

SENATE BILL NO. 94—SENATOR O'DONNELL

FEBRUARY 9, 2001

Referred to Committee on Government Affairs

SUMMARY—Prohibits state contractors' board from issuing certificate of preference in bidding on public works to persons not licensed as general contractor. (BDR 28-955)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public works; prohibiting the state contractors' board from issuing a certificate of preference in bidding on public works to persons not licensed as a general contractor; 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. "Design-build contract" means a contract between a public body
8 and a design-build team in which the design-build team agrees to design
9 and construct a public work.
10 3. "Design-build team" means an entity that consists of:
11 (a) At least one person who is licensed as a general engineering
12 contractor or a general building contractor pursuant to chapter 624 of NRS;
13 and
14 (b) For a public work that consists of:
15 (1) A building and its site, at least one person who holds a certificate
16 of registration to practice architecture pursuant to chapter 623 of NRS.
17 (2) Anything other than a building and its site, at least one person
18 who holds a certificate of registration to practice architecture pursuant to
19 chapter 623 of NRS or is licensed as a professional engineer pursuant to
20 chapter 625 of NRS.
21 4. "Design professional" means a person with a professional license or
22 certificate issued pursuant to chapter 623, 623A or 625 of NRS.



1 5. "Eligible bidder" means a person who is:

2 (a) Found to be a responsible and responsive contractor by a local
3 government which requests bids for a public work in accordance with
4 paragraph (b) of subsection 1 of NRS 338.1373; or

5 (b) Determined by a public body which awarded a contract for a public
6 work pursuant to NRS 338.1375 to 338.1389, inclusive, to be qualified to
7 bid on that contract pursuant to NRS 338.1379 or was exempt from
8 meeting such qualifications pursuant to NRS 338.1383.

9 6. *"General contractor" means a person who is licensed to conduct
10 business in one or both of the following branches of the contracting
11 business:*

12 *(a) General engineering contracting, as described in subsection 2 of
13 NRS 624.215.*

14 *(b) General building contracting, as described in subsection 3 of NRS
15 624.215.*

16 7. "Local government" means every political subdivision or other
17 entity which has the right to levy or receive money from ad valorem or
18 other taxes or any mandatory assessments, and includes, without limitation,
19 counties, cities, towns, boards, school districts and other districts organized
20 pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS,
21 NRS 450.550 to 450.750, inclusive, and any agency or department of a
22 county or city which prepares a budget separate from that of the parent
23 political subdivision.

24 ~~17-1~~ 8. "Offense" means failing to:

25 (a) Pay the prevailing wage required pursuant to this chapter;
26 (b) Pay the contributions for unemployment compensation required
27 pursuant to chapter 612 of NRS; or

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

30 ~~18-1~~ 9. "Prime contractor" means a person who:

31 (a) Contracts to construct an entire project;
32 (b) Coordinates all work performed on the entire project;
33 (c) Uses his own work force to perform all or a part of the construction,
34 repair or reconstruction of the project; and

35 (d) Contracts for the services of any subcontractor or independent
36 contractor or is responsible for payment to any contracted subcontractors or
37 independent contractors.

38 ~~19-1~~ 10. "Public body" means the state, county, city, town, school
39 district or any public agency of this state or its political subdivisions
40 sponsoring or financing a public work.

41 ~~110-1~~ 11. "Public work" means any project for the new construction,
42 repair or reconstruction of:

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

- 44 (1) Public buildings;
45 (2) Jails and prisons;
46 (3) Public roads;
47 (4) Public highways;
48 (5) Public streets and alleys;



1 (6) Public utilities which are financed in whole or in part by public
2 money;
3 (7) Publicly owned water mains and sewers;
4 (8) Public parks and playgrounds;
5 (9) Public convention facilities which are financed at least in part
6 with public funds; and
7 (10) All other publicly owned works and property whose cost as a
8 whole exceeds \$20,000. Each separate unit that is a part of a project is
9 included in the cost of the project to determine whether a project meets that
10 threshold.
11 (b) A building for the University and Community College System of
12 Nevada of which 25 percent or more of the costs of the building as a whole
13 are paid from money appropriated by this state or from federal money.
14 ~~11.1~~ 12. "Specialty contractor" means a contractor whose operations
15 as such are the performance of construction work requiring special skill
16 and whose principal contracting business involves the use of specialized
17 building trades or crafts.
18 ~~11.2~~ 13. "Stand-alone underground utility project" means an
19 underground utility project that is not integrated into a larger project,
20 including, without limitation:
21 (a) An underground sewer line or an underground pipeline for the
22 conveyance of water, including facilities appurtenant thereto; and
23 (b) A project for the construction or installation of a storm drain,
24 including facilities appurtenant thereto,
25 that is not located at the site of a public work for the design and
26 construction of which a public body is authorized to contract with a design-
27 build team pursuant to subsection 2 of NRS 338.1711.
28 ~~11.3~~ 14. "Wages" means:
29 (a) The basic hourly rate of pay; and
30 (b) The amount of pension, health and welfare, vacation and holiday
31 pay, the cost of apprenticeship training or other similar programs or other
32 bona fide fringe benefits which are a benefit to the workman.
33 ~~11.4~~ 15. "Workman" means a skilled mechanic, skilled workman,
34 semiskilled mechanic, semiskilled workman or unskilled workman. The
35 term does not include a design professional.
36 **Sec. 2.** NRS 338.010 is hereby amended to read as follows:
37 338.010 As used in this chapter:
38 1. "Day labor" means all cases where public bodies, their officers,
39 agents or employees, hire, supervise and pay the wages thereof directly to a
40 workman or workmen employed by them on public works by the day and
41 not under a contract in writing.
42 2. "Eligible bidder" means a person who is:
43 (a) Found to be a responsible and responsive contractor by a local
44 government which requests bids for a public work in accordance with
45 paragraph (b) of subsection 1 of NRS 338.1373; or
46 (b) Determined by a public body which awarded a contract for a public
47 work pursuant to NRS 338.1375 to 338.1389, inclusive, to be qualified to
48 bid on that contract pursuant to NRS 338.1379 or was exempt from
49 meeting such qualifications pursuant to NRS 338.1383.



1 3. *“General contractor” means a person who is licensed to conduct*
2 *business in one or both of the following branches of the contracting*
3 *business:*

4 (a) *General engineering contracting, as described in subsection 2 of*
5 *NRS 624.215.*

6 (b) *General building contracting, as described in subsection 3 of NRS*
7 *624.215.*

8 4. “Local government” means every political subdivision or other
9 entity which has the right to levy or receive money from ad valorem or
10 other taxes or any mandatory assessments, and includes, without limitation,
11 counties, cities, towns, boards, school districts and other districts organized
12 pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS,
13 NRS 450.550 to 450.750, inclusive, and any agency or department of a
14 county or city which prepares a budget separate from that of the parent
15 political subdivision.

16 ~~14-1~~ 5. “Offense” means failing to:

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

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

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

22 ~~15-1~~ 6. “Prime contractor” means a person who:

23 (a) Contracts to complete an entire project;

24 (b) Coordinates all work performed on the entire project;

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

27 (d) Contracts for the services of any subcontractor or independent
28 contractor or is responsible for payment to any contracted subcontractors or
29 independent contractors.

30 ~~16-1~~ 7. “Public body” means the state, county, city, town, school
31 district or any public agency of this state or its political subdivisions
32 sponsoring or financing a public work.

33 ~~17-1~~ 8. “Public work” means any project for the new construction,
34 repair or reconstruction of:

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

36 (1) Public buildings;

37 (2) Jails and prisons;

38 (3) Public roads;

39 (4) Public highways;

40 (5) Public streets and alleys;

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

43 (7) Publicly owned water mains and sewers;

44 (8) Public parks and playgrounds;

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

47 (10) Any other publicly owned works and property whose cost as a
48 whole exceeds \$20,000. Each separate unit that is a part of a project is



1 included in the cost of the project to determine whether a project meets that
2 threshold.

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

6 ~~18-1~~ 9. "Wages" means:

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

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

11 ~~19-1~~ 10. "Workman" means a skilled mechanic, skilled workman,
12 semiskilled mechanic, semiskilled workman or unskilled workman. The
13 term does not include a "design professional" as that term is defined in
14 NRS 338.155.

15 **Sec. 3.** NRS 338.1389 is hereby amended to read as follows:

16 338.1389 1. Except as otherwise provided in NRS 338.1385 and
17 338.1711 to 338.1727, inclusive, a public body shall award a contract for a
18 public work to the contractor who submits the best bid.

19 2. Except as otherwise provided in subsection 8 or limited by
20 subsection 9, for the purposes of this section, a *general* contractor who:

21 (a) Has been determined by the public body to be a qualified bidder
22 pursuant to NRS 338.1379 or is exempt from meeting such requirements
23 pursuant to NRS 338.1373 or 338.1383; and

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

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

36 (a) Paid:

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

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



1 (3) Any combination of such sales and use taxes and motor vehicle
2 privilege tax; or
3 (b) Acquired, by inheritance, gift or transfer through a stock option plan
4 for employees, all the assets and liabilities of a viable, operating
5 construction firm that possesses a:
6 (1) License as a general contractor pursuant to the provisions of
7 chapter 624 of NRS; and
8 (2) Certificate of eligibility to receive a preference in bidding on
9 public works.
10 4. For the purposes of complying with the requirements set forth in
11 paragraph (a) of subsection 3, a general contractor shall be deemed to have
12 paid:
13 (a) Sales and use taxes and motor vehicle privilege taxes paid in this
14 state by an affiliate or parent company of the contractor, if the affiliate or
15 parent company is also a general contractor; and
16 (b) Sales and use taxes paid in this state by a joint venture in which the
17 contractor is a participant, in proportion to the amount of interest the
18 contractor has in the joint venture.
19 5. A *general* contractor who has received a certificate of eligibility to
20 receive a preference in bidding on public works from the state contractors'
21 board pursuant to subsection 3 shall, at the time for the annual renewal of
22 his contractor's license pursuant to NRS 624.283, submit to the board an
23 affidavit from a certified public accountant setting forth that the contractor
24 has, during the immediately preceding 12 months, paid the taxes required
25 pursuant to paragraph (a) of subsection 3 to maintain his eligibility to hold
26 such a certificate.
27 6. A *general* contractor who fails to submit an affidavit to the board
28 pursuant to subsection 5 ceases to be eligible to receive a preference in
29 bidding on public works unless he reapplies for and receives a certificate of
30 eligibility pursuant to subsection 3.
31 7. If a *general* contractor who applies to the state contractors' board
32 for a certificate of eligibility to receive a preference in bidding on public
33 works submits false information to the board regarding the required
34 payment of taxes, the contractor is not eligible to receive a preference in
35 bidding on public works for a period of 5 years after the date on which the
36 board becomes aware of the submission of the false information.
37 8. If any federal statute or regulation precludes the granting of federal
38 assistance or reduces the amount of that assistance for a particular public
39 work because of the provisions of subsection 2, those provisions do not
40 apply insofar as their application would preclude or reduce federal
41 assistance for that work. The provisions of subsection 2 do not apply to any
42 contract for a public work which is expected to cost less than \$250,000.
43 9. Except as otherwise provided in subsection 2 of NRS 338.1727, if a
44 bid is submitted by two or more contractors as a joint venture or by one of
45 them as a joint venturer, the provisions of subsection 2 apply only if both
46 or all of the joint venturers separately meet the requirements of that
47 subsection.



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

4 11. *The state contractors' board shall not issue a certificate of*
5 *eligibility to receive a preference in bidding on public works to a person*
6 *who is not licensed in this state as a general contractor.*

7 12. A person or entity who believes that a contractor wrongfully holds
8 a certificate of eligibility to receive a preference in bidding on public works
9 may challenge the validity of the certificate by filing a written objection
10 with the public body to which the contractor has submitted a bid or
11 proposal on a contract for the construction of a public work. A written
12 objection authorized pursuant to this subsection must:

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

16 (b) Be filed with the public body at or after the time at which the
17 contractor submitted the bid or proposal to the public body and before the
18 time at which the public body awards the contract for which the bid or
19 proposal was submitted.

20 ~~{12.}~~ 13. If a public body receives a written objection pursuant to
21 subsection ~~{11.}~~ 12, the public body shall determine whether the objection
22 is accompanied by the proof or substantiating evidence required pursuant
23 to paragraph (a) of that subsection. If the public body determines that the
24 objection is not accompanied by the required proof or substantiating
25 evidence, the public body shall dismiss the objection and may proceed
26 immediately to award the contract. If the public body determines that the
27 objection is accompanied by the required proof or substantiating evidence,
28 the public body shall determine whether the contractor qualifies for the
29 certificate pursuant to the provisions of this section and may proceed to
30 award the contract accordingly.

31 **Sec. 4.** NRS 338.141 is hereby amended to read as follows:

32 338.141 1. Except as otherwise provided in subsection 2, each bid
33 submitted to any officer, department, board or commission for the
34 construction of any public work or improvement must include:

35 (a) The name of each subcontractor who will provide labor or a portion
36 of the work or improvement to the contractor for which he will be paid an
37 amount exceeding 5 percent of the prime contractor's total bid. Within 2
38 hours after the completion of the opening of the bids, the ~~{general}~~
39 contractors who submitted the three lowest bids must submit a list of the
40 name of each subcontractor who will provide labor or a portion of the work
41 or improvement to the contractor for which he will be paid an amount
42 exceeding 1 percent of the prime contractor's total bid or \$50,000,
43 whichever is greater, and the number of the license issued to the
44 subcontractor pursuant to chapter 624 of NRS. If a ~~{general}~~ contractor
45 fails to submit such a list within the required time, his bid shall be deemed
46 not responsive.

47 (b) A description of the portion of the work or improvement which each
48 subcontractor named in the bid will complete.



1 2. The contractor shall list in his bid pursuant to subsection 1 the name
2 of a subcontractor for each portion of the project that will be completed by
3 a subcontractor.

4 3. A contractor whose bid is accepted shall not substitute any person
5 for a subcontractor who is named in the bid, unless:

6 (a) The awarding authority objects to the subcontractor, requests in
7 writing a change in the subcontractor and pays any increase in costs
8 resulting from the change; or

9 (b) The substitution is approved by the awarding authority and:

10 (1) The subcontractor, after having a reasonable opportunity, fails or
11 refuses to execute a written contract with the contractor which was offered
12 to the subcontractor with the same terms that all other subcontractors on
13 the project were offered;

14 (2) The named subcontractor files for bankruptcy or becomes
15 insolvent; or

16 (3) The named subcontractor fails or refuses to perform his
17 subcontract within a reasonable time or is unable to furnish a performance
18 bond and payment bond pursuant to NRS 339.025.

19 **Sec. 5.** NRS 338.147 is hereby amended to read as follows:

20 338.147 1. Except as otherwise provided in NRS 338.143 and
21 338.1711 to 338.1727, inclusive, a local government shall award a contract
22 for a public work to the contractor who submits the best bid.

23 2. Except as otherwise provided in subsection 8 or limited by
24 subsection 9, for the purposes of this section, a *general* contractor who:

25 (a) Has been found to be a responsible and responsive contractor by the
26 local government; and

27 (b) At the time he submits his bid, provides to the local government a
28 copy of a certificate of eligibility to receive a preference in bidding on
29 public works issued to him by the state contractors' board pursuant to
30 subsection 3,

31 shall be deemed to have submitted a better bid than a competing contractor
32 who has not provided a copy of such a valid certificate of eligibility if the
33 amount of his bid is not more than 5 percent higher than the amount bid by
34 the competing contractor.

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

40 (a) Paid:

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



- 1 (2) The motor vehicle privilege tax imposed pursuant to chapter 371
2 of NRS on the vehicles used in the operation of his business in this state of
3 not less than \$5,000 for each consecutive 12-month period for 60 months
4 immediately preceding the submission of the affidavit from the certified
5 public accountant; or
6 (3) Any combination of such sales and use taxes and motor vehicle
7 privilege tax; or
8 (b) Acquired, by inheritance, gift or transfer through a stock option plan
9 for employees, all the assets and liabilities of a viable, operating
10 construction firm that possesses a:
11 (1) License as a general contractor pursuant to the provisions of
12 chapter 624 of NRS; and
13 (2) Certificate of eligibility to receive a preference in bidding on
14 public works.
15 4. For the purposes of complying with the requirements set forth in
16 paragraph (a) of subsection 3, a general contractor shall be deemed to have
17 paid:
18 (a) Sales and use taxes and motor vehicle privilege taxes paid in this
19 state by an affiliate or parent company of the contractor, if the affiliate or
20 parent company is also a general contractor; and
21 (b) Sales and use taxes paid in this state by a joint venture in which the
22 contractor is a participant, in proportion to the amount of interest the
23 contractor has in the joint venture.
24 5. A *general* contractor who has received a certificate of eligibility to
25 receive a preference in bidding on public works from the state contractors'
26 board pursuant to subsection 3 shall, at the time for the annual renewal of
27 his contractor's license pursuant to NRS 624.283, submit to the board an
28 affidavit from a certified public accountant setting forth that the contractor
29 has, during the immediately preceding 12 months, paid the taxes required
30 pursuant to paragraph (a) of subsection 3 to maintain his eligibility to hold
31 such a certificate.
32 6. A *general* contractor who fails to submit an affidavit to the board
33 pursuant to subsection 5 ceases to be eligible to receive a preference in
34 bidding on public works unless he reapplies for and receives a certificate of
35 eligibility pursuant to subsection 3.
36 7. If a *general* contractor who applies to the state contractors' board
37 for a certificate of eligibility to receive a preference in bidding on public
38 works submits false information to the board regarding the required
39 payment of taxes, the contractor is not eligible to receive a preference in
40 bidding on public works for a period of 5 years after the date on which the
41 board becomes aware of the submission of the false information.
42 8. If any federal statute or regulation precludes the granting of federal
43 assistance or reduces the amount of that assistance for a particular public
44 work because of the provisions of subsection 2, those provisions do not
45 apply insofar as their application would preclude or reduce federal
46 assistance for that work. The provisions of subsection 2 do not apply to any
47 contract for a public work which is expected to cost less than \$250,000.
48 9. Except as otherwise provided in subsection 2 of NRS 338.1727 and
49 subsection 2 of NRS 408.3886 if a bid is submitted by two or more



* S B 9 4 *

1 contractors as a joint venture or by one of them as a joint venturer, the
2 provisions of subsection 2 apply only if both or all of the joint venturers
3 separately meet the requirements of that subsection.

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

7 11. *The state contractors' board shall not issue a certificate of*
8 *eligibility to receive a preference in bidding on public works to a person*
9 *who is not licensed in this state as a general contractor.*

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

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

19 (b) Be filed with the public body at or after the time at which the
20 contractor submitted the bid or proposal to the public body and before the
21 time at which the public body awards the contract for which the bid or
22 proposal was submitted.

23 ~~12.~~ 13. If a public body receives a written objection pursuant to
24 subsection ~~12.~~ 12, the public body shall determine whether the objection
25 is accompanied by the proof or substantiating evidence required pursuant
26 to paragraph (a) of that subsection. If the public body determines that the
27 objection is not accompanied by the required proof or substantiating
28 evidence, the public body shall dismiss the objection and may proceed
29 immediately to award the contract. If the public body determines that the
30 objection is accompanied by the required proof or substantiating evidence,
31 the public body shall determine whether the contractor qualifies for the
32 certificate pursuant to the provisions of this section and may proceed to
33 award the contract accordingly.

34 **Sec. 6.** Section 13.5 of chapter 627, Statutes of Nevada 1999, at page
35 3479, is hereby amended to read as follows:

36 Sec. 13.5. NRS 338.147 is hereby amended to read as follows:

37 338.147 1. Except as otherwise provided in NRS 338.143, ~~and~~
38 ~~sections 2 to 9, inclusive, of this act,~~ a local government shall award
39 a contract for a public work to the contractor who submits the best
40 bid.

41 2. Except as otherwise provided in subsection 8 or limited by
42 subsection 9, for the purposes of this section, a general contractor
43 who:

44 (a) Has been found to be a responsible and responsive contractor
45 by the local government; and

46 (b) At the time he submits his bid, provides to the local
47 government a copy of a certificate of eligibility to receive a preference
48 in bidding on public works issued to him by the state contractors'
49 board pursuant to subsection 3,



1 shall be deemed to have submitted a better bid than a competing
2 contractor who has not provided a copy of such a valid certificate of
3 eligibility if the amount of his bid is not more than 5 percent higher
4 than the amount bid by the competing contractor.

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

11 (a) Paid:

12 (1) The sales and use taxes imposed pursuant to chapters 372,
13 374 and 377 of NRS on materials used for construction in this state,
14 including, without limitation, construction that is undertaken or
15 carried out on land within the boundaries of this state that is managed
16 by the Federal Government or is on an Indian reservation or Indian
17 colony, of not less than \$5,000 for each consecutive 12-month period
18 for 60 months immediately preceding the submission of the affidavit
19 from the certified public accountant;

20 (2) The motor vehicle privilege tax imposed pursuant to chapter
21 371 of NRS on the vehicles used in the operation of his business in
22 this state of not less than \$5,000 for each consecutive 12-month
23 period for 60 months immediately preceding the submission of the
24 affidavit from the certified public accountant; or

25 (3) Any combination of such sales and use taxes and motor
26 vehicle privilege tax; or

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

30 (1) License as a general contractor pursuant to the provisions of
31 chapter 624 of NRS; and

32 (2) Certificate of eligibility to receive a preference in bidding on
33 public works.

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

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

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

43 5. A general contractor who has received a certificate of
44 eligibility to receive a preference in bidding on public works from the
45 state contractors' board pursuant to subsection 3 shall, at the time for
46 the annual renewal of his contractor's license pursuant to NRS
47 624.283, submit to the board an affidavit from a certified public
48 accountant setting forth that the contractor has, during the
49 immediately preceding 12 months, paid the taxes required pursuant to



1 paragraph (a) of subsection 3 to maintain his eligibility to hold such a
2 certificate.

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

7 7. If a general contractor who applies to the state contractors'
8 board for a certificate of eligibility to receive a preference in bidding
9 on public works submits false information to the board regarding the
10 required payment of taxes, the contractor is not eligible to receive a
11 preference in bidding on public works for a period of 5 years after the
12 date on which the board becomes aware of the submission of the false
13 information.

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

21 9. ~~{Except as otherwise provided in subsection 2 of section 8 of~~
22 ~~this act and subsection 2 of section 27 of this act, if}~~ If a bid is
23 submitted by two or more contractors as a joint venture or by one of
24 them as a joint venturer, the provisions of subsection 2 apply only if
25 both or all of the joint venturers separately meet the requirements of
26 that subsection.

27 10. The state contractors' board shall adopt regulations and may
28 assess reasonable fees relating to the certification of general
29 contractors for a preference in bidding on public works.

30 11. The state contractors' board shall not issue a certificate of
31 eligibility to receive a preference in bidding on public works to a
32 person who is not licensed in this state as a general contractor.

33 12. A person or entity who believes that a contractor wrongfully
34 holds a certificate of eligibility to receive a preference in bidding on
35 public works may challenge the validity of the certificate by filing a
36 written objection with the public body to which the contractor has
37 submitted a bid or proposal on a contract for the completion of a
38 public work. A written objection authorized pursuant to this
39 subsection must:

40 (a) Set forth proof or substantiating evidence to support the belief
41 of the person or entity that the contractor wrongfully holds a
42 certificate of eligibility to receive a preference in bidding on public
43 works; and

44 (b) Be filed with the public body at or after the time at which the
45 contractor submitted the bid or proposal to the public body and before
46 the time at which the public body awards the contract for which the
47 bid or proposal was submitted.

48 13. If a public body receives a written objection pursuant to
49 subsection 12, the public body shall determine whether the objection



1 is accompanied by the proof or substantiating evidence required
2 pursuant to paragraph (a) of that subsection. If the public body
3 determines that the objection is not accompanied by the required
4 proof or substantiating evidence, the public body shall dismiss the
5 objection and may proceed immediately to award the contract. If the
6 public body determines that the objection is accompanied by the
7 required proof or substantiating evidence, the public body shall
8 determine whether the contractor qualifies for the certificate pursuant
9 to the provisions of this section and may proceed to award the
10 contract accordingly.

11 **Sec. 7.** Section 35.4 of chapter 627, Statutes of Nevada 1999, at page
12 3491, is hereby amended to read as follows:

13 Sec. 35.4. Assembly Bill No. 298 of this session is hereby
14 amended by adding thereto new sections designated sections 19.2
15 through 19.6, following sec. 19, to read as follows:

16 Sec. 19.2. Section 8 of this act is hereby amended to read as
17 follows:

18 Sec. 8. 1. Except as otherwise provided in subsection 7
19 and NRS 338.1906 and 338.1907, this state, or a local
20 government that awards a contract for the construction, alteration
21 or repair of a public work in accordance with paragraph (a) of
22 subsection 1 of section 2 of this act, or a public officer, public
23 employee or other person responsible for awarding a contract for
24 the construction, alteration or repair of a public work who
25 represents the state or the local government, shall not:

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

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

31 2. Except as otherwise provided in subsection 7, a public
32 body that maintains a list of properly licensed contractors who
33 are interested in receiving offers to bid on public works projects
34 for which the estimated cost is more than \$25,000 but less than
35 \$100,000 shall solicit bids from not more than three of the
36 contractors on the list for a contract of that value for the
37 construction, alteration or repair of a public work. The public
38 body shall select contractors from the list in such a manner as to
39 afford each contractor an equal opportunity to bid on a public
40 works project. A properly licensed contractor must submit a
41 written request annually to the public body to remain on the list.
42 Offers for bids which are made pursuant to this subsection must
43 be sent by certified mail.

44 3. Each advertisement for bids must include a provision that
45 sets forth:

46 (a) The requirement that a contractor must be qualified
47 pursuant to section 5 of this act to bid on the contract or must be
48 exempt from meeting such qualifications pursuant to section 6 of
49 this act; and



* S B 9 4 *

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

4. 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.

5. Any 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 a qualified bidder pursuant to section 5 of this act, unless the bidder is exempt from meeting such qualifications pursuant to section 6 of this act;

(b) The bidder is not responsive;

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

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

6. Before the state or a local government 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, whom the state or the local government 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 state or the local government 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 state or the local government expects to save by rejecting the bids and performing the project itself.

7. 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;

or
(d) The Las Vegas Valley water district created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley water district created pursuant to chapter 477, Statutes of Nevada 1983



1 or the Virgin Valley water district created pursuant to chapter
2 100, Statutes of Nevada 1993. ~~}; or~~

3 ~~-(e) The design and construction of a public work for which a~~
4 ~~public body contracts with a design build team pursuant to~~
5 ~~sections 2 to 9, inclusive, of Senate Bill No. 475 of this session.]~~

6 Sec. 19.4. Section 8 of this act is hereby amended to read as
7 follows:

8 Sec. 8. 1. Except as otherwise provided in subsection 7 ,
9 ~~{and NRS 338.1906 and 338.1907,}~~ this state, or a local
10 government that awards a contract for the construction, alteration
11 or repair of a public work in accordance with paragraph (a) of
12 subsection 1 of section 2 of this act, or a public officer, public
13 employee or other person responsible for awarding a contract for
14 the construction, alteration or repair of a public work who
15 represents the state or the local government, shall not:

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

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

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

34 3. Each advertisement for bids must include a provision that
35 sets forth:

36 (a) The requirement that a contractor must be qualified
37 pursuant to section 5 of this act to bid on the contract or must be
38 exempt from meeting such qualifications pursuant to section 6 of
39 this act; and

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

42 4. Approved plans and specifications for the bids must be on
43 file at a place and time stated in the advertisement for the
44 inspection of all persons desiring to bid thereon and for other
45 interested persons. Contracts for the project must be awarded on
46 the basis of bids received.

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



(a) The bidder is not a qualified bidder pursuant to section 5 of this act, unless the bidder is exempt from meeting such qualifications pursuant to section 6 of this act;

(b) The bidder is not responsive;

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

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

6. Before the state or a local government 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, whom the state or the local government 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 state or the local government 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 state or the local government expects to save by rejecting the bids and performing the project itself.

7. 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; or

(d) The Las Vegas Valley water district created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley water district created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley water district created pursuant to chapter 100, Statutes of Nevada 1993.

Sec. 19.6. Section 11 of this act is hereby amended to read as follows:

Sec. 11. 1. Except as otherwise provided in section 8 of this act, ~~and sections 2 to 9, inclusive, of Senate Bill No. 475 of this session,~~ 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 8 or limited by subsection 9, for the purposes of this section, a general contractor who:



* S B 9 4 *

(a) Has been determined by the public body to be a qualified bidder pursuant to section 5 of this act or is exempt from meeting such requirements pursuant to section 6 of this act; and

(b) At the time he submits his bid, provides to the public body 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 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 the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and motor vehicle privilege tax; or

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

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

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

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

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



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

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

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

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

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

9. ~~Except as otherwise provided in subsection 2 of section 8 of Senate Bill No. 475 of this session, if~~ **If** a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the provisions of subsection 2 apply only if both or all of the joint venturers separately meet the requirements of that subsection.

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

11. The state contractors' board shall not issue a certificate of eligibility to receive a preference in bidding on public works to a person who is not licensed in this state as a general contractor.

12. A person or entity who believes that a contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the public body to which the contractor has submitted a bid or proposal on a



* S B 9 4 *

1 contract for the construction of a public work. A written
2 objection authorized pursuant to this subsection must:

3 (a) Set forth proof or substantiating evidence to support the
4 belief of the person or entity that the contractor wrongfully holds
5 a certificate of eligibility to receive a preference in bidding on
6 public works; and

7 (b) Be filed with the public body at or after the time at which
8 the contractor submitted the bid or proposal to the public body
9 and before the time at which the public body awards the contract
10 for which the bid or proposal was submitted.

11 13. If a public body receives a written objection pursuant to
12 subsection 12, the public body shall determine whether the
13 objection is accompanied by the proof or substantiating evidence
14 required pursuant to paragraph (a) of that subsection. If the
15 public body determines that the objection is not accompanied by
16 the required proof or substantiating evidence, the public body
17 shall dismiss the objection and may proceed immediately to
18 award the contract. If the public body determines that the
19 objection is accompanied by the required proof or substantiating
20 evidence, the public body shall determine whether the contractor
21 qualifies for the certificate pursuant to the provisions of this
22 section and may proceed to award the contract accordingly.

23 **Sec. 8.** 1. This section and sections 1 and 3 to 7, inclusive, of this act
24 become effective on October 1, 2001.

25 2. The amendatory provisions of section 1 of this act expire by
26 limitation on October 1, 2003.

27 3. Section 2 of this act becomes effective at 12:01 a.m. on October 1,
28 2003.

