

ASSEMBLY BILL NO. 562—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 26, 2001

Referred to Committee on Government Affairs

SUMMARY—Revises certain provisions concerning qualification of contractors on public works projects. (BDR 28-715)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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; requiring applicants for qualification to bid on public works to have a safety program established at the time of application; requiring such applicants to meet certain licensing requirements at the time of application; requiring the state public works board or governing body to consider certain factors in determining whether an applicant is qualified to bid on a public work; 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 is:
8 (a) Found to be a responsible and responsive contractor by a local
9 government which requests bids for a public work in accordance with
10 paragraph (b) of subsection 1 of NRS 338.1373; or
11 (b) Determined by a public body which awarded a contract for a public
12 work pursuant to NRS 338.1375 to 338.1389, inclusive, to be qualified to
13 bid on that contract pursuant to NRS 338.1379 or was exempt from
14 meeting such qualifications pursuant to NRS 338.1383.
15 3. “Local government” means every political subdivision or other
16 entity which has the right to levy or receive money from ad valorem or
17 other taxes or any mandatory assessments, and includes, without limitation,
18 counties, cities, towns, boards, school districts and other districts organized
19 pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS,
20 NRS 450.550 to 450.750, inclusive, and any agency or department of a



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- 1 county or city which prepares a budget separate from that of the parent
2 political subdivision.
- 3 4. "Offense" means failing to:
- 4 (a) Pay the prevailing wage required pursuant to this chapter;
- 5 (b) Pay the contributions for unemployment compensation required
6 pursuant to chapter 612 of NRS; or
- 7 (c) Provide and secure compensation for employees required pursuant
8 to chapters 616A to 617, inclusive, of NRS.
- 9 5. "Prime contractor" means a person who:
- 10 (a) Contracts to complete an entire project;
- 11 (b) Coordinates all work performed on the entire project;
- 12 (c) Uses his own work force to perform all or a part of the construction,
13 repair or reconstruction of the project; and
- 14 (d) Contracts for the services of any subcontractor or independent
15 contractor or is responsible for payment to any contracted subcontractors or
16 independent contractors.
- 17 6. "Public body" means the state, county, city, town, school district or
18 any public agency of this state or its political subdivisions sponsoring or
19 financing a public work.
- 20 7. "Public work" means any project for the new construction, repair or
21 reconstruction of:
- 22 (a) A project financed in whole or in part from public money for:
- 23 (1) Public buildings;
- 24 (2) Jails and prisons;
- 25 (3) Public roads;
- 26 (4) Public highways;
- 27 (5) Public streets and alleys;
- 28 (6) Public utilities which are financed in whole or in part by public
29 money;
- 30 (7) Publicly owned water mains and sewers;
- 31 (8) Public parks and playgrounds;
- 32 (9) Public convention facilities which are financed at least in part
33 with public funds; and
- 34 (10) Any other publicly owned works and property whose cost as a
35 whole exceeds \$20,000. Each separate unit that is a part of a project is
36 included in the cost of the project to determine whether a project meets that
37 threshold.
- 38 (b) A building for the University and Community College System of
39 Nevada of which 25 percent or more of the costs of the building as a whole
40 are paid from money appropriated by this state or from federal money.
- 41 8. *"Specialty contractor" means a contractor whose operations as*
42 *such are the performance of construction work requiring special skill*
43 *and whose principal contracting business involves the use of specialized*
44 *building trades or crafts.*
- 45 9. "Wages" means:
- 46 (a) The basic hourly rate of pay; and
- 47 (b) The amount of pension, health and welfare, vacation and holiday
48 pay, the cost of apprenticeship training or other similar programs or other
49 bona fide fringe benefits which are a benefit to the workman.



1 ~~19-1~~ 10. "Workman" means a skilled mechanic, skilled workman,
2 semiskilled mechanic, semiskilled workman or unskilled workman. The
3 term does not include a "design professional" as that term is defined in
4 NRS 338.155.

5 **Sec. 2.** NRS 338.1377 is hereby amended to read as follows:

6 338.1377 1. The criteria adopted by the state public works board or a
7 governing body pursuant to NRS 338.1375 to determine whether an
8 applicant is qualified to bid on a contract for a public work:

9 ~~11-1~~ (a) Must be adopted in such a form that the determination of
10 whether an applicant is qualified to bid on a contract for a public work does
11 not require or allow the exercise of discretion by any one person.

12 ~~12-1~~ (b) *Must give consideration to:*

13 (1) *The experience that is relevant to the proposed public works*
14 *project of the principal personnel of the applicant;*

15 (2) *Any civil judgment or criminal conviction against the principal*
16 *personnel of the applicant; and*

17 (3) *Any records relating to a violation or an alleged violation of a*
18 *law regarding the prohibition of discrimination in employment, wage and*
19 *hour standards, occupational safety and health standards or labor*
20 *relations.*

21 (c) May include ~~only:~~

22 ~~(a)~~ :

23 (1) The financial ability of the applicant to perform the contract;

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

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

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

29 2. *As used in this section:*

30 (a) *"Principal personnel" includes, without limitation, a chief*
31 *executive officer, a chief financial officer, a chief operations officer, a*
32 *project manager, a project superintendent, a foreman and a person who*
33 *owns any part of the applicant.*

34 (b) *"Records" means any evidence or documentation that the state*
35 *public works board or a governing body determines is relevant and*
36 *credible.*

37 **Sec. 3.** NRS 338.1379 is hereby amended to read as follows:

38 338.1379 1. Except as otherwise provided in NRS 338.1383, a
39 person who wishes to qualify as a bidder on a contract for a public work
40 must ~~submit~~ :

41 (a) *Submit* an application to the state public works board or the
42 governing body ~~1~~;

43 (b) *Have in force a written safety program established pursuant to the*
44 *provisions of NRS 618.383; and*

45 (c) *Meet the applicable requirements for licensure established by the*
46 *state contractors' board pursuant to chapter 624 of NRS.*

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



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- 1 (a) Investigate the applicant to determine whether he is qualified to bid
2 on the contract; ~~and~~
3 (b) *Consider information concerning the criteria described in NRS*
4 *338.1377 regarding the applicant that it receives from any person; and*
5 (c) After conducting the investigation, determine whether the applicant
6 is qualified to bid on the contract. The determination must be made within
7 30 days after receipt of the application.
8 3. The state public works board or the governing body shall notify
9 each applicant in writing of its determination. If an application is denied,
10 the notice must set forth the reasons for the denial and inform the applicant
11 of his right to a hearing pursuant to NRS 338.1381.
12 4. The state public works board or the governing body shall not use
13 any criteria other than the criteria described in NRS 338.1377 in
14 determining whether to approve or deny an application.
15 5. Financial information and other data pertaining to the net worth of
16 an applicant which is gathered by or provided to the state public works
17 board or a governing body to determine the financial ability of an applicant
18 to perform a contract is confidential and not open to public inspection.
19 6. *The state public works board or a governing body may:*
20 *(a) Maintain a list of the applicants whom it disqualifies for a project.*
21 *(b) Qualify an applicant for a single job or on an annual basis.*
22 7. *The state public works board or a governing body may appoint a*
23 *committee to advise the state public works board or the governing body*
24 *concerning the qualification of an applicant pursuant to this section.*
25 8. *As used in this section, "applicant" includes a general contractor,*
26 *a subcontractor or a specialty contractor who makes an application*
27 *pursuant to this section.*
28 **Sec. 4.** 1. This section and sections 2 and 3 of this act become
29 effective on October 1, 2001.
30 2. Section 1 of this act becomes effective at 12:01 a.m. on October 1,
31 2003.

