

Assembly Bill No. 298--Committee on Government Affairs

CHAPTER.....

AN ACT relating to public works projects; requiring the adoption of criteria for the qualification of bidders on certain contracts for public works; making an exemption for local governments and the department of transportation in certain circumstances; requiring a person to qualify before bidding on such contracts in certain circumstances; and providing other matters properly relating thereto.

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

Section 1. Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this act.

Sec. 2. 1. *A local government shall award a contract for the construction, alteration or repair of a public work pursuant to the provisions of:*

- (a) Sections 3 to 11, inclusive, of this act; or*
- (b) NRS 338.143, 338.145 and 338.147.*

2. The provisions of sections 3 to 11, inclusive, of this act and NRS 338.143, 338.145 and 338.147 do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the department of transportation pursuant to NRS 408.313 to 408.433, inclusive.

Sec. 3. 1. *Except as otherwise provided in section 6 of this act, a public body shall not accept a bid on a contract for a public work unless the person who submits the bid has qualified pursuant to section 5 of this act to bid on that contract.*

2. The governing body of each local government that sponsors or finances a public work may adopt criteria for the qualification of bidders on contracts for public works of the local government. If a governing body adopts criteria pursuant to this subsection, the governing body shall use the criteria to determine the qualification of bidders on contracts for public works of the local government.

3. The state public works board shall adopt criteria for the qualification of bidders on contracts for public works of this state. The criteria adopted by the state public works board pursuant to this subsection must be used by the state public works board to determine the qualification of bidders on contracts for public works of this state.

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

- (a) Construction trade associations; and*
 - (b) Labor unions representing trades in the building industry*
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Sec. 4. *The criteria adopted by the state public works board or a governing body pursuant to section 3 of this act to determine whether an applicant is qualified to bid on a contract for a public work:*

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

2. May include only:

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

(b) The principal personnel of the applicant;

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

(d) Whether the applicant has been disqualified from being awarded the contract pursuant to NRS 338.017 or 338.145.

Sec. 5. *1. Except as otherwise provided in section 6 of this act, a person who wishes to qualify as a bidder on a contract for a public work must submit an application to the state public works board or the governing body.*

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

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

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

3. The state public works board or the governing body shall notify each applicant in writing of its determination. If an application is denied, the notice must set forth the reasons for the denial and inform the applicant of his right to a hearing pursuant to section 7 of this act.

4. The state public works board or the governing body shall not use any criteria other than the criteria described in section 4 of this act in determining whether to approve or deny an application.

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

Sec. 6. *A public body may accept a bid on a contract for a public work from a person who does not qualify pursuant to section 5 of this act if the person holds:*

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

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

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

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

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

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

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

Sec. 7. 1. If, within 10 days after receipt of the notice denying his application, the applicant files a written request for a hearing with the state public works board or the governing body of the local government, the board or governing body shall set the matter for a hearing within 10 days after receipt of the request. The hearing must be held not later than 20 days after the receipt of the request for a hearing.

2. The hearing must be held at a time and place prescribed by the board or governing body. At least 10 days before the date set for the hearing, the board or governing body shall serve the applicant with written notice of the hearing. The notice may be served by personal delivery to the applicant or by certified mail to the last known business or residential address of the applicant.

3. The board or governing body shall issue a decision on the matter within 5 days after the hearing and notify the applicant, in writing, of its decision within 5 days after it is issued. The decision of the board or governing body is a final decision for purposes of judicial review.

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

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

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

2. Except as otherwise provided in subsection 7, a public body that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than \$25,000 but less than \$100,000 shall solicit bids from

not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The public body shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the public body to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.

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

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

(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; an

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(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.

Sec. 9. 1. Except as otherwise provided in subsection 7, this state, or a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (a) of subsection 1 of section 2 of this act, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents the state or the local government, shall not:

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

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

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

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

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

(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 or responsible;

(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.

Sec. 10. 1. A public body awarding a contract for a public work shall not award the contract to a person who, at the time of the bid, is not properly licensed under the provisions of chapter 624 of NRS or if the contract would exceed the limit of his license. A subcontractor named by the contractor who is not properly licensed for that portion of the work shall be deemed unacceptable. If the subcontractor is deemed unacceptable, the contractor shall provide an acceptable subcontractor before the award of the contract.

2. If, after awarding the contract, the public body discovers that the person to whom the contract was awarded is not licensed, or that the

contract would exceed his license, the public body shall reject the bid and may accept the next lowest bid for that public work from a responsive bidder who was determined by the public body to be a qualified bidder pursuant to section 5 of this act or was exempt from meeting such qualifications pursuant to section 6 of this act without requiring that new bids be submitted.

Sec. 11. 1. 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 4 or limited by subsection 5, for the purposes of this section, a contractor who:

(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 qualifications pursuant to section 6 of this act; and

(b) At the time he submits his bid, provides to the public body proof of the payment of:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of his bid;

(2) The motor vehicle privilege tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of his bid; or

(3) Any combination of those sales and use taxes and motor vehicle privilege tax, shall be deemed to have submitted a better bid than a competing contractor who has not provided proof of the payment of those taxes if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.

3. A contractor who has previously provided the public body awarding a contract with the proof of payment required pursuant to subsection 2 may update that proof on or before April 1, July 1, September 1 and December 1 rather than with each bid.

4. 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 if the application of those provisions 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.

5. Except as otherwise provided in subsection 6, 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.

6. *Except as otherwise provided in subsection 8, if a bid is submitted by a joint venture and one or more of the joint venturers has responsibility for the performance of the contract as described in subsection 7, the provisions of subsection 2 apply only to those joint venturers who have that responsibility.*

7. *For the purposes of subsection 6, a joint venturer has responsibility for the performance of a contract if he has at least one of the following duties or obligations delegated to him in writing in the contract creating the joint venture:*

(a) Supplying the labor necessary to perform the contract and paying the labor and any related taxes and benefits;

(b) Supplying the equipment necessary to perform the contract and paying any charges related to the equipment;

(c) Contracting with and making payments to any subcontractors; or

(d) Performing the recordkeeping for the joint venture and making any payments to persons who provide goods or services related to the performance of the contract.

8. *The provisions of subsection 6 do not apply to a joint venture which is formed for the sole purpose of circumventing any of the requirements of this section.*

Sec. 12. NRS 338.010 is hereby amended to read as follows:

338.010 As used in this chapter:

1. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a workman or workmen employed by them on public works by the day and not under a contract in writing.

2. "Eligible bidder" means a person who was ~~found~~ :

(a) Found to be a responsible contractor by a ~~public body~~ local government which awarded a contract for a public work ~~in accordance with paragraph (b) of subsection 1 of section 2 of this act; or~~

(b) Determined by a public body which awarded a contract for a public work pursuant to sections 3 to 11, inclusive, of this act, to be qualified to bid on that contract pursuant to section 5 of this act or was exempt from meeting such qualifications pursuant to section 6 of this act.

3. "Offense" means failing to:

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

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

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

4. "Public body" means the state, county, city, town, school district or any public agency of this state or its political subdivisions sponsoring or financing a public work.

5. "Public work" means any project for the new construction, repair or reconstruction of:

- (a) A project financed in whole or in part from public money for:
- (1) Public buildings;
 - (2) Jails and prisons;
 - (3) Public roads;
 - (4) Public highways;
 - (5) Public streets and alleys;
 - (6) Public utilities which are financed in whole or in part by public money;
 - (7) Publicly owned water mains and sewers;
 - (8) Public parks and playgrounds;
 - (9) Public convention facilities which are financed at least in part with public funds; and
 - (10) ~~Any~~ **Any** other publicly owned works and property whose cost as a whole exceeds \$20,000. Each separate unit which is a part of a project is included in the cost of the project for the purpose of determining whether a project meets this threshold.
- (b) A building for the University and Community College System of Nevada of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by ~~the~~ **this** state or **from** federal money.

6. "Wages" means:

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

7. "Workman" means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman.

Sec. 13. NRS 338.0115 is hereby amended to read as follows:

338.0115 1. Except as otherwise provided in subsection 2, the provisions of this chapter and chapters 332 and 339 of NRS do not apply to a contract under which a private developer, for the benefit of a private development, constructs a water or sewer line extension and any related appurtenances:

- (a) Which qualify as a public work pursuant to NRS 338.010; and
- (b) For which he will receive a monetary contribution or refund from a public body as reimbursement for a portion of the costs of the project.

2. If, pursuant to the provisions of such a contract, the developer is not responsible for paying all of the initial construction costs of the project, the provisions of NRS 338.013 to 338.090, inclusive, and 338.140 to 338.147, inclusive, **and sections 2 to 11, inclusive, of this act** apply to the contract.

Sec. 14. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 6 and NRS ~~338.1906 and 338.1907, an agency or political subdivision of the state,~~ **338.1907, a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (b) of subsection 1 of section 2 of this act,** or a public officer,

public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work ~~H~~ **who represents that local government**, shall not:

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

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

2. Except as otherwise provided in subsection 6, a ~~{public-body}~~ **local government** that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than \$25,000 but less than \$100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The ~~{public-body}~~ **local government** shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the ~~{public-body}~~ **local government** to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.

3. 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.

4. Any ~~for all~~ 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 responsive or responsible;

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

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

5. Before ~~{an agency or political subdivision of the state}~~ **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, ~~{who the agency or political subdivision}~~ **whom 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 ~~{agency or political subdivision}~~ **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 ~~{agency or political subdivision}~~ **local government** expects to save by rejecting the bids and performing the project itself.

6. 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.

Sec. 15. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 6, ~~{an agency or political subdivision of the state,}~~ **a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (b) of subsection 1 of section 2 of this act**, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work ~~{}~~ **who represents that local government**, shall not:

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

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

2. Except as otherwise provided in subsection 6, a ~~{public body}~~ **local government** that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than \$25,000 but less than \$100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The ~~{public body}~~ **local government** shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the ~~{public body}~~ **local government** to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.

3. 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.

4. Any ~~{or all}~~ 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 responsive or responsible

;

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

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

5. Before ~~{an agency or political subdivision of the state}~~ **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, ~~{who the agency or political subdivision}~~ **whom 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 ~~{agency or political subdivision}~~ **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 ~~{agency or political subdivision}~~ **local government** expects to save by rejecting the bids and performing the project itself.

6. 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.

Sec. 16. NRS 338.145 is hereby amended to read as follows:

338.145 1. A ~~{public body}~~ **local government** awarding a contract for a public work shall not award the contract to a person who, at the time of the bid, is not properly licensed under the provisions of chapter 624 of NRS or if the contract would exceed the limit of his license. A subcontractor named by the contractor who is not properly licensed for that portion of the work shall be deemed unacceptable. If the subcontractor is deemed unacceptable, the contractor shall provide an acceptable subcontractor before the award of the contract.

2. If, after awarding the contract, the ~~{public body}~~ **local government** discovers that the person to whom the contract was awarded is not licensed, or that the contract would exceed his license, the ~~{public body}~~ **local government** shall reject the bid and may accept the next lowest bid for that public work from a responsive and responsible bidder without requiring that new bids be submitted.

Sec. 17. NRS 338.147 is hereby amended to read as follows:

338.147 1. A ~~{public body}~~ **local government** shall award a contract for a public work to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 4 or limited by subsection 5, for the purposes of this section, a contractor who:

(a) Has been found to be a responsible contractor by the ~~{public body}~~ **local government**; and

(b) At the time he submits his bid, provides to the ~~{public body}~~ **local government** proof of the payment of:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of his bid;

(2) The motor vehicle privilege tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of his bid; or

(3) Any combination of such sales and use taxes and motor vehicle privilege tax, shall be deemed to have submitted a better bid than a competing contractor who has not provided proof of the payment of those taxes if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.

3. A contractor who has previously provided the ~~{public body}~~ **local government** awarding a contract with the proof of payment required pursuant to subsection 2 may update such proof on or before April 1, July 1, September 1 and December 1 rather than with each bid.

4. 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.

5. Except as otherwise provided in subsection 6, 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.

6. Except as otherwise provided in subsection 8, if a bid is submitted by a joint venture and one or more of the joint venturers has responsibility for the performance of the contract as described in subsection 7, the provisions of subsection 2 apply only to those joint venturers who have such responsibility.

7. For the purposes of subsection 6, a joint venturer has responsibility for the performance of a contract if he has at least one of the following duties or obligations delegated to him in writing in the contract creating the joint venture:

- (a) Supplying the labor necessary to perform the contract and paying the labor and any related taxes and benefits;
- (b) Supplying the equipment necessary to perform the contract and paying any charges related to the equipment;
- (c) Contracting with and making payments to any subcontractors; or
- (d) Performing the recordkeeping for the joint venture and making any payments to persons who provide goods or services related to the performance of the contract.

8. The provisions of subsection 6 do not apply to a joint venture which is formed for the sole purpose of circumventing any of the requirements of this section.

Sec. 18. NRS 338.1906 is hereby amended to read as follows:

338.1906 1. Upon request by or consultation with an officer or employee of the state who is responsible for the budget of a department, board, commission, agency or other entity of the state, the appropriate energy retrofit coordinator may request the approval of the state board of examiners to advertise a request for proposals to retrofit a building, or any portion thereof, that is occupied by the department, board, commission, agency or other entity, to make the use of energy in the building, or portion thereof, more efficient.

2. Upon approval of the state board of examiners, the coordinator shall prepare a request for proposals for the retrofitting of one or more buildings, or any portion thereof, which includes:

- (a) The name and location of the coordinator;
- (b) A brief description of the requirements for the initial audit of the use of energy and the retrofitting;
- (c) Where and how specifications of the requirements for the initial audit of the use of energy and the retrofitting may be obtained;
- (d) The date and time not later than which proposals must be received by the coordinator; and
- (e) The date and time when responses will be opened.

3. The request for proposals must be published in at least one newspaper of general circulation in the state.

4. After receiving the proposals but before making a decision on the proposals, the coordinator shall consider:

- (a) The best interests of the state;
- (b) The experience and financial stability of the persons submitting the proposals;
- (c) Whether the proposals conform with the terms of the request for proposals;
- (d) The prices of the proposals; and
- (e) Any other factor disclosed in the request for proposals.

5. The coordinator shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted to the coordinator.

6. After reviewing the proposals, if the coordinator determines that sufficient energy could be saved to justify retrofitting the building or buildings, or portion thereof, the coordinator shall select the best proposal and request the approval of the board of examiners to award the contract. The request for approval must include the proposed method of financing the audit and retrofit, which may include an installment contract, a shared savings contract or any other contract for a reasonable financing arrangement. Such a contract may commit the state to make payments beyond the biennium in which the contract is executed, but the interest due on any debt created pursuant to this section must be paid at least semiannually, payments must be made on the principal at least annually and the debt must be fully repaid on or before May 1, 2013.

7. Before approving a retrofit pursuant to this section, the state board of examiners shall evaluate any projects that would utilize shared savings as a method of payment or any method of financing that would commit the state to make payments beyond the biennium in which the contract is executed to ensure that:

(a) The amount of energy to be saved will likely justify the cost of the retrofit;

(b) The state is likely to continue to occupy the building for the entire period required to recoup the cost of the retrofit in energy savings; and

(c) The limitation set forth in subsection 9 will not be exceeded.

8. Upon approval of the state board of examiners, the coordinator shall execute the contract and notify:

(a) The state board of examiners of the total amount of money committed by the contract per year; and

(b) Each officer or employee who is responsible for the budget of a department, board, commission, agency or other entity which occupies a portion of a building that will be retrofitted of the amount of money it will be required to pay annually for its portion of the retrofit.

9. The total amount of money committed beyond the biennium for all contracts executed pursuant to this section must not exceed \$5,000,000 at any one time.

10. The legislature hereby pledges that a tax will be levied to pay the principal and interest on any indebtedness resulting from a contract executed pursuant to this section as they become due if the required payments will not be made by the entity that executed the contract from its budgeted accounts and the proceeds from any such taxes are hereby specially appropriated for this purpose.

11. ~~[NRS 338.143]~~ *Section 8 of this act* does not apply to a project for which a request for proposals is advertised and the contract is awarded pursuant to the provisions of this section.

Sec. 19. NRS 338.1907 is hereby amended to read as follows:

338.1907 1. The governing body of a local government may designate one or more energy retrofit coordinators for the buildings occupied by the local government.

2. If such a coordinator is designated, upon request by or consultation with an officer or employee of the local government who is responsible for the budget of a department, board, commission or other entity of the local government, the coordinator may request the approval of the governing body to advertise a request for proposals to retrofit a building, or any portion thereof, that is occupied by the department, board, commission or other entity, to make the use of energy in the building, or portion thereof, more efficient.

3. Upon approval of the governing body, the coordinator shall prepare a request for proposals for the retrofitting of one or more buildings, or any portion thereof, which includes:

- (a) The name and location of the coordinator;
- (b) A brief description of the requirements for the initial audit of the use of energy and the retrofitting;
- (c) Where and how specifications of the requirements for the initial audit of the use of energy and the retrofitting may be obtained;
- (d) The date and time not later than which proposals must be received by the coordinator; and
- (e) The date and time when responses will be opened.

4. The request for proposals must be published in at least one newspaper of general circulation in the county in which the local government is located.

5. After receiving the proposals but before making a decision on the proposals, the coordinator shall consider:

- (a) The best interests of the local government;
- (b) The experience and financial stability of the persons submitting the proposals;
- (c) Whether the proposals conform with the terms of the request for proposals;
- (d) The prices of the proposals; and
- (e) Any other factor disclosed in the request for proposals.

6. The coordinator shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted to the coordinator.

7. After reviewing the proposals, if the coordinator determines that sufficient energy could be saved to justify retrofitting the building or buildings, or portion thereof, the coordinator shall select the best proposal and request the approval of the governing body to award the contract. The request for approval must include the proposed method of financing the audit and retrofit, which may include an installment contract, a shared savings contract or any other contract for a reasonable financing arrangement. Such a contract may commit the local government to make payments beyond the fiscal year in which the contract is executed or beyond the terms of office of the governing body, or both.

8. Before approving a retrofit pursuant to this section, the governing body shall evaluate any projects that would utilize shared savings as a method of payment or any method of financing that would commit the local government to make payments beyond the fiscal year in which the contract is executed or beyond the terms of office of the governing body to ensure that:

(a) The amount of energy to be saved will likely justify the cost of the retrofit; and

(b) The local government is likely to continue to occupy the building for the entire period required to recoup the cost of the retrofit in energy savings.

9. Upon approval of the governing body, the coordinator shall execute the contract and notify each officer or employee who is responsible for the budget of a department, board, commission or other entity which occupies a portion of a building that will be retrofitted of the amount of money it will be required to pay annually for its portion of the retrofit.

10. NRS 338.143 ~~does~~ *and section 8 of this act do* not apply to a project for which a request for proposals is advertised and the contract is awarded pursuant to the provisions of this section.

Sec. 20. NRS 341.147 is hereby repealed.

Sec. 21. 1. This section and sections 2 to 8, inclusive, 10 to 14, inclusive, and 16 to 20, inclusive, of this act become effective on October 1, 1999.

2. Sections 9 and 15 of this act become effective at 12:01 a.m. on May 1, 2013.

3. Sections 8, 14, 18 and 19 of this act expire by limitation on May 1, 2013.

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