

# PROPOSED REGULATION OF THE STATE PUBLIC WORKS BOARD

LCB File No. R099-15

## DRAFT REGULATIONS Public Works Division of the Department of Administration

(Additions are noted in ***bold italics*** text and deletions are noted in ~~strikethrough~~.)

### Qualification for Veteran's Preference

NAC 338.450 Application; list of businesses qualified to receive preference ***on contracts with an estimated cost of \$100,000 or less.*** (NRS 338.1375, 338.13844, 338.13847, 341.070, 341.110, **Assembly Bill 62**)

1. To qualify to receive the preference set forth in NRS 338.13844, a business must:
  - (a) Submit an application to the 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~~H~~; ***and***
    - (3) ***A business operated by a veteran with a service-connected disability.***
2. The Division will:
  - (a) Compile and maintain a list of the businesses that the 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 Division.
3. As used in this section:
  - (a) "Business owned ***and operated*** 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-connected disability" has the meaning ascribed to it in NRS 338.13843.

***NAC 338.460 Application; list of businesses qualified to receive preference on contracts with an estimated cost of more than \$100,000 but less than \$250,000. (NRS 338.1375, 338.13844, 338.13847, 341.070, 341.110, Assembly Bill 62)***

1. ***To qualify to receive the preference set forth in Assembly Bill 62, section 22 a business must:***
  - (a) ***Submit an application to the 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;***
    - (2) ***A business owned by a veteran with a service-connected disability that has been determined to be 50 percent or more by the United States Department of Veterans Affairs; and***

*(3) A business operated by a veteran with service-connected disability that has been determined to be 50 percent or more by the United States Department of Veterans Affairs.*

*2. The Division will:*

*(a) Compile and maintain a list of the businesses that the 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 Division.*

*3. As used in this section:*

*(a) "Business owned and operated 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-connected disability" has the meaning ascribed to it in NRS 338.13843.*

#### Qualification of Contractor's Under \$100,000

NAC 338.245 Criteria for qualification for public work with estimated cost of less than \$100,000; pertinent documentation and information. (NRS 338.1375, 338.13895, 341.070, 341.110)

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 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.]~~

#### Qualification of Contractors Over \$100,000

NAC 338.240 Criteria for qualification for public work with estimated cost of \$100,000 or more; pertinent documentation and information; exceptions. (NRS 338.1375, 338.13895, 341.070, 341.110)

1. Except as otherwise provided in subsection 3, 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, the 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 has 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 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 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, the principal personnel or any 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.

*(g) 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, or binding arbitration relating to any public works construction project either against or by the prime contractor, principal personnel or business entity associated with the principal personnel. For each such action include the following:*

*(1) The name of the project;*

*(2) The scope of work;*

*(3) The circumstances surrounding the action;*

*(4) Whether any liquidated damages were imposed in connection with the action;*

*(5) The outcome of the action; and*

*(6) Any judgment entered against the prime contractor, the principal personnel or business entity associated with the principal personnel relating to the action whether the result of a civil action, administrative proceeding, binding arbitration or mediation.*

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 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.

3. The criteria set forth in subsection 1 are not required to be used if:

(a) The Department of Transportation requested that bidders on the contract for the public work be qualified to bid on the contract pursuant to NRS 408.333; and

(b) The public work involves the construction, reconstruction, improvement or maintenance of highways pursuant to this chapter, chapter 408 of NAC or chapter 338 or 408 of NRS.

4. As used in this section, "highway" has the meaning ascribed to it in NRS 408.070.

NAC 338.285 Evaluation of performance of prime contractor qualified for ~~for~~ public work *with an estimated cost of \$100,000 or more*. (NRS 338.1375, 341.070, 341.110)

1. *For all prime contractors qualified to perform public works with an estimated costs of \$100,00 or more*, Within 30 days after the final completion of a public work, the 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 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 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 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 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 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 Division who prepared the initial evaluation deemed necessary based upon the response.