

**ADOPTED REGULATION OF
THE OFFICE OF ECONOMIC DEVELOPMENT**

LCB File No. R102-13

Effective December 23, 2013

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

AUTHORITY: §§1-10, NRS 231.1408.

A REGULATION relating to economic development; adopting provisions governing the certification of local emerging small businesses by the Office of Economic Development; interpreting certain provisions relating to reports concerning local emerging small businesses submitted to the Office; adopting provisions governing the establishment of goals for the participation of local emerging small businesses in certain contracts relating to purchasing and public works; and providing other matters properly relating thereto.

Section 1. Chapter 231 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. 1. *The Office will certify as a local emerging small business a business that satisfies the requirements set forth in this section and NRS 231.1405 and 231.14055.*

2. To obtain certification as a local emerging small business, a business must;

(a) Submit a complete application to the Office on a form prescribed and provided by the Office.

(b) Attest on the application that the business satisfies the criteria to be certified as a local emerging small business, as set forth in NRS 231.1405.

(c) Submit to the Office the documentation required by the Office to establish that the business satisfies the criteria set forth in NRS 231.1405.

3. A business may submit to the Office an application to obtain certification as a local emerging small business and the supporting documentation required by subsection 2 by using the Office's online application process or by mail or in person at the address provided on the application form.

4. Upon receipt of a complete application, the Office will review the application and supporting documentation submitted by the applicant and determine whether the applicant satisfies the requirements to obtain certification as a local emerging small business, as set forth in this section and NRS 231.1405 and 231.14055.

5. The Office may delay or deny the certification of an applicant for certification as a local emerging small business if the applicant fails to disclose information required by the application or submits a materially incomplete application.

6. The Office will provide each applicant for certification as a local emerging small business written notification of its pursuant to subsection 4 within 90 days after receipt of the application.

Sec. 3. For the purpose of determining whether a business satisfies the criteria for certification as a local emerging small business, as set forth in NRS 231.1405, the Office interprets the requirement that a business:

1. Maintain its principal place of business in this State to mean that the address identified on the state business license of the business must be a physical address located in this State.

2. Be operated for profit to mean that the normal business operations of the business are intended to earn a profit and that the income or profit of the business is distributable to its owners or shareholders.

Sec. 4. *For the purpose of determining whether a business satisfies the criteria for certification as a Tier 1 business or a Tier 2 business pursuant to NRS 231.1405, the Office:*

1. Interprets the term “annual gross receipts” to mean the total amount of sales by the business during a fiscal year as reported on the business’s federal income tax return.

2. Will determine that a business is “involved in providing construction services” if the business:

(a) Is a person who is licensed pursuant to chapter 624 of NRS and who provides labor, materials, equipment or supplies for the construction, repair or reconstruction of any building, highway, road, railroad, excavation or other structure, project, development or improvement;
or

(b) Employs as an employee of the business a design professional as defined in NRS 338.010.

3. Will determine that a business is “involved in the sale of goods” if the business sells goods as defined in NRS 104.2105.

Sec. 5. *An applicant for certification as a local emerging small business and each local emerging small business certified by the Office shall notify the Office of any change in its business address, electronic mail address or telephone number and of any other change which may affect its eligibility to be certified as a local emerging small business.*

Sec. 6. *1. A certification as a local emerging small business is valid until 2 years after the last day of the month in which it is issued or renewed, unless the certification is renewed.*

2. Not less than 60 days before the expiration of the certification of a local emerging small business, the Office will send to the local emerging small business a written notice of the expiration of the certification and an affidavit on a form prescribed by the Office which the

local emerging small business may complete and return to the Office to renew its certification. The failure of a local emerging small business to receive a notice does not excuse it from the requirement to comply with the provisions of subsection 3.

3. To renew its certification, a local emerging small business must submit to the Office, at least 10 days before the expiration of the certification, the completed affidavit provided by the Office pursuant to subsection 2 and all supporting documentation required by the Office to establish that the local emerging small business continues to satisfy the criteria set forth in NRS 231.1405. The affidavit and documentation required by this subsection may be submitted to the Office through the Office's online renewal process or by mail or in person to the address identified on the affidavit.

4. If a local emerging small business submits an affidavit and all supporting documentation required by the Office at least 10 days before the expiration date of the certification, the certification of the local emerging small business is valid until the Office determines whether the local emerging small business satisfies the requirements for certification set forth in NRS 231.1405. The Office will determine whether to renew the certification within 90 days after receiving a request for renewal.

5. The Office may delay or deny the renewal of a certification as a local emerging small business if the local emerging small business fails to comply with the requirements of this section.

Sec. 7. 1. *Any individual, firm or agency who believes that a local emerging small business does not satisfy the criteria to be certified as a local emerging small business, as set forth in section 2 of this regulation and NRS 231.1405 and 231.14055, may file a complaint with the Office.*

2. Upon receipt of a complaint, the Office will investigate the allegations made in the complaint.

3. The Executive Director shall appoint a panel of three individuals who must not be employees of the Office to review the information, documentation and other materials obtained during the Office's investigation and to make a determination of whether the local emerging small business that is the subject of the complaint satisfies the criteria to be certified as a local emerging small business.

4. The Office will issue to the complainant and the local emerging small business that is the subject of the complaint written notice of the determination of the panel appointed pursuant to subsection 3.

5. The Office may revoke the certification of a local emerging small business if the panel appointed pursuant to subsection 3 determines that the local emerging small business does not satisfy the criteria to be certified as a local emerging small business, as set forth in section 2 of this regulation and NRS 231.1405 and 231.14055.

Sec. 8. 1. The Office may conduct investigations to determine whether a local emerging small business satisfies the criteria to be certified as a local emerging small business, as set forth in section 2 of this regulation and NRS 231.1405 and 231.14055.

2. The Office may revoke the certification of a local emerging small business if the Office determines that the local emerging small business does not satisfy the criteria to be certified as a local emerging small business, as set forth in section 2 of this regulation and NRS 231.1405 and 231.14055.

Sec. 9. 1. For the purposes of the reports required to be submitted to the Office pursuant to NRS 332.201, 333.177 and 338.1427, the Office interprets the term "solicited to

submit a bid or proposal” to mean issuing an invitation to participate in a bid or proposal for a local purchasing contract, state purchasing contract or contract for a public work, as applicable.

2. As used in this section, “contract for a public work” means a written contract between a contractor and a public body for the provision of labor, materials, equipment or supplies for a public work and a written contract between a design professional and a public body who is not a member of a design-build team for the provision of services in connection with a public work. As used in this subsection, “contractor,” “design professional,” “design-build team,” “public body” and “public work” have the meanings ascribed to them in NRS 338.010.

Sec. 10. *1. The Office will meet with authorized representatives of the Purchasing Division of the Department of Administration and the State Public Works Division of the Department of Administration to receive input and provide advice concerning the establishment and achievement of the goals required to be established pursuant to subsection 1 of NRS 231.1407.*

2. The Office will meet with authorized representatives of the governing body of each local government in a county whose population is 100,000 or more to receive input and provide advice concerning the establishment and achievement of goals for the award of local purchasing contracts and contracts for public works of the local government to local emerging small businesses.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
INFORMATIONAL STATEMENT**

**PROPOSED REGULATION OF THE OFFICE OF ECONOMIC DEVELOPMENT
LCB File No. R102-13**

The following information is provided pursuant to the requirements of NRS 233B.066:

1. A clear and concise explanation of the need for the adopted regulation

The regulation prescribes the procedure for certification as a local emerging small business in conformance with Assembly Bill (“AB”) 294 of the 77th Session of the Nevada Legislature. The regulation also interprets certain provisions relating to reports concerning local emerging small businesses submitted to the Office and adopts provisions governing the establishment of goals for the participation of local emerging small businesses in certain contracts relating to purchasing and public works.

2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

The Notice of Public Workshop as well as Notice of Intent to Act Upon a Regulation (Public Hearing) was published on November 8, 2013 to solicit public comment. Copies of the proposed regulations, the Small Business Impact Statement, the draft of the application, and the draft of the semi-annual reporting form were made available at the Public Workshop and Public Hearing and were available upon request prior to the meetings. However, there were no requests made to the Governor’s Office of Economic Development by members of the public for those materials in advance of the Public Workshop or Public Hearing.

These Notices were posted at the following locations:

- a) GOED, 808 West Nye Lane, Carson City, NV
- b) Sawyer Building, 555 East Washington Avenue, Las Vegas, NV
- c) Nevada State Library, 100 North Stewart St., Carson City, NV
- d) Nevada State Capitol, 101 S. Carson Street, Carson City, NV
- e) EDAWN, 5190 Neil Road, Suite 110, Reno, NV
- f) NDA, 6700 Via Austi Pkwy., Suite B, Las Vegas, NV
- g) Elko County, 569 Court Street, Elko, NV
- h) City of Fallon, 55 West Williams Avenue, Fallon, NV
- i) City of Las Vegas, City Hall, 400 East Stewart Avenue, Las Vegas, NV
- j) City of North Las Vegas, City Hall, 2250 Las Vegas Boulevard North, North Las Vegas, NV
- k) Clark County Government Center, 500 South Grand Central Parkway, Las Vegas, NV
- l) City of Boulder, City Hall, 401 California Avenue, Boulder City, NV
- m) City of Henderson, City Hall, 240 Water Street, Henderson, NV

- n) City of Mesquite, City Hall, 10 E. Mesquite Boulevard, Mesquite, NV
- o) NNRDA, 1500 College Parkway, McMullen Hall, Room 120, Elko, NV
- p) Humboldt Development Authority, 90 West Fourth Street, Winnemucca, NV
- q) Lincoln County Regional Development Authority, P.O. Box 1006, Caliente, NV
- r) Lander County Economic Development Authority, 315 South Humboldt St., NV
- s) NNDA, 704 West Nye Lane, Carson City, NV
- t) Nye County Regional Economic Development Authority, P.O. Box 822, Pahrump, NV
- u) White Pine County Economic Diversification Council, 957 Campton, Suite 11, Ely, NV
- v) GOED website www.diversifynevada.com
- w) Nevada Legislature website <http://www.leg.state.nv.us>

The Notice of Public Hearing was mailed to all county libraries in Nevada. In addition, an email list was created of parties interested in the regulation as well as local business membership organizations that were invited to participate in the workshop and/or public hearing. At the time of notice (November 8, 2013), this list contained 109 contacts for the purposes of public and small business outreach and some of these contacts represented listservs of additional businesses or agencies. An email of both meeting notices was sent to all parties on the list on November 8, 2013. The email contact list included:

- Asian Chamber of Commerce
- Assemblywoman Irene Bustamante Adams
- Business Development Advisory Council
- Better Business Bureau Southern NV
- Boulder City Chamber of Commerce
- Carson City Finance/Purchasing
- Carson Valley Chamber of Commerce
- City of Henderson Purchasing Department
- City of Henderson - Economic Development
- City of Las Vegas Purchasing Department
- City of North Las Vegas Purchasing Department
- City of North Las Vegas - Economic Dev
- City of Reno Purchasing Department
- City of Sparks Purchasing Department
- Clark County Dept of Comp Planning
- Clark County Library District
- Clark County Purchasing Department
- Clark County School District Purchasing Department
- Clearinghouse CDFI
- Congressman Joe Heck's Office
- Congressman Steven Horsford's Office
- Copening Consulting and Creative

EDAWN
Northeastern Nevada Regional Development Authority
Henderson Chamber of Commerce
Highway 95 RDA
Humboldt County Regional Economic Development Authority
Institute of Supply Management – Nevada Chapter
IRS – Small Business
Great Basin Regional Economic Development Authority
Las Vegas Convention and Visitors Authority
Las Vegas Global Economic Alliance
Las Vegas Metro Chamber of Commerce
Las Vegas Metro Police
Latin Chamber of Commerce
Laughlin Chamber of Commerce
Lincoln County RDA
LV Valley Water District - SNWA
MBDA Business Center
McCarran Airport
Mesquite Chamber of Commerce
Mesquite Regional Business Inc.
Mineral County ED
Native American PTAC for Nevada, Arizona, California and Utah
NCREDA (Nye County)
NDOT DBE Program
Nevada Association of Minority Contractors
Nevada Department of Business & Industry
Nevada DETR
Nevada Industry Excellence
Nevada Microenterprise Initiative
Nevada Minority Business Development Agency
Nevada Minority Supplier Development Council
Nevada Public Purchasing Consortium
Nevada SBDC Business Success Center
Nevada Small Business Development Center (SBDC)
Nevada Works
Nevada's Center for Entrepreneurship and Technology (NCET)
New Growth Nevada Corporation
NNDA
Northern NV Consortium of Purchasing (NNCCP)
NV Office for Consumer Health Assistance
NV State Development Corporation
Pahrump Chamber of Commerce
Pershing County Economic Diversification Council

Nevada PTAC Procurement Outreach Program
Regional Business Development Advisory Council
Reno Live and Buy Local
Reno Regional Jobs Network
Reno Tahoe Airport
Reno Tahoe Convention and Visitors Authority
Rural Nevada Development Corporation
RTC of Southern NV
RTC of Washoe County
S&B Christ Consulting
SBA - 8a program
SBA - LV
SBA - Reno
SBDC Business Environmental Program
SCORE
Senator Dean Heller's Office
Senator Harry Reid's Office
Southern Nevada Health District
State of Nevada Public Works
State of Nevada Purchasing
The Chamber (Reno/Sparks)
Tom Akers BOWD participants
Truckee Meadows Water Authority
University of Nevada Cooperative Extension
UNLV - Business Start Up Center
Urban Chamber of Commerce
USDA Rural Development
Vegas PBS
Ward 5 Chamber of Commerce
Washoe County Purchasing
Washoe County School District
WBENC
White Pine County ED
Women's Chamber of Commerce
Workforce Connections

A workshop was held on December 2, 2013 to provide a summary of the program and solicit comments on the regulation. A hearing was conducted on December 9, 2013 to receive comments regarding the adoption of the regulation. The minutes of the December 2 meeting are attached hereto (Exhibit I) and contain a summary of the discussion held regarding the proposed amendment to NAC Chapter 231 and the Local Emerging Small Business program. The meeting on December 9 included a review on the record of the comments and questions from the December 2 meeting as well as

proposed changes to the regulation draft (if any). The minutes of this meeting are also attached hereto (Exhibit II).

The minutes and audio recording of the Public Workshop held on December 2, 2013 and the Public Hearing held on December 9, 2013 are available at the Governor's Office of Economic Development located at 808 W. Nye Lane, Carson City, Nevada 89073, Phone (775) 687-9900 and 555 E. Washington Avenue, Suite 5400, Las Vegas, Nevada 89101, Phone (702) 486-2700.

A summary of all public comments received and GOED's response, including whether or not the regulation was changed as a result of those comments is attached hereto (Exhibit III). In some cases, multiple attendees had comments or questions in discussion form on a particular topic in addition to the lead author identified in the Exhibit. Those comments are reflected in the full minutes of the meetings (Exhibits I & II).

3. A statement indicating the number of persons who attended each meeting or workshop, testified at the hearing, and submitted written statements regarding the proposed regulation.

30 attendees participated in the Public Workshop on December 2, 2013. Of those attendees, 14 had questions or comments at the workshop.

24 attendees participated in the Public Hearing on December 9, 2013. Of those attendees, 2 had questions or comments at the hearing.

No written comments were submitted.

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency at the hearing:

- a. Name;**
- b. Telephone number;**
- c. Business address;**
- d. Business Telephone Number;**
- e. Electronic email address; and**
- f. Name of entity or organization represented.**

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- 5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary may be obtained as instructed in the response to Question #2.

- 6. If, after consideration of public comment, the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

All public comments from the public workshop and public hearing were fully considered. A summary of those comments and GOED's response including a description of whether or not the regulation was changed as a result of those comments is described in Question #2 and attached hereto as Exhibit III. As a result of the comments received, a change was made to the regulation to include a timeframe for GOED response regarding determination of application or request for renewal for certification (Sections 2.6 and 6.4).

- 7. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:**
- a. Both adverse and beneficial effects; and**

b. Both immediate and long-term effects.

The proposed regulation is not expected to have adverse immediate and long-term effects on the businesses which it is to regulate. GOED has determined that the proposed regulation does not impose a direct and/or significant economic burden upon small business and the proposed regulation will not restrict the formation, operation or expansion of a small business.

The proposed regulation is not expected to have adverse immediate and long-term effects on the public.

The proposed regulation is expected to have beneficial immediate effects on the businesses which it is to regulate as the regulation establishes a new program in which businesses that qualify and pursue certification can utilize when marketing their products and services to local government entities. It is expected to provide businesses with additional opportunities to bid on certain purchasing contracts and public works projects. The proposed regulation is expected to have beneficial long-term effect on the businesses which it is to regulate as the regulation encourages the utilization of Local Emerging Small Businesses in certain contracts pertaining to purchasing and public works projects. Businesses invited to participate in bids will be provided with direct contact and an opportunity for feedback with purchasing department personnel. Successful contractors would be expected to obtain new revenue streams and capacity building work experience.

The proposed regulation is expected to have beneficial immediate and long-term effects on the public due to the data that will be made available regarding the utilization of Local Emerging Small Businesses in certain contracts pertaining to purchasing and public works projects. This data will provide the public with information related to how public dollars are expended and the number of Local Emerging Small Businesses that are utilized for certain projects.

8. The estimated cost to the agency for enforcement of the proposed regulation.

Enforcement of these proposed regulations poses no significant cost to the Governor's Office of Economic Development beyond the budget that was established in the 2013 Legislative Session. Through negotiations conducted during the 2013 Legislative Session, the Nevada Department of Employment Training and Rehabilitation agreed to assume the costs of the program for the biennium, and transfer the funding needed to the Governor's Office of Economic Development through an Interlocal Agreement.

9. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The proposed regulation does not overlap that of any other state, local or federal agency.

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

The proposed regulation does not include provisions which are more stringent than a federal regulation.

- 11. If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.**

The proposed regulation does not establish any new fees or increase an existing fee.

- 12. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business?**

This regulation will not impose direct and significant economic burden upon a small business or directly restrict the formation, operation, or expansion of a small business. The Governor's Office of Economic Development Small Business Impact Statement is attached hereto.