

SENATE BILL NO. 437—SENATORS PORTER AND SCHNEIDER

MARCH 15, 1999

Referred to Committee on Government Affairs

SUMMARY—Makes various changes with respect to eligibility of contractor to receive preference in bidding on public works. (BDR 28-52)

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 ~~omitted material~~ is material to be omitted.

AN ACT relating to public works; making various changes with respect to the eligibility of a contractor to receive a preference in bidding on public works; 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.** NRS 338.010 is hereby amended to read as follows:
- 2 338.010 As used in this chapter:
- 3 1. “Day labor” means all cases where public bodies, their officers,
- 4 agents or employees, hire, supervise and pay the wages thereof directly to a
- 5 workman or workmen employed by them on public works by the day and
- 6 not under a contract in writing.
- 7 2. “Eligible bidder” means a person who ~~was~~ **is** found to be a
- 8 responsible **and responsive** contractor by a public body which ~~awarded a~~
- 9 ~~contract~~ **requests bids** for a public work.
- 10 3. “Offense” means failing to:
- 11 (a) Pay the prevailing wage required pursuant to this chapter;
- 12 (b) Pay the contributions for unemployment compensation required
- 13 pursuant to chapter 612 of NRS; or
- 14 (c) Provide and secure compensation for employees required pursuant to
- 15 chapters 616A to 617, inclusive, of NRS.
- 16 4. **“Prime contractor” means a person who:**
- 17 **(a) Contracts to complete an entire project;**
- 18 **(b) Coordinates all work performed on the entire project;**

1 (c) *Uses his own work force to perform all or a part of the*
2 *construction, repair or reconstruction of the project; and*

3 (d) *Contracts for the services of any subcontractor or independent*
4 *contractor or is responsible for payment to any contracted subcontractors*
5 *or independent contractors.*

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

9 ~~5.1~~ 6. "Public work" means any project for the new construction,
10 repair or reconstruction of:

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

12 (1) Public buildings;

13 (2) Jails and prisons;

14 (3) Public roads;

15 (4) Public highways;

16 (5) Public streets and alleys;

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

19 (7) Publicly owned water mains and sewers;

20 (8) Public parks and playgrounds;

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

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

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

30 ~~6.1~~ 7. "Wages" means:

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

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

35 ~~7.1~~ 8. "Workman" means a skilled mechanic, skilled workman,
36 semiskilled mechanic, semiskilled workman or unskilled workman. *The*
37 *term does not include a "design professional" as that term is defined in*
38 *NRS 338.155.*

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

40 338.147 1. ~~1A~~ *Except as otherwise provided in NRS 338.143, a*
41 public body shall award a contract for a public work to the contractor who
42 submits the best bid.

2. Except as otherwise provided in subsection ~~[4]~~ 8 or limited by subsection ~~[5.]~~ 9, for the purposes of this section, a contractor who:

(a) Has been found to be a responsible *and responsive* contractor by the public body; and

(b) At the time he submits his bid, provides to the public body ~~[proof of the payment of:]~~ *a copy of a certificate of eligibility to receive a preference in bidding on public works issued to him by the state contractors' board pursuant to subsection 3, shall be deemed to have submitted a better bid than a competing contractor who has not provided a copy of such a valid certificate of eligibility if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.*

3. *The state contractors' board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the board an affidavit from a certified public accountant setting forth that the general contractor has:*

(a) *Paid:*

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction *in this state, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this state that is managed by the Federal Government or is on an Indian reservation or Indian colony,* of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of ~~[his bid;]~~ *the affidavit from the certified public accountant;*

(2) The motor vehicle privilege tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business *in this state* of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of ~~[his bid;]~~ *the affidavit from the certified public accountant;* or

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

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

~~—4.]~~

;

or

1 ***(b) Acquired, by inheritance, gift or transfer through a stock option***
2 ***plan for employees, all the assets and liabilities of a viable, operating***
3 ***construction firm that possesses a:***

4 ***(1) License as a general contractor pursuant to the provisions of***
5 ***chapter 624 of NRS; and***

6 ***(2) Certificate of eligibility to receive a preference in bidding on***
7 ***public works.***

8 ***4. For the purposes of complying with the requirements set forth in***
9 ***paragraph (a) of subsection 3, a general contractor shall be deemed to***
10 ***have paid:***

11 ***(a) Sales and use taxes and motor vehicle privilege taxes paid in this***
12 ***state by an affiliate or parent company of the contractor, if the affiliate***
13 ***or parent company is also a general contractor; and***

14 ***(b) Sales and use taxes paid in this state by a joint venture in which***
15 ***the contractor is a participant, in proportion to the amount of interest the***
16 ***contractor has in the joint venture.***

17 ***5. A contractor who has received a certificate of eligibility to receive***
18 ***a preference in bidding on public works from the state contractors' board***
19 ***pursuant to subsection 3 shall, at the time for the annual renewal of his***
20 ***contractors' license pursuant to NRS 624.283, submit to the board an***
21 ***affidavit from a certified public accountant setting forth that the***
22 ***contractor has, during the immediately preceding 12 months, paid the***
23 ***taxes required pursuant to paragraph (a) of subsection 3 to maintain his***
24 ***eligibility to hold such a certificate.***

25 ***6. A contractor who fails to submit an affidavit to the board pursuant***
26 ***to subsection 5 ceases to be eligible to receive a preference in bidding on***
27 ***public works unless he reapplies for and receives a certificate of***
28 ***eligibility pursuant to subsection 3.***

29 ***7. If a contractor who applies to the state contractors' board for a***
30 ***certificate of eligibility to receive a preference in bidding on public works***
31 ***submits false information to the board regarding the required payment of***
32 ***taxes, the contractor is not eligible to receive a preference in bidding on***
33 ***public works for a period of 5 years after the date on which the board***
34 ***becomes aware of the submission of the false information.***

35 ***8. If any federal statute or regulation precludes the granting of federal***
36 ***assistance or reduces the amount of that assistance for a particular public***
37 ***work because of the provisions of subsection 2, those provisions do not***
38 ***apply insofar as their application would preclude or reduce federal***
39 ***assistance for that work. The provisions of subsection 2 do not apply to any***
40 ***contract for a public work which is expected to cost less than \$250,000.***

41 ~~***5. Except as otherwise provided in subsection 6, if***~~

42 ***9. If a bid is submitted by two or more contractors as a joint venture or***
43 ***by one of them as a joint venturer, the provisions of subsection 2 apply only***

1 if both or all of the joint venturers separately meet the requirements of that
2 subsection.

3 ~~{6.—Except as otherwise provided in subsection 8, if a bid is submitted~~
4 ~~by a joint venture and one or more of the joint venturers has responsibility~~
5 ~~for the performance of the contract as described in subsection 7, the~~
6 ~~provisions of subsection 2 apply only to those joint venturers who have~~
7 ~~such responsibility.~~

8 ~~—7.—For the purposes of subsection 6, a joint venturer has responsibility~~
9 ~~for the performance of a contract if he has at least one of the following~~
10 ~~duties or obligations delegated to him in writing in the contract creating the~~
11 ~~joint venture:~~

12 ~~—(a) Supplying the labor necessary to perform the contract and paying the~~
13 ~~labor and any related taxes and benefits;~~

14 ~~—(b) Supplying the equipment necessary to perform the contract and~~
15 ~~paying any charges related to the equipment;~~

16 ~~—(c) Contracting with and making payments to any subcontractors; or~~

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

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

23 *10. The state contractors' board shall adopt regulations and may*
24 *assess reasonable fees relating to the certification of contractors for a*
25 *preference in bidding on public works.*

26 *11. A person or entity who believes that a contractor wrongfully*
27 *holds a certificate of eligibility to receive a preference in bidding on*
28 *public works may challenge the validity of the certificate by filing a*
29 *written objection with the public body to which the contractor has*
30 *submitted a bid or proposal on a contract for the completion of a public*
31 *work. A written objection authorized pursuant to this subsection must:*

32 *(a) Set forth proof or substantiating evidence to support the belief of*
33 *the person or entity that the contractor wrongfully holds a certificate of*
34 *eligibility to receive a preference in bidding on public works; and*

35 *(b) Be filed with the public body at or after the time at which the*
36 *contractor submitted the bid or proposal to the public body and before*
37 *the time at which the public body awards the contract for which the bid*
38 *or proposal was submitted.*

39 *12. If a public body receives a written objection pursuant to*
40 *subsection 11, the public body shall determine whether the objection is*
41 *accompanied by the proof or substantiating evidence required pursuant*
42 *to paragraph (a) of that subsection. If the public body determines that the*
43 *objection is not accompanied by the required proof or substantiating*

1 *evidence, the public body shall dismiss the objection and may proceed*
2 *immediately to award the contract. If the public body determines that the*
3 *objection is accompanied by the required proof or substantiating*
4 *evidence, the public body shall determine whether the contractor*
5 *qualifies for the certificate pursuant to the provisions of this section and*
6 *may proceed to award the contract accordingly.*