In The Matter Of:
State of Nevada Public Works Board
Video-Conference Regulation Workshop

May 1, 2018

Capitol Reporters
123 W. Nye Lane, Ste 107
Carson City, Nevada  89706
1 STATE OF NEVADA
2 PUBLIC WORKS BOARD
3 VIDEO-CONFERENCE REGULATION WORKSHOP
4 TUESDAY, MAY 1, 2018
5 8:00 A.M.
6 CARSON CITY, NEVADA
7
8 THE BOARD: BRYCE CLUTTS, Chairperson
9 SEAN STEWART, Vice-Chair
10 (Present but late)
11 CHRIS CHIMITS,
12 Interim Administrator
13 TITO TIBERTI, Member
14 (Present but late)
15 KEVIN LEWIS, Member
16 CLINT BENTLEY, Member
17 ADAM HAND, Member
18
19 FOR THE BOARD: SUSAN STEWART,
20 Construction Law Counsel
21 JEFF MENICUCCI,
22 Deputy Attorney General
23 KATHI PASCIAK,
24 SPWD Program Officer
25
26 REPORTED BY: CAPITOL REPORTERS
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29 123 West Nye Lane
30 Carson City, Nevada 89706

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6 various sections of Nevada Administrative Code
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12 1 want to start? Okay.
13 So, I'm Bryce Clutts, President and CEO of
14 ACCO Development Group and the current Chairman.
15 COUNSEL MENICUCCI: Jeff Menicucci, Deputy
16 Attorney General.
17 ADMINISTRATOR CHIMITS: Chris Chimits,
18 Interim Administrator, for the State Public Works Board.
19 COUNSEL STEWART: Susan Stewart, Deputy
20 Attorney General and Construction Law Counsel, for the
21 Public Works Division.
22 MEMBER HAND: Adam Hand. I'm a professor at
23 the University of Nevada-Reno, and a Member.
24 MR. REEDER: Brian Reeder, with Ferrari
25 Public Affairs, representing the Nevada Contractors
26 Association.
27 MR. GRAHAM: Jeff Graham, State Public Works
28 building official.
30 MR. COTHAN: Ron Cothran, Deputy
31 Administrator, Buildings and Grounds.
32 MS. SHEA: Kristina Shea, LCB.
33 CHAIR CLUTTS: And, down south?
34 MEMBER BENTLEY: Clint Bentley, Member of the
35 Public Works Board.
36 MEMBER LEWIS: Kevin Lewis, Member of Public
1. and then adopt regulations for the NAC 341 and 338.
2. So today, we're going to do the workshop.
3. We'll get public comment, have a discussion among the
4. Board and staff regarding the proposed amendments, and
5. then the next step will be -- depending on how
6. substantive the changes are, the next step would be a
7. public hearing and an adoption hearing where the Board
8. would formally adopt the regulations, and the
9. Administrator would formally adopt the regulations in a
10. public meeting.
11. So then the next step, after that happens, is
12. that we go to the Legislative Commission, and the
13. Legislature actually has to approve the regulations.
14. Now, as an aside, some of these proposed
15. regulations may look familiar. And for reasons that I'm
16. not entirely clear, the last time the Public Works
17. Division went through the reg process, the third step of
18. our reg adoption process never happened. And I apologize
19. for that.
20. So, working with LCB, I learned that what we
21. had to do was withdraw those, and then we would simply
22. start the process over, because you have two years to
23. complete the process. And, as I said, for reasons that I
24. haven't been able to figure out yet, the third step was
25. not taken. And so I apologize for the redundancy that

1. before you speak, please introduce yourself.
2. And, please keep in mind that any shuffling
3. of papers is picked up by the intercom or microphone.
4. And so, perhaps while I'm going through the subject of
5. the regulations, we could -- I don't know if they know
6. how to mute it down south -- if we could mute it from
7. down there for now. Do you know how to do that?
8. So, before I talk about the specifics of the
9. regs, in general, I just wanted to point out that
10. pursuant to NRS 341.110, the Administrator is authorized
11. to adopt regulations pertaining to the Buildings and
12. Grounds section. So that is independent of the Board's
13. authority. But because we have to have a public meeting
14. for both B&G and the Public Works side of the Division,
15. we just have them all together. And those are the draft
16. regulations that we'll be talking about: NAC 331.
17. Now, pursuant to NRS 341.110, the
18. Administrator recommends to the Board regulations
19. pertaining to Code compliance and the professional
20. services side of the Division. And these are the draft
21. regulations that we'll be talking about today. Those
22. are: NAC 341 and NAC 338.
23. And then, it is incumbent upon the Board,
24. pursuant to -- again, the same statute: 341.110, that
25. the Board consider the Administrator's recommendations
look at the language, we're asking for disclosure of any 1 action, whether the result was in favor of or against the 2 contractor. And we're simply trying to capture 3 information about a contractor that has perhaps sued 4 numerous other local government or county government 5 entities in the course of performing public works. 6 That's information that we want to know in our 7 qualification process. So that change has expanded what 8 they're required to disclose.
9 The next change, again, is on page four. And 10 this is pertaining to qualification for contracts under 11 $100,000. And this is for our smaller construction 12 contracts. It's a streamlined qualification process. 13 And what we're proposing here is that we 14 delete the requirement that the project manager have to 15 perform a contractor evaluation on those smaller 16 contracts. We just thought that the amount of 17 administrative work did not equal or create a benefit 18 based upon the value you got when it was just for those 19 smaller contract amounts.
20 The next change: 338.250, on page four and 21 five. And again, you'll see this is just adding, again, 22 the federal debarment requirement. And then it's 23 deleting the evaluation for the under $100,000.
24 And then on page 5: 338.285. Again, it's a
clarification that the evaluation is only required for 1 public works with an estimated cost of $100,000 or more. 2 When you make a change like that, you've got to pull the 3 thread and make sure that you connect it throughout 4 various provisions in the regulations.
5 The next proposed change is on page 6 and 7, 6 and this is a change to 338.370. And this pertains to 7 subcontractor qualifications.
8 So you'll recall that for public works, 9 subcontractors are presumed qualified. However, in 10 certain circumstances, we may ask them to qualify. And 11 so what we've done here is we've just added the federal 12 debarment disclosure requirement and the additional 13 dispute history disclosure to the subcontractor 14 qualification provisions so again, so that it's 15 consistent throughout the regulations.
16 So, now, the next section is on page 8 and 9.
18 And you'll recall that Nevada law recognizes a 5 percent 19 preference for disabled veterans. And I believe it was 20 in the 2015 session, the legislature added an additional 21 category.
22 So now there is a category where veterans can 23 get the 5 percent preference for when they submit a bid 24 that is an estimated cost of $100,000 or less, if the 25 business is owned and operated by a veteran with a
service-connected disability. And there is no percentage 1 attached to that particular qualification. If they have 2 any service-connected disability, and the business is 3 owned and operated by a veteran, and the bid is for 4 $100,000 or less, they get the 5 percent.
5 They've added a second category. If the 6 project is over $100,000, but less than $250,000, then 7 the business is owned and operated by a veteran with a 8 service-connected disability, and the service-connected 9 disability is determined to be 50 percent or more, then 10 in that cost category of bidding public works, they would 11 also get a 5 percent preference.
12 So, what is added here in our regulations on 14 page 8 and 9 is revisions to our regs that reflect those 15 two different categories of preferences for disabled 16 veterans when bidding public works.
17 And the next category of proposed changes to 18 our NAC 338 is to the CMAR regulations. These changes do 19 only one thing, and that is -- well, with one minor 20 exception. They bring our regs into compliance with 21 changes to the CMAR law that occurred last session.
22 And, if you look on page 9: NAC 338.580,
23 you'll see that the advertisement requirement now must be 24 pursuant to NRS 338.1385(1a). That was added in SB 246
25 last session. And so the new law is simply reflected
here in our regulations.
2 On the next page, 10, NAC 338.610. You may 3 recall that SB 246 also required that when a 4 subcontractor is submitting their proposal to the CMAR, 5 it must be on a pre-approved standard form. And so the 6 proposed revision here simply adds that requirement to 7 our regulation.
8 And then, if you look 338.620, which is on 9 page 10 and 11, again, we're adding the requirement that 10 the subcontractor has to submit their proposal on the 11 form provided by the CMAR.
12 And then again, on page 11, NAC 338.630.
13 Again, there's the requirement that the sub proposal must 14 be submitted on the form that's been provided by the CMAR 15 and approved by the owner.
16 And then also, there were questions raised 17 about subcontractors having to attend a pre-proposal 18 meeting when, in some instances, it wasn't necessary to 19 have a pre-proposal meeting.
20 And so our reg here, this one change just 21 makes it clear that the proposal is responsive, if it's 22 submitted by a subcontractor who attended the 23 pre-proposal meeting, if there was a pre-proposal 24 meeting. So it just makes a minor clarification in that 25 regard. And that is the proposed changes to NAC 338.
In going back through these, I did want to point out that I've made one minor addition. You'll recall that I talked about consistency between the contractor prequalification and the subcontractor prequalification. In NAC 338.370, which is on page six, I proposed to make one minor edit, which is that we still have, in the subcontractor qualification, the requirement for a certified original statement of bonding capacity. And so, just like we're proposing in the contractor qualification, I'm going to want to delete the "original" language or the word "original" from the subcontractor qualification as well, just so that's consistent. Because again, if a subcontractor was required to qualify, they would use our online process. And that's all I have. And, with the Chair's permission, I would just open up the discussion for questions, concerns, comments. Thank you.

CHAIR CLUTTS: Thank you, Ms. Stewart. Any questions or comments from the Board?

Moving on. Any questions or comments from the public? There are none. Moving on.

COUNSEL STEWART: Thank you, Chairman. I was going to say, at the beginning of my discussion, that these are rather straightforward and should be uncontroversial, but I didn't want to jinx it. But they're pretty straightforward.

Okay. The next set of proposed regulations pertain to NAC 341. The primary changes here are related to our building official function. And you have enclosed NAC 341.045, and that's pages one to five. And what we're doing here is, we're updating the version of the building codes that will be adopted by the Board for construction of public works, and then we're making some other minor modifications.

There's a clarification, on page two, that we're referring to high-rise buildings. We're also updating the cost of the code books to reflect current prices.

If you look on page 4 and 5, we've added a requirement that for structural standards for seismic zones, that the requirements of the local jurisdiction govern if they're more stringent than what is required by the IBC. So, if you're in Washoe Valley, for example, their wind tolerance seems to be more significant than what's required for Carson City. So you would do whatever is more stringent.

The last change to -- well, the next-to-the-last change to NAC is, we've updated our website. And then we've also clarified that the building official can charge fees related to the actual cost incurred to the Division, and that includes the cost to the Division if they have to hire a plan check by a third party.

The last change to NAC 341 is we just added a clarification. You'll see 341.077: General requirements for bids. It did not have a reference that the bid has to be submitted by someone who is qualified, so we've just added that requirement there.

And those are the sum total of the proposed changes to NAC 341.

CHAIR CLUTTS: Thank you. Are there any comments of the Board regarding these changes?

Any comments by the public?

MEMBER HAND: I have a question for Susan.

Member Hand, for the record. You know the pricing that's in here? Do these get updated every -- how often do they get revised?

Is it necessary to have the pricing in there on what a code costs if the reference to it is there, just so you don't have to deal with it in the future? It's a question. It's not a -- yeah. It's just a question as to making it easier for revisions in the future.

COUNSEL STEWART: For the record, Susan Stewart. I don't know if the prices need to be in there.

I think that's a good question, because it does become outdated so fast. So I'll take a look and see if they need to be in there.

MEMBER HAND: Thank you.

COUNSEL STEWART: I would ask -- our new building official, Jeff Graham, is here.

Are you aware of any requirement that we have to publish the prices?

MR. GRAHAM: No, not at all. The main thing is just getting the right -- the 2018, you know, get the right year down.

These prices came straight from ICC, but anyone purchasing knows they can go on the Web and find multiple vendors that sell the book at different prices. These are just the ones you can get straight from the publisher. But you have the opportunity to purchase from other locations, and those could vary. So these were just as of just recently. And you're right. They can change. So that may be a good point.

COUNSEL STEWART: Okay. For the record, Susan Stewart. What if I find out that they're not required? Would the Board be amenable to me removing the pricing so that we could streamline it and they didn't become outdated? And I don't really need a formal -- any
1 motion or anything. Just kind of taking your temperature
2 to see if that's something that would make sense to the
3 Board.
4 CHAIR CLUTTS: Are you guys okay with that?
5 MEMBER BENTLEY: Yes.
6 MEMBER LEWIS: Yes.
7 COUNSEL STEWART: All right. I'll check into
8 it. It certainly would streamline things. And it would
9 also make it so that they're not obsolete in five
10 minutes. Okay. Thank you.
11 CHAIR CLUTTS: Thank you.
12 COUNSEL STEWART: Can we go onto 331?
13 CHAIR CLUTTS: Yes, please.
14 COUNSEL STEWART: All right. The next
15 section: Nevada Administrative Code 331. And this
16 pertains to the State Public Works Division Buildings &
17 Grounds section. And currently, Buildings & Grounds does
18 not have any regulations, so we're creating regulations.
19 You'll see page one is simply definitions for
20 use throughout the proposed reg. Pages one through four
21 sets forth the regulations governing agencies leasing
22 office space outside State buildings.
23 And what Buildings & Grounds runs into is
24 that, without regs, they're basically -- well, they are
25 just asking agencies, "This is our internal process."

1 And this simply puts into regulation and -- frankly, a
2 little bit of teeth -- into the requirement that state
3 agencies need to follow certain procedures before they
4 begin the process to lease office space outside State
5 buildings.
6 There's also a process set forth here in the
7 regs for when a State agency wants to use office space
8 within State buildings. The process is set forth here as
9 well.
10 Also, we've put here in the regs on page four
11 that if an entity wants to hold a special event, they
12 need to come to Leasing Services and get a special use
13 permit and what those requirements are.
14 And then finally, on page four and five, it
15 sets the environmental controls for the State buildings
16 and limits when employees can bring animals to work. And
17 then it does some other limitations on how office workers
18 are permitted to utilize their office space.
19 Before we open up for questions, I did want
20 to point out a couple of suggested changes. On page
21 four, one of the issues that Leasing Services encounters
22 is a State agency may be leasing a building, and they may
23 take it upon themselves to make improvements to a
24 building that they don't own. And so we require the
25 State agency to go through Leasing Services before they

1 do that for tenant improvements.
2 And our new Deputy Administrator for
3 Buildings & Grounds, Ron Cothran, is here. And, on
4 Section 2, his suggestion was that we have a definition
5 of "improvement" or "modification."
6 And Ron has suggested expanding that so that
7 it includes any item covered within the International
8 Building Code Council series of books and State Public
9 Works Division's adopted standards, and then add a
10 structural or architectural change. So it simply expands
11 what that definition is of "improvement" or
12 "modification."
13 And then Ron also reached out to staff
14 regarding the setpoints for cooling and heating. And we
15 currently, here in the proposed reg, have the cooling or
16 the heating set at 72 degrees, and the cooling set at 75.
17 And Ron reached out to staff to find that they set the
18 cooling of 75 and the heating at 70.
19 So I thought that it would be appropriate to
20 -- and that is based on the Energy Conservation Code. So
21 I thought that that may be appropriate to make that
22 change. And again, the adoption of these codes is within
23 the jurisdiction of the Administrator.
24 So, Chris, for the day, this would be your
25 purview to review this.

1 But that's the conclusion of my presentation
2 on NAC 331 and those proposed regulations.
3 CHAIR CLUTTS: Thank you, Ms. Stewart.
4 Any questions or comments of the Board?
5 Any from the public?
6 Mr. Stewart, do you have something? Sean,
7 you didn't have anything?
8 VICE-CHAIRMAN STEWART: No. Huh-uh. Well, I
9 guess I do. Sean Stewart, for the record. These seem
10 pretty stringent. I didn't realize there was -- as far
11 as the State buildings. It says you can't have a fridge
12 in your office unless you get special permission.
13 Have we had problems in the past, or where
14 does this regulation come from? Maybe just a lack of
15 regulation?
16 MR. CHIMITS: Chris Chimits, Interim
17 Administrator. We have had problems with State-owned
18 buildings where there's been people who want to bring in
19 small-space heaters or refrigerators, people that want to
20 open up windows. And what it does is, it makes it
21 extremely difficult to regulate the temperature band that
22 Ms. Stewart recommended.
23 So what we needed is some kind of a uniform
24 regulation or something that would kind of curb some of
25 the errant behavior by certain State employees in State
buildings so that we can keep it between 70 and 75
degrees, as well as manage the energy costs in a more
reasonable way for our State buildings.

MEMBER TIBERTI: Mr. Chairman, Tito Tiberti.
I have two questions.

CHAIR CLUTTS: Please.

MEMBER TIBERTI: How do you expect Sean
Stewart to keep his Big Gulps cold without a
refrigerator?

CHAIR CLUTTS: We're just happy he's not in a
State building.

MEMBER TIBERTI: Well, the second one is:
Counsel Stewart was talking about animals allowed in your
office. If I have an owl, is that a bird, or is it an
animal?

COUNSEL STEWART: Really, Member Tiberti?
MEMBER TIBERTI: Just saying.

CHAIR CLUTTS: Mr. Tiberti, we value you
lightening this up a little bit. It's awfully boring.

COUNSEL STEWART: Well, I apologize. It is
definitely my favorite thing to do, too.

CHAIR CLUTTS: Moving on from the Board, is
there any comment of the public? Okay.

Moving onto Agenda Item Number 4, which is
public comment, is there any public comment?

Hearing none, we will adjourn the meeting.
Thank you.

COUNSEL STEWART: Thank you.
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