

## LCB File No. R188-07

# PROPOSED REGULATION OF THE STATE PUBLIC WORKS BOARD

### GENERAL PROVISIONS

**NAC 341.001 Definitions.** ~~[(NRS 341.110)]~~ (NRS 341.010) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 341.002 to 341.012, inclusive, have the meanings ascribed to them in those sections.

**NAC 341.002** ~~["At-risk construction manager"]~~ **"Construction manager at-risk" defined.** ~~[(NRS 341.110)]~~ (NRS 341.010) ~~["At-risk construction manager"]~~ **"Construction manager at-risk"** means a contractor licensed pursuant to chapter 624 of NRS who is retained by the Board for a project of capital improvement pursuant to NRS 341.161 and who guarantees that the final price for the project will not be exceeded.

**NAC 341.004 "Board" defined.** ~~[(NRS 341.110)]~~ (NRS 341.010) "Board" has the meaning ascribed to it in NRS 341.013.

**NAC 341.006 "Chairman" defined.** ~~[(NRS 341.110)]~~ (NRS 341.010) "Chairman" means the Chairman of the Board.

**NAC 341.007 "Construction manager" defined.** ~~[(NRS 341.110)]~~ (NRS 341.010) "Construction manager" means a contractor licensed pursuant to chapter 624 of NRS who is retained by the Board pursuant to NRS 341.161 and who assists in a project that is performed by this State or a local government itself in accordance with NRS 338.1386 and 338.13864.

**NAC 341.009 "Manager" defined.** ~~[(NRS 341.110)]~~ (NRS 341.010) "Manager" has the meaning ascribed to it in NRS 341.015.

**NAC 341.012 "Vice Chairman" defined.** ~~[(NRS 341.110)]~~ (NRS 341.010) "Vice Chairman" means the Vice Chairman of the Board.

### ADMINISTRATION

**NAC 341.015 Matters requiring action by Board.** (NRS 341.110, 341.145, 341.191) 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, engineers and professional consultants and the designation of the sequence of negotiations for contracts for professional services in an amount of ~~[\$100,000]~~ \$250,000 or more.

3. The termination of a contract of ~~[\$200,000]~~ *\$1,000,000* or more.

4. Making the biennial recommendations for the operating budget.

~~[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 or more.]~~

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

~~[7]~~ 5. The delegation of the authority of the Board to another state agency in accordance with NRS 341.119 for projects of ~~[\$200,000]~~ *\$500,000* or more.

**NAC 341.017 Matters requiring legislative approval: “Change in the scope of the design or construction of a project” interpreted.** (NRS 341.110, 341.145) For the purposes of subsection 7 of NRS 341.145, the Board interprets the phrase “change in the scope of the design or construction of a project” to mean **[the]**:

~~[1. Addition or deletion of 10 percent or more of the square footage of the project that was originally authorized by the Legislature;~~

~~— 2. Change in the intended use of more than 10 percent of the square footage of the project that was originally authorized by the Legislature; or~~

~~— 3. Change of more than 10 percent of the users of the project that were originally intended by the Legislature.]~~ *A change that increases or decreases the total square*

*footage or cost of the project by 10 percent or more.*

**NAC 341.020 Officers: Terms; vacancies; powers and duties.** (NRS 341.070, 341.110)

1. The officers of the Board consist of a Chairman, Vice Chairman and Secretary.

2. The term of office of the Chairman and the Vice Chairman is 2 years. The Secretary shall notify the Chairman and the Vice Chairman of the date on which their respective terms end at least 60 days before the end of such terms.

3. If a vacancy occurs in the office of:

(a) Chairman, the Vice Chairman shall assume the duties of the Chairman for the unexpired term.

(b) Vice Chairman, the Board will, at its next meeting, elect from among its members a Vice Chairman to fill the vacancy for the unexpired term.

4. The Manager serves as Secretary of the Board.

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.

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.

**NAC 341.025 Board of Appeals. (NRS 341.070, 341.110)** The Board may appoint three of its members to function as a Board of Appeals in order to attempt to resolve all disputes concerning contracts before the Board will initiate procedures for arbitration.

**NAC 341.030 Employees; authority of Manager. (NRS 341.100, 341.110)**

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) Use the criteria adopted by the Board pursuant to **NRS 338.1375** to determine the qualification of bidders on contracts for public works of this State.

(g) Award a contract for a public work of this State to responsive and responsible contractors.

(h) Administer the Board's employees, including hiring and firing, except that the Deputy Managers *for professional services and the Deputy Manager for administrative, fiscal and constructional services* may be hired and fired only with the concurrence of the Board. *The Deputy Manager for compliance and code enforcement serves at the pleasure of the Board and the Governor.*

(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]~~ *the architecture of all buildings, plans, designs, types of construction, major repairs and designs of landscaping.*

(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) Select architects, engineers and other professional consultants for contracts for professional services that are less than ~~[\$100,000]~~ **\$250,000.**

(m) Make recommendations to the Board for the selection of architects, engineers and other professional consultants for contracts for professional services that are ~~[\$100,000]~~ **\$250,000** or more.

(n) Solicit bids for the construction of a project.

(o) Execute the forms necessary for the final acceptance of work that is completed for a project.

(p) Terminate for good cause a contract of less than ~~[\$200,000]~~ **\$1,000,000.**

(q) 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 and, with the concurrence of the Chairman, seek legislative approval for those projects, if necessary].~~

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

(s) Delegate the authority of the Board to other state agencies in accordance with NRS 341.119 for projects of less than ~~[\$200,000]~~ \$500,000.

(t) Review and render final decisions on a protest filed pursuant to NRS 338.142 and determine whether a person filing such a protest must post a bond or other security.

(u) Request that a contractor or consultant engage in mediation regardless of whether mediation is required pursuant to the contract with the contractor or consultant.

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. The Manager shall not delegate his authority as the building official for all buildings and structures on property of the State or held in trust for any division of the State Government pursuant to paragraph (h) of subsection 5 of NRS 341.100].~~

[5] 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.

***NAC 341.? Employees; authority of Deputy Manager for compliance and code enforcement. (NRS 341.100, 341.105)***

***1. The Deputy Manager for compliance and code enforcement shall:***

***(a) Plan check for code compliance on all buildings and structures on property of the State or held in trust for any division of the State Government.***

***(b) Inspect the construction of structures on property of the State or held in trust for any division of the State Government for compliance with the adopted codes.***

***(c) Issue temporary and final certificates of occupancy for structures on property of the State or held in trust for any division of the State Government.***

***(d) Not delegate his authority as the building official for all buildings and structures on property of the State or held in trust for any division of the State Government pursuant subsection 9 of NRS 341.100.***

**NAC 341.040 Meetings. (NRS 341.070, 341.110)**

1. The Board will obtain the concurrence of the Attorney General or a Deputy Attorney General before closing a meeting for one of the purposes described in NRS 241.030.

2. The Board will conduct its meetings with ***Robert's Rules of Order***. Those rules, as they exist on November 1, 1982, are incorporated by reference and can be obtained from Flemming H. Revel Company, 184 Central Avenue, Old Pappan, New Jersey 07675, at a price of \$3.95.

3. A majority of the members of the Board constitutes a quorum for the transaction of business. All action by the Board must be approved by a majority of the members of the Board who have not been disqualified to vote on an issue, except that a majority of the members of the Board of Appeals established in accordance with NAC 341.025 may act on behalf of the Board with regard to a dispute being reviewed.

**NAC 341.043 Qualifications of insurers and sureties. (NRS 341.110)**

1. Except as otherwise provided in this section, an insurer or surety providing the insurance or bond required by the Board for:

(a) With respect to contracts of more than \$5,000,000, ~~[a contractor]~~ ***an insurer or surety*** 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, and be included on the list of approved sureties in Circular 570 of the Department of the Treasury.

(b) With respect to contracts of \$5,000,000 or less, ~~the contractor~~ *an insurer or surety* must have received a rating of “A-” or better as determined by A.M. Best Company of Oldwick, New Jersey, and be included on the list of approved sureties in Circular 570 of the Department of the Treasury.

(c) A subcontractor’s *insurer or surety* must have received a rating of “A-” or better as determined by A.M. Best Company of Oldwick, New Jersey, and be included on the list of approved sureties in Circular 570 of the Department of the Treasury.

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.

**NAC 341.045 Standards for design; structural standards for geographic location. (NRS 341.110, 341.143)**

1. The Board hereby adopts by reference the following publications and establishes the standards contained therein as minimum standards for the design of state buildings, other than those excepted in NRS 341.141:

(a) The ~~2003~~ *2006 International Building Code* published by the International Code Council with the following exceptions:

(1) References to the *International Plumbing Code* are replaced with references to the *Uniform Plumbing Code*; and

(2) References to the *International Electrical Code* are replaced with references to the ~~2002~~ *2005 National Electrical Code*; and

(3) *References to the International Mechanical Code are replaced with references to the Uniform Mechanical Code.*

(4) *In section 403.1, replace the phrase “more than 75 feet” with “more than 55 feet”.*

(5) *To section 403.6 add: “Loudspeakers or horns for a fire alarm must achieve at least 80 decibels of sound in all areas within the protected property.”*

(6) *To section 403.8, add the following provisions:*

(1) *“All equipment contained within the fire command center must be tested annually by a person approved by the authority having jurisdiction. Systems terminating within the fire command center must be tested as required by the authority having jurisdiction according to a schedule which is commensurate with the size and complexity of the facility being protected and the systems involved. All equipment for the safety of life must be reset and certified by a person approved by the authority having jurisdiction after having been tested. A log of the tests required by this section must be available for inspection by the authority having jurisdiction. Graphic display annunciator panels may be required if the complexity of the systems warrant. Testing must follow procedures which are developed by the designer, manufacturer and nationally recognized standards of good practice as approved by the authority having jurisdiction.”*

(2) *“The fire command center must be housed in a room separated from the building in which it is located by noncombustible construction rated at a minimum of 2 hours. The room used for that command center must be provided an exterior door if possible.”*

(7) *To section 403.12, at the end of the last sentence, add “or the activation of any fire alarm system or a power failure.”*

(8) *To section 903.2.2, add section 903.2.2.1.*

(9) *In section 907.2.12, replace the phrase “75 feet” with “55 feet”.*

(10) *Section 907.9.1 is revised by adding the following exceptions:*

(3) *Electrical rooms and mechanical rooms that are not normally occupied and are less than 400 square feet.*

(4) *Janitor closets.*

(5) *Storage rooms that are less than 400 square feet.*

(6) *Elevator cabs.*

(7) *Individual work areas or offices and private toilets serving individual work areas or offices.*

(8) *Individual inmate sleeping accommodations and patient sleeping rooms except as required by section 907.2.10.1.3.*

(11) *In section 907.9.2 delete and replace as follows:*

(1) *“70 dBA” is replaced with “80 dBA”.*

(2) *“60 dBA” is replaced with “80 dBA”.*

(12) *In section 1008.1.8.7, exception 3 is revised to read as follows: “In stairways serving buildings other than high-rise buildings, doors are permitted to be locked on the side opposite the egress side, provided that the doors can be opened from the egress side. Except for exit discharge doors, the doors must be automatically unlocked upon the activation of a fire alarm system or fire sprinkler alarm and for a power failure.*

(13) *Section 1020.1.7, replace “75 feet” with “55 feet”.*

This code may be obtained from the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, Virginia 22041-3401, or at the Internet address <http://www.iccsafe.org/>, at a price of ~~[\$65]~~ \$75 for members and ~~[\$86]~~ \$100 for nonmembers.

(b) The ~~[2003]~~ 2006 *International Existing Building Code* published by the International Code Council with the following exceptions:

(1) References to the *International Plumbing Code* are replaced with references to the *Uniform Plumbing Code*; and

(2) References to the *International Electrical Code* are replaced with references to the ~~[2002]~~ ~~[2005]~~ *National Electrical Code*.

(3) *References to the International Mechanical Code are replaced with references to the Uniform Mechanical Code; and*

This code may be obtained from the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, Virginia 22041-3401, or at the Internet address <http://www.iccsafe.org/>, at a price of ~~[\$35]~~ \$40.50 for members and ~~[\$46]~~ \$54 for nonmembers.

(c) The ~~[2003]~~ 2006 *International Residential Code* published by the International Code Council with the following exceptions:

(1) References to the *International Plumbing Code* are replaced with references to the *Uniform Plumbing Code*; and

(2) References to the *International Electrical Code* are replaced with references to the ~~[2002]~~ ~~[2005]~~ *National Electrical Code*.

(3) *References to the International Mechanical Code are replaced with references to the Uniform Mechanical Code.*

This code may be obtained from the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, Virginia 22041-3401, or at the Internet address <http://www.iccsafe.org/>, at a price of ~~[\$45]~~ \$57.50 for members and ~~[\$60]~~ \$76.50 for nonmembers.

(d) The ~~2002~~ **2005** *National Electrical Code* published by the National Fire Protection Association. This code may be obtained from the National Fire Protection Association, 11 Tracy Drive, Avon, Massachusetts 02322, or at the Internet address <http://www.nfpa.org/>, at a price of \$67.50 for members and \$75 for nonmembers.

(e) The ~~2003~~ **2006** *Uniform Plumbing Code* published by the International Association of Plumbing and Mechanical Officials. This code may be obtained from the International Association of Plumbing and Mechanical Officials, 5001 East Philadelphia Street, Ontario, California 91761-2816, or at the Internet address <http://www.iapmo.org/>, at a price of ~~[\$64]~~ **\$74** for members and ~~[\$89]~~ **\$93** for nonmembers.

***(1) Exception: In section 412.0, minimum number of required fixtures, “Table 4-1 Minimum Plumbing Facilities” is replaced by “Table 2902.1, Minimum Number of Required Plumbing Fixtures” of the 2006 International Building Code.***

(f) The ~~2003~~ **2006** *Uniform Mechanical Code* published by the International Association of Plumbing and Mechanical Officials. This code may be obtained from the International Association of Plumbing and Mechanical Officials, 5001 East Philadelphia Street, Ontario, California 91761-2816, or at the Internet address <http://www.iapmo.org/>, at a price of ~~[\$64]~~ **\$72** for members and ~~[\$89]~~ **\$93** for nonmembers.

(g) The *Heating, Ventilating and Air-Conditioning Handbooks* published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. These handbooks may be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, N.E., Atlanta, Georgia 30329, or at the Internet address <http://www.ashrae.org/>. The price is ~~[\$144]~~ **\$195** each for the ~~2003~~ **2007** *ASHRAE Handbook - HVAC Applications*, ~~2002~~ **2006** *ASHRAE Handbook - Refrigeration*, ~~2001~~ **2005** *ASHRAE Handbook - Fundamentals* and the ~~2000~~ **2004** *ASHRAE Handbook - HVAC Systems & Equipment* ~~[Handbook]~~.

(h) The *Illuminating Engineering Society of North America, Design Guide Package*. This design guide may be obtained from the Illuminating Engineering Society of North America, 120 Wall Street, Floor 17, New York, New York 10025-4001, or at the Internet address <http://www.iesna.org/>, at a cost of ~~[\$175]~~ **\$186** for members and ~~[\$250]~~ **\$266** for nonmembers.

(i) 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.

~~[(j) NFPA-101: Life Safety Code, 2003 Edition, published by the National Fire Protection Association. The code may be obtained from the National Fire Protection Association, 11 Tracy Drive, Avon, Massachusetts 02322, or at the Internet address http://www.nfpa.org/, at a price of \$55.80 for members and \$62 for nonmembers.]~~

~~[(k)]~~ (j) The ~~2003~~ **2006** *International Energy Conservation Code* published by the International Code Council. This code may be obtained from the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, Virginia 22041-3401, or at the Internet address <http://www.iccsafe.org/>, at a price of ~~[\$22]~~ **\$25** for members and ~~[\$29]~~ **\$31** for nonmembers.

~~[(4)]~~ (k) The “Guidelines for Evaluating Potential Surface Fault Rupture/Land Subsidence Hazards in Nevada” and the “Guidelines for Evaluating Liquefaction Hazards in Nevada” published by the Nevada Earthquake Safety Council. These guidelines 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 each.

2. In addition to the standards contained in the ~~[2003]~~ **2006 International Building Code** adopted pursuant to subsection 1, all buildings and structures of the State and any parts thereof must be designed using the structural standards for seismic zones, basic wind speed, wind exposure, frost line and the live loads and snow loads for roofs adopted by the political subdivision in which the building or structure is being constructed. In the absence of such structural standards adopted by the political subdivision, the Manager may use structural standards that the Manager determines are appropriate for the geographic location at which the building or structure is being constructed.

**NAC 341.060 Standards for design or construction: Variances.** (NRS 341.110) Upon request, the ~~[Manager]~~ **Deputy Manager for compliance and code enforcement** may grant a variance from ~~[a standard established by this chapter for the design or construction of a public work, if:~~

- ~~— 1. The proposed alternative design or construction would satisfy the purpose of the standard; and~~
- ~~— 2. Strict compliance with the standard is not practicable because of unique circumstances surrounding the project.]~~ **code requirements as an alternate method of design and method of construction in accordance with the International Building Code.**

**NAC 341.065 Contract documents; insurance.** (NRS 341.110)

1. Before bidding takes place, the contract documents must be approved by each agency whose approval is required by law.
2. The final contract documents must be independently checked to ensure conformity with the requirements of this chapter before bidding.
3. Contract documents must contain provisions which require the contractor and subcontractors to obtain and maintain during the period of construction the following insurance, in addition to industrial insurance for all employees as required by **chapter 616** of NRS:
  - (a) Casualty insurance.
  - (b) Property insurance.
  - (c) Insurance covering builders' risks, with endorsements for extended coverage and insurance against vandalism and malicious mischief.
4. The Manager shall determine the amount of coverage. Proof of the insurance is required before the Board will issue the notice to proceed. The Manager may waive insurance covering builders' risks on remodeling contracts if the project is insured by the State's policy.

**NAC 341.075 Invitations to bid; issuance of plans and specifications for bidding.** (NRS 341.110)

1. The Manager shall publish an invitation to bid in a newspaper in the locale of the work for each project ~~[which is estimated to]~~ **with an estimated construction cost of [more than \$25,000] \$100,000 or more.** To indicate the approximate size of the project, the Manager must include the estimated cost of the construction in the invitation.
2. The Manager shall provide adequate quantities of plans and specifications for bidding on the following basis:
  - (a) To licensed general contractors and, when necessary, to major subcontractors ~~[and materialmen]~~. Except as provided in subsection 4, a deposit is required in an amount to be established by the Manager based on the cost of reproduction, binding and handling, and rounded



upward to the nearest \$10. The Manager shall refund deposits upon the return of contract documents in a satisfactory condition. The Manager shall deposit money so received with the State Treasurer for credit to the account for the project or, if there is no such account, with the State Treasurer to hold for a possible refund.

(b) To other subcontractors, ~~[materialmen and manufacturers]~~ upon the nonrefundable payment of the actual cost of reproduction and binding. The Manager shall deposit money so received with the State Treasurer in the account for the project.

(c) To ~~[established]~~ *selected* building exchanges at no cost.

3. In the issuance of plans and specifications on the basis specified in subsection 2, the Manager shall give preference to licensed general contractors desiring to bid on the project. The Manager may limit the number of sets provided to any one person or organization.

~~[4. Deposits for plans are not required on projects costing less than \$25,000.]~~

**NAC 341.077 General requirements for bids; amounts of performance and payment bonds. (NRS 339.025, 341.110)**

1. All bids in excess of ~~[\$25,000]~~ *\$100,000* 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 35 calendar days after the date of the opening of the bids unless *otherwise provided in the contract documents or* this period is extended by written agreement between the Manager and the contractor.

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]~~ *the relevant budget item plus 10%* 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.

~~[5. The performance bond required pursuant to NRS 339.025 must be in an amount equal to 100 percent of the contract amount.]~~

~~[6. The payment bond required pursuant to NRS 339.025 must be in an amount equal to 100 percent of the contract amount.]~~

**NAC 341.079 Licensing of bidders; opening and rejection of bids. (NRS 341.110)**

1. Before the bids are opened, all contractors and subcontractors submitting bids must be properly licensed by the State Contractors' Board to perform the work.

2. The opening of bids must be open to the public.

3. Any bid received after the scheduled time for opening bids will be rejected.

**NAC 341.081 Notice to architects and engineers concerning budget. (NRS 341.110)** The Manager shall inform the architects and engineers who prepare contract documents of the budget available for the construction. He shall require them to prepare those documents so that an acceptable bid within the amount of the budget can be obtained or to redesign the work at no cost to the State so that such a bid can be obtained.

**NAC 341.083 Procedure when lowest bid exceeds approved budget. (NRS 341.110)**

1. If the lowest bid exceeds the Board's ~~approved budget for construction~~ *relevant budget item* ~~for that building project~~ *by not more than 10%*, the Manager may exercise the Board's power to negotiate with the person who submitted the bid to obtain a revised bid.

2. If the lowest bid ~~is not within the budget and~~ *exceeds the Board's relevant budget item* ~~for that building project~~ *by more than 10% or* cannot be satisfactorily negotiated, all bids will be rejected.

~~{3. The Manager shall give the Board written notice of the results of bidding for projects of \$100,000 or more.}~~

4. The Board will award a contract to the lowest responsible bidder unless such an award would not be in the best interest of the State. The determination of the lowest bid will include a consideration of the base bid and any alternative bids which are accepted.

**NAC 341.084 Irregularity in lowest bid. (NRS 341.110)** If the lowest bid contains an irregularity, the Manager may refer the bid to the Attorney General.

**NAC 341.086 Alternative bids. (NRS 341.110)** The Board will consider alternative bids and award contracts upon them in the order in which they are listed on the form for proposing bids.

**NAC 341.090 Contract administration. (NRS 341.110)**

1. Within 48 hours after a contractor receives a written notice of the Board's intent to award him a contract, he shall submit to the Board, in writing, a complete listing of all the subcontractors whom he will engage on the contract *along with their Nevada State Contractor's license number and a description of the work they will perform.*

2. All contracts must be approved by the Attorney General.

3. The Board will record a copy of the fully executed agreement between the contractor and the Board or other contracting agency in the county in which the work is located and will distribute copies to the contractor, the architect or engineer, the agency which will occupy or control the building, the Secretary of State and the Board's inspector of the construction.

**NAC 341.100 Progress payments. (NRS 341.110)**

1. The Manager shall expedite payment of approved and certified claims by the contractor.

2. The contractor must warrant that he has good title to all materials and supplies for which he accepts payment.

3. The Manager shall pay the retained portion of the money due under a contract on the date when the notice of completion is filed if the contractor releases all claims against the Board and provides all guarantees and instructions required by the contract. The Manager may release a portion of the retained money before the notice of completion is filed if he determines that the project is functionally complete.

4. The Manager may make payment for materials if they are:

- (a) Stored and protected on-site or in a bonded and insured warehouse; and
- (b) Otherwise protected from other claims.

5. Unless a contractor has the Board's written consent to do so, he shall not assign any part of the money that is due or is to become due to him under the contract. If a contractor has the Board's written consent for such an assignment, the instrument of assignment must contain a

clause providing that the right of the assignee to any money due or to become due to the contractor is subject to any prior rights or liens.

**NAC 341.105 Contract modifications. (NRS 341.110, 341.145)**

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. Except as otherwise provided in this subsection, 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. If the Manager determines that an error or omission in the plans or specifications is minor, *in the context of the scope of work*, the Manager may waive such a payment.

**NAC 341.113 Plans for construction of school buildings. (NRS 341.110, 393.110)**

1. The Board will not approve plans for a new school building or any addition to or alteration of an existing school building which involves structural systems, or 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;
- (c) The building codes adopted by reference by the Board pursuant to [NAC 341.045](#); and
- (d) All applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, et seq., and any regulations adopted pursuant thereto.

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 code which were revised after the Board's initial approval of the standard plans.

**NAC 341.127 Review of proposals regarding local adoption of *Uniform Plumbing Code*. (NRS 341.110, 444.420)**

1. The ~~[Manager]~~ *Deputy Manager for compliance and code enforcement* 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. Any such proposal must be submitted to the Board in writing.

(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]~~ *Deputy Manager for compliance and code enforcement* has advised any local government that any proposed changes are not warranted, the local government may file a written request for an appeal in the manner set forth in [NAC 341.161](#).

3. The ~~[Manager]~~ *Deputy Manager for compliance and code enforcement* shall send copies of all proposals received by the Board pursuant to subsection 1 and the ~~[Manager's]~~ *Deputy Manager for compliance and code enforcement's* response or, if applicable, the Board's recommendation to the Health Division of the Department of Health and Human Services.

**NAC 341.136 Selection of professional consultant for project: Procedure for selection with assistance of committees.** (NRS 341.100, 341.110, 341.161, 341.166)

1. The Manager shall appoint a committee to:

(a) Review applications received by the Board for retention by the Board in a position on a project of the Board as an architect, engineer, ~~[at-risk-construction-manager]~~ *construction manager at-risk, construction manager or other professional consultant* who will assist in a project ~~[that has an estimated cost]~~ *with an estimated cost for those services* of over ~~[\$100,000]~~ *\$250,000* ~~[,construction manager or other professional consultant;]~~ and

(b) Create a list of not more than five applicants for each architect, engineer, ~~[at-risk-construction-manager]~~ *construction manager at-risk, construction manager or other professional consultant* who will assist in a project that has an estimated cost ~~[of over \$100,000]~~ *for those services of over \$250,000*, ~~[construction manager or other professional consultant]~~ that the Board wishes to retain.

2. The committee appointed pursuant to subsection 1 must consist of two members who are employed by the Board and one member who is employed by the agency for which the project is to be designed or constructed.

3. After a committee appointed pursuant to subsection 1 creates a list of applicants, the Manager shall appoint another committee to interview the applicants included on the list and to recommend to the Manager an applicant for selection. The committee appointed pursuant to this subsection must:

(a) Consist of three members who are employed by the Board and two members who are employed by the agency for which the project is to be designed or constructed.

(b) Not consist of any members of the committee appointed pursuant to subsection 1.

*4. The committees appointed pursuant to subsections 1 and 3 shall consider the Board's prior experience with the architect, engineer, ~~[at-risk-construction-manager]~~ construction manager at-risk, construction manager or other professional consultant on prior Board projects when creating a list of applicants and making a recommendation to the Manager.*

~~[4.]~~ *5. After reviewing the findings of the committees appointed pursuant to subsections 1 and 3, the Manager shall make a final recommendation to the Board for the selection of the applicant.*

**NAC 341.141 Selection of professional consultant for project: Considerations for selection without assistance of committees.** (NRS 341.100, 341.110, 341.161, 341.166) In determining whether to select an architect, engineer, ~~[at-risk-construction-manager]~~ *construction manager at-risk*, construction manager or other professional consultant for a project without complying with the provisions of NAC 341.136, the Board and the Manager may consider whether the person possesses:

1. Experience with the same or a similar project;

*2. An acceptable history of work experience and performance on other Board projects.*

~~[2]~~ *3. Specialized technical knowledge or experience relevant to the project;*

~~[3]~~ *4. The copyright to a certain design or prototype relevant to the project;*

~~[4]~~ 5. Such experience or expertise as is necessary to complete the project in a more timely manner than other professionals; or

~~[5]~~ 6. Any other factor that the Board determines is relevant to the health, safety or welfare of the public.

**NAC 341.151 Awarding of certain contracts by Manager to meet emergency.** (NRS 338.011, 341.100, 341.110) If the Chairman determines that an emergency which results from a natural or man-made disaster and which threatens the health, safety or welfare of the public exists, the Manager may, without the prior approval of the Board, award a contract to meet the emergency to:

1. An architect, engineer, ~~[at-risk-construction-manager]~~ *construction manager at-risk*, construction manager or other professional consultant without complying with the provisions of NAC 341.136.

2. A contractor who is licensed pursuant to chapter 624 of NRS without complying with the provisions of this chapter, chapter 338 of NAC and chapters 338 and 341 of NRS governing the selection of contractors.

**NAC 341.161 Appeal of decision by ~~[Manager acting]~~ Deputy Manager for compliance and code enforcement acting in his capacity as building official: Board of appeals; procedure.** (NRS 341.070, 341.110)

1. The Chairman shall appoint at least one person to serve as an expert in each of the following fields:

(a) Architecture;

(b) Construction;

(c) Engineering; and

(d) Issues relating to the accommodation of persons with disabilities in public facilities,

to serve as a potential member of a board of appeals pursuant to this section and the provisions of ~~[section 112 of the 2003 International Building Code]~~ *the current code*, which is adopted by reference pursuant to NAC 341.045. The term of a person appointed to serve as an expert pursuant to this subsection is 2 years. The Chairman may reappoint such a person at his discretion.

2. A person who is aggrieved by a decision made by the ~~[Manager]~~ *Deputy Manager for compliance and code enforcement acting* in his capacity as the building official pursuant to paragraph (h) of subsection 5 of NRS 341.100 may, within 30 days after the ~~[Manager]~~ *Deputy Manager for compliance and code enforcement* issues his decision in writing, file a written request for an appeal of that decision with the ~~[Manager]~~ *Deputy Manager for compliance and code enforcement*.

3. Upon receipt of a request for an appeal pursuant to subsection 2, the ~~[Manager]~~ *Deputy Manager for compliance and code enforcement* shall immediately forward the request to the Chairman. The Chairman shall appoint a board of appeals to hear the appeal.

4. A board of appeals appointed pursuant to subsection 3 must consist of:

(a) One member who is an expert in the field of architecture appointed pursuant to subsection 1;

(b) One member who is an expert in the field of construction appointed pursuant to subsection 1;

(c) One member who is an expert in the field of engineering appointed pursuant to subsection 1;

(d) One member who is a member of the general public and who is not licensed or registered as an architect, contractor or engineer and who is not employed in the design or contracting industry; and

(e) If, in the opinion of the Chairman, the appeal:

(1) Concerns any issues relating to the accommodation of persons with disabilities, one member who is an expert in issues concerning the accommodation of persons with disabilities in public facilities appointed pursuant to subsection 1; or

(2) Does not concern any issues relating to the accommodation of persons with disabilities, one additional member who is an expert in the field of architecture, construction or engineering.

5. Any person appointed to a board of appeals pursuant to this section must not be an employee of the State of Nevada.

6. The Chairman shall appoint a member of a board of appeals appointed pursuant to this section to act as chairman of the board of appeals.

7. A board of appeals appointed pursuant to this section shall:

(a) Conduct a hearing within 30 days after the notice of appeal is received by the Manager; and

(b) Provide notice of the time and place of the hearing to the person who requested the appeal.

8. The chairman of a board of appeals appointed pursuant to subsection 6 may:

(a) Compel the parties to the appeal to enter into negotiations for a settlement;

(b) Mediate between the parties to the appeal; and

(c) Order the parties to the appeal to provide discovery.

9. Each party to the appeal shall, within 5 business days before the hearing, provide to the board of appeals and each opposing party a prehearing statement. The statement must:

(a) Set forth the facts and legal issues concerning the case.

(b) Include a list of any witnesses the party intends to call during the hearing. The list must include the name, address and telephone number of each witness, if known, and a brief statement concerning the proposed testimony of the witness.

(c) Except as otherwise provided in this paragraph, include a copy of any documents intended to be introduced into evidence at the hearing. The statement provided to the board of appeals must include five copies of the documents.

10. Upon commencement of the hearing by the board of appeals, the person who requested the appeal must be the first to present evidence. The person who requested the appeal has the burden to prove his case by substantial evidence.

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

12. If a party fails to appear at a hearing conducted pursuant to this section and was not granted a continuance or did not enter into a stipulation for a continuance, the board of appeals may hear evidence from those parties present at the hearing and may make a decision based upon the available record.

13. A board of appeals shall, by majority vote, determine whether evidence is admissible during a hearing conducted pursuant to this section.

14. A board of appeals shall conclude the hearing of an appeal pursuant to this section after it hears evidence and oral arguments.

15. A board of appeals shall issue its decision concerning a hearing conducted pursuant to this section at a public meeting. The board of appeals shall send, by certified mail, its written decision to the parties to the appeal within 20 days after the conclusion of the meeting.

**NAC 341.171 Imposition and submission of fees for certain projects. (NRS 341.110, 393.110)**

1. Except as otherwise provided in subsections 3 and 4, any plans and specifications for a project that is not part of the approved program for capital improvement which are submitted to the Board for review and approval must be accompanied by the following fees:

(a) A basic fee for inspection services based on the proposed cost of construction of the project in accordance with the following schedule:

Total Construction Cost	Fee
\$1 to \$500.....	\$23.50
\$501 to \$2,000.....	\$23.50 for the first \$500 plus \$3.05 for each additional \$100 or fraction thereof, to and including \$2,000.
\$2,001 to \$25,000.....	\$69.25 for the first \$2,000 plus \$14 for each additional \$1,000 or fraction thereof, to and including \$25,000.
\$25,001 to \$50,000.....	\$391.25 for the first \$50,000 plus \$10.10 for each additional \$1,000 or fraction thereof, to and including \$50,000.
\$50,001 to \$100,000.....	\$643.75 for the first \$50,000 plus \$7 for each additional \$1,000 or fraction thereof, to and including \$100,000.
\$100,001 to \$500,000.....	\$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000 or fraction thereof, to and including \$500,000.
\$500,001 to \$1,000,000.....	\$3,233.75 for the first \$500,000 plus \$4.75 for each \$1,000 or fraction thereof, to and including \$1,000,000.
\$1,000,001 and up.....	\$5,608.75 for the first \$1,000,000 plus \$3.15 for each \$1,000 or fraction thereof.

(b) Except as otherwise provided in this paragraph, an additional fee for inspection services for each mechanical, electrical and plumbing system of the project in an amount equal to 15 percent of the basic fee for inspection services for each such system. If an application involves only one such system, no additional fee for inspection services is due pursuant to this paragraph.

(c) A fee for the review of the plans and specifications for the project in an amount equal to 65 percent of the total amount of the basic fee for inspection services calculated pursuant to paragraph (a) and any additional fees for inspection services calculated pursuant to paragraph (b).

2. In addition to the fees calculated for a project pursuant to subsection 1, the Board:

(a) May charge a fee for the following services on an hourly basis at a rate equal to the hourly cost of the Board for:

- (1) Inspections outside of normal business hours.
- (2) Reinspections.
- (3) Inspections for which no fee is specifically indicated.

(4) Additional reviews of plans or specifications required by changes, additions or alterations to the plans or specifications.

(b) Will charge a fee for the use of outside consultants by the Board for inspections of the project in an amount equal to the actual cost to the Board for the outside consultants plus the hourly cost of the Board for obtaining the services of, and overseeing the work of, the outside consultants.

The Board will calculate its hourly costs based on the average amount the Board pays for the position of employment which is applicable to the service being provided, including, without limitation, inspectors, project managers and plan checkers. The hourly costs of the Board will be maintained on file at the Board's offices in Carson City and Las Vegas and will be posted on the Board's website at <http://www.spwb.state.nv.us/>.

3. The review of plans, designs and specifications for a school building pursuant to [NRS 393.110](#) must be accompanied only by the fee for the review of plans and specifications as set forth in paragraph (c) of subsection 1.

4. The ~~[Manager]~~ *Deputy Manager for compliance and code enforcement* shall determine, based on the actual costs to the Board, the amount of the fee that must accompany the plans and specifications for a project which will be completed in phases or on an expedited schedule or which has unique or unusual requirements.

## **ENFORCEMENT OF ORDERS TO COMPEL CESSATION OF WORK**

**NAC 341.210 "Person" defined.** ([NRS 341.105](#), [341.110](#)) As used in [NAC 341.210](#) to [341.230](#), inclusive, "person" means a natural person, any form of business or social organization and any other legal entity, including, without limitation, a corporation, partnership, association, trust, unincorporated organization, government, governmental agency or political subdivision of a government.

**NAC 341.215 Imposition of administrative penalties.** ([NRS 341.105](#), [341.110](#)) In addition to any other penalty provided by law, the ~~[Manager]~~ *Deputy Manager for compliance and code enforcement* may impose against a person who knowingly refuses to comply, or a person who willfully encourages another person to refuse to comply, with an order issued pursuant to subsection 1 of [NRS 341.105](#):

1. For a first offense, not more than \$250 for each day that the person violates the order.
2. For a second offense occurring within 7 years after a first offense, not more than \$750 for each day that the person violates the order.
3. For a third offense occurring within 7 years after a second offense, not more than \$1,000 for each day that the person violates the order.

**NAC 341.220 Notice of intent to impose administrative penalty and of right to hearing.** ([NRS 341.105](#), [341.110](#)) If the ~~[Manager]~~ *Deputy Manager for compliance and code enforcement* determines, by substantial evidence, that a person has knowingly refused to comply, or has willfully encouraged another person to refuse to comply, with an order issued pursuant to subsection 1 of [NRS 341.105](#), the ~~[Manager]~~ *Deputy Manager for compliance and code enforcement* shall send to that person by certified mail a notice stating that:



1. The ~~[Manager]~~ *Deputy Manager for compliance and code enforcement* intends to impose against the person an administrative penalty pursuant to [NAC 341.215](#); and
2. The person has the right to request a hearing.

**NAC 341.225 Appeal of determination to impose administrative penalty: Appointment, duties and authority of subcommittee of Board; procedure.** ([NRS 341.070](#), [341.105](#), [341.110](#))

1. The Board will appoint a subcommittee consisting of three members of the Board to hear appeals from a determination by the ~~[Manager]~~ *Deputy Manager for compliance and code enforcement* to impose administrative penalties pursuant to [NAC 341.215](#).

2. Within 10 days after a person receives a notice sent pursuant to [NAC 341.220](#), the person may file with the Board a written notice of appeal. The written notice must set forth the basis for the appeal and may be accompanied by copies of any supporting documents.

3. The subcommittee appointed pursuant to subsection 1 shall:

(a) Conduct a hearing within 45 days after the notice of appeal is received by the Board;

(b) Provide notice of the time and place of the hearing to the person who requested the appeal; and

(c) Select from among its members a chairman.

4. The chairman of the subcommittee appointed pursuant to subsection 1 may:

(a) Compel the parties to the appeal to enter into negotiations for a settlement;

(b) Mediate between the parties to the appeal; and

(c) Order the parties to the appeal to provide discovery.

5. Each party to the appeal shall, within 5 business days before the hearing, provide to the subcommittee appointed pursuant to subsection 1 and each opposing party a prehearing statement. The statement must:

(a) Set forth the facts and legal issues concerning the case.

(b) Include a list of any witnesses the party intends to call during the hearing. The list must include the name, address and telephone number of each witness, if known, and a brief statement concerning the proposed testimony of the witness.

(c) Except as otherwise provided in this paragraph, include a copy of any documents intended to be introduced into evidence at the hearing. The statement provided to the subcommittee must include five copies of the documents.

6. Upon commencement of the hearing by the subcommittee, the person who requested the appeal must be the first to present evidence. The person who requested the appeal has the burden to prove his case by substantial evidence.

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

8. If a party fails to appear at a hearing conducted pursuant to this section and was not granted a continuance or did not enter into a stipulation for a continuance, the subcommittee may hear evidence from those parties present at the hearing and may make a decision based upon the available record.

9. The subcommittee shall, by majority vote, determine whether evidence is admissible during a hearing conducted pursuant to this section.

10. The subcommittee shall issue its decision concerning a hearing conducted pursuant to this section at a public meeting. The subcommittee shall send, by certified mail, its written decision to the parties to the appeal within 20 days after the conclusion of the meeting.

**NAC 341.230 Collection of administrative penalty.** (NRS 341.105, 341.110) If a person does not request an appeal pursuant to [NAC 341.225](#), a decision by the ~~Manager~~ *Deputy Manager for compliance and code enforcement* to impose an administrative penalty pursuant to [NAC 341.215](#) is final and the Manager may collect the administrative penalty pursuant to the collection procedures set forth in [chapter 353C](#) of NRS or as otherwise authorized by law.