

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

LCB File No. R100-11

Effective May 30, 2012

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

AUTHORITY: §§1 and 18, NRS 341.070 and 341.110; §§2, 3 and 5, NRS 338.1375, 338.1376, 341.070 and 341.110; §4, NRS 338.1375, 338.13847, 341.070 and 341.110; §§6 and 7, NRS 338.1375, 338.13895, 341.070 and 341.110; §8, NRS 338.1375, 338.1379, 338.13844, 338.13847, 341.070 and 341.110; §9, NRS 338.1375, 338.1379, 341.070 and 341.110; §§10-12, NRS 338.1375, 341.070 and 341.110; §§13-16, NRS 338.1376, 341.070 and 341.110; §17, NRS 338.1375, 338.13844, 338.13847, 341.070 and 341.110.

A REGULATION relating to public works; revising provisions relating to public works to clarify the respective powers and duties of the State Public Works Board and State Public Works Division; and providing other matters properly relating thereto.

Section 1. Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *“Administrator” means the Administrator of the Division.*

Sec. 3. *“Division” means the State Public Works Division of the Department of Administration.*

Sec. 4. NAC 338.130 is hereby amended to read as follows:

338.130 As used in NAC 338.130 to 338.450, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 338.132 to 338.144, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 5. NAC 338.142 is hereby amended to read as follows:

338.142 “Public work” means a public work, as defined in NRS 338.010, that is under the jurisdiction of the ~~Board.~~ *Division*.

Sec. 6. 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 for which the estimated cost is \$100,000 or more:

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

(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) A certified original statement of the bonding capacity of the prime contractor obtained for 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 United States 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 United States 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.

(b) 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 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 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}~~ *Division* 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.

(f) Whether the prime contractor 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 prime contractor:

(a) Any other verifiable information relating to the criteria set forth in subsection 1 that is provided to or discovered by the ~~{Board}~~ *Division* 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 for which the estimated cost is \$100,000 or more; and

(b) Each final evaluation of the performance of the prime contractor on a public work of this State that was provided to the prime contractor pursuant to NAC 338.285 on or after September 18, 2008, and within the 5 years immediately preceding the date of the application will be used

to determine whether the prime contractor is qualified to bid on one or more contracts for public works for which the estimated cost is \$100,000 or more.

Sec. 7. NAC 338.245 is hereby amended to read as follows:

338.245 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 for which the estimated cost is less than \$100,000:

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

(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.

(b) 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.

2. In addition to the information provided by a prime contractor:

(a) Any other verifiable information relating to the criteria set forth in subsection 1 that is provided to or discovered by the ~~Board~~ *Division* 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 for which the estimated cost is less than \$100,000; and

(b) Each final evaluation of the performance of the prime contractor on a public work of this State that was provided to the prime contractor pursuant to NAC 338.285 on or after September

18, 2008, and within the 5 years immediately preceding the date of the application will be used to determine whether the prime contractor is qualified to bid on one or more contracts for public works for which the estimated cost is less than \$100,000.

Sec. 8. 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}~~ *Administrator* 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}~~ *Division* 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}~~ *Division* will specify:

(a) In the application for a specific public work, any special requirements for the specific public work that the ~~{Board}~~ *Division* prescribes.

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

- (1) Of less than \$100,000;
- (2) Of \$100,000 to \$1,000,000;
- (3) Of \$1,000,001 to \$5,000,000; and
- (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. If the prime contractor is qualified to receive the preference set forth in NRS 338.13844, the prime contractor must indicate on the application his or her qualification for the preference.

5. An application must contain the signature of the prime contractor who is submitting the application.

6. 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.

Sec. 9. NAC 338.260 is hereby amended to read as follows:

338.260 1. The ~~[Manager]~~ *Administrator* shall appoint a committee consisting of a deputy ~~[manager]~~ *administrator* and at least two other employees of the ~~[Board]~~ *Division* 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.]~~ *Division.*

2. The committee shall calculate the scores of applications based on the weights of the criteria set forth in NAC 338.240 or 338.245 that are prescribed by the Board. In addition to the

information provided by a prime contractor in his or her application submitted pursuant to NAC 338.250, the committee:

(a) May consider any other verifiable information relating to the criteria set forth in NAC 338.240 or 338.245 that is provided to or discovered by the ~~[Board]~~ *Division* or its employees regarding the application to determine whether the prime contractor is qualified to bid on one or more contracts for public works; and

(b) Shall consider each final evaluation of the performance of the prime contractor on a public work of this State that was provided to the prime contractor pursuant to NAC 338.285 on or after September 18, 2008, and within the 5 years immediately preceding the date of 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]~~ *Administrator* shall provide written notice to the prime contractor 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]~~ *Administrator* 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 or her 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]~~ *Administrator* may deny a request by a prime contractor to withdraw his or her application regardless of whether the application is complete. Within 10 days after receipt of notice that his or her request to withdraw the application has been denied, the prime contractor may appeal the decision of the ~~[Manager]~~ *Administrator* 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 the prime contractor files the request for a hearing, submit copies of any documents that support his or her appeal.

Sec. 10. NAC 338.280 is hereby amended to read as follows:

338.280 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 338.245; 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,~~ *Administrator*, in writing, of its determination. After receipt of such notification, the ~~Manager,~~ *Administrator* 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 or her 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.

Sec. 11. NAC 338.285 is hereby amended to read as follows:

338.285 1. Within 30 days after the final completion of a public work, the ~~[Board]~~ *Division* or its designee will provide the prime contractor on the public work with a copy of an initial evaluation of the performance of the prime contractor on the public work. The initial evaluation must be prepared by the employee of the ~~[Board]~~ *Division* who was primarily responsible for managing the public work and must be approved by the supervisor of the employee.

2. Within 30 days after receipt of an initial evaluation pursuant to subsection 1, a prime contractor may submit to the ~~[Board]~~ *Division* or its designee a response to the initial evaluation, which must include, without limitation, any information or documentation that the prime contractor determines is relevant to the initial evaluation.

3. The ~~[Board]~~ *Division* or its designee will provide to the prime contractor a copy of the final evaluation of the performance of the prime contractor on the public work:

(a) If the prime contractor submitted a response pursuant to subsection 2, within 30 days after receipt of the response by the ~~[Board]~~ *Division* or its designee.

(b) If the prime contractor did not submit a response pursuant to subsection 2, within 60 days after provision of the initial evaluation to the prime contractor pursuant to subsection 1.

4. The final evaluation of the performance of the prime contractor on the public work:

(a) Must:

(1) Be prepared by the employee of the ~~[Board]~~ *Division* who prepared the initial evaluation and approved by the supervisor of the employee; and

(2) If the prime contractor submitted a response pursuant to subsection 2, include the response as an attachment; and

(b) If the prime contractor submitted a response pursuant to subsection 2, may include any revisions to the initial evaluation that the employee of the ~~{Board}~~ *Division* who prepared the initial evaluation deemed necessary based upon the response.

Sec. 12. NAC 338.290 is hereby amended to read as follows:

338.290 A prime contractor who has been determined to be qualified as a bidder shall inform the ~~{Board}~~ *Division* within 10 days after any change to, or renewal of, any license issued to the prime contractor pursuant to chapter 624 of NRS.

Sec. 13. NAC 338.370 is hereby amended to read as follows:

338.370 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 or her 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 or she 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 or her 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]~~ *Division* 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]~~ *Division* 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.

Sec. 14. NAC 338.380 is hereby amended to read as follows:

338.380 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]~~ *Administrator* shall notify the subcontractor of that fact in writing by certified mail. The subcontractor must submit a completed application for qualification to the ~~[Manager,]~~ *Administrator*, 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,]~~ *Division*, 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] Division** from removing a subcontractor pursuant to paragraph (a) of subsection 5 of NRS 338.141.

2. The **[Board] Division** 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 or her 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] Division** 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] Division** 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.

Sec. 15. NAC 338.390 is hereby amended to read as follows:

338.390 1. The ~~{Manager}~~ *Administrator* shall appoint a committee consisting of a deputy ~~{manager}~~ *administrator* and at least two other employees of the ~~{Board}~~ *Division* 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}~~ *Division* 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}~~ *Division* 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}~~ *Administrator* 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}~~ *Administrator* 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 or her 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 or her period of disqualification has ended must submit an application for qualification and be determined to be qualified by the ~~[Board]~~ *Administrator* 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]~~ *Administrator* may prevent a subcontractor from withdrawing his or her application for qualification regardless of whether the application is complete. Within 10 days after receipt of notice denying the withdrawal of the subcontractor's application for qualification, a subcontractor may appeal the decision by the ~~[Manager]~~ *Administrator* 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 the subcontractor files the request, submit copies of any documents that support his or her appeal.

Sec. 16. NAC 338.410 is hereby amended to read as follows:

338.410 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,~~ *Administrator*, in writing, of its determination. After receipt of such notification, the ~~Manager,~~ *Administrator* 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 or her 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.

Sec. 17. NAC 338.450 is hereby amended to read as follows:

338.450 1. To qualify to receive the preference set forth in NRS 338.13844, a business must:

(a) Submit an application to the ~~[Manager]~~ *Administrator* on a form prescribed and provided by the Board; and

(b) Certify in writing on the application and include with the application documentation evidencing that the business is:

(1) A local business; and

(2) A business owned by a veteran with a service-connected disability.

2. The ~~[Board]~~ *Division* will:

(a) Compile and maintain a list of the businesses that the ~~[Board]~~ *Administrator* has determined are qualified to receive the preference set forth in NRS 338.13844; and

(b) Post the list on the Internet website maintained by the ~~[Board.]~~ *Division*.

3. As used in this section:

(a) “Business owned by a veteran with a service-connected disability” has the meaning ascribed to it in NRS 338.13841.

(b) “Local business” has the meaning ascribed to it in NRS 333.3363.

(c) “Veteran with a service-related disability” has the meaning ascribed to it in NRS 338.13843.

Sec. 18. NAC 338.138 is hereby repealed.

TEXT OF REPEALED SECTION

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

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R100-11**

The State Public Works Board adopted regulations assigned LCB File No. R100-11, 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.

Date of Notice	Workshop/ Hearing	Date of Workshop
11/28/11	Workshop	12/15/11
1/10/12	Hearing	2/10/12

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 Division at (775) 684-4141 or by writing to the State Public Works Division, 515 East Musser, Room 102, Carson City, NV 89701, or by e-mailing the SPWD at hfatzer@admin.nv.gov

2. The number of persons who:

	12/15/11	2/10/12
(a) Attended each hearing:	32	15
(b) Testified at each hearing:	0	0
(c) Submitted written comments:	0	0

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 Division at (775) 684-4141 or by writing to the State Public Works Division, 515 East Musser, Room 102, Carson City, NV 89701, or by e-mailing the SPWD at hfatzer@admin.nv.gov

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.

The proposed regulation is not controversial; it merely implements revisions to relevant provisions to reflect the incorporation of SPWB into the Department of Administration and the resultant changes in titles, roles and duties as required by SB 427.

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

Adverse - No adverse affects.

Beneficial – Updates relevant provisions to reflect incorporation of SPWB into the Department of Administration.

(b) Both immediate and long-term effects.

Updates relevant provisions to reflect incorporation of SPWB into the Department of Administration.

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.

None

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?

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