

ASSEMBLY BILL NO. 298—COMMITTEE ON GOVERNMENT AFFAIRS

FEBRUARY 22, 1999

Referred to Committee on Government Affairs

SUMMARY—Requires bidders on public works projects to qualify before bidding in certain circumstances. (BDR 28-991)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to public works 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:

- 1 **Section 1.** Chapter 338 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 11, inclusive, of this act.
3 **Sec. 2. 1. *A local government shall award a contract for the***
4 ***construction, alteration or repair of a public work pursuant to the***
5 ***provisions of:***
6 ***(a) Sections 3 to 11, inclusive, of this act; or***
7 ***(b) NRS 338.143, 338.145 and 338.147.***
8 **2. *The provisions of sections 3 to 11, inclusive, of this act and NRS***
9 ***338.143, 338.145 and 338.147 do not apply with respect to contracts for***
10 ***the construction, reconstruction, improvement and maintenance of***
11 ***highways that are awarded by the department of transportation pursuant***
12 ***to NRS 408.313 to 408.433, inclusive.***
13 **Sec. 3. 1. *Except as otherwise provided in section 6 of this act, a***
14 ***public body shall not accept a bid on a contract for a public work unless***
15 ***the person who submits the bid has qualified pursuant to section 5 of this***
16 ***act to bid on that contract.***

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

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

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

17 (a) Construction trade associations; and

18 (b) Labor unions representing trades in the building industry.

19 Sec. 4. The criteria adopted by the state public works board or a
20 governing body pursuant to section 3 of this act to determine whether an
21 applicant is qualified to bid on a contract for a public work:

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

25 2. May include only:

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

27 (b) The principal personnel of the applicant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 **Sec. 7. 1. If, within 10 days after receipt of the notice denying his**
36 **application, the applicant files a written request for a hearing with the**
37 **state public works board or the governing body of the local government,**
38 **the board or governing body shall set the matter for a hearing within 10**
39 **days after receipt of the request. The hearing must be held not later than**
40 **20 days after the receipt of the request for a hearing.**

41 **2. The hearing must be held at a time and place prescribed by the**
42 **board or governing body. At least 10 days before the date set for the**
43 **hearing, the board or governing body shall serve the applicant with**

1 written notice of the hearing. The notice may be served by personal
2 delivery to the applicant or by certified mail to the last known business or
3 residential address of the applicant.

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

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

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

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

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

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

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

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

38 4. Approved plans and specifications for the bids must be on file at a
39 place and time stated in the advertisement for the inspection of all
40 persons desiring to bid thereon and for other interested persons.

41 Contracts for the project must be awarded on the basis of bids received.

1 5. Any bids received in response to an advertisement for bids may be
2 rejected if the person responsible for awarding the contract determines
3 that:

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

7 (b) The bidder is not responsive;

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

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

11 6. Before the state or a local government may commence a project
12 subject to the provisions of this section, based upon a determination that
13 the public interest would be served by rejecting any bids received in
14 response to an advertisement for bids, it shall prepare and make
15 available for public inspection a written statement containing:

16 (a) A list of all persons, including supervisors, whom the state or the
17 local government intends to assign to the project, together with their
18 classifications and an estimate of the direct and indirect costs of their
19 labor;

20 (b) A list of all equipment that the state or the local government
21 intends to use on the project, together with an estimate of the number of
22 hours each item of equipment will be used and the hourly cost to use
23 each item of equipment;

24 (c) An estimate of the cost of administrative support for the persons
25 assigned to the project;

26 (d) An estimate of the total cost of the project; and

27 (e) An estimate of the amount of money the state or the local
28 government expects to save by rejecting the bids and performing the
29 project itself.

30 7. This section does not apply to:

31 (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

32 (b) Any work of construction, reconstruction, improvement and
33 maintenance of highways subject to NRS 408.323 or 408.327;

34 (c) Normal maintenance of the property of a school district; or

35 (d) The Las Vegas Valley water district created pursuant to chapter
36 167, Statutes of Nevada 1947.

37 **Sec. 9. 1.** Except as otherwise provided in subsection 7, this state,
38 or a local government that awards a contract for the construction,
39 alteration or repair of a public work in accordance with paragraph (a) of
40 subsection 1 of section 2 of this act, or a public officer, public employee
41 or other person responsible for awarding a contract for the construction,
42 alteration or repair of a public work who represents the state or the local
43 government, shall

not:

1 (a) Commence such a project for which the estimated cost exceeds
2 \$100,000 unless it advertises in a newspaper of general circulation in this
3 state for bids for the project; or

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

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

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

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

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

24 4. Approved plans and specifications for the bids must be on file at a
25 place and time stated in the advertisement for the inspection of all
26 persons desiring to bid thereon and for other interested persons.
27 Contracts for the project must be awarded on the basis of bids received.

28 5. Any bids received in response to an advertisement for bids may be
29 rejected if the person responsible for awarding the contract determines
30 that:

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

34 (b) The bidder is not responsive or responsible;

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

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

38 6. Before the state or a local government may commence a project
39 subject to the provisions of this section, based upon a determination that
40 the public interest would be served by rejecting any bids received in
41 response to an advertisement for bids, it shall prepare and make
42 available for public inspection a written statement containing:

1 (a) A list of all persons, including supervisors, whom the state or the
2 local government intends to assign to the project, together with their
3 classifications and an estimate of the direct and indirect costs of their
4 labor;

5 (b) A list of all equipment that the state or the local government
6 intends to use on the project, together with an estimate of the number of
7 hours each item of equipment will be used and the hourly cost to use
8 each item of equipment;

9 (c) An estimate of the cost of administrative support for the persons
10 assigned to the project;

11 (d) An estimate of the total cost of the project; and

12 (e) An estimate of the amount of money the state or the local
13 government expects to save by rejecting the bids and performing the
14 project itself.

15 7. This section does not apply to:

16 (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

17 (b) Any work of construction, reconstruction, improvement and
18 maintenance of highways subject to NRS 408.323 or 408.327;

19 (c) Normal maintenance of the property of a school district; or

20 (d) The Las Vegas Valley water district created pursuant to chapter
21 167, Statutes of Nevada 1947.

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

30 2. If, after awarding the contract, the public body discovers that the
31 person to whom the contract was awarded is not licensed, or that the
32 contract would exceed his license, the public body shall reject the bid and
33 may accept the next lowest bid for that public work from a responsive
34 bidder who was determined by the public body to be a qualified bidder
35 pursuant to section 5 of this act or was exempt from meeting such
36 qualifications pursuant to section 6 of this act without requiring that new
37 bids be submitted.

38 **Sec. 11. 1.** A public body shall award a contract for a public work
39 to the contractor who submits the best bid.

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

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

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

6 (1) The sales and use taxes imposed pursuant to chapters 372, 374
7 and 377 of NRS on materials used for construction of not less than
8 \$5,000 for each consecutive 12-month period for 60 months immediately
9 preceding the submission of his bid;

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

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

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

24 4. If any federal statute or regulation precludes the granting of
25 federal assistance or reduces the amount of that assistance for a
26 particular public work because of the provisions of subsection 2, those
27 provisions do not apply if the application of those provisions would
28 preclude or reduce federal assistance for that work. The provisions of
29 subsection 2 do not apply to any contract for a public work which is
30 expected to cost less than \$250,000.

31 5. Except as otherwise provided in subsection 6, if a bid is submitted
32 by two or more contractors as a joint venture or by one of them as a joint
33 venturer, the provisions of subsection 2 apply only if both or all of the
34 joint venturers separately meet the requirements of that subsection.

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

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

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

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

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

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

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

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

13 338.010 As used in this chapter:

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

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

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

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

27 3. "Offense" means failing to:

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

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

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

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

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

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

39 (1) Public buildings;

40 (2) Jails and prisons;

41 (3) Public roads;

42 (4) Public highways;

43 (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 ~~who~~ *who represents that* *local* *government,* shall not:

1 (a) Commence such a project ~~[]~~ for which the estimated cost exceeds
2 \$100,000 ~~[]~~ unless it advertises in a newspaper of general circulation in
3 ~~[the]~~ **this** state for bids for the project; or

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

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

18 3. Approved plans and specifications for the bids must be on file at a
19 place and time stated in the advertisement for the inspection of all persons
20 desiring to bid thereon and for other interested persons. Contracts for the
21 project must be awarded on the basis of bids received.

22 4. Any ~~[or all]~~ bids received in response to an advertisement for bids
23 may be rejected if the person responsible for awarding the contract
24 determines that:

25 (a) The bidder is not responsive or responsible;

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

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

29 5. Before ~~[an agency or political subdivision of the state]~~ **a local**
30 **government** may commence a project subject to the provisions of this
31 section, based upon a determination that the public interest would be served
32 by rejecting any bids received in response to an advertisement for bids, it
33 shall prepare and make available for public inspection a written statement
34 containing:

35 (a) A list of all persons, including supervisors, ~~[who the agency or~~
36 ~~political subdivision]~~ **whom the local government** intends to assign to the
37 project, together with their classifications and an estimate of the direct and
38 indirect costs of their labor;

39 (b) A list of all equipment that the ~~[agency or political subdivision]~~ **local**
40 **government** intends to use on the project, together with an estimate of the
41 number of hours each item of equipment will be used and the hourly cost to
42 use each item of equipment;

1 (c) An estimate of the cost of administrative support for the persons
2 assigned to the project;

3 (d) An estimate of the total cost of the project; and

4 (e) An estimate of the amount of money the ~~{agency or political~~
5 ~~subdivision}~~ **local government** expects to save by rejecting the bids and
6 performing the project itself.

7 6. This section does not apply to:

8 (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

9 (b) Any work of construction, reconstruction, improvement and
10 maintenance of highways subject to NRS 408.323 or 408.327;

11 (c) Normal maintenance of the property of a school district; or

12 (d) The Las Vegas Valley water district created pursuant to chapter 167,
13 Statutes of Nevada 1947.

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

15 338.143 1. Except as otherwise provided in subsection 6, ~~{an agency~~
16 ~~or political subdivision of the state,}~~ **a local government that awards a**
17 **contract for the construction, alteration or repair of a public work in**
18 **accordance with paragraph (b) of subsection 1 of section 2 of this act,** or
19 a public officer, public employee or other person responsible for awarding
20 a contract for the construction, alteration or repair of a public work ~~{}~~ **who**
21 **represents that local government,** shall not:

22 (a) Commence such a project ~~{}~~ for which the estimated cost exceeds
23 \$100,000 ~~{}~~ unless it advertises in a newspaper of general circulation in
24 ~~{the}~~ **this** state for bids for the project; or

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

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

39 3. Approved plans and specifications for the bids must be on file at a
40 place and time stated in the advertisement for the inspection of all persons
41 desiring to bid thereon and for other interested persons. Contracts for the
42 project must be awarded on the basis of bids received.

1 4. Any ~~for all~~ bids received in response to an advertisement for bids
2 may be rejected if the person responsible for awarding the contract
3 determines that:

- 4 (a) The bidder is not responsive or responsible;
5 (b) The quality of the services, materials, equipment or labor offered
6 does not conform to the approved plan or specifications; or
7 (c) The public interest would be served by such a rejection.

8 5. Before ~~an agency or political subdivision of the state~~ **a local**
9 **government** may commence a project subject to the provisions of this
10 section, based upon a determination that the public interest would be served
11 by rejecting any bids received in response to an advertisement for bids, it
12 shall prepare and make available for public inspection a written statement
13 containing:

14 (a) A list of all persons, including supervisors, ~~who the agency or~~
15 ~~political subdivision~~ **whom the local government** intends to assign to the
16 project, together with their classifications and an estimate of the direct and
17 indirect costs of their labor;

18 (b) A list of all equipment that the ~~agency or political subdivision~~ **local**
19 **government** intends to use on the project, together with an estimate of the
20 number of hours each item of equipment will be used and the hourly cost to
21 use each item of equipment;

22 (c) An estimate of the cost of administrative support for the persons
23 assigned to the project;

24 (d) An estimate of the total cost of the project; and

25 (e) An estimate of the amount of money the ~~agency or political~~
26 ~~subdivision~~ **local government** expects to save by rejecting the bids and
27 performing the project itself.

28 6. This section does not apply to:

29 (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

30 (b) Any work of construction, reconstruction, improvement and
31 maintenance of highways subject to NRS 408.323 or 408.327;

32 (c) Normal maintenance of the property of a school district; or

33 (d) The Las Vegas Valley water district created pursuant to chapter 167,
34 Statutes of Nevada 1947.

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

36 338.145 1. A ~~public body~~ **local government** awarding a contract
37 for a public work shall not award the contract to a person who, at the time
38 of the bid, is not properly licensed under the provisions of chapter 624 of
39 NRS or if the contract would exceed the limit of his license. A
40 subcontractor named by the contractor who is not properly licensed for that
41 portion of the work shall be deemed unacceptable. If the subcontractor is
42 deemed unacceptable, the contractor shall provide an acceptable
43 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.

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

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

5 (a) The best interests of the state;

6 (b) The experience and financial stability of the persons submitting the
7 proposals;

8 (c) Whether the proposals conform with the terms of the request for
9 proposals;

10 (d) The prices of the proposals; and

11 (e) Any other factor disclosed in the request for proposals.

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

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

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

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

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

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

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

40 (a) The state board of examiners of the total amount of money
41 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.

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

3 (a) The best interests of the local government;

4 (b) The experience and financial stability of the persons submitting the
5 proposals;

6 (c) Whether the proposals conform with the terms of the request for
7 proposals;

8 (d) The prices of the proposals; and

9 (e) Any other factor disclosed in the request for proposals.

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

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

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

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

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

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

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

1 **Sec. 20.** NRS 341.147 is hereby repealed.

2 **Sec. 21.** 1. This section and sections 2 to 8, inclusive, 10 to 14,
3 inclusive, and 16 to 20, inclusive, of this act become effective on October
4 1, 1999.

5 2. Sections 9 and 15 of this act become effective at 12:01 a.m. on May
6 1, 2013.

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

TEXT OF REPEALED SECTION

341.147 Qualification of bidders on contracts for public works: Regulations; advertising; renewal; confidentiality of certain information provided to board.

1. The board shall adopt regulations establishing the criteria and procedures for determining the qualification of applicants to be bidders on contracts for public works projects of this state. The board shall use the criteria and procedures to award contracts for public works projects of this state.

2. The criteria adopted by the board pursuant to subsection 1 must include, without limitation, an evaluation of:

(a) The financial ability of the applicant to provide the necessary bond for the contract;

(b) The principal personnel of the applicant;

(c) The performance history of the applicant concerning other recent projects completed by the applicant in this state;

(d) Any breach of contract of the applicant on a prior contract, other than a breach for legitimate cause;

(e) Whether the applicant has ever been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.145; and

(f) The safety program and safety record of the applicant.

3. The regulations adopted pursuant to this section must include, without limitation, a procedure and deadlines for:

(a) Investigating an applicant and determining whether he is qualified to bid on a contract for a public works project of this state based on the criteria established pursuant to this section;

(b) Notifying an applicant of the determination of the board regarding his application; and

(c) A hearing and appeal by an applicant whose application for qualification has been denied by the board.

4. The board shall, not less than 45 days before advertising for bids concerning a public works project, notify by advertisement in a newspaper of general circulation in this state that the contract for the public works project requires a determination that the applicant is qualified to bid on the contract pursuant to this section.

5. An applicant determined to be qualified by the board pursuant to this section must apply each year to renew his qualification in the manner provided in the regulations adopted pursuant to this section.

6. Any information and data pertaining to the net worth of an applicant which are gathered by or provided to the board for a determination of qualification pursuant to this section are confidential and not open to public inspection.

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