of the board. All experts, whether required by the provisions of*

NRS chapter 281, shall disclose to the Attorney General any actual or potential conflicts of interest as specified in NRS chapter 281 prior to a hearing.

Sec. 2. Any person aggrieved by a decision of the manager made in his capacity as the building official pursuant to paragraph (h) of subsection 5 of NRS 341.100, may, within 30 calendar days of a written decision of the manager, file a written appeal with the manager regarding such a decision.

Sec. 3. Upon receipt of an appeal pursuant to Section 2, the manager shall immediately forward the appeal to the chairman of the board, who shall convene an appropriate appeals board from those experts appointed pursuant to Section 1 and a private member as specified in Section 4. The appeals board shall contain an expert in disability issues only if the chairman, in his sole discretion, determines that disabilities issues are relevant to the appeal. If disability issues are not relevant to the appeal, the chairman, in his sole discretion, may appoint an additional expert in the field of engineering, architecture, or construction as he deems relevant to the issues presented in the appeal.

Sec. 4. The appeals board shall consist of either 4 or 5 individuals, who are not employees of the State of Nevada, and shall contain at least one contractor licensed pursuant to NRS chapter 624, one disabilities expert appointed pursuant to Section 1 if a disability issue is present in the appealed case, at least one architect, at least one engineer and one citizen who is not licensed or registered as a contractor, engineer, or architect, and who is not employed in the design or construction industry. The chairman of the Board shall appoint an individual to serve as the chairman of the appeals board.

Sec. 5. An appeals hearing shall be scheduled within 30 calendar days of the receipt of the written request for a hearing.

Sec. 6. The appeals hearing shall not be deemed a contested case for purposes of NRS 233B.032.

Sec. 7. 1. For each appeal filed, the chairman of the board shall provide notice of the hearing.

2. The chairman of the board shall have authority to mediate and order the parties to provide discovery.

3. All parties shall, within 5 working days of the scheduled hearing, serve upon the appeals panel appointed pursuant to Section 4, and the opposing party a pre-hearing statement setting forth factual elements of the case and legal issues surrounding the case. Attached to the pre-hearing statement delivered to the opposing party shall be 1 copy of the documents intended to be introduced at the hearing, and attached to the pre-hearing statement delivered to the appeals panel shall be 5 copies of the documents intended to be introduced at the hearing. The pre-hearing statement shall also include a witness list that shall state the address and telephone number of a witness, if known, and a short and plain statement as to the proposed testimony of the witness.

4. The chairman of the appeals panel shall call the hearing to order and act upon preliminary matters, and evidence shall be presented first by the appellant and then by the administrative body

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

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

7. *If a party fails to appear at a hearing and was not granted a continuance or did not enter into a stipulation for a continuance, the appeals panel may hear evidence from those present at the hearing and make a decision based on the available record.*

8. *Issues surrounding the admissibility of evidence at the hearing shall be determined by a majority vote of the appeals panel.*

9. *The appeals panel shall issue its decision in public after the submission of the case and shall serve upon the parties by certified mail a written decision within 20 days after the conclusion of the hearing.*

BUILDING PERMIT, PLAN REVIEW AND OTHER FEES

Chapter 341 of NAC is hereby amended by adding thereto the new provisions as set forth in Sections 1, inclusive, of this regulation:

Authority: NRS 341.100, 341.110, 431.145 and 393.110

Section 1. *Building Permit, Plan Review and Other Fees. Any plans and specifications for Non-Capital Improvement Program (CIP) projects, submitted to the board for review and approval, must be accompanied by the appropriate fee based upon the proposed cost of construction according to the following:*

1. Basic Building Permit Fees:

<i>Total Construction Cost</i>	<i>Fee</i>
<i>\$1.00 to \$500.00</i>	<i>23.50</i>
<i>\$501.00 to \$2,000.00</i>	<i>\$23.50 for the first \$500 plus \$3.05 for each additional \$100.00 or fraction thereof, to and including \$2,000.00.</i>
<i>\$2,001.00 to \$25,000.00</i>	<i>\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00.</i>
<i>\$25,001.00 to \$50,000.00</i>	<i>\$391.25 for the first \$50,000.00 plus \$10.10 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00.</i>
<i>\$50,001.00 to \$100,000.00</i>	<i>\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00</i>
<i>\$100,001.00 to \$500,000.00</i>	<i>\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00 or fraction thereof, to and including \$500,000.00.</i>
<i>\$500,001.00 to \$1,000,000.00</i>	<i>\$3,233.75 for the first \$500,000.00 plus \$4.75 for each \$1,000.00 or fraction thereof, to and including \$1,000,000.00.</i>
<i>\$1,000,001.00 and up</i>	<i>\$5,608.75 for the first \$1,000,000.00 plus \$3.15 for each \$1,000.00 or fraction thereof.</i>

2. *Sub Permit Fees. In addition to the basic building permit fee, sub permit fees shall be assessed for additional disciplines (mechanical, electrical and plumbing). These fees shall be assessed at 15% of the basic permit fee for each additional discipline. When the application involves only 1 discipline, the permit fee shall be calculated using the table for basic building permit fees.*

3. *Plan review fees shall be assessed at 65% of the related basic building and sub permit fees.*

4. *The following services may be assessed on a per hour basis at the Board's hourly cost:*

(a) Inspections outside of normal business hours.

(b) Re-inspections.

(c) Inspections for which no fee is specifically indicated.

(d) Additional plan reviews required by changes, additions, or alterations to plans.

5. *The fee for use of outside consultants for inspections shall be assessed at actual cost to the Board plus the Board's hourly costs.*

6. *Plan review of school district projects under NRS 393.110 are subject to plan review fees only.*

7. *Permit and plan review fees for phased, fast track or unusual projects shall be based on actual costs to the Board as determined by the Manager.*

8. *The Board's hourly costs shall be on file in its Carson City and Las Vegas offices and shall be posted on its Web site at www.spwb.state.nv.us.*

AMENDING SCOPE OF PROJECT

NAC 341.005 is hereby amended to read as follows:

NAC 341.005 Definitions. As used in this chapter, unless the context otherwise requires:

1. *“Amending scope of project” means, for the purposes of NRS 341.145(7) and this chapter, the addition or deletion of 10 percent or more of the originally planned square footage of a building, other structure, or facility, or the change in intended use of more than 10 percent of the originally proposed square footage of a building, other structure, or facility, or the change of more than 10 percent of the originally intended users of a building, other structure, or facility.*

~~1.~~2. *“Board” means the state public works board.*

~~2.~~3. *“Chairman” means the chairman of the board.*

4. *“Structure” means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.*

~~3.~~5. *“Manager” means the manager and technical supervisor of the board.*

BOARD ACTION

NAC 341.015 is hereby amended to read as follows:

NAC 341.015 Matters requiring board action. Unless the authority to take action is delegated by the board to the manager, an action by the board is required for:

1. The designation of projects, budgets and priorities to be included in the recommended program for capital improvements.

2. The selection of architects, ~~and~~ engineers, *professional consultants* and the designation of the sequence of negotiations for contracts for professional services in an amount of ~~[\$50,000]~~ *\$100,000* or more ~~[.]~~ *unless the manager, with consent of the chairman, determines that an emergency affecting the health, safety, or welfare of the public exists in which case the manager may select an architect, engineer, or other professional consultant, regardless of cost without Board approval. If the manager lets a contract based upon an emergency as specified*

herein, he shall notify the chairman and vice-chairman of the board immediately and the board at its next regularly scheduled meeting.

~~{3. Approval of the solicitation of bids for the construction of any project in a program of capital improvements if the estimated cost of the project is \$500,000 or more.}~~

~~{4. The final acceptance of work performed pursuant to a contract of \$1,000,000 or more.}~~

~~{5.}~~3. The termination of a contract of **\$200,000** ~~[\$100,000]~~ or more.

~~{6.}~~4. Making the biennial recommendations for the operating budget.

~~{7.}~~5. The acceptance of money and the establishment of funds for projects that are not included in the program for capital improvements and have a budget of **\$200,000** ~~[\$100,000]~~ or more.

~~{8.}~~6. Amending the scope or budget of a project if the amendment has a value of **\$200,000** ~~[\$100,000]~~ or more.

~~{9.}~~7. The delegation of the authority of the board to another state agency in accordance with NRS 341.119 for projects of **\$200,000** ~~[\$100,000]~~ or more.

~~{10.}~~8. The adoption of criteria for determining responsible contractors as required by NRS 338.147, including establishing the qualifications of contractors and rating their performance on projects.

9. The Board shall require 100 percent payment and performance bonds of both prime and subcontractors pursuant to NRS 339.025.

DELEGATION TO MANAGER

NAC 341.030 is hereby amended to read as follows:

NAC 341.030 Employees; powers of manager.

1. In addition to the manager and the deputy manager for professional services, each employee who is classified as an architect or an engineer must maintain a license to practice architecture or engineering in the State of Nevada.

2. The manager may:

(a) Administer the board's programs.

(b) Approve claims and partial payments.

(c) Negotiate and execute contracts and other documents authorized by the board.

(d) Except as otherwise provided in NAC 341.105, approve change orders and endorsements to authorized contracts.

(e) Select and commission professional or technical firms or other persons for checking plans, testing, surveying and providing necessary consulting or professional services.

(f) Establish criteria for soliciting bids and bidding and use the criteria established by the board to determine responsible contractors.

(g) Award a contract for construction to responsible contractors.

(h) Administer the board's employees, including hiring and firing, except that the deputy managers may be hired and fired only with the concurrence of the board.

(i) Perform such other functions as may be required for the efficient administration of the board's programs or as directed by the board.

(j) Approve plans for projects of capital improvement.

(k) Adopt A-E selection procedures, design standards, general provisions for contracts, contract forms and other standards that are needed to ensure the construction and maintenance of facilities at a reasonable cost.

(l) *Direct ~~Select~~ selection of architects, ~~and~~ engineers, or other professional consultants, for contracts for professional ~~design~~ services that are less than ~~[\$50,000.] \$100,000 unless the manager, with consent of the chairman, determines that an emergency effecting the health, safety, or welfare of the public exists in which case the manager may select an architect, engineer, construction manager, or other professional consultant regardless of cost without board approval. If the manager lets a contract based upon an emergency as specified herein, he shall notify the chairman and vice-chairman immediately and the board at its next regularly scheduled meeting.~~*

(m) *Where no emergency effecting the health, safety, or welfare of the public exists, and where the contract for professional services of an architect, engineer, or other professional consultant will be awarded in an amount exceeding \$100,000 the manager shall:*

(i) *Appoint a 3-person committee, with 2 members being employed by the board, and 1 member being employed by the agency for which the project is to be designed or constructed.*

(ii) *The 3-person committee shall review applications and form a short list of prospective candidates.*

(iii) *The manager shall then appoint a new committee of 5 different members who shall review the short list and conduct interviews. The committee shall consist of 3 employees who are employed by the board, and 2 employees employed by the agency for which the project is to be designed or constructed. After conducting interviews, the committee shall make a recommendation to the manager.*

(iv) *The manager shall then make a final recommendation for selection to the board.*

~~(m)~~(n) Make recommendations to the board for the selection of architects, ~~and~~ engineers, or other professional consultants, for contracts for professional ~~design~~ services that are ~~[\$50,000] \$100,000~~ or more.

~~(n)~~(o) Solicit bids for the construction of a project of any value. ~~[with an estimated value of less than \$500,000.]~~ *If the manager, with consent of the chairman, determines that an emergency effecting the health, safety, or welfare of the public exists the manager may direct select a contractor licensed pursuant to NRS chapter 624 regardless of cost without board approval and without complying with the provisions of NRS chapter 338. If the manager lets a contract based upon an emergency as specified herein, he shall notify the chairman and vice-chairman of the board immediately and the board at its next regularly scheduled meeting.*

~~(o)~~(p) Execute the forms necessary for the final acceptance of work that is completed for a project ~~[with a value of less than \$1,000,000.]~~ of any value.

~~(p)~~(q) Terminate for good cause a contract of less than \$200,000. ~~[\$100,000.]~~

~~(q)~~(r) Accept money and establish funds for projects not previously included in the program for capital improvements which have a budget of less than \$200,000 ~~[\$100,000]~~ and, with the concurrence of the chairman, seek legislative approval for those projects, if necessary.

~~(r)~~(s) Amend the scope or budget of a project if the amendment has a value of less than \$200,000 ~~[\$100,000]~~ and, with the concurrence of the chairman, seek legislative approval for those amendments, if necessary.

~~(s)~~(t) Delegate the authority of the board to other state agencies in accordance with NRS 341.119 for projects of less than \$200,000 ~~[\$100,000.]~~

(u) Review and render final decisions on bid protests and to determine whether a bid protest bond shall be required.

(v) Request that a contractor or consultant engage in mediation at anytime whether specified in the contractual documents or not.

(w) The manager shall not delegate his authority as the building official of buildings and structures on property of the state or held in trust for any division of the state pursuant to NRS 341.100(5)(h)

3. The manager may delegate his authority to take any action pursuant to subsection 2 to a deputy manager or ~~the~~ chief of design.

4. No employee may have any personal interest in any project under the jurisdiction of the board or engage in any activity that is in conflict with policies and procedures of the board.

BID BONDS

NAC 341.077 is hereby amended to read as follows:

NAC 341.077 Bidding: General prerequisites.

1. All bids in excess of \$25,000 must be accompanied by a bond securing the bid and a certified check or cash in an amount which is at least 5 percent of the total of the base bid and all alternative bids. The bond must be in a form approved by the attorney general.

2. A bidder must guarantee that the bid submitted will remain open *for a minimum of* ~~for at least~~ 35 calendar days after the date of the opening of the bids ~~unless a mutual agreement is reached in writing between the manager and the contractor to extend the time past 35 calendar days.~~

3. A general contractor must list on the form for proposing bids the subcontractors whom he intends to engage for the project for those areas of work identified on the form used to list subcontractors. Subcontractors may not be subsequently substituted by the contractor without the approval of the manager.

4. The board will not consider a bid unless it meets all the following conditions:

(a) The bid must be within the approved budget for the building project.

(b) The bid must be in the best interests of the State of Nevada.

(c) The bid must be submitted by a person who is licensed as a contractor in Nevada.

IRREGULARITY IN BID

NAC 341.084 is hereby amended to read as follows:

NAC 341.084 Irregularity in bid. If the lowest bid contains an irregularity, the manager *may* ~~shall~~ refer the bid to the attorney general. ~~The contract will not be awarded until the attorney general approves the bid.~~

BOARD OFFICERS; TIME OF SERVICE

NAC 341.020 is hereby amended to read as follows:

NAC 341.020 Officers: Powers and duties.

1. The officers of the board consist of a chairman, vice chairman and secretary. *The chairman and vice chairman shall hold their office for a period of 2 years. Nothing herein shall be construed to prevent a chairman or vice chairman from being elected to multiple terms of office. The secretary of the Board shall inform the chairman and vice-chairman at least 60 calendar days prior to the end of their respective terms.*

2. *If the chairman resigns, or if his position becomes otherwise vacant, the vice-chairman shall succeed to the position of chairman and serve out the unexpired term of the former chairman's term. In the event that the vice-chairman succeeds the chairman, the board shall appoint a new vice-chairman and the new vice-chairman shall fill the unexpired term of the previous vice-chairman.*

3. *If the vice-chairman resigns, or if his position otherwise becomes vacant, the board shall appoint a new vice-chairman to serve out his unexpired term.*

~~{2.}4. The manager serves as secretary of the board.~~

~~{3.}~~5. The chairman, or if he is unable to act, the vice chairman, may:

- (a) Call meetings of the board and preside at the meetings.
- (b) Appoint the members of the board's committees.
- (c) Execute documents on behalf of the board.
- (d) Represent the board.

~~{4.}~~6. The secretary shall:

- (a) Schedule and arrange all meetings of the board;
- (b) Post and mail copies of notices of the meetings;
- (c) Maintain:
 - (1) Written minutes of the meetings;
 - (2) Records of the policies and procedures of the board; and
 - (3) Other official records of the board; and
- (d) Provide such information to members of the board as they may request or the secretary considers to be appropriate.

BUILDING CODE ISSUES

NAC 341.045 is hereby amended to read as follows:

NAC 341.045 Standards for design and for seismic investigation. The board hereby adopts by reference the following publications ~~{as they exist on November 12, 1992}~~, and establishes the standards contained therein as minimum standards for the design of state buildings, other than those excepted in NRS 341.141:

1. The *2003 International Building Code* ~~{Uniform Building Code}~~ published by the International *Code Council with the following amendments: The provisions of the Uniform Plumbing Code shall apply and shall supercede all references to the International Plumbing Code. The provisions of the 2002 National Electric Code shall apply and shall supercede all references to the International Electrical Code.* ~~{Conference of Building Officials.}~~ This code may be obtained from the International *Code Council, www.iccsafe.org* ~~{Conference of Building~~

~~Officials~~], 5360 South Workman Mill Road, Whittier, California 90601, at a price of ~~[\$47.40]~~ \$65.00 for members and ~~[\$63.20]~~ \$86.00 for nonmembers.

2. *The 2003 International Residential Code published by the International Code Council. The provisions of the Uniform Plumbing Code shall apply and shall supercede all references to the International Plumbing Code. The provisions of the 2002 National Electric Code shall apply and shall supercede all references to the International Electrical Code. This code may be obtained from the International Code Council, 5360 South Workman Mill Road, Whittier, California 90601, www.iccsafe.org, at a price of \$45.00 for members and \$60.00 for nonmembers.*

3. *The 2003 International Existing Building Code published by the International Code Council. The provisions of the Uniform Plumbing Code shall apply and shall supercede all references to the International Plumbing Code. The provisions of the 2002 National Electric Code shall apply and shall supercede all references to the International Electrical Code. This code may be obtained from the International Code Council, 5360 South Workman Mill Road, Whittier, California 90601, www.iccsafe.org, at a price of \$35.00 for members and \$46.00 for nonmembers.*

~~[2]~~4. The 2002 National Electrical Code published by the National Fire Protection Association. This code may be obtained from the National Fire Protection Association, www.nfpa.org, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02169-7471, at a price of ~~[\$29.25]~~ \$67.50 for members and ~~[\$32.50]~~ \$75.00 for nonmembers.

~~[3]~~5. The 2003 Uniform Plumbing Code published by the International Association of Plumbing and Mechanical Officials. This code may be obtained from International Association of Plumbing and Mechanical Officials, www.iapmo.org, 20001 Walnut Drive South, Walnut, California 91789-2825, at a price of ~~[\$35.05]~~ \$80.10 for members and ~~[\$45.50]~~ \$89.00 for nonmembers.

~~[4]~~6. The 2003 ~~[1997]~~ Uniform Mechanical Code published by the International Association of Plumbing and Mechanical Officials. This code may be obtained from International Association of Plumbing and Mechanical Officials, www.iapmo.org, 20001 Walnut Drive South, Walnut, California 91789-2825 ~~[Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601]~~, at a price of \$80.10 ~~[\$29.90]~~ for members and \$89.00 ~~[\$39.70]~~ for nonmembers.

~~[5]~~7. The Heating, Ventilating and Air-Conditioning Handbooks ~~[Guide]~~ published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. *These handbooks* ~~[This guide]~~ may be obtained from *the* American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., www.ashrea.org, 1791 Tullie Circle, N.E., Atlanta, Georgia 30329. The price is \$144.00 ~~[\$114]~~ each for the 2003 HVAC applications, 2002 Refrigeration, 2001 Fundamentals and *the* 2000 HVAC & Equipment Handbooks ~~[series]~~.

~~[6]~~8. The Illuminating Engineering Society of North America, Design Guide Package ~~[Standard for Illumination]~~. This design guide ~~[These standards]~~ may be obtained from *the* Illuminating Engineering Society of North America, 120 Wall Street, Floor 17 ~~[345 E. 47th Street]~~, New York, New York 10025-4001 ~~[10017]~~, www.iesna.org, at a cost of \$175.00 ~~[\$140]~~ for members and \$250.00 ~~[\$350]~~ for nonmembers.

~~[7. The Minimum Federal Guidelines and Requirements for Accessible Design published by the United States Architectural and Transportation Barriers Compliance Board. This publication~~

~~may be obtained from the U.S. Architectural and Transportation Barriers Compliance Board, 330 C Street, S.W., Room 1010, Switzer Building, Washington, D.C. 20202, at a cost of \$2.]~~

~~[8]9.~~ The *Americans with Disabilities Act* published by the United States Department of Justice. This publication may be obtained from the Office of Americans with Disabilities Act, Civil Rights Division, United States Department of Justice, Washington D.C. 20530, free of charge.

~~[9. *The Uniform Building Code Standards* published and issued by the International Conference of Building Officials. The standards may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, at a price of \$70.10 for members and \$99.30 for nonmembers.]~~

10. The **2003 Life Safety Code, NFPA No. 101**, published by the National Fire Protection Association. The code may be obtained from the National Fire Protection Association, **1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02169-7471, www.nfpa.org**, at a price of ~~[\$29.25]~~ \$53.55 for members and ~~[\$32.50]~~ \$59.50 for nonmembers.

11. ***The 2003 International Energy Conservation Code published by the International Code Council. This code may be obtained from the International Code Council, 5360 South Workman Mill Road, Whittier, California 90601, www.iccsafe.org, at a price of \$22.00 for members and \$29.00 for nonmembers.*** ~~[The State of Nevada regulations for the Conservation of Energy in New Building Construction adopted by the Nevada State Energy Office. The regulations may be obtained from the Nevada State Energy Office, 1050 E. William Street, Suite 435, Carson City, Nevada 89710, free of charge.]~~

12. ***The “Guidelines for Evaluating Potential Surface Fault Rupture/Land Subsidence Hazards in Nevada” and the “Guidelines for Evaluating Liquefaction Hazards in Nevada” as published by the Nevada Earthquake Safety Council. The publications referenced herein may be obtained from the Nevada Earthquake Safety Council, c/o Nevada Bureau of Mines and Geology, University of Nevada, Reno, Mail Stop 178, Reno, Nevada 89557-0088, at a price of \$1.00 each.***

13. ***All State buildings, structures and parts thereof shall be designed utilizing the structural provisions for seismic zone, basic wind speed, wind exposure, frost line, roof live loads and roof snow loads adopted by the local political jurisdiction where the building or structure is being constructed. In the absence of adopted structural provisions, the Manager shall apply the structural provisions utilizing the standards contained within the 2003 International Building Code or additional documentation as necessary.***

PLUMBING CODE AMENDMENTS

NAC 341.127 is hereby amended to read as follows:

NAC 341.127 Review of proposal for local adoption of *the Uniform Plumbing Code and review of proposed amendments to the Uniform Plumbing Code.*

1. The manager shall:

(a) Notify all cities and counties of the requirement in NRS 444.420 for the board to review any proposals for local adoption of the *Uniform Plumbing Code* or changes to that code.

(b) Within 60 days after the board’s receipt of such a proposal, advise the local government in writing whether or not any proposed changes are warranted by geographic, topographic or climatic conditions.

2. If the manager has advised any local government that any proposed changes are not warranted, the local government may request a review of the matter by the board at its next scheduled meeting after the local government received the manager's written advice. The manager shall notify the local government of its right to such a review and shall request it to give the board written notice, within 30 days after it received the manager's written advice, if it desires to have a review by the board.

3. The board's secretary shall send copies of all such proposals and the manager's response or, if applicable, the board's recommendation to the health division of the department of human resources.

4. Pursuant to paragraph 5 of NRS 444.350, the manager shall review proposed amendments to the Uniform Plumbing Code that are submitted to him in writing and shall approve or disapprove of the proposed amendments for use in Nevada. An aggrieved party may file an appeal pursuant to the provisions adopted herein relating to appeals of the manager as the building official.

5. The manager shall send notice to the health division of the department of human resources as to whether he approved or disapproved of the proposed amendments of the Uniform Plumbing Code for use in Nevada.

CONTRACT MODIFICATIONS

NAC 341.105 is hereby amended to read as follows:

NAC 341.105 Contract modifications.

1. Any change in the time, price or material set forth in a contract must be authorized in a written change order. The board will approve a change order which reduces the price set forth in the contract by more than 10 percent.

2. A request by a contractor for an extension of time must be submitted in writing to the manager within 7 calendar days after the first occurrence of the incident causing the delay. The manager shall give a written acknowledgment of the receipt of such a request to the contractor.

3. If a change order which increases the price of a contract is the result of an error or omission in the plans or specifications, the architect or engineer who prepared the plans and specifications must pay the board the estimated difference in cost between what the work would have cost in the absence of the error or omission and the actual cost *unless the manager, in his sole discretion, waives minor irregularities and errors and omissions.*

SCHOOL BUILDING CODES

NAC 341.113 is hereby amended to read as follows:

NAC 341.113 Plans for construction of school building costing more than \$25,000.

~~[1. Plans for the construction of a school building which is estimated to cost more than \$25,000 must be prepared by architects and engineers who are licensed to practice in Nevada.]~~

~~[2]~~1. The board will not approve plans for a new school building *or any addition to or alteration of an existing school building involving structural systems, exiting, sanitary, or fire protection facilities* unless the design complies with the requirements of:

(a) The state fire marshal;

- (b) The state board of education; ~~and~~
 - (c) The building codes *adopted by the board pursuant to NAC 341.045; and* ~~and other ordinances of the appropriate local government.~~
 - (d) *The Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, et seq.*
- ~~3~~2. If standard plans are to be used, pursuant to NRS 385.125, the board's approval is required:
- (a) For the work of adaptation to the applicable site; and
 - (b) To ensure compliance with any provisions of the ~~local~~ code which were revised after the board's initial approval of the standard plans.

SURETY REQUIREMENTS FOR SUBCONTRACTORS

NAC 341.043 is hereby amended as follows:

NAC 341.043 Rating and classification of insurer or surety; exceptions.

1. Except as otherwise provided in this section, an insurer or surety providing the insurance or bond required by a contractor 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.
2. The requirements of subsection 1 do not apply to Lloyd's of London.
3. The manager may specify a lesser rating or financial category for an insurer or surety after giving consideration to the size and complexity of the project for which the insurance or bond is required.
4. *An insurer or surety providing the insurance or a surety bond required of a subcontractor must have received a rating of “A-“ or better and be included on the United States Treasury Circular 570.*