

SENATE BILL NO. 474—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF PUBLIC WORKS BOARD)

MARCH 18, 1999

Referred to Committee on Government Affairs

SUMMARY—Revises procedures for awarding to contractor contract for services which assist architect in design of project of capital improvement and for awarding corresponding construction contract. (BDR 28-736)

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; authorizing the state public works board to let to a contractor a contract for services which assist an architect in the design of a project of capital improvement without the approval of the interim finance committee or the legislature; authorizing the board to establish procedures for awarding such a contract and the corresponding construction contract for the project without the use of competitive bidding; 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 338.143 is hereby amended to read as follows:
2 338.143 1. Except as otherwise provided in subsection 6 and NRS
3 338.1906 and 338.1907, an agency or political subdivision of the state, or a
4 public officer, public employee or other person responsible for awarding a
5 contract for the construction, alteration or repair of a public work, shall not:
6 (a) Commence such a project, for which the estimated cost exceeds
7 \$100,000, unless it advertises in a newspaper of general circulation in the
8 state for bids for the project; or
9 (b) Divide such a project into separate portions to avoid the
10 requirements of paragraph (a).
11 2. Except as otherwise provided in subsection 6, a public body that
12 maintains a list of properly licensed contractors who are interested in
13 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. Approved plans and specifications for the bids must be on file at a
10 place and time stated in the advertisement for the inspection of all persons
11 desiring to bid thereon and for other interested persons. Contracts for the
12 project must be awarded on the basis of bids received.

13 4. Any or all bids received in response to an advertisement for bids
14 may be rejected if the person responsible for awarding the contract
15 determines that:

- 16 (a) The bidder is not responsive or responsible;
17 (b) The quality of the services, materials, equipment or labor offered
18 does not conform to the approved plan or specifications; or
19 (c) The public interest would be served by such a rejection.

20 5. Before an agency or political subdivision of the state may commence
21 a project subject to the provisions of this section, based upon a
22 determination that the public interest would be served by rejecting any bids
23 received in response to an advertisement for bids, it shall prepare and make
24 available for public inspection a written statement containing:

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

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

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

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

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

38 6. This section does not apply to:

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

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

42 (c) Normal maintenance of the property of a school district; ~~for~~

(d) The Las Vegas Valley water district created pursuant to chapter 167, Statutes of Nevada 1947 ~~H~~; or

(e) A contract awarded pursuant to the provisions of NRS 341.161.

Sec. 2. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 6, an agency or political subdivision of the 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 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, 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. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the project must be awarded on the basis of bids received.

4. Any or all bids received in response to an advertisement for bids may be rejected if the person responsible for awarding the contract determines that:

(a) The bidder is not responsive or responsible;

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

(c) The public interest would be served by such a rejection.

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

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

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

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

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

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

6. This section does not apply to:

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

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

(c) Normal maintenance of the property of a school district; ~~for~~

(d) The Las Vegas Valley water district created pursuant to chapter 167, Statutes of Nevada 1947 ~~to~~; or

(e) A contract awarded pursuant to the provisions of NRS 341.161.

Sec. 3. NRS 338.147 is hereby amended to read as follows:

338.147 1. ~~(A)~~ *Except as otherwise provided in NRS 341.161, a* public body shall award a contract for a public work to the contractor who submits the best bid.

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

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

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

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

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

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

5 4. If any federal statute or regulation precludes the granting of federal
6 assistance or reduces the amount of that assistance for a particular public
7 work because of the provisions of subsection 2, those provisions do not
8 apply insofar as their application would preclude or reduce federal
9 assistance for that work. The provisions of subsection 2 do not apply to any
10 contract for a public work which is expected to cost less than \$250,000.

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

15 6. Except as otherwise provided in subsection 8, if a bid is submitted
16 by a joint venture and one or more of the joint venturers has responsibility
17 for the performance of the contract as described in subsection 7, the
18 provisions of subsection 2 apply only to those joint venturers who have
19 such responsibility.

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

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

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

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

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

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

35 **Sec. 4.** NRS 341.090 is hereby amended to read as follows:

36 341.090 1. Except as *otherwise* provided in subsections 2 and 3, the
37 board may make expenditures necessary to carry into effect the purposes of
38 its acts.

39 2. All expenditures made by the board must be within the limits of the
40 appropriation provided for the use of the board, or provided from money
41 appropriated or authorized for expenditure by the legislature for
42 construction work or major repairs.

1 3. ~~{The}~~ *Except as otherwise provided in NRS 341.161, the* board
2 may, with the approval of the interim finance committee when the
3 legislature is not in regular or special session, or with the approval of the
4 legislature by concurrent resolution when the legislature is in regular or
5 special session, expend money obtained from any source for advance
6 planning of projects of capital improvement. For the purposes of this
7 subsection, "advance planning" means the preparation of floor plans, cross
8 sections, elevations, outlines of specifications, estimates of cost by category
9 of work and perspective renderings of the project.

10 **Sec. 5.** NRS 341.145 is hereby amended to read as follows:

11 341.145 The board:

12 1. After consulting with the interim finance committee, has final
13 authority for approval as to the architecture of all buildings, plans, designs,
14 types of construction, major repairs and designs of landscaping.

15 2. Shall determine whether any rebates are available from a public
16 utility for installing devices in any state building which are designed to
17 decrease the use of energy in the building. If such a rebate is available, the
18 board shall apply for the rebate.

19 3. ~~{Shall}~~ *Except as otherwise provided in NRS 341.161, shall* solicit
20 bids for and let all contracts for new construction or major repairs.

21 4. May negotiate with the lowest responsible bidder on any contract to
22 obtain a revised bid if:

23 (a) The bid is less than the appropriation made by the legislature for that
24 building project; and

25 (b) The bid does not exceed the relevant budget item for that building
26 project as established by the board by more than 10 percent.

27 5. May reject any or all bids.

28 6. After the contract is let, shall supervise and inspect construction and
29 major repairs. The cost of supervision and inspection must be financed
30 from the capital construction program approved by the legislature.

31 7. May authorize change orders, before or during construction:

32 (a) In any amount, where the change represents a reduction in the
33 awarded contract price.

34 (b) Not to exceed in the aggregate 10 percent of the total awarded
35 contract price, where the change represents an increase in that price.

36 8. Has final authority to accept each building as completed or to
37 require necessary alterations to conform to the contract, and to file the
38 notice of completion.

39 **Sec. 6.** NRS 341.147 is hereby amended to read as follows:

40 341.147 1. The board shall adopt regulations establishing the criteria
41 and procedures for determining the qualification of applicants to be bidders
42 on contracts for public works projects of this state. ~~{The}~~ *Except as*

1 *otherwise provided in NRS 341.161, the* board shall use the criteria and
2 procedures to award contracts for public works projects of this state.

3 2. The criteria adopted by the board pursuant to subsection 1 must
4 include, without limitation, an evaluation of:

5 (a) The financial ability of the applicant to provide the necessary bond
6 for the contract;

7 (b) The principal personnel of the applicant;

8 (c) The performance history of the applicant concerning other recent
9 projects completed by the applicant in this state;

10 (d) Any breach of contract of the applicant on a prior contract, other
11 than a breach for legitimate cause;

12 (e) Whether the applicant has ever been disqualified from being
13 awarded a contract pursuant to NRS 338.017 or 338.145; and

14 (f) The safety program and safety record of the applicant.

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

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

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

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

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

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

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

36 **Sec. 7.** NRS 341.148 is hereby amended to read as follows:

37 341.148 1. Except as *otherwise* provided in subsection 2 ~~H~~ and

38 *NRS 341.161*, the board shall advertise in a newspaper of general
39 circulation in the State of Nevada for separate sealed bids for each
40 construction project. Approved plans and specifications for the
41 construction must be on file at a place and time stated in the advertisement
42 for the inspection of all persons desiring to bid thereon and for other
43 interested persons. The board may accept bids on either the whole or a part

1 of the construction, equipment and furnishings, and may let separate
2 contracts for different and separate portions of any project, or a
3 combination contract for structural, mechanical and electrical construction
4 if savings will result to the lowest bidder.

5 2. The board is not required to advertise for sealed bids for
6 construction projects if the estimated cost is less than \$25,000, but the
7 board may solicit firm written bids from not less than two licensed
8 contractors doing business in the area and may award the contract to the
9 lowest bidder or reject all bids.

10 **Sec. 8.** NRS 341.161 is hereby amended to read as follows:

11 341.161 1. The board may ~~[-, with the approval of the interim finance~~
12 ~~committee when the legislature is not in regular or special session, or with~~
13 ~~the approval of the legislature by concurrent resolution when the legislature~~
14 ~~is in regular or special session,]~~ let to a contractor licensed under chapter
15 624 of NRS a contract for services which assist the architect in the design
16 of a project of capital improvement. The board shall for that purpose
17 participate in the development of plans, outlines of specifications and
18 estimates of costs.

19 2. The board shall adopt regulations establishing procedures for:

20 (a) The determination of the qualifications of contractors ~~[to bid]~~ **who**
21 **may compete** for contracts for services described in subsection 1.

22 (b) The ~~[bidding]~~ **selection of contractors** and awarding of such
23 contracts, subject to the provisions of subsection 3.

24 (c) The awarding of construction contracts, subject to the provisions of
25 subsection 4, based on a final cost of the project which the contractor
26 guarantees will not be exceeded.

27 (d) The scheduling and controlling of projects.

28 3. ~~[Bids on contracts]~~ **Contracts** for services which assist the architect
29 in the design of a project of capital improvement must state separately the
30 contractor's cost for:

31 (a) Assisting the architect in the design of the project.

32 (b) Obtaining all bids for subcontracts.

33 (c) Administering the construction contract.

34 4. A contractor who is:

35 (a) Qualified under the regulations of the board to ~~[bid]~~ **compete** for a
36 contract for services described in subsection 1; and

37 (b) Awarded that contract,
38 is entitled to be awarded the construction contract for the project if his
39 work under the contract for services is satisfactory to the board and he
40 guarantees a final cost for the project which the board is willing to accept.

41 5. A person who furnishes services under a contract awarded pursuant
42 to subsection 1 is a contractor subject to all provisions pertaining to a
43 contractor in Title 28 of NRS.

1 **Sec. 9.** 1. This section and sections 1 and 3 to 8, inclusive, of this act
2 become effective on October 1, 1999.

3 2. Section 2 of this act becomes effective at 12:01 a.m. on May 1,
4 2013.

5 3. Section 1 of this act expires by limitation on May 1, 2013.

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