In The Matter Of:

State of Nevada
Public Works Division Video Conference Board Meeting

January 27, 2017

Capitol Reporters
208 N. Curry Street

Carson City, Nevada 89703
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<td>1. Roll Call</td>
<td>1. CARSON CITY, NEVADA; FRIDAY, JANUARY 27, 2017; 2:00 P.M. -00-</td>
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<td>2. Public Comment</td>
<td>2. MEMBER BENTLEY: No. None.</td>
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<td>3. For Possible Action: Acceptance and Approval of Public Works Board Meeting Minutes: October 10, 2016 and November 1, 2016</td>
<td>3. CHAIR CLUTTS: Thank you. I don’t see any here up north. No public comment. Moving on to Agenda Item No. 3 for possible action: Acceptance and approval of Public Works Board meeting minutes for the following meeting dates: October 10th, 2016, and November 1st, 2016.</td>
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<td>4. For Possible Action: Overview of SPWD Contractor Qualifications</td>
<td>5. MEMBER CATES: I have some comments. For the record, Member Cates. Just a couple of spots here. I’m on page 27. I’m sorry, page 28, little block of 28 there. About mid page, it has the term, “In the next biennial budget.” Biennium with an “E” rather than an “A.” With an “E,” it means every two years, and with an “A,” it means twice a year. And on page 45, this is line 5 on page 45, “I think that it would be helpful to include in the letter, and I think that it’s very inconsistent with the motion.” I think, I hope I said, &quot;Consistent.&quot; And that’s all I have.</td>
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<td>5. For Possible Action: Legislative Update</td>
<td>6. MEMBER HAND: So moved.</td>
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<td>6. For Possible Action: Proposed Legislation Board Input</td>
<td>7. CHAIR CLUTTS: Second?</td>
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<td>7. For Possible Action: Board comment and Discussion - Board comments on any agenda item - Items to be included in future agendas - Review of action items for SPWD management - Set future meeting date if needed</td>
<td>8. MEMBER CATES: Second.</td>
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<td>8. Public comment</td>
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procedure, and I think everyone on the Board has
the statute right into the letter.
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Then in 338.1381, that is the appeal
consideration if a contractor was, in essence, litigious.
And so we wanted to capture not just was there a breach
of contract, but had that contractor initiated
arbitration hearing? And so we have a reg pending that
specifically requires the Board to make a decision at the
hearing. So those are your statutes. Those are your
governing statutes.
11
And then this Board has adopted regulations
implementing those statutes, and if you look on the next
page in your packet, you'll see relevant regulations, and
copies of the statutes are also attached here for you.
And this is, very broadly, NAC 338.150, through 338.290,
and what this does is it puts some, if you will, meat on
the bones of what those statutes say. So it defines
bidder, principal, personnel. It establishes cost
categories.
20
Several sessions ago, the State Public Works
Division statute was implemented where contractors under
a hundred thousand dollars seeking qualification had a
very streamlined qualification process to encourage them
to get experience doing Public Works, so that process is
very streamlined compared to the over a hundred thousand

CHAIR CLUTTS: Okay.
COUNSEL STEWART: First, you'll see what I've
been -- there's a list under the "discussion," and the
first set of documents you have is just a brief summary
of the statutes and regulations. 338.1375, that is the
statute that tells us what exactly we are able to take
into consideration when we are evaluating a contractor's
qualifications to bid public works.
22
You'll see there that there's a fairly
straightforward list of what we're able to take into
consideration, and then also, that statute requires the
Board, this Board, to adopt regulations that implement
that criteria, and then the other thing that that statute
specifically sets forth is that no one person may have
discretion to make the decision whether someone is
qualified or not. And you'll see as we get further into
the process that Public Works has several steps to make
sure that that is in fact followed.
13
The next statute, 338.1375, it just tells us
the process that the contractor and the Public Works
Board needs to follow. Essentially, the contractor
submits the application that's approved by this Board.
17
The staff are required to investigate the application,
made a determination within 45 days, and then we notify
the applicant in writing within the time frame if they
have been approved. And if not, we include in there very
clearly their appeal rights and the time frames that will
apply to those appeal rights. We actually cut and paste
the statute right into the letter.
24
Then in 338.1381, that is the appeal
procedure, and I think everyone on the Board has
participated in one of those appeals. It's very
straightforward. We have a time frame within which we
must respond. We have a time frame within which we have
to set the hearing and give them notice. The applicant
has the burden of proof in the hearing, and of course the
statute sets forth how this Board can handle evidentiary
matters that are presented, and then the statute
specifically requires the Board to make a decision at the
hearing. So those are your statutes. Those are your
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"discussion," and the many things that we expanded in the past performance is
that contractor initiated
litigation? Had that contractor been the subject of an
arbitration hearing? And so we have a reg pending that
expands 338.240. And so going forward, that's something,
that gets approved by the legislature, we'll need to
amend the qualification application and the scoring to
follow up on that process.
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<td>ADMINISTRATOR NUNEZ: -- we asked for a certified statement from their bonding company. And basically, what we asked them to do is to indicate in that letter their single limit and their aggregate limit. And so, in fact, we're using the surety company and the review of the financial information by a surety company, have them do that for us instead of us doing it, and therefore, that establishes for us the maximum amount that we would consider a bid from a prime. Obviously, we'd ask them for -- and as you can see here, as you go over here on part one, financial ability, under the scoring system, the valuation, the bonding is a pass/fail in this category. If you cannot bond a project, obviously, you can't bid. So bonding is a pass/fail. The next one is to provide evidence of a current State of Nevada contractor's license pursuant to Chapter 625. Again, you can see here, part 1B, licensure. And again, that's a pass/fail. I don't think I need to go any further on that. And then the last one here: Has applicant ever filed as a debtor under the United States Bankruptcy Code during the last 5 years immediately preceding the date of application? If yes, please attach a copy of the bankruptcy petition. And what we do here, we got two C and D addresses that we have. If it's a Chapter 7 in the last five years, that's a pass/fail. If it was a Chapter 11 or 13 bankruptcy filing in the last 5 years, we deduct 10 points. Then I'll move on to Part II under Principal Personnel. It says here, &quot;The applicant shall include in the application submitted a description of the professional qualifications and relevant experiences of the principal personnel employed by applicant.&quot; And it says, &quot;NAC 338.220 defines 'Principal Personnel' as the owner of any corporate officer or qualified employee listed in the contractor's license of the applicant.&quot; And then, &quot;Lists 10 projects successfully completed under the direction of the principal personnel within the cost category or higher for which applicant is seeking to qualify.&quot; And then for each principal personnel, then we ask them to list the projects here. So you can see the name of the qualified employee, the title upon which he had in doing that particular project, years relevant work experience, years employed by the company and licenses. And then the projects after that, the project name, project scope, dollar amount and year of completion. Again, we're looking for projects within the last five years.</td>
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<td>So if everybody is ready, basically, on the first page of the application, you need to provide your contact information in here. And in addition to that, you need to tell us whether you're applying for the different categories, which is $100,000 to $1,000,000, $1,000,000 to $5,000,000, or more than $5,000,000. You also need to indicate whether you want to be considered for $25- and $100,000 for contracts on this particular one here. And that has to -- part of this has to do with some of the manner in which you're scored later on, so keep in mind the categories, especially the ones between $100,000 and $1,000,000, $1,000,000 to $5,000,000, and then over $5,000,000. If we move on to the next page, we get into financial ability. And originally when we looked at this thing, we saw that there's some agencies like DOT where they actually ask for financial statements. We here at Public Works didn't have the staffing or capabilities of really properly reviewing a financial statement, and so what we chose to do was to ask for other information to let us know about where the contractor should be at with respect to what we would allow them to bid on Public Works projects. To that end -- (Sean Stewart in Las Vegas arrived to the meeting.)</td>
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<td>1. CHAIR CLUTTS: If I can interrupt you for a second.</td>
<td>1. him up to $3,000,000.</td>
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<td>2. ADMINISTRATOR NUNEZ: You bet.</td>
<td>2. So now what we want in this scoring here, the way the scoring is performed, is that we look at the projects that are listed and the total amount of the contract. If it's between -- if it's below $1,000,000,</td>
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<td>3. CHAIR CLUTTS: I was waiting to see if you mentioned that. So you said you're looking for projects in the last five years. In this particular category, I was trying to find where it's calling for that.</td>
<td>4. then he would get a 1 point deduction. If it's between $1,000,000 and $3,000,000, which would be his limit, his single bonding limit capacity, then it's prorated between $1,000,000 and $3,000,000 as to how much you deduct out of that point. If it's $3,000,000 or more, he gets no deduction. So again, the main thing is that we don't go all the way to 5. One to five is the category, but if a contractor's limit is less than that because his license may be whatever, but if he's only qualified up to $3 because of his bonding capacity, that's what we're going to do. We just go by that.</td>
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<td>4. ADMINISTRATOR NUNEZ: And I may have been off base on that. Typically, we're only looking at the last five years, but in this particular category, you're correct. It doesn't say that.</td>
<td>5. CHAIR CLUTTS: Bryce Clutts, for the record.</td>
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<td>5. CHAIR CLUTTS: So this particular Tab II is not applicable to the last five years?</td>
<td>6. COUNSEL STEWART: For the record, Susan refers.</td>
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<td>6. ADMINISTRATOR NUNEZ: Correct. Yes.</td>
<td>7. COUNSEL STEWART: For the record, Susan Stewart. Just let me double-check and see what the reg said because what the reg said would govern, and it may not be accurately or clearly reflected in here.</td>
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<td>7. CHAIR CLUTTS: It's any projects at any time during the company, that principal personnel's experience.</td>
<td>8. COUNSEL STEWART: Well --</td>
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<td>8. ADMINISTRATOR NUNEZ: And you can see the successful projects are within the last five years, but I can see that it doesn't say that here, so maybe I missed one. Did you want to say something?</td>
<td>9. ADMINISTRATOR NUNEZ: Susan will check that. And in the meantime, what we'll do is we'll go through how we score this, and then Susan can be looking at that. So in -- I ask you to pull out the last five pages, which includes the evaluation. If you go to the last page of the evaluation, you're going to see something that kind of looks like a spreadsheet, and in here, what we do is -- so you can see it's got personnel and successful.</td>
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<td>12. administrador NUNEZ: Yeah. Let's say okay, on a $10,000,000, now you're in the 5 and above category. And you're at $10,000,000. So what we would do is if your project that you're listing is below $5,000,000, that's a full point deduction. If it's $10,000,000 or more, that's zero deductions. And anything between five and ten, then we prorate.</td>
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<td>12. ADMINISTRATOR NUNEZ: Correct. It doesn't say that.</td>
<td>13. COUNSEL STEWART: Well --</td>
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<td>13. CHAIR CLUTTS: If I can interrupt you for a second.</td>
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<td>15. CHAIR CLUTTS: Can I ask a question again?</td>
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<td>16. ADMINISTRATOR NUNEZ: Sure.</td>
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<td>18. CHAIR CLUTTS: And that was one of my questions is I didn't go back and look at 338.220 in terms of principal personnel, but I was wondering if this particular part was different than subsequent parts, and so I just want to make sure there wasn't any confusion there. It was confusing to me.</td>
<td>19. CHAIR CLUTTS: If I can interrupt you for a second.</td>
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MEMBER BENTLEY: Okay. I understand that.

But it sounds to me as though even though this has been approved prior to this, that it's just arbitrarily up to the scoring committee where they decide where the upper, the middle and the lower ranges are.

ADMINISTRATOR NUNEZ: Well, you said arbitrarily. Actually, the Board has made a judgment call on all of these, and this is the direction that we've gone from the Public Works Board. And these are the limits that they have established for us to work with. We score it based on what is submitted.

We will assist -- let's say if someone for some reason submitted an application and it just happens that instead of submitting ten projects on one of these categories, they only submitted five, and that caused them to fail. We'll call them up and say, "Here's the current situation right now. Here's where you're at."

You're getting a certain number of deductions because you didn't submit enough projects. Do you have other projects that you could submit?"

We go over all of this with them before we make a final determination and kind of help them out in getting there, so there is some communication and back and forth before we just fail them and say, "Okay. You don't qualify." That's about the extent that we do, but depending as to -- not between $1 and $5. We score it...
CHAIR CLUTTS: Okay. So why -- Bryce Clutts then you get no deduct. If it's $30 or more, they're between $5 and $30 million, then we just prorate $30 million. The projects that you put in here, if the only thing that we would do -- let's say you're using to decide that?

ADMINISTRATOR NUNEZ: Correct.

MEMBER BENTLEY: I totally understand that, Gus, but my question is that within each one of those parameters, how do you determine what is upper, what is medium, and what is lower? It's not a set for the whole thing. It has to be within each guideline. So what are you using to decide that?

CHAIR CLUTTS: Can I jump in and take a stab at this? I'm following you, Clint, all the way there, and I think that I understand. So I want to just see because I didn't understand up until just a few minutes ago. So, Gus, if I could, if you circle $5 million, you want a limit -- you want to be qualified for more than $5 million, and your bonding capacity, single project capacity is $20 million, is it correct to say that the lower limit is $5 million and the upper limit is $20 million?

ADMINISTRATOR NUNEZ: That's correct.

CHAIR CLUTTS: Okay. So help me understand. What is the middle and why is that even relevant, the middle range? Is there just a lower and an upper period?

ADMINISTRATOR NUNEZ: Yeah, a lower and an upper.

CHAIR CLUTTS: Okay. There is no middle.

ADMINISTRATOR NUNEZ: There is no middle, no. The only thing that we would do -- let's say you're applying for $5 or more, and your single bonding limit is $30 million. The projects that you put in here, if they're between $5 and $30 million, then we just prorate it in-between there for the deduct. If it's $30 or more, then you get no deduct.

CHAIR CLUTTS: Okay. So why -- Bryce Clutts again, for the record. Explain to me why you prorate it.

If I've got a $30 million single project bonding capacity and I've said I want to qualify for more than $5 million, why am I being deducted at all and not -- and potentially not able to bid on projects between $5 and $30? That, I think, is the discretion, at least it concerns me, is why are we prorating any deduction at all?

If a bonding company says that the contractor is qualified to do those projects, that is the part that I'm concerned potentially is arbitrary, is the prorating part where that's not described anywhere. That's something that has just been done.

ADMINISTRATOR NUNEZ: And like I said, keep in mind again that you can have the full 10 points deducted under this category and then the full 20 deduction under the successful projects because you have -- you could have no projects in between the $5 and the $30 in here in your application and still pass. That was something that the Board, when they approved this, wanted to make sure that that was available, but at the same time, they also approved that if you're applying in a certain category and your project was below the bottom limit that you would get a full deduction, that if you were at or above the limit, that you get no deduction, and then everything in-between gets prorated. That was what was agreed to.

And of course, if you have -- they also wanted to make sure that if you had no projects in that category but you had the bonding and the license, that you could still be qualified to do that as long as you didn't have other prevailing wage violations or any other things in your record. That was the discussion during the adoption of this here and how it was approved.

Now, if you wanted to say as a policy of the Board in the future that says well, any projects in that category within the range, you get no deduction, that's up to the Board. Keep in mind that the Board also has full discretion. We score it as we see it. You have full discretion as to the outcome if it does get appealed to you.

CHAIR CLUTTS: Thank you. Ms. Stewart?

COUNSEL STEWART: I just wanted to clarify. For the record, Stan Stewart. The reg does -- first of all, it says to list 10 projects, and this is for principal personnel of the prime. There's no limitation on time frame for this particular part of the qualification.

And what we are asking for -- and this is from the regulation, is -- and I'm going to paraphrase just a little bit, but the qualifications of the
1. principal personnel of the prime contractor. The prime must include in the application a description, as Gus said, of the principal personnel's qualifications and relevant experience of the principal personnel and list not more than ten Public Works and private construction projects or any combination within the cost category for which the prime contractor is applying that have been successfully completed.

9. So I think that the thinking behind the scoring is we're looking for experience in a particular cost category. And so if it's at that cost category, well, then, there's no reductions. But then if there is, if it's less than that cost category, then there may be deductions. So that's right from the language of the reg.

16. CHAIR CLUTTS: Thank you. Member Hand?
17. MEMBER HAND: Member Hand. So what's the -- in the unlimited category case, right, if it's over $5 million, help me understand the proration in that situation. It's upper limit, right?
18. ADMINISTRATOR NUNEZ: Sure. There's two examples. To best understand the $5 and above, it's better to look at the examples. One of them would be between -- for the purposes of scoring, one would be between $5 million and $30 million, and one above --

1. between $5 million and above $30 million. Because the Board requested us to use $30 million as an upper limit in the $5 and above --
4. MEMBER HAND: Okay.
5. ADMINISTRATOR NUNEZ: -- in this scoring. So let's say you're above $5 million but at $20 million. So if your projects that you list here is at $20 million or more, you get no deduction. If you're below $5 million, below the lower threshold, you get a full -- the full deduction. If you're between $5 million and $20 million, you get a prorated deduction depending as to where the project lands.
13. Now, that's one example. Now let's talk about the one that -- the person that has an unlimited license and has a -- their single limit bonding is $80 million. We are then -- and then he lists these projects. Again, anything below $5 million is a full deduction. Anything between -- anything above $30 million, not the $80 million bonding capacity, anything above $30 million gets no deduction. Anything between $5 and $30 gets prorated.

22. CHAIR CLUTTS: Bryce Clutts. And that occurs because that is what a previous Board directed you to do.

24. ADMINISTRATOR NUNEZ: Uh-huh.
25. CHAIR CLUTTS: So it's not arbitrary in the
1 ADMINISTRATOR NUNEZ: Technically, unless you ask specifically, "I want to see your scoring form," which is public information, we would have to release it, that would be the only way. Typically, we just -- we get the application. Hopefully, it is straightforward and truthful and to the point, and then we just score it.

3 And like I said, we do go the extra mile to get back with an applicant and say, "Hey, you've got some prevailing wage deductions. You've got some deductions here. And by the way, in your principal personnel and on your successful projects, if you have other projects that you could include in this range or in this area that you can substitute, then that will eliminate those deductions and you'll be able to pass."

5 I mean, we help them and we go way out of our way in trying to do our best in getting them over that 120-point threshold. If they have it, if it comes to a point where they just don't have what it takes to get, you know, 120 points, and then we -- the only thing that we suggest to them at that point is well, if you go to a lower category instead of going all the way to your maximum license and bonding limit, if you, instead of going at $5 million, if you lower to $3 million, you'll gain all of these points and you'll pass. Do you want to lower your request? And a lot of times, they'll go, "Oh, yeah. Rather than fail, we'll lower it." So we do a certain amount of help and coaching in trying to get them passed. We just don't score and say, "Sorry" and send them a letter. We get together with them and explain to them, okay. Here's where you're at. If you have projects in this area or if you lower what your request is, then we can pass you. We do try to do the best we can on those areas.

9 COUNSEL STEWART: If I may, for the record, Susan Stewart. I hope it's apparent to the Board that with very few exceptions, when the contractors come here to appeal a qualification denial, it's very -- it's not adversarial. It is a, you know, we go out of our way to, you know, we'll share the scoring sheet. I mean, there's not any animosity on my part or staff's part. Our job is to qualify applicants so that they can perform Public Works. That's what we see our role as, within the statute, the regs and the guidance of the Board has given us. So it's a very nonadversarial process, has been my experience, and I've been here since 2008.

21 CHAIR CLUTTS: Thank you. Bruce Clutts, for the record. I'm a believer that if something is broke, you fix it. Otherwise, you just maintain it. And so the biggest question that I have is over the last, say, eight years, do we know how many applications there's been, how many approvals and rejections? And out of those rejections, how many were appealed to even know as a body whether we have a problem, whether something is broke or whether it needs just a little maintenance?

24 Because I've been here for a little while now, and we've had a couple of appeals, and I imagine that you all see a lot of applications. I don't know. So if -- I don't know if this is a small issue that comes up every now and then or if this is a much broader issue so that as a body, we can understand what it is that we should be focused on.

25 ADMINISTRATOR NUNEZ: We look at about 300 a year, I would say. I know that when we were looking at -- the reason we had a law that was passed that requires us to do our best effort in getting this form is so that they can be filled out and submitted electronically, and so we were going through a process. In getting there, we ended up with a DocuSign company that actually provides that avenue for us to use, and I'm sure if you've done some mortgage closures lately, you've seen where they can do all of the signing electronically and remotely, and so we've been using that.

28 We had to come up with a -- well, how many are we going to do a year? How much is that going to cost? And just from a budgetary perspective because they say, well, in this range, we'll charge you $3 per what they call envelope or per application that they process, I think was the quote that they gave us. And so I had Cece, Kathy's predecessor, go back and look over several years and see how many we were looking at, and we came up with a figure of about 300, is what I remember, that we were averaging per year. I'm sure it varies.

And I guess if I -- right now, I don't have the last eight years or whatever, five, eight, ten years that we've had this thing going, how many appeals qualifications and appeals we've had, but I bet you it's less than a dozen over -- since we've had this whole system going, I would guess -- I would be surprised if it's more than a dozen, but I can go back and get you the exact number.

16 COUNSEL STEWART: I was going to say ten, and I've been here since '08. And I know that I'm recalling not necessarily just contractor qualification appeals, but other matters that have come before the Board. But certainly, I cannot recall more than 10 or 12 at the most.
**State of Nevada**

**Public Works Division Video Conference Board Meeting**

January 27, 2017

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1. some -- I discovered a typo. We are going to -- we do
2. have the new reg that's pending, so we will have to
3. revise the application.
4. **ADMINISTRATOR NUNEZ:** And the scoring.
5. **COUNSEL STEWART:** And the scoring. And so
6. and I did want to -- I know that there was some concern
7. about the penalties that were -- or the deductions that
8. were made for the fines, and so I did want to give the
9. Board a clear understanding of how we got there so that
10. -- because, you know, the contractor may come here, and
11. they're not happy, and so, you know, they may find
12. something that they can latch onto. And whether it's
13. legitimate or not, who knows. But if the Board has a
14. full understanding of exactly how -- because you weren't
15. here when we, you know, had it approved by prior boards,
16. it just may be helpful for your general understanding.
17. **CHAIR CLUTTS:** Okay. Thank you. Any other
18. questions before we move on? Part III.
19. **ADMINISTRATOR NUNEZ:** Part III has to do with
20. prior breach of contract. And basically, it just states,
21. "If the applicant has been found to have been in breach
22. of contract by a court of competent jurisdiction during
23. the 5 years immediately preceding the date of the
24. application." And then, "For each such action, the
25. applicant shall include below a description of: The

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| 1. circumstances surrounding the breach; whether any
2. liquidated damages were imposed in connection with the
3. breach; and any judgment entered against the applicant
4. relating to the action." And then you're asked to
5. provide this information and a description here under
6. this type of form, and then you duplicate as necessary if
7. you have more than one.
8. And then with respect to how we score that,
9. if you go then to the scoring system, is that you take
10. the judgment amount, you divide it by the contract
11. amount, you multiply it times 10, and then you multiply
12. it times -- excuse me. You multiply it times 20 and then
13. you multiply it times 10, and then that gives you a total
14. amount of deductions.
15. So, for instance, to give you an example, if
16. you take -- if you have a $1 million judgment and a $20
17. million contract, that would equal to -- if you divide
18. that, that comes out about a .05. You multiply that
19. times 20, that equals 1. You multiply that 10 times 10,
20. and then you have taken 10. Then that gives you a
21. 10-point deduction. One times 10 would be 10. That's
22. how that looks like. Again, in going back since I've
23. been here, we haven't seen too much of this. As a matter
24. of fact, I don't recall any in this particular area.
25. **COUNSEL STEWART:** Excuse me. The only thing

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| 1. I saw was the contractor that did the construction on the
2. Las Vegas courthouse, and he submitted an application and
3. just attached the mediation decision or the arbitration
4. decision, and we started to work with him and try and
5. score it, and his attorney called me and said, "I can't
6. believe he submitted this without talking to me first."
7. And he withdrew his application, and I never heard from
8. him again. So that was the only issue that I've ever
9. seen with this one.
10. **ADMINISTRATOR NUNEZ:** I don't recall having
11. an issue there.
12. **COUNSEL STEWART:** No.
13. **ADMINISTRATOR NUNEZ:** So anyhow, unless you
14. have some questions, and perhaps, you know, you might
15. want to look at this formula here later on and on your
16. own time or whatever and think about it a bit, but that's
17. kind of like what the staff and the Board came up with a
18. while back on that particular matter as to how to score
19. that.
20. **THE COURT:** If I could, Bryce Clutts, for the
21. record. What I would suggest is, if the Board is okay
22. with it, is if you just run through it, and if there's a
23. question, we just pause and ask that question.
24. Otherwise, we'll assume there isn't, if that works.
25. **ADMINISTRATOR NUNEZ:** Okay. Move on. Then

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| 1. here under part IV, Prior Disqualification From the
2. Contract Award. And where it says, "The applicant was
3. disqualified from the award of any contract pursuant to
4. the NRS," the section, and we need to add a couple more
5. sections to this, we found out today.
6. I went back and started reading this and
7. looking at the current law, the NRS, and we need to get
8. through here. And every now and then, the NRS changes,
9. the numbers change, and the 138.7 needs to be changed to
10. 138.45 and 138.95. So, now, this is just housekeeping
11. stuff.
12. During -- in this case, "During the 5 years
13. immediately preceding the date of application, provide
14. the following information." And so if we -- if they
15. submit that, what we do is for each disqualification
16. here, we're going to deduct 20 points. So at that point,
17. like I said, you can lose up to 30 points, so this is a
18. major, major hit. But we feel that if you've had an
19. issue regarding these matters here, it should be a major
20. deduct.
21. **COUNSEL STEWART:** For the record, Susan
22. Stewart. One of the ways the scoring is set up is that
23. no one area -- you could get all of the points deducted
24. in one particular area, and it wouldn't be enough to
25. disqualify you.
1 ADMINISTRATOR NUNEZ: Completely. Moving on to Part V-5 is past performance. And under past performance, the first thing we look at is wage and hour. In other words, prevailing wage violations. So if you have any prevailing wage violation, we ask you to list them here.

And what we do is for each violation, as you can see here under Part V-A under the scoring system, under performance history, for each wage and hour violation, we deduct two points. So again, you’d have to have -- in order to fail, you must have over 15 in this category. You have to have more than 15 violations of wage and hour before you're actually -- at 15, you just pass. More than that, you fail.

COUNSEL STEWART: Which we've seen.

ADMINISTRATOR NUNEZ: Yes, which we have seen.

Moving on to the next page on the Past Performance is Discrimination in Employment. So what it says here, it says, "Give a description of any civil judgment, findings of fact, administrative proceedings or criminal conviction relating to a violation of any law pertaining to discrimination in employment against or by applicant or principal personnel of the applicant, indicating that the applicant or principal personnel have violated local, state, or federal laws which pertain to the work of the applicant, during the 5 years immediately preceding the date of the application." So we ask you to list that. Again, any violation in this category. If you go to V, Part VB, discrimination in employment, we deduct 2 points per violation.

Moving on to the next page, still under Performance History, and it deals with failed projects. So if the applicant, in the prior 5 years, in projects which exceeded $25,000 or more, "If the applicant failed to substantially complete the contract from the deadline for completion specified in the contract, as adjusted by any change order or extension of time award, or if the applicant failed to complete any remaining requirements of the contract within 90 days of substantial completion of the contract or the applicant failed to complete the contract and the remaining work on the project was performed by others," we ask you to list those projects here that are any that are in violation of any one of those bullet points that we have there. We ask them to list it here.

The way we score that is under VC here, failed projects in the past five years. Again, if you did not complete the project within the contract time as suggested by the change order, we can -- the staff can deduct anything between 1 and 10 points per offense. The amount of points deductable takes into consideration the magnitude of the delay of the completion. So obviously, just a 2-3 day delay, it scores pretty low. But if you get into the 30 days plus, it's going to be scoring pretty high.

The same thing here under the second item.

"If the applicant failed to complete any remaining requirements of the contract within 90 days of substantial completion," then we deduct 10 points per offense. So if you didn't finish your punch list within 90 days, then we're going to deduct 10 points. And then the last one. If the contractor failed basically to complete the work and the remaining work had to be completed by another contractor, then that's pretty egregious. We deduct 20 points. Again, not one of these will fail you. You have to lose 30 points before you get there.

CHAIR CLUTTS: So Bryce Clutts, for the record. So my understanding -- am I understanding correctly that the maximum amount of points deducted for 5C could be 20?

ADMINISTRATOR NUNEZ: Yes, you could. Yes.

CHAIR CLUTTS: So if you were 30 days late and then didn't get your punch list done for the 90 days and then failed to complete the job, would you add all of those or would it be a maximum 20?

ADMINISTRATOR NUNEZ: No, you would add all of those.

CHAIR CLUTTS: So you could, in that particular section, lose up to 40 points?

ADMINISTRATOR NUNEZ: Yes, you could. Yes.

CHAIR CLUTTS: Thank you.

ADMINISTRATOR NUNEZ: The next part here, which is Part VI, this is the one that was added recently to our application. Under VI under past performance is: "Have you ever been disciplined or fined by the State Contractor's Board or other state or federal agency?" So we ask you here basically, it says, "State whether you have been disciplined or fined by the Nevada Contractor's Board or another state or federal agency, such as OSHA, during the 5 years immediately preceding the date of the application. Any discipline or fine imposed pursuant to NRS 624.301 through 624.305, disclosing 624.30175 must be disclosed." And then, "Relevant documentation must be attached."

So we ask you to state it, disclose it in the form here, and then if you go to Part VI here under the scoring system, you can see there where we're using the...
CHAIR CLUTTS: Okay. All right. Thank you.

ADMINISTRATOR NUNEZ: Move on to the next section, which is Part VII: Successful Projects. And what we ask you here or ask here is that the applicant lists ten 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 for which the cost of the project is within the cost category for which the application seeks qualifications to submit bids."

And then, of course, for each project, then we ask you to fill out this information that is asked here. Now, as to when we go to then score this, if you look at Item 7 under successful projects, we take each project and we deduct, as it says here, we deduct zero to five points for projects in the upper range of the cost category, .5 for the middle, 1 point below the range of the cost category, and 2 points -- and deduct 2 points for each project not listed less than 10. So if you look -- again, going back to the last sheet that was in that section, which is that spreadsheet that we were looking at before for the successful projects, we basically score those the same way that we talked about under "Principal Personnel," except this time, we use -- because there is ten projects and it's a total potential of 20-point deduct on that, we basically score on a 2-point by 2-point per project.

So again, if you're below the range that you're asking for, you're going to get a full 2-point deduct. Or if you don't list any, then you're going to get a 2-point deduct. If you're at or above that category, .5 for the middle, 1 point below the range of the cost category, and 2 points -- and deduct 2 points for each project not listed less than 10. So if you look -- again, going back to the last sheet that was in that section, which is that spreadsheet that we were looking at before for the successful projects, we basically score those the same way that we talked about under "Principal Personnel," except this time, we use -- because there is 10 projects and it's a total potential of 20-point deduct on that, we basically score on a 2-point by 2-point per project.

And then if you're in-between, then you prorate it from the bottom of the category to your license bonding limit that you're applying for, and in the $5 million plus, you don't -- at $30 million and above, you get no deduct at all no matter how high your license and bonding limit is. And so basically, the same rules that we use for principal personnel applies to...
1 successful projects except it's on a 2-point basis per project rather than one.
2 And the last part that we score, and that is a pass/fail. And if you go to Part VIII, basically it's more of I guess you could call it an acknowledgment.
3 You're saying that you're being -- you didn't fail to disclose any material information or falsify any material information and that you're declaring under penalty of perjury that all information provided is complete and correct to the best of my knowledge and belief, and we ask you to sign and notarize that.
4 Because when you go to the scoring system, if you fail to disclose that material, that's a pass/fail situation, or if you falsify any material information, that also is a pass/fail. The prior Board that approved this, they were very adamant about this particular item here, that we want to make sure that everything that was -- all of the applications that were submitted that were full -- that there was a full disclosure and there was nothing there that was falsified.
5 COUNSEL STEWART: Susan Stewart, for the record. And you'll recall when I started my discussion, one of the criteria that we're specifically charged with taking into consideration is the truthfulness of the application. So that follows along with the statute.
6 ADMINISTRATOR NUNEZ: The first -- actually, a little bit of history, if you're interested. The first contractor that was ever disqualified by the Board, by us and the Board, was because of this particular item here.
7 Basically, if he would have told the truth, he would have failed, from my recollection, so that's about how it went. Actually, that went through the board. It was appealed, and we had a hearing.
8 MEMBER BENTLEY: I know the answer, but I'm still going to ask for clarification. Under VII, numbers 2 and 3, shouldn't that stipulate each project in the wording there?
9 ADMINISTRATOR NUNEZ: Yeah, it is for each project listed, you're correct, how the deduction goes.
10 Oh, I see. Add that. Okay. So add to 1, 2, and 3 for each project. Yes, you're absolutely correct.
11 MEMBER BENTLEY: Yes.
12 ADMINISTRATOR NUNEZ: Good catch.
13 CHAIR CLUTTS: Okay. Bryce Clutts, for the record. Is my understanding correct that today was really about trying to get an understanding of the whole process, the Board digests that information, and that at a subsequent meeting, provide potential recommendations or no recommendations? Is that the intent? Okay.
14 Are there any other questions from the Board?
1. the Division was going to put forth regarding the administrator's qualifications, delete the Board's review of local revisions to the Uniform Plumbing Code, delete the Division's responsibility through their facility group to inspect UNR and UNLV, exempt amendments to our professional services agreements -- I'm sorry, from the Board of Examiners, and allow the building official to issue permits directly to private contractors.

2. As of printing, it could have changed. I haven't checked the website today, but as of printing, the following BDRs are moving forward, and they've actually been assigned bill numbers, and AB 41 revises the administrator's qualifications back to what they were prior to the last session. It also tweaks, if you will, the qualifications for the Board members as well, allowing for the appointment of a Board member that is a licensed contractor or were licensed in the past. SB 44, the building official, will issue permits to private contractors, removing Public Works from oversight of local governments, revisions to the Uniform Plumbing Code, and the final bill that's moving forward is that the Division will not be responsible for inspecting UNR and UNLV facilities. The revisions to or eliminating the requirement that our amendments to professional service agreements from the Board of Examiners did not move forward. That's all I have unless anyone has any questions.

3. CHAIR CLUTTS: Okay. Thank you, Ms. Stewart. ADMINISTRATOR NUNEZ: A little housekeeping real quick. I just want to mention that Member Stewart joined us a while back, so I'm going to -- I can't recall exactly at which point in the discussion he came in, but he should be marked -- CHAIR CLUTTS: He's duly noted as late. ADMINISTRATOR NUNEZ: -- as being here.

4. COUNSEL STEWART: For the record, I believe the court reporter noted about an hour ago that Mr. Stewart was here and made a notation in the record.

5. ADMINISTRATOR NUNEZ: Oh, good. Thank you. Somebody's on the ball.

6. And then the other thing that I missed, you've been getting a lot of e-mails and phone calls from Laura Adair, and she's sitting right here right now, so I wanted you to see the face behind the e-mails.

7. CHAIR CLUTTS: Thank you.

8. ADMINISTRATOR NUNEZ: Anything you need, feel free to call Laura or myself, obviously. And if I'm not around, she can chase me down, I'm sure. So she has full access to my calendar. She can even schedule meetings for me.

9. CHAIR CLUTTS: Moving on to Agenda Item Number VI, again, Ms. Stewart.

10. COUNSEL STEWART: Thank you. For the record, Susan Stewart. The Public Works Division has been presented with a couple of pieces of proposed legislation, and hopefully you have copies of those.

11. They should have been in front of you. One is entitled, "Contracts Involving Construction Manager at Risk" and then the second one, you'll see in the middle of the page is, "Proposed changes to NRS 338.141." There's also a proposed change to 338.0117. And as I've stated in the discussion in your action item, there's a proposal that the State Public Works Division create a standard form subcontractor list that must be used by all local government public bodies in their bid documents. There's also been the same -- and that's this one -- the proposed changes to NRS 338.141 also proposed that the Public Works Division create a standard form affidavit for all bidders to use when they're applying for the bidder's preference. You'll recall the law changed a couple of years ago, and it required if you want to receive the bidder's preference when you submit your bid, you have to provide an affidavit of compliance that says if you're awarded the project, 50 percent of the subcontractors will reside in Nevada, et cetera, et cetera. And the proposal is, is that the Public Works Division create an affidavit for all public bodies to use. Gus and I met with -- ADMINISTRATOR NUNEZ: Did you state who came to us?

12. COUNSEL STEWART: AGC North.

13. ADMINISTRATOR NUNEZ: AGC North and Assemblyman Skip Dailey.

14. COUNSEL STEWART: Well, I was going to get to that next.

15. ADMINISTRATOR NUNEZ: Okay. All right.

16. COUNSEL STEWART: Sorry. So we met with AGC. We had proposed some changes which you will see at the --
primarily at the end of the bill, and what we had proposed in response to that was that the law require the use of the language that Public Works Division uses so that local bodies would need to use certain language, but it wouldn't be Public Works inserting themselves into the process. Do you want to talk about this one now and then we'll go to this one?

ADMINISTRATOR NUNEZ: Sure. I think that the goal of the bill that the AGC is trying to be moving through is being sponsored by the legislature, and they're telling us that to try to minimize the number of protests that they get on bids. So as a result of that, one of the areas that we get a lot of protests in is in the listing of sub-listings that are required, whether it is the 5 or 1 percent list or the 3 percent list.

The first thing that one of the ways that they -- so they felt that they need to simplify it because the contractors are making a lot of mistakes in this area, and it leads to protests and basically some bids that are actually rejected as being non-responsive, and they want to minimize that. And so one of the first things they did is they are going to take out the 3 percent list because basically, nobody is using that. We've never used it, and I've never seen it used. I don't know if anyone is using it, but it's not very common to see that 3 percent list. Most folks are using the 5 and the 1 percent. 5 percent, obviously, comes in with the bid. The 1 percent comes in two hours after the end of the bid opening.

And again, all of this is to prevent bid shopping, as it were, is the genesis of this particular law in the NRS. And there's been confusion as to, you know, if you're listed under 5, do you want to be listed under 1? If the prime is not performing any of the work, does he have to be listed? And in the forms that we use, we're very specific, and in the areas that we see some mistakes, then we bold it and put it in red on our forms. So they -- the group of contractors up here that are used to bidding our projects -- we like to see everybody use the same form, and the Public Works' form is the best one that we see out there that is the clearest. So we want to use that. My input back to them was, thank you, but --

COUNSEL STEWART: No thank you.

ADMINISTRATOR NUNEZ: -- we're not in the business of providing or requiring forms for local government, and sometimes this is seen as -- any of these things could be seen as, you know, Public Works is trying to influence or tell us how to do our forms, and it probably is not going to be well received, number one, by local government, and we would prefer not being the ones that prepare this form. I'm sure that Susan may tell you well, she could be -- there could be concern with respect to liability, I don't know, because we're creating those forms that they have to use.

So we would rather you take our form and the way that we word our form and use the wording. Don't -- and then not necessarily quote that you're going to use Public Works. So every time we -- because we may modify our form in the future if we find any problems with it. And then that means that everybody now, we've got to notify everybody out there in the whole state of Nevada that oh, by the way, we've changed our form and you've got to change your form because that's what the law says. We don't want to be in that business at all. So that's pretty much along those lines that we have suggested to them.

Susan has been working with their legal counsel and coming up with wording that they can use. There's also the issue that on some of these forms, sometimes you have to notify them just because you're using federal funds, grant funds. And they're requiring other things above and beyond what is required by state law, and they have to take care of that. So we brought also that to their attention in this area. But am I missing anything?

COUNSEL STEWART: I don't think so. This is Susan Stewart, for the record. I have some concerns that Public Works would even have jurisdiction to do something like this. And I'm, you know, typically, Public Works does things through the reg process, so it would be very involved if we were directed to do something like that. So again, like Gus said, our suggestion was is that if the language in the form is working, then, you know, just mandate that the form include the language that makes the form clear. Do you want to talk about the second one?

ADMINISTRATOR NUNEZ: Sure. So instead of actually mentioning Public Works, just take Public Works out and put what was suggested to them along those lines. CHAIR CLUTTS: Before we move on, is there action being requested of the Board at this time?

COUNSEL STEWART: Well, we did have another bill to talk about.

ADMINISTRATOR NUNEZ: And it's along the same lines, so what I'd like to do is then from a policy perspective, that should give us some direction on that. COUNSEL STEWART: The second bill is -- this is a bill that's been -- Assemblyman?

ADMINISTRATOR NUNEZ: Skip Dailey.

COUNSEL STEWART: Yeah, he's an assemblyman.
get a copy of everything so that as the prime contractor
As the bids are opened, copies are made. We
envelope, and we're there at the bid opening, and we
determine who the low bidder is on all of the trades,
that process, we keep track of all of that, and
documentation is given to us and all of that, so we
oversee the process, the whole process.
We typically have at least two and usually
three project managers at the contractor's office when
the bids are open. And again, this -- so the cost of the
work, you might say it's an open book-type process.
During the selection process, we know the fee, our
general overhead and profit, we know what the GCs are
going to be, and at the end, we get the cost of the work.
So pretty much I look at it as an open book-type contract
at that point. We have knowledge of everything. There
is nothing left.
And I guess in other jurisdictions because of
what they ask or don't ask for, you see some fees that
will come in kind of low and get an advantage at that
point and then certain contractors that then are using
either their GCs or other things as a profit center and
playing games with that, basically.
So Skip, Mr. Dailey, likes the way that --
the type of information in our process, so he's trying to
-- first of all, he tried to put in there that we use our

341, boy, it's a long, long ways from looking or
participating with local government in their contracting
and practices.
I think the other area that they wanted to
include in there was the information required for the
selection in the selection process, and we've been, to a
certain extent, successful due to the information that is
required to be provided. When we get the proposals in as
we're scoring and going through the short list and then
the interview and proposal, the final scoring is we ask
for sufficient information so that everything is
disclosed upfront. We ask enough information in --
obviously, we get the fee, the general overhead and
profit. That's from everyone. We also request that they
provide certain information so that their costs of their
general conditions can be calculated from and determined,
and then of course the only thing left at that point is
the cost of the work, which we require that at the end of
the process on the preconstruction services, that they
give us a GNP, that they do go through a bid process, and
at the bid opening, the bids are submitted in a closed
envelope, and we're there at the bid opening, and we
oversee everything and get copies of everything.
As the bids are opened, copies are made. We
get a copy of everything so that as the prime contractor
Public Works forms, and then we're trying to, again,
let's say -- why don't you then take a look at our forms
and whatever you like that's in there, then require it in
the law, and then keep that the words Public Works Board
forms out of it. And we're encouraging that right now
for that to be used in this. And you'll see the
comments that we've put together and sent back with them
there along these lines in here.
So having said all of that, the main
direction, you know, and I've been encouraging the --
I've told both AGC and Assemblyman Dailey that I needed
to get -- he still kind of insists that they want to use
Public Works into staff or forms in these bills, and I
would -- I told him as a policy, I'd like to get some
direction from our Board because our feeling, gut
feeling, is that we shouldn't be in that position. And I
told him I would get back with him and see what the
thoughts from the Board may be on naming specific Public
Works to be involved with what local jurisdictions are
doing with respect to the construction management at
risk.
CHAIR CLUTTS: Gus, where is -- or Susan,
where is the information? In 338.1693, where do I find
the language? On which page? The language that's
requiring --
VICE-CHAIR STEWART: I'm sorry. It's on page 5.
CHAIR CLUTTS: How do I know what is proposed language and what is existing language?
COUNSEL STEWART: Yes. So I apologize. I should have put a little legend in there. My proposal, my proposed additions, are underlined. And then everything else that's stricken or highlighted are Mr. Dailey's proposals.
CHAIR CLUTTS: So can I -- all of this is added language. Yours is underlined.
COUNSEL STEWART: All of?
CHAIR CLUTTS: If it's not underlined, is it Assemblyman Dailey's language, and if it is underlined, it's yours? Or is there an original language and then Assemblyman Dailey's language and then your language?
COUNSEL STEWART: Right. Sorry.
CHAIR CLUTTS: How do I differentiate between those?
COUNSEL STEWART: So the highlighted text, as you're going -- page 1, these deletions here on page 3 and the highlighted text.
CHAIR CLUTTS: Nothing that we have is highlighted.
COUNSEL STEWART: Oh, it's not? Oh. My apologies. Susan Stewart, for the record.

VICE-CHAIR STEWART: Ours is and it's really nice, Bryce.
CHAIR CLUTTS: Thank you, Mr. Stewart. It's hard to read from here.
VICE-CHAIR STEWART: Just to comment while we're looking at that, I think that we need to probably have a motion that you know, what Assemblyman Dailey is asking and what AGC of Reno is asking is for the State Public Works Board to become the monitor for the State of Nevada. I agree exactly with what you've said. If they want to use the forms, which I think is the issue, they want to -- if they want to have a standardized form statewide, I don't think as a Board we have an issue with that. But asking us to administer it in any way, shape, or form, we don't have the manpower, and we definitely don't have the manpower to be sending out a majority of every CMAR selection panel in the State of Nevada. That would be insane. So I don't know if we could put that in a motion or not, but I would be glad to make it.
ADMINISTRATOR NUNEZ: We would very much appreciate something along those lines. I don't want to influence the Board in any way, but --
CHAIR CLUTTS: So thank you, Mr. Stewart. Is that a motion?
VICE-CHAIR STEWART: Yes. If you want me to restate the motion, I can do that.
THE COURT: Does the Board need the motion restated?
CHAIR CLUTTS: There's a motion on the table.
Is there a second?
MEMBER BENTLEY: Second.
CHAIR CLUTTS: Any comments or questions?
All of those in favor?
THE BOARD: Aye.
CHAIR CLUTTS: Any opposed? The motion carries.
ADMINISTRATOR NUNEZ: Thank you.
COUNSEL STEWART: Susan Stewart, for the record.

COUNSEL STEWART: I'm very comfortable. Is anyone else cold?
MEMBER CATES: I have a public comment. I'm here.
CHAIR CLUTTS: Thank you. Seeing none up here.
MEMBER BENTLEY: No.
CHAIR CLUTTS: Thank you. Seeing none up here.
MEMBER CATES: I have a public comment. I would like to lodge a complaint with the thermostat czar. This room is freezing. I don't know if maybe -- my legs are icicles.
COUNSEL STEWART: I'm very comfortable. Is anyone else cold?
MEMBER CATES: Is it just me?

CHAIR CLUTTS: I think you're on your own on this one.

MEMBER CATES: I'd like to withdraw my comments from the record then. I'm sorry. Go ahead.

CHAIR CLUTTS: We'll adjourn the meeting at 3:45 p.m. Thank you.

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### Observations

- The document is a transcript of a meeting, possibly related to public works and housing matters.
- The term "NAC" is frequently mentioned, suggesting it is a key abbreviation within the context.
- Various topics such as mortgage, public works, and housing are discussed.
- Terms like "notary" and "mortgage" indicate legal or financial discussions.
- "October" is mentioned, indicating the meeting date or significant month.
- "November" is also mentioned, suggesting the meeting date or a significant month.
- "Ours" and "their" are used to indicate ownership or possession.
- "Notary" and "mortgage" are terms related to legal processes.
- "November" and "October" suggest the temporal context of the meeting.

### Summary

This document appears to be a transcript of a public works or housing meeting, discussing legal or financial matters, such as mortgages, notaries, and ownership. The abbreviation "NAC" suggests it is related to a specific organization or council within Nevada. The meeting took place in November, indicating a specific timeframe.
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State of Nevada
Public Works Division Video Conference Board Meeting

January 27, 2017