
SENATE BILL NO. 61—COMMITTEE ON GOVERNMENT AFFAIRS

PREFILED JANUARY 30, 2001

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions relating to use of design-build teams on public works projects. (BDR 28-99)

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 projects; authorizing certain public bodies to contract with a design-build team for certain public works projects; removing certain requirements for providing notice of certain hearings; removing certain requirements for advertising for preliminary proposals from design-build teams for certain projects; changing certain requirements for the contents of a request for preliminary proposals; authorizing a public body and the department of transportation to select finalists for submitting a final proposal within a certain period; requiring a public body and the department of transportation to consider the degree to which a preliminary proposal is responsive to certain requirements when selecting finalists; changing certain requirements for a request for final proposals; removing the date for expiration of provisions relating to the use of design-build teams on public works projects; 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 338.1385 is hereby amended to read as follows:
2 338.1385 1. Except as otherwise provided in subsection 7, ~~[and~~
3 ~~NRS 338.1906 and 338.1907,]~~ this state, or a local government that awards
4 a contract for the construction, alteration or repair of a public work in
5 accordance with paragraph (a) of subsection 1 of NRS 338.1373, or a
6 public officer, public employee or other person responsible for awarding a
7 contract for the construction, alteration or repair of a public work who
8 represents the s tate or the local government, shall not:
9 (a) Commence such a project for which the estimated cost exceeds
10 \$100,000 unless it advertises in a newspaper of general circulation in this
11 state for bids for the project; or

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

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

14 3. Each advertisement for bids must include a provision that sets forth:
15 (a) The requirement that a contractor must be qualified pursuant to NRS
16 338.1379 to bid on the contract or must be exempt from meeting such
17 qualifications pursuant to NRS 338.1383; and

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

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

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

26 (a) The bidder is not a qualified bidder pursuant to NRS 338.1379,
27 unless the bidder is exempt from meeting such qualifications pursuant to
28 NRS 338.1383;

29 (b) The bidder is not responsive;

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

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

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

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

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

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

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

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

7. This section does not apply to:

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

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

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

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

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

Sec. 2. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in NRS 338.1385 and 338.1711 to 338.1727, inclusive, a public body shall award a contract for a public work to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 8 or limited by subsection 9, for the purposes of this section, a contractor who:

(a) Has been determined by the public body to be a qualified bidder pursuant to NRS 338.1379 or is exempt from meeting such requirements pursuant to NRS 338.1373 or 338.1383; and

(b) At the time he submits his bid, provides to the public body a copy of a certificate of eligibility to receive a preference in bidding on public works issued to him by the state contractors' board pursuant to subsection 3, shall be deemed to have submitted a better bid than a competing contractor who has not provided a copy of such a valid certificate of eligibility if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.

3. The state contractors' board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the board an affidavit from a certified public accountant setting forth that the general contractor has:

(a) Paid:

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

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

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

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

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

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

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

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

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

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

21 5. A contractor who has received a certificate of eligibility to receive a
22 preference in bidding on public works from the state contractors' board
23 pursuant to subsection 3 shall, at the time for the annual renewal of his
24 contractors' license pursuant to NRS 624.283, submit to the board an
25 affidavit from a certified public accountant setting forth that the contractor
26 has, during the immediately preceding 12 months, paid the taxes required
27 pursuant to paragraph (a) of subsection 3 to maintain his eligibility to hold
28 such a certificate.

29 6. A contractor who fails to submit an affidavit to the board pursuant
30 to subsection 5 ceases to be eligible to receive a preference in bidding on
31 public works unless he reapplies for and receives a certificate of eligibility
32 pursuant to subsection 3.

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

39 8. If any federal statute or regulation precludes the granting of federal
40 assistance or reduces the amount of that assistance for a particular public
41 work because of the provisions of subsection 2, those provisions do not
42 apply insofar as their application would preclude or reduce federal
43 assistance for that work. The provisions of subsection 2 do not apply to any
44 contract for a public work which is expected to cost less than \$250,000.

45 9. ~~If a bid is submitted by two or more contractors as a joint venture or by one~~
46 ~~of them as a joint venturer, the provisions of subsection 2 apply only if~~
47 ~~both or all of the joint venturers separately meet the requirements of that~~
48 ~~subsection.~~
49

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

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

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

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

12. If a public body receives a written objection pursuant to subsection 11, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and may proceed immediately to award the contract. If the public body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and may proceed to award the contract accordingly.

Sec. 3. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 6, ~~and NRS 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 NRS 338.1373, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents that local government, shall not:

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

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

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

1 annually to the local government to remain on the list. Offers for bids
2 which are made pursuant to this subsection must be sent by certified mail.

3 3. 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 4. 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 responsive or responsible;

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

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

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

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

21 (b) A list of all equipment that the local government intends to use on
22 the project, together with an estimate of the number of hours each item of
23 equipment will be used and the hourly cost to use 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 local government expects to
28 save by rejecting the bids and performing the project itself.

29 6. This section does not apply to:

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

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

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

34 (d) The Las Vegas Valley water district created pursuant to chapter 167,
35 Statutes of Nevada 1947, the Moapa Valley water district created pursuant
36 to chapter 477, Statutes of Nevada 1983 or the Virgin Valley water district
37 created pursuant to chapter 100, Statutes of Nevada 1993; or

38 (e) The design and construction of a public work for which a public
39 body contracts with a design-build team pursuant to NRS 338.1711 to
40 338.1727, inclusive.

41 **Sec. 4.** NRS 338.147 is hereby amended to read as follows:

42 338.147 1. Except as otherwise provided in NRS 338.143 and
43 338.1711 to 338.1727, inclusive, a local government shall award a contract
44 for a public work to the contractor who submits the best bid.

45 2. Except as otherwise provided in subsection 8 or limited by
46 subsection 9, for the purposes of this section, a contractor who:

47 (a) Has been found to be a responsible and responsive contractor by the
48 local government; and

(b) At the time he submits his bid, provides to the local government a copy of a certificate of eligibility to receive a preference in bidding on public works issued to him by the state contractors' board pursuant to subsection 3, shall be deemed to have submitted a better bid than a competing contractor who has not provided a copy of such a valid certificate of eligibility if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.

3. The state contractors' board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the board an affidavit from a certified public accountant setting forth that the general contractor has:

(a) Paid:

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

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

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

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

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

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

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

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

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

5. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the state contractors' board pursuant to subsection 3 shall, at the time for the annual renewal of his contractors' license pursuant to NRS 624.283, submit to the board an

1 affidavit from a certified public accountant setting forth that the contractor
2 has, during the immediately preceding 12 months, paid the taxes required
3 pursuant to paragraph (a) of subsection 3 to maintain his eligibility to hold
4 such a certificate.

5 6. A contractor who fails to submit an affidavit to the board pursuant
6 to subsection 5 ceases to be eligible to receive a preference in bidding on
7 public works unless he reapplies for and receives a certificate of eligibility
8 pursuant to subsection 3.

9 7. If a contractor who applies to the state contractors' board for a
10 certificate of eligibility to receive a preference in bidding on public works
11 submits false information to the board regarding the required payment of
12 taxes, the contractor is not eligible to receive a preference in bidding on
13 public works for a period of 5 years after the date on which the board
14 becomes aware of the submission of the false information.

15 8. If any federal statute or regulation precludes the granting of federal
16 assistance or reduces the amount of that assistance for a particular public
17 work because of the provisions of subsection 2, those provisions do not
18 apply insofar as their application would preclude or reduce federal
19 assistance for that work. The provisions of subsection 2 do not apply to any
20 contract for a public work which is expected to cost less than \$250,000.

21 9. ~~[Except as otherwise provided in subsection 2 of NRS 338.1727 and~~
22 ~~subsection 2 of NRS 408.3886 if]~~ *If* a bid is submitted by two or more
23 contractors as a joint venture or by one of them as a joint venturer, the
24 provisions of subsection 2 apply only if both or all of the joint venturers
25 separately meet the requirements of that subsection.

26 10. The state contractors' board shall adopt regulations and may assess
27 reasonable fees relating to the certification of contractors for a preference
28 in bidding on public works.

29 11. A person or entity who believes that a contractor wrongfully holds
30 a certificate of eligibility to receive a preference in bidding on public works
31 may challenge the validity of the certificate by filing a written objection
32 with the public body to which the contractor has submitted a bid or
33 proposal on a contract for the completion of a public work. A written
34 objection authorized pursuant to this subsection must:

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

38 (b) Be filed with the public body at or after the time at which the
39 contractor submitted the bid or proposal to the public body and before the
40 time at which the public body awards the contract for which the bid or
41 proposal was submitted.

42 12. If a public body receives a written objection pursuant to subsection
43 11, the public body shall determine whether the objection is accompanied
44 by the proof or substantiating evidence required pursuant to paragraph (a)
45 of that subsection. If the public body determines that the objection is not
46 accompanied by the required proof or substantiating evidence, the public
47 body shall dismiss the objection and may proceed immediately to award
48 the contract. If the public body determines that the objection is
49 accompanied by the required proof or substantiating evidence, the public

body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and may proceed to award the contract accordingly.

Sec. 5. NRS 338.1711 is hereby amended to read as follows:

338.1711 1. Except as otherwise provided in this section, a public body shall contract with a prime contractor for the construction of a public work for which the estimated cost exceeds \$100,000.

2. A public body may contract with a design-build team for the design and construction of a public work that is a discrete project if the public body determines that:

(a) The public work is:

(1) A plant or facility for the treatment and pumping of water or the treatment and disposal of wastewater or sewage, the estimated cost of which exceeds \$100,000,000; or

(2) Any other type of public work, except a stand-alone underground utility project, the estimated cost of which exceeds \$30,000,000; and

(b) Contracting with a design-build team will enable the public body to:

(1) Design and construct the public work at a cost that is significantly lower than the cost that the public body would incur to design and construct the public work using a different method;

(2) Design and construct the public work in a shorter time than would be required to design and construct the public work using a different method, if exigent circumstances require that the public work be designed and constructed within a short time; or

(3) Ensure that the design and construction of the public work is properly coordinated, if the public work is unique, highly technical and complex in nature.

3. ~~In a county whose population is 400,000 or more, a~~ A public body that is responsible for financing public works may, for its own public works and those financed by a different public body, including, without limitation, an airport if the airport is owned and operated as a department of the public body, contract with a design-build team once in each fiscal year for the design and construction of a public work if the public body determines that:

(a) The estimated cost of the public work is :

(1) For a public work that is a plant or facility for the treatment and pumping of water or the treatment and disposal of wastewater or sewage, at least ~~[\$5,000,000]~~ \$250,000 but less than \$100,000,000; or

(2) For any other type of public work, at least \$250,000 but less than \$30,000,000; and

(b) Contracting with a design-build team will enable the public body to:

(1) Design and construct the public work at a cost that is significantly lower than the cost that the public body would incur to design and construct the public work using a different method;

(2) Design and construct the public work in a shorter time than would be required to design and construct the public work using a different method, if exigent circumstances require that the public work be designed and constructed within a short time; or

(3) Ensure that the design and construction of the public work is properly coordinated, if the public work is unique, highly technical and complex in nature.

4. Notwithstanding the provisions of subsections 1, 2 and 3, a public body may contract with:

(a) A nonprofit organization for the design and construction of a project to restore, enhance or develop wetlands.

(b) A prime contractor, specialty contractor or design-build team with respect to a public work if the public body determines that the public work is:

(1) Not part of a larger public work; and

(2) Limited in scope to:

(I) Removal of asbestos;

(II) Replacement of equipment or systems for heating, ventilation and air-conditioning;

(III) Replacement of a roof;

(IV) Landscaping; or

(V) Restoration, enhancement or development of wetlands.

Sec. 6. NRS 338.1713 is hereby amended to read as follows:

338.1713 1. A public body shall not contract with a design-build team with respect to a public work unless the governing body of the public body makes the determinations, at a public hearing, that are required pursuant to subsection 2, 3 or 4 of NRS 338.1711, as applicable.

2. A public body that is required to hold a public hearing pursuant to this section shall publish notice of the hearing ~~at least once each week for 3 consecutive weeks in:~~

~~— (a) A newspaper of general circulation published in the county in which the public work is proposed to be constructed or, if there is no such newspaper, in a newspaper of general circulation in the county published in this state; and~~

~~— (b) A] in a~~ newspaper of general circulation in this state.

Sec. 7. NRS 338.1723 is hereby amended to read as follows:

338.1723 1. A public body shall advertise for preliminary proposals for the design and construction of a public work by a design-build team ~~at least twice each week for 3 consecutive weeks in:~~

~~— (a) A newspaper of general circulation published in the county in which the public work is proposed to be constructed or, if there is no such newspaper, in a newspaper of general circulation in the county published in this state; and~~

~~— (b) A] in a~~ newspaper of general circulation in this state.

2. A request for preliminary proposals published pursuant to subsection 1 must include, without limitation:

(a) A description of the public work to be designed and constructed;

(b) Separate estimates of the costs of designing and constructing the public work;

(c) The dates on which it is anticipated that the separate phases of the design and construction of the public work will begin and end;

(d) *The date by which preliminary proposals must be submitted to the public body, which must not be less than 30 days after the date that the*

request for preliminary proposals is first published in a newspaper pursuant to subsection 1; and

(e) A statement setting forth the place and time in which a design-build team desiring to submit a proposal for the public work may obtain the information necessary to submit a proposal, including, without limitation, the *information set forth in subsection 3.*

3. A public body shall maintain at the time and place set forth in the request for preliminary proposals the following information for inspection by a design-build team desiring to submit a proposal for the public work:

(a) *The* extent to which designs must be completed for both preliminary and final proposals and any other requirements for the design and construction of the public work that the public body determines to be necessary;

~~[(e)]~~ (b) A list of the requirements set forth in NRS 338.1721;

~~[(f)]~~ (c) A list of the factors that the public body will use to evaluate design-build teams who submit a proposal for the public work, including, without limitation:

(1) The relative weight to be assigned to each factor ~~[(h)]~~ *pursuant to NRS 338.1727; and*

(2) A disclosure of whether the factors that are not related to cost are, when considered as a group, more or less important in the process of evaluation than the factor of cost;

~~[(g)]~~ (d) Notice that a design-build team desiring to submit a proposal for the public work must include with its proposal the information used by the public body to determine finalists among the design-build teams submitting proposals pursuant to subsection 2 of NRS 338.1725 and a description of that information;

~~[(h)]~~ (e) A statement that a design-build team whose prime contractor holds a certificate of eligibility to receive a preference in bidding on public works issued pursuant to NRS 338.1389 or 338.147 should submit a copy of the certificate of eligibility with its proposal;

~~[(i)]~~ *and*

(f) A statement as to whether a design-build team that is selected as a finalist pursuant to NRS 338.1725 but is not awarded the design-build contract pursuant to NRS 338.1727 will be partially reimbursed for the cost of preparing a final proposal and, if so, an estimate of the amount of the partial reimbursement. ~~[(j) and~~

~~—(j) The date by which preliminary proposals must be submitted to the public body, which must not be less than 30 days or more than 60 days after the date on which the request for preliminary proposals is first published in a newspaper pursuant to subsection 1.]~~

Sec. 8. NRS 338.1725 is hereby amended to read as follows:

338.1725 1. ~~[(At least 30 days after the date by which preliminary proposals must be submitted to the public body, the]~~ *The* public body shall select at least three but not more than five finalists from among the design-build teams that submitted preliminary proposals. If the public body does not receive at least three preliminary proposals from design-build teams that the public body determines to be qualified pursuant to this section and

1 NRS 338.1721, the public body may not contract with a design-build team
2 for the design and construction of the public work.

3 2. The public body shall select finalists pursuant to subsection 1 by:

4 (a) Verifying that each design-build team which submitted a
5 preliminary proposal satisfies the requirements of NRS 338.1721; and

6 (b) Conducting an evaluation of the qualifications of each design-build
7 team that submitted a preliminary proposal, including, without limitation,
8 an evaluation of:

9 (1) The professional qualifications and experience of the members of
10 the design-build team;

11 (2) The performance history of the members of the design-build team
12 concerning other recent, similar projects completed by those members, if
13 any;

14 (3) The safety programs established and the safety records
15 accumulated by the members of the design-build team; ~~and~~

16 (4) The proposed plan of the design-build team to manage the design
17 and construction of the public work that sets forth in detail the ability of the
18 design-build team to design and construct the public work ~~and~~; *and*

19 *(5) The degree to which the preliminary proposal is responsive to*
20 *the requirements of the public body for the submittal of a preliminary*
21 *proposal.*

22 **Sec. 9.** NRS 338.1727 is hereby amended to read as follows:

23 338.1727 1. After selecting the finalists pursuant to NRS 338.1725,
24 the public body shall provide to each finalist a request for final proposals
25 for the public work. The request for final proposals must:

26 (a) Set forth the factors that the public body will use to select a design-
27 build team to design and construct the public work, including the relative
28 weight to be assigned to each factor; and

29 (b) Set forth the date by which final proposals must be submitted to the
30 public body.

31 2. *In assigning the relative weight to each factor for selecting a*
32 *design-build team pursuant to subsection 1, the public body shall assign,*
33 *without limitation, a relative weight of 5 percent to the possession of a*
34 *certificate of eligibility to receive a preference in bidding on public works*
35 *and a relative weight of 30 percent to the proposed cost of design and*
36 *construction of the public work.*

37 3. A final proposal submitted by a design-build team pursuant to this
38 section must be prepared thoroughly, be responsive to the criteria that the
39 public body will use to select a design-build team to design and construct
40 the public work described in subsection 1 and comply with the provisions
41 of NRS 338.141. ~~If the cost of construction is a factor in the selection of a~~
42 ~~design-build team, a design-build team whose prime contractor has~~
43 ~~submitted with its proposal a certificate of eligibility to receive a~~
44 ~~preference in bidding on public works issued pursuant to NRS 338.1389 or~~
45 ~~338.147 shall be deemed to have submitted a better proposal than a~~
46 ~~competing design-build team whose prime contractor has not submitted~~
47 ~~such a certificate of eligibility if the amount proposed by the design-build~~
48 ~~team is not more than 5 percent higher than the amount proposed by the~~
49 ~~competing design-build team.~~

~~3. At least 30 days after]~~

4. ~~After~~ receiving the final proposals for the public work, the public body shall:

(a) Select the most cost-effective and responsive final proposal, using the criteria set forth pursuant to ~~[subsection 1.]~~ ~~subsections 1 and 2;~~ or

(b) Reject all the final proposals.

~~[4.]~~ 5. If a public body selects a final proposal pursuant to paragraph (a) of subsection ~~[3.]~~ 4, the public body shall, at its next regularly scheduled meeting:

(a) Review and ratify the selection.

(b) Award the design-build contract to the design-build team whose proposal is selected.

(c) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph ~~[6.]~~ (f) of subsection ~~[2.]~~ 3 of NRS 338.1723. The amount of reimbursement must not exceed, for each unsuccessful finalist, 3 percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

(d) Make available to the public a summary setting forth the factors used by the public body to select the successful design-build team and the ranking of the design-build teams who submitted final proposals. The public body shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

~~[5.]~~ 6. A contract awarded pursuant to this section must specify:

(a) An amount that is the maximum amount that the public body will pay for the performance of all the work required by the contract, excluding any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;

(b) An amount that is the maximum amount that the public body will pay for the performance of the professional services required by the contract; and

(c) A date by which performance of the work required by the contract must be completed.

~~[6.]~~ 7. A design-build team to whom a contract is awarded pursuant to this section shall:

(a) Assume overall responsibility for ensuring that the design and construction of the public work is completed in a satisfactory manner; and

(b) Use the work force of the prime contractor on the design-build team to construct at least 15 percent of the public work.

Sec. 10. NRS 408.215 is hereby amended to read as follows:

408.215 1. The director has charge of all the records of the department, keeping records of all proceedings pertaining to the department and keeping on file information, plans, specifications, estimates, statistics and records prepared by the department, except those financial statements described in NRS 408.333 and the financial or proprietary information described in paragraph (d) of subsection ~~[4.]~~ 5 of NRS 408.3886, which must not become matters of public record.

2. The director may photograph, microphotograph or film or dispose of the records of the department referred to in subsection 1 as provided in NRS 239.051, 239.080 and 239.085.

3. The director shall maintain an index or record of deeds or other references of title or interests in and to all lands or interests in land owned or acquired by the department.

4. The director shall adopt such regulations as may be necessary to carry out and enforce the provisions of this chapter.

Sec. 11. NRS 408.3881 is hereby amended to read as follows:

408.3881 1. The department shall not contract with a design-build team with respect to a project unless the board makes the determinations, at a public meeting, that are required pursuant to NRS 408.388.

2. If the department is required to hold a public meeting pursuant to this section, the department shall publish notice of the meeting ~~at least once each week for 3 consecutive weeks in:~~

~~—(a) A newspaper of general circulation published in each county in which the project is proposed to be constructed or, if there is no such newspaper, in a newspaper of general circulation in each county published in this state; and~~

~~—(b) A~~ *in a* newspaper of general circulation in this state.

Sec. 12. NRS 408.3883 is hereby amended to read as follows:

408.3883 1. The department shall advertise for preliminary proposals for the design and construction of a project by a design-build team ~~at least twice each week for 3 consecutive weeks in:~~

~~—(a) A newspaper of general circulation published in each county in which the project is proposed to be constructed or, if there is no such newspaper, in a newspaper of general circulation in each county published in this state; and~~

~~—(b) A~~ *in a* newspaper of general circulation in this state.

2. A request for preliminary proposals published pursuant to subsection 1 must include, without limitation:

(a) A description of the proposed project;

(b) Separate estimates of the costs of designing and constructing the project;

(c) The dates on which it is anticipated that the separate phases of the design and construction of the project will begin and end;

(d) *The date by which preliminary proposals must be submitted to the department, which must not be less than 30 days after the date that the request for preliminary proposals is first published in a newspaper pursuant to subsection 1; and*

(e) A statement setting forth the place and time in which a design-build team desiring to submit a proposal for the project may obtain the information necessary to submit a proposal, including, without limitation, the *information set forth in subsection 3.*

3. *The department shall maintain at the time and place set forth in the request for preliminary proposals the following information for inspection by a design-build team desiring to submit a proposal for the project:*

(a) The extent to which designs must be completed for both preliminary and final proposals and any other requirements for the design and construction of the project that the department determines to be necessary;

~~[(e)]~~ (b) A list of the requirements set forth in NRS 408.3884;

~~[(f)]~~ (c) A list of the factors that the department will use to evaluate design-build teams who submit a proposal for the project, including, without limitation:

(1) The relative weight to be assigned to each factor ~~[(f)]~~ pursuant to NRS 408.3886; and

(2) A disclosure of whether the factors that are not related to cost are, when considered as a group, more or less important in the process of evaluation than the factor of cost;

~~[(g)]~~ (d) Notice that a design-build team desiring to submit a proposal for the project must include with its proposal the information used by the department to determine finalists among the design-build teams submitting proposals pursuant to subsection 2 of NRS 408.3885 and a description of that information;

~~[(h)]~~ (e) A statement that a design-build team whose prime contractor holds a certificate of eligibility to receive a preference in bidding on public works issued pursuant to NRS 338.1389 or 338.147 should submit a copy of the certificate of eligibility with its proposal;

~~[(i)]~~ and

(f) A statement as to whether a bidding design-build team that is selected as a finalist pursuant to NRS 408.3885 but is not awarded the design-build contract pursuant to NRS 408.3886 will be partially reimbursed for the cost of preparing a final proposal and, if so, an estimate of the amount of the partial reimbursement. ~~[(f)] and~~

~~—(j) The date by which preliminary proposals must be submitted to the department, which must not be less than 30 days or more than 60 days after the date on which the request for preliminary proposals is first published in a newspaper pursuant to subsection 1.]~~

Sec. 13. NRS 408.3885 is hereby amended to read as follows:

408.3885 1. ~~[(At least 30 days after the date by which preliminary proposals must be submitted to the department, the)]~~ The department shall select at least three but not more than five finalists from among the design-build teams that submitted preliminary proposals. If the department does not receive at least three preliminary proposals from design-build teams that the department determines to be qualified pursuant to this section and NRS 408.3884, the department may not contract with a design-build team for the design and construction of the project.

2. The department shall select finalists pursuant to subsection 1 by:

(a) Verifying that each design-build team which submitted a preliminary proposal satisfies the requirements of NRS 408.3884; and

(b) Conducting an evaluation of the qualifications of each design-build team that submitted a preliminary proposal, including, without limitation, an evaluation of:

(1) The professional qualifications and experience of the members of the design-build team;

(2) The performance history of the members of the design-build team concerning other recent, similar projects completed by those members, if any;

(3) The safety programs established and the safety records accumulated by the members of the design-build team; ~~and~~

(4) The proposed plan of the design-build team to manage the design and construction of the project that sets forth in detail the ability of the design-build team to design and construct the project ~~[-]~~; and

(5) The degree to which the preliminary proposal is responsive to the requirements of the department for the submittal of a preliminary proposal.

Sec. 14. NRS 408.3886 is hereby amended to read as follows:

408.3886 1. After selecting the finalists pursuant to NRS 408.3885, the department shall provide to each finalist a request for final proposals for the project. The request for final proposals must:

(a) Set forth the factors that the department will use to select a design-build team to design and construct the project, including the relative weight to be assigned to each factor; and

(b) Set forth the date by which final proposals must be submitted to the department.

2. In assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the department shall assign, without limitation, a relative weight of 5 percent to the possession of a certificate of eligibility to receive a preference in bidding on public works and a relative weight of 30 percent for the proposed cost of design and construction of the project.

3. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly, be responsive to the criteria that the department will use to select a design-build team to design and construct the project described in subsection 1 and comply with the provisions of NRS 338.141. ~~[If the cost of construction is a factor in the selection of a design-build team, a design-build team whose prime contractor has submitted with its proposal a certificate of eligibility to receive a preference in bidding on public works issued pursuant to NRS 338.1389 or 338.147 shall be deemed to have submitted a better proposal than a competing design-build team whose prime contractor has not submitted such a certificate of eligibility if the amount proposed by the design-build team is not more than 5 percent higher than the amount proposed by the competing design-build team.]~~

~~— 3. — At least 30 days after~~

4. *After* receiving the final proposals for the project, the department shall:

(a) Select the most cost-effective and responsive final proposal, using the criteria set forth pursuant to ~~[subsection 1:]~~ *subsections 1 and 2*; or

(b) Reject all the final proposals.

~~[4:]~~ 5. If the department selects a final proposal pursuant to paragraph

(a) of subsection ~~[3:]~~ 4, the department shall hold a public meeting to:

(a) Review and ratify the selection.

(b) Award the design-build contract to the design-build team whose proposal is selected.

(c) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph ~~[(6)]~~ (f) of subsection ~~[(2)]~~ 3 of NRS 408.3883. The amount of reimbursement must not exceed, for each unsuccessful finalist, three percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

(d) Make available to the public a summary setting forth the factors used by the department to select the successful design-build team and the ranking of the design-build teams who submitted final proposals. The department shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

~~[(5-)]~~ 6. A contract awarded pursuant to this section must specify:

(a) An amount that is the maximum amount that the department will pay for the performance of all the work required by the contract, excluding any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;

(b) An amount that is the maximum amount that the department will pay for the performance of the professional services required by the contract; and

(c) A date by which performance of the work required by the contract must be completed.

~~[(6-)]~~ 7. A design-build team to whom a contract is awarded pursuant to this section shall:

(a) Assume overall responsibility for ensuring that the design and construction of the project is completed in a satisfactory manner; and

(b) Use the work force of the prime contractor on the design-build team to construct at least 15 percent of the project.

Sec. 15. Section 21 of Assembly Bill No. 298 of the 1999 session as last amended by section 35.6 of chapter 627, Statutes of Nevada 1999, at page 3497, is hereby amended to read as follows:

Sec. 21. 1. This section and sections 2 to 7, inclusive, 10 to 14, inclusive, *and* 16 to ~~[(19, inclusive, and)]~~ 20 , *inclusive*, of this act become effective on October 1, 1999.

2. Section 8 of this act becomes effective on October 1, 1999, and expires by limitation on ~~[(October 1, 2003-]~~

~~[(3- Sections 19.2 and 19.6 of this act become effective on October 1, 2003-]~~

~~[(4- Sections 15 and 19.4)]~~ *May 1, 2013.*

3. Section 15 of this act ~~[(become)]~~ *becomes* effective at 12:01 a.m. on May 1, 2013.

~~[(5-)]~~ 4. Sections 14, 18 ~~[(, 19 and 19.2)]~~ *and 19* of this act expire by limitation on May 1, 2013.

Sec. 16. Section 38 of chapter 627, Statutes of Nevada 1999, at page 3504, is hereby amended to read as follows:

Sec. 38. 1. This section and sections ~~[(35.4 and)]~~ *1 to 9, inclusive, 14 to 35, inclusive,* 35.6 *and 36* of this act become effective on October 1, 1999.

2. ~~[Sections 1 to 9, inclusive, 14 to 35, inclusive, 36 and]~~ *Section* 37 of this act ~~[become]~~ *becomes* effective on October 1, 1999, and ~~[expire]~~ *expires* by limitation on October 1, 2003.

3. Sections 10, 13 and 35.8 of this act become effective at 12:01 a.m. on October 1, 1999 . ~~[, and expire by limitation on October 1, 2003.]~~

4. Section 11 of this act becomes effective at 12:01 a.m. on October 1, 1999, and expires by limitation on May 1, 2013.

~~[5. Section 13.5 of this act becomes effective at 12:01 a.m. on October 1, 2003.]~~

~~[6. Section 35.2 of this act becomes effective at 12:01 a.m. on October 1, 2003 and expires by limitation on May 1, 2013.]~~

~~[7. Section 12 of this act becomes effective at 12:02 a.m. on May 1, 2013.]~~

Sec. 17. Sections 12, 13.5, 35.2 and 35.4 of chapter 627, Statutes of Nevada 1999, at pages 3476, 3479, 3490 and 3491, respectively, are hereby repealed.

Sec. 18. 1. This section and sections 2 and 4 to 17, inclusive, of this act become effective on July 1, 2001.

2. Section 1 of this act becomes effective on May 1, 2013.

3. Section 3 of this act becomes effective at 12:03 a.m. on May 1, 2013.

TEXT OF REPEALED SECTIONS

Section 12 of chapter 627, Statutes of Nevada 1999

Sec. 12. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 6, 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.]~~ *Assembly Bill No. 298 of this session*, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents that local government, shall not:

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

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

2. Except as otherwise provided in subsection 6, a local government that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than \$25,000 but less than \$100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The local government shall select contractors from the

list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the local government to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.

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

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

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

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

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

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

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

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

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

6. This section does not apply to:

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

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

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

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

Section 13.5 of chapter 627, Statutes of Nevada 1999

Sec. 13.5. NRS 338.147 is hereby amended to read as follows:

338.147 1. Except as otherwise provided in NRS 338.143, ~~and sections 2 to 9, inclusive, of this act,~~ a 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 8 or limited by subsection 9, for the purposes of this section, a contractor who:

(a) Has been found to be a responsible and responsive contractor by the local government; and

(b) At the time he submits his bid, provides to the local government a copy of a certificate of eligibility to receive a preference in bidding on public works issued to him by the state contractors' board pursuant to subsection 3, shall be deemed to have submitted a better bid than a competing contractor who has not provided a copy of such a valid certificate of eligibility if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.

3. The state contractors' board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the board an affidavit from a certified public accountant setting forth that the general contractor has:

(a) Paid:

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

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

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

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

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

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

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

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

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

5. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the state contractors' board pursuant to subsection 3 shall, at the time for the annual renewal of his contractors' license pursuant to NRS 624.283, submit to the board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 to maintain his eligibility to hold such a certificate.

6. A contractor who fails to submit an affidavit to the board pursuant to subsection 5 ceases to be eligible to receive a preference in bidding on public works unless he reapplies for and receives a certificate of eligibility pursuant to subsection 3.

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

8. 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.

9. ~~Except as otherwise provided in subsection 2 of section 8 of this act and subsection 2 of section 27 of this act, if~~ *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.

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

11. A person or entity who believes that a contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the public body to which the contractor has submitted a bid or proposal on a contract for the completion of a

public work. A written objection authorized pursuant to this subsection must:

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

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

12. If a public body receives a written objection pursuant to subsection 11, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and may proceed immediately to award the contract. If the public body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and may proceed to award the contract accordingly.

Section 35.2 of chapter 627, Statutes of Nevada 1999

Sec. 35.2. Section 11 of this act is hereby amended to read as follows:

Sec. 11. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 6 and NRS 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 represents that local government, shall not:

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

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

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

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Offers for bids which are made pursuant to this subsection must be sent by certified mail.

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

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

(a) The bidder is not responsive or responsible;

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

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

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

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

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

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

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

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

6. This section does not apply to:

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

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

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

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

~~—(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to sections 2 to 9, inclusive, of this act.]~~

Section 35.4 of chapter 627, Statutes of Nevada 1999

Sec. 35.4. Assembly Bill No. 298 of this session is hereby amended by adding thereto new sections designated sections 19.2 through 19.6, following sec. 19, to read as follows:

Sec. 19.2. Section 8 of this act is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

(b) The bidder is not responsive;

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

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

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

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

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

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

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

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

7. This section does not apply to:

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

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

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

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

~~—(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to sections 2 to 9, inclusive, of Senate Bill No. 475 of this session.]~~

Sec. 19.4. Section 8 of this act is hereby amended to read as follows:

Sec. 8. 1. Except as otherwise provided in subsection 7 , ~~[and NRS 338.1906 and 338.1907,]~~ this state, or a local government that awards a contract for the construction, alteration

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

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

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

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

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

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

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

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

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

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

(b) The bidder is not responsive;

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

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

6. Before the state or a local government may commence a project subject to the provisions of this section, based upon a

determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, it shall prepare and make available for public inspection a written statement containing:

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

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

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

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

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

7. This section does not apply to:

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

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

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

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

Sec. 19.6. Section 11 of this act is hereby amended to read as follows:

Sec. 11. 1. Except as otherwise provided in section 8 of this act, ~~[and sections 2 to 9, inclusive, of Senate Bill No. 475 of this session,]~~ a public body shall award a contract for a public work to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 8 or limited by subsection 9, for the purposes of this section, a contractor who:

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

(b) At the time he submits his bid, provides to the public body a copy of a certificate of eligibility to receive a preference in bidding on public works issued to him by the state contractors' board pursuant to subsection 3,

shall be deemed to have submitted a better bid than a competing contractor who has not provided a copy of such a valid certificate of eligibility if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.

3. The state contractors' board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the board an affidavit from a certified public accountant setting forth that the general contractor has:

(a) Paid:

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

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

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

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

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

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

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

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

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

5. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the state contractors' board pursuant to subsection 3 shall, at the time for the annual renewal of his contractors' license pursuant to NRS 624.283, submit to the board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 to maintain his eligibility to hold such a certificate.

6. A contractor who fails to submit an affidavit to the board pursuant to subsection 5 ceases to be eligible to receive a preference in bidding on public works unless he reapplies for and receives a certificate of eligibility pursuant to subsection 3.

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

8. 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.

9. ~~[Except as otherwise provided in subsection 2 of section 8 of Senate Bill No. 475 of this session, if]~~ **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.

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

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

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

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

12. If a public body receives a written objection pursuant to subsection 11, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and may proceed immediately to

award the contract. If the public body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and may proceed to award the contract accordingly.

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