
SENATE BILL NO. 507—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE NEVADA ASSOCIATION OF COUNTIES)

MARCH 26, 2007

Referred to Committee on Government Affairs

SUMMARY—Authorizes 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. (BDR 28-379)

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; 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.

Legislative Counsel's Digest:

Existing law authorizes the State Public Works Board to negotiate with the person who submitted the lowest responsive and responsible bid on a contract for a public work to obtain a revised bid from that person under certain conditions. (NRS 341.145) Under existing law, other public bodies may only reject bids received in response to an advertisement for bids on a contract for a public work that exceed the amount budgeted for a public work and advertise the public work again. (NRS 338.1385, 338.1389, 338.143, 338.147)

This bill authorizes a public body or its authorized representative to negotiate with the person who submitted the lowest responsive and responsible bid on a contract for a public work to obtain a revised bid from that person if: (1) all responsive and responsible bids received by the public body on the contract exceeded the amount budgeted for the public work; and (2) the bid from the lowest responsive and responsible bidder did not exceed the amount budgeted for the public work by more than 10 percent.



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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 ~~1~~ **10** 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 published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in 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 the authorized representative 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 or its authorized representative 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*



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(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.

~~7-1~~ 8. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the bidder who has submitted the lowest responsive and responsible bid.

~~8-1~~ 9. 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.

~~9-1~~ 10. This section does not apply to:



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

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

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

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

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

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

338.1385 1. Except as otherwise provided in subsection ~~9.1~~ **10**, 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 published in some qualified newspaper that is printed in the State of 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 the authorized representative 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~~ **subsection 6 and 7** and NRS 338.1389, a public body or its authorized



representative 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.

~~7.7~~ 8. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

~~8.1~~ 9. 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.

~~9-10~~ **10.** This section does not apply to:

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

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

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

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

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

Sec. 3. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in ~~subsection 10~~ **subsections 3 and 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. Except as otherwise provided in subsection ~~10~~ **11** or limited by subsection ~~11~~ **12**, 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 ~~3-4~~ **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 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 ~~3-4~~ **4 or 5**,

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

3. ***A public body or its authorized representative may negotiate with the lowest responsive and responsible bidder to***



1 *obtain a revised bid on a contract for a public work for which the*
2 *estimated cost exceeds \$250,000 if:*

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

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

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

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

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

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

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

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

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

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

38 ~~4-1~~ **5.** The State Contractors' Board shall issue a certificate of
39 eligibility to receive a preference in bidding on public works to a
40 specialty contractor who is licensed pursuant to the provisions of
41 chapter 624 of NRS and submits to the Board an affidavit from a
42 certified public accountant setting forth that the specialty contractor
43 has, while licensed as a specialty contractor in this State:

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



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

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

(3) Any combination of such sales and use taxes and 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 that were 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 that were 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 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



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1 receives a certificate of eligibility pursuant to subsection ~~[3 or 4.]~~ 4
2 or 5, as applicable.

3 ~~[8.]~~ 9. If a contractor holds more than one contractor's license,
4 he must submit a separate application for each license pursuant to
5 which he wishes to qualify for a preference in bidding. Upon
6 issuance, the certificate of eligibility to receive a preference in
7 bidding on public works becomes part of the contractor's license for
8 which the contractor submitted the application.

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

16 ~~[10.]~~ 11. If any federal statute or regulation precludes the
17 granting of federal assistance or reduces the amount of that
18 assistance for a particular public work because of the provisions of
19 subsection 2, those provisions do not apply insofar as their
20 application would preclude or reduce federal assistance for that
21 work.

22 ~~[11.]~~ 12. If a bid is submitted by two or more contractors as a
23 joint venture or by one of them as a joint venturer, the bid may be
24 deemed the best bid only if both or all of the joint venturers
25 separately meet the requirements of subsection 2.

26 ~~[12.]~~ 13. The State Contractors' Board shall adopt regulations
27 and may assess reasonable fees relating to the certification of
28 contractors for a preference in bidding on public works.

29 ~~[13.]~~ 14. A person or entity who believes that a contractor
30 wrongfully holds a certificate of eligibility to receive a preference in
31 bidding on public works may challenge the validity of the certificate
32 by filing a written objection with the public body to which the
33 contractor has submitted a bid on a contract for the construction of a
34 public work. A written objection authorized pursuant to this
35 subsection must:

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

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

43 ~~[14.]~~ 15. If a public body receives a written objection pursuant
44 to subsection ~~[13.]~~ 14, the public body shall determine whether the
45 objection is accompanied by the proof or substantiating evidence



1 required pursuant to paragraph (a) of that subsection. If the public
2 body determines that the objection is not accompanied by the
3 required proof or substantiating evidence, the public body shall
4 dismiss the objection and the public body or its authorized
5 representative may proceed immediately to award the contract. If
6 the public body determines that the objection is accompanied by the
7 required proof or substantiating evidence, the public body shall
8 determine whether the contractor qualifies for the certificate
9 pursuant to the provisions of this section and the public body or its
10 authorized representative may proceed to award the contract
11 accordingly.

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

13 338.143 1. Except as otherwise provided in subsection ~~{8}~~ 9
14 and NRS 338.1907, a local government or its authorized
15 representative that awards a contract for a public work in
16 accordance with paragraph (b) of subsection 1 of NRS 338.1373
17 shall not:

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

26 (b) Commence a public work for which the estimated cost is
27 \$100,000 or less unless it complies with the provisions of NRS
28 338.1442, 338.1444 and 338.1446.

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

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

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

40 4. Except as otherwise provided in ~~{subsection}~~ subsections 5
41 and 6 and NRS 338.147, the local government or its authorized
42 representative shall award a contract to the lowest responsive and
43 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. A local government may let a contract without
18 competitive bidding if no bids were received in response to an
19 advertisement for bids and:

20 (a) The local government publishes a notice stating that no bids
21 were received and that the contract may be let without further
22 bidding;

23 (b) The local government considers any bid submitted in
24 response to the notice published pursuant to paragraph (a);

25 (c) The local government lets the contract not less than 7 days
26 after publishing a notice pursuant to paragraph (a); and

27 (d) The contract is awarded to the lowest responsive and
28 responsible bidder.

29 ~~[7-]~~ 8. Before a local government may commence the
30 performance of a public work itself pursuant to the provisions of this
31 section, based upon a determination that the public interest would be
32 served by rejecting any bids received in response to an
33 advertisement for bids, the local government shall prepare and make
34 available for public inspection a written statement containing:

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

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

43 (c) An estimate of the cost of administrative support for the
44 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 local government expects to save by rejecting the bids and performing the public work itself.

~~§ 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;

(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. 5. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection ~~8.1~~ 9, 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:

(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 within the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has 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 338.1442, 338.1444 or 338.1446.

(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 local government shall report to the governing body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection



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1 of all persons desiring to bid thereon and for other interested
2 persons. Contracts for the public work must be awarded on the basis
3 of bids received.

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

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

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

14 (b) *The bid of the lowest responsive and responsible bidder did*
15 *not exceed the amount budgeted for the public work by more than*
16 *10 percent.*

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

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

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

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

24 ~~[6-]~~ 7. A local government may let a contract without
25 competitive bidding if no bids were received in response to an
26 advertisement for bids and:

27 (a) The local government publishes a notice stating that no bids
28 were received and that the contract may be let without further
29 bidding;

30 (b) The local government considers any bid submitted in
31 response to the notice published pursuant to paragraph (a);

32 (c) The local government lets the contract not less than 7 days
33 after publishing a notice pursuant to paragraph (a); and

34 (d) The contract is awarded to the lowest responsive and
35 responsible bidder.

36 ~~[7-]~~ 8. Before a local government may commence the
37 performance of a public work itself pursuant to the provisions of this
38 section, based upon a determination that the public interest would be
39 served by rejecting any bids received in response to an
40 advertisement for bids, the local government shall prepare and make
41 available for public inspection a written statement containing:

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



(b) A list of all equipment that the local government 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 local government 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;

(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 10]~~ **subsections 3 and 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. Except as otherwise provided in subsection ~~[10]~~ **11** or limited by subsection ~~[11]~~ **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



1 preference in bidding on public works issued to him by the State
2 Contractors' Board pursuant to subsection ~~[3 or 4.]~~ 4 or 5,
3 ➔ shall be deemed to be the best bid for the purposes of this section.

4 3. *A local government or its authorized representative may*
5 *negotiate with the lowest responsive and responsible bidder to*
6 *obtain a revised bid on a contract for a public work for which the*
7 *estimated cost exceeds \$250,000 if:*

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

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

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

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

21 (1) The sales and use taxes imposed pursuant to chapters
22 372, 374 and 377 of NRS on materials used for construction in this
23 State, including, without limitation, construction that is undertaken
24 or carried out on land within the boundaries of this State that is
25 managed by the Federal Government or is on an Indian reservation
26 or Indian colony, of not less than \$5,000 for each consecutive
27 12-month period for 60 months immediately preceding the
28 submission of the affidavit from the certified public accountant;

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

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

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

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

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

43 ~~[4.]~~ 5. The State Contractors' Board shall issue a certificate of
44 eligibility to receive a preference in bidding on public works to a
45 specialty 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 specialty contractor has, while licensed as a specialty contractor in this State:

(a) Paid directly, on his own behalf:

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

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

(3) Any combination of such sales and use taxes and 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.

~~5.1~~ 6. For the purposes of complying with the requirements set forth in paragraph (a) of subsection ~~3.1~~ 4 and paragraph (a) of subsection ~~4.1~~ 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.

~~6.1~~ 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 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 ~~3.1~~ 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 period of 5 years after the date on which the Board becomes aware of the submission of the false information.

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

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

~~[12.]~~ 13. 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.]~~ 14. 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 local government 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



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

~~[H4.]~~ **15.** If a local government receives a written objection pursuant to subsection ~~[H3.]~~ **14**, the local government shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the local government determines that the objection is not accompanied by the required proof or substantiating evidence, the local government shall dismiss the objection and the local government or its authorized representative may proceed immediately to award the contract. If the local government determines that the objection is accompanied by the required proof or substantiating evidence, the local government shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and the local government or its authorized representative may proceed to award the contract accordingly.

Sec. 7. 1. This section and sections 1, 3, 4 and 6 of this act become effective upon passage and approval.

2. Sections 1 and 4 of this act expire by limitation on April 30, 2013.

3. Sections 2 and 5 of this act become effective on May 1, 2013.

