

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

LCB File No. R085-01

Effective December 17, 2001

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

AUTHORITY: §1-15, NRS 338.1375.

Section 1. Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 15, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Applicant” means a person that applies to the board pursuant to section 12 of this regulation to be qualified as a bidder for one or more contracts for public works.*

Sec. 4. *“Bidder” means an applicant who has been determined to be qualified to bid on one or more contracts for public works pursuant to section 13 of this regulation.*

Sec. 5. *“Board” means the state public works board.*

Sec. 6. *“Committee” means the committee appointed pursuant to section 13 of this regulation.*

Sec. 7. *“Cost category” means the category of public works set forth in paragraph (b) of subsection 2 of section 12 of this regulation for which an applicant may apply to be qualified for a 2-year period to submit bids.*

Sec. 8. *“Manager” means the manager of the board appointed pursuant to NRS 341.100.*

Sec. 9. *“Principal personnel” means the owner and any corporate officer or qualified employee listed on the contractor’s license of the applicant.*

Sec. 10. *“Public work” means a public work, as defined in NRS 338.010, that is under the jurisdiction of the board.*

Sec. 11. 1. *The following criteria must be used to determine whether an applicant is qualified to bid on a contract for one or more public works:*

(a) The financial ability of the applicant to perform the contract. The applicant shall include with the application submitted pursuant to section 12 of this regulation:

(1) A certified statement of the bonding capacity of the applicant obtained from a surety authorized to issue bid, performance and payment bonds in this state. The statement must specify the single and aggregate limits on and the available bonding capacity of the applicant to work on a public work.

(2) Evidence of proper licensure pursuant to chapter 624 of NRS.

(3) A statement regarding whether the applicant 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 applicant. The applicant shall include in the application submitted pursuant to section 12 of this regulation a description of the professional qualifications and relevant experience of the principal personnel employed by the applicant.

(c) Whether the applicant has been found to have been in breach of contract by a court of competent jurisdiction during the 5 years immediately preceding the date of the application. For each such action, the applicant shall include in the application submitted pursuant to section 12 of this regulation 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 applicant relating to the action.*
- (d) Whether the applicant was disqualified from the award of any contract pursuant to NRS 338.017 or 338.1387 during the 5 years immediately preceding the date of the application.*
- (e) The past performance history of the applicant on recent, similar contracts. The applicant shall include in the application submitted pursuant to section 12 of this regulation:*
- (1) A description of:*
 - (I) Any civil judgment, settlement, findings of fact, administrative proceeding or criminal conviction relating to a violation of any law pertaining to wage and hour standards or prevailing wage rates either against or by the applicant or principal personnel of the applicant during the 5 years immediately preceding the date of the application; and*
 - (II) Any civil judgment, findings of fact, administrative proceeding or criminal conviction relating to a violation of any law pertaining to discrimination in employment with respect to construction work performed by the applicant either against or by the applicant or principal personnel of the applicant during the 5 years immediately preceding the date of the application.*
 - (2) A list of all public works and private construction projects undertaken or completed by the applicant during the 5 years immediately preceding the date of the application for which the cost exceeded \$25,000 and for which:*

(I) The applicant failed to substantially complete the contract within the deadline for completion specified in the contract, as adjusted by any change order or extension of time granted;

(II) The applicant failed to complete any remaining requirements of the contract within 90 days after substantial completion of the contract; or

(III) The applicant 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 at least a total of 10 public works or private construction projects, or any combination thereof, that the applicant has 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 applicant seeks qualification to submit bids. For each project included on the list, the applicant shall 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 applicant 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 applicant shall 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.

2. In addition to the information provided by an applicant, any other verifiable information relating to the criteria set forth in subsection 1 that is provided to or discovered by the board or its employees regarding the applicant may be used to determine whether an applicant is qualified to bid on one or more contracts for public works.

Sec. 12. 1. *To qualify to bid on one or more contracts for public works, an applicant 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 applicant 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 an applicant 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 of:

- (1) Less than \$1,000,000;*

FLUSH

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

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

for which an applicant may be qualified, which are based on the estimated cost of an individual public work. If an applicant is qualified to bid on public works in one of the cost categories specified in this subsection, the applicant 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 applicant must indicate on the application:

(a) Whether, for the purposes of subsection 2 of NRS 338.1385, the applicant 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 applicant seeks to qualify to submit bids.

4. An application must contain the original signature of the applicant. The board will not accept faxed or photocopied applications.

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

Sec. 13. 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 section 12 of this regulation to determine whether an applicant is qualified to bid on one or more contracts for public works. Such a determination must be made within 30 days after receipt of the application by the board.*

2. The committee shall calculate the scores of applications based on the weights of the criteria set forth in section 11 of this regulation that are prescribed by the board. In addition to the information provided by an applicant in the application submitted pursuant to section 12 of this regulation, the committee may consider any other verifiable information relating to the criteria set forth in section 11 of this regulation that is provided to or discovered by the board or its employees regarding the application to determine whether the applicant 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 applicant is:

(a) Qualified, the manager shall provide written notice to the applicant 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 applicant 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 applicant is qualified to submit bids.

(b) Not qualified, the manager shall provide written notice to the applicant 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 applicant of his right to a hearing pursuant to NRS 338.1381.

4. Except as otherwise provided in this subsection and section 15 of this regulation, the qualification of an applicant to bid on contracts for public works expires 2 years after the date on which the committee determines that the applicant is qualified. The qualification of an applicant for a specific public work expires upon completion of that public work.

5. An applicant 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. Denial of an application for qualification on a specific public work does not prohibit the applicant from submitting an application for qualification for a 2-year period or qualification on another specific public work.

Sec. 14. 1. *Within 10 days after receipt of notice denying an application pursuant to section 13 of this regulation, an applicant may appeal the determination by filing a request for a hearing with the board. The request must 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.*

2. The board shall appoint a board of appeals consisting of three of its members to conduct hearings on appeals filed pursuant to this section.

3. For each appeal filed pursuant to this section, 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 applicant 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 or was not granted a continuance, the board of appeals may hear evidence from those persons present at the hearing and make a decision based on the available record.*

Sec. 15. 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 section 11 of this regulation; 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, in writing, of its determination. After receipt of such notification, the manager 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 qualification pursuant to subsection 2, a bidder may appeal the determination by filing a request for a hearing with the*

FLUSH

board. A hearing on the appeal of the revocation of qualification will be conducted by the board of appeals appointed pursuant to section 14 of this regulation.

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 section 13 of this regulation has elapsed, if applicable.

NOTICE OF ADOPTION OF REGULATION

The State Public Works Board adopted regulations assigned LCB File No. R085-01 which pertain to chapter 338 of the Nevada Administrative Code on November 29, 2001. A copy of the regulations as adopted is attached hereto.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066 PETITION

LCB FILE R085-01

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 338.

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

LCB File R085-01 was noticed four (4) times; May 18, 2001 for Workshop held on June 5, 2001, September 19, 2001 for Workshop held on October 8, 2001, September 14, 2001 for Intent to Adopt Hearing held on October 18, 2001, October 29, 2001 for Intent to Adopt Hearing held on November 29, 2001.

The State Public Works Board held the first workshop on June 5, 2001, Those in attendance were consulted with representatives from Carpenters/Contractor, Laborers Unions, and the Regional Council of Carpenters.

The State Public Works Board solicited approximately three hundred contractors statewide. The solicitation was an attempt to inform them of the scheduled hearings, web site information, instructing them on how to obtain an application to qualify as a bidder, and also who to contact with any questions or concerns regarding the proposed regulation. In addition, on October 8, 2001 workshop was held to allow Small Businesses and other interested parties an opportunity to profess their views and concerns regarding the regulations and impact on small business.

An Intent to Adopt Hearing was held on October 18, 2001, this hearing ran over the time allotted so another Intent to Adopt hearing as held on November 29, 2001.

Interested parties may obtain a summary of the minutes by writing: The State Public Works Board, 505 East King Street, Room 301, Carson City, Nevada 89701.

2. **The number persons who:**
 - (a) **Attended each hearing:** 27

- (b) **Testified at each hearing:** 10
- (c) **Submitted to the agency written comments:**

Comments were submitted by ABC South, Southwest Regional Council of Carpenters, The Nevada Carpenters Association, AGC North, United Construction Company, Carpenters/Contractors, U. A. Local 525, Southern California – Nevada Regional Council of Carpenters of Northern Nevada.

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

In order to minimize the impact on the affected businesses, the State Public Works Board has solicited the ideas of small businesses, Labor Unions and Labor Associations, and any other interested parties through mailings and workshops. A summary of their suggestions include, but is not limited to:

- a) limit use of past performance records in qualifying bidders;
- b) add the requirement that the manager shall notify the applicant of its qualification;
- c) allow the board to consider additional testimony related to the applicants qualifications;
- d) information previously submitted to the State Contractors Board, should not be required on the application for qualification; and
- e) the qualification of subcontractors should be included in the regulations.

Interested parties may obtain a summary of the minutes by writing: The State Public Works Board, 505 East King Street, Room 301, Carson City, Nevada 89701.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

N/A

5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) **Both adverse and beneficial effects; and**
- (b) **Both immediate and long-term effects.**

- (a) The adverse economic effects of the proposed regulation on the business for licenses NAC 624.140 through NAC 624.574 is minimal. There is no application fee. The application for qualification consists of an eight-page questionnaire similar to information required for a bid submission on State Public Works Board projects. The application is estimated to be similar to that of other local entities within this State and is not as burdensome as that of the State of California, or some other states. The cost of gathering this information is a normal and expected cost of doing business for a bidder.

- (b) There is no estimated economic effect on the public, either adverse or beneficial, nor immediate or long-term.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The estimated cost to the State Public Works Board for the enforcement of the proposed regulations is \$50,000 for staffing.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

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

The proposed regulations do not include any provision(s) which duplicate or is more stringent than any federal, state, or local standard(s) regulating the same activity.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide or involve a new fee, and hence since no fee is involved, there is not a total amount expected to be collected or used.