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ASSEMBLY BILL NO. 295—ASSEMBLYMEN MCCLAIN, CLABORN, OHRENSCHALL, ATKINSON, GIBBONS, ANDERSON, ANDONOV, ARBERRY, BEERS, CARPENTER, CHRISTENSEN, COLLINS, CONKLIN, GIUNCHIGLIANI, GRADY, GRIFFIN, HETTRICK, KNECHT, KOIVISTO, MANENDO, PARKS, PIERCE, SHERER AND WILLIAMS (BY REQUEST)

MARCH 13, 2003

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing criteria for determining qualification of bidders on public works of the State or local governments. (BDR 28-747)

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

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted. Matter ~~double strikethrough~~ proposed language to be omitted in amendment; green
bold underlined proposed language to be added in amendment.

AN ACT relating to public works; revising the provisions governing the criteria for determining the qualification of bidders on public works of the State and local governments; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

NRS 338.~~1377~~ is hereby amended by adding thereto a new section to read as follows:

1. The State Public Works Board or the governing body of a local government may:

- (a) Qualify applicants to be subcontractors on a contract for a public work based on the criteria set forth in NRS 338.1375 or NRS 338.1377; or
- (b) Deem subcontractors to meet the criteria set forth in NRS 338.1375 or NRS 338.1377 unless the Board or public body receives verifiable information indicating that a subcontractor does not meet that criteria. Upon receipt of such information, the Board or governing body shall conduct an investigation to determine whether the subcontractor fails to meet the criteria. If the Board or governing body determines that the subcontractor fails to meet the criteria, the Board or governing body may disqualify the subcontractor for a period not to exceed 2 years.

2. A person may request a hearing to be conducted in the manner provided in NRS 338.1381 to appeal:

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Government Affairs
SUBCOMMITTEE on A.B. 295 and A.B. 540
DATE: April 8, 2003 EXHIBIT C
SUBMITTED BY: Lori Ashton

(a) A denial of his application for qualification pursuant to paragraph (a) of subsection 1 as a subcontractor; or

(b) His disqualification pursuant to paragraph (b) of subsection 1.
NRS 338.1375 is hereby amended to read as follows:

1. 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 state public works board shall by regulation adopt criteria for the qualification of bidders or pursuant to NRS 338. Section 1 the qualification or disqualification of subcontractors on contracts for public works of this state. The criteria adopted by the state public works board pursuant to this 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; }~~ :

1. *Whether the applicant possesses a valid contractor's license of a class corresponding to the work to be required by the local government;*

2. *Whether the applicant has the ability to obtain the necessary bonding for the work to be required by the local government;*

3. *Whether the applicant has successfully completed one or more projects during the 5 years immediately preceding the date of application of similar size, scope or type as the work to be required by the local government , including without limitations the performance history of the applicant;*

4. *Whether the principal personnel employed by the applicant have the necessary professional qualifications and experience for the work to be required by the local government;*

5. *Whether the applicant has breached any contracts with a public agency or person in this state or any other state; and*
~~(4)}~~ *during the 5 years immediately preceding the date of application;*

6. *Whether the applicant has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.1387[-];*

7. *Whether the applicant has been convicted of a violation for discrimination in employment during the 2 years immediately preceding the date of application;*

8. *Whether the applicant has the ability to obtain and maintain insurance coverage for public liability and property damage within limits sufficient to protect the applicant and all the subcontractors of the applicant from claims for personal injury, accidental death and damage to property that may arise in connection with the work to be required by the local government;*

9. *Whether the applicant has established a safety program that complies with the requirements of chapter 618 of NRS; and*

10. Whether any complaints against the applicant or the applicants principal personnel have been filed with and substantiated by the State Contractors' Board or another state or federal agency that relate to the ability of the applicant to perform the work to be required by the local government, pertains to the work of the applicant.

11. Whether the applicant has filed as a debtor under the United States Bankruptcy Code during the 5 years immediately preceding the date of the application;

12. The application of the applicant is truthful and complete

13. Whether the applicant has failed to perform any contract during the 5 years immediately preceding the application as a result of causes within the control of the applicant, his subcontractors or suppliers:

(a) In the manner specified by the contract and any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative;

(b) Within the time specified by the contract unless extended by the person or governmental entity that awarded the contract or its authorized representative;
or

(c) For the amount of money specified in the contract or as modified by any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative.

Evidence of such a failure includes, without limitation, the assessment of liquidated damages against the applicant, forfeiture of a bond by the applicant, an arbitration decision against the applicant or a decision by a court against the applicant.

~~_____ (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.~~

~~_____ (Added to NRS by 1999, 2390; A 2001, 1930)~~

Section 5.

338.1377 ~~{-}~~ Except as otherwise provided in NRS 338.1383, the governing body of each local government that sponsors or finances a public work shall ~~adopt by ordinance~~ implement the following criteria for ~~{the qualification of bidders}~~ determining whether a person who has applied

pursuant to NRS 338.1379 is qualified to bid or is disqualified pursuant to NRS 338. Section 1 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 a governing body pursuant to this section to determine whether an applicant is qualified to bid on a contract for a public work:~~

~~(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) :~~

1. *Whether the applicant possesses a valid contractor's license of a class corresponding to the work to be required by the local government;*
2. *Whether the applicant has the ability to obtain the necessary bonding for the work to be required by the local government;*
3. *Whether the applicant has successfully completed one or more projects during the 5 years immediately preceding the date of application of similar size, scope or type as the work to be required by the local government, including without limitations the performance history of the applicant;*
4. *Whether the principal personnel employed by the applicant have the necessary professional qualifications and experience for the work to be required by the local government;*
5. *Whether the applicant has breached any contracts with a public agency or person in this state or any other state; and*
- ~~(4) during the 5 years immediately preceding the date of application;~~
6. *Whether the applicant has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.1387; ;*
7. *Whether the applicant has been convicted of a violation for discrimination in employment during the 2 years immediately preceding the date of application;*
8. *Whether the applicant has the ability to obtain and maintain insurance coverage for public liability and property damage within limits sufficient to protect the applicant and all the subcontractors of the applicant from claims for personal injury, accidental death and damage to property that may arise in connection with the work to be required by the local government;*
9. *Whether the applicant has established a safety program that complies with the requirements of chapter 618 of NRS; and*
10. *Whether any complaints against the applicant or the applicants principal personnel have been filed with and substantiated by the State Contractors' Board or another state or federal agency that ~~relate to the ability of the applicant to perform the work to be required by the local government~~ pertains to the work of the applicant.*
11. *Whether the applicant has filed as a debtor under the United States Bankruptcy Code during the 5 years immediately preceding the date of the application;*
12. *The application of the applicant is truthful and complete*
13. *Whether the applicant has failed to perform any contract during the 5 years immediately preceding the application as a result of causes within the control of the applicant, his subcontractors or suppliers;*

- (d) In the manner specified by the contract and any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative;
- (e) Within the time specified by the contract unless extended by the person or governmental entity that awarded the contract or its authorized representative;
or
- (f) For the amount of money specified in the contract or as modified by any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative.
Evidence of such a failure includes, without limitation, the assessment of liquidated damages against the applicant, forfeiture of a bond by the applicant, an arbitration decision against the applicant or a decision by a court against the applicant.

Sec. 5. NRS 338.1379 is hereby amended to read as follows:

338.1379 ~~{1-}~~ Except as otherwise provided in NRS 338.1383

~~{, a} :~~

1. The State Public Works Board and the governing body of a local government that sponsors or finances a public work shall not accept a bid on a contract for a public work unless the person who submits the bid has qualified to bid on the contract pursuant to this section.

2. 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-}~~ 3. Upon receipt of an application submitted pursuant to subsection {1-} 2, the State Public Works Board or the governing body shall:

- (a) Investigate the applicant to determine whether ~~{he is qualified to bid on a contract; and~~
- ~~—(b) After conducting the investigation, determine whether} the applicant ~~{is qualified to bid on a contract.}~~ meets the criteria set forth in NRS 338.1375 or NRS 338.1377.~~

(b) Within 5 days after receipt of such an application, provide notice of the receipt of the application to:

- (1) Construction trade associations in this state;
- (2) Labor unions representing trades in the building industry in this state;
and
- (3) Any other interested person who has requested such notice.

4. In conducting an investigation pursuant to subsection 3, the State Public Works Board or the governing body may consider any verifiable information about the applicant relating to whether the applicant meets the criteria set forth in NRS. 338.1375 or NRS 338.1377 that is discovered by or provided to the Board or governing body.

5. The State Public Works Board or the governing body shall make a determination ~~{must be made}~~ of whether an applicant meets the criteria set forth in NRS 338.1375 or 338.1377 within 30 days after receipt of the application.

~~{3-}~~ 6. 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.}~~ 7. 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.}~~ 8. The State Public Works Board and the governing body shall not use any criteria other than the criteria ~~{adopted by regulation pursuant to}~~ set forth in NRS 338.1375 or NRS 338.1377 in determining whether to approve or deny an application.

~~{6. 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. 9. 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.