

ASSEMBLY BILL NO. 106—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF CLARK COUNTY)

FEBRUARY 4, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions concerning determination of best bid submitted for award of contract for public work. (BDR 28-263)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to public works; requiring the state contractors' board to certify a contractor as a qualified resident contractor if the contractor submits an application and certain proof to the board; authorizing the board to impose a fee for that certification; revising the provisions concerning the determination by a public body of the best bid submitted for an award of a contract for a public work; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 338 of NRS is hereby amended by adding thereto
2 a new section to read as follows:
3 ***1. A contractor may apply to the board for certification as a qualified***
4 ***resident contractor. The application must be submitted on a form***
5 ***approved by the board.***
6 ***2. The board shall certify a contractor as a qualified resident***
7 ***contractor if the contractor submits a completed application to the board***
8 ***and submits proof that:***
9 ***(a) If the contractor is:***
10 ***(1) A natural person, he is a resident of this state;***
11 ***(2) A corporation, the corporation is incorporated pursuant to the***
12 ***laws of this state and more than 50 percent of the outstanding shares of***
13 ***the corporation are beneficially owned by a natural person who is a***
14 ***resident of this state;***

1 (3) A general or limited partnership, limited-liability company or
2 any other business entity, the entity is organized pursuant to the laws of
3 this state and more than 50 percent of any interest in the entity is
4 beneficially owned by a natural person who is a resident of this state; or

5 (4) A trust, more than 50 percent of the beneficial interest in the
6 trust is owned by a natural person who is a resident of this state; or

7 (b) The contractor has paid:

8 (1) The sales and use taxes imposed pursuant to chapters 372, 374
9 and 377 of NRS on materials used for construction in this state,
10 including construction occurring on land managed by the Federal
11 Government or on an Indian reservation or colony in this state, of not
12 less than \$5,000 for each consecutive 12-month period for 60 months
13 immediately preceding the submission of his application for certification
14 pursuant to this section;

15 (2) The motor vehicle privilege tax imposed pursuant to chapter 371
16 of NRS on the vehicles used in the operation of his business of not less
17 than \$5,000 for each consecutive 12-month period for 60 months
18 immediately preceding the submission of his application for certification
19 pursuant to this section; or

20 (3) Any combination of those sales and use taxes and motor vehicle
21 privilege tax.

22 3. Except as otherwise provided in this subsection, in determining
23 whether a contractor has paid the taxes required for certification as a
24 qualified resident contractor pursuant to paragraph (b) of subsection 2,
25 the board shall award credit to a contractor for the amount of any sales
26 and use taxes paid on his behalf by a lender or owner of the contractor or
27 by an agent of that owner. If certification is requested for a joint venture,
28 each joint venturer is entitled to credit for the taxes paid by the joint
29 venture in proportion to his percentage of ownership of the joint venture.
30 The board shall not award credit pursuant to this subsection if the taxes
31 for which credit is requested are paid by a subcontractor or parent
32 company, subsidiary or other business entity of the contractor.

33 4. If the board certifies a contractor as a qualified resident
34 contractor pursuant to the provisions of this section, the board shall, at
35 the time the contractor is certified, establish a date on which the
36 contractor must submit an affidavit to the board pursuant to subsection
37 5. The board shall notify the contractor of the date as soon as practicable
38 after the board establishes the date.

39 5. A contractor who is certified pursuant to the provisions of:

40 (a) Paragraph (a) of subsection 2 shall:

41 (1) On or before the date established by the board for that
42 contractor pursuant to subsection 4:

1 (I) Submit an affidavit to the board which states that he has
2 complied with the requirements for certification pursuant to the
3 provisions of that paragraph; and

4 (II) If the address of a natural person specified by the contractor
5 in an application submitted pursuant to subsection 1 has changed since
6 the application was submitted, notify the board of that change; and

7 (2) Notify the board immediately if any changes occur that will
8 disqualify the contractor for that certification; or

9 (b) Paragraph (b) of subsection 2 shall, on or before the date
10 established by the board for that contractor pursuant to subsection 4,
11 submit an affidavit to the board which states that he has paid the taxes
12 specified in that paragraph for the 12-month period immediately
13 preceding the date he submits the affidavit.

14 6. If a contractor fails to comply with the provisions of subsection 5,
15 the contractor:

16 (a) Is not a qualified resident contractor for the purposes of NRS
17 338.147; and

18 (b) May not claim a preference pursuant to that section,
19 unless he reappplies to the board and is certified as a qualified resident
20 contractor by the board pursuant to the provisions of this section.

21 7. The board may:

22 (a) By regulation establish a fee for certifying a contractor pursuant
23 to the provisions of this section. The fee must not exceed the cost of
24 certifying the contractor. (b) Adopt regulations necessary to carry out
25 those provisions.

26 8. As used in this section, "board" means the state contractors'
27 board.

28 **Sec. 2.** NRS 338.147 is hereby amended to read as follows:

29 338.147 1. A public body shall award a contract for a public work to
30 the contractor who submits the best bid.

31 2. Except as otherwise provided in subsection ~~[4]~~ 3 or limited by
32 subsection ~~[5,]~~ 4, for the purposes of this section, a contractor who ~~is~~:

33 ~~—(a) Has]~~ **has** been found to be a responsible contractor by the public
34 body ~~is~~; and

35 ~~—(b) At the time he submits his bid, provides to the public body proof of~~
36 ~~the payment of:~~

37 ~~—(1) The sales and use taxes imposed pursuant to chapters 372, 374~~
38 ~~and 377 of NRS on materials used for construction of not less than \$5,000~~
39 ~~for each consecutive 12-month period for 60 months immediately~~
40 ~~preceding the submission of his bid;~~

1 ~~—(2) The motor vehicle privilege tax imposed pursuant to chapter 371~~
2 ~~of NRS on the vehicles used in the operation of his business of not less~~
3 ~~than \$5,000 for each consecutive 12-month period for 60 months~~
4 ~~immediately preceding the submission of his bid; or~~

5 ~~—(3) Any combination of such sales and use taxes and motor vehicle~~
6 ~~privilege tax,] and, before the date he submits his bid, has been certified~~
7 ~~as a qualified resident contractor by the state contractors' board~~
8 ~~pursuant to section 1 of this act shall be deemed to have submitted a better~~
9 ~~bid than a competing contractor who has not [provided proof of the~~
10 ~~payment of those taxes if the] been certified pursuant to that section if:~~

11 ~~(a) The~~ amount of his bid is not more than 5 percent higher than the
12 amount bid by the competing contractor ~~[-~~

13 ~~—3.— A contractor who has previously provided the public body awarding~~
14 ~~a contract with the proof of payment required pursuant to subsection 2 may~~
15 ~~update such proof on or before April 1, July 1, September 1 and December~~
16 ~~1 rather than with each bid.~~

17 ~~—4.] ; and~~

18 ~~(b) Not later than 5 p.m. on the next business day after the day the~~
19 ~~bids for the public work are opened by the public body, he submits to the~~
20 ~~public body a written and irrevocable bid in an amount that is equal to~~
21 ~~the amount of the bid submitted by the competing contractor.~~

22 **3.** If any federal statute or regulation precludes the granting of federal
23 assistance or reduces the amount of that assistance for a particular public
24 work because of the provisions of subsection 2, those provisions do not
25 apply ~~[insofar as their]~~ **if the** application **of those provisions** would
26 preclude or reduce federal assistance for that work. The provisions of
27 subsection 2 do not apply to any contract for a public work which is
28 expected to cost less than \$250,000.

29 ~~[5.] 4.~~ Except as otherwise provided in subsection ~~[6,] 5~~, if a bid is
30 submitted by two or more contractors as a joint venture or by one of them
31 as a joint venturer, the provisions of subsection 2 apply only if both or all
32 of the joint venturers separately meet the requirements of that subsection.

33 ~~[6.] 5.~~ Except as otherwise provided in subsection ~~[8,] 7~~, if a bid is
34 submitted by a joint venture and one or more of the joint venturers has
35 responsibility for the performance of the contract as described in
36 subsection ~~[7.] 6~~, the provisions of subsection 2 apply only to those joint
37 venturers who have ~~[such responsibility.~~

38 ~~—7.] that responsibility.~~

39 **6.** For the purposes of subsection ~~[6,] 5~~, a joint venturer has
40 responsibility for the performance of a contract if he has at least one of the
41 following duties or obligations delegated to him in writing in the contract
42 creating the joint venture:

- 1 (a) Supplying the labor necessary to perform the contract and paying
- 2 the labor and any related taxes and benefits;
- 3 (b) Supplying the equipment necessary to perform the contract and
- 4 paying any charges related to the equipment;
- 5 (c) Contracting with and making payments to any subcontractors; or
- 6 (d) Performing the recordkeeping for the joint venture and making any
- 7 payments to persons who provide goods or services related to the
- 8 performance of the contract.
- 9 ~~18.1~~ 7. The provisions of subsection ~~16.1~~ 5 do not apply to a joint
- 10 venture which is formed for the sole purpose of circumventing any of the
- 11 requirements of this section.
- 12 **Sec. 3.** This act becomes effective on January 1, 2000.

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