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July 5, 2018

Susan K. Stewart, Deputy Attorney General
Construction Law Counsel
100 N. Carson Street
Carson City, Nevada 89701

Re: LCB File No. R075-18

Dear Ms. Stewart:

A proposed regulation, R075-18, of the State Public Works Commission, has been examined pursuant to NRS 233B.063 and is returned in revised form.

We invite you to discuss with us any questions which you may have concerning this review. Please make reference to our file number in all further correspondence relating to this regulation.

Sincerely,

A handwritten signature in blue ink that reads "Eileen O'Grady".

Eileen G. O'Grady
Chief Deputy Legislative Counsel

Karly R. O'Krent
Deputy Legislative Counsel

Brenda J. Erdoes
Legislative Counsel

EGO/jlw
Enclosure

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

LCB File No. R075-18

July 2, 2018

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

AUTHORITY: §§1-6, 9 and 13, NRS 338.1375, 338.13844, 338.13847, 341.070 and 341.110; §§7, 8 and 11, NRS 338.1375 and 341.110; §10, NRS 338.1375, 338.1379, 341.070 and 341.110; §12, NRS 338.1376 and 341.110; §14, NRS 341.070 and 341.110; §15, NRS 338.16991, 338.16995, 341.070 and 341.110; §§16-18, NRS 338.16995, 341.070 and 341.110.

A REGULATION relating to public works; revising provisions relating to certain preferences for a local business owned and operated by a veteran with a service-connected disability; revising provisions governing the qualification of bidders and subcontractors on state public works; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Prior to the 2015 Legislative Session, existing law provided that if a local business owned by a veteran with a service-connected disability of at least zero percent submitted a bid for a state public work for which the estimated cost was \$100,000 or less, the bid was deemed to be 5 percent lower than the bid actually submitted. (NRS 338.13844) Assembly Bill No. 62 of the 2015 Legislative Session: (1) required such a local business also to be operated by a veteran with a service-connected disability to qualify for the preference; and (2) provided a similar 5-percent preference for a local business owned and operated by a veteran with a service-connected disability of 50 percent or more bidding on a contract for a state public work for which the estimated cost is more than \$100,000 but less than \$250,000. (Chapter 145, Statutes of Nevada 2015, at page 556)

Section 6 of this regulation: (1) establishes requirements for applying for the additional preference established by Assembly Bill No. 62 of the 2015 Legislative Session; and (2) requires the State Public Works Division of the Department of Administration to maintain on its Internet website a list of the businesses that have been determined by the Administrator of the Division to be qualified to receive the preference. **Sections 9 and 13** of this regulation make changes to conform with Assembly Bill No. 62.

Existing law requires the State Public Works Board to adopt criteria for the qualification of bidders on contracts for state public works. (NRS 338.1375) Existing law also requires the Board to adopt criteria for the qualification of a subcontractor to be included in a bid on a state public work. (NRS 338.1376) **Section 11** of this regulation removes the requirement that the Division prepare and provide to a prime contractor an evaluation of the contractor's performance on a public work for which the estimated cost is less than \$100,000. **Sections 8 and 10** of this regulation make the conforming change of removing a contractor evaluation as part of the criteria used to determine whether a prime contractor is qualified to bid on a contract for a state public work for which the estimated cost is less than \$100,000.

Existing regulations prescribe the criteria that must be used to determine whether: (1) a prime contractor is qualified to bid on a contract for one or more state public works for which the estimated cost is \$100,000 or more; and (2) a subcontractor is qualified to be included in a bid on a contract for a state public work. These criteria include the financial ability of the prime contractor to perform the contract. To demonstrate such a financial ability, existing regulations require a prime contractor to include a certified, original statement of bonding capacity. (NAC 338.240, 338.370) **Sections 7 and 12** of this regulation remove the requirement that such a certified statement be original.

The criteria used to determine the qualification of a prime contractor or subcontractor include whether the prime contractor or subcontractor has been disqualified from the award of a contract for a state public work. (NAC 338.240, 338.370) **Sections 7, 8 and 12** expand this criteria to include whether a prime contractor or subcontractor has been prohibited from applying for a preference given to a business owned and operated by a veteran with a service-connected disability or bidding on a contract for a public work of this State due to the business making a material misrepresentation or otherwise committing a fraudulent act in applying for the preference.

The criteria used to determine the qualification of a prime contractor or subcontractor also include the past performance history of the contractor and subcontractor. The performance history of a contractor or subcontractor includes 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 contractor or subcontractor, wage and hour standards, prevailing wage rates or licensing. **Sections 7 and 12** expand the criteria relating to past performance history to include information about any civil judgments, findings of fact, administrative proceedings, criminal convictions and binding arbitrations relating to a public work against or in favor of the prime contractor or subcontractor or his or her principal personnel or an associated business entity.

Existing law prescribes the procedure for the award of subcontracts by a construction manager at risk. This procedure requires a construction manager at risk to provide each qualified subcontractor with a form that has been prepared by the construction manager at risk and approved by the public body on which any proposal in response to a request for proposals for the

public work is required to be submitted. (NRS 338.16991, 338.16995) **Sections 16-18** of this regulation make conforming changes.

Prior to the 2013 Legislative Session, existing law prescribed the procedure for the award by a construction manager at risk to qualified subcontractors of subcontracts for which the estimated value was at least 1 percent of the total estimated cost of the public work. (NRS 338.16995) In addition to other changes relating to the awarding of contracts by a construction manager at risk, Assembly Bill No. 283 of the 2013 Legislative Session changed this threshold to the greater of 1 percent of the total estimated cost of the public work or \$50,000 and made the holding of a preproposal meeting regarding the scope of the work to be performed by the subcontractor optional. **Sections 14, 15 and 17-19** of this regulation make changes to conform with Assembly Bill No. 283. (Chapter 487, Statutes of Nevada 2013, at page 2980)

Section 1. Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *As used in NAC 338.450 and sections 2 to 6, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Business owned and operated by a veteran with a service-connected disability” has the meaning ascribed to it in NRS 338.13841.*

Sec. 4. *“Local business” has the meaning ascribed to it in NRS 333.3363.*

Sec. 5. *“Veteran with a service-connected disability” has the meaning ascribed to it in NRS 338.13843.*

Sec. 6. 1. *To qualify to receive the preference set forth in subsection 2 of NRS 338.13844, a business must:*

(a) Submit an application to the Administrator 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 and operated by a veteran with a service-connected disability that has been determined to be 50 percent or more by the United States Department of Veterans Affairs.

2. The Division shall:

(a) Compile and maintain a list of the businesses that the Administrator has determined are qualified to receive the preference set forth in subsection 2 of NRS 338.13844; and

(b) Post the list on the Internet website maintained by the Division.

Sec. 7. NAC 338.240 is hereby amended to read as follows:

338.240 1. Except as otherwise provided in subsection 3, 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, the 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, **338.13845** 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 *and copy* of †

~~(I) Any~~ **any** civil judgment, findings of fact, administrative proceeding, criminal conviction or binding arbitration relating to a **public work or to a** violation of any law pertaining to **discrimination in employment with respect to construction work performed by the prime contractor**, wage and hour standards, prevailing wage rates or licensing either against or ~~by~~ **in favor of** 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.~~ **For each such judgment, findings, proceeding, conviction or arbitration, the prime contractor must provide:**

(I) The name of the project;

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

(III) The circumstances surrounding the judgment, findings, proceeding, conviction or arbitration;

(IV) Whether any liquidated damages were imposed in connection with the judgment, findings, proceeding, conviction or arbitration; and

(V) The outcome of the judgment, findings, proceeding, conviction or arbitration.

(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 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 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 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 Division 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, the principal personnel or any business entity associated with the principal personnel 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 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.

3. The criteria set forth in subsection 1 are not required to be used if:

(a) The Department of Transportation requested that bidders on the contract for the public work be qualified to bid on the contract pursuant to NRS 408.333; and

(b) The public work involves the construction, reconstruction, improvement or maintenance of highways pursuant to this chapter, chapter 408 of NAC or chapter 338 or 408 of NRS.

4. As used in this section, "highway" has the meaning ascribed to it in NRS 408.070.

Sec. 8. NAC 338.245 is hereby amended to read as follows:

338.245 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 , ~~338.13845~~ 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~~ , ~~any~~ other verifiable information relating to the criteria set forth in subsection 1 that is provided to or discovered by the 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.~~

Sec. 9. NAC 338.250 is hereby amended to read as follows:

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

(a) Submit an application to the 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 Division ~~will~~ **shall** 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 Division ~~{will}~~ *shall* specify:

(a) In the application for a specific public work, any special requirements for the specific public work that the Division 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 *subsection 1 or 2 of* 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.

Sec. 10. NAC 338.260 is hereby amended to read as follows:

338.260 1. The Administrator shall appoint a committee consisting of a deputy administrator and at least two other employees of the 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 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 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 *, for a contract for one or more public works for which the estimated cost is \$100,000 or more,* 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 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 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 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 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.

Sec. 11. NAC 338.285 is hereby amended to read as follows:

338.285 1. Within 30 days after the final completion of a public work ~~for~~ *for which the estimated cost is \$100,000 or more*, the Division or its designee ~~will~~ *shall* 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 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 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 Division or its designee ~~{will}~~ *shall* 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 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 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 who prepared the initial evaluation deemed necessary based upon the response.

Sec. 12. NAC 338.370 is hereby amended to read as follows:

338.370 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 to chapter 624 of NRS, evidence that the subcontractor is properly licensed pursuant to that chapter.

(3) A statement regarding whether the subcontractor, the 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 , **338.1376, 338.13845** 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 *and copy* of ~~the~~

~~any~~ **any** civil judgment, findings of fact, administrative proceeding, criminal conviction or binding arbitration relating to a **public work or to a** violation of any law pertaining to **discrimination in employment with respect to construction work performed by the subcontractor**, wage and hour standards, prevailing wage rates or licensing either against or ~~by~~ **in favor of** the subcontractor, principal personnel or business entity associated with the principal personnel . ~~the~~ **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.]~~ **For each such judgment, findings, proceeding, conviction or arbitration, the subcontractor must provide:**

(I) The name of the project;

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

(III) The circumstances surrounding the judgment, findings, proceeding, conviction or arbitration;

(IV) Whether any liquidated damages were imposed in connection with the judgment, findings, proceeding, conviction or arbitration; and

(V) The outcome of the judgment, findings, proceeding, conviction or arbitration.

(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 has successfully completed his or her 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.

(f) Whether the subcontractor, the principal personnel or any business entity associated with the principal personnel 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 subcontractor to perform the work.

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 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 Division ~~will~~ *shall* 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.

Sec. 13. NAC 338.450 is hereby amended to read as follows:

338.450 1. To qualify to receive the preference set forth in *subsection 1 of* NRS

338.13844, a business must:

(a) Submit an application to the Administrator 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 *and operated* by a veteran with a service-connected disability.

2. The Division ~~{will:}~~ *shall:*

(a) Compile and maintain a list of the businesses that the Administrator has determined are qualified to receive the preference set forth in *subsection 1 of* NRS 338.13844; and

(b) Post the list on the Internet website maintained by the Division.

~~{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-connected disability” has the meaning ascribed to it in NRS 338.13843.~~

Sec. 14. NAC 338.510 is hereby amended to read as follows:

338.510 1. The Administrator of the Division shall advertise for proposals for a construction manager at risk by publishing a request for proposals in the manner set forth in subsection 1 of NRS 338.1692.

2. The request for proposals published pursuant to subsection 1 must include:

(a) A statement setting forth that the construction manager at risk must be qualified to bid on a public work of the State pursuant to NRS 338.1379 before submitting a proposal;

(b) The information set forth in ~~paragraphs (a) to (h), inclusive, of~~ subsection 2 of NRS 338.1692; and

(c) A statement that the proposed form of the contract to assist in the preconstruction of the public work and to construct the public work is available for review on the Division's website.

Sec. 15. NAC 338.570 is hereby amended to read as follows:

338.570 The provisions of NRS 338.16991 and 338.16995 and NAC 338.550 to 338.640, inclusive, apply only to a subcontract for which the estimated value is at least 1 percent of the total estimated cost of the construction of the public work ~~+~~ *or \$50,000, whichever is greater.*

Sec. 16. NAC 338.610 is hereby amended to read as follows:

338.610 1. The notice of a request for proposals required by subsection 3 of NRS 338.16995 must contain:

(a) The information required by subsection 4 of NRS 338.16995; and

(b) Plans sufficiently complete to allow a subcontractor to submit a meaningful and responsive proposal.

2. Before disseminating to subcontractors the notice of a request for proposals required by subsection 3 of NRS 338.16995, the construction manager at risk must provide to the public body or its authorized representative a copy of the ~~notice~~ :

(a) Notice and any instructions for proposals ~~+~~ ; *and*

(b) Form on which any proposal in response to the request for proposals must be submitted for approval by the public body.

Sec. 17. NAC 338.620 is hereby amended to read as follows:

338.620 1. To be considered responsive a proposal must:

(a) Satisfy the requirements of subsection 6 of NRS 338.16995;

(b) Be submitted:

(1) *On the form provided by the construction manager at risk pursuant to subsection 3 of NRS 338.16995;*

(2) In a sealed envelope; and

~~(2)~~ (3) By a subcontractor whom the construction manager at risk determined to be qualified in the trade or scope of work for which the proposal was submitted and who attended the preproposal meeting ~~(1)~~, *if such a meeting was held;* and

(c) Respond to the details and requirements included in the instructions related to the proposal and the bid package.

2. If a construction manager at risk has determined that three or more subcontractors are qualified to submit proposals for a trade or scope of work and has received fewer than three proposals for that trade or scope of work at the time proposals are opened, the construction manager at risk may not open any proposal for that trade or scope of work until the construction manager at risk receives from the public body or its authorized representative written directions concerning the manner in which to proceed. The public body has complete discretion to develop the written directions and the construction manager at risk must proceed in a manner consistent with the written directions developed by the public body. If the public body directs the

construction manager at risk to solicit additional proposals, a subcontractor that has submitted a proposal may withdraw the proposal.

3. A construction manager at risk shall time stamp all envelopes containing proposals to provide labor, materials or equipment on a public work which are submitted by subcontractor.

Sec. 18. NAC 338.630 is hereby amended to read as follows:

338.630 1. A construction manager at risk shall open proposals submitted by subcontractors who were qualified to submit proposals in accordance with the provisions of subsection 7 of NRS 338.16995.

2. Before the construction manager at risk opens a proposal submitted by a subcontractor, the construction manager at risk must confirm that the proposal was:

(a) Submitted by a subcontractor who was determined to be qualified to submit a proposal in the trade or for the scope of work for which the subcontractor has submitted a proposal ~~{}~~ *and who attended the preproposal meeting, if such a meeting was held;*

(b) Submitted ~~{by a subcontractor who attended}~~ *on the form provided by the {preproposal meeting;}* *construction manager at risk pursuant to subsection 3 of NRS 338.16995;* and

(c) Timely received by the construction manager at risk.

3. If a proposal does not satisfy the requirements of subsection 2, the construction manager at risk must return the proposal unopened to the subcontractor who submitted the proposal.

Sec. 19. NAC 338.640 is hereby amended to read as follows:

338.640 1. The list compiled and provided to a public body or its authorized representative by a construction manager at risk pursuant to subsection 8 of NRS 338.16995 must contain ~~{}~~

~~—(a) The~~ *the* name, contact information, and the trade or scope of work, or, if applicable, both the trade and scope of work, of the subcontractor . ~~}; and~~

~~—(b) The price of the proposal submitted by the subcontractor.~~

~~→ The list must be made available to the public upon request but the results of the bidding may only be made available to the public after the selection and approval of the best bid for each trade and scope of work.}~~

2. The construction manager at risk must provide to the public body or its authorized representative a copy of all proposals submitted by the subcontractors, and the public body must maintain a copy of each proposal in the project file for the public work.

3. A construction manager at risk shall evaluate the proposals and select a subcontractor in accordance with the provisions of subsection 9 of NRS 338.16995. The construction manager at risk must record, document and preserve the evaluations of the proposals.

4. If requested, the construction manager at risk must meet with a subcontractor who was not selected to discuss the reasons that the subcontractor was not selected.

5. A public body or its authorized representative must confirm that the construction manager at risk has complied with the requirements of NRS 338.16995 and NAC 338.550 to 338.640, inclusive.