

**LCB File No. R096-09**

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

AB 48 eliminates the requirement that contracts for a public work include a provision that requires binding arbitration of a dispute. The statute now allows the public body and the contractor to resolve a dispute relating to the contract for the public work by way of alternative dispute resolution before initiating judicial action.

SPWB has approved a new dispute resolution procedure in their contracts and the following amendments to the regulations are necessary for the implementation of that new process.

**NAC 341.025 Board of Appeals.** (NRS 341.070, 341.110) The Board may appoint three of its members to function as a Board of Appeals in order to attempt to resolve all disputes concerning contracts before the Board will initiate *formal* procedures ~~for~~ *including but not limited to mediation, non-binding or binding arbitration, and judicial action.*

**New Section**

*Request for Review. (NRS 341.070, 341.110)*

*1. In the event that a dispute concerning a contract is not resolved by direct discussions between Management and the Contractor; the Contractor may file a written Request for Review with the Board. If a dispute remains unresolved after 30 days from the date of the initial meeting between the Contractor's Principal and the Manager; then the Contractor may within 35days after the initial meeting with the Manager file a Request for Review. In the event the Contractor does not file a Request for Review the Manager must do so within 40 days from the date of the initial meeting between the Manager and the Contractor.*

*2. The Request for Review must set forth the basis for the request; the dollar value assigned to the dispute, and may be accompanied by copies of any supporting documents. The Contractor's Request for Review must also clearly indicate whether the Contractor agrees that the Board of Appeals' decision shall be binding. The Request for Review must be addressed to the Manager who will immediately forward it to the State Public Works Board ("Chairman"). In the event that the Contractor does not file a Request for Review the Manager must do so. The Manager's Request for Review must be directed to the Chairman with a copy to the Contractor. The Chairman may in his discretion determine whether the matter is appropriate for review before the subcommittee or the full State Public Works Board.*

**New Section**

*Appointment, duties and authority of subcommittee of Board; procedure. (NRS 341.070, 341.110)*

*1. Upon receipt of a Request for Review sent pursuant to NAC 341.026 the Board of Appeals shall:*

*(a) Conduct a public hearing within 45 days after the notice of Request for Review is received by the Board unless the parties by written stipulation agree to extend the time;*

*(b) Provide notice of the time and place of the public hearing to the person who requested the review; and*

*(c) Select from among its members a chairman. In the event the full Board hears the review, the Chairman of the Board shall act as Chairman.*

*2. The Board of Appeals' Chairman may:*

*(a) Compel the parties to the dispute to enter into negotiations for a settlement;*

*(b) Mediate between the parties to the dispute; and*

*(c) Order the parties to the dispute to provide discovery.*

*3. Each party shall, within 5 business days before the hearing, provide to the Board of Appeals and each opposing party a pre-hearing statement. The statement must:*

*(a) Set forth the facts and legal issues concerning the dispute, including the requested relief.*

*(b) Include a list of any witnesses the party intends to call during the hearing. The list must include the name, address and telephone number of each witness, if known, and a brief statement concerning the proposed testimony of the witness.*

*(c) Except as otherwise provided in this paragraph, include a copy of any documents intended to be introduced into evidence at the hearing. The statement provided to the Board of Appeals must include at least five copies of the documents.*

*4. Upon commencement of the public hearing, the person who filed the Request for Review must be the first to present evidence.*

*5. In conducting the hearing, the Board of Appeals is not bound by any technical rules of evidence.*

*6. The parties may agree to stipulate to the facts presented to the Board of Appeals.*

*7. If the Contractor fails to appear at a hearing conducted pursuant to this section and was not granted a continuance or did not enter into a stipulation for a continuance, the Board of Appeals may hear evidence from those parties present at the hearing and may make a decision based upon the available record. The failure of the Contractor to attend the hearing shall constitute a waiver of a Contractor's right to pursue any further remedies; including but not limited to Binding Arbitration, Formal Mediation and/or Judicial Action.*

*8. The Board of Appeals shall, by majority vote, determine whether evidence is admissible during a hearing conducted pursuant to this section.*

*9. The Board of Appeals must issue its written decision within 30 business days after the hearing. The written decision must be sent, by certified mail.*

*The Board of Appeals must also announce its decision concerning a Request for Review hearing conducted pursuant to this section at its next regularly scheduled public meeting. The decision need not be issued at the Request for Review hearing.*

*10. In the event the Contractor indicated his assent at the outset that the decision of the Board of Appeals would be binding, the Board of Appeals decision shall be deemed a final settlement agreement enforceable in any court of competent jurisdiction.*

*11. In the event the Contractor indicated that the Board of Appeal's decision was non-binding the parties shall within 30 days:*

*1. Enter into a final settlement agreement based upon the terms of the Board of Appeals decision or as otherwise agreed; or*

*2. The Contractor may:*

*a. Pursue Formal Mediation, pursuant to Section 3.9.7 of the General Conditions.*

*b. For disputes involving \$50,000 or less initiate Binding Arbitration.*

*12. In the event the Contractor does not initiate Binding Arbitration or Formal Mediation within 30 days of the Board of Appeals written decision; the decision becomes a binding*

*agreement enforceable in any court of competent jurisdiction. Further, by failing to give timely notice, the Contractor waives all applicable rights to pursue Formal Mediation, Binding Arbitration and/or Judicial Action.*

*13. Each party shall bear their own costs associated with the Request for Review.*

*14. Construction Law Counsel shall assist the Manager and staff in their presentation before the Board of Appeals. A Deputy Attorney General shall act as counsel for the Board of Appeals and advise them throughout the hearing and if requested in their deliberations. The Contractor may represent himself or be represented by counsel.*