

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

**LCB File No. R096-09**

February 19, 2010

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

AUTHORITY: §§1-5, NRS 338.150 and 341.110.

A REGULATION relating to public works; providing requirements concerning the review of a dispute between a contractor and an employee of the State Public Works Board relating to a contract for a public work by the Board or by a Board of Appeals appointed by the Board; and providing other matters properly relating thereto.

**Section 1.** Chapter 341 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

**Sec. 2.** *As used in NAC 341.025 and sections 2, 3 and 4 of this regulation:*

*1. “Board of Appeals” means the Board of Appeals appointed pursuant to NAC 341.025.*

*2. “Deciding body” means:*

*(a) The Board of Appeals, if the Board of Appeals is hearing the request for review; or*

*(b) The Board, if the Board is hearing the request for review.*

**Sec. 3.** *1. If a dispute arises between a contractor engaged on a public work and an employee of the Board, including, without limitation, the Manager, concerning a contract for a public work, the contractor or the employee may submit a written request for review of the dispute pursuant to this section.*

*2. Before submitting a request for review, the contractor and the employee shall meet to attempt to resolve the dispute.*

3. *A contractor may submit a request for review not less than 30 days nor more than 35 days after the date of the initial meeting held pursuant to subsection 2.*

4. *If the contractor does not submit a request for review pursuant to subsection 3, the employee may submit a request for review not less than 35 days nor more than 40 days after the date of the initial meeting held pursuant to subsection 2.*

5. *A request for review:*

(a) *Must be in writing;*

(b) *Must set forth the basis of the dispute, including, without limitation, the dollar amount involved in the dispute; and*

(c) *May be accompanied by a copy of any supporting document.*

6. *In addition to the requirements of subsection 5, a request for review from a contractor must:*

(a) *State whether the contractor agrees that any decision of the Board or the Board of Appeals regarding the dispute will be binding; and*

(b) *Be addressed to the Manager.*

7. *Upon receipt of a request for review from a contractor, the Manager shall forward the request to the Chair.*

8. *A request for review from an employee of the Board must be submitted directly to the Chair.*

9. *For each request for review from an employee of the Board, the employee shall provide a copy of the request and any accompanying documentation to the contractor.*

10. *A request for review may, at the discretion of the Chair, be heard by the Board or by the Board of Appeals.*

**Sec. 4. 1. The deciding body will:**

*(a) Hold a public hearing within 45 days after receiving a request for review submitted pursuant to section 3 of this regulation, unless the contractor and the employee of the Board involved in the dispute agree in writing to a later date; and*

*(b) Provide notice of the date, time and place of the hearing to the contractor and the employee of the Board.*

**2. For each hearing:**

*(a) If the Board of Appeals is the deciding body, the members of the Board of Appeals will select a chair from among their membership; and*

*(b) If the Board is the deciding body, the Chair will serve as the chair of the deciding body.*

**3. The chair of the deciding body may:**

*(a) Compel the contractor and the employee to enter into negotiations for a settlement of the dispute;*

*(b) Mediate between the contractor and the employee; and*

*(c) Order the contractor or the employee to provide discovery.*

**4. The contractor and the employee shall, not later than 5 business days before the hearing, provide to the deciding body and to the opposing party:**

*(a) A written statement of the facts, legal issues and requested relief;*

*(b) A written list of each witness that the contractor or employee intends to call during the hearing, including, without limitation, the name and, if known, the mailing address and telephone number of each such witness;*

*(c) A brief written summary of the anticipated testimony of each witness on the list required pursuant to paragraph (b); and*

*(d) Five copies to the deciding body and one copy to the opposing party of each document the contractor or employee intends to introduce into evidence during the hearing.*

*5. Upon commencement of the hearing, the party that submitted the request for review must be the first to present evidence to the deciding body.*

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

*7. The deciding body will, by majority vote, determine whether evidence is admissible during the hearing.*

*8. During the hearing, the contractor and the employee may agree to stipulate to any fact presented.*

*9. If the contractor does not appear at the hearing and was not granted a continuance by the deciding body or did not enter into a stipulation for a continuance:*

*(a) The deciding body may:*

*(1) Hear evidence from the parties present at the hearing; and*

*(2) May make a decision based on the available record; and*

*(b) The contractor shall be deemed to have waived the right to pursue any further remedies for the dispute, including, without limitation, binding arbitration, mediation and judicial review.*

*10. The deciding body will notify each party in writing of the decision of the deciding body by certified mail within 30 business days after the hearing. The Board will announce each such decision at its next regularly scheduled meeting.*

*11. If the contractor stated pursuant to subsection 6 of section 3 of this regulation that the contractor agreed that any decision of the deciding body regarding the dispute would be*

*binding, the decision of the deciding body must be deemed a final settlement agreement enforceable in any court of competent jurisdiction.*

*12. If the contractor did not state pursuant to subsection 6 of section 3 of this regulation that the contractor agreed that any decision of the deciding body regarding the dispute would be binding, within 30 days after notification of the decision is sent by the deciding body:*

*(a) The contractor and the employee may enter into a final settlement agreement based on the terms of the decision of the deciding body;*

*(b) The contractor may initiate mediation proceedings pursuant to any dispute resolution provisions in the contract for the public work; or*

*(c) For disputes involving \$50,000 or less, the contractor may initiate binding arbitration proceedings.*

*13. If the contractor and the employee do not enter into a final settlement agreement within 30 days after notification of the decision is sent by the deciding body, and if the contractor does not initiate mediation or arbitration proceedings within 30 days after notification of the decision is sent by the deciding body:*

*(a) The decision becomes a binding agreement enforceable in any court of competent jurisdiction; and*

*(b) The contractor will be deemed to have waived the right to pursue any further remedies for the dispute, including, without limitation, binding arbitration, mediation and judicial review.*

*14. A contractor may be represented before the deciding body by an attorney.*

*15. The employee may be assisted by the legal counsel of the Board in presenting evidence to the deciding body and complying with the provisions of this section and section 3 of this regulation.*

*16. The deciding body may be assisted during a hearing by the Office of the Attorney General.*

*17. A party is not liable for any fee paid or cost incurred by the opposing party in connection with the request for review or hearing of the dispute.*

**Sec. 5.** NAC 341.025 is hereby amended to read as follows:

341.025 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 *formal* procedures for *dispute resolution, including, without limitation, mediation, nonbinding or binding* arbitration ~~and~~ *and judicial action.*