
ASSEMBLY BILL NO. 60—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE NYE COUNTY SCHOOL DISTRICT)

PREFILED DECEMBER 15, 2010

Referred to Committee on Government Affairs

SUMMARY—Revises requirements pertaining to preferences in bidding on public works. (BDR 28-255)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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; restricting the eligibility to receive a preference in bidding on public works by requiring a contractor who seeks such a preference to file with the State Contractors' Board an affidavit stating that a certain percentage of the estimated cost of the work on the relevant contract will be performed by a general contractor or specialty contractor who holds a valid certificate of eligibility to receive such a preference; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 With respect to a contract for a public work for which the estimated cost
2 exceeds \$250,000, existing law provides for a bidder's preference of 5 percent for a
3 responsive and responsible contractor who holds a valid certificate of eligibility to
4 receive a preference in bidding on public works issued to the contractor by the State
5 Contractors' Board. Qualification for a certificate of eligibility to receive a
6 preference in bidding on public works is tied to the payment of certain taxes. (NRS
7 338.1389, 338.147) This bill restricts the ability of a contractor to receive the
8 bidder's preference by adding the additional requirement that, to receive the
9 preference, the contractor must not only hold a valid certificate of eligibility but
10 must also file an affidavit with the State Contractors' Board stating that, regardless
11 of whether the work on the applicable public works contract will be performed by
12 the contractor submitting the bid or by other contractors, the contractor submitting
13 the bid will ensure that work attributable to not less than 75 percent of the estimated
14 cost of the contract is performed by a general contractor or specialty contractor, or
15 both, who has a valid certificate of eligibility to receive a preference in bidding on
16 public works issued by the Board. This bill also provides a mechanism by which a



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17 contractor may lose his or her preference in bidding on public works if the
18 contractor fails to comply with the required affidavit.

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

1 **Section 1.** NRS 338.1389 is hereby amended to read as
2 follows:

3 338.1389 1. Except as otherwise provided in subsection 10
4 and NRS 338.1385, 338.1386 and 338.13864, a public body or its
5 authorized representative shall award a contract for a public work
6 for which the estimated cost exceeds \$250,000 to the contractor who
7 submits the best bid.

8 2. Except as otherwise provided in subsection 10 or limited by
9 subsection 11, the lowest bid that is:

10 (a) Submitted by a responsive and responsible contractor who:

11 (1) Has been determined by the public body to be a qualified
12 bidder pursuant to NRS 338.1379 or 338.1382; ~~and~~

13 (2) At the time the contractor submits his or her bid, has a
14 valid certificate of eligibility to receive a preference in bidding on
15 public works issued to the contractor by the State Contractors'
16 Board pursuant to subsection 3 or 4; and

17 *(3) At the time the contractor submits his or her bid, files*
18 *an affidavit with the State Contractors' Board stating that,*
19 *regardless of whether the work on the contract will be performed*
20 *by the contractor submitting the bid or by another contractor, the*
21 *contractor submitting the bid will ensure that any work*
22 *attributable to not less than 75 percent of the estimated cost of the*
23 *contract is performed by a general contractor or specialty*
24 *contractor, or both, who has a valid certificate of eligibility to*
25 *receive a preference in bidding on public works issued by the State*
26 *Contractors' Board pursuant to subsection 3 or 4; and*

27 (b) Not more than 5 percent higher than the bid submitted by the
28 lowest responsive and responsible bidder who ~~does~~:

29 *(1) Does* not have, at the time he or she submits the bid, a
30 valid certificate of eligibility to receive a preference in bidding on
31 public works issued to him or her by the State Contractors' Board
32 pursuant to subsection 3 or 4 ~~and~~; *or*

33 *(2) Has not filed the affidavit described in subparagraph (3)*
34 *of paragraph (a),*

35 *shall be deemed to be the best bid for the purposes of this section.*

36 3. The State Contractors' Board shall issue a certificate of
37 eligibility to receive a preference in bidding on public works to a
38 general contractor who is licensed pursuant to the provisions of
39 chapter 624 of NRS and submits to the Board an affidavit from a



1 certified public accountant setting forth that the general contractor
2 has, while licensed as a general contractor in this State:

3 (a) Paid directly, on his or her own behalf:

4 (1) The sales and use taxes imposed pursuant to chapters
5 372, 374 and 377 of NRS on materials used for construction in this
6 State, including, without limitation, construction that is undertaken
7 or carried out on land within the boundaries of this State that is
8 managed by the Federal Government or is on an Indian reservation
9 or Indian colony, of not less than \$5,000 for each consecutive
10 12-month period for 60 months immediately preceding the
11 submission of the affidavit from the certified public accountant;

12 (2) The governmental services tax imposed pursuant to
13 chapter 371 of NRS on the vehicles used in the operation of his or
14 her business in this State of not less than \$5,000 for each
15 consecutive 12-month period for 60 months immediately preceding
16 the submission of the affidavit from the certified public accountant;
17 or

18 (3) Any combination of such sales and use taxes and
19 governmental services tax; or

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

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

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

27 4. The State Contractors' Board shall issue a certificate of
28 eligibility to receive a preference in bidding on public works to a
29 specialty contractor who is licensed pursuant to the provisions of
30 chapter 624 of NRS and submits to the Board an affidavit from a
31 certified public accountant setting forth that the specialty contractor
32 has, while licensed as a specialty contractor in this State:

33 (a) Paid directly, on his or her own behalf:

34 (1) The sales and use taxes pursuant to chapters 372, 374 and
35 377 of NRS on materials used for construction in this State,
36 including, without limitation, construction that is undertaken or
37 carried out on land within the boundaries of this State that is
38 managed by the Federal Government or is on an Indian reservation
39 or Indian colony, of not less than \$5,000 for each consecutive
40 12-month period for 60 months immediately preceding the
41 submission of the affidavit from the certified public accountant;

42 (2) The governmental services tax imposed pursuant to
43 chapter 371 of NRS on the vehicles used in the operation of his or
44 her business in this State of not less than \$5,000 for each
45 consecutive 12-month period for 60 months immediately preceding



1 the submission of the affidavit from the certified public accountant;
2 or

3 (3) Any combination of such sales and use taxes and
4 governmental services tax; or

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

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

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

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

15 (a) Sales and use taxes and governmental services taxes that
16 were paid in this State by an affiliate or parent company of the
17 contractor, if the affiliate or parent company is also a general
18 contractor or specialty contractor, as applicable; and

19 (b) Sales and use taxes that were paid in this State by a joint
20 venture in which the contractor is a participant, in proportion to the
21 amount of interest the contractor has in the joint venture.

22 6. A contractor who has received a certificate of eligibility to
23 receive a preference in bidding on public works from the State
24 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
25 for the renewal of his or her contractor's license pursuant to NRS
26 624.283, submit to the Board an affidavit from a certified public
27 accountant setting forth that the contractor has, during the
28 immediately preceding 12 months, paid the taxes required pursuant
29 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
30 applicable, to maintain eligibility to hold such a certificate.

31 7. A contractor who fails to submit an affidavit to the Board
32 pursuant to subsection 6 ceases to be eligible to receive a preference
33 in bidding on public works unless the contractor reapplies for and
34 receives a certificate of eligibility pursuant to subsection 3 or 4, as
35 applicable.

36 8. If a contractor holds more than one contractor's license, the
37 contractor must submit a separate application for each license
38 pursuant to which the contractor wishes to qualify for a preference
39 in bidding. Upon issuance, the certificate of eligibility to receive a
40 preference in bidding on public works becomes part of the
41 contractor's license for which the contractor submitted the
42 application.

43 9. If a contractor who applies to the State Contractors' Board
44 for a certificate of eligibility to receive a preference in bidding on
45 public works submits false information to the Board regarding the



1 required payment of taxes ~~[§]~~ *or if a contractor who seeks a*
2 *preference in bidding on public works fails to comply with any*
3 *provision of an affidavit filed by the contractor pursuant to*
4 *subparagraph (3) of paragraph (a) of subsection 2*, the contractor
5 is not eligible to receive a preference in bidding on public works for
6 a period of 5 years after the date on which the Board becomes aware
7 of ~~[the]~~ :

8 (a) *The submission of the false information [§] ; or*

9 (b) *The failure to comply with the affidavit.*

10 10. If any federal statute or regulation precludes the granting of
11 federal assistance or reduces the amount of that assistance for a
12 particular public work because of the provisions of subsection 2,
13 those provisions do not apply insofar as their application would
14 preclude or reduce federal assistance for that work.

15 11. If a bid is submitted by two or more contractors as a joint
16 venture or by one of them as a joint venturer, the bid may be
17 deemed the best bid only if both or all of the joint venturers
18 separately meet the requirements of subsection 2.

19 12. The State Contractors' Board shall adopt regulations and
20 may assess reasonable fees relating to the certification of contractors
21 for a preference in bidding on public works.

22 13. A person or entity who believes that a contractor
23 wrongfully holds a certificate of eligibility to receive a preference in
24 bidding on public works may challenge the validity of the certificate
25 by filing a written objection with the public body to which the
26 contractor has submitted a bid on a contract for the construction of a
27 public work. A written objection authorized pursuant to this
28 subsection must:

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

33 (b) Be filed with the public body not later than 3 business days
34 after the opening of the bids by the public body or its authorized
35 representative.

36 14. *A person or entity who believes that a contractor has*
37 *failed to comply with any provision of an affidavit filed by the*
38 *contractor pursuant to subparagraph (3) of paragraph (a) of*
39 *subsection 2 may file a written objection with the public body to*
40 *which the contractor has submitted a bid on a contract for the*
41 *construction of a public work. A written objection authorized*
42 *pursuant to this subsection must:*

43 (a) *Set forth proof or substantiating evidence to support the*
44 *belief of the person or entity that the contractor has failed to*
45 *comply with any provision of the affidavit; and*



1 *(b) Be filed with the public body not later than 3 business days*
2 *after the person or entity becomes aware of the contractor's*
3 *alleged failure to comply with any provision of the affidavit.*

4 **15.** If a public body receives a written objection pursuant to
5 subsection 13 ~~[]~~ *or 14*, the public body shall determine whether the
6 objection is accompanied by the proof or substantiating evidence
7 required pursuant to paragraph (a) of ~~[that subsection.]~~ *subsection*
8 *13 or paragraph (a) of subsection 14, as applicable.* If the public
9 body determines that the objection is not accompanied by the
10 required proof or substantiating evidence, the public body shall
11 dismiss the objection . ~~[and the public body or its authorized~~
12 ~~representative may proceed immediately to award the contract.]~~ If
13 the public body determines that the objection is accompanied by the
14 required proof or substantiating evidence ~~[]~~ *and the objection is*
15 *filed pursuant to:*

16 *(a) Subsection 13*, the public body shall determine whether the
17 contractor qualifies for the certificate *of eligibility* pursuant to the
18 provisions of this section and the public body or its authorized
19 representative may proceed to award the contract accordingly.

20 *(b) Subsection 14*, the public body shall determine whether the
21 contractor has complied with each of the provisions of the
22 affidavit filed pursuant to subparagraph (3) of paragraph (a) of
23 subsection 2. *If the public body determines that the contractor has*
24 *complied with each of those provisions, the public body shall*
25 *dismiss the objection. If the public body determines that the*
26 *contractor has failed to comply with any provision of the affidavit,*
27 *the public body or its authorized representative:*

28 *(1) Shall notify the State Contractors' Board; and*

29 *(2) May, if the Board does not take action pursuant to*
30 *subsection 9, declare that the contractor is not eligible to receive a*
31 *preference in bidding on public works of the public body for a*
32 *period of 5 years after the date on which the public body or its*
33 *authorized representative becomes aware of the failure to comply.*

34 **Sec. 2.** NRS 338.147 is hereby amended to read as follows:

35 338.147 1. Except as otherwise provided in subsection 10
36 and NRS 338.143, 338.1442 and 338.1446, a local government or
37 its authorized representative shall award a contract for a public work
38 for which the estimated cost exceeds \$250,000 to the contractor who
39 submits the best bid.

40 2. Except as otherwise provided in subsection 10 or limited by
41 subsection 11, the lowest bid that is:

42 (a) Submitted by a contractor who:

43 (1) Has been found to be a responsible and responsive
44 contractor by the local government or its authorized representative;

45 ~~[and]~~



1 (2) At the time the contractor submits his or her bid, has a
2 valid certificate of eligibility to receive a preference in bidding on
3 public works issued to the contractor by the State Contractors'
4 Board pursuant to subsection 3 or 4; and

5 (3) *At the time the contractor submits his or her bid, files*
6 *an affidavit with the State Contractors' Board stating that,*
7 *regardless of whether the work on the contract will be performed*
8 *by the contractor submitting the bid or by another contractor, the*
9 *contractor submitting the bid will ensure that any work*
10 *attributable to not less than 75 percent of the estimated cost of the*
11 *contract is performed by a general contractor or specialty*
12 *contractor, or both, who has a valid certificate of eligibility to*
13 *receive a preference in bidding on public works issued by the State*
14 *Contractors' Board pursuant to subsection 3 or 4; and*

15 (b) Not more than 5 percent higher than the bid submitted by the
16 lowest responsive and responsible bidder who **[does]** :

17 (1) *Does* not have, at the time he or she submits the bid, a
18 valid certificate of eligibility to receive a preference in bidding on
19 public works issued to him or her by the State Contractors' Board
20 pursuant to subsection 3 or 4 **[]** ; or

21 (2) *Has not filed the affidavit described in subparagraph (3)*
22 *of paragraph (a),*

23 **↳** shall be deemed to be the best bid for the purposes of this section.

24 3. The State Contractors' Board shall issue a certificate of
25 eligibility to receive a preference in bidding on public works to a
26 general contractor who is licensed pursuant to the provisions of
27 chapter 624 of NRS and submits to the Board an affidavit from a
28 certified public accountant setting forth that the general contractor
29 has, while licensed as a general contractor in this State:

30 (a) Paid directly, on his or her own behalf:

31 (1) The sales and use taxes imposed pursuant to chapters
32 372, 374 and 377 of NRS on materials used for construction in this
33 State, including, without limitation, construction that is undertaken
34 or carried out on land within the boundaries of this State that is
35 managed by the Federal Government or is on an Indian reservation
36 or Indian colony, of not less than \$5,000 for each consecutive
37 12-month period for 60 months immediately preceding the
38 submission of the affidavit from the certified public accountant;

39 (2) The governmental services tax imposed pursuant to
40 chapter 371 of NRS on the vehicles used in the operation of his or
41 her business in this State of not less than \$5,000 for each
42 consecutive 12-month period for 60 months immediately preceding
43 the submission of the affidavit from the certified public accountant;

44 or



1 (3) Any combination of such sales and use taxes and
2 governmental services tax; or

3 (b) Acquired, by purchase, inheritance, gift or transfer through a
4 stock option plan, 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
7 of chapter 624 of NRS; and

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

10 4. The State Contractors' Board shall issue a certificate of
11 eligibility to receive a preference in bidding on public works to a
12 specialty contractor who is licensed pursuant to the provisions of
13 chapter 624 of NRS and submits to the Board an affidavit from a
14 certified public accountant setting forth that the specialty contractor
15 has, while licensed as a specialty contractor in this State:

16 (a) Paid directly, on his or her own behalf:

17 (1) The sales and use taxes pursuant to chapters 372, 374 and
18 377 of NRS on materials used for construction in this State,
19 including, without limitation, construction that is undertaken or
20 carried out on land within the boundaries of this State that is
21 managed by the Federal Government or is on an Indian reservation
22 or Indian colony, of not less than \$5,000 for each consecutive
23 12-month period for 60 months immediately preceding the
24 submission of the affidavit from the certified public accountant;

25 (2) The governmental services tax imposed pursuant to
26 chapter 371 of NRS on the vehicles used in the operation of his or
27 her business in this State of not less than \$5,000 for each
28 consecutive 12-month period for 60 months immediately preceding
29 the submission of the affidavit from the certified public accountant;
30 or

31 (3) Any combination of such sales and use taxes and
32 governmental services tax; or

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

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

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

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

43 (a) Sales and use taxes and governmental services taxes paid in
44 this State by an affiliate or parent company of the contractor, if the



1 affiliate or parent company is also a general contractor or specialty
2 contractor, as applicable; and

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

6 6. A contractor who has received a certificate of eligibility to
7 receive a preference in bidding on public works from the State
8 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
9 for the renewal of his or her contractor's license pursuant to NRS
10 624.283, submit to the Board an affidavit from a certified public
11 accountant setting forth that the contractor has, during the
12 immediately preceding 12 months, paid the taxes required pursuant
13 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
14 applicable, to maintain eligibility to hold such a certificate.

15 7. A contractor who fails to submit an affidavit to the Board
16 pursuant to subsection 6 ceases to be eligible to receive a preference
17 in bidding on public works unless the contractor reapplies for and
18 receives a certificate of eligibility pursuant to subsection 3 or 4, as
19 applicable.

20 8. If a contractor holds more than one contractor's license, the
21 contractor must submit a separate application for each license
22 pursuant to which the contractor wishes to qualify for a preference
23 in bidding. Upon issuance, the certificate of eligibility to receive a
24 preference in bidding on public works becomes part of the
25 contractor's license for which the contractor submitted the
26 application.

27 9. If a contractor who applies to the State Contractors' Board
28 for a certificate of eligibility to receive a preference in bidding on
29 public works submits false information to the Board regarding the
30 required payment of taxes ~~§~~ *or if a contractor who seeks a*
31 *preference in bidding on public works fails to comply with any*
32 *provision of an affidavit filed by the contractor pursuant to*
33 *subparagraph (3) of paragraph (a) of subsection 2*, the contractor
34 is not eligible to receive a preference in bidding on public works for
35 a period of 5 years after the date on which the Board becomes aware
36 of ~~the~~:

37 (a) *The submission of the false information ~~§~~; or*

38 (b) *The failure to comply with the affidavit.*

39 10. If any federal statute or regulation precludes the granting of
40 federal assistance or reduces the amount of that assistance for a
41 particular public work because of the provisions of subsection 2,
42 those provisions do not apply insofar as their application would
43 preclude or reduce federal assistance for that work.

44 11. If a bid is submitted by two or more contractors as a joint
45 venture or by one of them as a joint venturer, the bid may be



1 deemed a best bid only if both or all of the joint venturers separately
2 meet the requirements of subsection 2.

3 12. The State Contractors' Board shall adopt regulations and
4 may assess reasonable fees relating to the certification of contractors
5 for a preference in bidding on public works.

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

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

17 (b) Be filed with the local government not later than 3 business
18 days after the opening of the bids by the local government or its
19 authorized representative.

20 14. *A person or entity who believes that a contractor has*
21 *failed to comply with any provision of an affidavit filed by the*
22 *contractor pursuant to subparagraph (3) of paragraph (a) of*
23 *subsection 2 may file a written objection with the local government*
24 *to which the contractor has submitted a bid on a contract for the*
25 *construction of a public work. A written objection authorized*
26 *pursuant to this subsection must:*

27 (a) *Set forth proof or substantiating evidence to support the*
28 *belief of the person or entity that the contractor has failed to*
29 *comply with any provision of the affidavit; and*

30 (b) *Be filed with the local government not later than 3 business*
31 *days after the person or entity becomes aware of the contractor's*
32 *alleged failure to comply with any provision of the affidavit.*

33 15. If a local government receives a written objection pursuant
34 to subsection 13 ~~§~~ *or 14*, the local government shall determine
35 whether the objection is accompanied by the proof or substantiating
36 evidence required pursuant to paragraph (a) of ~~that subsection.~~
37 *subsection 13 or paragraph (a) of subsection 14, as applicable.* If
38 the local government determines that the objection is not
39 accompanied by the required proof or substantiating evidence, the
40 local government shall dismiss the objection . ~~and the local~~
41 ~~government or its authorized representative may proceed~~
42 ~~immediately to award the contract.~~ If the local government
43 determines that the objection is accompanied by the required proof
44 or substantiating evidence ~~§~~ *and the objection is filed pursuant to:*



1 ***(a) Subsection 13***, the local government shall determine
2 whether the contractor qualifies for the certificate ***of eligibility***
3 pursuant to the provisions of this section and the local government
4 or its authorized representative may proceed to award the contract
5 accordingly.

6 ***(b) Subsection 14***, the local government shall determine
7 ***whether the contractor has complied with each of the provisions of***
8 ***the affidavit filed pursuant to subparagraph (3) of paragraph (a)***
9 ***of subsection 2. If the local government determines that the***
10 ***contractor has complied with each of those provisions, the local***
11 ***government shall dismiss the objection. If the local government***
12 ***determines that the contractor has failed to comply with any***
13 ***provision of the affidavit, the local government or its authorized***
14 ***representative:***

15 ***(1) Shall notify the State Contractors' Board; and***

16 ***(2) May, if the Board does not take action pursuant to***
17 ***subsection 9, declare that the contractor is not eligible to receive a***
18 ***preference in bidding on public works of the local government for***
19 ***a period of 5 years after the date on which the local government or***
20 ***its authorized representative becomes aware of the failure to***
21 ***comply.***

22 **Sec. 3.** This act becomes effective on July 1, 2011.

