

ASSEMBLY BILL NO. 425—ASSEMBLYMAN PARKS

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions regarding public works.
(BDR 28-405)

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; providing for a hearing for unsuccessful bidders; revising the exemption of contracts necessary to contend with certain emergencies from the requirements relating to contracts for public works; authorizing a public body to require a person who is found to have failed to pay the prevailing wage to pay the costs incurred by the public body for its investigation; revising the provisions governing the criteria for determining the qualification of bidders on public works of local governments; revising certain provisions regarding advertising for bids; removing certain provisions regarding the maintenance of lists of licensed contractors by public bodies for bidding on certain contracts; revising provisions governing the naming of subcontractors; requiring an authorized representative to make certain reports to public bodies regarding certain contracts; revising certain provisions regarding objections to the award of a certificate of eligibility for a preference in bidding; and providing other matters properly relating thereto.

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



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1 **Section 1.** Chapter 338 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 1. *A person who bids on a contract may file a notice of protest*
4 *regarding the awarding of the contract with the authorized*
5 *representative designated by the public body within 5 business*
6 *days after the date the bids were opened by the public body or its*
7 *authorized representative.*

8 2. *The notice of protest must include a written statement*
9 *setting forth with specificity the reasons the person filing the*
10 *notice believes the applicable provisions of law were violated.*

11 3. *A person filing a notice of protest may be required by the*
12 *public body or its authorized representative, at the time the notice*
13 *of protest is filed, to post a bond with a good and solvent surety*
14 *authorized to do business in this state or submit other security, in*
15 *a form approved by the public body, to the public body who shall*
16 *hold the bond or other security until a determination is made on*
17 *the protest. A bond posted or other security submitted with a*
18 *notice of protest must be in an amount equal to the lesser of:*

19 (a) *Twenty-five percent of the total value of the bid submitted*
20 *by the person filing the notice of protest; or*

21 (b) *Two hundred fifty thousand dollars.*

22 4. *A notice of protest filed in accordance with the provisions*
23 *of this section operates as a stay of action in relation to the*
24 *awarding of any contract until a determination is made by the*
25 *public body on the protest.*

26 5. *A person who makes an unsuccessful bid may not seek any*
27 *type of judicial intervention until the public body has made a*
28 *determination on the protest and awarded the contract.*

29 6. *Neither a public body nor any authorized representative of*
30 *the public body is liable for any costs, expenses, attorney's fees,*
31 *loss of income or other damages sustained by a person who makes*
32 *a bid, whether or not the person files a notice of protest pursuant*
33 *to this section.*

34 7. *If the protest is upheld, the bond posted or other security*
35 *submitted with the notice of protest must be returned to the person*
36 *who posted the bond or submitted the security. If the protest is*
37 *rejected, a claim may be made against the bond or other security*
38 *by the public body in an amount equal to the expenses incurred by*
39 *the public body because of the unsuccessful protest. Any money*
40 *remaining after the claim has been satisfied must be returned to*
41 *the person who posted the bond or submitted the security.*



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1 **Sec. 2.** NRS 338.010 is hereby amended to read as follows:
2 338.010 As used in this chapter:
3 1. *“Authorized representative” means a person designated by*
4 *a governing body to be responsible for the development and award*
5 *of contracts for public works pursuant to this chapter.*
6 2. *“Contract” means a written contract entered into between*
7 *a contractor and a public body for the provision of labor,*
8 *materials, equipment or supplies for a public work.*
9 3. *“Contractor” means:*
10 (a) *A person who is licensed pursuant to the provisions of*
11 *chapter 624 of NRS or performs such work that he is not required*
12 *to be licensed pursuant to chapter 624 of NRS.*
13 (b) *A design-build team.*
14 4. “Day labor” means all cases where public bodies, their
15 officers, agents or employees, hire, supervise and pay the wages
16 thereof directly to a workman or workmen employed by them on
17 public works by the day and not under a contract in writing.
18 ~~[2.]~~ 5. “Design-build contract” means a contract between a
19 public body and a design-build team in which the design-build team
20 agrees to design and construct a public work.
21 ~~[3.]~~ 6. “Design-build team” means an entity that consists of:
22 (a) At least one person who is licensed as a general engineering
23 contractor or a general building contractor pursuant to chapter 624
24 of NRS; and
25 (b) For a public work that consists of:
26 (1) A building and its site, at least one person who holds a
27 certificate of registration to practice architecture pursuant to chapter
28 623 of NRS.
29 (2) Anything other than a building and its site, at least one
30 person who holds a certificate of registration to practice architecture
31 pursuant to chapter 623 of NRS or *landscape architecture pursuant*
32 *to chapter 623A of NRS or who* is licensed as a professional
33 engineer pursuant to chapter 625 of NRS.
34 ~~[4.]~~ 7. “Design professional” means:
35 (a) A person who is licensed as a professional engineer pursuant
36 to chapter 625 of NRS;
37 (b) A person who is licensed as a professional land surveyor
38 pursuant to chapter 625 of NRS;
39 (c) A person who holds a certificate of registration to engage in
40 the practice of architecture , *interior design or residential design*
41 pursuant to chapter 623 of NRS;
42 (d) A person who holds a certificate of registration to engage in
43 the practice of landscape architecture pursuant to chapter 623A of
44 NRS; or



- 1 (e) A business entity that engages in the practice of professional
2 engineering, land surveying, architecture or landscape architecture.
- 3 ~~[5.]~~ 8. "Eligible bidder" means a person who is:
- 4 (a) Found to be a responsible and responsive contractor by a
5 local government *or its authorized representative* which requests
6 bids for a public work in accordance with paragraph (b) of
7 subsection 1 of NRS 338.1373; or
- 8 (b) Determined by a public body *or its authorized*
9 *representative* which awarded a contract for a public work pursuant
10 to NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that
11 contract pursuant to NRS 338.1379 . ~~for was exempt from meeting~~
12 ~~such qualifications pursuant to NRS 338.1383.~~
- 13 ~~—6.]~~ 9. "General contractor" means a person who is licensed to
14 conduct business in one, or both, of the following branches of the
15 contracting business:
- 16 (a) General engineering contracting, as described in subsection 2
17 of NRS 624.215.
- 18 (b) General building contracting, as described in subsection 3 of
19 NRS 624.215.
- 20 10. *"Governing body" means the board, council, commission*
21 *or other body in which the general legislative and fiscal powers of*
22 *a local government are vested.*
- 23 ~~[7.]~~ 11. "Local government" means every political subdivision
24 or other entity which has the right to levy or receive money from ad
25 valorem or other taxes or any mandatory assessments, and includes,
26 without limitation, counties, cities, towns, boards, school districts
27 and other districts organized pursuant to chapters 244A, 309, 318,
28 379, 474, **538**, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
29 inclusive, and any agency or department of a county or city which
30 prepares a budget separate from that of the parent political
31 subdivision.
- 32 ~~[8.]~~ 12. "Offense" means failing to:
- 33 (a) Pay the prevailing wage required pursuant to this chapter;
- 34 (b) Pay the contributions for unemployment compensation
35 required pursuant to chapter 612 of NRS;
- 36 (c) Provide and secure compensation for employees required
37 pursuant to chapters 616A to 617, inclusive, of NRS; or
- 38 (d) Comply with subsection 4 or 5 of NRS 338.070.
- 39 ~~[9.]~~ 13. "Prime contractor" means a ~~[person]~~ *contractor* who:
- 40 (a) Contracts to construct an entire project;
- 41 (b) Coordinates all work performed on the entire project;
- 42 (c) Uses his own workforce to perform all or a part of the
43 ~~[construction, repair or reconstruction of the project;]~~ *public work;*
44 and



1 (d) Contracts for the services of any subcontractor or
2 independent contractor or is responsible for payment to any
3 contracted subcontractors or independent contractors.
4 The term includes, without limitation, a general contractor or a
5 specialty contractor who is authorized to bid on a project pursuant to
6 NRS 338.139 or 338.148.

7 ~~{10.}~~ 14. "Public body" means the State, county, city, town,
8 school district or any public agency of this state or its political
9 subdivisions sponsoring or financing a public work.

10 ~~{11.}~~ 15. "Public work" means any project for the new
11 construction, repair or reconstruction of:

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

- 14 (1) Public buildings;
- 15 (2) Jails and prisons;
- 16 (3) Public roads;
- 17 (4) Public highways;
- 18 (5) Public streets and alleys;
- 19 (6) Public utilities ; ~~{which are financed in whole or in part~~
20 ~~by public money;}~~
- 21 (7) Publicly owned water mains and sewers;
- 22 (8) Public parks and playgrounds;
- 23 (9) Public convention facilities which are financed at least in
24 part with public funds; and
- 25 (10) All other publicly owned works and property . ~~{whose~~
26 ~~cost as a whole exceeds \$20,000. Each separate unit that is a part of~~
27 ~~a project is included in the cost of the project to determine whether a~~
28 ~~project meets that threshold.}~~

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

33 ~~{12.}~~ 16. "Specialty contractor" means a person who is
34 licensed to conduct business as described in subsection 4 of
35 NRS 624.215.

36 ~~{13.}~~ 17. "Stand-alone underground utility project" means an
37 underground utility project that is not integrated into a larger
38 project, including, without limitation:

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

42 (b) A project for the construction or installation of a storm drain,
43 including facilities appurtenant thereto,



1 that is not located at the site of a public work for the design and
2 construction of which a public body is authorized to contract with a
3 design-build team pursuant to subsection 2 of NRS 338.1711.

4 ~~[14.]~~ 18. “Subcontract” means a written contract entered
5 into between:

6 (a) A contractor and a subcontractor or supplier; or

7 (b) A subcontractor and another subcontractor or supplier, for
8 the provision of labor, materials, equipment or supplies for a
9 construction project.

10 19. “Subcontractor” means a person who:

11 (a) Is licensed pursuant to the provisions of chapter 624 of
12 NRS or performs such work that he is not required to be licensed
13 pursuant to chapter 624 of NRS; and

14 (b) Contracts with a contractor, another subcontractor or a
15 supplier to provide labor, materials or services for a construction
16 project.

17 20. “Supplier” means a person who provides materials,
18 equipment or supplies for a construction project.

19 21. “Wages” means:

20 (a) The basic hourly rate of pay; and

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

25 ~~[15.]~~ 22. “Workman” means a skilled mechanic, skilled
26 workman, semiskilled mechanic, semiskilled workman or unskilled
27 workman. The term does not include a design professional.

28 **Sec. 3.** NRS 338.011 is hereby amended to read as follows:

29 338.011 The requirements of this chapter do not apply to a
30 contract ~~[awarded in compliance with chapter 332 or 333 of NRS~~
31 ~~which is:~~

32 ~~—1. Directly]:~~

33 1. Awarded in compliance with chapter 332 or 333 of NRS
34 which is directly related to the normal operation of the public body
35 or the normal maintenance of its property.

36 2. Awarded to meet an emergency which results from a natural
37 or man-made disaster and which threatens the health, safety or
38 welfare of the public. *If the public body or its authorized*
39 *representative determines that an emergency exists, a contract or*
40 *contracts necessary to contend with the emergency may be let*
41 *without complying with the requirements of this chapter. If such*
42 *emergency action was taken by the authorized representative, the*
43 *authorized representative shall report the contract or contracts to*
44 *the public body at the next regularly scheduled meeting of the*
45 *public body.*



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1 **Sec. 4.** NRS 338.013 is hereby amended to read as follows:

2 338.013 1. A public body that advertises for bids for a public
3 work shall request from the Labor Commissioner, and include in the
4 advertisement, an identifying number with his designation of the
5 work. That number must be included in any bid submitted in
6 response to the advertisement.

7 2. Each public body which awards a contract for any public
8 work shall report its award to the Labor Commissioner within 10
9 days after the award, giving the name and address of ~~each~~
10 ~~contractor who will be engaged on the work~~ *the contractor to*
11 *whom the public body awarded the contract* and the identifying
12 number ~~for the public work~~.

13 3. Each contractor engaged on a public work shall report to the
14 Labor Commissioner *and the public body that awarded the*
15 *contract* the name and address of each subcontractor whom he
16 engages for work on the project within 10 days after the
17 subcontractor commences work on the contract ~~for~~ *and the*
18 *identifying number for the public work*.

19 4. The public body which awarded the contract shall report the
20 completion of all work performed under the contract to the Labor
21 Commissioner before the final payment of money due the contractor
22 by the public body.

23 **Sec. 5.** NRS 338.030 is hereby amended to read as follows:

24 338.030 1. The public body awarding any contract for public
25 work, or otherwise undertaking any public work, shall ascertain
26 from the Labor Commissioner the prevailing wage in the county in
27 which the public work is to be performed for each craft or type of
28 work.

29 2. To establish a prevailing wage in each county, including
30 Carson City, the Labor Commissioner shall, annually, survey
31 contractors who have performed work in the county. Within 30 days
32 after the determination is issued:

33 (a) A public body or person entitled under subsection 5 to be
34 heard may submit an objection to the Labor Commissioner with
35 evidence to substantiate that a different wage prevails; and

36 (b) Any person may submit information to the Labor
37 Commissioner that would support a change in the prevailing wage
38 of a craft or type of work by 50 cents or more per hour in any
39 county.

40 3. The Labor Commissioner shall hold a hearing in the locality
41 in which the work is to be executed if he:

42 (a) Is in doubt as to the prevailing wage; or

43 (b) Receives an objection or information pursuant to
44 subsection 2.



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1 The Labor Commissioner may hold only one hearing a year on the
2 prevailing wage of any craft or type of work in any county.

3 4. Notice of the hearing must be advertised in a newspaper
4 nearest to the locality of the work once a week for 2 weeks before
5 the time of the hearing.

6 5. At the hearing, any public body, the crafts affiliated with the
7 state federation of labor or other recognized national labor
8 organizations, and the contractors of the locality or their
9 representatives must be heard. From the evidence presented, the
10 Labor Commissioner shall determine the prevailing wage.

11 6. The wages so determined must be filed by the Labor
12 Commissioner and must be available to any public body which
13 awards a contract for any public work.

14 7. Nothing contained in NRS 338.020 to 338.090, inclusive,
15 may be construed to authorize the fixing of any wage below any rate
16 which may now or hereafter be established as a minimum wage for
17 any person employed upon any public work, or employed by any
18 officer or agent of any ~~[political subdivision of the State of Nevada.]~~
19 *public body.*

20 **Sec. 6.** NRS 338.035 is hereby amended to read as follows:

21 338.035 The obligation of a contractor *engaged on a public*
22 *work* or subcontractor *engaged on a public work* to pay wages in
23 accordance with the determination of the Labor Commissioner may
24 be discharged by the making of payments in cash, or by making
25 contributions to a third person pursuant to a fund, plan or program in
26 the name of the workman.

27 **Sec. 7.** NRS 338.060 is hereby amended to read as follows:

28 338.060 1. A contractor engaged on *a public* ~~[works]~~ *work*
29 shall forfeit, as a penalty to the public body ~~[in]~~ *on* behalf of which
30 the contract has been made and awarded to the contractor, not less
31 than \$20 nor more than \$50 for each calendar day or portion thereof
32 that each workman employed on the public work:

33 (a) Is paid less than the designated rate for any work done under
34 the contract, by the contractor or any subcontractor ~~[under him.]~~
35 *engaged on the public work.*

36 (b) Is not reported to the public body awarding the contract as
37 required pursuant to NRS 338.070.

38 The public body awarding the contract shall cause a stipulation to
39 this effect to be inserted in the contract.

40 2. The Labor Commissioner shall, by regulation, establish a
41 sliding scale based on the size of the ~~[contractor's]~~ *business of a*
42 *contractor engaged on a public work* to determine the amount of
43 the penalty to be imposed pursuant to subsection 1.

44 3. If a penalty is imposed pursuant to this section, the costs of
45 the proceeding, including investigative costs and attorney's fees,



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1 may be recovered by the Labor Commissioner ~~[]~~ *and the public*
2 *body.*

3 **Sec. 8.** NRS 338.070 is hereby amended to read as follows:

4 338.070 1. Any public body ~~[and its officers or agents]~~
5 awarding a contract shall:

6 (a) Investigate possible violations of the provisions of NRS
7 338.010 to 338.090, inclusive, committed in the course of the
8 execution of the contract, and determine whether a violation has
9 been committed and inform the Labor Commissioner of any such
10 violations; and

11 (b) When making payments to the contractor *engaged on the*
12 *public work* of money becoming due under the contract, withhold
13 and retain all sums forfeited pursuant to the provisions of NRS
14 338.010 to 338.090, inclusive.

15 2. No sum may be withheld, retained or forfeited, except from
16 the final payment, without a full investigation being made by the
17 awarding *public* body . ~~[for its agents.]~~

18 3. It is lawful for any contractor *engaged on a public work* to
19 withhold from any subcontractor ~~[under him]~~ *engaged on the public*
20 *work* sufficient sums to cover any penalties withheld from ~~[him]~~ *the*
21 *contractor* by the awarding *public* body on account of the failure of
22 the subcontractor to comply with the terms of NRS 338.010 to
23 338.090, inclusive. If payment has already been made to the
24 subcontractor, the contractor may recover from ~~[him]~~ *the*
25 *subcontractor* the amount of the penalty or forfeiture in a suit at
26 law.

27 4. ~~[The]~~ *A* contractor *engaged on a public work* and each
28 subcontractor *engaged on the public work* shall keep or cause to be
29 kept an accurate record showing the name, the occupation and the
30 actual per diem, wages and benefits paid to each workman
31 employed by ~~[him]~~ *the contractor and subcontractor* in connection
32 with the public work.

33 5. The record *maintained pursuant to subsection 4* must be
34 open at all reasonable hours to the inspection of the public body
35 awarding the contract . ~~[, and its officers and agents.]~~ The contractor
36 *engaged on the public work* or subcontractor *engaged on the public*
37 *work* shall ensure that a copy of the record for each calendar month
38 is received by the public body awarding the contract no later than
39 ~~[10]~~ *15* days after the end of the month. The copy must be open to
40 public inspection as provided in NRS 239.010. The record in the
41 possession of the public body awarding the contract may be
42 discarded by the public body 2 years after final payment is made by
43 the public body for the public work.



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1 6. Any contractor or subcontractor, or agent or representative
2 thereof, performing work for a public work who neglects to comply
3 with the provisions of this section is guilty of a misdemeanor.

4 **Sec. 9.** NRS 338.080 is hereby amended to read as follows:

5 338.080 None of the provisions of NRS 338.020 to 338.090,
6 inclusive, apply to:

7 1. Any work, construction, alteration, repair or other
8 employment performed, undertaken or carried out, by or for any
9 railroad company or any person operating the same, whether such
10 work, construction, alteration or repair is incident to or in
11 conjunction with a contract to which ~~[this state or any of its political~~
12 ~~subdivisions]~~ *a public body* is a party, or otherwise.

13 2. Apprentices recorded under the provisions of chapter 610 of
14 NRS.

15 3. Any contract for a public work whose cost is less than
16 \$100,000. A unit of the project must not be separated from the total
17 project, even if that unit is to be completed at a later time, in order to
18 lower the cost of the project below \$100,000.

19 **Sec. 10.** NRS 338.090 is hereby amended to read as follows:

20 338.090 1. Any person, including the officers, agents or
21 employees of a public body, who violates any of the provisions of
22 NRS 338.010 to 338.090, inclusive, or any regulation adopted
23 pursuant thereto, is guilty of a misdemeanor.

24 2. The Labor Commissioner, in addition to any other penalty
25 provided in this chapter:

26 (a) Shall assess a person who, after a hearing, is found to have
27 failed to pay the prevailing wage required pursuant to NRS 338.020
28 to 338.090, inclusive, an amount equal to the difference between the
29 prevailing wages required to be paid and the wages ~~[he]~~ *that the*
30 *contractor or subcontractor* actually paid; and

31 (b) May, in addition, impose an administrative fine not to
32 exceed the costs ~~[he]~~ incurred *by the Labor Commissioner* to
33 investigate and prosecute the matter.

34 3. *If the Labor Commissioner finds that a person has failed to*
35 *pay the prevailing wage required pursuant to NRS 338.020 to*
36 *338.090, inclusive, the public body may, in addition to any other*
37 *penalty or administrative fine provided in this chapter, require the*
38 *person to pay the actual costs incurred by the public body to*
39 *investigate the matter.*

40 **Sec. 11.** NRS 338.125 is hereby amended to read as follows:

41 338.125 1. It is unlawful for any contractor in connection
42 with the performance of work under a contract with ~~[the State, or~~
43 ~~any of its political subdivisions,]~~ *a public body*, when payment of
44 the contract price, or any part of such payment, is to be made from
45 public money, to refuse to employ or to discharge from employment



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1 any person because of his race, color, creed, national origin, sex,
2 sexual orientation or age, or to discriminate against a person with
3 respect to hire, tenure, advancement, compensation or other terms,
4 conditions or privileges of employment because of his race, creed,
5 color, national origin, sex, sexual orientation or age.

6 2. Contracts ~~[negotiated]~~ between contractors and ~~[the State, or~~
7 ~~any of its political subdivisions,]~~ *public bodies* must contain the
8 following contractual provisions:
9

10 In connection with the performance of work under this
11 contract, the contractor agrees not to discriminate against any
12 employee or applicant for employment because of race, creed,
13 color, national origin, sex, sexual orientation or age,
14 including, without limitation, with regard to employment,
15 upgrading, demotion or transfer, recruitment or recruitment
16 advertising, layoff or termination, rates of pay or other forms
17 of compensation, and selection for training, including,
18 without limitation, apprenticeship.

19 The contractor further agrees to insert this provision in all
20 subcontracts hereunder, except subcontracts for standard
21 commercial supplies or raw materials.
22

23 3. Any violation of such provision by a contractor constitutes a
24 material breach of contract.

25 4. As used in this section, "sexual orientation" means having or
26 being perceived as having an orientation for heterosexuality,
27 homosexuality or bisexuality.

28 **Sec. 12.** NRS 338.130 is hereby amended to read as follows:

29 338.130 1. In all cases where persons are employed in the
30 construction of public works, preference ~~[shall]~~ *must* be given ~~[]~~ *by*
31 *a public body*, the qualifications of the applicants being equal:

32 (a) First: To honorably discharged soldiers, sailors and marines
33 of the United States who are citizens of the State of Nevada.

34 (b) Second: To other citizens of the State of Nevada.

35 2. Nothing in this section shall be construed to prevent the
36 working of prisoners by ~~[the State of Nevada, or by any political~~
37 ~~subdivision of the State, on street or road work or other]~~ *a public*
38 *body on a* public work.

39 3. In each contract for the construction of public works a
40 ~~[proviso shall]~~ *clause must* be inserted to the effect that if the
41 provisions of this section are not complied with by the contractor ~~[]~~
42 *engaged on the public work*, the contract ~~[shall be]~~ *is* void, and any
43 failure or refusal to comply with any of the provisions of this section
44 ~~[shall render]~~ *renders* any such contract void. All boards,
45 commissions, officers, agents and employees having the power to



1 enter into contracts for the expenditure of public money on public
2 works shall file in the Office of the Labor Commissioner the names
3 and addresses of all contractors holding contracts with the ~~[State of~~
4 ~~Nevada, or with any political subdivision of the State. Upon]~~ *public*
5 *body and upon* the letting of new contracts the names and addresses
6 of such new contractors ~~[shall]~~ *must* likewise be filed ~~[.]~~ *with the*
7 *Labor Commissioner.* Upon the demand of the Labor
8 Commissioner, a contractor shall furnish a list of the names and
9 addresses of all subcontractors ~~[in his employ.]~~ *employed by the*
10 *contractor engaged on a public work.*

11 4. Subject to the exceptions contained in this section, no money
12 ~~[shall]~~ *may* be paid out of the State Treasury or out of the treasury
13 of any political subdivision of the State to any person employed on
14 any work mentioned in this section unless there has been
15 compliance with the provisions of this section.

16 5. Any contractor ~~[with the State of Nevada or with any~~
17 ~~political subdivision of the State]~~ *engaged on a public work* or any
18 other person who violates any of the provisions of this section ~~[shall~~
19 ~~be]~~ *is* guilty of a misdemeanor. The penalties provided for in this
20 section ~~[shall]~~ *do* not apply where violations thereof are due to
21 misrepresentations made by the employee or employees.

22 **Sec. 13.** NRS 338.1373 is hereby amended to read as follows:

23 338.1373 1. A local government *or its authorized*
24 *representative* shall award a contract for ~~[the construction, alteration~~
25 ~~or repair of]~~ a public work pursuant to the provisions of:

26 (a) NRS 338.1377 to 338.139, inclusive; ~~[or]~~

27 (b) NRS 338.143 to 338.148, inclusive ~~[.]~~ *; or*

28 (c) *NRS 338.1711 to 338.1727, inclusive.*

29 2. The provisions of *section 1 of this act and* NRS 338.1375 to
30 ~~[338.1383,]~~ *338.1381*, inclusive, and 338.139 *and 338.1711 to*
31 *338.1727, inclusive*, do not apply with respect to contracts for the
32 construction, reconstruction, improvement and maintenance of
33 highways that are awarded by the Department of Transportation
34 pursuant to NRS 408.313 to 408.433, inclusive.

35 **Sec. 14.** NRS 338.1375 is hereby amended to read as follows:

36 338.1375 1. The State Public Works Board shall not accept a
37 bid on a contract for a public work unless the ~~[person]~~ *contractor*
38 who submits the bid has qualified pursuant to NRS 338.1379 to bid
39 on that contract.

40 2. The State Public Works Board shall by regulation adopt
41 criteria for the qualification of bidders on contracts for public works
42 of this state. The criteria adopted by the State Public Works Board
43 pursuant to this section must be used by the State Public Works
44 Board to determine the qualification of bidders on contracts for
45 public works of this state.



1 3. The criteria adopted by the State Public Works Board
2 pursuant to this section:

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

7 (b) May include only:

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

10 (2) The principal personnel of the applicant;

11 (3) Whether the applicant has breached any contracts with a
12 public ~~[agency]~~ *body* or person in this state or any other state;

13 (4) Whether the applicant has been disqualified from being
14 awarded a contract pursuant to NRS 338.017 or 338.1387; and

15 (5) The performance history of the applicant concerning
16 other recent, similar contracts, if any, completed by the applicant.

17 **Sec. 15.** NRS 338.1377 is hereby amended to read as follows:

18 338.1377 ~~[1. Except as otherwise provided in NRS~~
19 ~~338.1383.]~~ *If the governing body of [each] a local government that*
20 *sponsors or finances a public work* ~~elects to award contracts for~~
21 ~~public works pursuant to the provisions of NRS 338.1377 to~~
22 ~~338.139, inclusive, the governing body shall adopt the following~~
23 ~~criteria for [the qualification of bidders] determining whether a~~
24 ~~person who has applied pursuant to NRS 338.1379 is qualified to~~
25 ~~bid on contracts for public works of the local government [The~~
26 ~~governing body shall use the criteria to determine the qualification~~
27 ~~of bidders on contracts for public works of the local government.~~

28 ~~2. Before adopting criteria pursuant to this section, the~~
29 ~~governing body of a local government shall hold at least one public~~
30 ~~hearing to solicit and evaluate public opinion regarding the criteria~~
31 ~~to be adopted. Notice of such a hearing must be provided by mail at~~
32 ~~least 10 days before the hearing to:~~

33 ~~—(a) Construction trade associations in this state; and~~

34 ~~—(b) Labor unions representing trades in the building industry in~~
35 ~~this state.~~

36 ~~3. The criteria adopted by a governing body pursuant to this~~
37 ~~section to determine whether an applicant is qualified to bid on a~~
38 ~~contract for a public work:~~

39 ~~—(a) Must be adopted in such a form that the determination of~~
40 ~~whether an applicant is qualified to bid on a contract for a public~~
41 ~~work does not require or allow the exercise of discretion by any one~~
42 ~~person.~~

43 ~~—(b) May include only:~~

44 ~~—(1) The financial ability of the applicant to perform a~~
45 ~~contract;~~



1 ~~— (2) The principal personnel of the applicant;~~
2 ~~— (3) :~~

3 1. Whether the applicant possesses a valid contractor's
4 license of a class corresponding to the work to be required by the
5 local government;

6 2. Whether the applicant has the ability to obtain the
7 necessary bonding for the work to be required by the local
8 government;

9 3. Whether the applicant has successfully completed one or
10 more projects during the 5 years immediately preceding the date of
11 application of similar size, scope or type as the work to be required
12 by the local government;

13 4. Whether the principal personnel employed by the applicant
14 have the necessary professional qualifications and experience for
15 the work to be required by the local government;

16 5. Whether the applicant has breached any contracts with a
17 public agency or person in this state or any other state ~~;~~ and
18 ~~(4)~~ during the 5 years immediately preceding the date of
19 application;

20 6. Whether the applicant has been disqualified from being
21 awarded a contract pursuant to NRS 338.017 or 338.1387 ~~;~~ ;

22 7. Whether the applicant has been convicted of a violation for
23 discrimination in employment during the 2 years immediately
24 preceding the date of application;

25 8. Whether the applicant has the ability to obtain and
26 maintain insurance coverage for public liability and property
27 damage within limits sufficient to protect the applicant and all the
28 subcontractors of the applicant from claims for personal injury,
29 accidental death and damage to property that may arise in
30 connection with the work to be required by the local government;

31 9. Whether the applicant has established a safety program
32 that complies with the requirements of chapter 618 of NRS;

33 10. Whether the applicant has been disciplined or fined by
34 the State Contractors' Board or another state or federal agency for
35 conduct that relates to the ability of the applicant to perform the
36 work to be required by the local government;

37 11. Whether, during the 5 years immediately preceding the
38 date of application, the applicant has filed as a debtor under the
39 provisions of the United States Bankruptcy Code;

40 12. Whether the application of the applicant is truthful and
41 complete; and

42 13. Whether, during the 5 years immediately preceding the
43 date of application, the applicant has, as a result of causes within
44 the control of the applicant or a subcontractor or supplier of the
45 applicant, failed to perform any contract:



1 (a) *In the manner specified by the contract and any change*
2 *orders initiated or approved by the person or governmental entity*
3 *that awarded the contract or its authorized representative;*

4 (b) *Within the time specified by the contract unless extended*
5 *by the person or governmental entity that awarded the contract or*
6 *its authorized representative; or*

7 (c) *For the amount of money specified in the contract or as*
8 *modified by any change orders initiated or approved by the person*
9 *or governmental entity that awarded the contract or its authorized*
10 *representative.*

11 *Evidence of the failures described in this subsection may include,*
12 *without limitation, the assessment of liquidated damages against*
13 *the applicant, the forfeiture of any bonds posted by the applicant,*
14 *an arbitration award granted against the applicant or a decision*
15 *by a court of law against the applicant.*

16 **Sec. 16.** NRS 338.1379 is hereby amended to read as follows:

17 338.1379 1. ~~Except as otherwise provided in NRS 338.1383,~~
18 ~~a person~~ A contractor who wishes to qualify as a bidder on a
19 contract for a public work must submit an application to the State
20 Public Works Board or the governing body.

21 2. Upon receipt of an application pursuant to subsection 1, the
22 State Public Works Board or the governing body shall:

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

25 (b) After conducting the investigation, determine whether the
26 applicant is qualified to bid on a contract. The determination must
27 be made within ~~30~~ 45 days after receipt of the application.

28 3. The State Public Works Board or the governing body shall
29 notify each applicant in writing of its determination. If an
30 application is denied, the notice must set forth the reasons for the
31 denial and inform the applicant of his right to a hearing pursuant to
32 NRS 338.1381.

33 4. The State Public Works Board or the governing body ~~of a~~
34 ~~local government~~ may determine an applicant is qualified to bid:

35 (a) On a specific project;

36 (b) On more than one project over a period of 12 months; or

37 (c) On more than one project over a period of 24 months.

38 5. The State Public Works Board shall not use any criteria
39 other than criteria adopted by regulation pursuant to NRS 338.1375
40 in determining whether to approve or deny an application.

41 6. The governing body ~~of a local government~~ shall not use
42 any criteria other than the criteria described in NRS 338.1377 in
43 determining whether to approve or deny an application.

44 7. Financial information and other data pertaining to the net
45 worth of an applicant which is gathered by or provided to the State



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1 Public Works Board or a governing body to determine the financial
2 ability of an applicant to perform a contract is confidential and not
3 open to public inspection.

4 **Sec. 17.** NRS 338.1381 is hereby amended to read as follows:

5 338.1381 1. If, within 10 days after receipt of the notice
6 denying his application ~~[]~~ *pursuant to NRS 338.1379*, the applicant
7 files a written request for a hearing with the State Public Works
8 Board or the governing body, ~~[of the local government,]~~ the Board
9 or governing body shall set the matter for a hearing within ~~[10]~~ *20*
10 days after receipt of the request. The hearing must be held not later
11 than ~~[20]~~ *45* days after the receipt of the request for a hearing.

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

18 3. The Board or governing body shall issue a decision ~~[on the~~
19 ~~matter within 5 days after]~~ *at* the hearing. ~~[and notify the applicant,~~
20 ~~in writing, of its decision within 5 days after it is issued.]~~ The
21 decision of the Board or governing body is a final decision for
22 purposes of judicial review.

23 **Sec. 18.** NRS 338.1385 is hereby amended to read as follows:

24 338.1385 1. Except as otherwise provided in subsection ~~[7]~~ *8*
25 and NRS 338.1906 and 338.1907, this state, or *the governing body*
26 *of* a local government *or its authorized representative* that awards a
27 contract for ~~[the construction, alteration or repair of]~~ a public work
28 in accordance with paragraph (a) of subsection 1 of NRS 338.1373,
29 ~~[or a public officer, public employee or other person responsible for~~
30 ~~awarding a contract for the construction, alteration or repair of a~~
31 ~~public work who represents the State or the local government,~~ shall
32 not:

33 (a) Commence ~~[such a project]~~ *a public work* for which the
34 estimated cost exceeds \$100,000 unless it advertises in a newspaper
35 ~~[of general circulation in this state]~~ *qualified pursuant to chapter*
36 *238 of NRS that is published in the county where the public work*
37 *will be performed* for bids for the ~~[project; or]~~ *public work. If no*
38 *qualified newspaper is published in the county where the public*
39 *work will be performed, the required advertisement must be*
40 *published in some qualified newspaper that is printed in the State*
41 *of Nevada and has a general circulation in the county.*

42 (b) Divide ~~[such a project]~~ *a public work* into separate portions
43 to avoid the requirements of paragraph (a).

44 2. ~~[Except as otherwise provided in subsection 7, a public body~~
45 ~~that maintains a list of properly licensed contractors who are~~



1 ~~interested in receiving offers to bid on public works projects for~~
2 ~~which the estimated cost is more than \$25,000 but less than~~
3 ~~\$100,000 shall solicit bids from not more than three of the~~
4 ~~contractors on the list for a contract of that value for the~~
5 ~~construction, alteration or repair of a public work. The public body~~
6 ~~shall select contractors from the list in such a manner as to afford~~
7 ~~each contractor an equal opportunity to bid on a public works~~
8 ~~project. A properly licensed contractor must submit a written~~
9 ~~request annually to the public body to remain on the list. Offers for~~
10 ~~bids which are made pursuant to this subsection must be sent by~~
11 ~~certified mail.}] *At least once each quarter, the authorized*~~
12 ~~*representative of a public body shall report to the public body any*~~
13 ~~*contract that he awarded pursuant to subsection 1 in the*~~
14 ~~*immediately preceding quarter.*~~

15 3. Each advertisement for bids must include a provision that
16 sets forth ~~[-~~

17 ~~—(a) The] *the* requirement that a contractor must be qualified~~
18 ~~pursuant to NRS 338.1379 to bid on the contract . [for must be~~
19 ~~exempt from meeting such qualifications pursuant to NRS~~
20 ~~338.1383; and~~

21 ~~—(b) The period during which an application to qualify as a bidder~~
22 ~~on the contract must be submitted.}]~~

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

28 5. *Except as otherwise provided in subsection 6 and NRS*
29 *338.1389, a public body shall award a contract to the lowest*
30 *responsive and responsible bidder.*

31 6. Any bids received in response to an advertisement for bids
32 may be rejected if the ~~[person]~~ *public body or its authorized*
33 *representative* responsible for awarding the contract determines
34 that:

35 (a) The bidder is not a qualified bidder pursuant to NRS
36 338.1379 ; ~~[- unless the bidder is exempt from meeting such~~
37 ~~qualifications pursuant to NRS 338.1383;]~~

38 (b) The bidder is not responsive ~~[-]~~ *or responsible;*

39 (c) The quality of the services, materials, equipment or labor
40 offered does not conform to the approved ~~[plan]~~ *plans* or
41 specifications; or

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

43 ~~[6. — Before the State or a local government may]~~

44 7. *Before a public body may commence the performance of a*
45 ~~[project subject]~~ *public work itself pursuant* to the provisions of



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1 this section, based upon a determination that the public interest
2 would be served by rejecting any bids received in response to an
3 advertisement for bids, ~~it~~ *the public body* shall prepare and make
4 available for public inspection a written statement containing:

5 (a) A list of all persons, including supervisors, whom the ~~State~~
6 ~~or the local government~~ *public body* intends to assign to the
7 ~~project,~~ *public work*, together with their classifications and an
8 estimate of the direct and indirect costs of their labor;

9 (b) A list of all equipment that the ~~State or the local~~
10 ~~government~~ *public body* intends to use on the ~~project,~~ *public*
11 *work*, together with an estimate of the number of hours each item of
12 equipment will be used and the hourly cost to use each item of
13 equipment;

14 (c) An estimate of the cost of administrative support for the
15 persons assigned to the ~~project,~~ *public work*;

16 (d) An estimate of the total cost of the ~~project,~~ *public work*,
17 *including the fair market value of or, if known, the actual cost of*
18 *all materials, supplies, labor and equipment to be used for the*
19 *public work*; and

20 (e) An estimate of the amount of money the ~~State or the local~~
21 ~~government~~ *public body* expects to save by rejecting the bids and
22 performing the ~~project itself.~~

23 ~~7-~~ *public work itself.*

24 8. This section does not apply to:

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

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

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

30 (d) The Las Vegas Valley Water District created pursuant to
31 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
32 District created pursuant to chapter 477, Statutes of Nevada 1983 or
33 the Virgin Valley Water District created pursuant to chapter 100,
34 Statutes of Nevada 1993; or

35 (e) The design and construction of a public work for which a
36 public body contracts with a design-build team pursuant to NRS
37 338.1711 to 338.1727.

38 **Sec. 19.** NRS 338.1385 is hereby amended to read as follows:

39 338.1385 1. Except as otherwise provided in subsection 8,
40 this state, or *the governing body of* a local government *or its*
41 *authorized representative* that awards a contract for ~~the~~
42 ~~construction, alteration or repair of~~ a public work in accordance
43 with paragraph (a) of subsection 1 of NRS 338.1373, ~~for a public~~
44 ~~officer, public employee or other person responsible for awarding a~~



1 ~~contract for the construction, alteration or repair of a public work~~
2 ~~who represents the State or the local government,]~~ shall not:

3 (a) Commence ~~[such a project]~~ *a public work* for which the
4 estimated cost exceeds \$100,000 unless it advertises in a newspaper
5 ~~[of general circulation in this state]~~ *qualified pursuant to chapter*
6 *238 of NRS that is published in the county where the public work*
7 *will be performed* for bids for the ~~[project; or]~~ *public work. If no*
8 *qualified newspaper is published in the county where the public*
9 *work will be performed, the required advertisement must be*
10 *published in some qualified newspaper that is printed in the State*
11 *of Nevada and having a general circulation within the county.*

12 (b) Divide ~~[such a project]~~ *a public work* into separate portions
13 to avoid the requirements of paragraph (a).

14 2. ~~[Except as otherwise provided in subsection 8, a public body~~
15 ~~that maintains a list of properly licensed contractors who are~~
16 ~~interested in receiving offers to bid on public works projects for~~
17 ~~which the estimated cost is more than \$25,000 but less than~~
18 ~~\$100,000 shall solicit bids from not more than three of the~~
19 ~~contractors on the list for a contract of that value for the~~
20 ~~construction, alteration or repair of a public work. The public body~~
21 ~~shall select contractors from the list in such a manner as to afford~~
22 ~~each contractor an equal opportunity to bid on a public works~~
23 ~~project. A properly licensed contractor must submit a written~~
24 ~~request annually to the public body to remain on the list. Offers for~~
25 ~~bids which are made pursuant to this subsection must be sent by~~
26 ~~certified mail.]~~ *At least once each quarter, the authorized*
27 *representative of a public body shall report to the public body any*
28 *contract that he awarded pursuant to subsection 1 in the*
29 *immediately preceding quarter.*

30 3. Each advertisement for bids must include a provision that
31 sets forth ~~[-~~

32 ~~—(a) The]~~ *the* requirement that a contractor must be qualified
33 pursuant to NRS 338.1379 to bid on the contract . ~~[or must be~~
34 ~~exempt from meeting such qualifications pursuant to NRS~~
35 ~~338.1383; and~~

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

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

43 5. *Except as otherwise provided in subsection 6 and NRS*
44 *338.1389, a public body shall award a contract to the lowest*
45 *responsive and responsible bidder.*



1 6. Any bids received in response to an advertisement for bids
2 may be rejected if the ~~{person}~~ *public body or its authorized*
3 *representative* responsible for awarding the contract determines
4 that:

5 (a) The bidder is not a qualified bidder pursuant to NRS
6 338.1379 ; ~~{, unless the bidder is exempt from meeting such~~
7 ~~qualifications pursuant to NRS 338.1383;}~~

8 (b) The bidder is not responsive ~~{;}~~ *or responsible;*

9 (c) The quality of the services, materials, equipment or labor
10 offered does not conform to the approved ~~{plan}~~ *plans* or
11 specifications; or

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

13 ~~{6. Before the State or a local government}~~

14 7. *Before a public body* may commence *the performance of* a
15 ~~{project subject}~~ *public work itself pursuant* to the provisions of
16 this section, based upon a determination that the public interest
17 would be served by rejecting any bids received in response to an
18 advertisement for bids, ~~{it}~~ *the public body* shall prepare and make
19 available for public inspection a written statement containing:

20 (a) A list of all persons, including supervisors, whom the ~~{State~~
21 ~~or the local government}~~ *public body* intends to assign to the
22 ~~{project;}~~ *public work*, together with their classifications and an
23 estimate of the direct and indirect costs of their labor;

24 (b) A list of all equipment that the ~~{State or the local~~
25 ~~government}~~ *public body* intends to use on the ~~{project;}~~ *public*
26 *work*, together with an estimate of the number of hours each item of
27 equipment will be used and the hourly cost to use each item of
28 equipment;

29 (c) An estimate of the cost of administrative support for the
30 persons assigned to the ~~{project;}~~
31 *public work;*

32 (d) An estimate of the total cost of the ~~{project;}~~ *public work,*
33 *including, the fair market value of or, if known, the actual cost of*
34 *all materials, supplies, labor and equipment to be used for the*
35 *public work;* and

36 (e) An estimate of the amount of money the ~~{State or the local~~
37 ~~government}~~ *public body* expects to save by rejecting the bids and
38 performing the ~~{project itself.}~~

39 ~~7. In preparing the estimated cost of a project pursuant to~~
40 ~~subsection 6, the State or a local government must include the fair~~
41 ~~market value of, or, if known, the actual cost of, all materials,~~
42 ~~supplies, labor and equipment to be used for the project.}~~ *public*
43 *work itself.*

44 8. This section does not apply to:



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

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

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

6 (d) The Las Vegas Valley Water District created pursuant to
7 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
8 District created pursuant to chapter 477, Statutes of Nevada 1983 or
9 the Virgin Valley Water District created pursuant to chapter 100,
10 Statutes of Nevada 1993; or

11 (e) The design and construction of a public work for which a
12 public body contracts with a design-build team pursuant to NRS
13 338.1711 to 338.1727, inclusive.

14 **Sec. 20.** NRS 338.1387 is hereby amended to read as follows:

15 338.1387 1. A public body *or its authorized representative*
16 awarding a contract for a public work shall not award the contract to
17 a person who, at the time of the bid, is not properly licensed under
18 the provisions of chapter 624 of NRS or if the contract would
19 exceed the limit of his license. A subcontractor ~~{named by the~~
20 ~~contractor}~~ who is ~~{not}~~ :

21 (a) *Named in the bid for the contract as a subcontractor who*
22 *will provide a portion of the work on the public work pursuant to*
23 *NRS 338.141; and*

24 (b) *Not* properly licensed for that portion of the work ,
25 shall be deemed unacceptable. If the subcontractor is deemed
26 unacceptable ~~{}~~ *pursuant to this subsection*, the contractor shall
27 provide an acceptable subcontractor . ~~{before the award of the~~
28 ~~contract.}~~

29 2. If, after awarding the contract, *but before commencement of*
30 *the work*, the public body *or its authorized representative* discovers
31 that the person to whom the contract was awarded is not licensed, or
32 that the contract would exceed his license, the public body *or its*
33 *authorized representative* shall ~~{reject the bid}~~ *rescind the award of*
34 *the contract* and may accept the next lowest bid for that public work
35 from a responsive bidder who was determined by the public body *or*
36 *its authorized representative* to be a qualified bidder pursuant to
37 NRS 338.1379 ~~{or was exempt from meeting such qualifications~~
38 ~~pursuant to NRS 338.1373 or 338.1383}~~ without requiring that new
39 bids be submitted.

40 **Sec. 21.** NRS 338.1389 is hereby amended to read as follows:

41 338.1389 1. Except as otherwise provided in *subsection 10*
42 *and* NRS 338.1385 , ~~{and 338.1711 to 338.1727, inclusive,}~~ a public
43 body *or its authorized representative* shall award a contract for a
44 public work *for which the estimated cost exceeds \$250,000* to the
45 contractor who submits the best bid.



- 1 2. Except as otherwise provided in subsection 10 or limited by
2 subsection 11, ~~[for the purposes of this section, a contractor who:~~
3 ~~—(a) Has] the lowest bid that is:~~
4 (a) *Submitted by a responsive and responsible contractor who:*
5 (1) *Has* been determined by the public body to be a qualified
6 bidder pursuant to NRS 338.1379 ~~[or is exempt from meeting such~~
7 ~~requirements pursuant to NRS 338.1373 or 338.1383; and~~
8 ~~—(b) At the time he submits his bid, provides to the public body a~~
9 ~~copy of] ; and~~
10 (2) *At the time he submits his bid, has* a *valid* certificate of
11 eligibility to receive a preference in bidding on public works issued
12 to ~~[him]~~ *the contractor* by the State Contractors' Board pursuant to
13 subsection 3 or 4 ~~;~~
14 ~~shall be deemed to have submitted a better bid than a competing~~
15 ~~contractor who has not provided a copy of such a valid certificate of~~
16 ~~eligibility if the amount of his bid is not] ; and~~
17 (b) *Not* more than 5 percent higher than the ~~[amount]~~ bid
18 *submitted* by the ~~[competing contractor.]~~ *lowest responsive and*
19 *responsible bidder who does not have, at the time he submits his*
20 *bid, a valid certificate of eligibility to receive a preference in*
21 *bidding on public works issued to him by the State Contractors'*
22 *Board pursuant to subsection 3 or 4,*
23 *shall be deemed to be the best bid for the purposes of this section.*
24 3. The State Contractors' Board shall issue a certificate of
25 eligibility to receive a preference in bidding on public works to a
26 general contractor who is licensed pursuant to the provisions of
27 chapter 624 of NRS and submits to the Board an affidavit from a
28 certified public accountant setting forth that the general contractor
29 has, while licensed as a general contractor in this state:
30 (a) Paid directly, on his own behalf:
31 (1) The sales and use taxes imposed pursuant to chapters
32 372, 374 and 377 of NRS on materials used for construction in this
33 state, including, without limitation, construction that is undertaken
34 or carried out on land within the boundaries of this state that is
35 managed by the Federal Government or is on an Indian reservation
36 or Indian colony, of not less than \$5,000 for each consecutive
37 12-month period for 60 months immediately preceding the
38 submission of the affidavit from the certified public accountant;
39 (2) The governmental services tax imposed pursuant to
40 chapter 371 of NRS on the vehicles used in the operation of his
41 business in this state of not less than \$5,000 for each consecutive
42 12-month period for 60 months immediately preceding the
43 submission of the affidavit from the certified public accountant; or
44 (3) Any combination of such sales and use taxes and
45 governmental services tax; or



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

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

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

8 4. The State Contractors' Board shall issue a certificate of
9 eligibility to receive a preference in bidding on public works to a
10 specialty contractor who is licensed pursuant to the provisions of
11 chapter 624 of NRS and submits to the Board an affidavit from a
12 certified public accountant setting forth that the specialty contractor
13 has, while licensed as a specialty contractor in this state:

14 (a) Paid directly, on his own behalf:

15 (1) The sales and use taxes pursuant to chapters 372, 374 and
16 377 of NRS on materials used for construction in this state,
17 including, without limitation, construction that is undertaken or
18 carried out on land within the boundaries of this state that is
19 managed by the Federal Government or is on an Indian reservation
20 or Indian colony, of not less than \$5,000 for each consecutive
21 12-month period for 60 months immediately preceding the
22 submission of the affidavit from the certified public accountant;

23 (2) The governmental services tax imposed pursuant to
24 chapter 371 of NRS on the vehicles used in the operation of his
25 business in this state of not less than \$5,000 for each consecutive
26 12-month period for 60 months immediately preceding the
27 submission of the affidavit from the certified public accountant; or

28 (3) Any combination of such sales and use taxes and
29 governmental services tax; or

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

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

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

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

40 (a) Sales and use taxes and governmental services taxes that
41 were paid in this state by an affiliate or parent company of the
42 contractor, if the affiliate or parent company is also a general
43 contractor or specialty contractor, as applicable; and



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

4 6. A contractor who has received a certificate of eligibility to
5 receive a preference in bidding on public works from the State
6 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
7 for the annual renewal of his contractor's license pursuant to NRS
8 624.283, submit to the Board an affidavit from a certified public
9 accountant setting forth that the contractor has, during the
10 immediately preceding 12 months, paid the taxes required pursuant
11 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
12 applicable, to maintain his eligibility to hold such a certificate.

13 7. A contractor who fails to submit an affidavit to the Board
14 pursuant to subsection 6 ceases to be eligible to receive a preference
15 in bidding on public works unless he reapplies for and receives a
16 certificate of eligibility pursuant to subsection 3 or 4, as applicable.

17 8. If a contractor holds more than one contractor's license, he
18 must submit a separate application for each license pursuant to
19 which he wishes to qualify for a preference in bidding. Upon
20 issuance, the certificate of eligibility to receive a preference in
21 bidding on public works becomes part of the contractor's license for
22 which the contractor submitted the application.

23 9. If a contractor who applies to the State Contractors' Board
24 for a certificate of eligibility to receive a preference in bidding on
25 public works submits false information to the Board regarding the
26 required payment of taxes, the contractor is not eligible to receive a
27 preference in bidding on public works for a period of 5 years after
28 the date on which the Board becomes aware of the submission of the
29 false information.

30 10. If any federal statute or regulation precludes the granting of
31 federal assistance or reduces the amount of that assistance for a
32 particular public work because of the provisions of subsection 2,
33 those provisions do not apply insofar as their application would
34 preclude or reduce federal assistance for that work. ~~[The provisions
35 of subsection 2 do not apply to any contract for a public work which
36 is expected to cost less than \$250,000.]~~

37 11. If a bid is submitted by two or more contractors as a joint
38 venture or by one of them as a joint venturer, the ~~[provisions of
39 subsection 2 apply]~~ *bid may be deemed the best bid* only if both or
40 all of the joint venturers separately meet the requirements of ~~[that
41 subsection.]~~ *subsection 2.*

42 12. The State Contractors' Board shall adopt regulations and
43 may assess reasonable fees relating to the certification of contractors
44 for a preference in bidding on public works.



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

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

12 (b) Be filed with the public body ~~{at or after the time at which~~
13 ~~the contractor submitted the bid or proposal to the public body and~~
14 ~~before the time at which the public body awards the contract for~~
15 ~~which the bid or proposal was submitted.}~~ *not later than 3 business*
16 *days after the opening of the bids by the public body or its*
17 *authorized representative.*

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

31 **Sec. 22.** NRS 338.139 is hereby amended to read as follows:

32 338.139 1. A public body *or its authorized representative*
33 may award a contract for ~~{the construction, alteration or repair of}~~ a
34 public work pursuant to NRS 338.1375 to 338.1389, inclusive, to a
35 specialty contractor if:

36 (a) The majority of the work to be performed on the ~~{project}~~
37 *public work* to which the contract pertains consists of specialty
38 contracting for which the specialty contractor is licensed; and

39 (b) The ~~{project}~~ *public work* to which the contract pertains is
40 not part of a larger public work.

41 2. If a public body *or its authorized representative* awards a
42 contract to a specialty contractor pursuant to NRS 338.1375 to
43 338.1389, inclusive, all work to be performed on the ~~{project}~~ *public*
44 *work* to which the contract pertains that is outside the scope of the



1 license of the specialty contractor must be performed by a
2 subcontractor who is licensed to perform such work.

3 **Sec. 23.** NRS 338.140 is hereby amended to read as follows:

4 338.140 1. ~~[An agency of this state, a political subdivision,~~
5 ~~municipal corporation or district, a public officer or a person~~
6 ~~charged with the letting of contracts for the construction, alteration~~
7 ~~or repair of public works]~~ *A public body* shall not draft or cause to
8 be drafted specifications for bids, in connection with ~~[the~~
9 ~~construction, alteration or repair of public works:]~~
10 *a public work:*

11 (a) In such a manner as to limit the bidding, directly or
12 indirectly, to any one specific concern.

13 (b) Except in those instances where the product is designated to
14 match others in use on a particular public improvement either
15 completed or in the course of completion, calling for a designated
16 material, product, thing or service by specific brand or trade name
17 unless the specification lists at least two brands or trade names of
18 comparable quality or utility and is followed by the words "or
19 equal" so that bidders may furnish any equal material, product, thing
20 or service.

21 (c) In such a manner as to hold the bidder to whom such
22 contract is awarded responsible for extra costs incurred as a result of
23 errors or omissions by the public ~~[agency]~~ *body* in the contract
24 documents.

25 (d) In such a manner as to require a bidder to furnish to the
26 public ~~[agency.]~~ *body*, whether before or after the bid is submitted,
27 documents generated in the preparation or determination of prices
28 included in the bid, except when requested by the public ~~[agency]~~
29 *body* for:

30 (1) A determination of the price of additional work
31 performed pursuant to a change order;

32 (2) An evaluation of claims for costs incurred for the
33 performance of additional work;

34 (3) Preparation for arbitration or litigation; or

35 (4) Any combination thereof.

36 A document furnished to a public ~~[agency]~~ *body* pursuant to this
37 paragraph is confidential and must be returned to the bidder.

38 2. In those cases involving a unique or novel product
39 application required to be used in the public interest, or where only
40 one brand or trade name is known to the ~~[specifying agency.]~~ *public*
41 *body*, it may list only one.

42 3. Specifications must provide a period of time of at least 7
43 days after award of the contract for submission of data
44 substantiating a request for a substitution of "an equal" item.



* A B 4 2 5 R 2 *

1 **Sec. 24.** NRS 338.141 is hereby amended to read as follows:
2 338.141 1. ~~{Except as otherwise provided in subsection 2,~~
3 ~~each}~~ *Each* bid submitted to ~~{any officer, department, board or~~
4 ~~commission for the construction of}~~ *a public body for* any public
5 work ~~{or improvement}~~ *to which paragraph (a) of subsection 1 of*
6 *NRS 338.1385 or paragraph (a) of subsection 1 of NRS 338.143*
7 *applies,* must include:
8 (a) ~~{The}~~ *If the public body provides a list of the labor or*
9 *portions of the public work which are estimated by the public body*
10 *to exceed 3 percent of the estimated cost of the public work, the*
11 *name of each subcontractor who will provide such labor or*
12 *portion of the work on the public work which is estimated to*
13 *exceed 3 percent of the estimated cost of the public work; or*
14 (b) *If the public body does not provide a list of the labor or*
15 *portions of the public work which are estimated by the public body*
16 *to exceed 3 percent of the estimated cost of the public work, the*
17 name of each subcontractor who will provide labor or a portion of
18 the work ~~{or improvement}~~ *on the public work* to the *prime*
19 contractor for which ~~{he}~~ *the subcontractor* will be paid an amount
20 exceeding 5 percent of the prime contractor's total bid. ~~{Within}~~ *If*
21 *the bid is submitted pursuant to this paragraph, within* 2 hours
22 after the completion of the opening of the bids, the contractors who
23 submitted the three lowest bids must submit a list containing the
24 name of each subcontractor who will provide labor or a portion of
25 the work ~~{or improvement}~~ *on the public work* to the *prime*
26 contractor for which ~~{he}~~ *the subcontractor* will be paid an amount
27 exceeding 1 percent of the prime contractor's total bid or \$50,000,
28 whichever is greater, and the number of the license issued to the
29 subcontractor pursuant to chapter 624 of NRS. ~~{If a contractor fails~~
30 ~~to submit such a list within the required time, his bid shall be~~
31 ~~deemed not responsive.~~
32 ~~—b) A description of the portion of the work or improvement~~
33 ~~which each subcontractor named in the bid will complete.~~
34 ~~—2. The contractor shall list in his bid pursuant to subsection 1~~
35 ~~the name of a subcontractor for each portion of the project that will~~
36 ~~be completed by a subcontractor.]~~
37 2. *The lists required by subsection 1 must include a*
38 *description of the labor or portion of the work which each*
39 *subcontractor named in the list will provide to the prime*
40 *contractor.*
41 3. *A prime contractor shall include his name on a list*
42 *required by paragraph (a) of subsection 1 if he will perform any of*
43 *the work required to be listed pursuant to paragraph (a) of*
44 *subsection 1.*



1 4. *If a prime contractor does not submit a list required by*
2 *subsection 1, his bid shall be deemed not responsive.*

3 5. A contractor whose bid is accepted shall not substitute *a*
4 *subcontractor for* any ~~[person for a]~~ subcontractor who is named in
5 the bid, unless:

6 (a) The ~~[awarding authority]~~ *public body or its authorized*
7 *representative* objects to the subcontractor, requests in writing a
8 change in the subcontractor and pays any increase in costs resulting
9 from the change; or

10 (b) The substitution is approved by the ~~[awarding authority or~~
11 ~~an]~~ *public body or its* authorized representative. ~~[of the awarding~~
12 ~~authority.]~~ The substitution must be approved if the ~~[awarding~~
13 ~~authority]~~ *public body* or *its* authorized representative ~~[of the~~
14 ~~awarding authority]~~ determines that:

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

20 (2) The named subcontractor files for bankruptcy or becomes
21 insolvent; ~~[or]~~

22 (3) The named subcontractor fails or refuses to perform his
23 subcontract within a reasonable time or is unable to furnish a
24 performance bond and payment bond pursuant to NRS 339.025 ~~[~~
25 ~~—4.]~~; or

26 (4) *The named subcontractor is not properly licensed to*
27 *provide that labor or portion of the work.*

28 6. *If a contractor indicates pursuant to subsection 1 that he*
29 *will perform a portion of work on the public work and thereafter*
30 *requests to substitute a subcontractor to perform such work, the*
31 *contractor shall provide to the public body a written explanation in*
32 *the form required by the public body which contains the reasons*
33 *that:*

34 (a) *A subcontractor was not originally contemplated to be used*
35 *on that portion of the public work; and*

36 (b) *The substitution is in the best interest of the public body.*

37 7. As used in this section, "general terms" means the terms and
38 conditions of a contract that set the basic requirements for a
39 ~~[project]~~ *public work* and apply without regard to the particular
40 trade or specialty of a subcontractor, but does not include any
41 provision that controls or relates to the specific portion of the
42 ~~[project]~~ *public work* that will be completed by a subcontractor,
43 including, without limitation, the materials to be used by the
44 subcontractor or other details of the work to be performed by the
45 subcontractor.



1 **Sec. 25.** NRS 338.143 is hereby amended to read as follows:
2 338.143 1. Except as otherwise provided in subsection ~~[6]~~ **7**
3 and NRS 338.1907, a local government *or its authorized*
4 *representative* that awards a contract for ~~[the construction, alteration~~
5 ~~or repair of]~~ a public work in accordance with paragraph (b) of
6 subsection 1 of NRS 338.1373 ~~[, or a public officer, public~~
7 ~~employee or other person responsible for awarding a contract for the~~
8 ~~construction, alteration or repair of a public work who represents~~
9 ~~that local government,]~~ shall not:
10 (a) Commence ~~[such a project]~~ *a public work* for which the
11 estimated cost exceeds \$100,000 unless it advertises in a newspaper
12 ~~[of general circulation in this state]~~ *qualified pursuant to chapter*
13 *238 of NRS that is published in the county where the project will*
14 *be performed* for bids for the ~~[project; or]~~ *public work. If no*
15 *qualified newspaper is published in the county where the public*
16 *work will be performed, the required advertisement must be*
17 *published in some qualified newspaper that is printed in the State*
18 *of Nevada and has a general circulation in the county.*
19 (b) Divide ~~[such a project]~~ *a public work* into separate portions
20 to avoid the requirements of paragraph (a).
21 2. ~~[Except as otherwise provided in subsection 6, a local~~
22 ~~government that maintains a list of properly licensed contractors~~
23 ~~who are interested in receiving offers to bid on public works~~
24 ~~projects for which the estimated cost is more than \$25,000 but less~~
25 ~~than \$100,000 shall solicit bids from not more than three of the~~
26 ~~contractors on the list for a contract of that value for the~~
27 ~~construction, alteration or repair of a public work. The local~~
28 ~~government shall select contractors from the list in such a manner as~~
29 ~~to afford each contractor an equal opportunity to bid on a public~~
30 ~~works project. A properly licensed contractor must submit a written~~
31 ~~request annually to the local government to remain on the list.~~
32 ~~Offers for bids which are made pursuant to this subsection must be~~
33 ~~sent by certified mail.] At least once each quarter, the authorized~~
34 ~~representative of a local government shall report to the local~~
35 ~~government any contract that he awarded pursuant to subsection 1~~
36 ~~in the immediately preceding quarter.~~
37 3. Approved plans and specifications for the bids must be on
38 file at a place and time stated in the advertisement for the inspection
39 of all persons desiring to bid thereon and for other interested
40 persons. Contracts for the project must be awarded on the basis of
41 bids received.
42 4. *Except as otherwise provided in subsection 5 and NRS*
43 *338.147, the local government or its authorized representative*
44 *shall award a contract to the lowest responsive and responsible*
45 *bidder.*



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1 5. Any bids received in response to an advertisement for bids
2 may be rejected if the ~~{person}~~ *local government or its authorized*
3 *representative* responsible for awarding the contract determines
4 that:

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

10 ~~{5.}~~ 6. Before a local government may commence *the*
11 *performance of* a ~~{project-subject}~~ *public work itself pursuant* to
12 the provisions of this section, based upon a determination that the
13 public interest would be served by rejecting any bids received in
14 response to an advertisement for bids, ~~{it}~~ *the local government*
15 shall prepare and make available for public inspection a written
16 statement containing:

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

21 (b) A list of all equipment that the local government intends to
22 use on the ~~{project,}~~ *public work*, together with an estimate of the
23 number of hours each item of equipment will be used and the hourly
24 cost to use each item of equipment;

25 (c) An estimate of the cost of administrative support for the
26 persons assigned to the ~~{project,}~~ *public work*;

27 (d) An estimate of the total cost of the ~~{project,}~~ *public work,*
28 *including the fair market value of or, if known, the actual cost of*
29 *all materials, supplies, labor and equipment to be used for the*
30 *public work*; and

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

34 ~~6.}~~ *public work itself.*

35 7. This section does not apply to:

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

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

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

41 (d) The Las Vegas Valley Water District created pursuant to
42 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
43 District created pursuant to chapter 477, Statutes of Nevada 1983 or
44 the Virgin Valley Water District created pursuant to chapter 100,
45 Statutes of Nevada 1993; or



1 (e) The design and construction of a public work for which a
2 public body contracts with a design-build team pursuant to NRS
3 338.1711 to 338.1727, inclusive.

4 **Sec. 26.** NRS 338.143 is hereby amended to read as follows:

5 338.143 1. Except as otherwise provided in subsection 7, a
6 local government *or its authorized representative* that awards a
7 contract for ~~[the construction, alteration or repair of]~~ a public work
8 in accordance with paragraph (b) of subsection 1 of NRS 338.1373
9 ~~[, or a public officer, public employee or other person responsible~~
10 ~~for awarding a contract for the construction, alteration or repair of a~~
11 ~~public work who represents that local government,]~~ shall not:

12 (a) Commence ~~[such a project]~~ *a public work* for which the
13 estimated cost exceeds \$100,000 unless it advertises in a newspaper
14 ~~[of general circulation in this state]~~ *qualified pursuant to chapter*
15 *238 or NRS that is published in the county where the public work*
16 *will be performed* for bids for the ~~[project; or]~~ *public work. If no*
17 *qualified newspaper is published within the county where the*
18 *public work will be performed, the required advertisement must be*
19 *published in some qualified newspaper that is printed in the State*
20 *of Nevada and has a general circulation within the county.*

21 (b) Divide ~~[such a project]~~ *a public work* into separate portions
22 to avoid the requirements of paragraph (a).

23 2. ~~[Except as otherwise provided in subsection 7, a local~~
24 ~~government that maintains a list of properly licensed contractors~~
25 ~~who are interested in receiving offers to bid on public works~~
26 ~~projects for which the estimated cost is more than \$25,000 but less~~
27 ~~than \$100,000 shall solicit bids from not more than three of the~~
28 ~~contractors on the list for a contract of that value for the~~
29 ~~construction, alteration or repair of a public work. The local~~
30 ~~government shall select contractors from the list in such a manner as~~
31 ~~to afford each contractor an equal opportunity to bid on a public~~
32 ~~works project. A properly licensed contractor must submit a written~~
33 ~~request annually to the local government to remain on the list.~~
34 ~~Offers for bids which are made pursuant to this subsection must be~~
35 ~~sent by certified mail.]~~ *At least once each quarter, the authorized*
36 *representative of a local government shall report to the local*
37 *government any contract that he awarded pursuant to subsection 1*
38 *in the immediately preceding quarter.*

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

44 4. *Except as otherwise provided in subsection 5 and NRS*
45 *338.147, the local government or its authorized representative*



1 *shall award a contract to the lowest responsive and responsible*
2 *bidder.*

3 5. Any bids received in response to an advertisement for bids
4 may be rejected if the ~~{person}~~ *local government or its authorized*
5 *representative* responsible for awarding the contract determines
6 that:

7 (a) The bidder is not responsive or responsible;
8 (b) The quality of the services, materials, equipment or labor
9 offered does not conform to the approved ~~{plan}~~ *plans* or
10 specifications; or

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

12 ~~{5-}~~ 6. Before a local government may commence *the*
13 *performance of* a ~~{project-subject}~~ *public work itself pursuant* to
14 the provisions of this section, based upon a determination that the
15 public interest would be served by rejecting any bids received in
16 response to an advertisement for bids, ~~{it}~~ *the local government*
17 shall prepare and make available for public inspection a written
18 statement containing:

19 (a) A list of all persons, including supervisors, whom the local
20 government intends to assign to the ~~{project-}~~ *public work*, together
21 with their classifications and an estimate of the direct and indirect
22 costs of their labor;

23 (b) A list of all equipment that the local government intends to
24 use on the ~~{project-}~~ *public work*, together with an estimate of the
25 number of hours each item of equipment will be used and the hourly
26 cost to use each item of equipment;

27 (c) An estimate of the cost of administrative support for the
28 persons assigned to the ~~{project-}~~ *public work*;

29 (d) An estimate of the total cost of the ~~{project-}~~ *public work*,
30 *including the fair market value of or, if known, the actual cost of,*
31 *all materials, supplies, labor and equipment to be used for the*
32 *public work*; and

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

36 ~~6. In preparing the estimated cost of a project pursuant to~~
37 ~~subsection 5, a local government must include the fair market value~~
38 ~~of, or, if known, the actual cost of, all materials, supplies, labor and~~
39 ~~equipment to be used for the project.] public work itself.~~

40 7. This section does not apply to:

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

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

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



1 (d) The Las Vegas Valley Water District created pursuant to
2 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
3 District created pursuant to chapter 477, Statutes of Nevada 1983 or
4 the Virgin Valley Water District created pursuant to chapter 100,
5 Statutes of Nevada 1993; or

6 (e) The design and construction of a public work for which a
7 public body contracts with a design-build team pursuant to NRS
8 338.1711 to 338.1727, inclusive.

9 **Sec. 27.** NRS 338.145 is hereby amended to read as follows:

10 338.145 1. A local government *or its authorized*
11 *representative* awarding a contract for a public work shall not award
12 the contract to a person who, at the time of the bid, is not properly
13 licensed under the provisions of chapter 624 of NRS or if the
14 contract would exceed the limit of his license. A subcontractor
15 ~~{named by the contractor}~~ who is ~~{not}~~ :

16 (a) *Named in the bid for the contract as a subcontractor who*
17 *will provide a portion of the work on the public work pursuant to*
18 *NRS 338.141; and*

19 (b) *Not* properly licensed for that portion of the work ,
20 shall be deemed unacceptable. If the subcontractor is deemed
21 unacceptable ~~{}~~ *pursuant to this subsection*, the contractor shall
22 provide an acceptable subcontractor . ~~{before the award of the~~
23 ~~contract.}~~

24 2. If, after awarding the contract, *but before commencement of*
25 *the work*, the local government *or its authorized representative*
26 discovers that the person to whom the contract was awarded is not
27 licensed, or that the contract would exceed his license, the local
28 government *or its authorized representative* shall ~~{reject the bid}~~
29 *rescind the award of the contract* and may accept the next lowest
30 bid for that public work from a responsive and responsible bidder
31 without requiring that new bids be submitted.

32 **Sec. 28.** NRS 338.147 is hereby amended to read as follows:

33 338.147 1. Except as otherwise provided in *subsection 10*
34 *and* NRS 338.143 , ~~{and 338.1711 to 338.1727, inclusive,}~~ a local
35 government *or its authorized representative* shall award a contract
36 for a public work *for which the estimated cost exceeds \$250,000* to
37 the contractor who submits the best bid.

38 2. Except as otherwise provided in subsection 10 or limited by
39 subsection 11, ~~{for the purposes of this section, a contractor who:~~
40 ~~—(a) Has}~~ *the lowest bid that is:*

41 (a) *Submitted by a contractor who:*

42 (1) *Has* been found to be a responsible and responsive
43 contractor by the local government ~~{and~~

44 ~~—(b) At the time he submits his bid, provides to the local~~
45 ~~government a copy of}~~ *or its authorized representative; and*



1 (2) *At the time he submits his bid, has a valid* certificate of
2 eligibility to receive a preference in bidding on public works issued
3 to ~~him~~ *the contractor* by the State Contractors' Board pursuant to
4 subsection 3 or 4 ~~;~~
5 ~~shall be deemed to have submitted a better bid than a competing~~
6 ~~contractor who has not provided a copy of such a valid certificate of~~
7 ~~eligibility if the amount of his bid is not~~ ; and
8 (b) *Not* more than 5 percent higher than the ~~amount bid~~ *bid*
9 *submitted* by the ~~competing contractor~~ *lowest responsive and*
10 *responsible bidder who does not have, at the time he submits the*
11 *bid, a valid certificate of eligibility to receive a preference in*
12 *bidding on public works issued to him by the State Contractors'*
13 *Board pursuant to subsection 3 or 4,*
14 *shall be deemed to be the best bid for the purposes of this section.*
15 3. The State Contractors' Board shall issue a certificate of
16 eligibility to receive a preference in bidding on public works to a
17 general contractor who is licensed pursuant to the provisions of
18 chapter 624 of NRS and submits to the Board an affidavit from a
19 certified public accountant setting forth that the general contractor
20 has, while licensed as a general contractor in this state:
21 (a) Paid directly, on his own behalf:
22 (1) The sales and use taxes imposed pursuant to chapters
23 372, 374 and 377 of NRS on materials used for construction in this
24 state, including, without limitation, construction that is undertaken
25 or carried out on land within the boundaries of this state that is
26 managed by the Federal Government or is on an Indian reservation
27 or Indian colony, of not less than \$5,000 for each consecutive
28 12-month period for 60 months immediately preceding the
29 submission of the affidavit from the certified public accountant;
30 (2) The governmental services tax imposed pursuant to
31 chapter 371 of NRS on the vehicles used in the operation of his
32 business in this state of not less than \$5,000 for each consecutive
33 12-month period for 60 months immediately preceding the
34 submission of the affidavit from the certified public accountant; or
35 (3) Any combination of such sales and use taxes and
36 governmental services tax; or
37 (b) Acquired, by purchase, inheritance, gift or transfer through a
38 stock option plan, all the assets and liabilities of a viable, operating
39 construction firm that possesses a:
40 (1) License as a general contractor pursuant to the provisions
41 of chapter 624 of NRS; and
42 (2) Certificate of eligibility to receive a preference in bidding
43 on public works.
44 4. The State Contractors' Board shall issue a certificate of
45 eligibility to receive a preference in bidding on public works to a



1 specialty contractor who is licensed pursuant to the provisions of
2 chapter 624 of NRS and submits to the Board an affidavit from a
3 certified public accountant setting forth that the specialty contractor
4 has, while licensed as a specialty contractor in this state:

5 (a) Paid directly, on his own behalf:

6 (1) The sales and use taxes pursuant to chapters 372, 374 and
7 377 of NRS on materials used for construction in this state,
8 including, without limitation, construction that is undertaken or
9 carried out on land within the boundaries of this state that is
10 managed by the Federal Government or is on an Indian reservation
11 or Indian colony, of not less than \$5,000 for each consecutive
12 12-month period for 60 months immediately preceding the
13 submission of the affidavit from the certified public accountant;

14 (2) The governmental services tax imposed pursuant to
15 chapter 371 of NRS on the vehicles used in the operation of his
16 business in this state of not less than \$5,000 for each consecutive
17 12-month period for 60 months immediately preceding the
18 submission of the affidavit from the certified public accountant; or

19 (3) Any combination of such sales and use taxes and
20 governmental services tax; or

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

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

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

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

31 (a) Sales and use taxes and governmental services taxes paid in
32 this state by an affiliate or parent company of the contractor, if the
33 affiliate or parent company is also a general contractor or specialty
34 contractor, as applicable; and

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

38 6. A contractor who has received a certificate of eligibility to
39 receive a preference in bidding on public works from the State
40 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
41 for the annual renewal of his contractor's license pursuant to NRS
42 624.283, submit to the Board an affidavit from a certified public
43 accountant setting forth that the contractor has, during the
44 immediately preceding 12 months, paid the taxes required pursuant



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1 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
2 applicable, to maintain his eligibility to hold such a certificate.

3 7. A contractor who fails to submit an affidavit to the Board
4 pursuant to subsection 6 ceases to be eligible to receive a preference
5 in bidding on public works unless he reapplies for and receives a
6 certificate of eligibility pursuant to subsection 3 or 4, as applicable.

7 8. If a contractor holds more than one contractor's license, he
8 must submit a separate application for each license pursuant to
9 which he wishes to qualify for a preference in bidding. Upon
10 issuance, the certificate of eligibility to receive a preference in
11 bidding on public works becomes part of the contractor's license for
12 which the contractor submitted the application.

13 9. If a contractor who applies to the State Contractors' Board
14 for a certificate of eligibility to receive a preference in bidding on
15 public works submits false information to the Board regarding the
16 required payment of taxes, the contractor is not eligible to receive a
17 preference in bidding on public works for a period of 5 years after
18 the date on which the Board becomes aware of the submission of the
19 false information.

20 10. If any federal statute or regulation precludes the granting of
21 federal assistance or reduces the amount of that assistance for a
22 particular public work because of the provisions of subsection 2,
23 those provisions do not apply insofar as their application would
24 preclude or reduce federal assistance for that work. ~~[The provisions~~
25 ~~of subsection 2 do not apply to any contract for a public work which~~
26 ~~is expected to cost less than \$250,000.]~~

27 11. If a bid is submitted by two or more contractors as a joint
28 venture or by one of them as a joint venturer, ~~[the provisions of~~
29 ~~subsection 2 apply]~~ *the bid may be deemed a best bid* only if both or
30 all of the joint venturers separately meet the requirements of ~~[that~~
31 ~~subsection.]~~ *subsection 2.*

32 12. The State Contractors' Board shall adopt regulations and
33 may assess reasonable fees relating to the certification of contractors
34 for a preference in bidding on public works.

35 13. A person or entity who believes that a contractor
36 wrongfully holds a certificate of eligibility to receive a preference in
37 bidding on public works may challenge the validity of the certificate
38 by filing a written objection with the ~~[public body]~~ *local*
39 *government* to which the contractor has submitted a bid ~~[or~~
40 ~~proposal]~~ on a contract for the ~~[completion]~~ *construction* of a public
41 work. A written objection authorized pursuant to this subsection
42 must:

43 (a) Set forth proof or substantiating evidence to support the
44 belief of the person or entity that the contractor wrongfully holds a



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1 certificate of eligibility to receive a preference in bidding on public
2 works; and

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

7 ~~—14. If a public body~~ *local government not later than 3*
8 *business days after the opening of the bids by the local*
9 *government or its authorized representative.*

10 *14. If a local government* receives a written objection pursuant
11 to subsection 13, the ~~{public body}~~ *local government* shall
12 determine whether the objection is accompanied by the proof or
13 substantiating evidence required pursuant to paragraph (a) of that
14 subsection. If the ~~{public body}~~ *local government* determines that
15 the objection is not accompanied by the required proof or
16 substantiating evidence, the ~~{public body}~~ *local government* shall
17 dismiss the objection and *the local government or its authorized*
18 *representative* may proceed immediately to award the contract. If
19 the ~~{public body}~~ *local government* determines that the objection is
20 accompanied by the required proof or substantiating evidence, the
21 ~~{public body}~~ *local government* shall determine whether the
22 contractor qualifies for the certificate pursuant to the provisions of
23 this section and *the local government or its authorized*
24 *representative* may proceed to award the contract accordingly.

25 **Sec. 29.** NRS 338.148 is hereby amended to read as follows:

26 338.148 1. A local government *or its authorized*
27 *representative* may award a contract for ~~{the construction, alteration~~
28 ~~or repair of}~~ a public work to a specialty contractor pursuant to NRS
29 *338.143, 338.145 and 338.147* if:

30 (a) The majority of the work to be performed on the ~~{project}~~
31 *public work* to which the contract pertains consists of specialty
32 contracting for which the specialty contractor is licensed; and

33 (b) The ~~{project}~~ *public work* to which the contract pertains is
34 not part of a larger public work.

35 2. If a local government *or its authorized representative*
36 awards a contract to a specialty contractor pursuant to NRS *338.143,*
37 *338.145 and 338.147*, all work to be performed on the ~~{project}~~
38 *public work* to which the contract pertains that is outside the scope
39 of the license of the specialty contractor must be performed by a
40 subcontractor who is licensed to perform such work.

41 **Sec. 30.** NRS 338.150 is hereby amended to read as follows:

42 338.150 1. ~~{Any agency of this state and any political~~
43 ~~subdivision, municipal corporation or district and any public officer~~
44 ~~or person}~~ *Except as otherwise provided in subsection 3, any*
45 *public body* charged with the drafting of specifications for ~~{the~~



1 ~~construction, alteration or repair of public works,]~~ *a public work*
2 shall include in the specifications a clause permitting arbitration of a
3 dispute arising between the ~~[agency and a]~~ *public body and the*
4 contractor *engaged on a public work* if the dispute cannot otherwise
5 be settled.

6 2. Any dispute requiring arbitration must be handled in
7 accordance with the *construction* industry's rules for arbitration as
8 administered by the American Arbitration Association or the
9 Nevada Arbitration Association.

10 3. The provisions of subsection 1 do not require the
11 Department of Transportation to include such a clause in any
12 contract entered into by the Department.

13 **Sec. 31.** NRS 338.155 is hereby amended to read as follows:

14 338.155 ~~[(1)]~~ If a public body enters into a contract with a
15 design professional who is not a member of a design-build team, for
16 the provision of services in connection with a public work, the
17 contract:

18 ~~[(a)]~~ 1. Must set forth:

19 ~~[(1)]~~ (a) The specific period within which the public body
20 must pay the design professional.

21 ~~[(2)]~~ (b) The specific period and manner in which the public
22 body may dispute a payment or portion thereof that the design
23 professional alleges is due.

24 ~~[(3)]~~ (c) The terms of any penalty that will be imposed upon
25 the public body if the public body fails to pay the design
26 professional within the specific period set forth in the contract
27 pursuant to ~~[subparagraph (1)].~~

28 ~~—(4)] paragraph (a).~~

29 (d) That the prevailing party in an action to enforce the contract
30 is entitled to reasonable attorney's fees and costs.

31 ~~[(b)]~~ 2. May set forth the terms of any discount that the public
32 body will receive if the public body pays the design professional
33 within the specific period set forth in the contract pursuant to
34 ~~[subparagraph (1) of]~~ paragraph (a)~~[-~~

35 ~~—(e)] of subsection 1.~~

36 3. May set forth the terms by which the design professional
37 agrees to name the public body, at the cost of the public body, as an
38 additional insured in an insurance policy held by the design
39 professional.

40 ~~[(d)]~~ 4. Except as otherwise provided in ~~[paragraph (e),]~~
41 *subsection 5*, must not require the design professional to defend,
42 indemnify or hold harmless the public body or the employees,
43 officers or agents of that public body from any liability, damage,
44 loss, claim, action or proceeding caused by the negligence, errors,



1 omissions, recklessness or intentional misconduct of the employees,
2 officers or agents of the public body.

3 ~~[(e)] 5.~~ May require the design professional to defend,
4 indemnify and hold harmless the public body, and the employees,
5 officers and agents of the public body from any liabilities, damages,
6 losses, claims, actions or proceedings, including, without limitation,
7 reasonable attorneys' fees, that are caused by the negligence, errors,
8 omissions, recklessness or intentional misconduct of the design
9 professional or the employees or agents of the design professional in
10 the performance of the contract.

11 ~~[(2. — Any provision of a contract that is in violation of paragraph~~
12 ~~(d) of subsection 1 is declared to be contrary to the public policy of~~
13 ~~this state and is void.)]~~

14 **Sec. 32.** NRS 338.1711 is hereby amended to read as follows:

15 338.1711 1. Except as otherwise provided in this section, a
16 public body shall contract with a prime contractor for the
17 construction of a public work for which the estimated cost exceeds
18 \$100,000.

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

22 (a) The public work is:

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

26 (2) Any other type of public work, except a stand-alone
27 underground utility project, the estimated cost of which exceeds
28 \$30,000,000; and

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

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

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

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

41 3. Each state agency and each local government may contract
42 with a design-build team once in each fiscal year for the design and
43 construction of a public work if the ~~[governing body of the entity]~~
44 **public body** that is responsible for financing the public work
45 determines that:



- 1 (a) The estimated cost of the public work is:
- 2 (1) At least \$250,000 but less than \$30,000,000 if the public
- 3 work is the construction of a park and appurtenances thereto, the
- 4 rehabilitation or remodeling of a public building, or the construction
- 5 of an addition to a public building;
- 6 (2) At least \$500,000 but less than \$30,000,000 if the public
- 7 work is the construction of a new public building;
- 8 (3) At least \$5,000,000 but less than \$100,000,000 if the
- 9 public work is the construction, alteration or repair of a plant or
- 10 facility for the treatment and pumping of water or the treatment and
- 11 disposal of wastewater or sewage; or
- 12 (4) At least \$5,000,000 but less than \$30,000,000 if the
- 13 public work is the construction, alteration or repair of any other
- 14 fixed works as described in subsection 2 of NRS 624.215; and
- 15 (b) Contracting with a design-build team will enable the public
- 16 body to:
- 17 (1) Design and construct the public work at a cost that is
- 18 significantly lower than the cost that the public body would incur to
- 19 design and construct the public work using a different method;
- 20 (2) Design and construct the public work in a shorter time
- 21 than would be required to design and construct the public work
- 22 using a different method, if exigent circumstances require that the
- 23 public work be designed and constructed within a short time; or
- 24 (3) Ensure that the design and construction of the public
- 25 work is properly coordinated, if the public work is unique, highly
- 26 technical and complex in nature.
- 27 4. Notwithstanding the provisions of subsections 1, 2 and 3, a
- 28 public body may contract with:
- 29 (a) A nonprofit organization for the design and construction of a
- 30 project to restore, enhance or develop wetlands.
- 31 (b) A prime contractor or design-build team with respect to a
- 32 public work if the public body determines that the public work is:
- 33 (1) Not part of a larger public work; and
- 34 (2) Limited in scope to:
- 35 (I) Removal of asbestos;
- 36 (II) Replacement of equipment or systems for heating,
- 37 ventilation and air-conditioning;
- 38 (III) Replacement of a roof;
- 39 (IV) Landscaping; or
- 40 (V) Restoration, enhancement or development of
- 41 wetlands.
- 42 5. *A public body that is required to contract with a prime*
- 43 *contractor pursuant to subsection 1 or elects to contract with a*
- 44 *prime contractor pursuant to subsection 4 shall select the prime*



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1 *contractor in accordance with the procedures for bidding that are*
2 *set forth in:*

3 (a) *The provisions of NRS 338.1375 to 338.139, inclusive; or*
4 (b) *NRS 338.143 to 338.148, inclusive, if the public body is a*
5 *local government that elects to award a contract for a public work*
6 *in accordance with paragraph (b) of subsection 1 of*
7 *NRS 338.1373.*

8 6. As used in this section, “state agency” includes an agency,
9 bureau, board, commission, department, division or any other unit of
10 the Legislative Department, Judicial Department or Executive
11 Department of State Government or the University and Community
12 College System of Nevada.

13 **Sec. 33.** NRS 338.1713 is hereby amended to read as follows:

14 338.1713 1. A public body shall not contract with a design-
15 build team with respect to a public work unless the ~~[governing body~~
16 ~~of the]~~ public body makes the determinations, at a public hearing,
17 that are required pursuant to subsection 2, 3 or 4 of NRS 338.1711,
18 as applicable.

19 2. A public body that is required to hold a public hearing
20 pursuant to this section shall publish notice of the hearing in a
21 newspaper ~~[of]~~ *qualified pursuant to chapter 238 of NRS that is*
22 *published in the county where the work will be performed. If no*
23 *qualified newspaper is published in the county where the public*
24 *work will be performed, the required advertisement must be*
25 *published in some qualified newspaper that is printed in the State*
26 *of Nevada and has a general circulation in [this state.] the county.*

27 **Sec. 34.** NRS 338.1715 is hereby amended to read as follows:

28 338.1715 ~~[1.—A public body that is required to contract with a~~
29 ~~prime contractor pursuant to subsection 1 of NRS 338.1711 or elects~~
30 ~~to contract with a prime contractor pursuant to subsection 4 of NRS~~
31 ~~338.1711 shall select the prime contractor in accordance with the~~
32 ~~procedures for bidding that are set forth in:~~

33 ~~—(a) The provisions of NRS 338.1375 to 338.139, inclusive; or~~
34 ~~—(b) NRS 338.143 to 338.148, inclusive, if the public body is a~~
35 ~~local government that elects to award a contract for a public work in~~
36 ~~accordance with paragraph (b) of subsection 1 of NRS 338.1373.~~

37 ~~—2.]~~ A public body that contracts with a design-build team
38 pursuant to NRS 338.1711 and 338.1713 shall select the design-
39 build team in accordance with *the provisions of* NRS 338.1721 to
40 338.1727, inclusive.

41 **Sec. 35.** NRS 338.1717 is hereby amended to read as follows:

42 338.1717 A public body may employ a registered architect ,
43 *landscape architect* or licensed professional engineer as a
44 consultant to assist the public body in overseeing the construction of



1 a public work. An architect , *landscape architect* or engineer so
2 employed shall not:

- 3 1. Construct the public work; or
- 4 2. Assume overall responsibility for ensuring that the
5 construction of the public work is completed in a satisfactory
6 manner.

7 **Sec. 36.** NRS 338.1723 is hereby amended to read as follows:

8 338.1723 1. A public body shall advertise for preliminary
9 proposals for the design and construction of a public work by a
10 design-build team in a newspaper ~~{of}~~ *qualified pursuant to chapter*
11 *238 of NRS that is published in the county where the public work*
12 *will be performed. If no qualified newspaper is published within*
13 *the county where the public will be performed, the required*
14 *advertisement must be published in some qualified newspaper that*
15 *is printed in the State of Nevada and has a* general circulation in
16 ~~{this state.}~~ *the county.*

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

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

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

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

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

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

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

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

43 (b) A list of the requirements set forth in NRS 338.1721;



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

4 (1) The relative weight to be assigned to each factor pursuant
5 to NRS 338.1727; and

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

9 (d) Notice that a design-build team desiring to submit a proposal
10 for the public work must include with its proposal the information
11 used by the public body to determine finalists among the design-
12 build teams submitting proposals pursuant to subsection 2 of NRS
13 338.1725 and a description of that information;

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

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

23 **Sec. 37.** NRS 338.1727 is hereby amended to read as follows:

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

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

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

33 2. Except as otherwise provided in this subsection, in assigning
34 the relative weight to each factor for selecting a design-build team
35 pursuant to subsection 1, the public body shall assign, without
36 limitation, a relative weight of 5 percent to the possession of a
37 certificate of eligibility to receive a preference in bidding on public
38 works and a relative weight of at least 30 percent to the proposed
39 cost of design and construction of the public work. If any federal
40 statute or regulation precludes the granting of federal assistance or
41 reduces the amount of that assistance for a particular public work
42 because of the provisions of this subsection relating to preference in
43 bidding on public works, those provisions of this subsection do not
44 apply insofar as their application would preclude or reduce federal
45 assistance for that public work.



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1 3. A final proposal submitted by a design-build team pursuant
2 to this section must be prepared thoroughly, be responsive to the
3 criteria that the public body will use to select a design-build team to
4 design and construct the public work described in subsection 1 and
5 comply with the provisions of NRS 338.141.

6 4. After receiving the final proposals for the public work, the
7 public body, *at a regularly scheduled meeting*, shall:

8 (a) Select the most cost-effective and responsive final proposal,
9 using the criteria set forth pursuant to subsections 1 and 2; or

10 (b) Reject all the final proposals.

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

14 (a) Review and ratify the selection.

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

17 (c) Partially reimburse the unsuccessful finalists if partial
18 reimbursement was provided for in the request for preliminary
19 proposals pursuant to paragraph (f) of subsection 3 of NRS
20 338.1723. The amount of reimbursement must not exceed, for each
21 unsuccessful finalist, 3 percent of the total amount to be paid to the
22 design-build team as set forth in the design-build contract.

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

29 6. A contract awarded pursuant to this section:

30 (a) Must specify:

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

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

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

41 (b) May set forth the terms by which the design-build team
42 agrees to name the public body, at the cost of the public body, as an
43 additional insured in an insurance policy held by the design-build
44 team.



1 (c) Except as otherwise provided in paragraph (d), must not
2 require the design professional to defend, indemnify or hold
3 harmless the public body or the employees, officers or agents of that
4 public body from any liability, damage, loss, claim, action or
5 proceeding caused by the negligence, errors, omissions, recklessness
6 or intentional misconduct of the employees, officers and agents of
7 the public body.

8 (d) May require the design-build team to defend, indemnify and
9 hold harmless the public body, and the employees, officers and
10 agents of the public body from any liabilities, damages, losses,
11 claims, actions or proceedings, including, without limitation,
12 reasonable attorneys' fees, that are caused by the negligence, errors,
13 omissions, recklessness or intentional misconduct of the design-
14 build team or the employees or agents of the design-build team in
15 the performance of the contract.

16 7. ~~Any provision of a contract that is in violation of paragraph~~
17 ~~(c) of subsection 6 is declared to be contrary to the public policy of~~
18 ~~this state and is void.~~

19 ~~—8.]~~ A design-build team to whom a contract is awarded
20 pursuant to this section shall:

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

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

26 **Sec. 38.** NRS 338.175 is hereby amended to read as follows:

27 338.175 A public body shall notify the State Board of
28 Architecture, Interior Design and Residential Design *or the State*
29 *Board of Landscape Architecture, as applicable*, in writing if a
30 registered architect, interior designer, ~~or~~ residential designer ~~or~~ *or*
31 *landscape architect*:

32 1. Submits plans for a project which are substantially
33 incomplete; or

34 2. Submits plans for the same project which are rejected by the
35 public body at least three times.

36 **Sec. 39.** NRS 338.177 is hereby amended to read as follows:

37 338.177 1. Real property acquired by *the governing body of*
38 a local government for a public work may be leased, pending the
39 completion of the public work but for not more than 5 years, upon
40 such terms and conditions as the governing body ~~of the local~~
41 ~~government~~ prescribes.

42 2. The governing body ~~of the local government~~ shall:

43 (a) Adopt the procedures for entering into such a lease at a
44 public hearing held thereon; and



1 (b) Offer to lease the property to the person from whom it was
2 acquired before offering to lease the property to any other person.

3 3. Except as otherwise provided in this subsection, revenue
4 from the lease must be used to maintain the property in order to
5 mitigate any adverse effect upon the adjacent area. Any revenue
6 from the lease that is not needed to maintain the property must be
7 used to offset the cost of the public work for which the property was
8 acquired.

9 **Sec. 40.** NRS 338.180 is hereby amended to read as follows:

10 338.180 1. The Legislature of the State of Nevada declares
11 that:

12 (a) The primary purpose of this section is to provide, subject to
13 the limitations set forth in this section, for the removal and
14 elimination of architectural barriers to the physically handicapped in
15 public buildings and facilities designed after July 1, 1973, in order
16 to encourage and facilitate the employment of the physically
17 handicapped and to make public buildings accessible to and usable
18 by the physically handicapped; and

19 (b) It is the intent of the Legislature that insofar as possible all
20 buildings and facilities used by the public be accessible to, and
21 functional for, the physically handicapped, without loss of function,
22 space or facility where the general public is concerned.

23 2. All plans and specifications for the construction of public
24 buildings and facilities owned by ~~the State of Nevada or by a~~
25 ~~political subdivision thereof~~ *a public body* must, after July 1, 1973,
26 provide facilities and features for the physically handicapped so that
27 buildings which are normally used by the public are constructed
28 with entrance ramps, toilet facilities, drinking fountains, doors and
29 public telephones accessible to and usable by the physically
30 handicapped. In addition, all plans and specifications for the
31 construction or alteration of public buildings and facilities owned by
32 ~~the State of Nevada or a political subdivision thereof~~ *a public body*
33 must comply with the applicable requirements of the:

34 (a) Americans with Disabilities Act of 1990, 42 U.S.C. §§
35 12101 et seq., and the regulations adopted pursuant thereto,
36 including, without limitation, the Americans with Disabilities Act
37 Accessibility Guidelines for Buildings and Facilities set forth in
38 Appendix A of Part 36 of Title 28 of the Code of Federal
39 Regulations;

40 (b) Minimum Guidelines and Requirements for Accessible
41 Design, 36 C.F.R. §§ 1190.1 et seq.; and

42 (c) Fair Housing Act, 42 U.S.C. § 3604, and the regulations
43 adopted pursuant thereto.

44 The requirements of paragraph (a) of this subsection are not
45 satisfied if the plans and specifications comply solely with the



1 Uniform Federal Accessibility Standards set forth in Appendix A of
2 Part 101-19.6 of Title 41 of the Code of Federal Regulations.

3 3. ~~3. [The State of Nevada and each political subdivision thereof]~~
4 *All public bodies* shall, in the design, construction and alteration of
5 public buildings and facilities comply with the applicable
6 requirements of the:

7 (a) Americans with Disabilities Act of 1990, 42 U.S.C. §§
8 12101 et seq., and the regulations adopted pursuant thereto,
9 including, without limitation, the Americans with Disabilities Act
10 Accessibility Guidelines for Buildings and Facilities set forth in
11 Appendix A of Part 36 of Title 28 of the Code of Federal
12 Regulations;

13 (b) Minimum Guidelines and Requirements for Accessible
14 Design, 36 C.F.R. §§ 1190.1 et seq.; and

15 (c) Fair Housing Act, 42 U.S.C. § 3604, and the regulations
16 adopted pursuant thereto.

17 The requirements of paragraph (a) of this subsection are not
18 satisfied if the ~~[State of Nevada or a political subdivision thereof]~~
19 *public body* complies solely with the Uniform Federal Accessibility
20 Standards set forth in Appendix A of Part 101-19.6 of Title 41 of the
21 Code of Federal Regulations.

22 4. In each public building and facility owned by ~~[this state or a~~
23 ~~political subdivision of this state.]~~ *a public body*, each entrance to a
24 corridor which leads to a toilet facility must be marked with a sign
25 which:

26 (a) Conforms to the requirements related to signage contained in
27 §§ 4.30 et seq. of the Americans with Disabilities Act Accessibility
28 Guidelines for Buildings and Facilities set forth in Appendix A of
29 Part 36 of Title 28 of the Code of Federal Regulations; and

30 (b) Uses symbols, raised letters and Braille to:

31 (1) Identify the toilet facility and the gender of persons who
32 may use the toilet facility; and

33 (2) If the toilet facility is for the exclusive use of persons of
34 one gender:

35 (I) Indicate that the toilet facility is for the exclusive use
36 of persons of that gender; and

37 (II) Provide direction to a toilet facility that may be used
38 by persons of the other gender.

39 5. The State Public Works Board shall verify that all public
40 buildings and facilities owned by the State of Nevada conform with
41 the requirements of this section. Each political subdivision shall
42 verify that all public buildings and facilities owned by the political
43 subdivision conform with the requirements of this section.

44 6. A person may report a violation of this section to the
45 Attorney General.



1 7. Upon receiving a report pursuant to subsection 6, the
2 Attorney General shall notify the public body responsible for the
3 alleged violation. Not later than 30 days after receiving such a
4 notification, the public body shall:

5 (a) Present evidence to the Attorney General that it is in
6 compliance with this section; or

7 (b) Begin any action necessary to comply with the requirements
8 of this section and notify the Attorney General of the date on which
9 it will be in compliance with those requirements.

10 8. If the public body responsible for the alleged violation fails
11 to comply with this section, the Attorney General shall take such
12 action as is necessary to ensure compliance with this section,
13 including, without limitation, commencing proceedings in a court of
14 competent jurisdiction, if appropriate.

15 **Sec. 41.** NRS 338.1907 is hereby amended to read as follows:

16 338.1907 1. The governing body of a local government may
17 designate one or more energy retrofit coordinators for the buildings
18 occupied by the local government.

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

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

31 (a) The name and location of the coordinator;

32 (b) A brief description of the requirements for the initial audit of
33 the use of energy and the retrofitting;

34 (c) Where and how specifications of the requirements for the
35 initial audit of the use of energy and the retrofitting may be
36 obtained;

37 (d) The date and time not later than which proposals must be
38 received by the coordinator; and

39 (e) The date and time when responses will be opened.

40 4. The request for proposals must be published in ~~at least one~~
41 ~~newspaper or~~ *a newspaper qualified pursuant to chapter 238 of*
42 *NRS that is published in the county where the work will be*
43 *performed. If no qualified newspaper is published in the county*
44 *where the public work will be performed, the required*
45 *advertisement must be published in some qualified newspaper that*



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1 *is printed in the State of Nevada and has a* general circulation in
2 the county ~~[in which the local government is located.]~~ *where the*
3 *work will be performed.*

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

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

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

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

11 (d) The prices of the proposals; and

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

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

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

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

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

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

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



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1 10. NRS 338.1385 and 338.143 do not apply to a project for
2 which a request for proposals is advertised and the contract is
3 awarded pursuant to the provisions of this section.

4 **Sec. 42.** NRS 338.515 is hereby amended to read as follows:

5 338.515 1. Except as otherwise provided in NRS 338.525, a
6 public body and its officers or agents awarding a contract for a
7 public work shall pay or cause to be paid to a contractor the progress
8 payments due under the contract within 30 days after the date the
9 public body receives the progress bill or within a shorter period if
10 the provisions of the contract so provide. Not more than 90 percent
11 of the amount of any progress payment may be paid until 50 percent
12 of the work required by the contract has been performed. Thereafter
13 the public body may pay any of the remaining progress payments
14 without withholding additional retainage if, in the opinion of the
15 public body, satisfactory progress is being made in the work.

16 2. Except as otherwise provided in NRS 338.525, a public
17 body shall identify in the contract and pay or cause to be paid to a
18 contractor the actual cost of the supplies, materials and equipment
19 that:

- 20 (a) Are identified in the contract;
21 (b) Have been delivered and stored at a location, and in the time
22 and manner, specified in a contract by the contractor or a
23 subcontractor or supplier for use in ~~the construction, repair or~~
24 ~~reconstruction of the~~ a public work; and
25 (c) Are in short supply or were specially made for the public
26 work,
27 within 30 days after the public body receives a progress bill from
28 the contractor for those supplies, materials or equipment.

29 3. A public body shall pay or cause to be paid to the contractor
30 at the end of each quarter interest for the quarter on any amount
31 withheld by the public body pursuant to NRS 338.400 to 338.645,
32 inclusive, at a rate equal to the rate quoted by at least three financial
33 institutions as the highest rate paid on a certificate of deposit whose
34 duration is approximately 90 days on the first day of the quarter. If
35 the amount due to a contractor pursuant to this subsection for any
36 quarter is less than \$500, the public body may hold the interest until:

- 37 (a) The end of a subsequent quarter after which the amount of
38 interest due is \$500 or more;
39 (b) The end of the fourth consecutive quarter for which no
40 interest has been paid to the contractor; or
41 (c) The amount withheld under the contract is due pursuant to
42 NRS 338.520,
43 whichever occurs first.

44 4. If the Labor Commissioner has reason to believe that an
45 employee has a valid and enforceable claim for wages against a



1 contractor ~~or~~ *or subcontractor*, he may require the public body to
2 withhold from any payment due the contractor under this section
3 and pay the Labor Commissioner instead, an amount equal to the
4 amount claimed by the employee. This amount must be paid to the
5 employee *by the Labor Commissioner* if the claim is resolved in his
6 favor, otherwise it must be returned to the public body for payment
7 to the contractor.

8 **Sec. 43.** NRS 338.560 is hereby amended to read as follows:

9 338.560 1. A contractor may withhold from a progress
10 payment or retainage payment an amount sufficient to pay ~~the~~ :

11 (a) *The* expenses the contractor reasonably expects to incur as a
12 result of the failure of his subcontractor or supplier to comply with
13 the subcontract or applicable building code, law or regulation.

14 (b) *An amount withheld from payment to the contractor by a*
15 *public body pursuant to subsection 4 of NRS 338.515 for a claim*
16 *for wages against the subcontractor.*

17 2. A contractor shall, within 10 days after he receives:

18 (a) A progress payment or retainage payment from the public
19 body for an amount that is less than the amount set forth in the
20 applicable progress bill or retainage bill; or

21 (b) A progress bill or retainage bill from his subcontractor or
22 supplier,
23 give a written notice to his subcontractor or supplier of any amount
24 that will be withheld pursuant to this section.

25 3. The written notice must:

26 (a) Set forth:

27 (1) The amount of the progress payment or retainage
28 payment that will be withheld from his subcontractor or supplier;
29 and

30 (2) A detailed explanation of the reason the contractor will
31 withhold that amount, including, without limitation, a specific
32 reference to the provision or section of the subcontract, or
33 documents related thereto, or applicable building code, law or
34 regulation with which his subcontractor or supplier has failed to
35 comply; and

36 (b) Be signed by an authorized agent of the contractor.

37 4. The contractor shall pay to his subcontractor or supplier the
38 amount withheld by the public body or the contractor within 10 days
39 after:

40 (a) The contractor receives a written notice of the correction of
41 the condition that is the reason for the withholding, signed by an
42 authorized agent of the subcontractor or supplier; or

43 (b) The public body pays to the contractor the amount
44 withheld,
45 whichever occurs later.



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1 **Sec. 44.** NRS 338.595 is hereby amended to read as follows:

2 338.595 1. If a subcontractor and another subcontractor or
3 supplier enter into a subcontract for a public work, the subcontractor
4 may withhold as retainage not more than 10 percent from the
5 amount of any progress payment due under a subcontract which is
6 made before 50 percent of the work has been completed under the
7 subcontract. The subcontractor shall pay any additional progress
8 payments due under the subcontract without withholding any
9 additional retainage if, in the opinion of the subcontractor,
10 satisfactory progress is being made in the work under the
11 subcontract. The payment must be equal to that paid by the
12 contractor to him for the work performed or supplies provided by
13 his subcontractor or supplier.

14 2. If the subcontractor receives a payment of interest earned on
15 the retainage or an amount withheld from a progress payment, he
16 shall, within 10 days after receiving the money, pay to each of his
17 subcontractors or suppliers that portion of the interest received from
18 the contractor which is attributable to the retainage or amount
19 withheld from a progress payment by ~~him to~~ *the subcontractor to*
20 his subcontractor or supplier.

21 **Sec. 45.** NRS 338.600 is hereby amended to read as follows:

22 338.600 1. A subcontractor may withhold from a progress
23 payment or retainage payment an amount sufficient to pay the
24 expenses the subcontractor reasonably expects to incur as a result of
25 the failure of his subcontractor or supplier to comply with the
26 subcontract or applicable building code, law or regulation.

27 2. A subcontractor shall, within 10 days after he receives:

28 (a) A progress payment or retainage payment from a contractor
29 for an amount that is less than the amount set forth in the applicable
30 progress bill or retainage bill; or

31 (b) A progress bill or retainage bill from his subcontractor or
32 supplier,
33 give a written notice to his subcontractor or supplier of any amount
34 that will be withheld pursuant to this section.

35 3. The written notice must:

36 (a) Set forth:

37 (1) The amount of the progress payment or retainage
38 payment that will be withheld from his subcontractor or supplier;
39 and

40 (2) A detailed explanation of the reason the subcontractor
41 will withhold that amount, including, without limitation, a specific
42 reference to the provision or section of the subcontract, or
43 documents related thereto, or applicable building code, law or
44 regulation with which the subcontractor or supplier has failed to
45 comply; and



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- 1 (b) Be signed by an authorized agent of the subcontractor.
2 4. The subcontractor shall pay to his subcontractor or supplier
3 the amount withheld by the public body, contractor or subcontractor
4 within 10 days after:
5 (a) The subcontractor receives a written notice of the correction
6 of the condition that is the reason for the withholding, signed by an
7 authorized agent of his subcontractor or supplier; or
8 (b) The contractor pays to ~~him~~ *the subcontractor* the amount
9 withheld,
10 whichever occurs later.
11 **Sec. 46.** NRS 338.1383 is hereby repealed.
12 **Sec. 47.** 1. This section and sections 1 to 18, inclusive, 20 to
13 25, inclusive, and 27 to 46, inclusive, of this act become effective on
14 July 1, 2003.
15 2. Sections 18 and 25 of this act expire by limitation on
16 April 30, 2013.
17 3. Sections 19 and 26 of this act become effective on May 1,
18 2013.

TEXT OF REPEALED SECTION

338.1383 Requirements for acceptance of bids by local government which has not adopted criteria for qualification of bidders. If a local government does not adopt criteria for the qualification of bidders on a public work pursuant to NRS 338.1377, the governing body may only accept a bid on a contract for a public work from a person who holds:

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

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

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

2. A contractor's license issued by the State Contractors' Board that is designated in any classification if he:

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



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

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

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