

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 in certain circumstances. (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 certain contracts for public works; requiring a person to qualify before bidding on such contracts in certain circumstances; and providing other matters properly relating thereto.

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

Section 1. Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. 1. *Except as otherwise provided in subsection 4, a public body shall not accept a bid on a contract for a public work unless the person who submits the bid has qualified pursuant to section 4 of this act to bid on that contract.*

2. *The governing body of each local government that sponsors or finances a public work may adopt criteria for the qualification of bidders on contracts for public works of the local government. If a governing body adopts criteria pursuant to this subsection, the governing body shall use the criteria to determine the qualification of bidders on contracts for public works of the local government.*

3. *The state public works board shall adopt criteria for the qualification of bidders on contracts for public works of this state. The criteria adopted by the state public works board pursuant to this subsection must be used by the state public works board to determine the qualification of bidders on contracts for public works of this state.*

1 **4. A public body may accept a bid on a contract for a public work**
2 **from a person who does not qualify pursuant to section 4 of this act if the**
3 **person holds:**

4 **(a) An unlimited contractor's license issued by the state contractors'**
5 **board in the branch of general engineering contracting or general**
6 **building contracting, or in both branches, and:**

7 **(1) At the time he submits his bid, he provides a bid bond equal to**
8 **10 percent of the amount of the bid; and**

9 **(2) At the time the contract is awarded, he provides a performance**
10 **bond, a labor and material bond, and a guaranty bond, each equal to 100**
11 **percent of the amount of the contract; or**

12 **(b) A contractor's license issued by the state contractors' board that is**
13 **designated in any classification if he:**

14 **(1) Has, in the 5 years immediately preceding the submission of the**
15 **bid, been found to be a responsible contractor in the classification in**
16 **which his contractor's license is designated;**

17 **(2) Provides a bid bond, a performance bond, a guaranty bond and**
18 **a labor and material bond in such amounts as the state public works**
19 **board or governing body may require; and**

20 **(3) Employs a person determined by the state contractors' board to**
21 **be qualified to supervise each classification of construction upon which**
22 **the person submitting the bid is bidding.**

23 **5. Before adopting criteria pursuant to this section, the state public**
24 **works board or a governing body shall hold at least one public hearing to**
25 **solicit and evaluate public opinion regarding the criteria to be adopted.**
26 **Notice of such a hearing must be provided by mail at least 10 days before**
27 **the hearing to:**

28 **(a) Construction trade associations; and**

29 **(b) Labor unions representing trades in the building industry.**

30 **Sec. 3. The criteria adopted by the state public works board or a**
31 **governing body pursuant to section 2 of this act to determine whether an**
32 **applicant is qualified to bid on a contract for a public work:**

33 **1. Must be adopted in such a form that the determination of whether**
34 **an applicant is qualified to bid on a contract for a public work does not**
35 **require or allow the exercise of discretion by any one person.**

36 **2. May include only:**

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

38 **(b) The principal personnel of the applicant;**

39 **(c) Whether the applicant has breached any contracts with a public**
40 **agency or person in this state or any other state; and**

41 **(d) Whether the applicant has been disqualified from being awarded**
42 **the contract pursuant to NRS 338.017 or 338.145.**

1 **Sec. 4. 1.** *Except as otherwise provided in subsection 4 of section 2*
2 *of this act, a person who wishes to qualify as a bidder on a contract for a*
3 *public work must submit an application to the state public works board*
4 *or the governing body.*

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

7 **(a)** *Investigate the applicant to determine whether he is qualified to*
8 *bid on the contract; and*

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

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

16 **4.** *The state public works board or the governing body shall not use*
17 *any criteria other than the criteria described in section 3 of this act in*
18 *determining whether to approve or deny an application.*

19 **5.** *Financial information and other data pertaining to the net worth*
20 *of an applicant which is gathered by or provided to the state public works*
21 *board or a governing body to determine the financial ability of an*
22 *applicant to perform a contract is confidential and not open to public*
23 *inspection.*

24 **Sec. 5. 1.** *If, within 10 days after receipt of the notice denying his*
25 *application, the applicant files a written request for a hearing with the*
26 *state public works board or the governing body of the local government,*
27 *the board or governing body shall set the matter for a hearing within 10*
28 *days after receipt of the request. The hearing must be held not later than*
29 *20 days after the receipt of the request for a hearing.*

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

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

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

41 338.010 As used in this chapter:

42 1. "Day labor" means all cases where public bodies, their officers,
43 agents or employees, hire, supervise and pay the wages thereof directly to a

1 workman or workmen employed by them on public works by the day and
2 not under a contract in writing.

3 2. "Eligible bidder" means a person who was ~~found to be a~~
4 ~~responsible contractor~~ *determined* by a public body which awarded a
5 contract for a public work ~~to be qualified to bid on that contract~~
6 *pursuant to section 4 of this act or was exempt from meeting such*
7 *qualifications pursuant to subsection 4 of section 2 of this act.*

8 3. "Offense" means failing to:

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

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

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

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

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

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

20 (1) Public buildings;

21 (2) Jails and prisons;

22 (3) Public roads;

23 (4) Public highways;

24 (5) Public streets and alleys;

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

27 (7) Publicly owned water mains and sewers;

28 (8) Public parks and playgrounds;

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

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

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

39 6. "Wages" means:

40 (a) The basic hourly rate of pay; and

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

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

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

4 338.143 1. Except as otherwise provided in subsection ~~6~~ 7 and
5 NRS 338.1906 and 338.1907, an agency or political subdivision of ~~the~~
6 **this** state, or a public officer, public employee or other person responsible
7 for awarding a contract for the construction, alteration or repair of a public
8 work, shall not:

9 (a) Commence such a project, for which the estimated cost exceeds
10 \$100,000, unless it advertises in a newspaper of general circulation in ~~the~~
11 **this** state for bids for the project; or

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

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

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

27 (a) ***The requirement that a contractor must be qualified pursuant to***
28 ***section 4 of this act to bid on the contract or must be exempt from***
29 ***meeting such qualifications pursuant to subsection 4 of section 2 of this***
30 ***act; and***

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

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

37 ~~4. Any or all~~

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

40 (a) ***The bidder is not a qualified bidder pursuant to section 4 of this***
41 ***act, unless the bidder is exempt from meeting such qualifications***
42 ***pursuant to subsection 4 of section 2 of this act;***

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

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

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

6 ~~(5.)~~ 6. Before an agency or political subdivision of the state may
7 commence a project subject to the provisions of this section, based upon a
8 determination that the public interest would be served by rejecting any bids
9 received in response to an advertisement for bids, it shall prepare and make
10 available for public inspection a written statement containing:

11 (a) A list of all persons, including supervisors, ~~(who)~~ whom the agency
12 or political subdivision intends to assign to the project, together with their
13 classifications and an estimate of the direct and indirect costs of their labor;

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

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

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

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

24 ~~(6.)~~ 7. This section does not apply to:

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

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

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

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

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

32 338.143 1. Except as otherwise provided in subsection ~~(6.)~~ 7, an
33 agency or political subdivision of ~~(the)~~ this state, or a public officer, public
34 employee or other person responsible for awarding a contract for the
35 construction, alteration or repair of a public work, shall not:

36 (a) Commence such a project, for which the estimated cost exceeds
37 \$100,000, unless it advertises in a newspaper of general circulation in ~~(the)~~
38 this state for bids for the project; or

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

41 2. Except as otherwise provided in subsection ~~(6.)~~ 7, a public body that
42 maintains a list of properly licensed contractors who are interested in
43 receiving offers to bid on public works projects for which the estimated

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

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

11 *(a) The requirement that a contractor must be qualified pursuant to*
12 *section 4 of this act to bid on the contract or must be exempt from*
13 *meeting such qualifications pursuant to subsection 4 of section 2 of this*
14 *act; and*

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

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

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

22 5. Any bids received in response to an advertisement for bids may be
23 rejected if the person responsible for awarding the contract determines that:

24 (a) *The bidder is not a qualified bidder pursuant to section 4 of this*
25 *act, unless the bidder is exempt from meeting such qualifications*
26 *pursuant to subsection 4 of section 2 of this act;*

27 (b) The bidder is not responsive ~~{or responsible;~~
28 ~~-(b)};~~

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

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

32 ~~{5.}~~ 6. Before an agency or political subdivision of the state may
33 commence a project subject to the provisions of this section, based upon a
34 determination that the public interest would be served by rejecting any bids
35 received in response to an advertisement for bids, it shall prepare and make
36 available for public inspection a written statement containing:

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

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

- 1 (c) An estimate of the cost of administrative support for the persons
- 2 assigned to the project;
- 3 (d) An estimate of the total cost of the project; and
- 4 (e) An estimate of the amount of money the agency or political
- 5 subdivision expects to save by rejecting the bids and performing the project
- 6 itself.

7 ~~[6.]~~ 7. This section does not apply to:

- 8 (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;
- 9 (b) Any work of construction, reconstruction, improvement and
- 10 maintenance of highways subject to NRS 408.323 or 408.327;
- 11 (c) Normal maintenance of the property of a school district; or
- 12 (d) The Las Vegas Valley water district created pursuant to chapter 167,
- 13 Statutes of Nevada 1947.

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

15 338.145 1. A public body awarding a contract for a public work shall

16 not award the contract to a person who, at the time of the bid, is not

17 properly licensed under the provisions of chapter 624 of NRS or if the

18 contract would exceed the limit of his license. A subcontractor named by

19 the contractor who is not properly licensed for that portion of the work

20 shall be deemed unacceptable. If the subcontractor is deemed unacceptable,

21 the contractor shall provide an acceptable subcontractor before the award

22 of the contract.

23 2. If, after awarding the contract, the public body discovers that the

24 person to whom the contract was awarded is not licensed, or that the

25 contract would exceed his license, the public body shall reject the bid and

26 may accept the next lowest bid for that public work from a responsive ~~and~~

27 ~~responsible~~ bidder *who was determined by the public body to be a*

28 *qualified bidder pursuant to section 4 of this act or was exempt from*

29 *meeting such qualifications pursuant to subsection 4 of section 2 of this*

30 *act* without requiring that new bids be submitted.

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

32 338.147 1. A public body shall award a contract for a public work to

33 the contractor who submits the best bid.

34 2. Except as otherwise provided in subsection 4 or limited by

35 subsection 5, for the purposes of this section, a contractor who:

36 (a) Has been ~~found~~ *determined by the public body* to be a ~~responsible~~

37 ~~contractor by the public body;~~ *qualified bidder pursuant to section 4 of*

38 *this act or is exempt from meeting such qualifications pursuant to*

39 *subsection 4 of section 2 of this act;* and

40 (b) At the time he submits his bid, provides to the public body proof of

41 the payment of:

42 (1) The sales and use taxes imposed pursuant to chapters 372, 374

43 and 377 of NRS on materials used for construction of not less than \$5,000

1 for each consecutive 12-month period for 60 months immediately
2 preceding the submission of his bid;

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

7 (3) Any combination of ~~such~~ those sales and use taxes and motor
8 vehicle privilege tax,
9 shall be deemed to have submitted a better bid than a competing contractor
10 who has not provided proof of the payment of those taxes if the amount of
11 his bid is not more than 5 percent higher than the amount bid by the
12 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~~ that proof on or before April 1, July 1, September 1 and
16 December 1 rather than with each bid.

17 4. If any federal statute or regulation precludes the granting of federal
18 assistance or reduces the amount of that assistance for a particular public
19 work because of the provisions of subsection 2, those provisions do not
20 apply ~~insofar as their~~ if the application of those provisions would
21 preclude or reduce federal assistance for that work. The provisions of
22 subsection 2 do not apply to any contract for a public work which is
23 expected to cost less than \$250,000.

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

28 6. Except as otherwise provided in subsection 8, if a bid is submitted
29 by a joint venture and one or more of the joint venturers has responsibility
30 for the performance of the contract as described in subsection 7, the
31 provisions of subsection 2 apply only to those joint venturers who have
32 ~~such~~ that responsibility.

33 7. For the purposes of subsection 6, a joint venturer has responsibility
34 for the performance of a contract if he has at least one of the following
35 duties or obligations delegated to him in writing in the contract creating the
36 joint venture:

37 (a) Supplying the labor necessary to perform the contract and paying the
38 labor and any related taxes and benefits;

39 (b) Supplying the equipment necessary to perform the contract and
40 paying any charges related to the equipment;

41 (c) Contracting with and making payments to any subcontractors; or

(d) Performing the recordkeeping for the joint venture and making any payments to persons who provide goods or services related to the performance of the contract.

8. The provisions of subsection 6 do not apply to a joint venture which is formed for the sole purpose of circumventing any of the requirements of this section.

Sec. 11. NRS 341.147 is hereby repealed.

Sec. 12. 1. This section and sections 1 to 7, inclusive, 9, 10 and 11 of this act become effective on October 1, 1999.

2. Section 8 of this act becomes effective at 12:01 a.m. on May 1, 2013.

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.

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