

SENATE BILL NO. 418—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF WASHOE COUNTY)

MARCH 29, 2005

Referred to Committee on Government Affairs

SUMMARY—Authorizes certain additional public bodies to negotiate with lowest responsive and responsible bidder to obtain revised bid on contract for public work in certain circumstances. (BDR 28-451)

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

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public works projects; authorizing certain additional public bodies to negotiate with the lowest responsive and responsible bidder to obtain a revised bid on a contract for a public work in certain circumstances; and providing other matters properly relating thereto.

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

Section 1. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection ~~8~~ **9** and NRS 338.1906 and 338.1907, this State, or a governing body or its authorized representative that awards a contract for a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be



1 published in some qualified newspaper that is printed in the State of
2 Nevada and has a general circulation in the county.

3 (b) Commence a public work for which the estimated cost is
4 \$100,000 or less unless it complies with the provisions of NRS
5 338.1386, 338.13862 and 338.13864.

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

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

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

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

20 5. Except as otherwise provided in ~~subsection~~ *subsections* 6
21 *and 7* and NRS 338.1389, a public body shall award a contract to
22 the lowest responsive and responsible bidder.

23 6. *A public body or its authorized representative may*
24 *negotiate with the lowest responsive and responsible bidder to*
25 *obtain a revised bid on a contract for a public work if:*

26 (a) *Each bid on the contract received by the public body from a*
27 *responsive and responsible bidder exceeded the amount budgeted*
28 *for the public work; and*

29 (b) *The bid of the lowest responsive and responsible bidder did*
30 *not exceed the amount budgeted for the public work by more than*
31 *10 percent.*

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

35 (a) The bidder is not a qualified bidder pursuant to NRS
36 338.1379 or 338.1382;

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

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

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

41 ~~7-1~~ 8. Before a public body may commence the performance
42 of a public work itself pursuant to the provisions of this section,
43 based upon a determination that the public interest would be served
44 by rejecting any bids received in response to an advertisement for



1 bids, the public body shall prepare and make available for public
2 inspection a written statement containing:

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

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

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

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

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

18 ~~[8.]~~ 9. This section does not apply to:

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

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

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

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

29 (e) The design and construction of a public work for which a
30 public body contracts with a design-build team pursuant to NRS
31 338.1711 to 338.1727, inclusive.

32 **Sec. 2.** NRS 338.1385 is hereby amended to read as follows:

33 338.1385 1. Except as otherwise provided in subsection ~~[8.]~~
34 9, this State, or a governing body or its authorized representative
35 that awards a contract for a public work in accordance with
36 paragraph (a) of subsection 1 of NRS 338.1373 shall not:

37 (a) Commence a public work for which the estimated cost
38 exceeds \$100,000 unless it advertises in a newspaper qualified
39 pursuant to chapter 238 of NRS that is published in the county
40 where the public work will be performed for bids for the public
41 work. If no qualified newspaper is published in the county where the
42 public work will be performed, the required advertisement must be
43 published in some qualified newspaper that is printed in the State of
44 Nevada and having a general circulation within the county.



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

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

2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that he awarded pursuant to subsection 1 in the immediately preceding 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]~~ *subsections 6 and 7* and NRS 338.1389, a public body shall award a contract to the lowest responsive and responsible bidder.

6. *A public body or its authorized representative may negotiate with the lowest responsive and responsible bidder to obtain a revised bid on a contract for a public work if:*

(a) Each bid on the contract received by the public body from a responsive and responsible bidder exceeded the amount budgeted for the public work; and

(b) The bid of the lowest responsive and responsible bidder did not exceed the amount budgeted for the public work by more than 10 percent.

7. 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-]~~ 8. 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.~~ 9. This section does not apply to:

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

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

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

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993; 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. 3. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in subsection ~~10~~ **11** and NRS 338.1385, 338.1386 and 338.13864, 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. *A public body or its authorized representative may negotiate with the contractor who submits the lowest bid to obtain a revised bid on a contract for a public work for which the estimated cost exceeds \$250,000 if:*

(a) *Each bid on the contract received by the public body from a responsive and responsible bidder exceeded the amount budgeted for the public work; and*

(b) *The bid of the lowest responsive and responsible bidder did not exceed the amount budgeted for the public work by more than 10 percent.*



1 3. Except as otherwise provided in subsection ~~[10]~~ 11 or
2 limited by subsection ~~[11]~~ 12, the lowest bid that is:

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

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

6 (2) At the time he submits his bid, has a valid certificate of
7 eligibility to receive a preference in bidding on public works issued
8 to the contractor by the State Contractors' Board pursuant to
9 subsection ~~[3 or 4]~~ 4 or 5; and

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

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

16 ~~[3]~~ 4. The State Contractors' Board shall issue a certificate of
17 eligibility to receive a preference in bidding on public works to a
18 general contractor who is licensed pursuant to the provisions of
19 chapter 624 of NRS and submits to the Board an affidavit from a
20 certified public accountant setting forth that the general contractor
21 has, while licensed as a general contractor in this State:

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

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

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

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

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

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

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



1 ~~[4-]~~ 5. The State Contractors' Board shall issue a certificate of
2 eligibility to receive a preference in bidding on public works to a
3 specialty contractor who is licensed pursuant to the provisions of
4 chapter 624 of NRS and submits to the Board an affidavit from a
5 certified public accountant setting forth that the specialty contractor
6 has, while licensed as a specialty contractor in this State:

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

8 (1) The sales and use taxes pursuant to chapters 372, 374 and
9 377 of NRS on materials used for construction in this State,
10 including, without limitation, construction that is undertaken or
11 carried out on land within the boundaries of this State that is
12 managed by the Federal Government or is on an Indian reservation
13 or Indian colony, of not less than \$5,000 for each consecutive
14 12-month period for 60 months immediately preceding the
15 submission of the affidavit from the certified public accountant;

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

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

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

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

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

30 ~~[5-]~~ 6. For the purposes of complying with the requirements set
31 forth in paragraph (a) of subsection ~~[3-]~~ 4 and paragraph (a) of
32 subsection ~~[4-]~~ 5, a contractor shall be deemed to have paid:

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

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

40 ~~[6-]~~ 7. A contractor who has received a certificate of eligibility
41 to receive a preference in bidding on public works from the State
42 Contractors' Board pursuant to subsection ~~[3-or-4]~~ 4 or 5 shall, at
43 the time for the annual renewal of his contractor's license pursuant
44 to NRS 624.283, submit to the Board an affidavit from a certified
45 public accountant setting forth that the contractor has, during the



1 immediately preceding 12 months, paid the taxes required pursuant
2 to paragraph (a) of subsection ~~[3]~~ 4 or paragraph (a) of subsection
3 ~~[4]~~ 5, as applicable, to maintain his eligibility to hold such a
4 certificate.

5 ~~[7]~~ 8. A contractor who fails to submit an affidavit to the
6 Board pursuant to subsection ~~[6]~~ 7 ceases to be eligible to receive a
7 preference in bidding on public works unless he reapplies for and
8 receives a certificate of eligibility pursuant to subsection ~~[3 or 4]~~ 4
9 or 5, as applicable.

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

16 ~~[9]~~ 10. If a contractor who applies to the State Contractors'
17 Board for a certificate of eligibility to receive a preference in
18 bidding on public works submits false information to the Board
19 regarding the required payment of taxes, the contractor is not
20 eligible to receive a preference in bidding on public works for a
21 period of 5 years after the date on which the Board becomes aware
22 of the submission of the false information.

23 ~~[10]~~ 11. If any federal statute or regulation precludes the
24 granting of federal assistance or reduces the amount of that
25 assistance for a particular public work because of the provisions of
26 subsection ~~[2]~~ 3, those provisions do not apply insofar as their
27 application would preclude or reduce federal assistance for that
28 work.

29 ~~[11]~~ 12. If a bid is submitted by two or more contractors as a
30 joint venture or by one of them as a joint venturer, the bid may be
31 deemed the best bid only if both or all of the joint venturers
32 separately meet the requirements of subsection ~~[2]~~ 3.

33 ~~[12]~~ 13. The State Contractors' Board shall adopt regulations
34 and may assess reasonable fees relating to the certification of
35 contractors for a preference in bidding on public works.

36 ~~[13]~~ 14. A person or entity who believes that a contractor
37 wrongfully holds a certificate of eligibility to receive a preference in
38 bidding on public works may challenge the validity of the certificate
39 by filing a written objection with the public body to which the
40 contractor has submitted a bid on a contract for the construction of a
41 public work. A written objection authorized pursuant to this
42 subsection must:

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



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

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

6 ~~14.4~~ 15. If a public body receives a written objection pursuant
7 to subsection ~~13.3~~ 14, the public body shall determine whether the
8 objection is accompanied by the proof or substantiating evidence
9 required pursuant to paragraph (a) of that subsection. If the public
10 body determines that the objection is not accompanied by the
11 required proof or substantiating evidence, the public body shall
12 dismiss the objection and the public body or its authorized
13 representative may proceed immediately to award the contract. If
14 the public body determines that the objection is accompanied by the
15 required proof or substantiating evidence, the public body shall
16 determine whether the contractor qualifies for the certificate
17 pursuant to the provisions of this section and the public body or its
18 authorized representative may proceed to award the contract
19 accordingly.

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

21 338.143 1. Except as otherwise provided in subsection ~~7.1~~ 8
22 and NRS 338.1907, a local government or its authorized
23 representative that awards a contract for a public work in
24 accordance with paragraph (b) of subsection 1 of NRS 338.1373
25 shall not:

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

34 (b) Commence a public work for which the estimated cost is
35 \$100,000 or less unless it complies with the provisions of NRS
36 338.1442, 338.1444 and 338.1446.

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

39 2. At least once each quarter, the authorized representative of a
40 local government shall report to the local government any contract
41 that he awarded pursuant to subsection 1 in the immediately
42 preceding quarter.

43 3. Approved plans and specifications for the bids must be on
44 file at a place and time stated in the advertisement for the inspection
45 of all persons desiring to bid thereon and for other interested



1 persons. Contracts for the public work must be awarded on the basis
2 of bids received.

3 4. Except as otherwise provided in ~~{subsection}~~ *subsections* 5
4 *and 6* and NRS 338.147, the local government or its authorized
5 representative shall award a contract to the lowest responsive and
6 responsible bidder.

7 5. *A local government or its authorized representative may*
8 *negotiate with the lowest responsive and responsible bidder to*
9 *obtain a revised bid on a contract for a public work if:*

10 (a) *Each bid on the contract received by the local government*
11 *from a responsive and responsible bidder exceeded the amount*
12 *budgeted for the public work; and*

13 (b) *The bid of the lowest responsive and responsible bidder did*
14 *not exceed the amount budgeted for the public work by more than*
15 *10 percent.*

16 6. Any bids received in response to an advertisement for bids
17 may be rejected if the local government or its authorized
18 representative responsible for awarding the contract determines that:

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

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

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

23 ~~{6-}~~ 7. Before a local government may commence the
24 performance of a public work itself pursuant to the provisions of this
25 section, based upon a determination that the public interest would be
26 served by rejecting any bids received in response to an
27 advertisement for bids, the local government shall prepare and make
28 available for public inspection a written statement containing:

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

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

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

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

42 (e) An estimate of the amount of money the local government
43 expects to save by rejecting the bids and performing the public work
44 itself.

45 ~~{7-}~~ 8. This section does not apply to:



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

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

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

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

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

14 **Sec. 5.** NRS 338.143 is hereby amended to read as follows:

15 338.143 1. Except as otherwise provided in subsection ~~7~~ 8,
16 a local government or its authorized representative that awards a
17 contract for a public work in accordance with paragraph (b) of
18 subsection 1 of NRS 338.1373 shall not:

19 (a) Commence a public work for which the estimated cost
20 exceeds \$100,000 unless it advertises in a newspaper qualified
21 pursuant to chapter 238 of NRS that is published in the county
22 where the public work will be performed for bids for the public
23 work. If no qualified newspaper is published within the county
24 where the public work will be performed, the required
25 advertisement must be published in some qualified newspaper that is
26 printed in the State of Nevada and has a general circulation within
27 the county.

28 (b) Commence a public work for which the estimated cost is
29 \$100,000 or less unless it complies with the provisions of NRS
30 338.1442, 338.1444 or 338.1446.

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

33 2. At least once each quarter, the authorized representative of a
34 local government shall report to the local government any contract
35 that he awarded pursuant to subsection 1 in the immediately
36 preceding quarter.

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

42 4. Except as otherwise provided in ~~[subsection]~~ subsections 5
43 and 6 and NRS 338.147, the local government or its authorized
44 representative shall award a contract to the lowest responsive and
45 responsible bidder.



1 5. *A local government or its authorized representative may*
2 *negotiate with the lowest responsive and responsible bidder to*
3 *obtain a revised bid on a contract for a public work if:*

4 (a) *Each bid on the contract received by the local government*
5 *from a responsive and responsible bidder exceeded the amount*
6 *budgeted for the public work; and*

7 (b) *The bid of the lowest responsive and responsible bidder did*
8 *not exceed the amount budgeted for the public work by more than*
9 *10 percent.*

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

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

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

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

17 ~~[6.]~~ 7. Before a local government may commence the
18 performance of a public work itself pursuant to the provisions of this
19 section, based upon a determination that the public interest would be
20 served by rejecting any bids received in response to an
21 advertisement for bids, the local government shall prepare and make
22 available for public inspection a written statement containing:

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

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

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

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

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

39 ~~[7.]~~ 8. This section does not apply to:

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

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

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



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

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

Sec. 6. NRS 338.147 is hereby amended to read as follows:

338.147 1. Except as otherwise provided in subsection ~~100~~ **11** and NRS 338.143, 338.1442 and 338.1446, a local government 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. *A public body or its authorized representative may negotiate with the contractor who submits the lowest bid to obtain a revised bid on a contract for a public work for which the estimated cost exceeds \$250,000 if:*

(a) Each bid on the contract received by the public body from a responsive and responsible bidder exceeded the amount budgeted for the public work; and

(b) The bid of the lowest responsive and responsible bidder did not exceed the amount budgeted for the public work by more than 10 percent.

3. Except as otherwise provided in subsection ~~100~~ **11** or limited by subsection ~~111~~ **12**, the lowest bid that is:

(a) Submitted by a contractor who:

(1) Has been found to be a responsible and responsive contractor by the local government or its authorized representative; 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~~ **4 or 5**; 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 the 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~~ **4 or 5**,

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

~~3-3~~ **4.** 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



1 certified public accountant setting forth that the general contractor
2 has, while licensed as a general contractor in this State:

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

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

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

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

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

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

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

26 ~~[4]~~ 5. The State Contractors' Board shall issue a certificate of
27 eligibility to receive a preference in bidding on public works to a
28 specialty contractor who is licensed pursuant to the provisions of
29 chapter 624 of NRS and submits to the Board an affidavit from a
30 certified public accountant setting forth that the specialty contractor
31 has, while licensed as a specialty contractor in this State:

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

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

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



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

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

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

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

~~[5-]~~ 6. For the purposes of complying with the requirements set forth in paragraph (a) of subsection ~~[3]~~ 4 and paragraph (a) of subsection ~~[4-]~~ 5, a contractor shall be deemed to have paid:

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

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

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

~~[7-]~~ 8. A contractor who fails to submit an affidavit to the Board pursuant to subsection ~~[6]~~ 7 ceases to be eligible to receive a preference in bidding on public works unless he reapplies for and receives a certificate of eligibility pursuant to subsection ~~[3-or-4-]~~ 4 or 5, as applicable.

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

~~[9-]~~ 10. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works submits false information to the Board regarding the required payment of taxes, the contractor is not eligible to receive a preference in bidding on public works for a



1 period of 5 years after the date on which the Board becomes aware
2 of the submission of the false information.

3 ~~[40.]~~ 11. If any federal statute or regulation precludes the
4 granting of federal assistance or reduces the amount of that
5 assistance for a particular public work because of the provisions of
6 subsection ~~[2.]~~ 3, those provisions do not apply insofar as their
7 application would preclude or reduce federal assistance for that
8 work.

9 ~~[44.]~~ 12. If a bid is submitted by two or more contractors as a
10 joint venture or by one of them as a joint venturer, the bid may be
11 deemed a best bid only if both or all of the joint venturers separately
12 meet the requirements of subsection ~~[2.]~~ 3.

13 ~~[42.]~~ 13. The State Contractors' Board shall adopt regulations
14 and may assess reasonable fees relating to the certification of
15 contractors for a preference in bidding on public works.

16 ~~[43.]~~ 14. A person or entity who believes that a contractor
17 wrongfully holds a certificate of eligibility to receive a preference in
18 bidding on public works may challenge the validity of the certificate
19 by filing a written objection with the local government to which the
20 contractor has submitted a bid on a contract for the construction of a
21 public work. A written objection authorized pursuant to this
22 subsection must:

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

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

30 ~~[44.]~~ 15. If a local government receives a written objection
31 pursuant to subsection ~~[43.]~~ 14, the local government shall
32 determine whether the objection is accompanied by the proof or
33 substantiating evidence required pursuant to paragraph (a) of that
34 subsection. If the local government determines that the objection is
35 not accompanied by the required proof or substantiating evidence,
36 the local government shall dismiss the objection and the local
37 government or its authorized representative may proceed
38 immediately to award the contract. If the local government
39 determines that the objection is accompanied by the required proof
40 or substantiating evidence, the local government shall determine
41 whether the contractor qualifies for the certificate pursuant to the
42 provisions of this section and the local government or its authorized
43 representative may proceed to award the contract accordingly.

44 **Sec. 7.** 1. This section and sections 1, 4 and 6 of this act
45 become effective upon passage and approval.



- 1 2. Sections 1 and 4 of this act expire by limitation on April 30,
- 2 2013.
- 3 3. Sections 2 and 5 of this act become effective on May 1,
- 4 2013.



