

LCB File R094-04

PROPOSED REGULATION OF THE STATE PUBLIC WORKS BOARD

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the Nevada State Public Works Board

The Nevada State Public Works Board (SPWB) will hold a public hearing at 9:00 am, on June 22, 2004, at the Legislative Building, 401 S Carson Street, Room 3137, Carson City, NV 89701 and at the Grant Sawyer Building, 555 E Washington Street, Room 4401, Las Vegas, NV 89101. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations that pertain to chapter 338 of the Nevada Administrative Code.

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

1. The SPWB is proposing these amendments to comply with the requirements of NRS 338 to adopt regulations setting criteria and processes for qualification of bidders and certain sub contractors.
2. The proposed amendments relate generally to pre-qualification requirements for subcontractors on SPWB public works projects and broadening the scope of required information sought from prime contractors seeking pre-qualification to bid on public works projects. The proposed amendments also relate to the discretionary power of the appeals board that reviews contractor appeals.
3. The proposed regulation should have minimal impact on small businesses. Possible adverse effects include the requirements of certain subcontractors being required to submit qualification applications to the State Public Works Board. Such applications would have a beneficial impact to the industry as a whole in ensuring that only qualified subcontractors perform public works projects. Certain prime contractors may be adversely affected if they have employed, as a "principle personnel" an individual that was associated with a contracting entity in the past that had performance issues. Again, such a requirement ensures the construction industry that only qualified contractors are performing public works projects. Applicants challenging adverse rulings on qualification applications may incur legal expenses.
4. The estimated cost will vary depending on the number of subcontractors required to complete applications for qualification. At this juncture, the State Public Works Board believes that increased costs for administration and/or enforcement could amount to \$25,000 per year based upon the number of applicants and/or appeals. Increased legal fees could amount to \$20,000 per year.

5. The proposed regulations do not do not overlap or duplicate the regulations of other state or local governmental agencies.
6. Federal law does not require the proposed regulation.
7. The proposed regulations do not include provisions, which are more stringent than federal, state, or local standards regulating the same activity.
8. The proposed regulation does not provide a new fee and does not increase an existing fee.
9. Persons wishing to comment upon the proposed action of the SPWB may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to Nevada State Public Works Board, 505 E. King St., Room 301, Carson City, NV 89701. Written submissions must be received by the SPWB on or before June 14, 2004. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the SPWB may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public. A copy of this notice and the regulation to be Amended will be available at the Nevada State Public Works Board, 505 E. King St., Room 301, Carson City, NV 89701 and Nevada State Public Works Board, 1830 E. Sahara, Ste 204, Las Vegas, NV 89104 and on the State Public Works Board WEB site at www.spwb.state.nv.us and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also 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. This does not apply to a public body subject to the Open Meeting Law.

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

This notice of hearing has been posted at the following location:

Carson City Library
900 North Roop Street
Carson City, Nevada 89701

Elko County Library
720 Court Street
Elko, Nevada 89801

Churchill County Library
553 South Maine Street
Fallon, Nevada 89406

Goldfield Public Library
Post Office Box 430
(Fourth & Crook Street)
Goldfield, Nevada 89013

Las Vegas Library
833 Las Vegas Boulevard North
Las Vegas, Nevada 89101

Eureka Branch Library
Post Office Box 293
10190 Monroe Street
Eureka, Nevada 89316

Douglas County Library
Post Office Box 337
1625 Library Lane
Minden, Nevada 89423

Humboldt County Library
85 East 5th Street
Winnemucca, Nevada 89445

Pershing County Library
Post Office Box 781
1125 Central Avenue
Lovelock, Nevada 89419

Lincoln County Library
Post Office Box 330
93 Main Street
Pioche, Nevada 89043

Storey County Library
Post Office Box 14
95 South R Street
Virginia City, Nevada 89440

Lyon County Library
20 Nevin Way
Yerington, Nevada 89447

Washoe County Library
Post Office Box 2151
301 South Center
Reno, Nevada 89505

Mineral County Library
Post Office Box 1390
(First & A Street)
Hawthorne, Nevada 89415

White Pine County Library
950 Campton Street
Ely, Nevada 89301

Tonopah Public Library
Post Office Box 449
171 Central Street
Tonopah, Nevada 89049

Battle Mountain Branch Library
Post Office Box 141
Battle Mountain, Nevada 89820

LCB File R094-04

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

**PERFORMANCE CONTRACTING (I.E. ENERGY RETROFIT)
PRE-QUALIFICATION AND APPEAL PROCEDURE**

Authority: NRS 333.580

NOTE: Deletions are shown with ~~brackets and strikethrough~~ and additions are *bolded and italicized*. The proposed regulation sets forth a system to pre-qualify energy retrofit contractors and sets forth a system of appeal of those decisions.

Chapter 333 of NAC is hereby amended by adding thereto the provisions set forth in sections 1 to 11, inclusive, of this regulation.¹

Section 1. *“Applicant” defined. “Applicant” means a contractor licensed pursuant to NRS chapter 624 who files an application to become a qualified service company with the Board to be placed on the qualified service company list, unless the type of work does not require the license under NRS 624.*

Sec. 2. *“Board” defined. “Board” means the state public works board.*

Sec. 3. *“Contested case” defined. “Contested case” shall have the meaning ascribed to it in NRS 233B.032.*

Sec. 4. *“Manager” defined. “Manager” means the manager of the board appointed pursuant to NRS 341.100.*

Sec. 5. *“Qualified Service Company list” defined. “Qualified Service Company list” means a list of companies as determined by the Manager that shall be used by the Purchasing Division and using agencies to enter into performance contracts under this chapter. The list shall include a maximum dollar amount of work, and the type of work based on the lesser of performance and payment bonding limits or the contractor’s license limit.*

Sec. 6. *“Performance contract” defined. “Performance contract” shall have the meaning ascribed to it in NRS 333.550.*

Sec. 7. *“Qualified Service Company” defined. “Qualified Service Company” shall have the meaning ascribed to it in NRS 333.560.*

¹ Legal Counsel for the Legislative Counsel Bureau may determine that these regulations will be placed in a newly created subsection of NAC chapter 333 or in NAC chapter 338 or NAC chapter 341.

Sec. 8. *The Manager shall create a list of qualified service companies. A qualified service company shall remain on the list for a period of 2 years after approval by the Manager except as specified in Section 11.*

Sec. 9. *The Manager shall make a determination as to whether an applicant shall be placed on the list within 45 days after the receipt of a completed application.*

1. *If, after reviewing and scoring a completed application, the Manager determines that the applicant is:*

a. *Qualified, the Manager shall provide written notice to the applicant by certified mail within 10 days after that determination. The notice must indicate the date on which the qualification expires, which shall be two years from the date the Manager approved the application. The notice shall also contain the maximum dollar amount of the project for which the qualified service company is qualified to work. The notice shall also contain any specific limitations as to the type of work that the qualified service company may perform.*

b. *Not qualified, the Manager shall provide written notice to the applicant by certified mail within 10 days after that determination. The notice must indicate the reason for denial and inform the applicant of his right to a hearing pursuant to Section 10.*

2. *An applicant who applied to be placed on the list and whose application was denied may not reapply for qualification until 1 year after the date on which the application was denied.*

3. *In addition to the Manager's evaluation of the applicant's qualifications, the Manager may deny an application if it contains any materially false information or if the applicant failed to disclose materially relevant information in the application.*

Sec. 10. *Within 10 days after receipt of notice denying an application to be placed upon the list, an applicant may appeal the determination of the Manager to a three person subcommittee appointed by the Board. The request for a hearing shall set forth the basis for the appeal by the applicant. The applicant may submit with the request copies of any documents that support his appeal.*

1. *For each appeal filed pursuant to this section, the subcommittee of the Board shall hold a contested case, and:*

a. *Set the matter for hearing to take place within 45 days of the receipt of the request for a hearing, so long as all the parties have complied with subsection 3.*

b. *Provide notice of the hearing.*

c. *Hold the hearing at a time and place prescribed by the subcommittee of the Board.*

2. *The Chairman of the subcommittee of the Board shall have discretion to compel the parties to enter into settlement negotiations.*

3. *All parties shall, within 10 working days of the scheduled hearing, serve upon the subcommittee of the Board and the opposing party a pre-hearing statement setting forth factual elements of the case and legal issues surrounding the case. Attached to the pre-hearing statement delivered to the opposing party shall be 1 copy of documents intended to be introduced at the hearing, and attached to the pre-hearing statement delivered to the subcommittee of the Board shall be 10 copies of documents intended to be introduced at the hearing. The pre-hearing statement shall also include a witness list that shall state the*

address and telephone number of a witness, if known, and a short and plain statement as to the proposed testimony of the witness.

4. The subcommittee of the Board shall call the hearing to order and act upon preliminary matters, and evidence shall be presented first by the appellant and then by the administrative body. The applicant shall have the burden to prove his case. The subcommittee's decision and its findings of fact must be based on substantial evidence and on matters officially noticed

5. An appeal will be considered submitted for decision after the taking of evidence and oral argument.

6. In conducting the hearing, the subcommittee of the Board is not bound by any technical rules of evidence.

7. If a party fails to appear at a hearing and was not granted a continuance or did not enter into a stipulation for a continuance, the subcommittee of the Board may hear evidence from those present at the hearing and make a decision based on the available record.

8. Issues surrounding the admissibility of evidence at the hearing shall be determined by a majority vote of the subcommittee of the Board.

9. The subcommittee of the Board shall issue its decision in public after the submission of the case and shall serve upon the parties by certified mail a written decision within 20 days after the conclusion of the hearing.

Sec. 11. The qualification of a qualified service company will be revoked if, after an investigation, the Manager determines that:

1. The newly discovered evidence demonstrates that the qualified service company no longer meets the criteria set forth in NRS 333.580(4); or

2. The application submitted by the qualified service company contained materially false information or the qualified service company failed to disclose materially relevant information in the application.

3. If the manager determines pursuant to subsection 1 or 2 that the qualification of the qualified service company will be revoked, the Manager shall notify the qualified service company in writing, served by certified mail of his determination. Revocation of the qualification of the qualified service company becomes effective 10 days after the qualified service company receives notice of revocation pursuant to this subsection unless the qualified service company appeals the determination within the time prescribed for an appeal in subsection 4.

4. Within 10 days after receipt of notice of the revocation of his qualification pursuant to subsection 3, a qualified service company may appeal the determination by filing a request for a hearing with the board. A hearing on the appeal of the revocation of qualification will be conducted by the subcommittee of the board appointed pursuant to Section 10.

5. If the subcommittee of the board concurs with the determination of the Manager, revocation of the qualification of the qualified service company becomes effective upon the decision of the subcommittee of the board.

6. If the qualification of the qualified service company is revoked, the qualified service company may reapply for qualification after a period of 1 year from the decision of the manager as set forth in subsection 1 or 2.