

SENATE BILL NO. 108—SENATOR SETTELMAYER

PREFILED FEBRUARY 1, 2015

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works projects.
(BDR 28-598)

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; raising the estimated cost thresholds at or above which certain requirements apply to public works projects; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth general provisions applicable to public works for which the cost is in excess of \$100,000, including provisions requiring: (1) reports by the public body undertaking the public work to the Labor Commissioner; (2) enforcement of certain provisions regarding public works contracts by the Labor Commissioner, with prosecution of any violations by the Attorney General; (3) the payment of prevailing wages to employees on the public work; and (4) the advertisement in certain publications for bids on the public work. (NRS 338.013, 338.015, 338.080, 338.1385, 338.143) The prevailing wage requirements and certain reporting requirements also apply to a redevelopment project if a redevelopment agency provides financial incentives to the developer with a value of more than \$100,000. (NRS 279.500, 279.6098) Existing law also sets forth certain provisions applicable to public works for which the cost is less than \$100,000, including a provision requiring a preference in bidding for certain businesses owned by a veteran with a service-connected disability, and provisions authorizing a state or local government to: (1) perform the work itself; or (2) solicit bids from three licensed contractors if the estimated cost of the public work is more than \$25,000 but not more than \$100,000, or solicit bids from at least one licensed contractor if the estimated cost of the public work is \$25,000 or less. (NRS 338.13844, 338.1386, 338.13862, 338.13864, 338.1442, 338.1444, 338.1446) This bill changes the \$100,000 threshold to \$1,000,000, and in several sections, a technical correction is made clarifying that if the relevant work will cost exactly \$1,000,000, the requirements for those public works estimated to cost in excess of \$1,000,000 will apply.



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

1 **Section 1.** NRS 338.018 is hereby amended to read as follows:

2 338.018 The provisions of NRS 338.013 to 338.018, inclusive,
3 apply to any contract for construction work of the Nevada System of
4 Higher Education for which the estimated cost ~~exceeds \$100,000~~
5 *is \$1,000,000 or more* even if the construction work does not
6 qualify as a public work, as defined in subsection 17 of
7 NRS 338.010.

8 **Sec. 2.** NRS 338.075 is hereby amended to read as follows:

9 338.075 The provisions of NRS 338.020 to 338.090, inclusive,
10 apply to any contract for construction work of the Nevada System of
11 Higher Education for which the estimated cost ~~exceeds \$100,000~~
12 *is \$1,000,000 or more* even if the construction work does not
13 qualify as a public work, as defined in subsection 17 of
14 NRS 338.010.

15 **Sec. 3.** NRS 338.080 is hereby amended to read as follows:

16 338.080 None of the provisions of NRS 338.020 to 338.090,
17 inclusive, apply to:

18 1. Any work, construction, alteration, repair or other
19 employment performed, undertaken or carried out, by or for any
20 railroad company or any person operating the same, whether such
21 work, construction, alteration or repair is incident to or in
22 conjunction with a contract to which a public body is a party, or
23 otherwise.

24 2. Apprentices recorded under the provisions of chapter 610 of
25 NRS.

26 3. Any contract for a public work whose cost is less than
27 ~~[\$100,000.]~~ *\$1,000,000*. A unit of the project must not be separated
28 from the total project, even if that unit is to be completed at a later
29 time, in order to lower the cost of the project below ~~[\$100,000.]~~
30 *\$1,000,000*.

31 **Sec. 4.** NRS 338.13844 is hereby amended to read as follows:

32 338.13844 1. For the purpose of awarding a contract for a
33 public work of this State for which the estimated cost is ~~[\$100,000~~
34 ~~or] less [than~~ *\$1,000,000*, as governed by NRS 338.13862, if a
35 local business owned by a veteran with a service-connected
36 disability submits a bid, the bid shall be deemed to be 5 percent
37 lower than the bid actually submitted.

38 2. The preference described in subsection 1 may not be
39 combined with any other preference.

40 **Sec. 5.** NRS 338.1385 is hereby amended to read as follows:

41 338.1385 1. Except as otherwise provided in subsection 9,
42 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~~ *is \$1,000,000 or more* 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 *than \$1,000,000* unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864 and, with respect to the State, NRS 338.1384 to 338.13847, inclusive.

(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 6 and NRS 338.1389, a public body or its authorized representative 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. 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. 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. 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;

(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;



(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.1685 to 338.16995, inclusive.

Sec. 6. NRS 338.1386 is hereby amended to read as follows:

338.1386 If the estimated cost of a public work is ~~less than \$100,000~~ ~~or~~ less ~~than~~ **\$1,000,000**, this State or a local government shall:

1. Award a contract for the completion of the public work to a properly licensed contractor in accordance with NRS 338.13862; or

2. Perform the public work itself in accordance with NRS 338.13864.

Sec. 7. NRS 338.13862 is hereby amended to read as follows:

338.13862 1. Before this State or a local government awards a contract for the completion of a public work in accordance with subsection 1 of NRS 338.1386, the State or the local government must:

(a) If the estimated cost of the public work is more than \$25,000 but ~~not more~~ less than ~~\$100,000,~~ **\$1,000,000**, solicit bids from at least three properly licensed contractors; and

(b) If the estimated cost of the public work is \$25,000 or less, solicit a bid from at least one properly licensed contractor.

2. Any bids received in response to a solicitation for bids made pursuant to this section may be rejected if the State or the local government determines that:

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

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

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

3. At least once each quarter, the State and each local government shall prepare a report detailing, for each public work over \$25,000 for which a contract for its completion is awarded pursuant to paragraph (a) of subsection 1, if any:

(a) The name of the contractor to whom the contract was awarded;

(b) The amount of the contract awarded;

(c) A brief description of the public work; and

(d) The names of all contractors from whom bids were solicited.

4. A report prepared pursuant to subsection 3 is a public record and must be maintained on file at the administrative offices of the applicable public body.

5. The provisions of this section do not relieve this State from the duty to award the contract for the public work to a bidder who is:



(a) Qualified pursuant to the applicable provisions of NRS 338.1375 to 338.1382, inclusive; and

(b) The lowest responsive and responsible bidder, if bids are required to be solicited from more than one properly licensed contractor pursuant to subsection 1. For the purposes of this paragraph, the lowest responsive and responsible bidder must be determined in consideration of any applicable bidder's preference granted pursuant to NRS 338.13844.

Sec. 8. NRS 338.13864 is hereby amended to read as follows:

338.13864 1. If the State or a local government proposes to perform a public work itself in accordance with subsection 2 of NRS 338.1386, the public officer responsible for the management of the public works of the State or the local government, as applicable, must, if the estimated cost of the public work is more than \$25,000 but ~~not more~~ less than ~~[\$100,000]~~ **\$1,000,000** and before work on the public work is commenced, prepare a signed attestation regarding the decision of the State or the local government to perform the public work itself.

2. An attestation prepared pursuant to subsection 1:

(a) Must set forth:

(1) The estimated cost of the public work;

(2) A general statement as to why the State or the local government has decided to perform the public work itself; and

(3) A general statement that the public work will adhere to the same quality and standards as would be required of a properly licensed contractor if the public work had been awarded to a properly licensed contractor; and

(b) Is a public record and must be maintained on file at the administrative offices of the applicable public body.

Sec. 9. 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, a public body or its authorized representative shall award a contract for a public work for which the estimated cost ~~exceeds \$250,000~~ **is \$1,150,000 or more** 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;

(2) At the time the contractor submits his or her bid, provides 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



(3) Within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117; and

(b) Not more than 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who:

(1) Does not provide, at the time he or she submits the bid, a valid certificate of eligibility to receive a preference in bidding on public works issued to him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

(2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will comply with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,

➤ 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 or her 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 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 or her 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 general contractor pursuant to the provisions of chapter 624 of NRS; and



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

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board 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 or her 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 or her 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. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, 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. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall, at the time



1 for the renewal of his or her contractor's license pursuant to NRS
2 624.283, submit to the Board an affidavit from a certified public
3 accountant setting forth that the contractor has, during the
4 immediately preceding 12 months, paid the taxes required pursuant
5 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
6 applicable, to maintain eligibility to hold such a certificate.

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

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

19 9. If a contractor who applies to the State Contractors' Board
20 for a certificate of eligibility to receive a preference in bidding on
21 public works:

22 (a) Submits false information to the Board regarding the
23 required payment of taxes, the contractor is not eligible to receive a
24 preference in bidding on public works for a period of 5 years after
25 the date on which the Board becomes aware of the submission of the
26 false information; or

27 (b) Is found by the Board to have, within the preceding 5 years,
28 materially breached a contract for a public work for which the cost
29 exceeds \$5,000,000, the contractor is not eligible to receive a
30 preference in bidding on public works.

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

36 11. If a bid is submitted by two or more contractors as a joint
37 venture or by one of them as a joint venturer, the bid may receive a
38 preference in bidding only if both or all of the joint venturers
39 separately meet the requirements of subsection 2.

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

43 13. A person who submitted a bid on the public work or an
44 entity who believes that the contractor who was awarded the
45 contract for the public work 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. 10. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 8, 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~~ is *\$1,000,000 or more* 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 *than \$1,000,000* 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 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.

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

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

(a) The bidder is not responsive or responsible;

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

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

6. A local government may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

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

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

(c) The local government 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.

7. Before a local government 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 local government shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the local government 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 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. 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;

(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;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.1685 to 338.16995, inclusive.

Sec. 11. NRS 338.1442 is hereby amended to read as follows:

338.1442 If the estimated cost of a public work is ~~[\$100,000~~
~~or] less [.] than \$1,000,000~~, a local government shall:

1. Award a contract for the completion of the public work to a properly licensed contractor in accordance with NRS 338.1444; or

2. Perform the public work itself in accordance with NRS 338.1446.

Sec. 12. NRS 338.1444 is hereby amended to read as follows:

338.1444 1. Before a local government awards a contract for the completion of a public work in accordance with subsection 1 of NRS 338.1442, the local government must:

(a) If the estimated cost of the public work is more than \$25,000 but ~~[not more]~~ **less** than ~~[\$100,000,]~~ **\$1,000,000**, solicit bids from at least three properly licensed contractors; and

(b) If the estimated cost of the public work is \$25,000 or less, solicit a bid from at least one properly licensed contractor.



2. Any bids received in response to a solicitation for bids made pursuant to this section may be rejected if the local government determines that:

- (a) The quality of the services, materials, equipment or labor offered does not conform to the approved plan or specifications;
- (b) The bidder is not responsive or responsible; or
- (c) The public interest would be served by such a rejection.

3. At least once each quarter, a local government shall prepare a report detailing, for each public work over \$25,000 for which a contract for its completion is awarded pursuant to paragraph (a) of subsection 1, if any:

(a) The name of the contractor to whom the contract was awarded;

(b) The amount of the contract awarded;

(c) A brief description of the public work; and

(d) The names of all contractors from whom bids were solicited.

4. A report prepared pursuant to subsection 3 is a public record and must be maintained on file at the administrative offices of the applicable public body.

5. The provisions of this section do not relieve a local government from the duty to award the contract for the public work to a bidder who is the lowest responsive and responsible bidder if bids are required to be solicited from more than one properly licensed contractor pursuant to subsection 1.

Sec. 13. NRS 338.1446 is hereby amended to read as follows:

338.1446 1. If a local government proposes to perform a public work itself in accordance with subsection 2 of NRS 338.1442, the public officer responsible for the management of the public works of the local government must, if the estimated cost of the public work is more than \$25,000 but ~~not more~~ less than ~~[\$100,000]~~ \$1,000,000 and before work on the public work is commenced, prepare a signed attestation regarding the decision of the local government to perform the public work itself.

2. An attestation prepared pursuant to subsection 1:

(a) Must set forth:

(1) The estimated cost of the public work;

(2) A general statement as to why the local government has decided to perform the public work itself; and

(3) A general statement that the public work will adhere to the same quality and standards as would be required of a properly licensed contractor if the public work had been awarded to a properly licensed contractor; and

(b) Is a public record and must be maintained on file at the administrative offices of the local government.



Sec. 14. NRS 338.147 is hereby amended to read as follows:

338.147 1. Except as otherwise provided in subsection 10 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~~ *is more than \$1,150,000* 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 contractor who:

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

(2) At the time the contractor submits his or her bid, provides 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

(3) Within 2 hours after the completion of the opening of the bids by the local government or its authorized representative, submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117; and

(b) Not more than 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who:

(1) Does not provide, at the time he or she submits the bid, a valid certificate of eligibility to receive a preference in bidding on public works issued to him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

(2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will comply with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,

➤ 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 or her 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 12-



1 month period for 60 months immediately preceding the submission
2 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 or
5 her business in this State of not less than \$5,000 for each
6 consecutive 12-month period for 60 months immediately preceding
7 the submission of the affidavit from the certified public accountant;
8 or

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

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

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

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

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

24 (a) Paid directly, on his or her own behalf:

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

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

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

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

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



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

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

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

8. If a contractor holds more than one contractor's license, the contractor must submit a separate application for each license pursuant to which the contractor 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. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works:

(a) 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; or

(b) Is found by the Board to have, within the preceding 5 years, materially breached a contract for a public work for which the cost exceeds \$5,000,000, the contractor is not eligible to receive a preference in bidding on public works.



10. 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. 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 receive a preference in bidding only if both or all of the joint venturers 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 who submitted a bid on the public work or an entity who believes that the contractor who was awarded the contract for the public work 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

(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.

14. If a local government receives a written objection pursuant to subsection 13, 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. 15. NRS 338.1711 is hereby amended to read as follows:

338.1711 1. Except as otherwise provided in this section and NRS 338.161 to 338.16995, inclusive, a public body shall contract with a prime contractor for the construction of a public work for



1 which the estimated cost ~~exceeds \$100,000.~~ *is \$1,000,000 or*
2 *more.*

3 2. A public body may contract with a design-build team for the
4 design and construction of a public work that is a discrete project if
5 the public body has approved the use of a design-build team for the
6 design and construction of the public work and the public work has
7 an estimated cost which exceeds \$5,000,000.

8 **Sec. 16.** NRS 339.025 is hereby amended to read as follows:

9 339.025 1. Before any contract, except one subject to the
10 provisions of chapter 408 of NRS, ~~exceeding \$100,000~~ for
11 any project for the new construction, repair or reconstruction of any
12 public building or other public work or public improvement of any
13 contracting body *for which the estimated cost is \$1,000,000 or*
14 *more* is awarded to any contractor, the contractor shall furnish to the
15 contracting body the following bonds which become binding upon
16 the award of the contract to the contractor:

17 (a) A performance bond in an amount to be fixed by the
18 contracting body, but not less than 50 percent of the contract
19 amount, conditioned upon the faithful performance of the contract in
20 accordance with the plans, specifications and conditions of the
21 contract. The bond must be solely for the protection of the
22 contracting body which awarded the contract.

23 (b) A payment bond in an amount to be fixed by the contracting
24 body, but not less than 50 percent of the contract amount. The bond
25 must be solely for the protection of claimants supplying labor or
26 materials to the contractor to whom the contract was awarded, or to
27 any of his or her subcontractors, in the prosecution of the work
28 provided for in such contract.

29 2. If a general contractor has been awarded a contract, except
30 one subject to the provisions of chapter 408 of NRS, by the State
31 Public Works Division of the Department of Administration for any
32 project for new construction, repair or reconstruction of any public
33 building or other public work or public improvement, each of the
34 subcontractors of the general contractor who will perform work on
35 the contract that exceeds \$50,000 or 1 percent of the proposed
36 project, whichever amount is greater, shall furnish a bond to the
37 Division in an amount to be fixed by the Division.

38 3. Each of the bonds required pursuant to this section must be
39 executed by one or more surety companies authorized to do business
40 in the State of Nevada. If the contracting body is the State of
41 Nevada or any officer, employee, board, bureau, commission,
42 department, agency or institution thereof, the bonds must be payable
43 to the State of Nevada. If the contracting body is other than one of
44 those enumerated in this subsection, the bonds must be payable to
45 the other contracting body.



4. Each of the bonds must be filed in the office of the contracting body which awarded the contract for which the bonds were given.

5. This section does not prohibit a contracting body from requiring bonds.

Sec. 17. NRS 341.148 is hereby amended to read as follows:

341.148 The Division shall advertise in a newspaper of general circulation in the State of Nevada for separate sealed bids for each construction project whose estimated cost is ~~more than \$100,000.~~ **\$1,000,000 or more.** Approved plans and specifications for the construction 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. The Division may accept bids on either the whole or a part of the construction, equipment and furnishings of a construction project and may let separate contracts for different and separate portions of any project, or a combination contract for structural, mechanical and electrical construction if savings will result to this State.

Sec. 18. NRS 231.1407 is hereby amended to read as follows:

231.1407 1. The Office shall establish goals for:

(a) The submission of bids or proposals by local emerging small businesses for state purchasing contracts and for the awarding of those contracts to local emerging small businesses; and

(b) The submission of bids or proposals by local emerging small businesses for contracts for public works of this State for which the estimated cost is less than ~~[\$100,000]~~ **\$1,000,000** and for the awarding of those contracts to local emerging small businesses.

2. The Office shall encourage:

(a) Local governments to award local purchasing contracts and contracts for public works of the local government to local emerging small businesses;

(b) Local governments to establish goals for the awarding of local purchasing contracts and contracts for public works of the local government to local emerging small businesses; and

(c) Each local government in a county whose population is less than 100,000 to submit reports to the Office that are similar in nature and frequency to the reports required pursuant to NRS 332.201.

3. The Office, in cooperation with the Office of the Governor, shall establish an annual recognition program for the state agencies that meet the goals established pursuant to subsection 1.

Sec. 19. NRS 279.500 is hereby amended to read as follows:

279.500 1. The provisions of NRS 338.010 to 338.090, inclusive, apply to any contract for new construction, repair or



1 reconstruction which is awarded on or after October 1, 1991, by an
2 agency for work to be done in a project.

3 2. If an agency:

4 (a) Provides property for development at less than the fair
5 market value of the property;

6 (b) Provides a loan to a small business pursuant to NRS 279.700
7 to 279.740, inclusive; or

8 (c) Provides financial incentives to a developer with a value of
9 ~~more than \$100,000,~~ **\$1,000,000 or more,**

10 ↪ regardless of whether the project is publicly or privately owned,
11 the agency must provide in the loan agreement with the small
12 business or the agreement with the developer, as applicable, that the
13 development project is subject to the provisions of NRS 338.010 to
14 338.090, inclusive, to the same extent as if the agency had awarded
15 the contract for the project. This subsection applies only to the
16 project covered by the loan agreement between the agency and
17 the small business or the agreement between the agency and the
18 developer, as applicable. This subsection does not apply to future
19 development of the property unless an additional loan, or additional
20 financial incentives with a value of ~~more than \$100,000,~~
21 **\$1,000,000 or more,** are provided to the small business or
22 developer, as applicable.

23 **Sec. 20.** NRS 279.6098 is hereby amended to read as follows:

24 279.6098 1. Except as otherwise provided in subsection 2, a
25 developer that receives incentives from an agency for a
26 redevelopment project shall, upon completion of the project and
27 upon request of the agency, report, in a form prescribed by the
28 agency, information relating to:

29 (a) Outreach efforts that the developer has utilized, including,
30 without limitation, information relating to job fairs, advertisements
31 in publications that reach residents of the areas described in NRS
32 279.6096 and utilization of employment referral agencies;

33 (b) Training conducted for persons hired by the developer and
34 contractors, subcontractors, vendors and suppliers of the developer
35 and the employers within the redevelopment project; and

36 (c) The execution of the redevelopment project, including,
37 without limitation, plans and the scope of services.

38 2. If a developer receives incentives from an agency for a
39 redevelopment project with a value of ~~[\$100,000 or]~~ less ~~[,]~~ **than**
40 **\$1,000,000,** the developer shall use its best efforts to satisfy the
41 reporting requirements described in subsection 1.

42 3. If the developer fails to comply with the requirements of this
43 section:

44 (a) The agency may refuse to pay all or any portion of an
45 incentive; and



1 (b) The agency may require the developer to repay any incentive
2 already paid to the developer.

3 **Sec. 21.** 1. The amendatory provisions of this act do not
4 apply to a public work or other project of construction,
5 reconstruction or redevelopment that is awarded before July 1, 2015.

6 2. As used in this section, “public work” has the meaning
7 ascribed to it in NRS 338.010.

8 **Sec. 22.** This act becomes effective on July 1, 2015.

