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State Of Nevada

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MEMBERS
Kim W. Gregory, Chairman
Doug Carson
Dennis K. Johnson
John Lindell
Dennis F. Nelson
Deborah Winningham Sheltra
Michael Zech

STATE CONTRACTORS' BOARD

MINUTES OF THE HEARING BEFORE THE NEVADA STATE CONTRACTORS' BOARD HELD DECEMBER 30, 1999

Chairman Kim Gregory called the hearing to order at 10:05 a.m. on Thursday, December 30, 1999 at the offices of the State Contractors' Board, 4220 South Maryland Parkway, Building D, Suite 800, Las Vegas, Nevada 89119. Exhibit A is the Notice of Intent to Adopt and a copy of the Proposed Rule and Exhibit B is the Sign-In Log.

BOARD MEMBERS PRESENT:

Chairman Kim Gregory
Mr. Michael Zech

STAFF MEMBERS PRESENT:

Ms. Margi Grein, Executive Officer
Ms. Nancy Mathias, Licensing Administrator
Mr. George Lyford, Director of SUI
Ms. Jeanne Reynolds, Recording Secretary

OTHERS PRESENT:

Rene McCauley, Court Reporter, Associated Reporters; Cheryl Blomstrom, Associated General Contractors; Jim Mulcahy, Clark County; Ted Olivas, Clark County; Regina Heilman, Clark County; Sharon Hauht, Clark County; Jan Christopherson, Nevada Department of Transportation; Bob Barengo, State Contractors' Board Lobbyist; Fred Hillerby, State Contractors' Board Lobbyist; Dan Puls, Tibesar Construction Company; Gary Milliken, Associated General Contractors; Lee Atkins, Haydon Building Corp.; Jesse C. Paulk, Associated General Contractors; Bob Murnane, City of Henderson; Warren Hardy, Associated Building Contractors; Jim Bush, Pace Contracting Company; Tom Fallon, Pace Contracting Company; Bob Tibesar Construction Company; Fred Smith, Clark County School District; Holly Gordon, Clark County District Attorney; John Madole, Associated General Contractors; Dallas Coonwood, Associated Building Contractors; George Ogilvie, McDonald, Carano Law Firm; Chris Denning, Target General.

Margi Grein explained that the purpose of the hearing was to receive comments from all interested persons regarding the adoptions of regulations that pertain to Chapter 624 of the Nevada Administrative Code. She explained that the notice of the hearing was posted in compliance with NRS 233B on December 1, 1999 at the Las Vegas City Hall, the Sawyer State Building, the Clark County courthouse, the Washoe County Courthouse, the Washoe County Library, the Reno City Hall and offices of the State Contractors' Board in Reno and Las Vegas. Workshops on the proposed regulations were held in Reno on August 10, 1999 and in Las Vegas on August 25, 1999. The proposed amendments are to comply with legislative mandates concerning bidders preference for public works projects, inactive contractors' licenses and background investigations.

Ms. Grein noted that the proposed regulation relating to procedures for settlement of disciplinary cases, conditions which may be attached to probation and appointment of advisory committees and their procedures would not be heard at this time.

Ms. Grein explained the proposed bidders preference regulation indicating that the regulation puts into place a mechanism for the State Contractors' Board to issue certificates of eligibility to properly licensed general contractors who meet the criteria to qualify to receive a preference in bidding on public works projects as set forth in NRS 338.147. Ms. Grein explained the requirements that the contractor and a certified public accountant must meet in order to obtain a certificate of eligibility. She also explained the inactive license status proposal that will provide a procedure for a contractor to place a license in inactive status and also the regulation regarding background investigations which establishes the procedure for processing fingerprints required for background investigation.

Chairman Kim Gregory explained that the purpose of the hearing was to take comments from interested persons. He explained that no action on the proposed regulation would be taken until the full Board votes on the regulation. He also indicated that the legislation requiring this regulation was not sponsored by the State Contractors' Board and that the Board will be placing into effect a regulation that mirrors the legislation.

George Oglivie, Esq. representing Haydon Building Corporation expressed opposition to certain sections of the proposed regulation. His client opposes the section of the regulation that requires that an applicant for a certificate of eligibility for bidders preference be licensed as a general contractor in the State of Nevada at the time of the application and for a period of five years immediately preceding the submission of the application; Sec. 8(e) which allows the Board to request other documentation. Mr. Oglivie indicated that his client believes that the proposed regulation as written gives the Contractors' Board discretion that is not allowed by the statute. Ms. Grein explained the provision to allow the Board to request other documentation refers to license status. Mr. Oglivie indicated that it should be more specific.

Mr. Jesse Paulk representing the Associated General Contractors indicated that his organization was a sponsor of SB 437 and it is the position of the Associated General Contractors (AGC) that the general contractor did not have to be licensed as a general for five years. He also expressed opposition regarding the proposal to require a general contractor to submit a separate application for each classification or subclassification of a license as a general contractor for which a certificate of eligibility is required. He also commented that he feels that the regulation should provide for a definite denial of a certificate of eligibility to a contractor who submits false information to the Board. It is the position of the AGC that a separate section of the regulation be used to differentiate between false or misleading information submitted by a contractor and other considerations of non-compliance the Board needs to regulate. He also commented that the \$700 fee seems unreasonable.

Mr. Gregory commented that the \$700 fee is the estimate that Staff put together to cover the cost of administering the program.

Warren Hardy representing Associated Builders and Contractors agreed with the comments of Mr. Oglivie and Mr. Paulk.

Bob Tibesar, Tibesar Construction commented that he thinks that the law is great. It is his position that the law is for one reason – to give preference to the people that actually live here; raise their families; spend their money and are citizens of the communities. It was put into place to give preference to the local general contractors. He indicated his support for the law and the regulation.

Holly Gordon, Clark County District Attorney's Office had numerous questions regarding the definitions or general contractor; subcontractors; classifications and subclassifications. She also had questions regarding joint ventures. Mr. Gregory explained the various terms to Ms. Gordon. It was determined that the Legislative Counsel Bureau will be contacted for a clarification regarding language relating to joint ventures. Ms. Gordon also questioned how a lapse in license would be addressed. Ms. Grein indicated that the Contractors' Board is not familiar with public works projects and that the legislation relating to bidders preference may have to be clarified. She also asked when the regulation would become effective. Ms. Grein explained that she tried to put in place a regulation on an emergency basis, however, because of opposition by some parties to the proceeding, the emergency regulation was not processed.

Mr. Gregory said it appears that the earliest that the Contractors' Board would be able to begin issuing certificates of eligibility would be sometime in February or March.

Ms. Grein explained the sequence of events for the rulemaking process. She indicated that the Contractors' Board started the process last summer to adopt regulations for several pieces of legislation that passed the 1999 Nevada Legislature. In late August, a clarification regarding adopting regulations was requested from the Attorney General's Office. Ms. Grein then read the response received from the Attorney General's Office which advised the Contractors' Board that it must wait until the laws became effective on October 1, 1999 before adopting regulations to implement the laws.

Ms. Gordon indicated that the lack of a regulation in place causes problems for bids open after October 1. Ms. Gordon stated that Clark County had taken it upon themselves to accept a certificate from a CPA verifying that a contractor had complied with the payment of taxes and that the judge in the Haydon/Pace case had admonished them for doing so. Ms. Grein indicated that was the reason she had tried to put emergency regulations into place. However, when there was opposition to the emergency regulation, the Board followed the regular process.

John Madole, Associated General Contractors, Nevada Chapter, Reno stated that it is his opinion that in Senate Bill 437, section 35 the legislature has specifically made a provision to allow people who have not been licensed contractors for five years to get bidder certification. They are addressing people that may work on federal land within the State of Nevada or an Indian colony. He stated that the language in the proposed regulation in Section 8, subsection 2 contradicts the intent of the legislation.

Mr. Gregory asked Ms. Grein to read a portion of legislative minutes wherein Steve Holloway clarified the taxes paid by affiliate or parent company or contractor.

Mr. Madole stated that his organization would like to see section 8 of subsection 2 removed.

Dallas Coonrod, Associated Building Contractors indicated that his organization believes strongly in the intent of bidders preference, however, he agrees with the AGC that some areas of the regulation need work.

Chairman Gregory explained the next steps of the process toward adopting the regulation. He indicated that the regulation would be returned to the Legislative Counsel Bureau for its review. The regulation will then be brought before the full Board. Mr. Gregory noted that the matter has been posted for the Board's January 4, 2000 meeting, however, since the Legislative Counsel Bureau will be requested to provide clarification regarding legislative intent, action on the proposed rule may be postponed to a later date.

Mr. George Ogilvie asked where the language for section 8.4 originated. Ms. Grein indicated that she had drafted the language. Mr. Ogilvie questioned the difference in the first draft of the rule. Ms. Grein explained that the board's in-house counsel, Hal Taylor and Ms. Grein had been working on the rule

separately and had sent amended versions to fine tune the regulation. It is the intent of the agency to make the regulation clear so that the Board does not become involved in court proceedings. The intent is to clarify exactly what the legislative intent was through this chapter and make it jive with the provisions of NRS 624.

John Madole indicated that he was attempting to say that the law appears to separate the issue of paying taxes from having been licensed for five years.

Ms. Grein said the law said the "licensed general contractor shall have paid the taxes."

Mr. Gregory indicated that the clarification questions would be submitted to the LCB.

Mr. Gregory stated that it is not up to the Contractors' Board to award contracts. The Board will issue certificates of eligibility if it receives all of the required documentation.

There being no further comments, the hearing was closed at 11:05 A.M.

Respectfully submitted,

Jeanne Reynolds, Recording Secretary

APPROVED:

MARGI A. GREIN, EXECUTIVE OFFICER

KIM GREGORY, CHAIRMAN