

LCB File No. E001-00

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearings for the Adoption, Amendment or Repeal of Regulations
Of
The State of Nevada Contractors' Board

The State of Nevada Contractors' Board ("Board") will hold public hearings at 2:30 p.m. on Tuesday, March 7, 1999, at the Board's Las Vegas office. The purpose of the hearings is to receive comments from all interested persons regarding the adoption, amendment or repeal of regulations that pertain to Chapter 624 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.060 and 233B.0603:

1. The need for and purpose of the proposed regulation or amendment.

Pursuant NRS 338, upon proper application, the Board must issue a Certificate of Eligibility to licensed general contractors who qualify for a preference in bidding on certain public works projects in Nevada. Pursuant to this statutory requirement, these proposed regulations are necessary to implement the Certificate of Eligibility approval process required under NRS 338.

2. Either the terms or the substance of the regulations to be adopted amended or repealed or a description of the subjects and issues involved.

A copy of the proposed regulations may be obtained by contacting either of the Board's offices.

3. The estimated economic effect of this proposed regulation on the business which it is to regulate and on the public.

(a) Adverse and beneficial effects.

There will be no adverse effect on businesses if the proposed regulations are adopted, as the regulations are a fair and equitable method of assessing applicants.

(b) Both immediate and long-term effects.

Once issued, the Certificates of Eligibility should simplify and expedite processing of bids on public works projects. Because qualification for issuance of Certificates of Eligibility must be demonstrated on each renewal date, tighter control on eligibility for bidders preference should be achieved in the future.

4. the estimated cost to the Agency for enforcement of the proposed regulation.

Adoption of the proposed regulation will not result in any significant additional cost to the Agency for enforcement.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary.

This proposed regulation does not overlap or duplicate any regulations of other state or local governmental agencies.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

Does not apply.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

Does not apply.

8. Whether proposed regulation establishes a new fee or increases an existing fee.

Yes. However, the regulations only impose a fee on general contractors who choose to apply for a certificate. It is not a mandatory assessment.

Persons wishing to comment upon the proposed action of the Board may appear at the scheduled public hearing(s) or may address their comments, data, views or arguments, in written form to the Executive Officer of the Nevada State Contractors' Board, 4220 South Maryland Parkway, Building D, Suite 800, Las Vegas, Nevada 89119 or in Reno at 9670 Gateway Drive, Suite 100, Reno, Nevada 89511. Written submissions must be received by the Board on or before the day before the hearing(s). If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted, amended or repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notices and the regulation to be adopted will be available at the State Contractors' Board, 4220 South Maryland Parkway, Building D, Suite 800, Las Vegas, Nevada 89119 and 9670 Gateway Drive, Suite 100, Reno, Nevada 89511. In all counties in which an office of the Board is not maintained, a copy of this notice and proposed regulation will also be available for public inspection and copying at the main public library during business hours. This notice and the text of the proposed regulation will be available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the

Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the Board, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been mailed to all persons on the agency's mailing list of administrative regulations and posted at the following locations:

Washoe County Court House
Washoe County Library
Reno City Hall
Las Vegas City Hall
Sawyer State Building
Clark County Library
Offices of the State Contractors
' Board in Reno and Las Vegas

Dated: 2/7/00

SCB File No. 99 ER 208-99

**EMERGENCY REGULATION OF THE NEVADA STATE
CONTRACTORS BOARD**

In the Matter of Amendment and Adoption of Regulations' Pertaining to: SCB FILE No:
ER208-99 (emergency)

Contractors under Chapter 624 of the Nevada Administrative Code

STATEMENT OF EMERGENCY

The Executive Officer of the Nevada State Contractors Board ("Board"), hereby presents this Statement of Emergency to the Governor of the State of Nevada for endorsement. The Statement of Emergency is made pursuant to NRS 233B.0613 and is presented with the original copy of the Emergency Regulation, ER208-99. The proposed emergency regulation concerns amendments to Chapter 624 of the Nevada Administrative Code ("NAC"), relating to the certification of general contractors to receive a preference in bidding on public works pursuant to NRS 338.1389 or 338.147. The Nevada State Contractors Board has determined that an emergency exists for the adoption of these regulations, it appearing that:

- I. Senate Bill 437 and Senate Bill 475 were approved by the Governor on May 29, 1999. NRS 338.1389 and NRS 338.147 as amended, changed the method of determining eligibility for general contractors to receive preference in bidding on public works. NRS 338.1389 and 338.147 as amended, require the State Contractors Board to issue a certificate of eligibility to receive a preference in bidding on public works to a properly licensed general contractor under chapter 624 of NRS under certain conditions. Section 10 of NRS 338.1389 and NRS 338.147 requires the State Contractors Board to adopt regulations relating to the certification of contractors for a preference in bidding on public works and the assessment of related fees. The revised law became effective on October 1, 1999. NRS 338.147 and 338.1389, as recently amended, provides:

NRS 338.1389 Contract must be awarded to contractor who submits best bid; certain bids deemed best bid; eligibility to receive preference in bidding; issuance of certificate of eligibility by state contractors' board; regulations; fees; objections; prohibited acts; sanctions.

1. Except as otherwise provided in NRS 338.1385 and 338.1711 to 338.1727, inclusive, a public body shall award a contract for a public work to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 8 or limited by subsection 9, for the purposes of this section, a contractor who:

(a) Has been determined by the public body to be a qualified bidder pursuant to NRS 338.1379 or is exempt from meeting such requirements pursuant to NRS 338.1383; and

(b) At the time he submits his bid, provides to the public body a copy of a certificate of eligibility to receive a preference in bidding on public works issued to him by the state contractors' board pursuant to subsection 3,

shall be deemed to have submitted a better bid than a competing contractor who has not provided a copy of such a valid certificate of eligibility if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.

3. The state contractors' board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the board an affidavit from a certified public accountant setting forth that the general contractor has:

(a) Paid:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this state, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this state that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The motor vehicle privilege tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business in this state of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and motor vehicle privilege tax; or

(b) Acquired, by inheritance, gift or transfer through a stock option plan for employees, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3, a general contractor shall be deemed to have paid:

(a) Sales and use taxes and motor vehicle privilege taxes paid in this state by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor; and

(b) Sales and use taxes paid in this state by a joint venture in which the contractor is a participant, in proportion to the amount of interest the contractor has in the joint venture.

5. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the state contractors' board pursuant to subsection 3 shall, at the time for the annual renewal of his contractors' license pursuant to NRS 624.283, submit to the board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 to maintain his eligibility to hold such a certificate.

6. A contractor who fails to submit an affidavit to the board pursuant to subsection 5 ceases to be eligible to receive a preference in bidding on public works unless he reapplies for and receives a certificate of eligibility pursuant to subsection 3.

7. If a contractor who applies to the state contractors' board for a certificate of eligibility to receive a preference in bidding on public works submits false information to the board regarding the required payment of taxes, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the board becomes aware of the submission of the false information.

8. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work. The provisions

of subsection 2 do not apply to any contract for a public work which is expected to cost less than \$250,000.

9. Except as otherwise provided in subsection 2 of NRS 338.1727, if a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the provisions of subsection 2 apply only if both or all of the joint venturers separately meet the requirements of that subsection.

10. The state contractors' board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

11. A person or entity who believes that a contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the public body to which the contractor has submitted a bid or proposal on a contract for the construction of a public work. A written objection authorized pursuant to this subsection must:

(a) Set forth proof or substantiating evidence to support the belief of the person or entity that the contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works; and

(b) Be filed with the public body at or after the time at which the contractor submitted the bid or proposal to the public body and before the time at which the public body awards the contract for which the bid or proposal was submitted.

12. If a public body receives a written objection pursuant to subsection 11, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and may proceed immediately to award the contract. If the public body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and may proceed to award the contract accordingly.

II. After the Governor approved Senate bill 437 and Senate bill 475, the State Contractors Board send out the Notice of Public Workshop and Notice of Intent to Act

Upon A Regulation as required by NRS 23B.061 and NRS 233B.0603. On July 9, 1999, the board mailed the notices to industry associations, the media, and the persons who requested to be placed on the SCB mailing list; and scheduled the Northern Nevada workshop and public hearing for August 10, 1999 and the Southern Nevada workshop and public hearing on August 25, 1999. Approximately fifty-five people attended these workshops and public hearings. Eleven people testified at the public workshops and public hearings; three people submitted written comments prior to and after the public workshops and public hearings.

III. On November 30, 1999 the State Contractors Board submitted its proposed permanent regulation and informational statement to the Legislative Counsel Bureau for review and revision. On December 15, 1999, the State Contractors Board submitted a proposed emergency regulation to the Governor for endorsement. On December 19, 1999, the State Contractors Board received a letter from the Associated General Contractors of Northern Nevada stating their opposition to several sections of the proposed regulation. As a result, the emergency regulation was not filed with the Secretary of State and not adopted. On December 23, 1999, LCB revised and returned the proposed permanent regulation, LCB file No. R-208-99. The proposed regulation was amended and adopted by the State Contractors Board on January 20, 2000 as an Emergency Regulation, SCB File ER 208-99.

IV. Adoption of a regulation regarding the method of certifying contractors to receive a preference to bid on public works and the assessment of related fees is necessary to ensure that the State Contractors Board complies with the statutory mandate of issuing certificates of eligibility to properly licensed Nevada general contractors, who are entitled to receive a certificate. Failure to adopt a regulation regarding the issuance of certificates of eligibility create a potential liability for the State Contractors Board in the event the procedure used to issue a certificate is challenged in a bid protest. Fees must be established to fund this legislative requirement. The State Contractors Board currently does not have a fund established or budgeted to support these obligations.

V. Although the State Contractors Board has submitted its proposed regulation to the Legislative Counsel Bureau, under the Nevada Administrative Procedure Act, there is insufficient time to enact permanent regulations to comply with the requirements. NRS 233B.061(2) requires an agency to notify “each person who has requested to be placed on a mailing list” and in a “manner reasonably calculated to provide” notice to the general public at least fifteen days before the scheduled workshop. An agency must give at least thirty days notice to the persons on the mailing list and the general public of its intention to adopt, amend or repeal any regulation. NRS 233B.060(1). NRS 233B.063(2) provides that the Legislative Counsel Bureau has thirty days to examine and revise the agency’s proposed regulation. Within thirty-five days after the regulation is adopted, if there is no objection by the Legislative Commission, the Director of LCB files the adopted regulation with the Secretary of State. NRS 233B.067(4).

VI. The proposed regulations have been the subject of two public workshops and two public hearings. The State Contractors Board has carefully considered the testimony and

written comments of the participants. It has incorporated some of the suggestions made by the interested parties. The board has determined that:

- a) there will be no adverse effect on business if the proposed regulations are adopted as emergency regulations as the regulations are a fair and equitable method of assessing applicants;
- b) the immediate cost to the regulated business will only affect the contractors who apply for a certificate of eligibility; it is not a mandatory assessment;
- c) adoption of the proposed regulation as an emergency regulation will not result in any significant additional cost to the State Contractors Board for enforcement;
- d) there are no other regulations of any state or governmental agency which overlap or duplicate the proposed regulations; and
- e) adopting the proposed regulations as an emergency regulation will not impose or increase any mandatory fees. The contractor may apply to the board to receive a certificate of eligibility if he chooses to participate.

The Nevada State Contractors board has made a finding that an emergency arising from unseen circumstances affecting the issuance of certificates of eligibility exists, and that the adoption of the above Emergency Rule and Emergency Amendment to a Rule is appropriate.

Respectfully submitted on January 20, 2000 by:

Margi Grein /s/
Margi Grein, Executive Officer
Nevada State Contractors board
4220 South Maryland Parkway Suite 800 D
Las Vegas, Nevada 89119

Endorsed on January 21, 2000 by:

Kenny C. Guinn /s/
KENNY C. GUINN, Governor of the State of Nevada

LCB File No. E001-00

ADOPTED EMERGENCY REGULATION OF THE
STATE CONTRACTORS' BOARD
SCB File No. ER208-99

January 14, 2000

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

AUTHORITY: §§1-17, NRS 338.1389, 338.147 and 624.100; §18, NRS 624.100 and 624.265; §19, NRS 624.100 and 624.282; §20, NRS 338.1389, 338.147 and 624.282.

Section 1. Chapter 624 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 17, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Affidavit for a certificate of eligibility” means an affidavit from a certified public accountant required pursuant to subsection 3 of NRS 338.1389 or subsection 3 of NRS 338.147.*

Sec. 4. *“Affidavit for renewal of a certificate of eligibility” means an affidavit from a certified public accountant required pursuant to subsection 5 of NRS 338.1389 or subsection 5 of NRS 338.147.*

Sec. 5. *“Certificate of eligibility” means a certificate of eligibility to receive a preference in bidding on public works issued by the board pursuant to NRS 338.1389 or 338.147.*

Sec. 6. *“General contractor” means a general engineering contractor or general building contractor who is properly licensed pursuant to the provisions of chapter 624 of NRS.*

Sec. 7. *“Statement of compliance” means a statement from a general contractor who applies for a certificate of eligibility which states that the general contractor is properly licensed pursuant to the provisions of chapter 624 of NRS for the certificate of eligibility for which he is applying.*

Sec. 8. 1. *A general contractor who wishes to obtain a certificate of eligibility must submit to the board:*

(a) An application on a form provided by the board;

(b) A notarized affidavit for a certificate of eligibility on a form provided by the board;

(c) A notarized statement of compliance on a form provided by the board;

(d) The fee set forth in NAC 624.130; and

(e) Any other documentation required by the board.

2. *The applicant must be a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS on the date that he submits the application and for the 5 years immediately preceding the submission of the application.*

~~*[3. If a general contractor has more than one classification or subclassification of a license as a general contractor, he must submit a separate application for each classification or subclassification of a license for which a certificate of eligibility is requested.]*~~

Sec. 9. 1. *An application for a certificate of eligibility must include, without limitation:*

- (a) The name of the applicant;*
- (b) The license number of the applicant;*
- (c) The date of issuance of the license of the applicant;*
- (d) The mailing and physical address of the applicant;*
- (e) The telephone number of the applicant;*
- (f) The name and address of the designated agent for service of process;*
- (g) The name of any officer of the applicant and any identifying information;*
- (h) The signature of the applicant; and*
- (i) Any other information that the board may require.*

2. *A certified public accountant shall review any necessary banking records in accordance with generally accepted auditing standards, including, without limitation, bank statements, canceled checks, electronic transfers, cash disbursement records and any other records that the board deems appropriate, to substantiate an affidavit for a certificate of eligibility.*

Sec. 10. *The board or its designee will issue or deny a certificate of eligibility within a reasonable time after the date on which the board receives the application, all required documentation that supports the application and the fee set forth in NAC 624.130.*

Sec. 11. *The certificate of eligibility must include, without limitation:*

- 1. The date of issuance;*
- 2. The date of expiration; and*

3. Such other information that the board deems appropriate.

Sec. 12. The board will issue a duplicate certificate of eligibility to any general contractor who has received a certificate of eligibility and who certifies that his certificate of eligibility has been lost or destroyed and submits the fee set forth in NAC 624.130.

Sec. 13. An affidavit for renewal of a certificate of eligibility must be on a form provided by the board and must be notarized.

Sec. 14. The board will not issue a certificate of eligibility to a general contractor whose license is not on active status. If the general contractor has received a certificate of eligibility, the board will revoke the certificate of eligibility. Such a contractor must reapply for a certificate of eligibility pursuant to subsection 3 of NRS 338.1389 or subsection 3 of NRS 338.147 and sections 2 to 17, inclusive, of this regulation.

Sec. 15. 1. If a general contractor who applies to the board for a certificate of eligibility submits false or misleading information, submits an application which is incomplete or does not comply with this chapter or chapter 338 or 624 of NRS, the board may:

(a) Deny the application;

(b) If the contractor has received a certificate of eligibility, revoke the certificate of eligibility; or

(c) Take such actions that the board deems appropriate under the circumstances.

2. In carrying out the provisions of this section, the board may rely on information contained in the records maintained by the board and need not conduct any investigation, inquiry or hearing regarding the information contained in those records.

Sec. 16. *If a written objection is filed with a public body pursuant to subsection 11 of NRS 338.1389 or subsection 11 of NRS 338.147, the board will, upon request by the public body, provide to the public body a copy of the application of the general contractor against whom the complaint was made and any documentation submitted with the application.*

Sec. 17. 1. *If a public body determines that a written objection is accompanied by the required proof or substantiating evidence pursuant to subsection 12 of NRS 338.1389 or subsection 12 of NRS 338.147, the public body shall notify the board in writing of the determination of the public body within 30 days after the date of its determination.*

2. *Upon receipt of the written documentation from the public body, the board or its designee will immediately revoke the certificate of eligibility for the general contractor. No formal disciplinary hearing is required before revocation of the certificate of eligibility based upon the receipt of the documentation from the public body which received the bid or proposal on a contract for the completion of a public work.*

Sec. 18. *Any fingerprint cards required pursuant to subsection 2 of NRS 624.265 must be accompanied by a cashier's check made payable to the Nevada highway patrol for \$15.*

Sec. 19. 1. *A contractor who holds a license on active status may apply to the board to have his license placed on inactive status pursuant to NRS 624.282. The contractor must submit to the board:*

- (a) An application on a form provided by the board; and*
- (b) Any unexpired license on active status and any pocket card.*

2. A contractor whose license has been placed on inactive status may renew that license on the date that he would have renewed his license if it were on active status by submitting to the board an application on a form provided by the board and the fee set forth in NAC 624.130. Any license that is not renewed on or before the date for renewal automatically expires.

3. A license on inactive status that is not placed on active status within 5 years after the date the inactive status is granted will expire.

4. A licensee who holds a license on inactive status that is in good standing may apply for active status by:

- (a) Submitting an application on a form provided by the board;*
- (b) Paying the fee set forth in NAC 624.130 and any applicable assessments; and*
- (c) Fulfilling any other requirement for an active licensee.*

Sec. 20. NAC 624.130 is hereby amended to read as follows:

624.130 The board will charge and collect the following fees:

FLUSH	To issue a duplicate license.....	\$10.00
FLUSH	To issue a duplicate identification card.....	1.00
FLUSH	<i>To issue a duplicate certificate of eligibility.....</i>	<i>50.00</i>
FLUSH	To consider an application for a change in the name of the licensee.....	10.00
FLUSH	To consider an application for an increase of a licensee’s monetary limit for a single project.....	50.00
FLUSH	To supply a pamphlet containing the statutes and regulations relating to contractors	5.00
FLUSH	To supply a report containing information regarding not more than	

	500 current licensees.....	50.00
FLUSH	To supply a report containing information regarding more than 500 current licensees.....	100.00
FLUSH	To consider a request for a permanent increase or decrease of a licensee’s monetary limit	150.00
FLUSH	To consider a request to change the qualified person or corporate officer listed on a license	150.00
FLUSH	To consider a request to broaden a license to include the entire classification or other specific subclassifications within the classification	150.00
FLUSH	To issue or renew a license for classification if the applicant has filed a surety bond with the ... board or if the applicant has been relieved of the requirement of filing a surety bond or establishing a cash deposit with the board.....	180.00
FLUSH	To issue or renew a license for classification if the applicant has established a cash deposit with the board.....	230.00
FLUSH	<i>To issue or renew an inactive license</i>	<i>150.00</i>
FLUSH	To consider an application for the issuance of a license for a classification in which the applicant is not licensed	250.00
FLUSH	To examine for a master’s license.....	50.00
FLUSH	<i>To issue or renew a certificate of eligibility</i>	<i>700.00</i>
FLUSH	For photocopies (per page).....	1.00
FLUSH	For an examination on the skills of management.....	40.00
FLUSH	For a technical examination	35.00
FLUSH	For a combination of the technical examination and the examination on the skills	

	of management.....	75.00
FLUSH	To retake any examination.....	35.00
FLUSH	To charge for returned checks.....	25.00