

LCB File No. R189-07

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

QUALIFICATION FOR BIDDING

General Provisions

NAC 338.130 Definitions. (NRS 338.1375, 338.1376) As used in NAC 338.130 to 338.410, inclusive, unless the context otherwise requires, the words and terms defined in NAC 338.132 to 338.144, inclusive, have the meanings ascribed to them in those sections.

NAC 338.132 “Administrative proceeding” defined. (NRS 338.1375, 338.1376) “Administrative proceeding” means a hearing for which there is:

1. A notice of hearing in a contested case;
2. A right to be represented by counsel;
3. An opportunity to respond and present evidence;
4. A record of the proceeding; and
5. A finding of fact and a conclusion of law.

NAC 338.134 “Board” defined. (NRS 338.1375, 338.1376) “Board” means the State Public Works Board.

NAC 338.136 “Final completion” defined. (NRS 338.1375, 338.1376) “Final completion” means that 100 percent of the work of the contract and general conditions of the contract are satisfied.

NAC 338.138 “Manager” defined. (NRS 338.1375, 338.1376) “Manager” means the Manager of the Board appointed pursuant to NRS 341.100.

NAC 338.140 “Prime contractor” defined. (NRS 338.1375, 338.1376) “Prime contractor” has the meaning ascribed to it in NRS 338.010.

NAC 338.142 “Public work” defined. (NRS 338.1375, 338.1376) “Public work” means a public work, as defined in NRS 338.010, that is under the jurisdiction of the Board.

NAC 338.144 “Substantial completion” defined. (NRS 338.1375, 338.1376) “Substantial completion” means that the construction of a public work is, in accordance with the contract documents, sufficiently complete that the owner can occupy and utilize the public work for its intended use.

Prime Contractors

NAC 338.150 Definitions. (NRS 338.1375) As used in NAC 338.150 to 338.290, inclusive, unless the context otherwise requires, the words and terms defined in NAC 338.170 to 338.231, inclusive, have the meanings ascribed to them in those sections.

NAC 338.170 “Bidder” defined. (NRS 338.1375) “Bidder” means a prime contractor who has been determined to be qualified to bid on one or more contracts for public works pursuant to NAC 338.260.

NAC 338.181 “Business entity associated with the principal personnel” defined. (NRS 338.1375) “Business entity associated with the principal personnel” means a business entity in which a principal personnel of a prime contractor is or was the sole proprietor, a partner, the chairman or a member of the board of directors, or a shareholder owning 10 percent or more of outstanding stock in the business entity.

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

NAC 338.200 “Cost category” defined. (NRS 338.1375) “Cost category” means the category of public works set forth in paragraph (b) of subsection 2 of NAC 338.250 for which a prime contractor may apply to be qualified for a 2-year period to submit bids.

NAC 338.220 “Principal personnel” defined. (NRS 338.1375) “Principal personnel” means the owner, partner and any corporate officer and any qualified employee listed on the contractor’s license of the prime contractor.

NAC 338.231 “Successfully completed project” defined. (NRS 338.1375) “Successfully completed project” means that the contract or the portion of the contract for which the prime contractor was responsible was completed:

1. Within the deadline for completion specified in the contract, as adjusted by any change order or extension of time granted; and
2. In compliance with any remaining contractual requirements, including close-out documents, within 90 days after the substantial completion of the contract.

NAC 338.240 Criteria for qualification; pertinent documentation and information. (NRS 338.1375)

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) *For cost categories 2-4 in subsection 2(b) of NAC 338.250, [A] 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) 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.

(b) *For cost categories 2-4 in subsection 2(b) of NAC 338.250, ~~[The]~~ 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) *For cost categories 2-4 in subsection 2(b) of NAC 338.250, ~~[Whether]~~ 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) *For cost categories 2-4 in subsection 2(b) of NAC 338.250, ~~[The]~~ 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.

3. In determining whether a prime contractor is qualified to bid on one or more contracts for Public Works, the qualification committee, established by NAC 338.260 section 1, shall consider performance evaluations, as prepared by Public Works staff on a form prescribed and provided by the Board, on prior Public Works projects performed by the prime contractor. The committee shall review all such evaluations of the prime contractor for Public Works construction projects finished during the five years immediately preceding the date of application.

NAC 338.250 Application for qualification; eligibility to bid on public work. (NRS 338.1375)

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 of:
 - (1) Less than ~~[\$1,000,000]~~ **\$100,000;**
 - (2) **Up to \$1,000,000;**
 - ~~[(2)]~~ (3) ~~[One million dollars]~~ **Up** to \$5,000,000; and
 - ~~[(3)]~~ (4) 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.

NAC 338.260 Action on application; period of qualification; reapplication after denial of application; denial of request to withdraw application. (NRS 338.1375)

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

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

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

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

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

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

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

6. The Manager may deny a request by a prime contractor to withdraw his application regardless of whether the application is complete. Within 10 days after receipt of notice that his request to withdraw the application has been denied, the prime contractor may appeal the decision of the Manager to deny the request to withdraw the application by filing a request for a hearing with the Board pursuant to [NAC 338.270](#). The request for a hearing must set forth the basis for the appeal. The prime contractor may, at the time he files the request for a hearing, submit copies of any documents that support his appeal.

NAC 338.270 Appeal of determination that prime contractor is not qualified; hearings on appeals. (NRS 338.1375)

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

2. The Board shall appoint a board of appeals consisting of three of its members to conduct hearings on appeals filed pursuant to [NAC 338.150 to 338.290](#), inclusive, and shall designate one of the members of the board of appeals to serve as chairman.

3. For each such appeal, the board of appeals shall, in accordance with [NRS 338.1381](#):

(a) Set the matter for a hearing;

(b) Provide notice of the hearing; and

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

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

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

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

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

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

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

NAC 338.280 Revocation of qualification. ([NRS 338.1375](#))

1. The qualification of a bidder will be revoked if, after an investigation, the committee determines that:

(a) The bidder no longer meets one or more of the criteria set forth in [NAC 338.240](#); or

(b) The application submitted by the bidder contained materially false information or the bidder failed to disclose materially relevant information in the application,

unless, pursuant to this section, the bidder appeals the determination of the committee within the time prescribed for an appeal in subsection 3 and the board of appeals reverses the determination.

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

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

Board. A hearing on the appeal of the revocation of qualification will be conducted by the board of appeals appointed pursuant to [NAC 338.270](#).

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

5. If the qualification of a bidder is revoked, the bidder may reapply for qualification after the period specified in subsection 5 of [NAC 338.260](#) has elapsed, if applicable.

NAC 338.290 Notification of Board regarding change to or renewal of license of qualified bidder. ([NRS 338.1375](#)) A prime contractor who has been determined to be qualified as a bidder shall inform the Board within 10 days after any change to, or renewal of, any license issued to the prime contractor pursuant to [chapter 624](#) of NRS.

Subcontractors

NAC 338.300 Definitions. ([NRS 338.1376](#)) As used in [NAC 338.300](#) to [338.410](#), inclusive, unless the context otherwise requires, the words and terms defined in [NAC 338.310](#) to [338.360](#), inclusive, have the meanings ascribed to them in those sections.

NAC 338.310 “Business entity associated with the principal personnel” defined. ([NRS 338.1376](#)) “Business entity associated with the principal personnel” means a business entity in which the principal personnel of a subcontractor is or was the sole proprietor, a partner, the chairman or a member of the board of directors, or a shareholder owning 10 percent or more of outstanding stock in the business entity.

NAC 338.320 “Committee” defined. ([NRS 338.1376](#)) “Committee” means the committee appointed pursuant to [NAC 338.390](#).

NAC 338.330 “Cost category” defined. ([NRS 338.1376](#)) “Cost category” means the category of public works set forth in [NAC 338.380](#) for which a subcontractor may be required to apply for qualification.

NAC 338.340 “Principal personnel” defined. ([NRS 338.1376](#)) “Principal personnel” means the owner and any corporate officer or qualified employee listed on the contractor’s license of the subcontractor.

NAC 338.350 “Subcontractor” defined. ([NRS 338.1376](#)) “Subcontractor” has the meaning ascribed to it in [NRS 338.010](#).

NAC 338.360 “Successfully completed project” defined. ([NRS 338.1376](#)) “Successfully completed project” means that the construction or the portion of the construction for which the subcontractor was responsible was completed:

1. Within the deadline for completion specified in the contract, as adjusted by any change order or extension of time granted; and
2. In compliance with any remaining contractual requirements, including close-out documents, within 90 days after substantial completion of the contract.

NAC 338.370 Criteria for qualification; pertinent documentation and information; list of subcontractors determined not to be qualified. (NRS 338.1376)

1. The following criteria will be used to determine whether a subcontractor who submits an application for qualification is qualified pursuant to [NRS 338.1376](#) to be included in a bid:

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

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

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

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

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

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

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

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

(1) The name of the project or the name of the prime contractor on the project;

(2) The scope of the project or the scope of the portion of work within the project for which the principal personnel was responsible;

(3) The dollar amount of the project or the dollar amount of the portion of work within the project for which the principal personnel was responsible; and

(4) The month and year of substantial completion and final completion of the contract or portion of work for which the principal personnel was responsible.

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

(1) The circumstances surrounding the action;

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

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

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

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

(1) A description of:

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

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

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

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

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

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

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

(I) The name of the project;

(II) The location of the project;

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

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

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

(i) The owner of the project;

(ii) The owner's project manager;

(iii) The architect or engineer of the project;

(iv) The prime contractor for the project; and

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

2. In addition to the information provided by the subcontractor pursuant to subsection 1, any other verifiable information relating to the criteria set forth in subsection 1 that is provided to or

discovered by the Board or its employees regarding the subcontractor may be used to determine whether the subcontractor is qualified to be included in a bid pursuant to [NRS 338.141](#).

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

NAC 338.380 Application for qualification; disqualification; inclusion of subcontractor in bid. (NRS 338.1376)

1. If, pursuant to subsection 3 of [NRS 338.1376](#), a subcontractor is required to submit an application for qualification to be included in a bid pursuant to [NRS 338.141](#), the Manager shall notify the subcontractor of that fact in writing by certified mail. The subcontractor must submit a completed application for qualification to the Manager, on a form provided by the Board, not later than 30 days after the date on which the subcontractor received the notice. If a completed application for qualification from the subcontractor is not timely received by the Board, the subcontractor shall be deemed to be disqualified for 1 year commencing on the 31st day after the date on which the subcontractor received the notice. This subsection does not preclude the Board from removing a subcontractor pursuant to paragraph (a) of subsection 5 of [NRS 338.141](#).

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

- (a) Less than \$1,000,000;
- (b) One million dollars to \$5,000,000; and
- (c) More than \$5,000,000,

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

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

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

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

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

NAC 338.390 Action on application; period of disqualification; reapplication after disqualification; denial of withdrawal of application. (NRS 338.1376)

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

2. The committee shall calculate the scores of applications for qualification based on the weights of the criteria set forth in [NAC 338.370](#) that are prescribed by the Board. In addition to the information provided by a subcontractor in an application for qualification, the committee may consider any other verifiable information relating to the criteria set forth in [NAC 338.370](#)

that is provided to or discovered by the Board or its employees regarding the application for qualification to determine whether the subcontractor is qualified to be included in a bid pursuant to [NRS 338.141](#).

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

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

(b) Not qualified to be included in a bid pursuant to [NRS 338.141](#), the Manager shall provide written notice to the subcontractor by certified mail within 10 days after that determination. The notice must include, without limitation, the reasons on which the determination that the subcontractor was not qualified was based and must inform the subcontractor of his right to appeal the disqualification pursuant to [NRS 338.1381](#) and [NAC 338.400](#).

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

5. A subcontractor who has been disqualified from participating on a public work and who wishes to be included in a bid pursuant to [NRS 338.141](#) after his period of disqualification has ended must submit an application for qualification and be determined to be qualified by the Board in accordance with [NRS 338.1376](#) and [NAC 338.300](#) to [338.410](#), inclusive, before the subcontractor may be included in a bid pursuant to [NRS 338.141](#).

6. The Manager may prevent a subcontractor from withdrawing his application for qualification regardless of whether the application is complete. Within 10 days after receipt of notice denying the withdrawal of his application for qualification, a subcontractor may appeal the decision by the Manager to deny the withdrawal of the application by filing a request for a hearing with the Board pursuant to [NAC 338.400](#). The request must set forth the basis for the appeal. The subcontractor may, at the time he files the request, submit copies of any documents that support his appeal.

[NAC 338.400 Appeal of disqualification; hearings on appeals. \(NRS 338.1376\)](#)

1. Within 10 days after receipt of notice that he has been disqualified by the committee from participating on a public work pursuant to [NAC 338.390](#), a subcontractor may appeal the determination by filing a request for a hearing with the Board. The request must set forth the basis for the appeal. The subcontractor may, at the time he files the request, submit copies of any documents that support his appeal.

2. The Board shall appoint a board of appeals consisting of three of its members to conduct hearings on appeals filed pursuant to [NAC 338.300](#) to [338.410](#), inclusive, and shall designate one of the members of the board of appeals to serve as chairman.

3. For each such appeal, the board of appeals shall, in accordance with [NRS 338.1381](#):

(a) Set the matter for a hearing;

(b) Provide notice of the hearing; and

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

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

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

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

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

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

9. The board of appeals is not bound by the recommendation of the committee formed pursuant to [NAC 338.390](#) or any technical scoring conducted by the committee and may, when rendering its decision, take into consideration such facts and circumstances as may be in the best interests of this State.

NAC 338.410 Revocation of qualification. (NRS 338.1376)

1. The committee shall revoke its determination that a subcontractor is qualified to be included in a bid pursuant to [NRS 338.141](#) if, after an investigation, the committee finds that:

(a) The subcontractor no longer meets one or more of the criteria set forth in [NAC 338.370](#);
or

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

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

3. Within 10 days after receipt of notice of the revocation of his qualification pursuant to subsection 2, a subcontractor may appeal the determination by filing a request for a hearing with the Board. A hearing on the appeal of the revocation of qualification must be conducted by the board of appeals appointed pursuant to [NAC 338.400](#).

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

5. If the qualification of a subcontractor is revoked, the subcontractor may reapply for qualification after the period of disqualification specified in subsection 4 of [NAC 338.390](#) has elapsed.