
ASSEMBLY BILL NO. 298—COMMITTEE ON GOVERNMENT AFFAIRS

FEBRUARY 22, 1999

Referred to Committee on Government Affairs

SUMMARY—Requires bidders on public works projects to qualify before bidding. (BDR 28-991)

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

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

AN ACT relating to public works projects; requiring the adoption of criteria for the qualification of bidders on a contract for a public work; requiring a person to qualify before bidding on such a contract; 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 the provisions set forth as sections 2 to 5, inclusive, of this act.

3 **Sec. 2. 1. *A public body shall not accept a bid on a contract for a***
4 ***public work unless the person who submits the bid has qualified***
5 ***pursuant to section 4 of this act to bid on that contract.***

6 **2. *The governing body of each local government that sponsors or***
7 ***finances a public work shall adopt criteria for the qualification of bidders***
8 ***on contracts for public works of the local government.***

9 **3. *The state public works board shall adopt criteria for the***
10 ***qualification of bidders on contracts for public works of this state. The***
11 ***criteria adopted by the state public works board pursuant to this***
12 ***subsection must be used by the state public works board and any other***
13 ***public agency of this state that solicits bids for and awards a contract for***
14 ***a public work.***

15 **Sec. 3. *The criteria adopted pursuant to section 2 of this act must***
16 ***include:***

17 **1. *The criteria for approval that the state public works board***
18 ***or the governing body must consider in determining whether an***

1 applicant is qualified to bid on a contract for a public work. The criteria
2 for approval must include:

3 (a) The financial ability of the applicant to perform the contract;

4 (b) Whether the applicant possesses the equipment to perform the
5 contract;

6 (c) Whether the applicant has a sufficient number of experienced
7 persons to perform the contract;

8 (d) Whether the applicant has breached any contracts with a public
9 agency or person in this state or any other state;

10 (e) Whether the applicant has been disqualified from being awarded
11 the contract pursuant to NRS 338.017 or 338.145 or for any other
12 reason; and

13 (f) Any other factors that the state public works board or governing
14 body considers necessary in making its determination whether an
15 applicant is qualified to bid on a contract for a public work.

16 2. Any other criteria that the state public works board or the
17 governing body of a local government considers necessary in making its
18 determination whether an applicant is qualified to bid on a contract for a
19 public work.

20 **Sec. 4. 1.** A person who wishes to qualify as a bidder on a contract
21 for a public work must submit an application to the state public works
22 board or the governing body.

23 2. Upon receipt of an application pursuant to subsection 1, the state
24 public works board or the governing body shall:

25 (a) Investigate the applicant to determine whether he is qualified to
26 bid on the contract; and

27 (b) After conducting the investigation, determine whether the
28 applicant is qualified to bid on the contract. The determination must be
29 made within 30 days after receipt of the application.

30 3. The state public works board or the governing body shall notify
31 each applicant in writing of its determination. If an application is denied,
32 the notice must set forth the reasons for the denial and inform the
33 applicant of his right to a hearing pursuant to section 5 of this act.

34 4. The state public works board or the governing body shall not use
35 any criteria other than the criteria adopted pursuant to section 2 of this
36 act in determining whether to approve or deny an application.

37 **Sec. 5. 1.** If, within 10 days after receipt of the notice denying his
38 application, the applicant files a written request for a hearing with the
39 state public works board or the governing body of the local government,
40 the board or governing body shall set the matter for a hearing within 10
41 days after receipt of the request. The hearing must be held not later than
42 20 days after the receipt of the request for a hearing.

2. *The hearing must be held at a time and place prescribed by the board or governing body. At least 10 days before the date set for the hearing, the board or governing body shall serve the applicant with written notice of the hearing. The notice may be served by personal delivery to the applicant or by certified mail to the last known business or residential address of the applicant.*

3. *The board or governing body shall issue a decision on the matter within 5 days after the hearing and notify the applicant, in writing, of its decision within 5 days after it is issued. The decision of the board or governing body is a final decision for purposes of judicial review.*

Sec. 6. NRS 338.010 is hereby amended to read as follows:

338.010 As used in this chapter:

1. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a workman or workmen employed by them on public works by the day and not under a contract in writing.

2. "Eligible bidder" means a person who was ~~found to be a responsible contractor~~ *determined* by a public body which awarded a contract for a public work ~~to be qualified to bid on that contract pursuant to section 4 of this act.~~

3. "Offense" means failing to:

(a) Pay the prevailing wage required pursuant to this chapter;

(b) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS; or

(c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS.

4. "Public body" means the state, county, city, town, school district or any public agency of this state or its political subdivisions sponsoring or financing a public work.

5. "Public work" means any project for the new construction, repair or reconstruction of:

(a) A project financed in whole or in part from public money for:

(1) Public buildings;

(2) Jails and prisons;

(3) Public roads;

(4) Public highways;

(5) Public streets and alleys;

(6) Public utilities which are financed in whole or in part by public money;

(7) Publicly owned water mains and sewers;

(8) Public parks and playgrounds;

(9) Public convention facilities which are financed at least in part with public funds;

and

(10) ~~Any~~ Any other publicly owned works and property whose cost as a whole exceeds \$20,000. Each separate unit which is a part of a project is included in the cost of the project for the purpose of determining whether a project meets this threshold.

(b) A building for the University and Community College System of Nevada of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by ~~the~~ this state or ~~from~~ federal money.

6. "Wages" means:

(a) The basic hourly rate of pay; and

(b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the workman.

7. "Workman" means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman.

Sec. 7. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection ~~6~~ 7 and NRS 338.1906 and 338.1907, an agency or political subdivision of ~~the~~ this state, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work, shall not:

(a) Commence such a project, for which the estimated cost exceeds \$100,000, unless it advertises in a newspaper of general circulation in ~~the~~ this state for bids for the project; or

(b) Divide such a project into separate portions to avoid the requirements of paragraph (a).

2. Except as otherwise provided in subsection ~~6~~ 7, a public body that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than \$25,000 but less than \$100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The public body shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the public body to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.

3. *Each advertisement for bids must include a provision that sets forth:*

(a) The requirement that a contractor must be qualified pursuant to section 4 of this act to bid on the contract; and

(b) The period during which an application to qualify as a bidder on the contract must be submitted.

1 **4.** Approved plans and specifications for the bids must be on file at a
2 place and time stated in the advertisement for the inspection of all persons
3 desiring to bid thereon and for other interested persons. Contracts for the
4 project must be awarded on the basis of bids received.

5 ~~{4. Any or all}~~

6 **5.** Any bids received in response to an advertisement for bids may be
7 rejected if the person responsible for awarding the contract determines
8 that:

9 (a) *The bidder is not a qualified bidder pursuant to section 4 of this*
10 *act;*

11 (b) The bidder is not responsive ~~{or responsible;~~
12 ~~-(b)};~~

13 (c) The quality of the services, materials, equipment or labor offered
14 does not conform to the approved plan or specifications; or

15 ~~{(e)}~~ (d) The public interest would be served by such a rejection.

16 ~~{5.}~~ **6.** Before an agency or political subdivision of the state may
17 commence a project subject to the provisions of this section, based upon a
18 determination that the public interest would be served by rejecting any bids
19 received in response to an advertisement for bids, it shall prepare and make
20 available for public inspection a written statement containing:

21 (a) A list of all persons, including supervisors, ~~{who}~~ *whom* the agency
22 or political subdivision intends to assign to the project, together with their
23 classifications and an estimate of the direct and indirect costs of their labor;

24 (b) A list of all equipment that the agency or political subdivision
25 intends to use on the project, together with an estimate of the number of
26 hours each item of equipment will be used and the hourly cost to use each
27 item of equipment;

28 (c) An estimate of the cost of administrative support for the persons
29 assigned to the project;

30 (d) An estimate of the total cost of the project; and

31 (e) An estimate of the amount of money the agency or political
32 subdivision expects to save by rejecting the bids and performing the
33 project itself.

34 ~~{6.}~~ **7.** This section does not apply to:

35 (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

36 (b) Any work of construction, reconstruction, improvement and
37 maintenance of highways subject to NRS 408.323 or 408.327;

38 (c) Normal maintenance of the property of a school district; or

39 (d) The Las Vegas Valley water district created pursuant to chapter 167,
40 Statutes of Nevada 1947.

41 **Sec. 8.** NRS 338.143 is hereby amended to read as follows:

42 338.143 1. Except as otherwise provided in subsection ~~{6.}~~ **7**, an

43 agency or political subdivision of ~~{the}~~ *this* state, or a public officer, public

1 employee or other person responsible for awarding a contract for the
2 construction, alteration or repair of a public work, shall not:

3 (a) Commence such a project, for which the estimated cost exceeds
4 \$100,000, unless it advertises in a newspaper of general circulation in ~~the~~
5 **this** state for bids for the project; or

6 (b) Divide such a project into separate portions to avoid the
7 requirements of paragraph (a).

8 2. Except as otherwise provided in subsection ~~6.1~~ 7, a public body that
9 maintains a list of properly licensed contractors who are interested in
10 receiving offers to bid on public works projects for which the estimated
11 cost is more than \$25,000 but less than \$100,000 shall solicit bids from not
12 more than three of the contractors on the list for a contract of that value for
13 the construction, alteration or repair of a public work. The public body
14 shall select contractors from the list in such a manner as to afford each
15 contractor an equal opportunity to bid on a public works project. A
16 properly licensed contractor must submit a written request annually to the
17 public body to remain on the list. Offers for bids which are made pursuant
18 to this subsection must be sent by certified mail.

19 3. ***Each advertisement for bids must include a provision that sets***
20 ***forth:***

21 ***(a) The requirement that a contractor must be qualified pursuant to***
22 ***section 4 of this act to bid on the contract; and***

23 ***(b) The period during which an application to qualify as a bidder on***
24 ***the contract must be submitted.***

25 4. Approved plans and specifications for the bids must be on file at a
26 place and time stated in the advertisement for the inspection of all persons
27 desiring to bid thereon and for other interested persons. Contracts for the
28 project must be awarded on the basis of bids received.

29 ~~4. Any or all~~

30 5. ***Any*** bids received in response to an advertisement for bids may be
31 rejected if the person responsible for awarding the contract determines
32 that:

33 (a) ***The bidder is not a qualified bidder pursuant to section 4 of this***
34 ***act;***

35 (b) The bidder is not responsive ~~for responsible;~~

36 ~~-(b)1;~~

37 (c) The quality of the services, materials, equipment or labor offered
38 does not conform to the approved plan or specifications; or

39 ~~1(e)~~ (d) The public interest would be served by such a rejection.

40 ~~15.1~~ 6. Before an agency or political subdivision of the state may
41 commence a project subject to the provisions of this section, based upon a
42 determination that the public interest would be served by rejecting any bids

1 received in response to an advertisement for bids, it shall prepare and make
2 available for public inspection a written statement containing:

3 (a) A list of all persons, including supervisors, ~~{who}~~ *whom* the agency
4 or political subdivision intends to assign to the project, together with their
5 classifications and an estimate of the direct and indirect costs of their labor;

6 (b) A list of all equipment that the agency or political subdivision
7 intends to use on the project, together with an estimate of the number of
8 hours each item of equipment will be used and the hourly cost to use each
9 item of equipment;

10 (c) An estimate of the cost of administrative support for the persons
11 assigned to the project;

12 (d) An estimate of the total cost of the project; and

13 (e) An estimate of the amount of money the agency or political
14 subdivision expects to save by rejecting the bids and performing the
15 project itself.

16 ~~{6-}~~ 7. This section does not apply to:

17 (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

18 (b) Any work of construction, reconstruction, improvement and
19 maintenance of highways subject to NRS 408.323 or 408.327;

20 (c) Normal maintenance of the property of a school district; or

21 (d) The Las Vegas Valley water district created pursuant to chapter 167,
22 Statutes of Nevada 1947.

23 **Sec. 9.** NRS 338.145 is hereby amended to read as follows:

24 338.145 1. A public body awarding a contract for a public work
25 shall not award the contract to a person who, at the time of the bid, is not
26 properly licensed under the provisions of chapter 624 of NRS or if the
27 contract would exceed the limit of his license. A subcontractor named by
28 the contractor who is not properly licensed for that portion of the work
29 shall be deemed unacceptable. If the subcontractor is deemed
30 unacceptable, the contractor shall provide an acceptable subcontractor
31 before the award of the contract.

32 2. If, after awarding the contract, the public body discovers that the
33 person to whom the contract was awarded is not licensed, or that the
34 contract would exceed his license, the public body shall reject the bid and
35 may accept the next lowest bid for that public work from a responsive ~~{and~~
36 ~~responsible}~~ bidder *who was determined by the public body to be a*
37 *qualified bidder pursuant to section 4 of this act* without requiring that
38 new bids be submitted.

39 **Sec. 10.** NRS 338.147 is hereby amended to read as follows:

40 338.147 1. A public body shall award a contract for a public work to
41 the contractor who submits the best bid.

42 2. Except as otherwise provided in subsection 4 or limited by
43 subsection 5, for the purposes of this section, a contractor who:

1 (a) Has been ~~{found}~~ *determined by the public body* to be a ~~{responsible~~
2 ~~contractor by the public body;}~~ *qualified bidder pursuant to section 4 of*
3 *this act;* and

4 (b) At the time he submits his bid, provides to the public body proof of
5 the payment of:

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

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

14 (3) Any combination of ~~{such}~~ *those* sales and use taxes and motor
15 vehicle privilege tax,
16 shall be deemed to have submitted a better bid than a competing contractor
17 who has not provided proof of the payment of those taxes if the amount of
18 his bid is not more than 5 percent higher than the amount bid by the
19 competing contractor.

20 3. A contractor who has previously provided the public body awarding
21 a contract with the proof of payment required pursuant to subsection 2 may
22 update ~~{such}~~ *that* proof on or before April 1, July 1, September 1 and
23 December 1 rather than with each bid.

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

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

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

40 7. For the purposes of subsection 6, a joint venturer has responsibility
41 for the performance of a contract if he has at least one of the following
42 duties or obligations delegated to him in writing in the contract creating the
43 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 8. The provisions of subsection 6 do not apply to a joint venture which
- 10 is formed for the sole purpose of circumventing any of the requirements of
- 11 this section.
- 12 **Sec. 11.** NRS 341.147 is hereby repealed.
- 13 **Sec. 12.** 1. This section and sections 1 to 7, inclusive, 9, 10 and 11
- 14 of this act become effective on October 1, 1999.
- 15 2. Section 8 of this act becomes effective at 12:01 a.m. on May 1,
- 16 2013.
- 17 3. Section 7 of this act expires by limitation on May 1, 2013.

TEXT OF REPEALED SECTION

341.147 Qualification of bidders on contracts for public works: Regulations; advertising; renewal; confidentiality of certain information provided to board.

1. The board shall adopt regulations establishing the criteria and procedures for determining the qualification of applicants to be bidders on contracts for public works projects of this state. The board shall use the criteria and procedures to award contracts for public works projects of this state.
2. The criteria adopted by the board pursuant to subsection 1 must include, without limitation, an evaluation of:
 - (a) The financial ability of the applicant to provide the necessary bond for the contract;
 - (b) The principal personnel of the applicant;
 - (c) The performance history of the applicant concerning other recent projects completed by the applicant in this state;
 - (d) Any breach of contract of the applicant on a prior contract, other than a breach for legitimate cause;
 - (e) Whether the applicant has ever been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.145; and
 - (f) The safety program and safety record of the applicant.

3. The regulations adopted pursuant to this section must include, without limitation, a procedure and deadlines for:

(a) Investigating an applicant and determining whether he is qualified to bid on a contract for a public works project of this state based on the criteria established pursuant to this section;

(b) Notifying an applicant of the determination of the board regarding his application; and

(c) A hearing and appeal by an applicant whose application for qualification has been denied by the board.

4. The board shall, not less than 45 days before advertising for bids concerning a public works project, notify by advertisement in a newspaper of general circulation in this state that the contract for the public works project requires a determination that the applicant is qualified to bid on the contract pursuant to this section.

5. An applicant determined to be qualified by the board pursuant to this section must apply each year to renew his qualification in the manner provided in the regulations adopted pursuant to this section.

6. Any information and data pertaining to the net worth of an applicant which are gathered by or provided to the board for a determination of qualification pursuant to this section are confidential and not open to public inspection.