

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

LCB File No. R098-09

February 17, 2010

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

AUTHORITY: §§1 and 2, NRS 338.1379 and 341.110.

A REGULATION relating to public works; eliminating the provision stating that the State Public Works Board will not accept a faxed or photocopied application for qualification as a bidder on state public works; revising the manner of notifying contractors found to be so qualified; and providing other matters properly relating thereto.

Section 1. NAC 338.250 is hereby amended to read as follows:

338.250 1. To qualify to bid on one or more contracts for public works, a prime contractor must:

(a) Submit an application to the Manager on a form prescribed and provided by the Board.

(b) Be qualified before bids are required to be submitted for a public work on which the prime contractor wishes to bid. The Board will not delay the opening of bids on a public work pending the determination or appeal of the qualification of a prime contractor who wishes to bid on the public work.

2. The Board will specify:

(a) In the application for a specific public work, any special requirements for the specific public work that the Board prescribes.

(b) In the application for qualification for a 2-year period, the cost categories:

(1) Of less than \$100,000;

- (2) Of \$100,000 to \$1,000,000;
- (3) Of \$1,000,001 to \$5,000,000; and
- (4) Of more than \$5,000,000,

↳ for which a prime contractor may be qualified, which are based on the estimated cost of an individual public work. If a prime contractor is qualified to bid on public works in one of the cost categories specified in this subsection, the prime contractor is eligible to bid on public works in any lower cost category.

3. If the application is for qualification for a 2-year period, the prime contractor must indicate on the application:

(a) Whether the prime contractor is interested in receiving offers to bid on public works for which the estimated cost is more than \$25,000 but less than \$100,000; and

(b) The cost category for which the prime contractor seeks to qualify to submit bids.

4. An application must contain the ~~original~~ signature of the prime contractor who is submitting the application. ~~[The Board will not accept a faxed or photocopied application.]~~

5. The submission of a materially incomplete or falsified application or the failure of a prime contractor to disclose information in the application may be grounds for a delay in the qualification of the prime contractor or the denial or revocation of the qualification of a bidder.

Sec. 2. NAC 338.260 is hereby amended to read as follows:

338.260 1. The Manager shall appoint a committee consisting of a deputy manager and at least two other employees of the Board to review and score applications submitted pursuant to NAC 338.250 to determine whether a prime contractor is qualified to bid on one or more contracts for public works. Such a determination must be made within 45 days after receipt of the completed application by the Board.

2. The committee shall calculate the scores of applications based on the weights of the criteria set forth in NAC 338.240 that are prescribed by the Board. In addition to the information provided by a prime contractor in his application submitted pursuant to NAC 338.250, the committee:

(a) May consider any other verifiable information relating to the criteria set forth in NAC 338.240 that is provided to or discovered by the Board or its employees regarding the application to determine whether the prime contractor is qualified to bid on one or more contracts for public works; and

(b) Shall consider each final evaluation of the performance of the prime contractor on a public work of this State that was provided to the prime contractor pursuant to section 1 of LCB File No. R071-08, which was adopted by the State Public Works Board and filed with the Secretary of State on September 18, 2008, on or after September 18, 2008, and within the 5 years immediately preceding the date of the application to determine whether the prime contractor is qualified to bid on one or more contracts for public works.

3. If, after reviewing and scoring an application, the committee determines that the prime contractor is:

(a) Qualified, the Manager shall provide written notice to the prime contractor ~~by certified mail~~ within 10 days after that determination. If the application was for qualification to bid for a 2-year period, the notice must indicate the date on which the qualification expires and that, for the period of qualification, the prime contractor is qualified to bid on public works for which the estimated cost does not exceed the maximum dollar amount of the cost category for which the prime contractor is qualified to submit bids.

(b) Not qualified, the Manager shall provide written notice to the prime contractor by certified mail within 10 days after that determination. Pursuant to subsection 3 of NRS 338.1379, the notice must include, without limitation, the reasons for the denial of the application and inform the prime contractor of his right to a hearing pursuant to NRS 338.1381 and NAC 338.270.

4. Except as otherwise provided in this subsection and NAC 338.280, the qualification of a prime contractor to bid on contracts for public works expires 2 years after the date on which the committee determines that the prime contractor is qualified. The qualification of a prime contractor for a specific public work expires upon completion of that public work.

5. A prime contractor who applied for qualification for a 2-year period and whose application was denied may not reapply for qualification for a 2-year period until 1 year after the date on which the application was denied or, if the prime contractor appeals the denial of the application, 1 year after the date on which the board of appeals appointed pursuant to NAC 338.270 denies the appeal. Denial of an application for qualification on a specific public work does not prohibit the prime contractor from submitting an application for qualification for a 2-year period or qualification on another specific public work.

6. The Manager may deny a request by a prime contractor to withdraw his application regardless of whether the application is complete. Within 10 days after receipt of notice that his request to withdraw the application has been denied, the prime contractor may appeal the decision of the Manager to deny the request to withdraw the application by filing a request for a hearing with the Board pursuant to NAC 338.270. The request for a hearing must set forth the basis for the appeal. The prime contractor may, at the time he files the request for a hearing, submit copies of any documents that support his appeal.