

Assembly Bill No. 461—Assemblyman Parks

CHAPTER.....

AN ACT relating to public works; eliminating the provision providing an exemption from qualifying to bid for a public work of this state; requiring the state public works board to adopt by regulation an additional criteria for the qualification of bidders on a contract for a public work of this state; authorizing the state public works board and the governing body of a local government to determine whether an applicant is qualified to bid by project or for a specified period; allowing the governing body of a local government that does not adopt criteria for the qualification of bidders to accept a bid on a contract for a public work from certain persons; 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. NRS 338.1373 is hereby amended to read as follows:

338.1373 1. A local government shall award a contract for the construction, alteration or repair of a public work pursuant to the provisions of:

- (a) NRS ~~338.1375~~ **338.1377** to 338.1389, inclusive; or
- (b) NRS 338.143, 338.145 and 338.147.

2. The provisions of NRS 338.1375 to 338.1383, inclusive, do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the department of transportation pursuant to NRS 408.313 to 408.433, inclusive, and section 1 of *Assembly Bill No. 86 of this ~~act~~ session.*

Sec. 2. NRS 338.1375 is hereby amended to read as follows:

338.1375 1. ~~{Except as otherwise provided in NRS 338.1383, a public body}~~ **The state public works board** shall not accept a bid on a contract for a public work unless the person who submits the bid has qualified pursuant to NRS 338.1379 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 **by regulation** 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}~~ **section** must be used by the state public works board to determine the qualification of bidders on contracts for public works of this state.

3. The criteria adopted by the state public works board pursuant to this section:

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

(b) May include only:

- (1) The financial ability of the applicant to perform a contract;**
- (2) The principal personnel of the applicant;**

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

(4) *Whether the applicant has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.1387; and*

(5) *The performance history of the applicant concerning other recent, similar contracts, if any, completed by the applicant.*

~~{4. Before adopting criteria pursuant to this section, the state public works board or a governing body shall hold at least one public hearing to solicit and evaluate public opinion regarding the criteria to be adopted. Notice of such a hearing must be provided by mail at least 10 days before the hearing to:~~

~~— (a) Construction trade associations; and~~

~~— (b) Labor unions representing trades in the building industry. }~~

Sec. 3. NRS 338.1377 is hereby amended to read as follows:

338.1377 1. *Except as otherwise provided in NRS 338.1383, the governing body of each local government that sponsors or finances a public work shall adopt criteria for the qualification of bidders on contracts for public works of the local government. The governing body shall use the criteria to determine the qualification of bidders on contracts for public works of the local government.*

2. *Before adopting criteria pursuant to this section, the governing body of a local government shall hold at least one public hearing to solicit and evaluate public opinion regarding the criteria to be adopted. Notice of such a hearing must be provided by mail at least 10 days before the hearing to:*

(a) Construction trade associations in this state; and

(b) Labor unions representing trades in the building industry in this state.

3. The criteria adopted by ~~{the state public works board or}~~ a governing body pursuant to ~~{NRS 338.1375}~~ *this section* to determine whether an applicant is qualified to bid on a contract for a public work:

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

~~{2.}~~ (b) May include only:

~~{a)}~~ (1) The financial ability of the applicant to perform ~~{the}~~ a contract;

~~{b)}~~ (2) The principal personnel of the applicant;

~~{c)}~~ (3) Whether the applicant has breached any contracts with a public agency or person in this state or any other state; and

~~{d)}~~ (4) Whether the applicant has been disqualified from being awarded ~~{the}~~ a contract pursuant to NRS 338.017 or 338.1387.

Sec. 4. NRS 338.1379 is hereby amended to read as follows:

338.1379 1. Except as otherwise provided in NRS 338.1383, a person who wishes to qualify as a bidder on a contract for a public work must submit an application to the state public works board or the governing body.

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

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

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

3. The state public works board or the governing body shall notify each applicant in writing of its determination. If an application is denied, the notice must set forth the reasons for the denial and inform the applicant of his right to a hearing pursuant to NRS 338.1381.

4. *The state public works board or the governing body of a local government may determine an applicant is qualified to bid:*

(a) On a specific project;

(b) On more than one project over a period of 12 months; or

(c) On more than one project over a period of 24 months.

5. *The state public works board shall not use any criteria other than criteria adopted by regulation pursuant to NRS 338.1375 in determining whether to approve or deny an application.*

6. The ~~state public works board or the~~ governing body *of a local government* shall not use any criteria other than the criteria described in NRS 338.1377 in determining whether to approve or deny an application.

~~§ 7.~~ Financial information and other data pertaining to the net worth of an applicant which is gathered by or provided to the state public works board or a governing body to determine the financial ability of an applicant to perform a contract is confidential and not open to public inspection.

Sec. 5. NRS 338.1383 is hereby amended to read as follows:

338.1383 ~~{A public body may}~~ *If a local government does not adopt criteria for the qualification of bidders on a public work pursuant to NRS 338.1377, the governing body may only* accept a bid on a contract for a public work from a person who ~~{does not qualify pursuant to NRS 338.1379 if the person}~~ holds:

1. An unlimited contractor's license issued by the state contractors' board in the branch of general engineering contracting or general building contracting, or in both branches, and:

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

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

2. A contractor's license issued by the state contractors' board that is designated in any classification if he:

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

(b) Provides a bid bond, a performance bond, a guaranty bond, and a labor and material bond in such amounts as the ~~state public works board or~~ governing body may require; and

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

Sec. 6. This bill becomes effective on July 1, 2001.