

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

LCB File No. R085-01

August 29, 2001

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

AUTHORITY: §1-12, NRS 338.1375.

Section 1. Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 7, 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 9 of this regulation to be qualified as a bidder for one or more contracts for public works of this state.*

Sec. 4. *“Bidder” means an applicant who has been determined to be qualified to bid on one or more contracts for public works of this state pursuant to section 10 of this regulation.*

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

Sec. 6. *“Manager” means the manager of the board appointed pursuant to NRS 341.100.*

Sec. 7. *“Public work of this state” means a public work which is under the jurisdiction of the board.*

Sec. 8. *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 of this state:*

(a) The financial ability of the applicant to perform the contract. The applicant shall include with his application submitted pursuant to section 9 of this regulation:

(1) A certified statement of his bonding capacity 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 his application.

(4) A description of any civil judgment, settlement, findings of fact, administrative proceedings or criminal conviction relating to a violation of any law regarding wage and hour standards, prevailing wage rates or discrimination in employment against or by the applicant or principal personnel of the applicant during the 5 years immediately preceding the date of his application.

(b) The qualifications of the principal personnel of the applicant. The applicant shall include in his application submitted pursuant to section 9 of this regulation a description of the professional qualifications and relevant experience of the principal personnel employed by the applicant.

(c) Whether any public agency or person in this state or any other state commenced an action for breach of contract in a court of competent jurisdiction against the applicant during the 5 years immediately preceding the date of his application. For each such action, the applicant shall describe in his application submitted pursuant to section 9 of this regulation:

(1) The circumstances surrounding the action;

- (2) Whether any liquidated damages were imposed in connection with the action;*
- (3) Any mediation, arbitration or litigation relating to the action;*
- (4) Any settlement reached by the parties relating to the action; and*
- (5) 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 his application.

(e) The past performance history of the applicant on recent, similar projects. The applicant shall include with his application submitted pursuant to section 9 of this regulation:

(1) A statement regarding whether the applicant has been cited for any serious, willful or repetitive violations of federal or state occupational safety and health standards during the 5 years immediately preceding the date of his application and, if applicable, an explanation of the circumstances surrounding any such citations.

(2) If the application is for qualification to bid for a 2-year period, a list of all projects undertaken or completed by the applicant during the 5 years immediately preceding the date of his application for which the cost exceeded \$25,000. For each such project, the applicant shall include, without limitation, in his application:

- (I) The name of the project;*
- (II) The location of the project;*
- (III) The type of work performed on the project;*
- (IV) The owner, architect, engineer and project manager of the project;*
- (V) The price at which the contract for the project was awarded and the price at which the contract was paid upon completion of the project and, if those prices are different,*

an explanation of why the project was not completed for the price at which the contract was awarded;

(VI) The date for completion of the project specified in the contract and the date on which the applicant completed the project and, if those dates are different, an explanation of why the project was not completed on the date specified in the contract; and

(VII) Whether the applicant completed the project in the manner specified in the contract.

(3) If the application is for qualification to bid on a specific project, a list containing the information set forth in subsubparagraphs (I) to (VII), inclusive, of subparagraph (2) for each project undertaken or completed by the applicant during the 5 years immediately preceding the date of his application for which the cost exceeded \$25,000 and for which:

(I) The cost of the project was not less than 75 percent or more than 125 percent of the estimated cost of the specific project for which the applicant wishes to be qualified;

(II) The square footage of the project was not less than 75 percent or more than 125 percent of the square footage of the specific project for which the applicant wishes to be qualified; or

(III) The level of complexity or special requirements of the project was similar to the complexity or special requirements of the specific project for which the applicant wishes to be qualified.

2. In addition to the information provided by an applicant in his application, the board may consider any other 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 to determine

whether the applicant is qualified to bid on a contract for one or more public works of this state.

3. As used in this section, “principal personnel” means the chief executive officer, chief operations officer, chief financial officer, project managers and superintendents of projects.

Sec. 9. 1. *To qualify to bid on one or more contracts for public works of this state, an applicant must submit his application to the manager on a form prescribed and provided by the manager at least 30 days before the applicant is seeking to bid on a contract for a public work of this state.*

2. An applicant must indicate on his application whether he wishes to be qualified to bid:

(a) On a specific project; or

(b) For a period of 2 years. If the applicant wishes to be qualified for a 2-year period, the applicant must indicate on his application whether he would be interested in bidding on projects for which the estimated cost is more than \$25,000 but less than \$100,000.

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

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

Sec. 10. 1. *The manager shall appoint a committee consisting of at least three persons employed by the board to review and score an application submitted pursuant to section 9 of this regulation to determine whether the applicant is qualified to bid on one or more contracts for public works of this state. Such a determination must be made within 30 days after receipt of the application by the board.*

2. If, after conducting the investigation required pursuant to NRS 338.1379, a committee appointed pursuant to subsection 1 determines that the applicant is qualified, the manager shall notify the applicant in writing within 30 days after that determination regarding:

(a) If the application was for qualification to bid for a 2-year period, the types of projects and the maximum estimated cost of projects for which the applicant is qualified to submit bids and the date on which his qualification expires; or

(b) If the application was for qualification to bid on a specific project, the specific project for which the applicant is qualified.

3. Except as otherwise provided in this subsection and section 12 of this regulation, the qualification of an applicant to bid on contracts for public works of this state expires 2 years after the date on which the committee determines that the applicant is qualified. The qualification of an applicant for a specific project expires upon completion of that project.

4. If, after conducting the investigation required pursuant to NRS 338.1379, a committee appointed pursuant to subsection 1 determines that an applicant does not meet the criteria for qualification to bid on one or more contracts for public works of this state, the manager shall notify the applicant in the manner prescribed in NRS 338.1379.

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 2 years after the date on which his application was denied. Denial of an application for qualification on a specific project does not prohibit the applicant for any period from submitting an application for qualification for a 2-year period or qualification on another specific project.

Sec. 11. 1. *Within 10 days after receipt of notice denying his application, 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 a hearing on the appeal.

3. 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, that denied the applicant's application. 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. 12. 1. *The manager may revoke the qualification of a bidder if the manager finds that the bidder:*

(a) No longer meets one or more of the criteria set forth in section 8 of this regulation; or

(b) Submitted an application that contained false information or failed to disclose information in his application.

FLUSH *The manager shall provide written notice to a bidder of his intent to revoke the qualification of the bidder.*

2. Revocation of the qualification of a bidder becomes effective 10 days after the bidder receives notice of revocation pursuant to subsection 1. A bidder may appeal the revocation in the same manner as an appeal may be made for the denial of an application pursuant to section 11 of this regulation.

3. If the qualification of a bidder is revoked, the bidder may reapply for qualification after the period specified in subsection 5 of section 10 of this regulation has elapsed, if applicable.