

PROPOSED REGULATION OF THE STATE PUBLIC WORKS BOARD

LCB File No. R100-11

PROCEDURES FOR AWARDING CONTRACTS

General Provisions

NAC 338.130 Definitions. (NRS 338.1375, 338.13847) As used in NAC 338.130 to 338.450, inclusive, unless the context otherwise requires, the words and terms defined in NAC 338.132 to 338.144, inclusive, have the meanings ascribed to them in those sections.

NAC 338.132 “Administrative proceeding” defined. (NRS 338.1375, 338.1376) “Administrative proceeding” means a hearing for which there is:

1. A notice of hearing in a contested case;
2. A right to be represented by counsel;
3. An opportunity to respond and present evidence;
4. A record of the proceeding; and
5. A finding of fact and a conclusion of law.

NAC 338.134 “Board” defined. (NRS 338.1375, 338.1376) “Board” means the State Public Works Board.

NAC 338.136 “Final completion” defined. (NRS 338.1375, 338.1376) “Final completion” means that 100 percent of the work of the contract and general conditions of the contract is satisfied.

NAC 338.138 “Administrator” [~~“Manager”~~] defined. (NRS 338.1375, 338.1376) “Administrator” means the [~~Manager~~] Administrator of the [~~Board~~] Public Works Division appointed pursuant to NRS 341.100.

NAC 338.140 “Prime contractor” defined. (NRS 338.1375, 338.1376) “Prime contractor” has the meaning ascribed to it in NRS 338.010.

NAC 338.142 “Public work” defined. (NRS 338.1375, 338.1376) “Public work” means a public work, as defined in NRS 338.010 that is under the jurisdiction of the Division [~~Board~~].

NAC 338.144 “Substantial completion” defined. (NRS 338.1375, 338.1376) “Substantial completion” means that the construction of a public work is, in accordance with the contract documents, sufficiently complete that the owner can occupy and utilize the public work for its intended use.

Qualification of Bidders: Prime Contractors

NAC 338.150 Definitions. (NRS 338.1375, 338.13895, 341.110) As used in NAC 338.150 to 338.290, inclusive, unless the context otherwise requires, the words and terms defined in NAC 338.170 to 338.231, inclusive, have the meanings ascribed to them in those sections.

NAC 338.170 “Bidder” defined. (NRS 338.1375) “Bidder” means a prime contractor who has been determined to be qualified to bid on one or more contracts for public works pursuant to NAC 338.260.

NAC 338.181 “Business entity associated with the principal personnel” defined. (NRS 338.1375) “Business entity associated with the principal personnel” means a business entity in which principal personnel of a prime contractor is or was the sole proprietor, a partner, the chair or a member of the board of directors, or a shareholder owning 10 percent or more of outstanding stock in the business entity.

NAC 338.190 “Committee” defined. (NRS 338.1375) “Committee” means the committee appointed pursuant to NAC 338.260.

NAC 338.200 “Cost category” defined. (NRS 338.1375) “Cost category” means the category of public works set forth in paragraph (b) of subsection 2 of NAC 338.250 for which a prime contractor may apply to be qualified for a 2-year period to submit bids.

NAC 338.220 “Principal personnel” defined. (NRS 338.1375) “Principal personnel” means the owner, partner and any corporate officer and any qualified employee listed on the contractor’s license of the prime contractor.

NAC 338.231 “Successfully completed project” defined. (NRS 338.1375) “Successfully completed project” means that the contract or the portion of the contract for which the prime contractor was responsible was completed:

1. Within the deadline for completion specified in the contract, as adjusted by any change order or extension of time granted; and
2. In compliance with any remaining contractual requirements, including close-out documents, within 90 days after the substantial completion of the contract.

NAC 338.240 Criteria for qualification for public work with estimated cost of \$100,000 or more; pertinent documentation and information. (NRS 338.1375, 338.13895, 341.110)

1. The following criteria must be used to determine whether a prime contractor is qualified to bid on a contract for one or more public works for which the estimated cost is \$100,000 or more:

(a) The financial ability of the prime contractor to perform the contract. The prime contractor must include with the application submitted pursuant to NAC 338.250:

- (1) Evidence that the prime contractor is properly licensed pursuant to chapter 624 of NRS.
- (2) A statement regarding whether the prime contractor, principal personnel or any business entity associated with the principal personnel has filed as a debtor under the United States Bankruptcy Code during the 5 years immediately preceding the date of the application.

(3) A certified original statement of the bonding capacity of the prime contractor obtained for a surety which is authorized to issue bid, performance and payment bonds in this State and which:

(I) Has received a rating of “A-” or better, as determined by A.M. Best Company of Oldwick, New Jersey; and

(II) For a contract that:

(i) Is more than \$5,000,000, is classified in a financial size category of “VII” or better, as determined by A.M. Best Company of Oldwick, New Jersey, and is included on the list of approved sureties in Circular 570 of the United States Department of the Treasury; or

(ii) Is \$5,000,000 or less, is included on the list of approved sureties in Circular 570 of the United States Department of the Treasury.

↳ The requirements of sub-subparagraphs (I) and (II) do not apply if the surety is Lloyd’s of London. The certified original statement must specify the single and aggregate limits on and the available bonding capacity of the prime contractor to work on a public work.

(b) The qualifications of the principal personnel of the prime contractor. The prime contractor must include in the application submitted pursuant to NAC 338.250 a description of the professional qualifications and relevant experience of the principal personnel of the prime contractor and list not more than 10 public works and private construction projects, or any combination thereof, within the cost category for which the prime contractor is applying that have been successfully completed by the principal personnel. For each such successfully completed project included on the list, the prime contractor must provide:

(1) The name of the project;

(2) The scope of the project or work done;

(3) The dollar amount of the project; and

(4) The month and year of substantial completion and final completion of the project.

(c) Whether the prime contractor, the principal personnel or any business entity associated with the principal personnel has been found to be in breach of contract by a court of competent jurisdiction or through binding arbitration during the 5 years immediately preceding the date of the application. For each such action, the prime contractor must include in the application submitted pursuant to NAC 338.250 a description of:

(1) The circumstances surrounding the action;

(2) Whether any liquidated damages were imposed in connection with the action; and

(3) Any judgment entered against the prime contractor, the principal personnel or business entity associated with the principal personnel relating to the action.

(d) Whether the prime contractor, the principal personnel or any business entity associated with the principal personnel has been disqualified from the award of any contract pursuant to NRS 338.017 or 338.13895 during the 5 years immediately preceding the date of the application.

(e) The past performance history of the prime contractor, the principal personnel and each business entity associated with the principal personnel during the 5 years immediately preceding the date of the application. The prime contractor must include in the application submitted pursuant to NAC 338.250:

(1) A description of:

(I) Any civil judgment, findings of fact, administrative proceeding, criminal conviction or binding arbitration relating to a violation of any law pertaining to wage and hour standards, prevailing wage rates or licensing either against or by the prime contractor, principal personnel or business entity associated with the principal personnel; and

(II) Any civil judgment, findings of fact, administrative proceeding, criminal conviction or binding arbitration relating to a violation of any law pertaining to discrimination in employment with respect to construction work performed by the prime contractor either against or by the prime contractor, principal personnel or business entity associated with the business personnel.

(2) A list of all public works and private construction projects undertaken or completed by the prime contractor, principal personnel or business entity associated with the principal personnel during the 5 years immediately preceding the date of the application for which the cost exceeded \$25,000 and for which:

(I) The prime contractor, principal personnel or business entity associated with the principal personnel failed to substantially complete the contract within the deadline for completion of the project specified in the contract, as adjusted by any change order or extension of time granted;

(II) The prime contractor, principal personnel or business entity associated with the principal personnel failed to complete any remaining requirements of the contract within 90 days after substantial completion of the contract; or

(III) The prime contractor, principal personnel or business entity associated with the principal personnel failed to complete the contract and the remaining work on the project was performed by another person.

(3) If the application is for qualification for a 2-year period, a list of not more than 10 public works and private construction projects, or any combination thereof, that the prime contractor and the principal personnel, and, if applicable, any other business entity associated with the principal personnel, have successfully completed during the 5 years immediately preceding the date of the application and for which the cost of each of those projects is within the cost category for which the prime contractor seeks qualification to submit bids. For each project included on the list, the prime contractor must provide:

(I) The name of the project;

(II) The location of the project;

(III) The cost of the project;

(IV) A brief explanation of the type of work performed on the project; and

(V) The name, address and telephone number of the owner of the project, the owner's project manager, and the architect or engineer of the project.

(4) If the application is for qualification on a specific public work, a list of all public works and private construction projects undertaken or completed by the prime contractor, principal personnel or business entity associated with the principal personnel during the 5 years immediately preceding the date of the application for which the level of complexity or special requirements of the project were similar to the complexity or special requirements specified by the Board in the application for the specific public work. For each project included on the list, the prime contractor must provide:

(I) The name of the project;

(II) The location of the project;

(III) A brief explanation of the type of work performed on the project; and

(IV) The name, address and telephone number of the owner of the project, the owner's project manager, and the architect or engineer of the project.

(f) Whether the prime contractor has been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the prime contractor to perform the work.

2. In addition to the information provided by a prime contractor:

(a) Any other verifiable information relating to the criteria set forth in subsection 1 that is provided to or discovered by the ~~[Board]~~ *Division* or its employees regarding the prime contractor may be used to determine whether the prime contractor is qualified to bid on one or more contracts for public works for which the estimated cost is \$100,000 or more; and

(b) 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 NAC 338.285 on or after September 18, 2008, and within the 5 years immediately preceding the date of the application will be used to determine whether the prime contractor is qualified to bid on one or more contracts for public works for which the estimated cost is \$100,000 or more.

NAC 338.245 Criteria for qualification for public work with estimated cost of less than \$100,000; pertinent documentation and information. (NRS 338.1375, 338.13895, 341.110)

1. The following criteria must be used to determine whether a prime contractor is qualified to bid on a contract for one or more public works for which the estimated cost is less than \$100,000:

(a) The financial ability of the prime contractor to perform the contract. The prime contractor must include with the application submitted pursuant to NAC 338.250:

(1) Evidence that the prime contractor is properly licensed pursuant to chapter 624 of NRS.

(2) A statement regarding whether the prime contractor, principal personnel or any business entity associated with the principal personnel has filed as a debtor under the United States Bankruptcy Code during the 5 years immediately preceding the date of the application.

(b) Whether the prime contractor, the principal personnel or any business entity associated with the principal personnel has been disqualified from the award of any contract pursuant to NRS 338.017 or 338.13895 during the 5 years immediately preceding the date of the application.

2. In addition to the information provided by a prime contractor:

(a) Any other verifiable information relating to the criteria set forth in subsection 1 that is provided to or discovered by the ~~[Board]~~ *Division* or its employees regarding the prime contractor may be used to determine whether the prime contractor is qualified to bid on one or more contracts for public works for which the estimated cost is less than \$100,000; and

(b) 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 NAC 338.285 on or after September 18, 2008, and within the 5 years immediately preceding the date of the application will be used to determine whether the prime contractor is qualified to bid on one or more contracts for public works for which the estimated cost is less than \$100,000.

NAC 338.250 Application for qualification; eligibility to bid on public work. (NRS 338.1375, 338.1379, 338.13844, 338.13847, 341.110)

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

(a) Submit an application to the ~~[Manager]~~ *Administrator* 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]~~ *Division* 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. If the prime contractor is qualified to receive the preference set forth in NRS 338.13844, the prime contractor must indicate on the application his or her qualification for the preference.

5. An application must contain the signature of the prime contractor who is submitting the application.

6. 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.

NAC 338.260 Action on application; period of qualification; reapplication after denial of application; denial of request to withdraw application. (NRS 338.1375, 338.1379, 341.110)

1. The ~~{Manager}~~ *Administrator* shall appoint a committee consisting of a deputy ~~{manager}~~ *administrator* and at least two other employees of the ~~{Board}~~ *Division* 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}~~ *Division*.

2. The committee shall calculate the scores of applications based on the weights of the criteria set forth in NAC 338.240 or 338.245 that are prescribed by the Board. In addition to the information provided by a prime contractor in his or her 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 or 338.245 that is provided to or discovered by the ~~{Board}~~ *Division* 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 NAC 338.285 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]~~ *Administrator* shall provide written notice to the prime contractor 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]~~ *Administrator* 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 or her 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]~~ *Administrator* may deny a request by a prime contractor to withdraw his or her application regardless of whether the application is complete. Within 10 days after receipt of notice that his or her request to withdraw the application has been denied, the prime contractor may appeal the decision of the ~~[Manager]~~ *Administrator* 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 the prime contractor files the request for a hearing, submit copies of any documents that support his or her appeal.

NAC 338.270 Appeal of determination that prime contractor is not qualified; hearings on appeals. (NRS 338.1375)

1. Within 10 days after receipt of notice pursuant to NAC 338.260 that he or she has been determined to be not qualified, a prime contractor may appeal the determination by filing a request for a hearing with the Board. The request must set forth the basis for the appeal. The prime contractor may, at the time the prime contractor files the request, submit copies of any documents that support his or her appeal.

2. The Board shall appoint a board of appeals consisting of three of its members to conduct hearings on appeals filed pursuant to NAC 338.150 to 338.290, inclusive, and shall designate one of the members of the board of appeals to serve as chair.

3. For each such appeal, the board of appeals shall, in accordance with NRS 338.1381:

(a) Set the matter for a hearing;

(b) Provide notice of the hearing; and

(c) Hold the hearing at a time and place prescribed by the board of appeals.

4. The board of appeals shall call a hearing to order and act upon any preliminary matters. Unless modified by the board of appeals, the evidence will be presented first by the prime contractor and then by the committee, or a representative thereof. The board of appeals may allow the presentation of additional testimony and evidence from other interested parties.

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

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

7. If a party fails to appear at a hearing and did not request in writing or was not granted a continuance in writing, the board of appeals may hear evidence from those persons present at the hearing and make a decision based on the available record.

8. At any time after a request for a hearing is filed by a prime contractor, any party to the matter may request that the chair of the board of appeals issue a subpoena to compel the attendance of witnesses to testify before the board or for the production of related books, papers and documents.

9. The board of appeals is not bound by the recommendation of the committee formed pursuant to NAC 338.260 or any technical scoring conducted by the committee and may, when rendering its decision, take into consideration such facts and circumstances as may be in the best interests of this State.

NAC 338.280 Revocation of qualification. (NRS 338.1375)

1. The qualification of a bidder will be revoked if, after an investigation, the committee determines that:

(a) The bidder no longer meets one or more of the criteria set forth in NAC 338.240 or 338.245; or

(b) The application submitted by the bidder contained materially false information or the bidder failed to disclose materially relevant information in the application,

↳ unless, pursuant to this section, the bidder appeals the determination of the committee within the time prescribed for an appeal in subsection 3 and the board of appeals reverses the determination.

2. If the committee determines pursuant to subsection 1 that the qualification of a bidder will be revoked, the committee shall notify the ~~[Manager,]~~ *Administrator* in writing, of its determination. After receipt of such notification, the ~~[Manager]~~ *Administrator* shall provide written notice by certified mail to the bidder that the qualification of the bidder has been revoked and that the bidder may appeal the revocation. Revocation of the qualification of a bidder becomes effective 10 days after the bidder receives notice of revocation pursuant to this subsection unless the bidder appeals the determination within the time prescribed for an appeal in subsection 3.

3. Within 10 days after receipt of notice of the revocation of his or her qualification pursuant to subsection 2, a bidder 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 board of appeals appointed pursuant to NAC 338.270.

4. If the board of appeals concurs with the determination of the committee, revocation of the qualification of the bidder becomes effective upon the decision of the board of appeals.

5. If the qualification of a bidder is revoked, the bidder may reapply for qualification after the period specified in subsection 5 of NAC 338.260 has elapsed, if applicable.

NAC 338.285 Evaluation of performance of prime contractor on public work. (NRS 338.1375)

1. Within 30 days after the final completion of a public work, the ~~{Board}~~ *Division* or its designee will provide the prime contractor on the public work with a copy of an initial evaluation of the performance of the prime contractor on the public work. The initial evaluation must be prepared by the employee of the ~~{Board}~~ *Division* who was primarily responsible for managing the public work and must be approved by the supervisor of the employee.

2. Within 30 days after receipt of an initial evaluation pursuant to subsection 1, a prime contractor may submit to the ~~{Board}~~ *Division* or its designee a response to the initial evaluation, which must include, without limitation, any information or documentation that the prime contractor determines is relevant to the initial evaluation.

3. The ~~{Board}~~ *Division* or its designee will provide to the prime contractor a copy of the final evaluation of the performance of the prime contractor on the public work:

(a) If the prime contractor submitted a response pursuant to subsection 2, within 30 days after receipt of the response by the ~~{Board}~~ *Division* or its designee.

(b) If the prime contractor did not submit a response pursuant to subsection 2, within 60 days after provision of the initial evaluation to the prime contractor pursuant to subsection 1.

4. The final evaluation of the performance of the prime contractor on the public work:

(a) Must:

(1) Be prepared by the employee of the *Division* ~~{Board}~~ who prepared the initial evaluation and approved by the supervisor of the employee; and

(2) If the prime contractor submitted a response pursuant to subsection 2, include the response as an attachment; and

(b) If the prime contractor submitted a response pursuant to subsection 2, may include any revisions to the initial evaluation that the employee of the *Division* ~~{Board}~~—who prepared the initial evaluation deemed necessary based upon the response.

NAC 338.290 Notification of ~~{Board}~~ *Division* regarding change to or renewal of license of qualified bidder. (NRS 338.1375) A prime contractor who has been determined to be qualified as a bidder shall inform the ~~{Board}~~ *Division* within 10 days after any change to, or renewal of, any license issued to the prime contractor pursuant to chapter 624 of NRS.

Qualification of Bidders: Subcontractors

NAC 338.300 Definitions. (NRS 338.1376) As used in NAC 338.300 to 338.410, inclusive, unless the context otherwise requires, the words and terms defined in NAC 338.310 to 338.360, inclusive, have the meanings ascribed to them in those sections.

NAC 338.310 “Business entity associated with the principal personnel” defined. (NRS 338.1376) “Business entity associated with the principal personnel” means a business entity in which the principal personnel of a subcontractor is or was the sole proprietor, a partner, the chair or a member of the board of directors, or a shareholder owning 10 percent or more of outstanding stock in the business entity.

NAC 338.320 “Committee” defined. (NRS 338.1376) “Committee” means the committee appointed pursuant to NAC 338.390.

NAC 338.330 “Cost category” defined. (NRS 338.1376) “Cost category” means the category of public works set forth in NAC 338.380 for which a subcontractor may be required to apply for qualification.

NAC 338.340 “Principal personnel” defined. (NRS 338.1376) “Principal personnel” means the owner and any corporate officer or qualified employee listed on the contractor’s license of the subcontractor.

NAC 338.350 “Subcontractor” defined. (NRS 338.1376) “Subcontractor” has the meaning ascribed to it in NRS 338.010.

NAC 338.360 “Successfully completed project” defined. (NRS 338.1376) “Successfully completed project” means that the construction or the portion of the construction for which the subcontractor was responsible was completed:

1. Within the deadline for completion specified in the contract, as adjusted by any change order or extension of time granted; and
2. In compliance with any remaining contractual requirements, including close-out documents, within 90 days after substantial completion of the contract.

NAC 338.370 Criteria for qualification; pertinent documentation and information; list of subcontractors determined not to be qualified. (NRS 338.1376)

1. The following criteria will be used to determine whether a subcontractor who submits an application for qualification is qualified pursuant to NRS 338.1376 to be included in a bid:

(a) The financial ability of the subcontractor to perform the contract. The subcontractor must include with his or her application for qualification:

(1) A certified original statement of the bonding capacity of the subcontractor obtained from a surety which is authorized to issue bid, performance and payment bonds in this State and which:

(I) Has received a rating of “A-” or better, as determined by A.M. Best Company of Oldwick, New Jersey; and

(II) Is included on the list of approved sureties in Circular 570 of the Department of the Treasury.

↪ The requirements of sub-subparagraphs (I) and (II) do not apply if the surety is Lloyd’s of London. The certified original statement must specify the present single and aggregate limits of the subcontractor to work on a public work.

(2) If the subcontractor is going to be performing work for which he or she is required to be licensed pursuant chapter 624 of NRS, evidence that the subcontractor is properly licensed pursuant to that chapter.

(3) A statement regarding whether the subcontractor, principal personnel or any business entity associated with the principal personnel has filed as a debtor under the United States Bankruptcy Code during the 5 years immediately preceding the date of the application.

(b) The qualifications of the principal personnel of the subcontractor. The subcontractor must include in his or her application for qualification a description of the professional qualifications

and relevant experience of the principal personnel of the subcontractor and list not more than 10 public works and private construction projects, or any combination thereof, within the cost category for which the subcontractor is applying for qualification that have been successfully completed by the principal personnel. For each successfully completed project included on the list, the subcontractor must provide:

(1) The name of the project or the name of the prime contractor on the project;

(2) The scope of the project or the scope of the portion of work within the project for which the principal personnel was responsible;

(3) The dollar amount of the project or the dollar amount of the portion of work within the project for which the principal personnel was responsible; and

(4) The month and year of substantial completion and final completion of the contract or portion of work for which the principal personnel was responsible.

(c) Whether the subcontractor, the principal personnel or any business entity associated with the principal personnel has been found to be in breach of contract by a court of competent jurisdiction or through binding arbitration during the 5 years immediately preceding the date of the application. For each such action, the subcontractor must include in the application for qualification a description of:

(1) The circumstances surrounding the action;

(2) Whether any liquidated damages were imposed in connection with the action; and

(3) Any judgment entered against the subcontractor, principal personnel or business entity associated with the principal personnel relating to the action.

(d) Whether the subcontractor, the principal personnel or any business entity associated with the principal personnel has been disqualified from the award of any contract pursuant to NRS 338.017 or 338.13895 during the 5 years immediately preceding the date of the application.

(e) The past performance history of the subcontractor, the principal personnel and each business entity associated with the principal personnel during the 5 years immediately preceding the date of the application. The subcontractor must include in the application for qualification:

(1) A description of:

(I) Any civil judgment, findings of fact, administrative proceeding, criminal conviction or binding arbitration relating to a violation of any law pertaining to wage and hour standards, prevailing wage rates or licensing either against or by the subcontractor, principal personnel or business entity associated with the principal personnel; and

(II) Any civil judgment, findings of fact, administrative proceeding, criminal conviction or binding arbitration either against or by the subcontractor, principal personnel or business entity associated with the principal personnel relating to a violation of any law pertaining to discrimination in employment with respect to construction work.

(2) A list of all public works and private construction projects undertaken or completed by the subcontractor, principal personnel or business entity associated with the principal personnel during the 5 years immediately preceding the date of the application for which the cost exceeded \$25,000 and for which the subcontractor, principal personnel or business entity associated with the principal personnel failed to complete:

(I) Its portion of the work in a timely manner, as adjusted by any change order or extension of time granted;

(II) Any remaining requirements of the contract or failed to complete its portion of the work within 90 days after substantial completion of the contract; or

(III) Its portion of the work and the remaining work on the project was performed by another person.

(3) A list of not more than 10 public works and private construction projects, or any combination thereof, on which the subcontractor and the principal personnel, and, if applicable, any business entity associated with the principal personnel, have successfully completed their portion of the work during the 5 years immediately preceding the date of the application which is within the cost category for which the subcontractor seeks qualification. For each project included on the list, the subcontractor must provide:

(I) The name of the project;

(II) The location of the project;

(III) The cost of the portion of the work for which the subcontractor, the principal personnel and each business entity associated with the principal personnel were responsible;

(IV) A brief explanation of the type of work performed on the project; and

(V) The name, address and telephone number of:

(i) The owner of the project;

(ii) The owner's project manager;

(iii) The architect or engineer of the project;

(iv) The prime contractor for the project; and

(v) The superintendent of the prime contractor for the project.

2. In addition to the information provided by the subcontractor pursuant to subsection 1, any other verifiable information relating to the criteria set forth in subsection 1 that is provided to or discovered by the **[Board] Division** or its employees regarding the subcontractor may be used to determine whether the subcontractor is qualified to be included in a bid pursuant to NRS 338.141.

3. The **[Board] Division** will maintain a public list of subcontractors that have been determined not to be qualified to be included in a bid pursuant to NRS 338.141.

NAC 338.380 Application for qualification; disqualification; inclusion of subcontractor in bid. (NRS 338.1376)

1. If, pursuant to subsection 3 of NRS 338.1376, a subcontractor is required to submit an application for qualification to be included in a bid pursuant to NRS 338.141, the **[Manager] Administrator** shall notify the subcontractor of that fact in writing by certified mail. The subcontractor must submit a completed application for qualification to the **Administrator [Manager]**, on a form provided by the Board, not later than 30 days after the date on which the subcontractor received the notice. If a completed application for qualification from the subcontractor is not timely received by the **Division [Board]**, the subcontractor shall be deemed to be disqualified for 1 year commencing on the 31st day after the date on which the subcontractor received the notice. This subsection does not preclude the **[Board] Division** from removing a subcontractor pursuant to paragraph (a) of subsection 5 of NRS 338.141.

2. The **[Board] Division** will specify in each application for qualification the cost categories of:

(a) Less than \$1,000,000;

(b) One million dollars to \$5,000,000; and

(c) More than \$5,000,000,

↳ for which a subcontractor may be qualified, which are based on the estimated cost of that portion of the work for which the subcontractor will be responsible. If a subcontractor is

qualified to be included in a bid pursuant to NRS 338.141 in one of the cost categories specified in this subsection, the subcontractor may be included in a bid pursuant to NRS 338.141 in any lower cost category.

3. A subcontractor must indicate on his or her application for qualification the cost category for which the subcontractor seeks to be qualified to be included in a bid pursuant to NRS 338.141.

4. An application for qualification must contain the original signature of the subcontractor. The **[Board] Division** will not accept a faxed or photocopied application.

5. The submission of a materially incomplete or falsified application for qualification by a subcontractor and the failure of the subcontractor to disclose information required in the application may be grounds for the disqualification of the subcontractor.

6. The **[Board] Division** will not delay the award of bids on a public work pending the determination or appeal of the determination of the qualification of a subcontractor who was included in a bid.

NAC 338.390 Action on application; period of disqualification; reapplication after disqualification; denial of withdrawal of application. (NRS 338.1376)

1. The **[Manager] Administrator** shall appoint a committee consisting of a deputy **administrator [manager]** and at least two other employees of the **[Board] Division** to review and score applications for qualification submitted pursuant to NRS 338.1376 to determine whether a subcontractor is qualified to be included in a bid pursuant to NRS 338.141. Such a determination must be made within 45 days after the date on which the **[Board] Division** receives the completed application for qualification.

2. The committee shall calculate the scores of applications for qualification based on the weights of the criteria set forth in NAC 338.370 that are prescribed by the Board. In addition to the information provided by a subcontractor in an application for qualification, the committee may consider any other verifiable information relating to the criteria set forth in NAC 338.370 that is provided to or discovered by the **[Board] Division** or its employees regarding the application for qualification to determine whether the subcontractor is qualified to be included in a bid pursuant to NRS 338.141.

3. If, after reviewing and scoring an application for qualification, the committee determines that a subcontractor is:

(a) Qualified to be included in a bid pursuant to NRS 338.141, the **[Manager] Administrator** shall provide written notice to the subcontractor by certified mail within 10 days after that determination.

(b) Not qualified to be included in a bid pursuant to NRS 338.141, the **[Manager] Administrator** shall provide written notice to the subcontractor by certified mail within 10 days after that determination. The notice must include, without limitation, the reasons on which the determination that the subcontractor was not qualified was based and must inform the subcontractor of his or her right to appeal the disqualification pursuant to NRS 338.1381 and NAC 338.400.

4. A subcontractor who is determined not to be qualified to be included in a bid pursuant to NRS 338.141 shall be deemed to be disqualified for 1 year commencing on the date on which the determination is made or, if the subcontractor appeals the determination, the date on which the appeal of the determination is denied.

5. A subcontractor who has been disqualified from participating on a public work and who wishes to be included in a bid pursuant to NRS 338.141 after his or her period of disqualification

has ended must submit an application for qualification and be determined to be qualified by the ~~[Board]~~ *Administrator* in accordance with NRS 338.1376 and NAC 338.300 to 338.410, inclusive, before the subcontractor may be included in a bid pursuant to NRS 338.141.

6. The ~~[Manager]~~ *Administrator* may prevent a subcontractor from withdrawing his or her application for qualification regardless of whether the application is complete. Within 10 days after receipt of notice denying the withdrawal of the subcontractor's application for qualification, a subcontractor may appeal the decision by the ~~[Manager]~~ *Administrator* to deny the withdrawal of the application by filing a request for a hearing with the Board pursuant to NAC 338.400. The request must set forth the basis for the appeal. The subcontractor may, at the time the subcontractor files the request, submit copies of any documents that support his or her appeal.

NAC 338.400 Appeal of disqualification; hearings on appeals. (NRS 338.1376)

1. Within 10 days after receipt of notice that he or she has been disqualified by the committee from participating on a public work pursuant to NAC 338.390, a subcontractor may appeal the determination by filing a request for a hearing with the Board. The request must set forth the basis for the appeal. The subcontractor may, at the time the subcontractor files the request, submit copies of any documents that support his or her appeal.

2. The Board shall appoint a board of appeals consisting of three of its members to conduct hearings on appeals filed pursuant to NAC 338.300 to 338.410, inclusive, and shall designate one of the members of the board of appeals to serve as chair.

3. For each such appeal, the board of appeals shall, in accordance with NRS 338.1381:

(a) Set the matter for a hearing;

(b) Provide notice of the hearing; and

(c) Hold the hearing at a time and place prescribed by the board of appeals.

4. The board of appeals shall call a hearing to order and act upon any preliminary matters. Unless modified by the board of appeals, the evidence will be presented first by the subcontractor and then by the committee, or a representative thereof. The board of appeals may allow the presentation of additional testimony and evidence from other interested parties.

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

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

7. If a party fails to appear at a hearing and did not request in writing or was not granted a continuance in writing, the board of appeals may hear evidence from those persons present at the hearing and make a decision based on the available record.

8. At any time after a request for a hearing is filed by a subcontractor, any party to the matter may request that the chair of the board of appeals issue a subpoena to compel the attendance of witnesses to testify before the board or for the production of related books, papers and documents.

9. The board of appeals is not bound by the recommendation of the committee formed pursuant to NAC 338.390 or any technical scoring conducted by the committee and may, when rendering its decision, take into consideration such facts and circumstances as may be in the best interests of this State.

NAC 338.410 Revocation of qualification. (NRS 338.1376)

1. The committee shall revoke its determination that a subcontractor is qualified to be included in a bid pursuant to NRS 338.141 if, after an investigation, the committee finds that:

- (a) The subcontractor no longer meets one or more of the criteria set forth in NAC 338.370; or
- (b) The application for qualification submitted by the subcontractor contained materially false information or the subcontractor failed to disclose materially relevant information in the application.

2. If the committee determines pursuant to subsection 1 that the qualification of a subcontractor must be revoked, the committee shall notify the *Administrator* ~~[Manager]~~, in writing, of its determination. After receipt of such notification, the *Administrator* ~~[Manager]~~ shall provide written notice by certified mail to the subcontractor that the qualification of the subcontractor has been revoked and that the subcontractor may appeal the revocation. Revocation of the qualification of a subcontractor becomes effective 10 days after the subcontractor receives notice of revocation pursuant to this subsection unless the subcontractor appeals the determination within the time prescribed for an appeal in subsection 3.

3. Within 10 days after receipt of notice of the revocation of his or her qualification pursuant to subsection 2, a subcontractor may appeal the determination by filing a request for a hearing with the Board. A hearing on the appeal of the revocation of qualification must be conducted by the board of appeals appointed pursuant to NAC 338.400.

4. If the board of appeals concurs with the determination of the committee, revocation of the qualification of the subcontractor becomes effective upon the decision of the board of appeals.

5. If the qualification of a subcontractor is revoked, the subcontractor may reapply for qualification after the period of disqualification specified in subsection 4 of NAC 338.390 has elapsed.

Preference for Bids on Smaller Contracts Submitted by Local Businesses Owned by Veterans With Service-Connected Disabilities

NAC 338.450 Application; list of businesses qualified to receive preference. (NRS 338.1375, 338.13844, 338.13847, 341.110)

1. To qualify to receive the preference set forth in NRS 338.13844, a business must:

(a) Submit an application to the *Administrator* ~~[Manager]~~ on a form prescribed and provided by the Board; and

(b) Certify in writing on the application and include with the application documentation evidencing that the business is:

(1) A local business; and

(2) A business owned by a veteran with a service-connected disability.

2. The ~~[Board]~~ *Division* will:

(a) Compile and maintain a list of the businesses that the *Administrator* ~~[Board]~~ has determined are qualified to receive the preference set forth in NRS 338.13844; and

(b) Post the list on the Internet website maintained by the *Division* ~~[Board]~~.

3. As used in this section:

(a) “Business owned by a veteran with a service-connected disability” has the meaning ascribed to it in NRS 338.13841.

(b) “Local business” has the meaning ascribed to it in NRS 333.3363.

(c) “Veteran with a service-related disability” has the meaning ascribed to it in NRS 338.13843.