
ASSEMBLY BILL NO. 251—ASSEMBLYMAN ARBERRY JR.

MARCH 21, 2005

JOINT SPONSOR: SENATOR HORSFORD

Referred to Committee on Government Affairs

SUMMARY—Authorizes preference for disadvantaged businesses under certain circumstances for certain contracts relating to public works and state and local government purchasing. (BDR 27-724)

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 disadvantaged businesses; authorizing a preference for disadvantaged businesses under certain circumstances for certain contracts for public works and state and local government purchasing; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Under existing law, the State Purchasing Act and the Local Government
- 2 Purchasing Act provide procedures and requirements for the purchase of supplies,
- 3 materials, equipment and services by the State and local governments. (Chapters
- 4 332 and 333 of NRS) Existing law provides procedures and requirements for
- 5 bidding on contracts for public works. (Chapter 338 of NRS)
- 6 This bill authorizes a person to apply for designation as a disadvantaged
- 7 business for purposes of submitting bids on state or local purchasing contracts or
- 8 public works contracts. To make such a designation, the state or local entity must
- 9 first determine that the applicant's access to opportunities for contracting with the
- 10 entity has been impaired by the effects of previous discrimination.
- 11 This bill authorizes a state or local entity to give preference to a vendor or
- 12 contractor who indicates in his bid for a purchasing or public works contract that he
- 13 will enter into subcontracts with disadvantaged businesses for the performance of a
- 14 specified percentage of the contract. The bid submitted by the vendor or contractor
- 15 must not be more than 5 percent higher than a competitor's bid. The vendor or
- 16 contractor may apply for a waiver of these requirements, and the state or local



entity may grant the waiver if it determines that there is a lack of qualified disadvantaged businesses willing to enter into subcontracts at a competitive price.

This bill requires that if a state or local entity conducts a study which indicates certain findings concerning disadvantaged businesses, the state or local entity must develop and operate a program to inform disadvantaged businesses of the preference in awarding purchasing and public works contracts and to solicit applications for designation as a disadvantaged business. If a program is developed, the state or local entity must report annually to the Governor and the Legislature concerning the operation and effect of the program. The report must include any recommendation for legislation.

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

Section 1. Chapter 332 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. 1. *A person may apply to a governing body for designation as a disadvantaged business. The governing body shall not grant an application for designation as a disadvantaged business absent a determination that the access of the applicant to opportunities for contracting with local governments has been impaired by the effects of previous discrimination.*

2. *A designation as a disadvantaged business is effective for 2 years. Upon expiration of the 2 years, a person may apply for renewal of the designation.*

Sec. 3. 1. *If a governing body conducts a study within its jurisdiction which shows:*

(a) A significant statistical disparity between the number of disadvantaged businesses that are qualified to perform contracts under this chapter and the total value of such contracts that are awarded to such businesses; and

(b) That gender-neutral and race-neutral measures are unavailable as a matter of law or inadequate to eliminate the effects of previous discrimination suffered by such businesses, the governing body or its authorized representative, in determining the lowest responsive and responsible bidder on a contract for the purchase of any materials, supplies or equipment, may give preference to a vendor who indicated in his bid that he will enter into subcontracts with disadvantaged businesses in that jurisdiction for the performance of a specified percentage of the contract, if the bid submitted by the vendor is not more than 5 percent higher than the amount of the bid by a competing vendor. The contract must contain a provision which specifies the percentage of the full contract price which the vendor has promised to subcontract to disadvantaged businesses.



2. For the purposes of subsection 1, the specified percentage of the contract must be determined by the local government and be in an amount calculated to offset the effects of previous discrimination suffered by disadvantaged businesses in that jurisdiction in obtaining contracts pursuant to this chapter.

Sec. 4. 1. A vendor who enters into a contract pursuant to section 3 of this act which requires him to subcontract with disadvantaged businesses for the performance of a specified percentage of the full contract price may apply to a governing body or its authorized representative for a waiver of the requirement or a reduction of the percentage which the vendor must subcontract to disadvantaged businesses.

2. The governing body or its authorized representative may grant the application for a waiver or reduction if the governing body or authorized representative determines that the vendor, despite good faith efforts, cannot obtain the required participation by disadvantaged businesses because there is a lack of qualified disadvantaged businesses available and willing to enter into subcontracts at a competitive price.

Sec. 5. In determining whether a vendor has made good faith efforts in compliance with section 4 of this act, a governing body or its authorized representative shall consider whether the vendor:

1. Has attended any meetings held by the local government regarding the policy of the local government and the law on subcontracting with disadvantaged businesses.

2. Has, when appropriate, subdivided its bids into specific subcontracts that may feasibly be performed by the particular businesses that the local government has identified as disadvantaged businesses.

3. Has contacted specified disadvantaged businesses to inquire of their interest and ability to subcontract with the vendor.

4. Before opening the bidding process, advertised in one or more trade publications or other comparable advertising sources to inform disadvantaged businesses of the opportunity to bid for subcontracts with the vendor.

5. Responded promptly to inquiries by disadvantaged businesses by providing them with plans, specifications and requirements for participating in the bidding process.

6. Dealt in a fair and reasonable manner with the disadvantaged businesses which expressed interest in subcontracting with the vendor.

7. Requested assistance from any trade organization that represents the needs of disadvantaged businesses in the process of trying to obtain participation by disadvantaged businesses.



1 **Sec. 6.** *If a governing body has conducted a study which*
2 *produces the results described in section 3 of this act, the*
3 *governing body:*

4 1. *Shall develop and operate a program to inform*
5 *disadvantaged businesses in its jurisdiction of the provisions of*
6 *sections 2 to 6, inclusive, of this act and to solicit applications for*
7 *designation as a disadvantaged business pursuant to section 2 of*
8 *this act.*

9 2. *Shall adopt such ordinances, rules and regulations as are*
10 *necessary to administer the provisions of sections 2 to 6, inclusive,*
11 *of this act. Such ordinances, rules or regulations must establish an*
12 *application process for designation as a disadvantaged business*
13 *and standards that the governing body will apply in determining*
14 *whether an entity will be designated as a disadvantaged business.*

15 3. *Shall report annually to the Governor and the Legislature*
16 *concerning the operation and effect of sections 2 to 6, inclusive, of*
17 *this act. The report must include any recommendations for*
18 *legislation.*

19 **Sec. 7.** NRS 332.025 is hereby amended to read as follows:

20 332.025 As used in this chapter, unless the context otherwise
21 requires:

22 1. "Authorized representative" means a person designated by
23 the governing body to be responsible for the development, award
24 and proper administration of all purchases and contracts for a local
25 government or a department, division, agency, board or unit of a
26 local government made pursuant to this chapter.

27 2. "Chief administrative officer" means the person directly
28 responsible to the governing body for the administration of that
29 particular entity.

30 3. *"Disadvantaged business" means any business in this*
31 *State:*

32 (a) *In which a majority of the ownership interest is controlled*
33 *by one or more disadvantaged persons;*

34 (b) *Whose management and daily business operations are*
35 *controlled by one or more disadvantaged persons; and*

36 (c) *Which has, upon proof of previous discrimination, been*
37 *designated as such by a governing body.*

38 4. "Disadvantaged person" means any person:

39 (a) *Who is a woman or a member of a racial or ethnic*
40 *minority;*

41 (b) *Who has been subjected to racial or ethnic prejudice or*
42 *cultural bias because of his identity as a member of a group,*
43 *without regard to his individual qualities; and*

44 (c) *Whose ability to compete in the system of free enterprise in*
45 *this State has been impaired because of diminished capital and*



1 *opportunities for credit compared to other persons who are not*
2 *subject to such prejudice or bias.*

3 5. "Evaluator" means an authorized representative, officer,
4 employee, representative, agent, consultant or member of a
5 governing body who has participated in:

6 (a) The evaluation of bids;

7 (b) Negotiations concerning purchasing by a local government;
8 or

9 (c) The review or approval of the award, modification or
10 extension of a contract.

11 ~~[4-]~~ 6. "Governing body" means the board, council,
12 commission or other body in which the general legislative and fiscal
13 powers of the local government are vested.

14 ~~[5-]~~ 7. "Proprietary information" means:

15 (a) Any trade secret or confidential business information that is
16 contained in a bid submitted to a governing body or its authorized
17 representative on a particular contract; or

18 (b) Any other trade secret or confidential business information
19 submitted to a governing body or its authorized representative by a
20 bidder and designated as proprietary by the governing body or its
21 authorized representative.

22 ➤ As used in this subsection, "confidential business information"
23 means any information relating to the amount or source of any
24 income, profits, losses or expenditures of a person, including data
25 relating to cost, price, or the customers of a bidder which is
26 submitted in support of a bid. The term does not include the amount
27 of a bid submitted to a governing body or its authorized
28 representative.

29 ~~[6-]~~ 8. "Trade secret" has the meaning ascribed to it in
30 NRS 600A.030.

31 **Sec. 8.** NRS 332.065 is hereby amended to read as follows:

32 332.065 1. ~~[H]~~ *Except as otherwise provided in subsection 2*
33 *and section 3 of this act, if* a governing body or its authorized
34 representative has advertised for or requested bids in letting a
35 contract, the governing body or its authorized representative must ~~[~~
36 ~~except as otherwise provided in subsection 2,]~~ award the contract to
37 the lowest responsive and responsible bidder. ~~[The]~~ *Except as*
38 *otherwise provided in section 3 of this act, the* lowest responsive
39 and responsible bidder may be judged on the basis of:

40 (a) Price;

41 (b) Conformance to specifications;

42 (c) Qualifications;

43 (d) Past performance;

44 (e) Performance or delivery date;



(f) Quality and utility of services, supplies, materials or equipment offered and the adaptability of those services, supplies, materials or equipment to the required purpose of the contract; and

(g) The best interests of the public.

2. The governing body or its authorized representative:

(a) Shall give preference to recycled products if:

(1) The product meets the applicable standards;

(2) The product can be substituted for a comparable nonrecycled product; and

(3) The product costs no more than a comparable nonrecycled product.

(b) May give preference to recycled products if:

(1) The product meets the applicable standards;

(2) The product can be substituted for a comparable nonrecycled product; and

(3) The product costs no more than 5 percent more than a comparable nonrecycled product.

(c) May purchase recycled paper products if the specific recycled paper product is:

(1) Available at a price which is not more than 10 percent higher than that of paper products made from virgin material;

(2) Of adequate quality; and

(3) Available to the purchaser within a reasonable period.

3. If after the lowest responsive and responsible bidder has been awarded the contract, during the term of the contract he does not supply goods or services in accordance with the bid specifications, or if he repudiates the contract, the governing body or its authorized representative may reaward the contract to the next lowest responsive and responsible bidder without requiring that new bids be submitted. Reawarding the contract to the next lowest responsive and responsible bidder is not a waiver of any liability of the initial bidder awarded the contract.

4. As used in this section:

(a) "Postconsumer waste" means a finished material which would normally be disposed of as a solid waste having completed its life cycle as a consumer item.

(b) "Recycled paper product" means all paper and wood-pulp products containing in some combination at least 50 percent of its total weight:

(1) Postconsumer waste; and

(2) Secondary waste,

➡ but does not include fibrous waste generated during the manufacturing process such as fibers recovered from wastewater or trimmings of paper machine rolls, wood slabs, chips, sawdust or other wood residue from a manufacturing process.



(c) "Secondary waste" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value.

Sec. 9. NRS 332.085 is hereby amended to read as follows:

332.085 In determining the responsibility of any bidder, the governing body or its authorized representative:

1. Shall consider the possession of and limit on any required license of the bidder; and

2. ~~[May]~~ *Except as otherwise provided in section 3 of this act,* may consider the:

(a) Financial responsibility of the bidder;

(b) Experience of the bidder;

(c) Adequacy of the equipment of the bidder;

(d) Past performance of the bidder;

(e) Performance or delivery date; and

(f) Ability of the bidder to perform the contract.

Sec. 10. Chapter 333 of NRS is hereby amended by adding thereto the provisions set forth as sections 11 to 17, inclusive, of this act.

Sec. 11. 1. *A person may apply to the Purchasing Division or the Chief for designation as a disadvantaged business. The Purchasing Division or the Chief shall not grant an application for designation as a disadvantaged business absent a determination that the access of the applicant to opportunities for contracting with the State has been impaired by the effects of previous discrimination.*

2. A designation as a disadvantaged business is effective for 2 years. Upon expiration of the 2 years, a person may apply for renewal of the designation.

Sec. 12. 1. *If the Purchasing Division conducts a study of the State which shows:*

(a) A significant statistical disparity between the number of disadvantaged businesses in this State that are qualified to perform contracts under this chapter and the total value of such contracts that are awarded to such businesses; and

(b) That gender-neutral and race-neutral measures are unavailable as a matter of law or inadequate to eliminate the effects of previous discrimination suffered by such businesses,

↳ the Purchasing Division or the Chief, in determining the lowest responsible bidder on a contract for the purchase of any materials, supplies or equipment, may give preference to a vendor who indicated in his bid that he will enter into subcontracts with disadvantaged businesses in this State for the performance of a specified percentage of the contract, if the bid submitted by the vendor is not more than 5 percent higher than the amount of the



1 *bid by a competing vendor. The contract must contain a provision*
2 *which specifies the percentage of the full contract price which the*
3 *vendor has promised to subcontract to disadvantaged businesses.*

4 *2. For the purposes of subsection 1, the specified percentage*
5 *of the contract must be determined by the Chief and be in an*
6 *amount calculated to offset the effects of previous discrimination*
7 *suffered by disadvantaged businesses in this State in obtaining*
8 *contracts pursuant to this chapter.*

9 **Sec. 13.** *1. A vendor who enters into a contract pursuant to*
10 *section 12 of this act which requires him to subcontract with*
11 *disadvantaged businesses for the performance of a specified*
12 *percentage of the full contract price may apply to the Purchasing*
13 *Division or the Chief for a waiver of the requirement or a*
14 *reduction of the percentage which the vendor must subcontract to*
15 *disadvantaged businesses.*

16 *2. The Purchasing Division or the Chief may grant the*
17 *application for a waiver or reduction if the Purchasing Division or*
18 *the Chief determines that the vendor, despite good faith efforts,*
19 *cannot obtain the required participation by disadvantaged*
20 *businesses because there is a lack of qualified disadvantaged*
21 *businesses available and willing to enter into subcontracts at a*
22 *competitive price.*

23 **Sec. 14.** *In determining whether a vendor has made good*
24 *faith efforts in compliance with section 13 of this act, the*
25 *Purchasing Division or the Chief shall consider whether the*
26 *vendor:*

27 *1. Has attended any meetings held by the Purchasing*
28 *Division regarding the policy of the Purchasing Division and the*
29 *law on subcontracting with disadvantaged businesses.*

30 *2. Has, when appropriate, subdivided its bids into specific*
31 *subcontracts that may feasibly be performed by the particular*
32 *businesses that the Purchasing Division has identified as*
33 *disadvantaged businesses.*

34 *3. Has contacted specified disadvantaged businesses to*
35 *inquire of their interest and ability to subcontract with the vendor.*

36 *4. Before opening the bidding process, advertised in one or*
37 *more trade publications or other comparable advertising sources*
38 *to inform disadvantaged businesses of the opportunity to bid for*
39 *subcontracts with the vendor.*

40 *5. Responded promptly to inquiries by disadvantaged*
41 *businesses by providing them with plans, specifications and*
42 *requirements for participating in the bidding process.*

43 *6. Dealt in a fair and reasonable manner with the*
44 *disadvantaged businesses which expressed interest in*
45 *subcontracting with the vendor.*



1 7. *Requested assistance from any trade organization that*
2 *represents the needs of disadvantaged businesses in the process of*
3 *trying to obtain participation by disadvantaged businesses.*

4 **Sec. 15.** *If the Purchasing Division has conducted a study*
5 *which produces the results described in section 12 of this act, the*
6 *Purchasing Division or the Chief:*

7 1. *Shall develop and operate a program to inform*
8 *disadvantaged businesses in this State of the provisions of sections*
9 *11 to 15, inclusive, of this act and to solicit applications for*
10 *designation as a disadvantaged business pursuant to section 11 of*
11 *this act.*

12 2. *Shall adopt such rules and regulations as are necessary to*
13 *administer the provisions of sections 11 to 15, inclusive, of this act.*
14 *Such rules or regulations must establish an application process*
15 *for designation as a disadvantaged business and standards that the*
16 *Purchasing Division or the Chief will apply in determining*
17 *whether an entity will be designated as a disadvantaged business.*

18 3. *Shall report annually to the Governor and the Legislature*
19 *concerning the operation and effect of sections 11 to 15, inclusive,*
20 *of this act. The report must include any recommendations for*
21 *legislation.*

22 **Sec. 16.** NRS 333.020 is hereby amended to read as follows:

23 333.020 As used in this chapter, unless the context otherwise
24 requires:

25 1. "Best value" means the greatest possible economy consistent
26 with grades or qualities of supplies, materials, equipment and
27 services that are adapted to the purposes to be served.

28 2. "Chief" means the Chief of the Purchasing Division.

29 3. "Director" means the Director of the Department of
30 Administration.

31 4. *"Disadvantaged business" means any business in this*
32 *State:*

33 (a) *In which a majority of the ownership interest is controlled*
34 *by one or more disadvantaged persons;*

35 (b) *Whose management and daily business operations are*
36 *controlled by one or more disadvantaged persons; and*

37 (c) *Which has, upon proof of previous discrimination, been*
38 *designated as such by the Purchasing Division or the Chief.*

39 5. *"Disadvantaged person" means any person:*

40 (a) *Who is a woman or a member of a racial or ethnic*
41 *minority;*

42 (b) *Who has been subjected to racial or ethnic prejudice or*
43 *cultural bias because of his identity as a member of a group,*
44 *without regard to his individual qualities; and*



1 (c) *Whose ability to compete in the system of free enterprise in*
2 *this State has been impaired because of diminished capital and*
3 *opportunities for credit compared to other persons who are not*
4 *subject to such prejudice or bias.*

5 6. "Invitation to bid" means a written statement which sets
6 forth the requirements and specifications of a contract to be awarded
7 by competitive selection.

8 ~~5-1~~ 7. "Proprietary information" means:

9 (a) Any trade secret or confidential business information that is
10 contained in a bid or proposal submitted on a particular contract; or

11 (b) Any other trade secret or confidential business information
12 submitted in a bid or proposal and designated as proprietary by the
13 Chief.

14 ➡ As used in this subsection, "confidential business information"
15 means any information relating to the amount or source of any
16 income, profits, losses or expenditures of a person, including data
17 relating to cost or price submitted in support of a bid or proposal.
18 The term does not include the amount of a bid or proposal.

19 ~~6-1~~ 8. "Purchasing Division" means the Purchasing Division
20 of the Department of Administration.

21 ~~7-1~~ 9. "Purchasing officer" means a person who is authorized
22 by the Chief or a using agency to participate in:

23 (a) The evaluation of bids or proposals for a contract;

24 (b) Any negotiations concerning a contract; or

25 (c) The development, review or approval of a contract.

26 ~~8-1~~ 10. "Request for proposals" means a written statement
27 which sets forth the requirements and specifications of a contract to
28 be awarded by competitive selection.

29 ~~9-1~~ 11. "Trade secret" has the meaning ascribed to it in
30 NRS 600A.030.

31 ~~10-1~~ 12. "Using agencies" means all officers, departments,
32 institutions, boards, commissions and other agencies in the
33 Executive Department of the State Government which derive their
34 support from public money in whole or in part, whether the money
35 is provided by the State of Nevada, received from the Federal
36 Government or any branch, bureau or agency thereof, or derived
37 from private or other sources. The term does not include the Nevada
38 Rural Housing Authority, the Housing Division of the Department
39 of Business and Industry, local governments as defined in NRS
40 354.474, conservation districts, irrigation districts and, except as
41 otherwise provided in NRS 333.435, the University and Community
42 College System of Nevada.

43 ~~11-1~~ 13. "Volunteer fire department" means a volunteer fire
44 department which pays premiums for industrial insurance pursuant



1 to the provisions of chapters 616A to 616D, inclusive, or chapter
2 617 of NRS.

3 **Sec. 17.** NRS 333.020 is hereby amended to read as follows:

4 333.020 As used in this chapter, unless the context otherwise
5 requires:

6 1. "Best value" means the greatest possible economy consistent
7 with grades or qualities of supplies, materials, equipment and
8 services that are adapted to the purposes to be served.

9 2. "Chief" means the Chief of the Purchasing Division.

10 3. "Director" means the Director of the Department of
11 Administration.

12 4. *"Disadvantaged business" means any business in this*
13 *State:*

14 (a) *In which a majority of the ownership interest is controlled*
15 *by one or more disadvantaged persons;*

16 (b) *Whose management and daily business operations are*
17 *controlled by one or more disadvantaged persons; and*

18 (c) *Which has, upon proof of previous discrimination, been*
19 *designated as such by the Purchasing Division or the Chief.*

20 5. *"Disadvantaged person" means any person:*

21 (a) *Who is a woman or a member of a racial or ethnic*
22 *minority;*

23 (b) *Who has been subjected to racial or ethnic prejudice or*
24 *cultural bias because of his identity as a member of a group,*
25 *without regard to his individual qualities; and*

26 (c) *Whose ability to compete in the system of free enterprise in*
27 *this State has been impaired because of diminished capital and*
28 *opportunities for credit compared to other persons who are not*
29 *subject to such prejudice or bias.*

30 6. "Invitation to bid" means a written statement which sets
31 forth the requirements and specifications of a contract to be awarded
32 by competitive selection.

33 ~~5-1~~ 7. "Proprietary information" means:

34 (a) Any trade secret or confidential business information that is
35 contained in a bid or proposal submitted on a particular contract; or

36 (b) Any other trade secret or confidential business information
37 submitted in a bid or proposal and designated as proprietary by the
38 Chief.

39 ➤ As used in this subsection, "confidential business information"
40 means any information relating to the amount or source of any
41 income, profits, losses or expenditures of a person, including data
42 relating to cost or price submitted in support of a bid or proposal.
43 The term does not include the amount of a bid or proposal.

44 ~~6-1~~ 8. "Purchasing Division" means the Purchasing Division
45 of the Department of Administration.



~~[7-]~~ 9. "Purchasing officer" means a person who is authorized by the Chief or a using agency to participate in:

- (a) The evaluation of bids or proposals for a contract;
- (b) Any negotiations concerning a contract; or
- (c) The development, review or approval of a contract.

~~[8-]~~ 10. "Request for proposals" means a written statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection.

~~[9-]~~ 11. "Trade secret" has the meaning ascribed to it in NRS 600A.030.

~~[10-]~~ 12. "Using agencies" means all officers, departments, institutions, boards, commissions and other agencies in the Executive Department of the State Government which derive their support from public money in whole or in part, whether the money is provided by the State of Nevada, received from the Federal Government or any branch, bureau or agency thereof, or derived from private or other sources. The term does not include the Nevada Rural Housing Authority, local governments as defined in NRS 354.474, conservation districts, irrigation districts and, except as otherwise provided in NRS 333.435, the University and Community College System of Nevada.

~~[11-]~~ 13. "Volunteer fire department" means a volunteer fire department which pays premiums for industrial insurance pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS.

Sec. 18. NRS 333.300 is hereby amended to read as follows:

333.300 1. Except as otherwise provided in NRS 333.375, the Chief shall give reasonable notice, by advertising and by written notice provided to persons in a position to furnish the classes of commodities involved, as shown by its records, of all proposed purchases of supplies, materials and equipment to be purchased in accordance with a schedule prepared in conformity with the provisions of NRS 333.250.

2. ~~[A-]~~ *Except as otherwise provided in this section and section 12 of this act, all* such materials, supplies and equipment, ~~[except as otherwise provided in this section,]~~ if the estimated cost thereof exceeds \$25,000, must be purchased by formal contract from the lowest responsible bidder after notice inviting the submission of sealed proposals to the Chief ~~[of the Purchasing Division]~~ at the date, hour and location set forth in the proposal, and at that date, hour and location , the proposals must be publicly opened. The Purchasing Division may reject ~~[any or]~~ all proposals ~~[.]~~ or may accept the proposal determined best for the interest of the State. The notice must be published as prescribed in NRS 333.310.



3. In case of emergencies caused by acts of God or the national defense or other unforeseeable circumstances, the provisions for advertisements on competitive bids may be waived by the Chief, but every effort must be made to secure the maximum competitive bidding under the circumstances. In no case may contracts be awarded until every possible effort has been made to secure at least three bona fide competitive bids.

4. In awarding contracts for the purchase of supplies, materials and equipment, if two or more lowest bids are identical, the Chief shall:

(a) If the lowest bids are by bidders ~~resident~~ *who reside* in the State of Nevada, accept the proposal which, in his discretion, is in the best interests of this State.

(b) If the lowest bids are by bidders ~~resident~~ *who reside* outside the State of Nevada:

(1) Accept the proposal of the bidder who will furnish goods or commodities produced or manufactured in this State; or

(2) Accept the proposal of the bidder who will furnish goods or commodities supplied by a dealer ~~resident~~ *who resides* in the State of Nevada.

Sec. 19. NRS 333.335 is hereby amended to read as follows:

333.335 1. Each proposal must be evaluated by:

(a) The chief of the using agency, or a committee appointed by the chief of the using agency in accordance with the regulations adopted pursuant to NRS 333.135, if the proposal is for a using agency; or

(b) The Chief of the Purchasing Division, or a committee appointed by the Chief in accordance with the regulations adopted pursuant to NRS 333.135, if he is responsible for administering the proposal.

2. A committee appointed pursuant to subsection 1 must consist of not less than two members. A majority of the members of the committee must be state officers or employees. The committee may include persons who are not state officers or employees and possess expert knowledge or special expertise that the chief of the using agency or the Chief of the Purchasing Division determines is necessary to evaluate a proposal. The members of the committee are not entitled to compensation for their service on the committee, except that members of the committee who are state officers or employees are entitled to receive their salaries as state officers and employees. No member of the committee may have a financial interest in a proposal.

3. In making an award, the chief of the using agency, the Chief of the Purchasing Division or each member of the committee, if a committee is established, shall consider and assign a score for each



1 of the following factors for determining whether the proposal is in
2 the best interests of the State of Nevada:

3 (a) The experience and financial stability of the person
4 submitting the proposal;

5 (b) Whether the proposal complies with the requirements of the
6 request for proposals as prescribed in NRS 333.311;

7 (c) The price of the proposal, including the imposition of an
8 inverse preference described in NRS 333.336, if applicable; ~~and~~

9 (d) *Whether the vendor who submitted the proposal has*
10 *promised or otherwise indicated that he will subcontract with*
11 *disadvantaged businesses if he is awarded the contract; and*

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

13 4. The chief of the using agency, the Chief of the Purchasing
14 Division or the committee, if a committee is established, shall
15 determine the relative weight of each factor set forth in subsection 3
16 before a request for proposals is advertised. The weight of each
17 factor must not be disclosed before the date proposals are required
18 to be submitted.

19 5. The chief of the using agency, the Chief of the Purchasing
20 Division or the committee, if a committee is established, shall award
21 the contract based on the best interests of the State, as determined by
22 the total scores assigned pursuant to subsection 3, and is not
23 required to accept the lowest-priced proposal.

24 6. Each proposal evaluated pursuant to the provisions of this
25 section is confidential and may not be disclosed until the contract is
26 awarded.

27 **Sec. 20.** NRS 333.340 is hereby amended to read as follows:

28 333.340 1. Every contract or order for goods must be
29 awarded to the lowest responsible bidder. To determine the lowest
30 responsible bidder, the Chief:

31 (a) Shall consider, if applicable, the imposition of the inverse
32 preference described in NRS 333.336.

33 (b) ~~May~~ *Except as otherwise provided in section 12 of this*
34 *act, may* consider:

35 (1) The location of the using agency to be supplied.

36 (2) The qualities of the articles to be supplied.

37 (3) The total cost of ownership of the articles to be supplied.

38 (4) Except as otherwise provided in subparagraph (5), the
39 conformity of the articles to be supplied with the specifications.

40 (5) If the articles are an alternative to the articles listed in the
41 original request for bids, whether the advertisement for bids
42 included a statement that bids for an alternative article will be
43 considered if:



1 (I) The specifications of the alternative article meet or
2 exceed the specifications of the article listed in the original request
3 for bids;

4 (II) The purchase of the alternative article results in a
5 lower price; and

6 (III) The Chief deems the purchase of the alternative
7 article to be in the best interests of the State of Nevada.

8 (6) The purposes for which the articles to be supplied are
9 required.

10 (7) The dates of delivery of the articles to be supplied.

11 2. If a contract or an order is not awarded to the lowest bidder,
12 the Chief shall provide the lowest bidder with a written statement
13 which sets forth the specific reasons that the contract or order was
14 not awarded to him.

15 3. As used in this section, "total cost of ownership" includes,
16 but is not limited to:

17 (a) The history of maintenance or repair of the articles;

18 (b) The cost of routine maintenance and repair of the articles;

19 (c) Any warranties provided in connection with the articles;

20 (d) The cost of replacement parts for the articles; and

21 (e) The value of the articles as used articles when given in trade
22 on a subsequent purchase.

23 **Sec. 21.** NRS 333.4606 is hereby amended to read as follows:

24 333.4606 1. The Chief shall review and revise the
25 specifications for procuring goods and products for the using
26 agencies to eliminate discrimination against the procurement or
27 purchase of recycled products whenever the quality of a recycled
28 product is reasonably equal to the same product manufactured with
29 virgin resources. Except for specifications which have been
30 established to preserve the public health and safety, all
31 specifications for procurement must be established in a manner
32 which results in the maximum procurement and purchase of
33 recycled products.

34 2. When purchasing goods and products for the using agencies,
35 the Chief shall give preference to recycled products if:

36 (a) The product meets the applicable standards;

37 (b) The product can be substituted for a comparable nonrecycled
38 product; and

39 (c) The product costs no more than a comparable nonrecycled
40 product.

41 3. When purchasing goods and products for the using agencies,
42 the Chief may give preference to recycled products if:

43 (a) The product meets the applicable standards;

44 (b) The product can be substituted for a comparable nonrecycled
45 product; and



(c) The product costs no more than 5 percent more than a comparable nonrecycled product.

4. ~~[(c)]~~ *Except as otherwise provided in section 12 of this act, to* encourage the use of postconsumer waste, a bidder who manufactures a product in Nevada that contains postconsumer waste shall be deemed to be the lowest bidder if:

(a) At least 50 percent of the product, by weight, contains postconsumer waste;

(b) The product complies with the applicable standards; and

(c) The amount of the bid is not more than 10 percent higher than the bid of any other bidder.

5. A bidder whose product contains postconsumer waste shall certify in writing:

(a) That the product contains postconsumer waste; and

(b) The percentage of postconsumer waste, by weight, that is contained in the product.

Sec. 22. NRS 287.0415 is hereby amended to read as follows:

287.0415 1. A majority of the members of the Board constitutes a quorum for the transaction of business.

2. The Governor shall designate one of the members of the Board to serve as the Chairman.

3. The Board shall meet at least once every calendar quarter and at other times upon the call of the Chairman.

4. The Board may meet in closed session:

(a) To discuss matters relating to personnel;

(b) To prepare a request for a proposal or other solicitation for bids to be released by the Board for competitive bidding; or

(c) As otherwise provided pursuant to chapter 241 of NRS.

5. As used in this section, "request for a proposal" has the meaning ascribed to it in subsection ~~[(8)]~~ 10 of NRS 333.020.

Sec. 23. Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 24 to 28, inclusive, of this act.

Sec. 24. 1. *A person may apply to a public body for designation as a disadvantaged business. The public body shall not grant an application for designation as a disadvantaged business absent a determination that the access of the applicant to opportunities for contracting with the public body has been impaired by the effects of previous discrimination.*

2. A designation as a disadvantaged business is effective for 2 years. Upon expiration of the 2 years, a person may apply for renewal of the designation.

Sec. 25. 1. *If a public body conducts a study within its jurisdiction which shows:*



1 (a) A significant statistical disparity between the number of
2 disadvantaged businesses that are qualified to perform contracts
3 under this chapter and the total value of such contracts that are
4 awarded to such businesses; and

5 (b) That gender-neutral and race-neutral measures are
6 unavailable as a matter of law or inadequate to eliminate the
7 effects of previous discrimination suffered by such businesses,
8 ➔ the public body, in determining the lowest responsive and
9 responsible bidder on a contract for a public work, may give
10 preference to a contractor who indicated in his bid that he will
11 enter into subcontracts with disadvantaged businesses in that
12 jurisdiction for the performance of a specified percentage of the
13 contract, if the bid submitted by the contractor is not more than 5
14 percent higher than the amount of the bid by a competing
15 contractor. The contract must contain a provision which specifies
16 the percentage of the full contract price which the contractor has
17 promised to subcontract to disadvantaged businesses.

18 2. For the purposes of subsection 1, the specified percentage
19 of the contract must be determined by the chief administrative
20 officer of the public body and be in an amount calculated to offset
21 the effects of previous discrimination suffered by disadvantaged
22 businesses in that jurisdiction in obtaining contracts for public
23 works.

24 **Sec. 26.** 1. A contractor who enters into a contract
25 pursuant to section 25 of this act which requires him to
26 subcontract with disadvantaged businesses for the performance of
27 a specified percentage of the full contract price may apply to the
28 public body for a waiver of the requirement or a reduction of the
29 percentage which the contractor must subcontract to
30 disadvantaged businesses.

31 2. The public body may grant the application for a waiver or
32 reduction if it determines that the contractor, despite good faith
33 efforts, cannot obtain the required participation by disadvantaged
34 businesses because there is a lack of qualified disadvantaged
35 businesses available and willing to enter into subcontracts at a
36 competitive price.

37 **Sec. 27.** In determining whether a contractor has made good
38 faith efforts in compliance with section 26 of this act, a public
39 body shall consider whether the contractor:

40 1. Has attended any meetings held by the public body
41 regarding the policy of the public body and the law on
42 subcontracting with disadvantaged businesses.

43 2. Has, when appropriate, subdivided its bids into specific
44 subcontracts that may feasibly be performed by the particular



1 *businesses that the public body has identified as disadvantaged*
2 *businesses.*

3 *3. Has contacted specified disadvantaged businesses to*
4 *inquire of their interest and ability to subcontract with the*
5 *contractor.*

6 *4. Before opening the bidding process, advertised in one or*
7 *more trade publications or other comparable advertising sources*
8 *to inform disadvantaged businesses of the opportunity to bid for*
9 *subcontracts with the contractor.*

10 *5. Responded promptly to inquiries by disadvantaged*
11 *businesses by providing them with plans, specifications and*
12 *requirements for participating in the bidding process.*

13 *6. Dealt in a fair and reasonable manner with the*
14 *disadvantaged businesses which expressed interest in*
15 *subcontracting with the contractor.*

16 *7. Requested assistance from any trade organization that*
17 *represents the needs of disadvantaged businesses in the process of*
18 *trying to obtain participation by disadvantaged businesses.*

19 **Sec. 28.** *If the public body has conducted a study which*
20 *produces the results described in section 25 of this act, the public*
21 *body:*

22 *1. Shall develop and operate a program to inform*
23 *disadvantaged businesses in its jurisdiction of the provisions of*
24 *sections 24 to 28, inclusive, of this act and to solicit applications*
25 *for designation as a disadvantaged business pursuant to section 24*
26 *of this act.*

27 *2. Shall adopt such ordinances, rules and regulations as are*
28 *necessary to administer the provisions of sections 24 to 28,*
29 *inclusive, of this act. Such ordinances, rules or regulations must*
30 *establish an application process for designation as a*
31 *disadvantaged business and standards that the public body will*
32 *apply in determining whether an entity will be designated as a*
33 *disadvantaged business.*

34 *3. Shall report annually to the Governor and the Legislature*
35 *concerning the operation and effect of sections 24 to 28, inclusive,*
36 *of this act. The report must include any recommendations for*
37 *legislation.*

38 **Sec. 29.** NRS 338.010 is hereby amended to read as follows:

39 338.010 As used in this chapter:

40 1. "Authorized representative" means a person designated by a
41 governing body to be responsible for the development and award of
42 contracts for public works pursuant to this chapter.

43 2. "Contract" means a written contract entered into between a
44 contractor and a public body for the provision of labor, materials,
45 equipment or supplies for a public work.



1 3. "Contractor" means:

2 (a) A person who is licensed pursuant to the provisions of
3 chapter 624 of NRS or performs such work that he is not required to
4 be licensed pursuant to chapter 624 of NRS.

5 (b) A design-build team.

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

10 5. "Design-build contract" means a contract between a public
11 body and a design-build team in which the design-build team agrees
12 to design and construct a public work.

13 6. "Design-build team" means an entity that consists of:

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

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

18 (1) A building and its site, at least one person who holds a
19 certificate of registration to practice architecture pursuant to chapter
20 623 of NRS.

21 (2) Anything other than a building and its site, at least one
22 person who holds a certificate of registration to practice architecture
23 pursuant to chapter 623 of NRS or landscape architecture pursuant
24 to chapter 623A of NRS or who is licensed as a professional
25 engineer pursuant to chapter 625 of NRS.

26 7. "Design professional" means:

27 (a) A person who is licensed as a professional engineer pursuant
28 to chapter 625 of NRS;

29 (b) A person who is licensed as a professional land surveyor
30 pursuant to chapter 625 of NRS;

31 (c) A person who holds a certificate of registration to engage in
32 the practice of architecture, interior design or residential design
33 pursuant to chapter 623 of NRS;

34 (d) A person who holds a certificate of registration to engage in
35 the practice of landscape architecture pursuant to chapter 623A of
36 NRS; or

37 (e) A business entity that engages in the practice of professional
38 engineering, land surveying, architecture or landscape architecture.

39 8. *"Disadvantaged business" means any business in this*
40 *State:*

41 (a) *In which a majority of the ownership interest is controlled*
42 *by one or more disadvantaged persons;*

43 (b) *Whose management and daily business operations are*
44 *controlled by one or more disadvantaged persons; and*



(c) Which has, upon proof of previous discrimination, been designated as such by a public body.

9. "Disadvantaged person" means any person:

(a) Who is a woman or a member of a racial or ethnic minority;

(b) Who has been subjected to racial or ethnic prejudice or cultural bias because of his identity as a member of a group, without regard to his individual qualities; and

(c) Whose ability to compete in the system of free enterprise in this State has been impaired because of diminished capital and opportunities for credit compared to other persons who are not subject to such prejudice or bias.

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

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

(b) Determined by a public body or its authorized representative which awarded a contract for a public work pursuant to NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or 338.1382.

~~9.1~~ 11. "General contractor" means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business:

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

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

~~10.1~~ 12. "Governing body" means the board, council, commission or other body in which the general legislative and fiscal powers of a local government are vested.

~~11.1~~ 13. "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision. The term includes a person who has been designated by a local government to serve as its authorized representative.

~~12.1~~ 14. "Offense" means failing to:

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



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

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

(d) Comply with subsection 4 or 5 of NRS 338.070.

~~13.1~~ **15.** “Prime contractor” means a contractor who:

(a) Contracts to construct an entire project;

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

(c) Uses his own workforce to perform all or a part of the public work; and

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

➔ The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to NRS 338.139 or 338.148.

~~14.1~~ **16.** “Public body” means the State, county, city, town, school district or any public agency of this State or its political subdivisions sponsoring or financing a public work.

~~15.1~~ **17.** “Public work” means any project for the new construction, repair or reconstruction of:

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

(1) Public buildings;

(2) Jails and prisons;

(3) Public roads;

(4) Public highways;

(5) Public streets and alleys;

(6) Public utilities;

(7) Publicly owned water mains and sewers;

(8) Public parks and playgrounds;

(9) Public convention facilities which are financed at least in part with public money; and

(10) All other publicly owned works and property.

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

~~16.1~~ **18.** “Specialty contractor” means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

~~17.1~~ **19.** “Stand-alone underground utility project” means an underground utility project that is not integrated into a larger project, including, without limitation:



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

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

9 ~~18.1~~ 20. "Subcontract" means a written contract entered into
10 between:

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

12 (b) A subcontractor and another subcontractor or supplier ~~19.1~~ for
13 the provision of labor, materials, equipment or supplies for a
14 construction project.

15 ~~19.1~~ 21. "Subcontractor" means a person who:

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

19 (b) Contracts with a contractor, another subcontractor or a
20 supplier to provide labor, materials or services for a construction
21 project.

22 ~~20.1~~ 22. "Supplier" means a person who provides materials,
23 equipment or supplies for a construction project.

24 ~~21.1~~ 23. "Wages" means:

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

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

30 ~~22.1~~ 24. "Workman" means a skilled mechanic, skilled
31 workman, semiskilled mechanic, semiskilled workman or unskilled
32 workman in the service of a contractor or subcontractor under any
33 appointment or contract of hire or apprenticeship, express or
34 implied, oral or written, whether lawfully or unlawfully employed.
35 The term does not include a design professional.

36 **Sec. 30.** NRS 338.1385 is hereby amended to read as follows:

37 338.1385 1. Except as otherwise provided in subsection 8
38 and NRS 338.1906 and 338.1907, this State, or a governing body or
39 its authorized representative that awards a contract for a public work
40 in accordance with paragraph (a) of subsection 1 of NRS 338.1373
41 shall not:

42 (a) Commence a public work for which the estimated cost
43 exceeds \$100,000 unless it advertises in a newspaper qualified
44 pursuant to chapter 238 of NRS that is published in the county
45 where the public work will be performed for bids for the public



1 work. If no qualified newspaper is published in the county where the
2 public work will be performed, the required advertisement must be
3 published in some qualified newspaper that is printed in the State of
4 Nevada and has a general circulation in the county.

5 (b) Commence a public work for which the estimated cost is
6 \$100,000 or less unless it complies with the provisions of NRS
7 338.1386, 338.13862 and 338.13864.

8 (c) Divide a public work into separate portions to avoid the
9 requirements of paragraph (a) or (b).

10 2. At least once each quarter, the authorized representative of a
11 public body shall report to the public body any contract that he
12 awarded pursuant to subsection 1 in the immediately preceding
13 quarter.

14 3. Each advertisement for bids must include a provision that
15 sets forth the requirement that a contractor must be qualified
16 pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

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

22 5. Except as otherwise provided in subsection 6 and NRS
23 338.1389, *and section 25 of this act*, a public body shall award a
24 contract to the lowest responsive and responsible bidder.

25 6. Any bids received in response to an advertisement for bids
26 may be rejected if the public body or its authorized representative
27 responsible for awarding the contract determines that:

28 (a) The bidder is not a qualified bidder pursuant to NRS
29 338.1379 or 338.1382;

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

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

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

34 7. Before a public body may commence the performance of a
35 public work itself pursuant to the provisions of this section, based
36 upon a determination that the public interest would be served by
37 rejecting any bids received in response to an advertisement for bids,
38 the public body shall prepare and make available for public
39 inspection a written statement containing:

40 (a) A list of all persons, including supervisors, whom the public
41 body intends to assign to the public work, together with their
42 classifications and an estimate of the direct and indirect costs of
43 their labor;

44 (b) A list of all equipment that the public body intends to use on
45 the public work, together with an estimate of the number of hours



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

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

5 (d) An estimate of the total cost of the public work, including
6 the fair market value of or, if known, the actual cost of all materials,
7 supplies, labor and equipment to be used for the public work; and

8 (e) An estimate of the amount of money the public body expects
9 to save by rejecting the bids and performing the public work itself.

10 8. This section does not apply to:

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

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

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

16 (d) The Las Vegas Valley Water District created pursuant to
17 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
18 District created pursuant to chapter 477, Statutes of Nevada 1983 ,
19 or the Virgin Valley Water District created pursuant to chapter 100,
20 Statutes of Nevada 1993; or

21 (e) The design and construction of a public work for which a
22 public body contracts with a design-build team pursuant to NRS
23 338.1711 to 338.1727, inclusive.

24 **Sec. 31.** NRS 338.1385 is hereby amended to read as follows:

25 338.1385 1. Except as otherwise provided in subsection 8,
26 this State, or a governing body or its authorized representative that
27 awards a contract for a public work in accordance with paragraph
28 (a) of subsection 1 of NRS 338.1373 shall not:

29 (a) Commence a public work for which the estimated cost
30 exceeds \$100,000 unless it advertises in a newspaper qualified
31 pursuant to chapter 238 of NRS that is published in the county
32 where the public work will be performed for bids for the public
33 work. If no qualified newspaper is published in the county where the
34 public work will be performed, the required advertisement must be
35 published in some qualified newspaper that is printed in the State of
36 Nevada and having a general circulation within the county.

37 (b) Commence a public work for which the estimated cost is
38 \$100,000 or less unless it complies with the provisions of NRS
39 338.1386, 338.13862 and 338.13864.

40 (c) Divide a public work into separate portions to avoid the
41 requirements of paragraph (a) or (b).

42 2. At least once each quarter, the authorized representative of a
43 public body shall report to the public body any contract that he
44 awarded pursuant to subsection 1 in the immediately preceding
45 quarter.



3. Each advertisement for bids must include a provision that sets forth the requirement that a contractor must be qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

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

5. Except as otherwise provided in subsection 6 and NRS 338.1389, *and section 25 of this act*, a public body shall award a contract to the lowest responsive and responsible bidder.

6. Any bids received in response to an advertisement for bids may be rejected if the public body or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(b) The bidder is not responsive or responsible;

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

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

7. Before a public body may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the public body shall prepare and make available for public inspection a written statement containing:

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

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

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

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

(e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

8. This section does not apply to:

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



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

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

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

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

Sec. 32. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in subsection 10 and NRS 338.1385, 338.1386 and 338.13864, *and section 25 of this act*, a public body or its authorized representative shall award a contract for a public work for which the estimated cost exceeds \$250,000 to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, the lowest bid that is:

(a) Submitted by a responsive and responsible contractor who:

(1) Has been determined by the public body to be a qualified bidder pursuant to NRS 338.1379 or 338.1382; and

(2) At the time he submits his bid, has a valid certificate of eligibility to receive a preference in bidding on public works issued to the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and

(b) Not more than 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who does not have, at the time he submits his bid, a valid certificate of eligibility to receive a preference in bidding on public works issued to him by the State Contractors' Board pursuant to subsection 3 or 4,

↪ shall be deemed to be the best bid for the purposes of this section.

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

(a) Paid directly, on his own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than \$5,000 for each consecutive



1 12-month period for 60 months immediately preceding the
2 submission of the affidavit from the certified public accountant;

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

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

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

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

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

17 4. The State Contractors' Board shall issue a certificate of
18 eligibility to receive a preference in bidding on public works to a
19 specialty contractor who is licensed pursuant to the provisions of
20 chapter 624 of NRS and submits to the Board an affidavit from a
21 certified public accountant setting forth that the specialty contractor
22 has, while licensed as a specialty contractor in this State:

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

24 (1) The sales and use taxes pursuant to chapters 372, 374 and
25 377 of NRS on materials used for construction in this State,
26 including, without limitation, construction that is undertaken or
27 carried out on land within the boundaries of this State that is
28 managed by the Federal Government or is on an Indian reservation
29 or Indian colony, of not less than \$5,000 for each consecutive
30 12-month period for 60 months immediately preceding the
31 submission of the affidavit from the certified public accountant;

32 (2) The governmental services tax imposed pursuant to
33 chapter 371 of NRS on the vehicles used in the operation of his
34 business in this State of not less than \$5,000 for each consecutive
35 12-month period for 60 months immediately preceding the
36 submission of the affidavit from the certified public accountant; or

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

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

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

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



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

4 (a) Sales and use taxes and governmental services taxes that
5 were paid in this State by an affiliate or parent company of the
6 contractor, if the affiliate or parent company is also a general
7 contractor or specialty contractor, as applicable; and

8 (b) Sales and use taxes that were paid in this State by a joint
9 venture in which the contractor is a participant, in proportion to the
10 amount of interest the contractor has in the joint venture.

11 6. A contractor who has received a certificate of eligibility to
12 receive a preference in bidding on public works from the State
13 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
14 for the annual renewal of his contractor's license pursuant to NRS
15 624.283, submit to the Board an affidavit from a certified public
16 accountant setting forth that the contractor has, during the
17 immediately preceding 12 months, paid the taxes required pursuant
18 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
19 applicable, to maintain his eligibility to hold such a certificate.

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

24 8. If a contractor holds more than one contractor's license, he
25 must submit a separate application for each license pursuant to
26 which he wishes to qualify for a preference in bidding. Upon
27 issuance, the certificate of eligibility to receive a preference in
28 bidding on public works becomes part of the contractor's license for
29 which the contractor submitted the application.

30 9. If a contractor who applies to the State Contractors' Board
31 for a certificate of eligibility to receive a preference in bidding on
32 public works submits false information to the Board regarding the
33 required payment of taxes, the contractor is not eligible to receive a
34 preference in bidding on public works for a period of 5 years after
35 the date on which the Board becomes aware of the submission of the
36 false information.

37 10. If any federal statute or regulation precludes the granting of
38 federal assistance or reduces the amount of that assistance for a
39 particular public work because of the provisions of subsection 2,
40 those provisions do not apply insofar as their application would
41 preclude or reduce federal assistance for that work.

42 11. If a bid is submitted by two or more contractors as a joint
43 venture or by one of them as a joint venturer, the bid may be
44 deemed the best bid only if both or all of the joint venturers
45 separately meet the requirements of subsection 2.



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


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

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

(b) Be filed with the public body not later than 3 business days after the opening of the bids by the public body or its authorized representative.

14. If a public body receives a written objection pursuant to subsection 13, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and the public body or its authorized representative may proceed immediately to award the contract. If the public body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and the public body or its authorized representative may proceed to award the contract accordingly.

Sec. 33. NRS 338.141 is hereby amended to read as follows:

338.141 1. Except as otherwise provided in NRS 338.1727, each bid submitted to a public body for any public work to which paragraph (a) of subsection 1 of NRS 338.1385 or paragraph (a) of subsection 1 of NRS 338.143 applies  must include:

(a) If the public body provides a list of the labor or portions of the public work which are estimated by the public body to exceed 3 percent of the estimated cost of the public work, the name of each subcontractor who will provide such labor or portion of the work on the public work which is estimated to exceed 3 percent of the estimated cost of the public work; or

(b) If the public body does not provide a list of the labor or portions of the public work which are estimated by the public body to exceed 3 percent of the estimated cost of the public work, the name of each subcontractor who will provide labor or a portion of



1 the work on the public work to the prime contractor for which the
2 subcontractor will be paid an amount exceeding 5 percent of the
3 prime contractor's total bid. If the bid is submitted pursuant to this
4 paragraph, within 2 hours after the completion of the opening of the
5 bids, the contractors who submitted the three lowest bids must
6 submit a list containing the name of each subcontractor who will
7 provide labor or a portion of the work on the public work to the
8 prime contractor for which the subcontractor will be paid an amount
9 exceeding 1 percent of the prime contractor's total bid or \$50,000,
10 whichever is greater, and the number of the license issued to the
11 subcontractor pursuant to chapter 624 of NRS.

12 2. *In addition to the requirements in subsection 1, each bid*
13 *submitted to a public body for any public work to which paragraph*
14 *(a) of subsection 1 of NRS 338.1385 or paragraph (a) of*
15 *subsection 1 of NRS 338.143 applies must include a designation, if*
16 *any, of subcontractors named in the bid that have been designated*
17 *as disadvantaged businesses pursuant to section 24 of this act.*

18 3. The lists required by subsection 1 must include a description
19 of the labor or portion of the work which each subcontractor named
20 in the list will provide to the prime contractor.

21 ~~[3-]~~ 4. A prime contractor shall include his name on a list
22 required by paragraph (a) of subsection 1 if he will perform any of
23 the work required to be listed pursuant to paragraph (a) of
24 subsection 1.

25 ~~[4-]~~ 5. Except as otherwise provided in this subsection, if a
26 contractor:

27 (a) Fails to submit the list within the required time; or

28 (b) Submits a list that includes the name of a subcontractor who,
29 at the time of the submission of the list, is on disqualified status with
30 the State Public Works Board pursuant to NRS 338.1376,

31 ➡ the contractor's bid shall be deemed not responsive. A
32 contractor's bid shall not be deemed not responsive on the grounds
33 that the contractor submitted a list that includes the name of a
34 subcontractor who, at the time of the submission of the list, is on
35 disqualified status with the State Public Works Board pursuant to
36 NRS 338.1376 if the contractor, before the award of the contract,
37 provides an acceptable replacement subcontractor in the manner set
38 forth in subsection 1 of NRS 338.13895.

39 ~~[5-]~~ 6. A contractor whose bid is accepted shall not substitute a
40 subcontractor for any subcontractor who is named in the bid, unless:

41 (a) The public body or its authorized representative objects to
42 the subcontractor, requests in writing a change in the subcontractor
43 and pays any increase in costs resulting from the change.



(b) The substitution is approved by the public body or its authorized representative. The substitution must be approved if the public body or its authorized representative determines that:

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

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

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

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

(c) If the public body awarding the contract is a governing body, the public body or its authorized representative, in awarding the contract pursuant to NRS 338.1375 to 338.139, inclusive:

(1) Applies such criteria set forth in NRS 338.1377 as are appropriate for subcontractors and determines that the subcontractor does not meet ~~that~~ *those* criteria; and

(2) Requests in writing a substitution of the subcontractor.

~~[6-]~~ **7.** If a contractor indicates pursuant to subsection 1 that he will perform a portion of work on the public work and thereafter requests to substitute a subcontractor to perform such work, the contractor shall provide to the public body a written explanation in the form required by the public body which contains the reasons that:

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

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

~~[7-]~~ **8.** As used in this section, "general terms" means the terms and conditions of a contract that set the basic requirements for a public work and apply without regard to the particular trade or specialty of a subcontractor, but does not include any provision that controls or relates to the specific portion of the public work that will be completed by a subcontractor, including, without limitation, the materials to be used by the subcontractor or other details of the work to be performed by the subcontractor.

Sec. 34. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 7 and NRS 338.1907, a local government or its authorized representative that awards a contract for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373 shall not:



1 (a) Commence a public work for which the estimated cost
2 exceeds \$100,000 unless it advertises in a newspaper qualified
3 pursuant to chapter 238 of NRS that is published in the county
4 where the public work will be performed for bids for the public
5 work. If no qualified newspaper is published in the county where the
6 public work will be performed, the required advertisement must be
7 published in some qualified newspaper that is printed in the State of
8 Nevada and has a general circulation in the county.

9 (b) Commence a public work for which the estimated cost is
10 \$100,000 or less unless it complies with the provisions of NRS
11 338.1442, 338.1444 and 338.1446.

12 (c) Divide a project work into separate portions to avoid the
13 requirements of paragraph (a) or (b).

14 2. At least once each quarter, the authorized representative of a
15 local government shall report to the local government any contract
16 that he awarded pursuant to subsection 1 in the immediately
17 preceding quarter.

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

23 4. Except as otherwise provided in subsection 5 and NRS
24 338.147, *and section 25 of this act*, the local government or its
25 authorized representative shall award a contract to the lowest
26 responsive and responsible bidder.

27 5. Any bids received in response to an advertisement for bids
28 may be rejected if the local government or its authorized
29 representative responsible for awarding the contract determines that:

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

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

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

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

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

44 (b) A list of all equipment that the local government intends to
45 use on the public work, together with an estimate of the number of



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

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

5 (d) An estimate of the total cost of the public work, including
6 the fair market value of or, if known, the actual cost of all materials,
7 supplies, labor and equipment to be used for the public work; and

8 (e) An estimate of the amount of money the local government
9 expects to save by rejecting the bids and performing the public work
10 itself.

11 7. This section does not apply to:

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

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

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

17 (d) The Las Vegas Valley Water District created pursuant to
18 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
19 District created pursuant to chapter 477, Statutes of Nevada 1983 ,
20 or the Virgin Valley Water District created pursuant to chapter 100,
21 Statutes of Nevada 1993; or

22 (e) The design and construction of a public work for which a
23 public body contracts with a design-build team pursuant to NRS
24 338.1711 to 338.1727, inclusive.

25 **Sec. 35.** NRS 338.143 is hereby amended to read as follows:

26 338.143 1. Except as otherwise provided in subsection 7, a
27 local government or its authorized representative that awards a
28 contract for a public work in accordance with paragraph (b) of
29 subsection 1 of NRS 338.1373 shall not:

30 (a) Commence a public work for which the estimated cost
31 exceeds \$100,000 unless it advertises in a newspaper qualified
32 pursuant to chapter 238 of NRS that is published in the county
33 where the public work will be performed for bids for the public
34 work. If no qualified newspaper is published within the county
35 where the public work will be performed, the required
36 advertisement must be published in some qualified newspaper that is
37 printed in the State of Nevada and has a general circulation within
38 the county.

39 (b) Commence a public work for which the estimated cost is
40 \$100,000 or less unless it complies with the provisions of NRS
41 338.1442, 338.1444 or 338.1446.

42 (c) Divide a public work into separate portions to avoid the
43 requirements of paragraph (a) or (b).

44 2. At least once each quarter, the authorized representative of a
45 local government shall report to the local government any contract



1 that he awarded pursuant to subsection 1 in the immediately
2 preceding quarter.

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

8 4. Except as otherwise provided in subsection 5 and NRS
9 338.147, *and section 25 of this act*, the local government or its
10 authorized representative shall award a contract to the lowest
11 responsive and responsible bidder.

12 5. Any bids received in response to an advertisement for bids
13 may be rejected if the local government or its authorized
14 representative responsible for awarding the contract determines that:

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

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

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

19 6. Before a local government may commence the performance
20 of a public work itself pursuant to the provisions of this section,
21 based upon a determination that the public interest would be served
22 by rejecting any bids received in response to an advertisement for
23 bids, the local government shall prepare and make available for
24 public inspection a written statement containing:

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

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

33 (c) An estimate of the cost of administrative support for the
34 persons assigned to the public work;

35 (d) An estimate of the total cost of the public work, including
36 the fair market value of or, if known, the actual cost of all materials,
37 supplies, labor and equipment to be used for the public work; and

38 (e) An estimate of the amount of money the local government
39 expects to save by rejecting the bids and performing the public work
40 itself.

41 7. This section does not apply to:

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

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



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

7 (e) The design and construction of a public work for which a
8 public body contracts with a design-build team pursuant to NRS
9 338.1711 to 338.1727, inclusive.

10 **Sec. 36.** NRS 338.147 is hereby amended to read as follows:

11 338.147 1. Except as otherwise provided in subsection 10
12 and NRS 338.143, 338.1442 and 338.1446, *and section 25 of this*
13 *act*, a local government or its authorized representative shall award a
14 contract for a public work for which the estimated cost exceeds
15 \$250,000 to the contractor who submits the best bid.

16 2. Except as otherwise provided in subsection 10 or limited by
17 subsection 11, the lowest bid that is:

18 (a) Submitted by a contractor who:

19 (1) Has been found to be a responsible and responsive
20 contractor by the local government or its authorized representative;
21 and

22 (2) At the time he submits his bid, has a valid certificate of
23 eligibility to receive a preference in bidding on public works issued
24 to the contractor by the State Contractors' Board pursuant to
25 subsection 3 or 4; and

26 (b) Not more than 5 percent higher than the bid submitted by the
27 lowest responsive and responsible bidder who does not have, at the
28 time he submits the bid, a valid certificate of eligibility to receive a
29 preference in bidding on public works issued to him by the State
30 Contractors' Board pursuant to subsection 3 or 4,

31 ➡ shall be deemed to be the best bid for the purposes of this section.

32 3. The State Contractors' Board shall issue a certificate of
33 eligibility to receive a preference in bidding on public works to a
34 general contractor who is licensed pursuant to the provisions of
35 chapter 624 of NRS and submits to the Board an affidavit from a
36 certified public accountant setting forth that the general contractor
37 has, while licensed as a general contractor in this State:

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

39 (1) The sales and use taxes imposed pursuant to chapters
40 372, 374 and 377 of NRS on materials used for construction in this
41 State, including, without limitation, construction that is undertaken
42 or carried out on land within the boundaries of this State that is
43 managed by the Federal Government or is on an Indian reservation
44 or Indian colony, of not less than \$5,000 for each consecutive



1 12-month period for 60 months immediately preceding the
2 submission of the affidavit from the certified public accountant;

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

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

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

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

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

17 4. The State Contractors' Board shall issue a certificate of
18 eligibility to receive a preference in bidding on public works to a
19 specialty contractor who is licensed pursuant to the provisions of
20 chapter 624 of NRS and submits to the Board an affidavit from a
21 certified public accountant setting forth that the specialty contractor
22 has, while licensed as a specialty contractor in this State:

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

24 (1) The sales and use taxes pursuant to chapters 372, 374 and
25 377 of NRS on materials used for construction in this State,
26 including, without limitation, construction that is undertaken or
27 carried out on land within the boundaries of this State that is
28 managed by the Federal Government or is on an Indian reservation
29 or Indian colony, of not less than \$5,000 for each consecutive
30 12-month period for 60 months immediately preceding the
31 submission of the affidavit from the certified public accountant;

32 (2) The governmental services tax imposed pursuant to
33 chapter 371 of NRS on the vehicles used in the operation of his
34 business in this State of not less than \$5,000 for each consecutive
35 12-month period for 60 months immediately preceding the
36 submission of the affidavit from the certified public accountant; or

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

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

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

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



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

4 (a) Sales and use taxes and governmental services taxes paid in
5 this State by an affiliate or parent company of the contractor, if the
6 affiliate or parent company is also a general contractor or specialty
7 contractor, as applicable; and

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

11 6. A contractor who has received a certificate of eligibility to
12 receive a preference in bidding on public works from the State
13 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
14 for the annual renewal of his contractor's license pursuant to NRS
15 624.283, submit to the Board an affidavit from a certified public
16 accountant setting forth that the contractor has, during the
17 immediately preceding 12 months, paid the taxes required pursuant
18 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
19 applicable, to maintain his eligibility to hold such a certificate.

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

24 8. If a contractor holds more than one contractor's license, he
25 must submit a separate application for each license pursuant to
26 which he wishes to qualify for a preference in bidding. Upon
27 issuance, the certificate of eligibility to receive a preference in
28 bidding on public works becomes part of the contractor's license for
29 which the contractor submitted the application.

30 9. If a contractor who applies to the State Contractors' Board
31 for a certificate of eligibility to receive a preference in bidding on
32 public works submits false information to the Board regarding the
33 required payment of taxes, the contractor is not eligible to receive a
34 preference in bidding on public works for a period of 5 years after
35 the date on which the Board becomes aware of the submission of the
36 false information.

37 10. If any federal statute or regulation precludes the granting of
38 federal assistance or reduces the amount of that assistance for a
39 particular public work because of the provisions of subsection 2,
40 those provisions do not apply insofar as their application would
41 preclude or reduce federal assistance for that work.

42 11. If a bid is submitted by two or more contractors as a joint
43 venture or by one of them as a joint venturer, the bid may be
44 deemed a best bid only if both or all of the joint venturers separately
45 meet the requirements of subsection 2.



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

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

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

15 (b) Be filed with the local government not later than 3 business
16 days after the opening of the bids by the local government or its
17 authorized representative.

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

32 **Sec. 37.** NRS 408.343 is hereby amended to read as follows:

33 408.343 Except as otherwise provided in NRS 408.3875 to
34 408.3887, inclusive:

35 1. All bids must be submitted under sealed cover and received
36 at the address in Nevada stated in the advertisement for bids and
37 must be opened publicly and read at the time stated in the
38 advertisement.

39 2. No bids may be received after the time stated in the
40 advertisement even though bids are not opened exactly at the time
41 stated in the advertisement. No bid may be opened before that time.

42 3. Any bid may be withdrawn at any time before the time
43 stated in the advertisement only by written request or telegram filed
44 with the Director and executed by the bidder or his duly authorized
45 representative. The withdrawal of a bid does not prejudice the right



1 of the bidder to file a new bid before the time stated in the
2 advertisement.

3 4. The Department may reject any bid or all bids if, in the
4 opinion of the Department, the bids are unbalanced, incomplete,
5 contain irregularities of any kind or for any good cause.

6 5. Until the final award of the contract, the Department may
7 reject or accept any bids and may waive technical errors contained
8 in the bids, as may be deemed best for the interests of the State.

9 6. In awarding a contract, the Department shall make the award
10 to the lowest responsible bidder who has qualified and submitted his
11 bid in accordance with the provisions of this chapter.

12 *7. In determining the lowest responsible bidder, the*
13 *Department may give preference to a bidder who indicated in his*
14 *bid that he will enter into subcontracts with persons designated as*
15 *disadvantaged businesses pursuant to section 24 of this act for the*
16 *performance of a specified percentage of the contract, if the bid is*
17 *not more than 5 percent higher than the amount of the bid by a*
18 *competing bidder. The contract must contain a provision which*
19 *specifies the percentage of the full contract price which the bidder*
20 *has promised to subcontract to disadvantaged businesses. As used*
21 *in this subsection, "disadvantaged business" has the meaning*
22 *ascribed to it in subsection 8 of NRS 338.010.*

23 **Sec. 38.** NRS 625.530 is hereby amended to read as follows:

24 625.530 Except as otherwise provided in NRS 338.1711 to
25 338.1727, inclusive, and 408.3875 to 408.3887, inclusive:

26 1. The State of Nevada or any of its political subdivisions,
27 including a county, city or town, shall not engage in any public
28 work requiring the practice of professional engineering or land
29 surveying, unless the maps, plans, specifications, reports and
30 estimates have been prepared by, and the work executed under the
31 supervision of, a professional engineer, professional land surveyor
32 or registered architect.

33 2. The provisions of this section do not:

34 (a) Apply to any public work wherein the expenditure for the
35 complete project of which the work is a part does not exceed
36 \$35,000.

37 (b) Include any maintenance work undertaken by the State of
38 Nevada or its political subdivisions.

39 (c) Authorize a professional engineer, registered architect or
40 professional land surveyor to practice in violation of any of the
41 provisions of *this chapter or* chapter 623 of NRS . ~~for this chapter.~~

42 (d) Require the services of an architect registered pursuant to the
43 provisions of chapter 623 of NRS for the erection of buildings or
44 structures manufactured in an industrial plant, if those buildings or



1 structures meet the requirements of local building codes of the
2 jurisdiction in which they are being erected.

3 3. ~~[The]~~ *Except as otherwise provided in subsection 4, the*
4 selection of a professional engineer, professional land surveyor or
5 registered architect to perform services pursuant to subsection 1
6 must be made on the basis of the competence and qualifications of
7 the engineer, land surveyor or architect for the type of services to be
8 performed and not on the basis of competitive fees. If, after
9 selection of the engineer, land surveyor or architect, an agreement
10 upon a fair and reasonable fee cannot be reached with him, the
11 public agency may terminate negotiations and select another
12 engineer, land surveyor or architect.

13 *4. A public agency may, in selecting a professional engineer,*
14 *professional land surveyor or registered architect, give preference*
15 *to a person who subcontracts with or receives his supplies from a*
16 *business which has been designated as a disadvantaged business*
17 *pursuant to section 24 of this act. As used in this subsection,*
18 *“disadvantaged business” has the meaning ascribed to it in*
19 *subsection 8 of NRS 338.010.*

20 **Sec. 39.** 1. This section and sections 1 to 16, inclusive, 18 to
21 30, inclusive, 32, 33, 34, 36, 37 and 38 of this act become effective
22 on October 1, 2005.

23 2. Section 16 of this act expires by limitation on June 30, 2009.

24 3. Section 17 of this act becomes effective on July 1, 2009.

25 4. Sections 30 and 34 of this act expire by limitation on
26 April 30, 2013.

27 5. Sections 31 and 35 of this act become effective on May 1,
28 2013.

