

# PROPOSED REGULATION OF THE STATE PUBLIC WORKS BOARD

LCB File No. R099-11

## Outline

1. Definitions
2. Advertisement/Subcontractor Application to CMAR for prequalification; eligibility to propose on public work
3. Criteria for CMAR prequalification of subcontractor for public work
4. CMAR Action on subcontractor application
5. Appeal of CMAR determination that subcontractor is not qualified; hearings on appeals
6. CMAR Request for Subcontractor Proposals
7. General requirements for subcontractor proposals
8. CMAR Opening and rejection of proposals
9. CMAR Evaluation of Subcontractor Proposals

### *1. Definitions*

*“Applicant” defined. “Applicant” means a subcontractor who has been determined to be pre-qualified by a Construction Manager at Risk to submit a proposal for a public works project.*

*“Business entity associated with the principal personnel” defined. “Business entity associated with the principal personnel” means a business entity in which principal personnel of a subcontractor is or was the sole proprietor, a partner, the chair or a member of the board of directors, or a shareholder owning 10 percent or more of outstanding stock in the business entity.*

*“Construction manager at risk” defined. “Construction manager at risk” means a contractor licensed pursuant to chapter 624 of NRS who is retained by the Board for a project of a capital improvement pursuant to NRS 341.161 and who guarantees that the final price for the project will not be exceeded.*

*“Principal personnel” defined. “Principal personnel” means the owner, partner and any corporate officer and any qualified employee listed on the contractor’s license of the subcontractor.*

*“Subcontract” defined. “Subcontractor” has the meaning ascribed to it in NRS 338.010.*

*“Successfully completed project” defined. “Successfully completed project” means that the contract or the portion of the contract 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 the substantial completion of the contract.*

*2. Advertisement/Subcontractor Application to CMAR for prequalification; eligibility to propose on public work*

- 1. At least 3 weeks before the date that a subcontractor prequalification application must be submitted, the CMAR shall advertise for such applications in a newspaper pursuant to chapter 238 of NRS that is published in the county where the public work will be performed.*
- 2. To qualify to submit an application to a CMAR for a public work, a subcontractor must:*
  - (a) Submit an application to the CMAR on a form prescribed and provided by the CMAR.*
  - (b) Be qualified before proposals are required to be submitted for a public work on which the subcontractor wishes to submit a proposal. The CMAR is not authorized to delay the opening of subcontractor proposals pending the determination or appeal of the qualification of a subcontractor who wishes to submit a proposal on the public work.*
- 3. The subcontractor prequalification application must be reviewed by the public body or its authorized representative to confirm compliance with section 4.5 of SB 268.*
- 4. The CMAR will specify:*
  - (a) That proposals received from subcontractors who are not prequalified will be returned to the subcontractor unopened.*
- 5. An application must contain the signature of the subcontractor who is submitting the application.*
- 6. The submission of a materially incomplete or falsified application or the failure of a subcontractor to disclose information in the application may be grounds for a delay in the qualification of the subcontractor or the denial of the qualification of that subcontractor submitting the application.*
- 7. The CMAR must prequalify at least 3 subcontractors for each trade required to submit bids under section 5 of Senate Bill 268; unless prior written approval is obtained from the public body allowing the prequalification of less than 3 subcontractors for a particular trade.*

3. *Criteria for CMAR prequalification of subcontractor for public work*
  1. *The following criteria must be used by a CMAR to determine whether a subcontractor is qualified to submit a proposal on a public works project:*
    - (a) *The financial ability of the subcontractor to perform the contract. At a minimum the subcontractor must include with the application submitted the following information:*
      - (1) *The monetary limit placed on the license of the applicant pursuant to chapter 624 of NRS.*
      - (2) *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.*
      - (3) *The applicant's current workload and schedule.*
      - (4) *Balance sheet prepared by an independent CPA within one year of the Notice to Proceed date.*
      - (5) *Bank letter stating average balance, and any line of credit, including available balance.*
        - (i) *The CMAR may not require that the applicant submit proprietary information.*
    - (b) *The qualifications of the principal personnel of the subcontractor.*
    - (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.*
    - (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.*
    - (f) *Whether the subcontractor principal personnel or business entity associated with the principal personnel has been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the prime contractor to perform the work.*
  2. *In addition to the information provided by a subcontractor:*
    - (a) *Any other verifiable information relating to the criteria set forth in subsection 1 that is provided to or discovered by the CMAR or its employees regarding the subcontractor may be used to determine whether the subcontractor is qualified to submit a proposal, including the truthfulness and the completeness of the application; and*
    - (b) *The safety programs established and the safety records accumulated by the applicant.*

4. *CMAR action on subcontractor application*
  1. *The CMAR shall review and score subcontractor prequalification applications submitted to determine whether a subcontractor is qualified to submit a proposal for a public works. Such a determination must be made within 45 days after receipt of the completed application by the CMAR.*
  2. *The CMAR shall calculate the scores of applications based upon subsection 4 of section 4 of Senate Bill 268; and*
    - (a) *May consider any other verifiable information relating to the criteria set forth in Senate Bill 268 that is provided to or discovered by the CMAR or its employees regarding the application to determine whether the subcontractor is qualified to submit a proposal on a public work.*
  3. *If, after reviewing and scoring an application, the CMAR determines that the subcontractor is:*
    - (a) *Qualified, the CMAR shall provide written notice to the subcontractor and the public body or its authorized representative within 10 days after that determination.*
    - (b) *Not qualified, the CMAR shall provide written notice to the subcontractor and the public body or its authorized representative within 10 days after that determination. The notice must include, without limitation, the reasons for the denial of the application and inform the subcontractor of his or her right to a hearing pursuant to NRS 338.1381.*
  4. *The CMAR must notify the public body in writing of each determination for every subcontractor who submitted an application so that the public body can ensure that the CMAR's determination was made in compliance with SB 268.*
5. *Appeal of CMAR determination that subcontractor is not qualified; hearings on appeals*
  1. *Within 10 days after receipt of notice pursuant to SB 268 that he or she has been determined to be not qualified, a subcontractor may appeal the determination by filing a request for a hearing with the public body with whom the CMAR has entered into a contract for the construction of the public work. The request must set forth the basis for the appeal. The subcontractor may, at the time the subcontractor files the request, submit copies of any documents that support his or her appeal. The request and any supporting documents must also be sent to the CMAR.*
  2. *For each such appeal, the public body shall, in accordance with NRS 338.1381:*
    - (a) *Set the matter for a hearing;*
    - (b) *Provide notice of the hearing to the subcontractor and the CMAR; and*
    - (c) *Hold the hearing at a time and place prescribed by the public body.*
  3. *The public body shall call a hearing to order and act upon any preliminary matters. Unless modified by the public body, the evidence will be presented first by the subcontractor and then by the CMAR, or a representative thereof. The public body may allow the presentation of additional testimony and evidence from other interested parties.*
  4. *An appeal will be considered submitted for decision after the taking of evidence and oral argument.*
  5. *In conducting the hearing, the public body is not bound by any technical rules of evidence.*

6. *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.*
  7. *At any time after a request for a hearing is filed by a subcontractor, any party to the matter may request that the public body issue a subpoena to compel the attendance of witnesses to testify before the public body or for the production of related books, papers and documents.*
  8. *The public body must issue its decision on the matter during the hearing.*
6. *CMAR request for subcontractor proposals*
1. *For all subcontracts for which the estimated value is at least 1 percent of the total cost of the public works, the CMAR shall not later than 21 days before the date the subcontractor proposal is due, give written notice requesting a proposal from all prequalified subcontractors.*
  2. *The CMAR request for subcontractor proposals must include, without limitation:*
    - (a) *A description of the design for the public work and a statement indicating where a copy of the documents relating to that design may be obtained;*
    - (b) *A description of the type and scope of labor, equipment and materials for which subcontractor proposals are being sought;*
    - (c) *The dates on which it is anticipated that construction of the public work will begin and end;*
    - (d) *The date, time and place at which a pre-proposal meeting will be held;*
    - (e) *The date and time by which proposals must be received, and to whom they must be submitted;*
    - (f) *The date, time and place at which proposals will be opened for evaluation;*
    - (g) *A description of the bonding and insurance requirements for subcontractors;*
    - (h) *Any other information reasonably necessary for a subcontractor to submit a responsive proposal; and*
    - (i) *A statement in substantially the following form:*  
*Notice: For a proposal for a subcontract on the public work to be considered:*
      1. *The subcontractor must be licensed pursuant to chapter 624 of NRS;*
      2. *The proposal must be timely received;*
      3. *The subcontractor must attend the pre-proposal meeting; and*
      4. *The subcontractor may not modify the proposal after the date and time the proposal is received.*
  3. *The CMAR must provide the public body or its authorized representative with a copy of the subcontractor request for proposals and any proposal instructions prior to their dissemination to subcontractors.*
7. *General requirements for subcontractor proposals*
1. *To be considered responsive, a proposal must:*
    - (a) *Be submitted by a prequalified subcontractor for the trade in which he was prequalified;*
    - (b) *Be submitted by a prequalified subcontractor that has attended the pre-proposal meeting;*
    - (c) *Be timely received;*

- (d) *Be submitted in a sealed envelope; and*
  - (e) *Respond to the details and requirements included in the proposal instructions and the bid package.*
2. *A minimum of 3 bids required per trade unless prior written approval is obtained by the public body or its authorized representatives. If the CMAR prequalified at least 3 subcontractors for a trade and receives less than 3 proposals for that trade at the proposal opening; the proposals must remain unopened until the CMAR receives written direction from the public body or its authorized representative on how to proceed.*
8. *CMAR opening and rejection of proposals*
    1. *The opening must be attended by the public body or its authorized representative and the architect or engineer for the design of the public work. The bid opening is not open to the public.*
    2. *Before the proposals are opened, the CMAR shall confirm:*
      - (f) *That the proposal is being submitted by a prequalified subcontractor. The prequalification must be for the same trade for which the subcontractor is submitting the proposal; and*
      - (g) *That the proposal is being submitted by a prequalified subcontractor that attended the pre-proposal meeting; and*
      - (h) *Are timely received.*
    3. *Proposals that do not meet these requirements will be returned unopened.*
    4. *The CMAR must time stamp all envelopes containing proposals confirming their timely receipt.*
  9. *CMAR evaluation of subcontractor proposals*
    1. *The CMAR must make a list of all subcontractor proposals that were received and opened. The list must include:*
      - (a) *The Subcontractor's name, contact information, trade, and price.*
    2. *The list must be given to the public body or its authorized representative, and the public. However, the list with associated prices must never be provided to the public until after the CMAR has made his subcontractor selection and the public body or its authorized representative has approved that selection.*
    3. *The public body or its authorized representative must be provided with copies of all bids; which must be maintained as part of the project file.*
    4. *Not less than 10 business days after opening the proposal, the CMAR shall:*
      - (a) *Evaluate all proposals for responsiveness, such evaluation must include a line by line comparison of scope and price for each subcontractor trade;*
      - (b) *Select the best proposal; and*
      - (c) *Inform the public body or its authorized representative which subcontractors have been selected.*
    5. *Evaluation of the proposals must be recorded, documented and preserved.*
    6. *The public body or its authorized representative must confirm that the CMAR has complied with SB 268 section 4.*
    7. *If requested the CMAR will meet with any unsuccessful subcontractor to discuss the reasons why the subcontractor's proposal was not selected as the best proposal.*