

## LCB File No. R085-01

### PROPOSED REGULATION OF THE STATE PUBLIC WORKS BOARD

To comply with the requirements to adopt regulations pursuant to AB 461 of the 2001 Legislature, Chapter 338 of NAC is hereby amended by adding the provisions set forth as sections 1 to 5, inclusive, of this regulation.

- Section 1. **Definitions.** *As used in this chapter, unless otherwise requires;*
1. *“Applicant” is a person that applies to be qualified as a bidder for public works projects of this state.*
  2. *“Manager” is the manager of the State of Nevada Public Works Board.*
  3. *“Public works project of this State” is any project under the jurisdiction of the State of Nevada Public Works Board pursuant to Chapter 341 of NRS.*
  4. *“Staff” means the employees of the State Public Works Board.*
  5. *“Board” means the State Public Works Board.*

- Sec. 2. **Criteria for Qualification of Applicant**
1. *Pursuant to NRS 338.1375 the criteria for determining whether an Applicant is qualified to bid on a public works contract of this state shall be as follows:*
    - (a) *To determine whether an Applicant has the financial ability, an Applicant shall be evaluated based upon:*
      - 1) *A certified statement of bonding capacity from a surety authorized to issue bid, performance and payment bonds in the State of Nevada identifying single and aggregate limits and available bonding capacity to work on a public works project.*
      - 2) *Evidence of proper licensure under chapter 624 of the NRS.*
      - 3) *No filings under the United States Bankruptcy Code as a debtor within the past five years.*
      - 4) *Civil judgments, settlements, records of findings, violations, or criminal convictions against Applicant or key personnel during the past five years of a law regarding wage and hours standards, prevailing wage rates or the prohibition of discrimination in employment.*
    - (b) *To determine whether the Applicant has qualified personnel, the Applicant shall identify the professional qualifications and relevant experience of its chief executive officer, chief operations officer, chief financial officer, project managers and superintendent.*
    - (c) *In determining whether the Applicant has breached any contracts with any public agency or person in this state or any other state within the last five years the Applicant shall describe the circumstances surrounding any contract dispute, any liquidated damages imposed, any mediation, arbitration, or litigation relating to the contract dispute, any settlement*

*reached by the parties, and any judgment against the Applicant within the past five years.*

*(d) A determination of whether Applicant was disqualified from the award of a contract pursuant to NRS 338.017 or NRS 338.1387 within the past five years.*

*(e) In determining the past performance history of the Applicant, the Applicant shall provide information concerning:*

*1) All previous work undertaken over \$25,000, detailing project name, type of work completed, location, initial and final contract price, owner, architect, engineer, and project manager for a minimum of the past five years;*

*2) The safety records indicating whether the Applicant has been cited for serious, willful, or repetitive OSHA safety violations during the past five years;*

*3) The Applicant shall identify projects that the Applicant has completed within the scheduled contract period, achieved final completion of its projects in a timely manner, performed all portions of work of a project without forcing an Owner to exercise its right to carry out the work of a contract;*

*4) The Applicant and the Board, (or its staff) shall identify projects for a public works agency during the past five years where Applicant failed to perform on any contract:*

*a. In the manner specified by the contract and any change orders approved and authorized by the public works agency or its authorized representatives;*

*b. Within the time specified by the contract unless extended by the public works agency or its representatives without penalty to the Applicant; or*

*c. For the amount of money specified by the contract unless modified by change orders approved and authorized by the public works agency or its authorized representatives; and*

*5) Whether a breach has been alleged against an Applicant by any public agency or person in this state or any other state within the past five years. The Applicant shall describe the circumstances surrounding any contract dispute, any liquidated damages imposed, any mediation, arbitration or litigation relating to the contract dispute and any settlement reached by the parties within the past five years.*

### **Sec. 3.**

#### **Application to Qualify as a Bidder**

*1. In order to bid on a public works project of this State, an application to qualify as a bidder shall be submitted to the Manager pursuant to NRS 338.1379. An application to qualify as a bidder shall be on a form provided and approved by the Manager and shall be submitted at least thirty days before seeking to bid on a public works project.*

*2. An Applicant may seek to be qualified as a bidder for a two year period or on a project-by-project basis.*

3. *An application must contain original signatures. Faxed or copied applications are not acceptable.*
4. *Incomplete or falsified applications or the Applicant's failure to disclose information may be grounds for disqualification or delay in the qualification of an Applicant.*

Sec. 4.

#### **Review of Applicants**

1. *The Manager shall appoint a committee of not less than three staff members to review and score an application and determine whether the Applicant is qualified.*
2. *Upon a determination that an Applicant is qualified, the Manager shall certify the Applicant as to the types of projects, and dollar amount of work on which the Applicant is qualified to submit bids, or certify that the Applicant is qualified to bid on a specific project, and notify the Applicant in writing of its qualification.*
3. *An Applicant's qualification expires two years from the date of determination. If information is discovered that may affect an Applicant's qualification as a bidder prior to the expiration of the two years, the manager may request the Board to require a bidder to submit an updated application to qualify as a bidder.*
4. *Upon a determination that an Applicant does not meet the criteria for qualification to be a bidder for public works projects of this state, the Manager shall notify the Applicant in writing that his application has been denied.*
5. *An Applicant whose qualification has been denied may reapply no sooner than two years after the determination of denial, unless the qualification was denied only as to a specific project.*

Sec. 5.

#### **Appeal and Hearing**

1. *An Applicant may, within ten days after receipt of the notice denying its application to qualify as a bidder, file a notice of appeal and request for a hearing.*
2. *The notice of appeal and request for a hearing shall set forth the Applicant's basis for appeal. The Applicant shall submit any copies of documents to be reviewed at the hearing.*
3. *The Board shall appoint an appeals board made up of three Board members to review the appeal.*
4. *The hearing must be held at a time and place prescribed by the appeals board in accordance with NRS 338.1381.*
5. *The appeals board shall call the hearing to order and act upon any preliminary matters. The Applicant must present its evidence first, followed by a presentation by the committee or committee representative that denied the application, and allow for additional testimony and evidence from interested parties.*
6. *An appeal stands submitted for decision after taking of evidence and oral argument.*

- 7. In conducting the hearing, the appeals board is not bound by any technical rules of evidence.*
- 8. If a party fails to appear at a noticed hearing and no continuance has been requested or granted, the appeals board may hear evidence from those present and make a decision based on the available record.*

**MINUTES  
OF THE  
STATE PUBLIC WORKS BOARD  
NEVADA ADMINISTRATIVE CODE WORKSHOP**

Held at  
Nevada State Library  
100 Stewart Street, Boardroom  
Carson City, Nevada 89701-4285  
Tuesday, June 5, 2001

STAFF MEMBERS PRESENT

Kathy Dow, Deputy Manager  
Debra Spieth, Prequalification of Bidders  
Shari Hannah, Contracts  
Hansa Karia, Program Assistant  
Brett Kandt, Deputy Attorney General  
Sonia Taggart, Deputy Attorney General

OTHERS PRESENT

Daniel Costella, Ironworkers 118  
Richard Daly, Laborers Union 169  
Mike Witt, Northern Nevada Carpenters/Contractors  
Sandra Maloney, Carpenters/Contractors  
David Kersh, Carpenters/Contractors  
Lori Ashton, Southwest Regional Council of Carpenters  
Jim Boletti, Carpenters/Contractors

This meeting was called to order at 1:30 p.m., June 5, 2001. Notice of this meeting was posted in accordance with the Nevada Open Meeting Law.

Kathy Dow, Deputy Manager, presiding.

Kathy Dow, Deputy Manager: This is the workshop that has been set and noticed for 1:30 p.m., on June 5<sup>th</sup> at the Nevada State Library Board Room, in Carson City. I'm Kathy Dow, Deputy Manager, for Administrative and Fiscal Services for the State Public Works Board, Dan O'Brien the Manager, could not be here today, but also with me from the Public Works Board, Debra Spieth on my right, and on my left is Shari Hannah and Hansa Karia. Got that right. Then from the Attorney General's office is Brett Kandt, Deputy Attorney General and Sonia Taggart, Deputy Attorney General. Basically the purpose of the workshop is to solicit public opinion and comments, so that's what we are going to do. It's going to be very informal. Sonia is going to go through the regulations, just an overview and then we will go through each section and whenever you have questions please do not save them for the end.

Sonia Taggart, Deputy Attorney General; I will briefly go over the contents of the proposed regulation and then we can go specific section by section, and accept comments and suggestions. In section 1 definitions we will make sure that nothing is duplicative. I don't think it is. Remember this regulation is actually going to be under 338, because 338 involves the local governments as well as the State Public Works Board. Prequalifications will be included under the new statute. There is going to be a section in the statutes for the State Public Works Board and a section for state for local governments. We have put it under 338, however if LCB tells us we are absolutely wrong, we need to put it under 341, we will probably be forced to comply with that.

Section 2, deals with the criteria for qualifications of the "Applicant" and how it is segmented out is that if you look at AB461, and look under section 2, subsection 3, and then (b) and this tells us what it may include. There are five criteria. The first one being financial abilities. The subsection, or section 2, subsection 1(a), has to do with financial ability. We came up with four types of criteria that would be used to determine whether a bidder would be financially responsible, so that they could have the financial ability to perform on a public works contract. The second criteria under AB 461 was the principal personnel. This is pretty vague in the statute and so if you look under 1(b) of the proposed reg we are looking at the experience, and any relevant qualifications that you can provide us for the top members of the organization. Now if we look at AB461 subsection 3, that has to do with if the "Applicant" has breached any contracts with a public agency or person in this state. In order to make this type of determination under section 1 (c) of the regulation we have asked for any information concerning any type of breach, or liquidated damages, or a contract dispute, so that we can get some understanding. I think this will help us evaluate the applicant and just because the applicant answers yes and did pay liquidated damages that is not necessarily going to mean that the Public Works Board is going to automatically deny an application and say that this person is disqualified. In this section your going to provide an explanation, the contractor or bidder is going to be able to explain what the circumstances were. Subsection (d) of the regulation is used to determination whether the "Applicant" was disqualified pursuant to sections 338.017 and 338.1387 of the NRS, and if we have made the determination within the past five years. If you look at AB461 again and look under section 3 (e) 4, it states whether the "Applicant" can be disqualified from being awarded a contract pursuant to those safe subsections. We have made the determination that we are only going to look at the past five years. The last criteria is a revision we had to make. Because at the time we were proposing a revision due to the fact that when AB461 went into the final committee meeting that they decided that they wanted the past performance to be a specific criteria for us to look at. And so, under subsection (e) of the regulation we tried to come up with criteria that would give us indications of the past performance history of the "Applicant". And those were pretty detailed, and maybe I will wait for discussion to get into the specifics of those. Now going onto Section 3 of the proposed regs. This is more the administrative part of the reg on what exactly, how exactly the how process works. We are pretty much dictated by NRS chapter 338 and not necessarily under AB461. Because that did not change how the administrative process of how this is gonna proceed, but, we are adopting regs so that it is absolutely clear how the statute, is going to be carried out, and so that's what subsection or section 3 does. Section 4 discusses the review of the "Applicant". We have come up with a committee of not less than three members to review the qualifications. At that time they would certify the "Applicant" as to: the type of project; the dollar amount; of whether it could be either on a project by project basis. Because some projects maybe lend itself to a very specific type of

qualification for that, in other wise it could be also on all types of products that you could be certified. I think it probably depends also on the bidder. Whether they want to or proposed bidder whether they want to be qualified on the global scope with the public works board or its just for a limited project that they want to be qualified for. We made the qualification of two years. We thought that that was administratively feasible length of time. However, we wanted the “Applicant” to be aware that if there was information of fraud, or anything like that, we could re look into the application again, if the information came to our knowledge. If we thought that there was a problem then we would just request an updated application. The next section goes into the appeals process, which is section 5 with the NAC. That discusses the notice of appeal or who makes up the appeals board. We have suggested that the board shall appoint the appeals board made up of three members. Having the whole Public Works Board may not be always feasible because of this short time frame, but we could have three members who are always ready and able to meet at a short notice. Then we can administer this appeals process in a prompt manner. Then there are just some guidelines on how the appeals process works and that’s about it. I think that we could take it section by section if people or if its more feasible someone wants just to discuss all the things that they would like to make comments upon. We can open this up, very informal.

(Speaker unknown): Where we think a letter might be changed to.

(Speaker unknown): That’s fine, we are open to all comments.

(Speaker unknown): You know maybe section by section would be good so that we can hear other people that we might change our minds, you know.

(Speaker unknown): Oh, identify myself.

(Speaker unknown): Yes, could you please identify yourself for the record.

Sonia Taggart, Deputy Attorney General: So if section by section works best why don’t we begin with section 1 and the definitional section. I’ll take all comments. Yes.

Lori Ashton, Nevada Carpenters: for the record, section 1.1 “Applicant” my only concern is that this was the glitch we had in the previous 338 statute when you used that singular word “a”. So I would delete it where it says “Applicant” is contractor who applies to be qualified as a bidder for Public Works projects of the State”. And, get rid of the “a” because you have singular.

Sonia Taggart, Deputy Attorney General: So the letter “a”

Lori Ashton, Nevada Carpenters: The letter “a” if the contractor applies to be a bidder for Public Works projects.

Sonia Taggart, Deputy Attorney General: Okay, okay.

Lori Ashton, Southwest Regional Council of Carpenters: Because then they could be doing it project by project or annual, but that was a glitch that we had in the original language was people were having to go on a manual basis, then attorneys were telling them, it says “a” contract.

Sonia Taggart, Deputy Attorney General: Okay. Anything else for section 1.

Sandra, Carpenters/Contractors: If we agree should we put that on the record if we agree with what Lori is saying? Does that make a difference or if we just go on like this?

Sonia Taggart, Deputy Attorney General: Sure, you can say that you agree with her comment for the record.

Sandra Maloney, Carpenters/Contractors: Okay, for the record I agree with your comment.

Richard Daly, Laborers Union 169: When you say “Applicant” as a contractor how are you going to apply that, as prime contractor as opposed to just a general contractor for instance we are doing a air conditioning renovation on a building. If a prime contractor has a HVAC the contractor should still have to apply as opposed to building a whole a building as a general contractor. Would “Applicant” apply to subcontractors.

Sonia Taggart, Deputy Attorney General: Do you want to address that or do you want me to go ahead?

Brett Kandt, Deputy Attorney General: Go ahead.

Sonia Taggart, Deputy Attorney General: It is my understanding that we are not qualifying subcontractors unless it’s a project that the bid is out just to do for example: air conditioning work, if that is just a specific specialty contractor, if it is for “X building”, oops this is Sonia Taggart, Deputy Attorney General for the record, then the contractor who is bidding on that contract, not his subs work, but just the contractor who would need to be qualified. At least that was the scope that at this time, if two years from now we find it necessary with the legislation, promotes subcontractors being qualified as well, then we will reach that, but at point we’re going to be limited to contractors who are actually bidding.

Richard Daly, Laborers Union 169: Is it the Board’s view then or the staff’s view that the statute 461 as written would preclude your prequalifying subs, or would you be able to do it under 461 if you felt it was a necessary thing? What would be beneficial to the public?

Sonia Taggart, Deputy Attorney General: I don’t think we would preclude subcontractors from wanting to be qualified because then again if a contract, lets say that it was a HVAC contractor and then there was at a future date a bidding for a contract for HVAC then they are already qualified and that would be, I don’t think we could ever stop anyone from trying to become qualified.

Jim Boletti, Carpenters/Contractors Cooperation Committee: Are you going to hold your subcontractors to the same standard you are holding your general contractors to? The question



being if we have information on a contractor that has some performance problems, wage violations, etc., can we submit that to you and have the subcontractor disqualified?

Sonia Taggart, Deputy Attorney General: Well again it would depend if the subcontractor is going to be the person bidding on the contract with the Public Works, whether there is that relationship.

Jim Boletti, Carpenters/Contractors Cooperation Committee: Okay, a contract. Okay, what if he is just a subcontractor for a prime contractor he has bid for or if he has some problems you're not going to hold that subcontractor to the same criteria as in this document?

Sonia Taggart, Deputy Attorney General: I don't think we are ready to

Kathy Dow, Deputy Manager: The contract is going to be between Public Works and that prime contractor, that general contractor, not with the subs.

Sonia Taggart, Deputy Attorney General: I think though, if you are a contractor and you're contracting with subs with substandard work, poor performance, I don't see how that's not going to reflect upon the prime contractor and their ability to get the job done on previous contracts. So, somehow that's going to have to come back to be part of their past history. Because it's the are a subcontractor so it's gonna be a reflection, I would think upon their performance of a contract.

Jim Boletti, Carpenters/Contractors Cooperation Committee: Possibly if he uses that same sub previously but if he hasn't used that subcontractor and we have past performance problems with this gentleman we will bring that information to you based on anything we've done maybe to disqualify him from the project.

Sandra Maloney, Carpenters/Contractors: I think that the reason behind that is because well over 80% of the work is actually being done by the subcontractors. That's really where your problems are you know it kinda defeats the purpose I think of prequalifying. You are not going to find as much problems with the general as you are with the subs.

Richard Daly, Laborers Union 169: And I concur with what they said and am a little concerned with what you said that it will reflect on the general, not necessarily matters if the subcontractor gets caught and his tactics that are being used that might be in conflict with some state law that may cost him actually to work cheaper, faster, etc., etc. And I understand that with this in here it is to qualifications for the contractor that the State Public Works Board is actually contracting with but this is one of the comments that I would make if the others want to chime in than its up to them. Would be if at sometime in the future for the State Public Works Board to look into some type of regulation that would also require prequalification for major subcontractors perhaps at the 5% bid listing level because again I agree with the lady at the end that a lot of work is being done by subcontractors. Some general contractors, prime contractors are suitcase contractors and don't perform any on the job work and everything is done by subcontractors.

Lori Ashton, Nevada Carpenters: I'd like to stick to the sections but that's okay. Cause we were talking about the one part Lori Ashton, Nevada Carpenters for the record I'm sorry when we

talked about the “Applicant” and his concerns, and like you said that if they are the prime doing HVAC would it just not be easier than to say that an “Applicant” a I lost my train of thought here, an “Applicant” pursuant to this section includes a general contractor, a subcontractor, or a specialty contractor who makes an application. Therefore, you would cover if it was a GC that was going to overtake the whole project using subs, or if it was a specialty contractor that was making a prequal application to just do his specialty item. You know in other words just broaden the “Applicant” being the prime person doing the work. Rather than just saying contractor.

Brett Kandt, Deputy Attorney General: The statute itself uses the term person. So we might just consider using the term person instead of contractor.

(Speaker unknown): We got a specialty guy coming in to say he wants to qualify to do the plumbing in every state and he is not holding a general license, he’s holding a specialty contractor’s license.

Sonia Taggart, Deputy Attorney General: Right.

David Kersh, Carpenters/Contractors: Going back to what you were saying that at some point it is going to reflect on their subcontract, I mean if they have had bad subcontractors that I think what we are going to get its always asking what the “Applicant”. We’ve had situations before where in California in particular where a contractor who has used a bad sub and it doesn’t appear because its always been asked about the “Applicant” or about the general and that’s at real fault that we might be careful. Or the situation where you have a bad sub and he is being used for the first time by the general its not going to reflect on his performance, so I mean that the sub issue is I think the key.

Sonia Taggart, Deputy Attorney General: So is it the general opinion that for an example if a general was to apply for prequalifying to bid on Public Works Projects that in order for them to list subs they could only list qualified subs that were also prequalified.

Lori Ashton, Nevada Carpenters: We worked with the school board two years ago on this and I think really it was covered in their language, it might be something to consider, because again we all are concerned with that. Ninety percent of the subcontractors who and basically what the final language of the CCSD was that the contractors would be prequalified and that the subcontractors would be presumptively qualified. Meaning that there is no reason to do anything with them that they are all good guys. However, if an agency or a labor organization or someone brings to the attention of the entity, which would be yourselves, to say we know of X, Y, Z, subcontractor who has violated wage and hour laws, violated OSHA laws, at that point and based on the criteria that you hold the generals accountable, the Board would than review that and disqualify that sub from being eligible to being listed on the project. So in other words, rather than undertaking the nightmare of prequalifying 20,000 subcontractors, you say okay the general’s gone through the process, he has qualified, all the subs are qualified, except X, Y, Z, we now have this stack of litigation in front of us we now need to review that and need to advise general that we have disqualified the electrical contractor, the plumbing contractor, or drywall contractor. And I think your people that manage your projects will be happy with something like that, because I am sure that the problems on most of the state projects would be general and

would cut down on that really bad subcontractor. Without the ability to disqualify then your stuck with this guy listing him and true it would fall back on the guy.

Richard Daly, Laborers Union 169: I think what we are trying to accomplish with the whole prequalification is to ensure that the state is contracting with reputable firms and getting the best dollar value instead of always just looking at the lowest bid and I don't think you can successfully accomplish that without some look at the subcontractors or at least the major subcontractors. Making up such a large part of the project, and I think that's the concurrence here. Most everybody here it needs to be looked at in some fashion.

Sonia Taggart, Deputy Attorney General: Thank you and we will bring that to the attention of Dan. Thank you we got some very good suggestions. Should we go on to section 2?

Lori Ashton, Nevada Carpenters: 1 (a) 4 No civil judgements or criminal convictions against "Applicant" or key personnel during the past five years. Somewhere, somehow if you do not in some manner include recordings of findings or settlements the massive wage violators in our state will do two things: they will settle out and not got to hearing so you do not have a judgement which becomes a settlement, and that becomes very difficult to litigate, and I am talking about they will settle two and three and four of them, year after year after year for twenty, thirty, or forty thousand dollars. And if they get caught they pay the money and you try to disqualify them and they say it's a settlement there is no judgement. They argue that point tell they are blue in the face.

Sonia Taggart, Deputy Attorney General: Okay, so if we include the word settlements or thing of findings?

Lori Ashton, Nevada Carpenters: Records of findings

Sandra Maloney, Carpenters/Contractors: Any other documented records or violations, possibly.

Lori Ashton, Nevada Carpenters: I just know that that was a big loophole and it was one that they liked to litigate, without the you know.

Sonia Taggart, Deputy Attorney General: Yea.

Lori Ashton, Nevada Carpenters: Sandie dealt with City Plan, the thing is that City Plan was found guilty and they got a years debarment, they prorated it, during the first six month interim, that they are allowed to continue work, they violated the wage and hour laws again, they went through a hearing, they got found guilty, they go to district court, they get a stay there. Right now eligible to bid Public Works even though they have done a pretty good settlement and been found guilty for twenty, thirty, forty, or fifty thousands of dollars, but right now they are eligible, because of the way the commissioner's hands are tied with the state to bid work. So those are the things ya got to look at. Is you could have the guy that goes to a hearing, gets found guilty, is debarred for three years and district court steps in and states that unless you have something in your prequal to cover that, then you'll be obligated to take his business.

Sandra Maloney, Carpenters/Contractors: There are several contractors that do that, that we have dealt with, that's primarily what we do as a labor management organization. They just tie it up in the court system purposely, they find a little technicalities and keep it going and they keep bidding and again really mistreating the workers and just blatant wage violations of all sorts.

Sonia Taggart, Deputy Attorney General: Okay, so then maybe we can say also including any appeals of convictions, or stay of the convictions.

Lori Ashton, Carpenters: Yea, I just think you need to cover that loop hole before its out there

Sonia Taggart, Deputy Attorney General: And records and finding and any other documents of wage violations.

Lori Ashton, Carpenters: Right.

Richard Daly, Laborers Union 169: Same situation where were the labor commission when they find out when they are looking at three years to litigate this thing, two years before the people can get paid who will make a settlement and then they are violated the law pays and they can just say I didn't do anything wrong. So I really agree that it needs to be covered, good point.

Lori Ashton, Carpenters: Yea, another thing is you have AB560 which is now going to turn all of that responsibility back onto the agencies themselves. So where will there be any type of records, you know if, I'm just curious how that part is going to work. If you go to the City of Henderson, and say X, Y, Z, contractors didn't pay the wage rate and they go out and resolve it doesn't mean he is a good guy, I mean he deliberately broke it, but and they penalized him. Is the Labor Commission going to hold a record for you guys to check? If an agency themselves enforces which you are going to do under 560 now if they enforce the law themselves on the contractor? Are they going to review now that it is going to go out of the hands of the Labor Commissioner?

Richard Daly, Laborers Union 169: SB560 calls for them to conduct an investigation if they find a violation they have a responsibility to report it to the Labor Commission. There will be a record generated somewhere and if there is not, I have been told by the Labor Commissioner that he is prepared under 338.090 that he has against the awarding authority, if they don't act responsible under there responsibility.

Lori Ashton, Carpenters: And that's why there has to be a record because if we do it with the legal terminology we will be stuck..

Sonia Taggart, Deputy Attorney General: Okay.

Sandra Maloney, Carpenters/Contractors: I just want to reiterate that I think that it is really important because the system that we have now it's really profitable for a contractor to cheat. Because there is really no one monitoring this type of work and its if they do get caught it takes two or three years after they have to pay that money out, so really it is profitable, so if they do they can settle out and that's why it is so important so there is really no contract compliance taking place.

Sonia Taggart, Deputy Attorney General: Okay, I think we will definitely make changes that to include those suggestions. Anything else in 1(a)? Okay why don't we proceed to 1(b)? We will look to 1(b) which will be then "Breach in Contracts" which also includes that we don't want the finding of the breach by the board but contract disputes being looked at as well.

Brett Kandt, Deputy Attorney General: Open meeting law sorry, that's what happens when attorneys get involved. Technically the door should be open, so I apologize for the sound out there.

Sonia Taggart, Deputy Attorney General: Okay, so we are looking at section 1(c) do you think we could, no comments on that one, any comments for 1(d) it seems pretty straight forward with the AB461. How about 1(e), I'm sure we will have comments on this one?

Lori Ashton, Carpenters: I was trying to determine the intent of 1 and 2 because they seem sort of repetitive and I don't know, if (1) was to be utilized for contractors that want to qualify on the biannual basis and number (2) was utilized for a person who wanted to bid on a project, what my concern is that if you have a contractor who is going to be filling out prequal for yourself and the counties and the cities and now they have to list first everything they have ever done and then they have to go back and relist, I was trying, ya know, it sorta seems like one applies to going on the biannual type qualification and number (2) would be project specific in other words "I want to build this state building, and I have built this state building, and I have done this scope of work, so I don't know.

Sonia Taggart, Deputy Attorney General: The other thing we could do is combine (1) and (2) so they're all in the past five years and then as one of the subcriteria in there is identify if any of the projects are similar to the size and scope to the work preformed. You know kinda.

Lori Ashton, Carpenters: Well see that's the thing a general contractor who does buildings wants to qualify with you for two years he may have built a little out house for the county, he may have built a seventeen story building, so if you get project related, and those can always be covered in bid documents, you know. If you do the generic what type of work if there are heavy highway guys they are not going to build your church, ya know or your building. If you were to include the specific stuff on a specific project in the bid documents you know you what to bid a State Public Works building and in the bid documents you say that you must include that you have done some more work or something.

Qualifies section (1) to "Applicant", subsection (2) to projects

Sonia Taggart, Deputy Attorney General: And (1) should be limited to five years, we don't have any time frame.

Daniel Costella, Ironworkers 118: I just wonder if you ever worry about a guy with no history?

Sonia Taggart, Deputy Attorney General: Obviously I don't think that can be used against you, because what this, we are looking a past history, and if you have no history it's not a plus and it's not minus.

Daniel Costella, Ironworkers 118: So does one weigh heavier or something? Do you have a point system?

Sonia Taggart, Deputy Attorney General: I think there's

Kathy Dow: I don't think that it is complete yet but.

Sonia Taggart, Deputy Attorney General: Right, but there is going to be points, but I think you would, your not deducted and you are not added points and you are not going to be disqualified because you don't have a past history. It won't be held against you. But these criteria are gonna have to be some sort of point system.

Daniel Costella, Ironworkers 118: What if you get someone from out of state that might be a terrible contractor with no history of their work.

Sonia Taggart, Deputy Attorney General: Well he would still have to put the previous work undertaken if he is from another state you have that

Daniel Costella, Ironworkers 118: What if he doesn't have previous work?

Sonia Taggart, Deputy Attorney General: Then we don't know if he was a good contractor and he has no history of being a bad contractor whatsoever right? I mean you are going to say how long have you been a contractor? Well I've been a contractor for five years. How much work tell us about your previous work? Well I've had no work. Either that's going to look suspicious or

Lori Ashton, Carpenters: Going back, I think you need to at least put the minimum of five years, but you might not lock them into it, because someone may want to tell you something they did ten years ago. You know.

Sonia Taggart, Deputy Attorney General: Okay, that's a good point.

Lori Ashton, Carpenters: You need to know at least the last five years, but if they wanted because their whole point is to tell they are able to do a project they want to include projects that have been done prior.

Sonia Taggart, Deputy Attorney General: Okay, so maybe both of those would be at least the past five years.

Richard Daly, Laborers Union 169: I agree with what you said about qualifying in the first paragraph, I forget the word you used now

Sonia Taggart, Deputy Attorney General: Biannual

Richard Daly, Laborers Union 169: I would caution on number 2 to leaving it as vague as “similar size and scope” put a dollar limit, I mean, if you did a job over 10 million bucks we want to know about it or 5 million or whatever you think the appropriate level would be. If you just say similar size and scope they are going to pick and choose, similar but wasn’t the same scope and they will have a tendency to leave projects out then. Reflect poorly on their

Sonia Taggart, Deputy Attorney General: Its had to reach, okay if you said, okay I know this wouldn’t happen but a swimming pool and so we’re doing a specific project by project, but if we say 5 million dollar or sometimes the dollar amount and type of project sometimes the project could be specific to the type of design, like if something was very unique like a theater and then other things could be, and the money might not be reflective, I don’t know if the dollar amount or how you characterize it but I can see the concern.

Lori Ashton, Carpenters: But if you put in similar size and scope and somewhere in there require to include what the contract price was there is some idea both on the nature of the project and on size of the project.

Sonia Taggart, Deputy Attorney General: But then how do you get around the fact that they may exclude something that they don’t think is

Lori Ashton, Carpenters: The difficulty with that really is that you’re if you built that church five years the dollar value may be substantially less than here when you are talking scope of work you were able to put the tile roofs on and do the specialty items, you sort identify and the cost factor, prevailing wage goes up annually, material goes up annually, I think put the dollar figure like you said, if they are telling you they built seven story high rise building, without problems, I think they are going to build another seven story it tells you they have the ability to do it.

Richard Daly, Laborers Union 169: They are going to be contracting for a seven story building and they built an eight story building, a nine story building, and a seven story building with no problem, if they built a six story building and had a leak whatever problems they had they’d say report the three good ones that are seven stories and bigger and I ain’t telling you about the six story

Lori Ashton, Carpenters: No, but that would be included in their breach of contracts and other parts of the

Richard Daly, Laborers Union 169: I’d actually allow them to define similar scope and size.

Lori Ashton, Carpenters: No, no, no, this is just for them to identify that they’re, this is my understanding, this is the type of work we are use to doing and we have done. And the other criteria is going to take care of if they did it on time, how well they did it, etc. This is just so that they are not a heavy highway contractor that’s coming to build your state government building or your state guy that only builds a building isn’t going to go out and try to do roadwork. That’s what my understanding of that particular part is, I may be incorrect.

Richard Daly, Laborers Union 169: Where number two says you want to know the projects for the past five years of similar scope and size and those are the projects you want to know about in regards to number three, in regards to number four, you are not going to want to know about every project they ever built now for number four when you only wanted to tell you about projects of similar scope and size in number two.

Sonia Taggart, Deputy Attorney General: Okay we will take those under consideration and maybe we can come up with some solution, we can't come up with it right now.

Richard Daly, Laborers Union 169: No, I know you can't, no offence.

Sonia Taggart, Deputy Attorney General: That's right. More comments number three, four, five.

Lori Ashton, Carpenters: Three years on safety violations, I mean everything else is consistent with five, I think I would keep consistent on that one. My question cause you're talking and I know you're still working out points or values or how you're going to do it. Were you going to be looking at OSHA records identifying with point systems?

Sonia Taggart, Deputy Attorney General: I think we were looking at OSHA violations is a maker, it could be a make or brake type of situation. If you have, if you have a serious, willful, or repetitive.

Lori Ashton, Carpenters: Well I guess the reason why I am asking is when we were talking earlier, Lori Ashton again, if you try to give OSHA violations point systems, say \_\_\_\_\_ and failing to put the safety glasses on as one, you could have one guy who has had some warrants and never paid a fine, you know settled those out and had somebody killed finely, and he gets a ten. You could have another guy for some reason continually gets these little one and two point evaluations and his could become a forty. You know what I mean?

Sonia Taggart, Deputy Attorney General: Right, but they have to be serious, willful, or repetitive. So, I think the the failure to wear the safety glasses might not even come within the willful, serious, or repetitive. At least yeah.

Kathy Dow, Deputy Manager: That's the way I would look at it.

Sonia Taggart, Deputy Attorney General: I mean yeah.

Lori Ashton, Carpenters: I'm just using it as an example, I mean you don't have the proper safety equipment on can be a serious violation, especially if it's fall protection situation.

Sonia Taggart, Deputy Attorney General: Yeah

Lori Ashton, Carpenters: But it might, nobody died from it

Sonia Taggart, Deputy Attorney General: Right



Lori Ashton, Carpenters: He just keeps getting warrants and doing informal settlements and that's what you'll see on a lot of these.

Sonia Taggart, Deputy Attorney General: Right

Lori Ashton, Carpenters: Is that they informally settle them out. I don't know if you want to include settlements there? In other words they can be charged and basically found guilty in an OSHA situation where the fine is fifteen thousand dollars and they can go through an informal settlement and abate the situation and pay zero over a long period.

Sonia Taggart, Deputy Attorney General: Would if they settle it does it still show up as a violation, does it go away or does it

Lori Ashton, Carpenters: It'll show one informal settlement, it's like it almost negates it, it's like it's a, they abated it, it's and informal settlement and they are not a bad guy. But you can see seventeen of those on one guy. See so I don't know if that can be clarified more.

Sonia Taggart, Deputy Attorney General: Okay.

Sandra Maloney, Carpenters/Contractors: The point system is that something that's informal or a committee of three is going to use to evaluate the contractor? Is that cause I'm not it's not here how you are going to do that.

Sonia Taggart, Deputy Attorney General: Right

Sandra Maloney, Carpenters/Contractors: To get the performance based contracting with a number system?

Sonia Taggart, Deputy Attorney General: A committee of three is going to yeah come up with a with a point system where and

David Kersh, Carpenters/Contractors: Maybe when we get to section 4 there is a way where we can weight it in, like saying review and score and

Sonia Taggart, Deputy Attorney General: Okay, okay

Sandra Maloney, Carpenters/Contractors: Just to giving you our experience might be able to help you come up with some different things because we work in that environment the state of California actually has a point based system that they look at their contractors.

Sonia Taggart, Deputy Attorney General: Do you have a form

David Kersh, Carpenters/Contractors: I have a copy, its prequalification from the state of California

Sonia Taggart, Deputy Attorney General: You do, oh great

Sandra Maloney, Carpenters/Contractors: We'll get into that and discuss some of it

Sonia Taggart, Deputy Attorney General: That would be great

Richard Daly: On this whole section on the information that they turn in that your gonna be scoring them on are you going to disclose as public record, people can look at it sensitive information of coarse such as financial stuff etc. So if somebody else any party has information that's contrary to what they turn in is the State willing to accept that take a look at it?

Sonia Taggart, Deputy Attorney General: Yeah, and that would be why we came up to I can't remember where it is but oh it expires in two years unless information is discovered that may effect the "Applicant"

Subsection 4 number 3 that's where we kind of anticipated that if someone came forward wanting to give us additional information.

Richard Daly, Laborers Union 169: I do remember reading that no when you went through the work up cause I'm almost sure that Washoe County is doing similar like this deal where it says make sure you that you get all the information may cause you to be disqualified and they put that in a their language, says you lied to us your going to pay.

Sonia Taggart, Deputy Attorney General: Right and we could put that right on the form

Lori Ashton, Carpenters: Say failure to disclose or

Sonia Taggart, Deputy Attorney General: Right.

Jim Boletti: Are you saying then that this is going to be your public document then excluding the financial information or the information submitted by the contractor?

Kathy Dow: I don't think we are prepared to answer that.

Sonia Taggart, Deputy Attorney General: Yeah, I think we'd have to do the analysis of public records to find out

Brett Kandt, Deputy Attorney General: In public records laws there is certainly a provision that's deemed confidential by law so it would have to be a balancing test we'd have to be able demonstrate the privacy interests of the "Applicant" and that information out weighs publics right to know.

Jim Boletti: Well I think the only privacy issue would be the financial information that if that was in a separate section of that one could be excluded from the public records and then we can view these documents we keep a database of some of the guys we a come in contact with and that's what would bring forward to you so we can tell if their submitting you accurate information we could prove that maybe in some cases they are not and we can't do that unless we can see the documents.

Sonia Taggart, Deputy Attorney General: Okay we will look into that and do that balancing test.

Sandra Maloney, Carpenters/Contractors: I think that there is a lot of entities out there like ourselves labor management that could actually help you, you know especially noticed I have seen it in Nevada and (out skirts) California where actually they just build to admit the job they have worked on and you would know that but someone we know the construction industry we know who's doing what because they know if that's not right just admit the information and it would make your life a lot easier.

Sonia Taggart, Deputy Attorney General: Do you know if California makes those records available?

Sandra Maloney, Carpenters/Contractors: Yes, they do, don't they California?

Jim Boletti, Carpenters/Contractors: Disclose prequalification exclude the financial, I know that OSHA safety records are available from OSHA.

David Kersh, Carpenters/Contractors: I don't think that prequalification in that state is a public document, but the city of LA does have a contractor evaluation program and what they did in dealing with the situation that financial information could not be public and then here in the language of 461 it says that the financial is confidential and that the data pertaining to the net worth of an "Applicant" they separated it so I mean you could have like the first two pages just dealing with the financial information and the other page is dealing with some of the other past history. Because its (kind of misunderstanding) you know we can contribute and maybe we can provide information more than the financial information is more than the performance issue so I mean that could be one way I don't know specifics of the public records laws here but this is a financial that could be supplementary.

Brett Kandt, Deputy Attorney General: Our public records law is pretty simple it says "confidential by law" in other words you could look up somewhere in state or federal law and that specific information deemed confidential, or you got to do this balancing test. The balancing test could get messy. We are obviously better off staying away from a situation where we have to engage in a balancing analysis on a case by case basis. If we can establish the benchmark where by certain information is deemed public census of among you as the participants that outside of the financial information the rest of the information is really is considered public view to all. Financial information you do consider private and not subject to the public records law. So that's something that we'll have to research. We certainly would want to avoid having to argue that or engage in that analysis on a regular basis, you would want that as well.

David Kersh, Carpenters/Contractors: Correct.

Jim Boletti, Carpenters/Contractor: I stand corrected I confused the State with the City of LA as far as the prequal of public information.

Richard Daly, Laborers Union 169: The way I understand NRS 241 with the meaning of 239 that there is a document being kept in the regular course of business generally speaking its public document, I mean I am sure that except for the financial part this would meet that test. Research it for us and let us know.

Brett Kandt, Deputy Attorney General: I'm sorry a there was some reference made to a scoring I get the impression that you would like to see more specificity in the regulation about the scoring process and then you also indicated that maybe instead of reinventing the wheel we could look to some other jurisdictions perhaps California.

David Kersh, Carpenters/Contractors: California prequalification there was an assembly bill that a went over that basically said that the Department of Industrial Relations was to meet a work group where they would develop a prequalification packet. Part of the prequalification packet has a section where there is a rating system for their scores.

Brett Kandt, Deputy Attorney General: Did we look at that at all? Did we ever look at that?  
Kathy Dow: From the City of California, State of California?

Debra Speith: Yeah

Brett Kandt, Deputy Attorney General: You did.

Sonia Taggart, Deputy Attorney General: Obviously we better read that. I guess the only thing is that do we have to put the scoring in the regulation which makes it very restrictive if we need to change it at a later date or do we put the scoring right on the application itself so that we have identified how it's being scored or what the rating is?

Brett Kandt, Deputy Attorney General: Well I know that for non public works contracts the "State Purchasing Act" references scoring not with much more specificity than that, it just makes it clear that the contractor 's proposals will be scored based upon pre established criteria, so I certainly think we could consider some language of that sort and probably would have you requisite specificity, that we might need from a legal standpoint if LCB wants it. I don't know how our members of the public hearing feel, if they would feel that would be efficient specificity or not.

Sandra Maloney, Carpenters/Contractors: I think I would just maybe discuss it again since we're more of the experts in this area, just to discuss some of the things for you to consider, I don't know that you have to write it into anything other than just scoring, but just maybe to point things out for your consideration, because this is what we do, we might see it from a different perspective being that this what we deal with everyday and we now have a contractors chief again to help you achieve your goal, getting the best contractor to do your work.

David Kersh, Carpenters/Contractors: Again, that you have a committee of three and then I mean it seems like they're there are no guidelines. How do you determine who qualifies and who doesn't qualify? That's how, that's why were.

Sonia Taggart, Deputy Attorney General: That's why we were going to do scoring sheets, the scoring would then reflect whether they qualified or not.

David Kersh, Carpenters/Contractors: In the state in California it was a moral I mean it's a moral that could be used it could be modified but it was something to start for the different agencies to use. So, I mean there is different ways that you can apply this scoring. The idea of having scoring as part of the prequalification as opposed to not having it was something that they decided against was worked with a lot of different groups, it was like a six month a working group with a you know everybody, a lot of different you know contractor groups, labor groups, everybody that came up this a prequalification packet and

Kathy Dow: How long has that been in place?

David Kersh, Carpenters/Contractors: It just went into effect I think.

Sandra Maloney, Carpenters/Contractors: It's kinda subjective, that's gonna be a hard one for you guys. I would think, you know there is so many different, you put a number on something in construction, there is: change orders, so many different factors that play into each situation that in order to be fair it seems like the scoring system that's my only problem with it is that it would be difficult to be really be truly fair and very possibly it might open you up law suits, I don't know. It might be something to consider.

Brett Kandt, Deputy Attorney General: Well, our challenge is to make what is inherently subjective as possibly. Once again, I can only make reference to the "State Purchasing Act". That has been found to pass the test, in requiring scoring. I should make it clear (consistency in scoring) when I say "consistency" what I mean. You know if there is ten points omitted than you (tape unclear) and that you give them a score for each of the relevant criteria a, that as long as you do that the courts traditionally consider that to meet that standard of trying to create some objectivity, you're-right.

Sandra Maloney, Carpenters/Contractors: My only concern it's a great idea

Brett Kandt, Deputy Attorney General: (Tape unclear) There is some inherent subjectivity but, a like I said, the courts have traditionally been seeing scoring systems as creating, I want to say guides of objectivity creating enough objectivity that there is a due process there.

Sandra Maloney, Carpenters/Contractors: Sure.

Sonia Taggart, Deputy Attorney General: I'd be happy to look at California and see (Tape unclear)

(Speaker unknown): Submit to you

Sonia Taggart, Deputy Attorney General: Everything

Brett Kandt, Deputy Attorney General: Great

(Speaker unknown): I have made several copies so (Tape unclear)

Sonia Taggart, Deputy Attorney General: Any further comments on section (e)

Richard Daly, Laborers Union 169: Just the last one, Richard Daly, I'm a lifelong Nevadan and I caution ya don't do anything (Tape unclear) from California. No offense.

Sandra Maloney, Carpenters/Contractors: I'm a Nevadan now.

Sonia Taggart, Deputy Attorney General: Sandra get em. (Tape unclear) Hopefully we'll take the best from California (Tape unclear).

(Speaker unknown): I mean basically just a starting point and a reference study would be quite helpful.

(Speaker unknown): Yeah

Sonia Taggart, Deputy Attorney General: Okay, so if I don't hear anymore on section (e) right now, a lets go and move on to section 3 which is the application qualifies the bidder. Again, administrative in nature. At this point and time we are not going to take faxed or copied applications. I know it sound like we are in the dark ages, but at this point we'll want originals.

Lori Ashton, Southwest Regional Council of Carpenters: I don't have any problem with it.

Sonia Taggart, Deputy Attorney General: Okay, if I don't hear anything I'll try to give you a little more time.

(Speaker unknown): Where it says incomplete application there's a section you could add in we talked about earlier.

Sonia Taggart, Deputy Attorney General: Incomplete or false right

(Speaker unknown): Because generally we have history of contractors submitting a information on their bid documents that is not a completely true and they have been disqualified when it has been brought to the awarding agencies attention.

Sonia Taggart, Deputy Attorney General: Okay, incomplete, failure to disclose, or falsified

Brett Kandt, Deputy Attorney General: Obviously we didn't use it on the application, I am looking at a representation made by (Tape unclear) information contained

Lori Ashton, Southwest Regional Council of Carpenters: No, it's under the penalty of disqualification. Permanent disqualification.

Sonia Taggart, Deputy Attorney General: Okay, lets move on to section 4, if we're done with 3, which is the review.

Brett Kandt, Deputy Attorney General: You know I had jumped ahead a little bit talking about scoring. We were looking at item 1. It talks about reviewing the application. Perhaps, I'm going to through them, then I'll leave. But section 4 subsection 1 would read something along the lines of "The Manager shall appoint a committee of not less than three members to review an application, score the application, and to determine whether the applicant is qualified".

(Speaker unknown): That's what I was referring to.  
So that would be a place where you could put review and score and application.

Sonia Taggart, Deputy Attorney General: Yeah.

Richard Daly, Laborers Union 169: Again, a where it says "should appoint a committee of not less than three" earlier or later we say board members, is that intended to be board members, or just three members?

Sonia Taggart, Deputy Attorney General: I think we are yeah, intending it to mean more staff, because we don't want it to be the board members, because we want them to be involved in the appeals process.

Richard Daly, Laborers Union 169: So they would be

Sonia Taggart, Deputy Attorney General: So more than likely the staff members of Public Works Board.

Richard Daly, Laborers Union 169: And they would be selected just, so that's what we're looking at on that one? I was just curious if you were going to get like other boards or select industry experts, other contractors, whoever, someone from the Contractors Board, public. I didn't know where you were going with that, but you are looking at staff.

Sonia Taggart, Deputy Attorney General: Although it's not limited.

Brett Kandt, Deputy Attorney General: I think that jives with the definition section doesn't it?

Sonia Taggart, Deputy Attorney General: No, it doesn't go with, staff means the staff, but we don't say, we say appoint not less than three members we don't specify completely that it's staff.

Lori Ashton, Southwest Regional Council of Carpenters: From where are the members are coming?

(Speaker unknown): Is that what the case will be though? It will be three members of the staff?

Sonia Taggart, Deputy Attorney General: Not less than three. No it could be more than three. But, we thought at least three.

Lori Ashton, Southwest Regional Council of Carpenters: Members of staff

(Speaker unknown): Public Works Board employees

Brett Kandt, Deputy Attorney General: Okay, the word "Staff"

Sonia Taggart, Deputy Attorney General: I think "Staff" is defined.

(Speaker unknown): Yes

(Speaker unknown): It's under definitions but it's not

(Speaker unknown): Your, your

(Speaker unknown): I think it just means employee's maybe. (tape unclear) staff

Sonia Taggart, Deputy Attorney General: Yeah, "Staff" means maybe it should say the employees of the State Public Works Board.

Lori Ashton, Southwest Regional Council of Carpenters: Okay.

Sonia Taggart, Deputy Attorney General: Because that would not be the Board members cause they aren't employees.

(Speaker unknown): So they're going to appoint "Staff" members to the committee are part of

Richard Daly, Laborers Union 169: It could be "Staff" members?

Sonia Taggart, Deputy Attorney General: Yeah, we'll change 1 to "Staff" and I changed in section 1 number 4 "Staff" means the employees of the State Public Works Board.

Richard Daly, Laborers Union 169: Really to me if this properly, it doesn't matter who these people are because we have flexible criteria, where monkeys could do it, theoretically. No offense to the staff.

Sonia Taggart, Deputy Attorney General: Let's a anything else in this review of applicants?

Lori Ashton, Southwest Regional Council of Carpenters: When just to understand the process, a person can you're not setting a date like say on September 1<sup>st</sup> of each year notifications, so these people can come in July and if they qualify for if they are prequalified for two years, then their expiration will be on the date that you do it, so that they will be staggered based?

Sonia Taggart, Deputy Attorney General: Be staggered.

Lori Ashton, Southwest Regional Council of Carpenters: Okay, which is different than the Clark County School District. That's the thing. The one thing that they do include in theirs, and I don't know if it can be incorporated in yours, but it might deal with the issues of the contractor's



committee. It talks about laborers and workers. Once they have received the application, and they are in the process of reviewing, it says “the District will send to all persons who have informed the District they wish to receive such notice. And those stating that the District will accept information for any interested person concerning the qualification of contractors”. So, when the School Board gets a contractor that is making a qualification application, I’m on that list, they notify me that Addison, or Martin Harris, or whoever is making an application. I think every labor agency in town would welcome it. If you are doing it staggered it really wouldn’t work if she’s got to fax. Kathy, I’ll give you the whole copy of this one. In other words, then the Contractors Cooperation Committee could be faxed at the time you receive an application. You know we have taken an application for biannual from X, Y, Z, contractor, you could get one, I could get one, the other labor organizations could get one, if we know something that’s when we the flag goes up and should direct the information to you.

Richard Daly, Laborers Union 169: I would just comment that the information that she is talking about would be useful if you really want to get the information, and you might ya know, what century are we in? Put it in the mail, fax it, electronic transmission would all be acceptable.

Lori Ashton, Southwest Regional Council of Carpenters: That’s the whole qualification from the School Board.

Richard Daly, Laborers Union 169: Paper

Sonia Taggart, Deputy Attorney General: But we might need further, ya know, whatever we can accept that, but we might what the originals. Hard copy.

Richard Daly, Laborers Union 169: The hard copy

Sonia Taggart, Deputy Attorney General: Hard copy

Richard Daly, Laborers Union 169: I’m just saying on the notification process.

Sonia Taggart, Deputy Attorney General: Right, oh okay we can notify you by fax

Richard Daly, Laborers Union 169: Yeah, you can notify by fax, email, whatever, whenever a person requests, if they say “I want you to mail it to me” you can mail it to them but, if they say fax or email is fine it should be it should be fine.

Sandra Maloney, Carpenters/Contractors: I think this is a good idea because the school board has notified us about things and we have brought to light again that’s what I work with the contractors and we do bring things forward, will go to the School Board, their meetings and bring things forward that they wouldn’t of known otherwise, in a sense we are saving many times money, helping you.

Lori Ashton, Southwest Regional Council of Carpenters: Chances are one or all of us have a copy of their OSHA records, ya know, if it’s the bad guy, if it’s not

Sonia Taggart, Deputy Attorney General: I think that's a good suggestion.

Sandra Maloney, Carpenters/Contractors: Yeah, I do too.

Lori Ashton, Southwest Regional Council of Carpenters: If I can get a copy of the way they wrote it which would have to I'm sure be modified because they do a specific date.

Richard Daly, Laborers Union 169: On a if a person is or doesn't meet the qualification criteria how long does that disqualification

Sonia Taggart, Deputy Attorney General: One year, it's section 5

Richard Daly, Laborers Union 169: One year, okay, you got to qualify for two years you should be disqualified for two years.

Sonia Taggart, Deputy Attorney General: You think two years? I mean I'm open for comment.

Richard Daly, Laborers Union 169: Well I would say it should be consistent, if they go through all the hoops to be qualified for two years you should be.

Lori Ashton, Southwest Regional Council of Carpenters: Also, it could be applying project by project.

Sonia Taggart, Deputy Attorney General: Well then unless it says unless the disqualification is decided as to a specific project.

Lori Ashton, Southwest Regional Council of Carpenters: I guess it would determine why did they get disqualified, they didn't do the, they I don't know.

Sandra Maloney, Contractors/Carpenters: Safety glasses for OSHA opposed to you know you might have to fall back onto your point system that you come with the severity of why they didn't get qualified.

Richard Daly, Laborers Union 169: Well if you establish a point system and eighty is the mark out of a possible hundred. If you score eighty or higher you are qualified, you score seventy-nine or less you are not qualified. Doesn't matter what all the nuances in you objective criteria, they scored seventy-nine or less you are not qualified. And if you have a rule your going to have to have a penalty. The penalty is a year, two years, whatever it is, I think that the stiffer the penalty, obviously the greater the deterrent or the greater incentive to make sure you are qualified. I would say two years. That would be my comment, of course you don't have to take it.

Lori Ashton, Southwest Regional Council of Carpenters: I could concur with that but, I think in some points you may want to go longer than that. Because if you have had someone that's debarred from doing Public Works for three years or something like that, two years might not be good enough.

Sonia Taggart, Deputy Attorney General: It seems though that it just might be easy though to disqualify them again.

Lori Ashton, Southwest Regional Council of Carpenters: But you would still have to go through the repetitive process. So I guess that would be the thing. Is there any safety net in here to keep you from having to deal with a Tibesar or somebody that as far as anybody concerned you are never going to do business again. Or do you have to revisit those issues every two years. Is there some, I'm just kicking this around, cause nothing is addressed in here. Is there some point where you can just say forget it, you're done or do you have to deal with them every two years.

Richard Daly, Laborers Union 169: Just thinking out loud on your question. If a person is debarred they are debarred from the Labor Commissioner's office for a period of three years if wouldn't matter if they qualified or not they would still be debarred. They could come in and try to prequalify, knowing that the debarment is going to end in a year, and have a running two years going. But probably I would think under the scoring system that they would have if you are currently debarred you are not going to meet the qualification. So I think that some of those things take care of themselves.

Sonia Taggart, Deputy Attorney General: Right, and we don't want if there is a small company that just barely made it in for some reason we don't want to penalize them completely unfairly for a long period of time if it's something that they have remedied.

Lori Ashton, Southwest Regional Council of Carpenters: Correct

Sonia Taggart, Deputy Attorney General: Because we want good contractors and if they could be a good contractor two years from now we want

Lori Ashton, Southwest Regional Council of Carpenters: I'm just talking about those repeat violators, I'm sure.

Sonia Taggart, Deputy Attorney General: Yeah, I think it won't be hard to disqualify them again, if they are so bad. Okay why don't we move onto the appeal and hearing. It's a conduction word, I thought I changed that once to conducting.

Kathy Dow, Deputy Manager: Yeah.

Sonia Taggart, Deputy Attorney General: Conduction means electricity or something, its an engineering term I don't know.

Lori Ashton, Southwest Regional Council of Carpenters: Can anybody outside of the applicant be party to this? I mean in other words, if we were to say you disqualified somebody, I'm trying to interpret, the appeals board may require written briefs from parties obviously we are an outside entity we're not a party.

Sonia Taggart, Deputy Attorney General: Right.

Lori Ashton, Southwest Regional Council of Carpenters: And no it just says if a the Board may hear evidence from those present. So in the event of this is also where I think you need to incorporate some kind of the disqualification on the subs in this, either above or you have an ability for a contractor you disqualified to appeal the decision, but nowhere do you have that ability that we talked about on the front end of this that if evidence is presented to you on a non prime contractor to disqualify. I don't know where if that can the language is in I just handed that to Debra.

Sonia Taggart, Deputy Attorney General: Oh yeah, okay, yeah we would have to put that in there if that scenario came up, so that if information is brought to us about a subcontractor than we could make them ineligible to be a listed as a subcontractor on a contract and that also needs to be able to go through an appeals process.

Jim Boletti, Carpenters/Contractors: I think we have some documentation that is similar to that, the subs are held to the same standards as the general contractors, as long as that information is presented then you could disqualify him from performing we do that too.

Sandra Maloney, Carpenters/Contractors: Right here in Nevada that's what Bruce and Emily are doing trying this.

Lori Ashton, Southwest Regional Council of Carpenters: Let me find it where it says where it's a

Sonia Taggart, Deputy Attorney General: So we would have to change it to an applicant or a subcontractor who has been denied, something like that.

Lori Ashton, Southwest Regional Council of Carpenters: Then somewhere in the front end, you would have to have the ability for anybody. Cause this could be the county that has dealt with a very bad subcontractor that wants to give you guys the heads up and say "look you know this contractor is okay, but this sub we have pulled our hair out on".

Sandra Maloney, Carpenters/Contractors: That's true, it's often that the agencies amongst themselves talking you can get information.

Sonia Taggart, Deputy Attorney General: But going back to your question about allowing other parties to appear. I guess we have to take that under consideration, I don't think that we have considered that entirely, or we didn't consider that at all. It was my understanding for example: if a Union, or a subcontractor wanted to come forth with information against this contractor, that they would come to the State Public Works Board, provide that information, be willing to testify at the hearing, it would not require them to be a party to the lawsuit.

Richard Daly, Laborers Union 169: Might I make a suggestion is that we looked at the language a for validity and the under the disputes under prevailing wage there is a part I believe under 338.030 where it says, "or any party listed" and I think it's subsection 5, and they list anybody that is affiliated with the State Federation. It was a labor organization nationally recognized or contractor's association's representative would also be parties that could be heard at the hearing.

Sonia Taggart, Deputy Attorney General: Okay, that couldn't be in 338 could it? Cause that's State Public Works Board.

Richard Daly, Laborers Union 169: It's in 338.030 number 5.

Kathy Dow, Deputy Manager: That's about prevailing wage.

Sonia Taggart, Deputy Attorney General: Okay, okay, okay.

Richard Daly, Laborers Union 169: Yeah, that's where they talk about people that are aloud to be heard at the hearing if there is a wage determination hearing.

Lori Ashton, Southwest Regional Council of Carpenters: But that's on the violation of wage an hour.

Richard Daly, Laborers Union 169: No that's on the prevailing wage survey contractors, labor organizations, and contractor's associations, essentially is what it says. But you could possibly borrow some more language from that. It gives a limitation on who can be heard there also, allows interested parties.

Lori Ashton, Southwest Regional Council of Carpenters: So that at the hearing any public body that crafts affiliated "State Federation of Laborer or other recognized national laborer organizations and contracts of locality or their representatives must be heard" now that's in determining the wage violation. That one just says interested parties, I believe can present the information to you and that is in regards to the qualifications or the presumptively disqualifying, I think in the very last sentence it talks about the disqualification of the subcontractors.

Richard Daly, Laborers Union 169: I think it would be good if we could actually narrow who could be heard at the hearing, instead of just the interested parties. You could look at the people that are going to have, most likely to have the information. (Tape unclear) just a suggestion.

Jim Boletti, Carpenters/Contractors: Wouldn't we be able to get in under number seven? We're not following the a, we are not bound by any technical rules of evidence, so you could call any of these people in to hearing to give evidence and that's a way of doing it.

Sonia Taggart, Deputy Attorney General: Right, that's the way I was anticipating that the State if you came forward with information we would call you in as a witness.

Richard Daly, Laborers Union 169: I would feel more comfortable if it's in there that those certain parties can definitely be heard, and list who they are. And then if the Board wanted to let somebody else in they could, but they wouldn't be able to

Sonia Taggart, Deputy Attorney General: The interested parties could be heard. How about heard at the disgresion of the board.

Lori Ashton, Southwest Regional Council of Carpenters: And what about the guy who's pissed off at his brother in law that's a contractor, frivilace stuff?

Richard Daly, Laborers Union 169: I think the parties of interest in 338 should be allowed to be heard if they have relative information.

Lori Ashton, Southwest Regional Council of Carpenters: So you are not going to formulate this before you enact this. Is there a way you can contact us, those that have participated to review it or are you going to do a second one? When you get actually do the application are you going to hold a workshop to maybe go over it or?

Sonia Taggart, Deputy Attorney General: We are going to go back to Dan and work on these suggestions. Then it's his call whether, I think he will definitely hold another workshop or get this sent out to you guys especially this group that has attended and ask for any more additional comments. It's really his call how he wants to proceed in that if we have to hold another workshop, but if he thinks it's beneficial to hold another one or if he wants it more informally done than that's how we'll go about it. I think I can bring or to suggest to him that you would like to be involved or least be able to comment on the application process, okay?

Lori Ashton, Southwest Regional Council of Carpenters: Yeah, you know whether he wants to sit around and have not a workshop you did actually a committee thing.

David Kersh, Carpenters/Contractors: Yeah, One of the things that we did in the State of California had a working group before their prequalifications and then the City of LA a also and it is very helpful because you get a lot of different voices, and a lot of input and I think you end up having a good product, I mean at the end because a lot of people had a different interests and a it would be beneficial to have a large group.

Lori Ashton, Southwest Regional Council of Carpenters: I was going to say "you know you guys are heading it up, the School District's had something in place, and the biggest argument we have had out there is uniformity and consistency". You know, your criteria is similar, and then the county adopts it, it makes it very easy for a contractor to prequalify everywhere. Instead of: oh guy, I have got to go to the State and I do this, and I'm over here at the county and they want me to do this. You know, consistent wise to talk to the other entities who are going to be adopting it, so that you know prior to putting it in.

Richard Daly, Laborers Union 169: That's why it's important we do it right here.

Lori Ashton, Southwest Regional Council of Carpenters: Well no, this is the State and the State, this is not going to have any effect on what the county, or the city adopts, unless they bring the county and the city into the loops. And maybe say if Dan gets to that point, have a representative from the county and the cities together, even if we are out of the loop at that point, if he's got the basics down to see if they're on board and if it's something they just endorse. To me it would be very beneficial to the contracting community. Because now they could basically fill out one type of form, and send it to everywhere they want to be qualified. Verses, the State requires this, and all these certified things, and with the county I have to do something different, and I go to the city and I have to do something different.

Sonia Taggart, Deputy Attorney General: The problem with the county and city right now is that under the statute, they don't have criteria number five, which is the performance history of the applicant. They did not want that in their prequalification. So that's always going to be a change until they get that legislation changed.

Lori Ashton, Southwest Regional Council of Carpenters: Well that's just in addition to yours though, but if the rest of the format was very similar.

Sonia Taggart, Deputy Attorney General: Right, right.

Kathy Dow, Deputy General: Yeah and we have all the stuff from Clark County, I got that over a year ago. Debra has been working on that.

Lori Ashton, Southwest Regional Council of Carpenters: Yeah, then we were busting heads with their attorney because they kept saying a contract, no. We had letters from Bache saying, "it's annual". Didn't matter.

Sandra Maloney, Carpenters/Contractors: I just want to say for the record that I agree with Lori because you don't want to scare off the good contractors. You don't want the good contractors not to bid the work because it's going to be a pain. And so you could almost, you got to be careful it's a balancing act there not to scare away people that aren't going to bother to take the time or the extra effort. So I agree the uniformity thing if possible.

Sonia Taggart, Deputy Attorney General: Yeah, well hopefully we'll set a good example for Nevada, I mean Clark County has and I think we have taken a lot from Clark County, it looks like we're going to take some more from them.

Lori Ashton, Southwest Regional Council of Carpenters: And I know that during the interim almost every agency has agreed to work to actually strengthen 338 in detail, because there is probably things that were admitted that would be nice to see. I mean we fought, and tried to get in the friendship, because we know that if it's like state/city money, they ought to be able to have a legitimate apprenticeship program. Cause you are taking care of your own, or even health care so you don't burden up doctors, I mean there is a lot of issues that I think still shall be addressed when it's public money.

Jim Boletti, Carpenters/Contractors: I have a question and once we get this all worked out and get this into play in prequalification are you guys going to move to some type of evaluation program where you can start evaluating the contractors that doing business with you?

Sonia Taggart, Deputy Attorney General: We have actually, you can address that.

Kathy Dow, Deputy Manager: I think we already have. Preliminary, which includes just information that we have collected internally, our inspectors that have dealt with some of the contractors recently.

David Kersh, Carpenters/Contractors: Okay, will you disqualify a contractor if you deem it necessary through that program?

Sonia Taggart, Deputy Attorney General: Well the committee would. It would be the committee's decision.

David Kersh, Carpenters/Contractors: Okay.

Sonia Taggart, Deputy Attorney General: We would definitely want that California information if you wouldn't mind providing it to us.

David Kersh, Carpenters/Contractors: I have it right now.

Sonia Taggart, Deputy Attorney General: That's wonderful. Thank you.

David Kersh, Carpenters/Contractors: Thank you for asking us we appreciate being allowed to participate.

Sonia Taggart, Deputy Attorney General: We really appreciate your input and suggestions and

Sandra Maloney, Carpenters/Contractors: Do you want business cards in case you have any specific questions.

Sonia Taggart, Deputy Attorney General: That would be great.

David Kersh, Carpenters/Contractors: I have one other question here. Is the review of the committee is that under is that open, so

Lori Ashton, Southwest Regional Council of Carpenters: No that's why I was talking about the utilization that they used at Clark County. When they had the applications in, I get a fax that says this these are the contractors that have applied for prequalification, or been prequalified. At that time I say "red light". Right, and that's what I was talking about. (Tape unclear)

Debra Spieth, Prequalification of Bidders: Is this meeting closed.

Sonia Taggart, Deputy Attorney General: Yeah.

**Adjourned : 3:40 p.m.**