

ASSEMBLY BILL NO. 461—ASSEMBLYMAN PARKS

MARCH 19, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to qualification of bidders on certain contracts for public works in this state. (BDR 28-591)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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; eliminating the requirement that the state public works board or a governing body of a local government have a public hearing before adopting criteria for the qualification of bidders on a contract for a public work; requiring the board or governing body to disqualify persons from bidding on public works contracts in certain circumstances based on their past performance on contracts for public works; requiring the appointment of a committee to evaluate bids for certain public works projects; establishing criteria for evaluating certain bids for a public work to determine whether a bid is a best bid; repealing the provision providing an exemption from qualifying to bid for public works; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 338.010 is hereby amended to read as follows:
2 338.010 As used in this chapter:
3 1. “Day labor” means all cases where public bodies, their officers,
4 agents or employees, hire, supervise and pay the wages thereof directly to a
5 workman or workmen employed by them on public works by the day and
6 not under a contract in writing.
7 2. “Design-build contract” means a contract between a public body
8 and a design-build team in which the design-build team agrees to design
9 and construct a public work.
10 3. “Design-build team” means an entity that consists of:
11 (a) At least one person who is licensed as a general engineering
12 contractor or a general building contractor pursuant to chapter 624 of NRS;
13 and
14 (b) For a public work that consists of:
15 (1) A building and its site, at least one person who holds a certificate
16 of registration to practice architecture pursuant to chapter 623 of NRS.



- 1 (2) Anything other than a building and its site, at least one person
2 who holds a certificate of registration to practice architecture pursuant to
3 chapter 623 of NRS or is licensed as a professional engineer pursuant to
4 chapter 625 of NRS.
- 5 4. "Design professional" means a person with a professional license or
6 certificate issued pursuant to chapter 623, 623A or 625 of NRS.
- 7 5. "Eligible bidder" means a person who is:
- 8 (a) Found to be a responsible and responsive contractor by a local
9 government which requests bids for a public work in accordance with
10 paragraph (b) of subsection 1 of NRS 338.1373; or
- 11 (b) Determined by a public body which awarded a contract for a public
12 work pursuant to NRS 338.1375 to 338.1389, inclusive, to be qualified to
13 bid on that contract pursuant to NRS 338.1379 . ~~for was exempt from~~
14 ~~meeting such qualifications pursuant to NRS 338.1383.~~
- 15 6. "Local government" means every political subdivision or other
16 entity which has the right to levy or receive money from ad valorem or
17 other taxes or any mandatory assessments, and includes, without limitation,
18 counties, cities, towns, boards, school districts and other districts organized
19 pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS,
20 NRS 450.550 to 450.750, inclusive, and any agency or department of a
21 county or city which prepares a budget separate from that of the parent
22 political subdivision.
- 23 7. "Offense" means failing to:
- 24 (a) Pay the prevailing wage required pursuant to this chapter;
- 25 (b) Pay the contributions for unemployment compensation required
26 pursuant to chapter 612 of NRS; or
- 27 (c) Provide and secure compensation for employees required pursuant
28 to chapters 616A to 617, inclusive, of NRS.
- 29 8. "Prime contractor" means a person who:
- 30 (a) Contracts to construct an entire project;
- 31 (b) Coordinates all work performed on the entire project;
- 32 (c) Uses his own work force to perform all or a part of the construction,
33 repair or reconstruction of the project; and
- 34 (d) Contracts for the services of any subcontractor or independent
35 contractor or is responsible for payment to any contracted subcontractors or
36 independent contractors.
- 37 9. "Public body" means the state, county, city, town, school district or
38 any public agency of this state or its political subdivisions sponsoring or
39 financing a public work.
- 40 10. "Public work" means any project for the new construction, repair
41 or reconstruction of:
- 42 (a) A project financed in whole or in part from public money for:
- 43 (1) Public buildings;
- 44 (2) Jails and prisons;
- 45 (3) Public roads;
- 46 (4) Public highways;
- 47 (5) Public streets and alleys;
- 48 (6) Public utilities which are financed in whole or in part by public
49 money;



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



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- 1 other taxes or any mandatory assessments, and includes, without limitation,
2 counties, cities, towns, boards, school districts and other districts organized
3 pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS,
4 NRS 450.550 to 450.750, inclusive, and any agency or department of a
5 county or city which prepares a budget separate from that of the parent
6 political subdivision.
- 7 4. "Offense" means failing to:
8 (a) Pay the prevailing wage required pursuant to this chapter;
9 (b) Pay the contributions for unemployment compensation required
10 pursuant to chapter 612 of NRS; or
11 (c) Provide and secure compensation for employees required pursuant
12 to chapters 616A to 617, inclusive, of NRS.
- 13 5. "Prime contractor" means a person who:
14 (a) Contracts to complete an entire project;
15 (b) Coordinates all work performed on the entire project;
16 (c) Uses his own work force to perform all or a part of the construction,
17 repair or reconstruction of the project; and
18 (d) Contracts for the services of any subcontractor or independent
19 contractor or is responsible for payment to any contracted subcontractors or
20 independent contractors.
- 21 6. "Public body" means the state, county, city, town, school district or
22 any public agency of this state or its political subdivisions sponsoring or
23 financing a public work.
- 24 7. "Public work" means any project for the new construction, repair or
25 reconstruction of:
26 (a) A project financed in whole or in part from public money for:
27 (1) Public buildings;
28 (2) Jails and prisons;
29 (3) Public roads;
30 (4) Public highways;
31 (5) Public streets and alleys;
32 (6) Public utilities which are financed in whole or in part by public
33 money;
34 (7) Publicly owned water mains and sewers;
35 (8) Public parks and playgrounds;
36 (9) Public convention facilities which are financed at least in part
37 with public funds; and
38 (10) Any other publicly owned works and property whose cost as a
39 whole exceeds \$20,000. Each separate unit that is a part of a project is
40 included in the cost of the project to determine whether a project meets that
41 threshold.
- 42 (b) A building for the University and Community College System of
43 Nevada of which 25 percent or more of the costs of the building as a whole
44 are paid from money appropriated by this state or from federal money.
- 45 8. "Wages" means:
46 (a) The basic hourly rate of pay; and
47 (b) The amount of pension, health and welfare, vacation and holiday
48 pay, the cost of apprenticeship training or other similar programs , or other
49 bona fide fringe benefits which are a benefit to the workman.



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1 9. "Workman" means a skilled mechanic, skilled workman,
2 semiskilled mechanic, semiskilled workman or unskilled workman. The
3 term does not include a "design professional" as that term is defined in
4 NRS 338.155.

5 **Sec. 3.** NRS 338.1373 is hereby amended to read as follows:

6 338.1373 1. A local government shall award a contract for the
7 construction, alteration or repair of a public work pursuant to the
8 provisions of:

9 (a) NRS 338.1375 to 338.1389, inclusive; or

10 (b) NRS 338.143, 338.145 and 338.147.

11 2. The provisions of NRS 338.1375 to ~~338.1383,~~ **338.1381,**
12 inclusive, do not apply with respect to contracts for the construction,
13 reconstruction, improvement and maintenance of highways that are
14 awarded by the department of transportation pursuant to NRS 408.313 to
15 408.433, inclusive.

16 **Sec. 4.** NRS 338.1375 is hereby amended to read as follows:

17 338.1375 1. ~~Except as otherwise provided in NRS 338.1383, a~~ **A**
18 public body shall not accept a bid on a contract for a public work unless the
19 person who submits the bid has qualified pursuant to NRS 338.1379 to bid
20 on that contract.

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

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

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

37 ~~—(a) Construction trade associations; and~~

38 ~~—(b) Labor unions representing trades in the building industry.}~~

39 **Sec. 5.** NRS 338.1377 is hereby amended to read as follows:

40 338.1377 The criteria adopted by the state public works board or a
41 governing body pursuant to NRS 338.1375 to determine whether an
42 applicant is qualified to bid on a contract for a public work ~~is:~~

43 ~~1. Must be} **must:**~~

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

47 2. ~~{May include only:}~~ **Include, without limitation, an evaluation of:**

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

49 (b) The principal personnel of the applicant;



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

3 (d) *Whether the applicant has sufficient supervisory personnel and*
4 *equipment to perform the contract;*

5 (e) *The past performance of the applicant on contracts for public*
6 *works, including, without limitation, the failure of the applicant to*
7 *perform any contract for a public work;*

8 (1) *In the manner specified by the contract;*

9 (2) *Within the time specified by the contract; and*

10 (3) *For the amount of money specified by the contract;*

11 (f) Whether the applicant has been disqualified from being awarded the
12 contract pursuant to NRS 338.017 or 338.1387 ~~+~~ ; and

13 (g) *Any additional factors that the state public works board or the*
14 *governing body considers necessary to make its determination.*

15 **Sec. 6.** NRS 338.1379 is hereby amended to read as follows:

16 338.1379 1. ~~Except as otherwise provided in NRS 338.1383, a~~ A
17 person who wishes to qualify as a bidder on a contract for a public work
18 must submit an application to the state public works board or the governing
19 body.

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

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

24 (b) After conducting the investigation, determine whether the applicant
25 is qualified to bid on the contract.

26 *The state public works board or the governing body shall deny the*
27 *application of an applicant if, after applying the criteria set forth in*
28 *subsection 2 of NRS 338.1377, the state public works board determines*
29 *that the record of the applicant in performing contracts for public works*
30 *demonstrates a pattern of repeated poor performance or substandard*
31 *workmanship or repeatedly exceeding the estimated costs specified in the*
32 *contracts for public works by a substantial margin.* The determination of
33 *whether the applicant is qualified to bid on the contract* must be made
34 within 30 days after receipt of the application.

35 3. The state public works board or the governing body shall notify
36 each applicant in writing of its determination. If an application is denied,
37 the notice must set forth the reasons for the denial and inform the applicant
38 of his right to a hearing pursuant to NRS 338.1381.

39 4. The state public works board or the governing body shall not use
40 any criteria other than the criteria described in NRS 338.1377 in
41 determining whether to approve or deny an application.

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

46 **Sec. 7.** NRS 338.1385 is hereby amended to read as follows:

47 338.1385 1. Except as otherwise provided in subsection 7 and NRS
48 338.1906 and 338.1907, this state, or a local government that awards a
49 contract for the construction, alteration or repair of a public work in



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1 accordance with paragraph (a) of subsection 1 of NRS 338.1373, or a
2 public officer, public employee or other person responsible for awarding a
3 contract for the construction, alteration or repair of a public work who
4 represents the state or the local government, shall not:

5 (a) Commence such a project for which the estimated cost exceeds
6 \$100,000 unless it advertises in a newspaper of general circulation in this
7 state for bids for the project; or

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

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

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

22 (a) The requirement that a contractor must be qualified pursuant to NRS
23 338.1379 to bid on the contract ; ~~for must be exempt from meeting such~~
24 ~~qualifications pursuant to NRS 338.1383;~~ and

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

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

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

33 (a) The bidder is not a qualified bidder pursuant to NRS 338.1379 ; ~~;~~
34 ~~unless the bidder is exempt from meeting such qualifications pursuant to~~
35 ~~NRS 338.1383;~~

36 (b) The bidder is not responsive;

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

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

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

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

48 (b) A list of all equipment that the state or the local government intends
49 to use on the project, together with an estimate of the number of hours each



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1 item of equipment will be used and the hourly cost to use each item of
2 equipment;

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

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

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

9 7. This section does not apply to:

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

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

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

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

18 (e) The design and construction of a public work for which a public
19 body contracts with a design-build team pursuant to NRS 338.1711 to
20 338.1727, inclusive.

21 **Sec. 8.** NRS 338.1385 is hereby amended to read as follows:

22 338.1385 1. Except as otherwise provided in subsection 7 and NRS
23 338.1906 and 338.1907, this state, or a local government that awards a
24 contract for the construction, alteration or repair of a public work in
25 accordance with paragraph (a) of subsection 1 of NRS 338.1373, or a
26 public officer, public employee or other person responsible for awarding a
27 contract for the construction, alteration or repair of a public work who
28 represents the state or the local government, shall not:

29 (a) Commence such a project for which the estimated cost exceeds
30 \$100,000 unless it advertises in a newspaper of general circulation in this
31 state for bids for the project; or

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

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

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

46 (a) The requirement that a contractor must be qualified pursuant to NRS
47 338.1379 to bid on the contract ; ~~for must be exempt from meeting such~~
48 ~~qualifications pursuant to NRS 338.1383;~~ and



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

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

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

9 (a) The bidder is not a qualified bidder pursuant to NRS 338.1379 ; ~~†~~
10 ~~unless the bidder is exempt from meeting such qualifications pursuant to~~
11 ~~NRS 338.1383.†~~

12 (b) The bidder is not responsive;

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

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

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

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

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

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

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

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

34 7. This section does not apply to:

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

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

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

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

43 **Sec. 9.** NRS 338.1385 is hereby amended to read as follows:

44 338.1385 1. Except as otherwise provided in subsection 7, this state,
45 or a local government that awards a contract for the construction, alteration
46 or repair of a public work in accordance with paragraph (a) of subsection 1
47 of NRS 338.1373, or a public officer, public employee or other person
48 responsible for awarding a contract for the construction, alteration or repair



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1 of a public work who represents the state or the local government, shall
2 not:

3 (a) Commence such a project for which the estimated cost exceeds
4 \$100,000 unless it advertises in a newspaper of general circulation in this
5 state for bids for the project; or

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

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

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

20 (a) The requirement that a contractor must be qualified pursuant to NRS
21 338.1379 to bid on the contract ; ~~for must be exempt from meeting such~~
22 ~~qualifications pursuant to NRS 338.1383;~~ and

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

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

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

31 (a) The bidder is not a qualified bidder pursuant to NRS 338.1379 ; ~~;~~
32 ~~unless the bidder is exempt from meeting such qualifications pursuant to~~
33 ~~NRS 338.1383;~~

34 (b) The bidder is not responsive;

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 available
42 for public inspection a written statement containing:

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

46 (b) A list of all equipment that the state or the local government intends
47 to use on the project, together with an estimate of the number of hours each
48 item of equipment will be used and the hourly cost to use each item of
49 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 state or the local
5 government expects to save by rejecting the bids and performing the
6 project itself.

7 7. 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, the Moapa Valley water district created pursuant
14 to chapter 477, Statutes of Nevada 1983 or the Virgin Valley water district
15 created pursuant to chapter 100, Statutes of Nevada 1993.

16 **Sec. 10.** NRS 338.1387 is hereby amended to read as follows:

17 338.1387 1. A public body awarding a contract for a public work
18 shall not award the contract to a person who, at the time of the bid, is not
19 properly licensed under the provisions of chapter 624 of NRS or if the
20 contract would exceed the limit of his license. A subcontractor named by
21 the contractor who is not properly licensed for that portion of the work
22 shall be deemed unacceptable. If the subcontractor is deemed unacceptable,
23 the contractor shall provide an acceptable subcontractor before the award
24 of the contract.

25 2. If, after awarding the contract, the public body discovers that the
26 person to whom the contract was awarded is not licensed, or that the
27 contract would exceed his license, the public body shall reject the bid and
28 may accept ~~the next lowest~~ *another* bid *determined to be the best bid*
29 *pursuant to NRS 338.1389* for that public work from a responsive bidder
30 who was determined by the public body to be a qualified bidder pursuant to
31 NRS 338.1379 or was exempt from meeting such qualifications pursuant to
32 NRS 338.1373 ~~for 338.1383~~ without requiring that new bids be submitted.

33 **Sec. 11.** NRS 338.1389 is hereby amended to read as follows:

34 338.1389 1. Except as otherwise provided in NRS 338.1385 and
35 338.1711 to 338.1727, inclusive, a public body shall award a contract for a
36 public work to the contractor who submits the best bid ~~H~~, *as determined*
37 *pursuant to subsection 2.*

38 2. *The manager of the state public works board, the state public*
39 *works board if the board has not appointed a manager or the governing*
40 *body of the local government shall appoint a committee of at least three*
41 *persons to evaluate and score eligible bids submitted for a public works*
42 *project. The committee shall submit its evaluations to the manager of the*
43 *state public works board, the state public works board if the board has*
44 *not appointed a manager or the local government. The criteria to be used*
45 *by the committee to determine the best bid must include:*

46 (a) *The bid amount, which must have a relative weight of 30 percent*
47 *or more;*

48 (b) *Whether the contractor has a certificate of eligibility to receive a*
49 *preference in bidding on public works;*



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- 1 (c) Whether the contractor has violated any occupational safety and
2 health standards within the past 36 months;
3 (d) Whether there are any civil judgments or criminal convictions
4 against the principal personnel of the contractor or the subcontractors
5 named in the bid pursuant to NRS 338.141;
6 (e) Whether there are any records relating to a violation or an alleged
7 violation of a law regarding wage and hour standards, occupational
8 safety and health standards, labor relations or the prohibition of
9 discrimination in employment by principal personnel of the contractor or
10 any subcontractors named in the bid pursuant to NRS 338.141;
11 (f) The past performance of the contractor on a public works contract;
12 (g) The organizational structure, management and operation of the
13 contractor;
14 (h) The quality of services, materials, equipment and labor offered;
15 (i) The best interests of the public;
16 (j) The demonstrated ability of the contractor to meet the requirements
17 and specifications of a contract for a public work; and
18 (k) The demonstrated responsibility, skill, judgment, capacity,
19 competence, honesty and integrity of the contractor on other public
20 works projects.
- 21 3. Except as otherwise provided in subsection ~~18~~ 9 or limited by
22 subsection ~~19~~ 10, for the purposes of this section, a contractor who:
23 (a) Has been determined by the public body to be a qualified bidder
24 pursuant to NRS 338.1379 or is exempt from meeting such requirements
25 pursuant to NRS 338.1373 ; ~~for 338.1383~~ and
26 (b) At the time he submits his bid, provides to the public body a copy of
27 a certificate of eligibility to receive a preference in bidding on public works
28 issued to him by the state contractors' board pursuant to
29 subsection ~~13~~ 4,
30 shall be deemed to have submitted a better bid than a competing contractor
31 who has not provided a copy of such a valid certificate of eligibility if the
32 amount of his bid is not more than 5 percent higher than the amount bid by
33 the competing contractor.
- 34 ~~13~~ 4. The state contractors' board shall issue a certificate of
35 eligibility to receive a preference in bidding on public works to a general
36 contractor who is licensed pursuant to the provisions of chapter 624 of
37 NRS and submits to the board an affidavit from a certified public
38 accountant setting forth that the general contractor has:
- 39 (a) Paid:
- 40 (1) The sales and use taxes imposed pursuant to chapters 372, 374
41 and 377 of NRS on materials used for construction in this state, including,
42 without limitation, construction that is undertaken or carried out on land
43 within the boundaries of this state that is managed by the Federal
44 Government or is on an Indian reservation or Indian colony, of not less
45 than \$5,000 for each consecutive 12-month period for 60 months
46 immediately preceding the submission of the affidavit from the certified
47 public accountant;
- 48 (2) The motor vehicle privilege tax imposed pursuant to chapter 371
49 of NRS on the vehicles used in the operation of his business in this state of



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1 not less than \$5,000 for each consecutive 12-month period for 60 months
2 immediately preceding the submission of the affidavit from the certified
3 public accountant; or

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

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

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

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

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

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

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

22 ~~15~~ 6. A contractor who has received a certificate of eligibility to
23 receive a preference in bidding on public works from the state contractors'
24 board pursuant to subsection ~~13~~ 4 shall, at the time for the annual renewal
25 of his contractor's license pursuant to NRS 624.283, submit to the board an
26 affidavit from a certified public accountant setting forth that the contractor
27 has, during the immediately preceding 12 months, paid the taxes required
28 pursuant to paragraph (a) of subsection ~~13~~ 4 to maintain his eligibility to
29 hold such a certificate.

30 ~~16~~ 7. A contractor who fails to submit an affidavit to the board
31 pursuant to subsection ~~15~~ 6 ceases to be eligible to receive a preference in
32 bidding on public works unless he reapplies for and receives a certificate of
33 eligibility pursuant to subsection ~~13~~ 4.

34 ~~17~~ 8. If a contractor who applies to the state contractors' board for a
35 certificate of eligibility to receive a preference in bidding on public works
36 submits false information to the board regarding the required payment of
37 taxes, the contractor is not eligible to receive a preference in bidding on
38 public works for a period of 5 years after the date on which the board
39 becomes aware of the submission of the false information.

40 ~~18~~ 9. If any federal statute or regulation precludes the granting of
41 federal assistance or reduces the amount of that assistance for a particular
42 public work because of the provisions of subsection ~~12~~ 3, those provisions
43 do not apply insofar as their application would preclude or reduce federal
44 assistance for that work. The provisions of subsection ~~12~~ 3 do not apply to
45 any contract for a public work which is expected to cost less than
46 \$250,000.

47 ~~19~~ 10. Except as otherwise provided in subsection 2 of NRS
48 338.1727, if a bid is submitted by two or more contractors as a joint
49 venture or by one of them as a joint venturer, the provisions of subsection



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1 ~~H2~~ 3 apply only if both or all of the joint venturers separately meet the
2 requirements of that subsection.

3 ~~H0~~ 11. The state contractors' board shall adopt regulations and may
4 assess reasonable fees relating to the certification of contractors for a
5 preference in bidding on public works.

6 ~~H1~~ 12. A person or entity who believes that a contractor wrongfully
7 holds a certificate of eligibility to receive a preference in bidding on public
8 works may challenge the validity of the certificate by filing a written
9 objection with the public body to which the contractor has submitted a bid
10 or proposal on a contract for the construction of a public work. A written
11 objection authorized pursuant to this subsection must:

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

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

19 ~~H2~~ 13. If a public body receives a written objection pursuant to
20 subsection ~~H1~~ 12, the public body shall determine whether the objection
21 is accompanied by the proof or substantiating evidence required pursuant
22 to paragraph (a) of that subsection. If the public body determines that the
23 objection is not accompanied by the required proof or substantiating
24 evidence, the public body shall dismiss the objection and may proceed
25 immediately to award the contract. If the public body determines that the
26 objection is accompanied by the required proof or substantiating evidence,
27 the public body shall determine whether the contractor qualifies for the
28 certificate pursuant to the provisions of this section and may proceed to
29 award the contract accordingly.

30 14. *As used in this section, "principal personnel" means the*
31 *supervisory personnel who will be working on the project, including,*
32 *without limitation, the project manager and the superintendent of the*
33 *project.*

34 **Sec. 12.** NRS 338.1389 is hereby amended to read as follows:

35 338.1389 1. Except as otherwise provided in NRS 338.1385, a public
36 body shall award a contract for a public work to the contractor who
37 submits the best bid ~~H~~, *as determined pursuant to subsection 2.*

38 2. *The manager of the state public works board, the state public*
39 *works board if the board has not appointed a manager or the governing*
40 *body of the local government shall appoint a committee of at least three*
41 *persons to evaluate and score eligible bids submitted for a public works*
42 *project. The committee shall submit its evaluations to the manager of the*
43 *state public works board, the state public works board if the board has*
44 *not appointed a manager or the local government. The criteria to be used*
45 *by the committee to determine the best bid must include:*

46 (a) *The bid amount, which must have a relative weight of 30 percent*
47 *or more;*

48 (b) *Whether the contractor has a certificate of eligibility to receive a*
49 *preference in bidding on public works;*



- 1 (c) Whether the contractor has violated any occupational safety and
2 health standards within the past 36 months;
3 (d) Whether there are any civil judgments or criminal convictions
4 against the principal personnel of the contractor or the subcontractors
5 named in the bid pursuant to NRS 338.141;
6 (e) Whether there are any records relating to a violation or an alleged
7 violation of a law regarding wage and hour standards, occupational
8 safety and health standards, labor relations or the prohibition of
9 discrimination in employment by principal personnel of the contractor or
10 any subcontractors named in the bid pursuant to NRS 338.141;
11 (f) The past performance of the contractor on a public works contract;
12 (g) The organizational structure, management and operation of the
13 contractor;
14 (h) The quality of services, materials, equipment and labor offered;
15 (i) The best interests of the public;
16 (j) The demonstrated ability of the contractor to meet the requirements
17 and specifications of a contract for a public work; and
18 (k) The demonstrated responsibility, skill, judgment, capacity,
19 competence, honesty and integrity of the contractor on other public
20 works projects.
- 21 3. Except as otherwise provided in subsection ~~18~~ 9 or limited by
22 subsection ~~19~~ 10, for the purposes of this section, a contractor who:
23 (a) Has been determined by the public body to be a qualified bidder
24 pursuant to NRS 338.1379 or is exempt from meeting such requirements
25 pursuant to NRS 338.1373 ; ~~for 338.1383~~ and
26 (b) At the time he submits his bid, provides to the public body a copy of
27 a certificate of eligibility to receive a preference in bidding on public works
28 issued to him by the state contractors' board pursuant to
29 subsection ~~13~~ 4,
30 shall be deemed to have submitted a better bid than a competing contractor
31 who has not provided a copy of such a valid certificate of eligibility if the
32 amount of his bid is not more than 5 percent higher than the amount bid by
33 the competing contractor.
- 34 ~~13~~ 4. The state contractors' board shall issue a certificate of
35 eligibility to receive a preference in bidding on public works to a general
36 contractor who is licensed pursuant to the provisions of chapter 624 of
37 NRS and submits to the board an affidavit from a certified public
38 accountant setting forth that the general contractor has:
- 39 (a) Paid:
40 (1) The sales and use taxes imposed pursuant to chapters 372, 374
41 and 377 of NRS on materials used for construction in this state, including,
42 without limitation, construction that is undertaken or carried out on land
43 within the boundaries of this state that is managed by the Federal
44 Government or is on an Indian reservation or Indian colony, of not less
45 than \$5,000 for each consecutive 12-month period for 60 months
46 immediately preceding the submission of the affidavit from the certified
47 public accountant;
48 (2) The motor vehicle privilege tax imposed pursuant to chapter 371
49 of NRS on the vehicles used in the operation of his business in this state of



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1 not less than \$5,000 for each consecutive 12-month period for 60 months
2 immediately preceding the submission of the affidavit from the certified
3 public accountant; or

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

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

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

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

13 ~~14-1~~ 5. For the purposes of complying with the requirements set forth
14 in paragraph (a) of subsection ~~13-1~~ 4, a general contractor shall be deemed
15 to have paid:

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

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

22 ~~15-1~~ 6. A contractor who has received a certificate of eligibility to
23 receive a preference in bidding on public works from the state contractors'
24 board pursuant to subsection ~~13-1~~ 4 shall, at the time for the annual renewal
25 of his contractor's license pursuant to NRS 624.283, submit to the board an
26 affidavit from a certified public accountant setting forth that the contractor
27 has, during the immediately preceding 12 months, paid the taxes required
28 pursuant to paragraph (a) of subsection ~~13-1~~ 4 to maintain his eligibility to
29 hold such a certificate.

30 ~~16-1~~ 7. A contractor who fails to submit an affidavit to the board
31 pursuant to subsection ~~15-1~~ 6 ceases to be eligible to receive a preference in
32 bidding on public works unless he reapplies for and receives a certificate of
33 eligibility pursuant to subsection ~~13-1~~ 4.

34 ~~17-1~~ 8. If a contractor who applies to the state contractors' board for a
35 certificate of eligibility to receive a preference in bidding on public works
36 submits false information to the board regarding the required payment of
37 taxes, the contractor is not eligible to receive a preference in bidding on
38 public works for a period of 5 years after the date on which the board
39 becomes aware of the submission of the false information.

40 ~~18-1~~ 9. If any federal statute or regulation precludes the granting of
41 federal assistance or reduces the amount of that assistance for a particular
42 public work because of the provisions of subsection ~~12-1~~ 3, those provisions
43 do not apply insofar as their application would preclude or reduce federal
44 assistance for that work. The provisions of subsection ~~12-1~~ 3 do not apply to
45 any contract for a public work which is expected to cost less than
46 \$250,000.

47 ~~19-1~~ 10. If a bid is submitted by two or more contractors as a joint
48 venture or by one of them as a joint venturer, the provisions of subsection



1 ~~12~~ 3 apply only if both or all of the joint venturers separately meet the
2 requirements of that subsection.

3 ~~10~~ 11. The state contractors' board shall adopt regulations and may
4 assess reasonable fees relating to the certification of contractors for a
5 preference in bidding on public works.

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

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

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

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

30 14. *As used in this section, "principal personnel" means the*
31 *supervisory personnel who will be working on the project, including,*
32 *without limitation, the project manager and the superintendent of the*
33 *project.*

34 **Sec. 13.** NRS 338.141 is hereby amended to read as follows:

35 338.141 1. Except as otherwise provided in subsection 2, each bid
36 submitted to any officer, department, board or commission for the
37 construction of any public work or improvement must include:

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



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

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

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

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

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

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

16 (2) The named subcontractor files for bankruptcy or becomes
17 insolvent; or

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

21 **Sec. 14.** NRS 338.145 is hereby amended to read as follows:

22 338.145 1. A local government 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 unacceptable,
28 the contractor shall provide an acceptable subcontractor before the award
29 of the contract.

30 2. If, after awarding the contract, the local government discovers that
31 the person to whom the contract was awarded is not licensed, or that the
32 contract would exceed his license, the local government shall reject the bid
33 and may accept ~~the next lowest~~ another bid *determined to be the best bid*
34 *pursuant to NRS 338.1389* for that public work from a responsive and
35 responsible bidder without requiring that new bids be submitted.

36 **Sec. 15.** NRS 338.1383 is hereby repealed.

37 **Sec. 16.** 1. This section and sections 3 to 6, inclusive, 10, 13, 14 and
38 15 of this act become effective on July 1, 2001.

39 2. Sections 1 and 11 of this act become effective on July 1, 2001, and
40 expire by limitation on September 30, 2003.

41 3. Sections 2 and 12 of this act become effective at 12:01 a.m. on
42 October 1, 2003.

43 4. Section 7 of this act becomes effective on July 1, 2001, and expires
44 by limitation on September 30, 2003.

45 5. Section 8 of this act becomes effective at 12:01 a.m. on October 1,
46 2003, and expires by limitation on April 30, 2013.

47 6. Section 9 of this act becomes effective at 12:01 a.m. on May 1,
48 2013.



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TEXT OF REPEALED SECTION

338.1383 Exemptions for certain contractors. A public body may accept a bid on a contract for a public work from a person who does not qualify pursuant to NRS 338.1379 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.

