

SENATE BILL NO. 63—COMMITTEE ON GOVERNMENT AFFAIRS

PREFILED JANUARY 31, 2001

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions relating to bidding on and awarding contracts for public works projects. (BDR 28-754)

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

~

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 public bodies and local governments to award contracts for certain public works projects to specialty contractors; specifying that certain requirements for receiving a certificate for preference in bidding must be satisfied while licensed as a general contractor or specialty contractor; requiring the state contractors' board to issue a certificate of eligibility to receive a preference in bidding to a specialty contractor under certain circumstances; allowing general contractors and specialty contractors to receive a preference for bidding on public works by purchasing a contractor that possesses such a preference; and providing other matters properly relating thereto.

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

Section 1. Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *A specialty contractor may qualify as a bidder on a project pursuant to NRS 338.1379 if the project is:*

- 1. Not part of a larger public work;*
- 2. Limited in scope to:*
 - (a) Removal of asbestos;*
 - (b) Replacement of equipment or systems for heating, ventilation and air conditioning;*
 - (c) Replacement of a roof;*
 - (d) Landscaping; or*
 - (e) Repair or renovation of an existing facility or an addition to an existing facility if the cost of related offsite and onsite work does not exceed the cost of repair, renovation or addition; and*
- 3. Limited in scope to the craft for which the specialty contractor is licensed.*

1 **Sec. 3.** *If a specialty contractor is awarded a contract pursuant to*
2 *NRS 338.1389 and during the course of the project, work arises that is*
3 *outside the scope of work for which the specialty contractor is licensed,*
4 *the specialty contractor shall contract with a subcontractor to perform*
5 *the work.*

6 **Sec. 4.** *1. A local government may award a contract to a specialty*
7 *contractor pursuant to NRS 338.147 if the project is:*

8 *(a) Not part of a larger public work;*

9 *(b) Limited in scope to:*

10 *(1) Removal of asbestos;*

11 *(2) Replacement of equipment or systems for heating, ventilation*
12 *and air conditioning;*

13 *(3) Replacement of a roof;*

14 *(4) Landscaping; or*

15 *(5) Repair or renovation of an existing facility or an addition to an*
16 *existing facility if the cost of all related offsite and onsite work does not*
17 *exceed the total cost of the repair, renovation or addition to the existing*
18 *facility; and*

19 *(c) Limited in scope to the craft for which the specialty contractor is*
20 *licensed.*

21 **2.** *If a specialty contractor is awarded a contract pursuant to NRS*
22 *338.147 and during the course of the project, work arises that is outside*
23 *the scope of work for which the specialty contractor is licensed, the*
24 *specialty contractor shall contract with a subcontractor to perform the*
25 *work.*

26 **Sec. 5.** NRS 338.010 is hereby amended to read as follows:

27 338.010 As used in this chapter:

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

32 2. "Design-build contract" means a contract between a public body
33 and a design-build team in which the design-build team agrees to design
34 and construct a public work.

35 3. "Design-build team" means an entity that consists of:

36 (a) At least one person who is licensed as a general engineering
37 contractor or a general building contractor pursuant to chapter 624 of NRS;
38 and

39 (b) For a public work that consists of:

40 (1) A building and its site, at least one person who holds a certificate
41 of registration to practice architecture pursuant to chapter 623 of NRS.

42 (2) Anything other than a building and its site, at least one person
43 who holds a certificate of registration to practice architecture pursuant to
44 chapter 623 of NRS or is licensed as a professional engineer pursuant to
45 chapter 625 of NRS.

46 4. "Design professional" means a person with a professional license or
47 certificate issued pursuant to chapter 623, 623A or 625 of NRS.

48 5. "Eligible bidder" means a person who is:

(a) Found to be a responsible and responsive contractor by a local government which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or

(b) Determined by a public body which awarded a contract for a public work pursuant to NRS 338.1375 to 338.1389, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or was exempt from meeting such qualifications pursuant to NRS 338.1383.

6. *“General contractor” means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business;*

(a) General engineering contracting, as described in subsection 2 of NRS 624.215.

(b) General building contracting, as described in subsection 3 of NRS 624.215.

7. “Local government” means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision.

~~7.1~~ 8. “Offense” means failing to:

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

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

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

~~8.1~~ 9. “Prime contractor” means a person who:

(a) Contracts to construct an entire project;

(b) Coordinates all work performed on the entire project;

(c) Uses his own work force to perform all or a part of the construction, repair or reconstruction of the project; and

(d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors.

~~9.1~~

The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to section 2 or 4 of this act.

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

~~10.1~~ 11. “Public work” means any project for the new construction, repair or reconstruction of:

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

(1) Public buildings;

(2) Jails and prisons;

(3) Public roads;

- (4) Public highways;
- (5) Public streets and alleys;
- (6) Public utilities which are financed in whole or in part by public money;
- (7) Publicly owned water mains and sewers;
- (8) Public parks and playgrounds;
- (9) Public convention facilities which are financed at least in part with public funds; and

(10) All other publicly owned works and property whose cost as a whole exceeds \$20,000. Each separate unit that is a part of a project is included in the cost of the project to determine whether a project meets that threshold.

(b) A building for the University and Community College System of Nevada of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this state or from federal money.

~~11.1~~ 12. "Specialty contractor" means a contractor whose operations as such are the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

~~11.2~~ 13. "Stand-alone underground utility project" means an underground utility project that is not integrated into a larger project, including, without limitation:

(a) An underground sewer line or an underground pipeline for the conveyance of water, including facilities appurtenant thereto; and

(b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto, that is not located at the site of a public work for the design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 338.1711.

~~11.3~~ 14. "Wages" means:

(a) The basic hourly rate of pay; and

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

~~11.4~~ 15. "Workman" means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman. The term does not include a design professional.

Sec. 6. NRS 338.010 is hereby amended to read as follows:

338.010 As used in this chapter:

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

2. "Eligible bidder" means a person who is:

(a) Found to be a responsible and responsive contractor by a local government which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or

(b) Determined by a public body which awarded a contract for a public work pursuant to NRS 338.1375 to 338.1389, inclusive, to be qualified to

bid on that contract pursuant to NRS 338.1379 or was exempt from meeting such qualifications pursuant to NRS 338.1383.

3. ***“General contractor” means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business:***

(a) ***General engineering contracting, as described in subsection 2 of NRS 624.215.***

(b) ***General building contracting, as described in subsection 2 of NRS 624.215.***

4. ***“Local government” means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision.***

~~4-1~~ 5. ***“Offense” means failing to:***

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

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

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

~~5-1~~ 6. ***“Prime contractor” means a person who:***

(a) Contracts to complete an entire project;

(b) Coordinates all work performed on the entire project;

(c) Uses his own work force to perform all or a part of the construction, repair or reconstruction of the project; and

(d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors.

~~6-1~~

The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to section 2 or 4 of this act.

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

~~7-1~~ 8. ***“Public work” means any project for the new construction, repair or reconstruction of:***

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

(1) Public buildings;

(2) Jails and prisons;

(3) Public roads;

(4) Public highways;

(5) Public streets and alleys;

(6) Public utilities which are financed in whole or in part by public money;

(7) Publicly owned water mains and sewers;

(8) Public parks and playgrounds;
(9) Public convention facilities which are financed at least in part with public funds; and

(10) Any other publicly owned works and property whose cost as a whole exceeds \$20,000. Each separate unit that is a part of a project is included in the cost of the project to determine whether a project meets that threshold.

(b) A building for the University and Community College System of Nevada of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this state or from federal money.

~~[8-]~~ **9.** "Wages" means:

(a) The basic hourly rate of pay; and

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

~~[9-]~~ **10.** "Workman" means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman. The term does not include a "design professional" as that term is defined in NRS 338.155.

Sec. 7. NRS 338.1373 is hereby amended to read as follows:

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

(a) NRS 338.1375 to 338.1389, inclusive ~~[4]~~, *and sections 2 and 3 of this act*; or

(b) NRS 338.143, 338.145 and 338.147 ~~[4]~~ *and section 4 of this act.*

2. The provisions of NRS 338.1375 to 338.1383, inclusive, *and section 2 of this act* do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the department of transportation pursuant to NRS 408.313 to 408.433, inclusive.

Sec. 8. 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]~~ **9** or limited by subsection ~~[9-]~~ **10**, 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 ~~[4]~~ *or 4*,

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 ~~it~~, *while licensed as a general contractor in this state or another state:*

(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, *purchase* 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. *The state contractors' board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the board:*

(a) A statement from a public body to which the specialty contractor intends to submit a bid showing that the classification of license which the specialty contractor holds is appropriate for qualification as a bidder on a project pursuant to section 2 of this act; and

(b) An affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this state or another state:

(1) Paid:

(I) The sales and use taxes 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;

(II) *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*

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

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

(I) *License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and*

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

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 ~~[-a general]~~ *and subparagraph (I) of paragraph (b) of subsection 4, a* 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 ~~[-]~~ *or specialty contractor, as applicable; 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.

~~[-]~~ 6. 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 *or 4* shall, at the time for the annual renewal of his contractor's 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 *or subparagraph (I) of paragraph (b) of subsection 4, as applicable*, to maintain his eligibility to hold such a certificate.

~~[-]~~ 7. A contractor who fails to submit an affidavit to the board pursuant to subsection ~~[-]~~ 6 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 ~~[-]~~ *or 4, as applicable.*

8. 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.

~~[-]~~ 9. 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

1 assistance for that work. The provisions of subsection 2 do not apply to any
2 contract for a public work which is expected to cost less than \$250,000.

3 ~~9-1~~ 10. Except as otherwise provided in subsection 2 of NRS
4 338.1727, if a bid is submitted by two or more contractors as a joint
5 venture or by one of them as a joint venturer, the provisions of subsection 2
6 apply only if both or all of the joint venturers separately meet the
7 requirements of that subsection.

8 ~~10-1~~ 11. The state contractors' board shall adopt regulations and may
9 assess reasonable fees relating to the certification of contractors for a
10 preference in bidding on public works.

11 ~~11-1~~ 12. A person or entity who believes that a contractor wrongfully
12 holds a certificate of eligibility to receive a preference in bidding on public
13 works may challenge the validity of the certificate by filing a written
14 objection with the public body to which the contractor has submitted a bid
15 or proposal on a contract for the construction of a public work. A written
16 objection authorized pursuant to this subsection must:

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

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

24 ~~12-1~~ 13. If a public body receives a written objection pursuant to
25 subsection ~~11-1~~ 12, the public body shall determine whether the objection
26 is accompanied by the proof or substantiating evidence required pursuant
27 to paragraph (a) of that subsection. If the public body determines that the
28 objection is not accompanied by the required proof or substantiating
29 evidence, the public body shall dismiss the objection and may proceed
30 immediately to award the contract. If the public body determines that the
31 objection is accompanied by the required proof or substantiating evidence,
32 the public body shall determine whether the contractor qualifies for the
33 certificate pursuant to the provisions of this section and may proceed to
34 award the contract accordingly.

35 **Sec. 9.** NRS 338.1389 is hereby amended to read as follows:

36 338.1389 1. Except as otherwise provided in NRS 338.1385, a public
37 body shall award a contract for a public work to the contractor who
38 submits the best bid.

39 2. Except as otherwise provided in subsection ~~8~~ 9 or limited by
40 subsection ~~9-1~~ 10, for the purposes of this section, a contractor who:

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

44 (b) At the time he submits his bid, provides to the public body a copy of
45 a certificate of eligibility to receive a preference in bidding on public works
46 issued to him by the state contractors' board pursuant to subsection 3 ~~H~~
47 or 4,

48 shall be deemed to have submitted a better bid than a competing contractor
49 who has not provided a copy of such a valid certificate of eligibility if the

1 amount of his bid is not more than 5 percent higher than the amount bid by
2 the competing contractor.

3 3. The state contractors' board shall issue a certificate of eligibility to
4 receive a preference in bidding on public works to a general contractor who
5 is licensed pursuant to the provisions of chapter 624 of NRS and submits to
6 the board an affidavit from a certified public accountant setting forth that
7 the general contractor has ~~H~~, *while licensed as a general contractor in*
8 *this state or another state:*

9 (a) Paid:

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

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

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

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

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

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

32 4. *The state contractors' board shall issue a certificate of eligibility to*
33 *receive a preference in bidding on public works to a specialty contractor*
34 *who is licensed pursuant to the provisions of chapter 624 of NRS and*
35 *submits to the board:*

36 (a) *A statement from a public body to which the specialty contractor*
37 *intends to submit a bid showing that the classification of license which*
38 *the specialty contractor holds is appropriate for qualification as a bidder*
39 *on a project pursuant to section 2 of this act; and*

40 (b) *An affidavit from a certified public accountant setting forth that*
41 *the specialty contractor has, while licensed as a specialty contractor in*
42 *this state or another state:*

43 (I) Paid:

44 (1) *The sales and use taxes pursuant to chapters 372, 374 and*
45 *377 of NRS on materials used for construction in this state, including,*
46 *without limitation, construction that is undertaken or carried out on land*
47 *within the boundaries of this state that is managed by the Federal*
48 *Government or is on an Indian reservation or Indian colony, of not less*
49 *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;*

3 *(II) The motor vehicle privilege tax imposed pursuant to chapter*
4 *371 of NRS on the vehicles used in the operation of his business in this*
5 *state of not less than \$5,000 for each consecutive 12-month period for 60*
6 *months immediately preceding the submission of the affidavit from the*
7 *certified public accountant; or*

8 *(III) Any combination of such sales and use taxes and motor*
9 *vehicle privilege tax; or*

10 *(2) Acquired, by inheritance, gift, purchase or transfer through a*
11 *stock option plan, all the assets and liabilities of a viable, operating*
12 *construction firm that possesses a:*

13 *(I) License as a specialty contractor pursuant to the provisions of*
14 *chapter 624 of NRS; and*

15 *(II) Certificate of eligibility to receive a preference in bidding on*
16 *public works.*

17 *5. For the purposes of complying with the requirements set forth in*
18 *paragraph (a) of subsection 3 ~~[-a general]~~ and subparagraph (I) of*
19 *paragraph (b) of subsection 4, a contractor shall be deemed to have paid:*

20 *(a) Sales and use taxes and motor vehicle privilege taxes paid in this*
21 *state by an affiliate or parent company of the contractor, if the affiliate or*
22 *parent company is also a general contractor ~~[-]~~ or specialty contractor, as*
23 *applicable; and*

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

27 ~~[-]~~ *6. A contractor who has received a certificate of eligibility to*
28 *receive a preference in bidding on public works from the state contractors'*
29 *board pursuant to subsection 3 or 4 shall, at the time for the annual renewal*
30 *of his contractor's license pursuant to NRS 624.283, submit to the board an*
31 *affidavit from a certified public accountant setting forth that the contractor*
32 *has, during the immediately preceding 12 months, paid the taxes required*
33 *pursuant to paragraph (a) of subsection 3 or subparagraph (I) of*
34 *paragraph (b) of subsection 4, as applicable, to maintain his eligibility to*
35 *hold such a certificate.*

36 ~~[-]~~ *7. A contractor who fails to submit an affidavit to the board*
37 *pursuant to subsection ~~[-]~~ 6 ceases to be eligible to receive a preference in*
38 *bidding on public works unless he reapplies for and receives a certificate of*
39 *eligibility pursuant to subsection 3 ~~[-]~~*
40 *~~—7-] or 4, as applicable.~~*

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

47 ~~[-]~~ *9. If any federal statute or regulation precludes the granting of*
48 *federal assistance or reduces the amount of that assistance for a particular*
49 *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-]~~ 10. 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-]~~ 11. 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-]~~ 12. 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-]~~ 13. If a public body receives a written objection pursuant to subsection ~~[11-]~~ 12, 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. 10. NRS 338.141 is hereby amended to read as follows:

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

(a) The name of each subcontractor who will provide labor or a portion of the work or improvement to the contractor for which he will be paid an amount exceeding 5 percent of the prime contractor's total bid. Within 2 hours after the completion of the opening of the bids, the ~~[general]~~ contractors who submitted the three lowest bids must submit a list of the name of each subcontractor who will provide labor or a portion of the work or improvement to the contractor for which he will be paid an amount exceeding 1 percent of the prime contractor's total bid or \$50,000, whichever is greater, and the number of the license issued to the subcontractor pursuant to chapter 624 of NRS. If a ~~[general]~~ contractor

1 fails to submit such a list within the required time, his bid shall be deemed
2 not responsive.

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

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

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

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

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

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

18 (2) The named subcontractor files for bankruptcy or becomes
19 insolvent; or

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

23 **Sec. 11.** NRS 338.147 is hereby amended to read as follows:

24 338.147 1. Except as otherwise provided in NRS 338.143 and
25 338.1711 to 338.1727, inclusive, a local government shall award a contract
26 for a public work to the contractor who submits the best bid.

27 2. Except as otherwise provided in subsection ~~8~~ 9 or limited by
28 subsection ~~9~~ 10, for the purposes of this section, a contractor who:

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

31 (b) At the time he submits his bid, provides to the local government a
32 copy of a certificate of eligibility to receive a preference in bidding on
33 public works issued to him by the state contractors' board pursuant to
34 subsection 3 ~~4~~ or 4,
35 shall be deemed to have submitted a better bid than a competing contractor
36 who has not provided a copy of such a valid certificate of eligibility if the
37 amount of his bid is not more than 5 percent higher than the amount bid by
38 the competing contractor.

39 3. The state contractors' board shall issue a certificate of eligibility to
40 receive a preference in bidding on public works to a general contractor who
41 is licensed pursuant to the provisions of chapter 624 of NRS and submits to
42 the board an affidavit from a certified public accountant setting forth that
43 the general contractor has ~~4~~, while licensed as a general contractor in
44 *this state or another state:*

45 (a) Paid:

46 (1) The sales and use taxes imposed pursuant to chapters 372, 374
47 and 377 of NRS on materials used for construction in this state, including,
48 without limitation, construction that is undertaken or carried out on land
49 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, *purchase* 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. *The state contractors' board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the board:*

(a) *A statement from a local government to which the specialty contractor intends to submit a bid showing that the classification of license which the specialty contractor holds is appropriate for qualification as a bidder on a project pursuant to section 4 of this act; and*

(b) *An affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this state or another state:*

(I) *Paid:*

(I) *The sales and use taxes 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;*

(II) *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*

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

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

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

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

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 ~~1-a general~~ and subparagraph (I) of paragraph (b) of subsection 4, a 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 ~~1-b~~ or specialty contractor, as applicable; 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.

~~5-1~~ 6. 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 or 4 shall, at the time for the annual renewal of his contractor's 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 or subparagraph (I) of paragraph (b) of subsection 4, as applicable, to maintain his eligibility to hold such a certificate.

~~16-1~~ 7. A contractor who fails to submit an affidavit to the board pursuant to subsection ~~5-1~~ 6 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 ~~1-b~~ ~~7-1~~ or 4, as applicable.

8. 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.

~~18-1~~ 9. 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.

~~19-1~~ 10. Except as otherwise provided in subsection 2 of NRS 338.1727 and subsection 2 of NRS 408.3886 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.

~~110-1~~ 11. 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.

~~11.1~~ 12. 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.

~~11.2~~ 13. If a public body receives a written objection pursuant to subsection ~~11.1~~ 12, 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. 12. NRS 338.147 is hereby amended to read as follows:

338.147 1. Except as otherwise provided in NRS 338.143, 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 ~~8.1~~ 9 or limited by subsection ~~9.1~~ 10, 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 ~~1.1~~ or 4,

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 ~~1.1~~, while licensed as a general contractor in this state or another state:

(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,

1 without limitation, construction that is undertaken or carried out on land
2 within the boundaries of this state that is managed by the Federal
3 Government or is on an Indian reservation or Indian colony, of not less
4 than \$5,000 for each consecutive 12-month period for 60 months
5 immediately preceding the submission of the affidavit from the certified
6 public accountant;

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

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

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

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

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

21 4. *The state contractors' board shall issue a certificate of eligibility to*
22 *receive a preference in bidding on public works to a specialty contractor*
23 *who is licensed pursuant to the provisions of chapter 624 of NRS and*
24 *submits to the board:*

25 (a) *A statement from a local government to which the specialty*
26 *contractor intends to submit a bid showing that the classification of*
27 *license which the specialty contractor holds is appropriate for*
28 *qualification as a bidder on a project pursuant to section 4 of this act;*
29 *and*

30 (b) *An affidavit from a certified public accountant setting forth that*
31 *the specialty contractor has, while licensed as a specialty contractor in*
32 *this state or another state:*

33 (I) *Paid:*

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

42 (II) *The motor vehicle privilege tax imposed pursuant to chapter*
43 *371 of NRS on the vehicles used in the operation of his business in this*
44 *state of not less than \$5,000 for each consecutive 12-month period for 60*
45 *months immediately preceding the submission of the affidavit from the*
46 *certified public accountant; or*

47 (III) *Any combination of such sales and use taxes and motor*
48 *vehicle privilege tax; or*

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

(I) *License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and*

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

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 ~~[-a general]~~ and subparagraph (I) of paragraph (b) of subsection 4, a 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 ~~[-]~~ or specialty contractor, as applicable; 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.

~~[-]~~ 6. 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 or 4 shall, at the time for the annual renewal of his contractor's 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 or subparagraph (I) of paragraph (b) of subsection 4, as applicable, to maintain his eligibility to hold such a certificate.

~~[-]~~ 7. A contractor who fails to submit an affidavit to the board pursuant to subsection ~~[-]~~ 6 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-]~~ or 4, as applicable.

8. 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.

~~[-]~~ 9. 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.

~~[-]~~ 10. 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.

~~10.1~~ 11. 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.

~~11.1~~ 12. 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.

~~12.1~~ 13. If a public body receives a written objection pursuant to subsection ~~11.1~~ 12, 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. 13. 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 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 at least \$5,000,000 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. 14. NRS 338.1715 is hereby amended to read as follows:

338.1715 1. A public body that is required to contract with a prime contractor pursuant to subsection 1 of NRS 338.1711 or elects to contract with a ~~[specialty]~~ **prime** contractor pursuant to subsection 4 of NRS 338.1711 shall select the prime contractor ~~[or -specialty contractor, as appropriate,]~~ in accordance with the procedures for bidding that are set forth in:

(a) The provisions of NRS 338.1375 to 338.1389, inclusive ~~[-]~~ **and sections 2 and 3 of this act;** or

(b) NRS 338.143, 338.145 and 338.147 ~~[-]~~ **and section 4 of this act,** if the public body is a local government that elects to award a contract for a

1 public work in accordance with paragraph (b) of subsection 1 of NRS
2 338.1373.

3 2. A public body that contracts with a design-build team pursuant to
4 NRS 338.1711 and 338.1713 shall select the design-build team in
5 accordance with NRS 338.1721 to 338.1727, inclusive.

6 **Sec. 15.** 1. This section, sections 1 to 5, inclusive, and 7, 8, 10, 11,
7 13 and 14 of this act become effective on July 1, 2001.

8 2. Sections 6, 9 and 12 of this act become effective at 12:01 a.m. on
9 October 1, 2003.

10 3. Sections 5, 8, 11, 13 and 14 of this act expire by limitation on
11 October 1, 2003.

H

SB63