

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

LCB File No. R189-07

Effective April 17, 2008

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

AUTHORITY: §§1-2, NRS 338.1375.

A REGULATION relating to public works; revising the criteria to be used for determining whether a prime contractor is qualified to bid on contracts for public works of this State; and providing other matters properly relating thereto.

Section 1. NAC 338.240 is hereby amended to read as follows:

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

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

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

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

~~———(II) For a contract that:~~

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

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

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

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

~~[(3)] (2)~~ A statement regarding whether the prime contractor, principal personnel or any business entity associated with the principal personnel has filed as a debtor under the United States Bankruptcy Code during the 5 years immediately preceding the date of the application.

(3) If the prime contractor is seeking to be qualified to bid on contracts for public works in a cost category set forth in subparagraph (2), (3) or (4) of paragraph (b) of subsection 2 of NAC 338.250, a certified original statement of the bonding capacity of the prime contractor obtained from a surety which is authorized to issue bid, performance and payment bonds in this State and which:

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

(II) For a contract that:

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

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

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

(b) ~~[The]~~ *If the prime contractor is seeking to be qualified to bid on contracts for public works in a cost category set forth in subparagraph (2), (3) or (4) of paragraph (b) of subsection 2 of NAC 338.250, the* qualifications of the principal personnel of the prime contractor. The prime contractor must include in the application submitted pursuant to NAC 338.250 a description of the professional qualifications and relevant experience of the principal personnel of the prime contractor and list not more than 10 public works and private construction projects, or any combination thereof, within the cost category for which the prime contractor is applying that have been successfully completed by the principal personnel. For each such successfully completed project included on the list, the prime contractor must provide:

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

(c) ~~[Whether]~~ *If the prime contractor is seeking to be qualified to bid on contracts for public works in a cost category set forth in subparagraph (2), (3) or (4) of paragraph (b) of subsection 2 of NAC 338.250, whether* the prime contractor, the principal personnel or any business entity associated with the principal personnel has been found to be in breach of contract by a court of competent jurisdiction or through binding arbitration during the 5 years immediately preceding the date of the application. For each such action, the prime contractor must include in the application submitted pursuant to NAC 338.250 a description of:

(1) The circumstances surrounding the action;

(2) Whether any liquidated damages were imposed in connection with the action; and

(3) Any judgment entered against the prime contractor, the principal personnel or business entity associated with the principal personnel relating to the action.

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

(e) ~~The~~ *If the prime contractor is seeking to be qualified to bid on contracts for public works in a cost category set forth in subparagraph (2), (3) or (4) of paragraph (b) of subsection 2 of NAC 338.250, the* past performance history of the prime contractor, the principal personnel and each business entity associated with the principal personnel during the 5 years immediately preceding the date of the application. The prime contractor must include in the application submitted pursuant to NAC 338.250:

(1) A description of:

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

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

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

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

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

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

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

(I) The name of the project;

(II) The location of the project;

(III) The cost of the project;

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

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

(4) If the application is for qualification on a specific public work, a list of all public works and private construction projects undertaken or completed by the prime contractor, principal personnel or business entity associated with the principal personnel during the 5 years immediately preceding the date of the application for which the level of complexity or special requirements of the project were similar to the complexity or special requirements specified by the Board in the application for the specific public work. For each project included on the list, the prime contractor must provide:

(I) The name of the project;

(II) The location of the project;

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

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

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

Sec. 2. NAC 338.250 is hereby amended to read as follows:

338.250 1. To qualify to bid on one or more contracts for public works, a prime contractor must:

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

2. The Board will specify:

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

(b) In the application for qualification for a 2-year period, the cost categories ~~to be~~

~~(1) Less~~

(1) Of less than \$1,000,000;

~~(2) One million dollars~~ *\$100,000;*

(2) Of \$100,000 to \$1,000,000;

(3) Of \$1,000,001 to \$5,000,000; and

~~[(3) More]~~

(4) Of more than \$5,000,000,

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

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

(a) Whether the prime contractor is interested in receiving offers to bid on public works for which the estimated cost is more than \$25,000 but less than \$100,000; and

(b) The cost category for which the prime contractor seeks to qualify to submit bids.

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

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

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R189-07**

The State Public Works Board adopted regulations assigned LCB File No. R189-07, which pertain to chapter 338 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

State Public Works Board solicited public comment through notices posted at State Public Works Board in Carson City and Las Vegas, the Blasdel Building, Nevada State Library, Archives in Carson City and at the Nevada County Public Libraries and mailings to our contact database.

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop</u>
9/28/07	Workshop	10/18/07
11/13/07	Hearing	12/13/07
12/20/07	Hearing	1/18/08

Many oral and nine written comments were received at the workshop and hearings. A copy of the audio taped comments or the record of the proceedings may be obtained by calling State Public Works Board at (775) 684-4141 or by writing to the State Public Works Board, 515 East Musser, Room 102, Carson City, NV 89701, or by e-mailing the SPWB at dnenzel@spwb.state.nv.us.

2. The number of persons who:

	10/18/2007	12/13/2007	1/18/2008
(a) Attended each hearing:	14	19	26
(b) Testified at each hearing:	4	2	6
(c) Submitted written comments:	6	1	1

3. A description of how comment was solicited from businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from the affected and interested contractor, unions and municipalities, by notices posted at State Public Works Board offices in Carson City and Las Vegas, Nevada State Library, and at the main public libraries in all the counties.

A copy of the audio taped comments or the record of the proceedings may be obtained by calling State Public Works Board at (775) 684-4141 or by writing to the State Public Works Board, 515

East Musser, Room 102, Carson City, NV 89701, or by e-mailing the SPWB at dnenzel@spwb.state.nv.us.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

NAC 338 was adopted by the board with exception to proposed language in NAC 338.240, Subsection 2.2(b) and NAC 338.240, Subsection 3.2(b) which refers to the use of performance evaluations on contractors which would be used when the contractor renews his qualification.

5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

This regulation should have no immediate economic impact on affected contractors.

(b) Both immediate and long-term effects.

This regulation should have no immediate or long-term effects on contractors.

6. The estimated cost to the agency for enforcement of the adopted regulation:

SPWB does not estimate any cost to enforce the amendments

7. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

Federal Law does not require the proposed regulation.

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

Federal Law does not require the proposed regulation.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

Does not apply

10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?

No, since there is no application fee. The cost of processing applications is within the administrative costs for the qualification of bidders program.

Small business impact questionnaires were distributed to everyone in the qualification data base plus contractor's associations, other State Agencies and the proper postings.