

Amendment No. 713

Assembly Amendment to Senate Bill No. 67 First Reprint	(BDR S-400)
Proposed by: Assemblywoman Benitez-Thompson	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



SENATE BILL NO. 67—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF CLARK COUNTY)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Government Affairs

SUMMARY—Creates a pilot program to gather data on the use of job order contracts for certain public works. (BDR S-400)

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; creating a pilot program to gather data on the use of job order contracts for certain public works in Clark County, the City of Henderson, the City of Las Vegas, the City of North Las Vegas and the Clark County Water Reclamation District; temporarily authorizing the governing bodies of those entities to enter into a job order contract for the maintenance, repair, alteration, demolition, renovation, remediation or minor construction of a public work; prescribing the procedure for awarding a job order contract; making certain documents and other information submitted by a person seeking a job order contract confidential until a contract is awarded; prescribing responsibilities of a contractor who enters into a job order contract; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prescribes general procedures for awarding a contract for a public work. (Chapter 338 of NRS) Existing law also authorizes a local government to comply with alternative procedures for awarding a contract for a public work. (NRS 338.1373) **Sections 1 and 15** of this bill establish a 4-year pilot program to gather data on the use of job order contracts for certain public works in Clark County, the City of Henderson, the City of Las Vegas, the City of North Las Vegas and the Clark County Water Reclamation District. As part of that pilot program, **section 7** of this bill authorizes a public body to enter into job order contracts for the maintenance, repair, alteration, demolition, renovation, remediation or minor construction of a public work. **Section 5** of this bill defines "public body" for purposes of this authorization to mean Clark County, the City of Henderson, the City of Las Vegas, the City of North Las Vegas and the Clark County Water Reclamation District. **Section 6** of this bill ~~provides that any requirement prescribed by~~ **requires the Labor Commissioner to enforce the provisions governing public works for a contract for a public work for which the estimated cost for the** ~~of existing law governing public works for a job order contract in the same manner in which he or she enforces those provisions for a contract for a public work~~ **with the same** ~~as the~~ **estimated cost** ~~for~~ **as the job order contract** ~~applies to a job order contract, including certain requirements relating to the use of apprentices and the~~

~~payment of prevailing wages.~~ **Section 7** of this bill requires a job order contract to be for a fixed period and provide for indefinite types and quantities of work and delivery times. **Section 7** ~~also~~ **provides that a job order contract:** (1) ~~provides that a job order contract~~ must not be for work exclusive to one trade for which a license as a specialty contractor is required; and (2) **must require a contractor to prepare and submit a proposal for each job order. Section 7 requires such a proposal to include the proposed price for the job order, each construction task required to perform the job order, the unit price for each such task and the adjustment factor applicable to the performance of the task. Sections 2.3 and 2.5 of this bill define the terms “adjustment factor” and “construction task,” respectively. Section 7 also requires a public body to adopt a written policy for the assignment of job orders and** limits the total dollar amount of job order contracts that may be awarded annually by each public body.

Section 8 of this bill prescribes the qualifications a contractor who wishes to enter into a job order contract must meet. **Section 9** of this bill requires a public body or its authorized representative to advertise requests for proposals or similar solicitation documents for job order contracts. **Section 9** also prescribes: (1) the contents of such advertisements or similar solicitation documents; and (2) requirements for proposals. **Section 10** of this bill makes any document or other information submitted to a public body in response to a request for proposals or similar solicitation document for a job order contract confidential and prohibits the disclosure of any such document or information until notice of intent to award the contract is issued.

Section 11 of this bill prescribes the method for selecting a contractor for a job order contract. Specifically, **section 11** requires a public body or its authorized representative to appoint a panel to rank the proposals submitted in response to the request for proposals and award a job order contract to one or more applicants. **Section 11** limits the initial term of a job order contract to 2 years and authorizes a public body to renew a job order contract for not more than 1 year after the expiration of the initial term of the job order contract or such other period of time as is necessary to complete any outstanding job order issued before the expiration of the initial contract, whichever is sooner.

Section 12 of this bill prescribes certain responsibilities of a contractor who enters into a job order contract relating to contracting for the services of a subcontractor, supplier or ~~independent contractor.~~ **professional. Section 12** also prohibits a contractor who enters into a job order contract from performing more than 50 percent of the estimated cost of a work order himself or herself, or using his or her own employees.

Section 7 requires a job order contract to provide for the use of job orders, which are defined in **section 3** of this bill as an order issued for a definite scope of work to be performed **for a fixed price** pursuant to a job order contract. **Section 13** of this bill requires a contractor to submit a list of each subcontractor whom the contractor intends to engage before ~~performing any work required by~~ **a public body issues** a job order. **Section 14** of this bill requires a public body to submit a quarterly report for the pilot program that contains certain information relating to job order contracts to the **governing body of the public body. Section 14 also requires a governing body to annually submit to** Director of the Legislative Counsel Bureau ~~[-] a written report including the information reported to the governing body during the immediately preceding calendar year.~~ **Section 15** of this bill expires this bill by limitation on June 30, 2025.

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

Section 1. 1. The Legislature hereby finds and declares that:

(a) It is in the best interest of the State to ensure that contracting and bidding procedures for public works in this State are efficient and cost-effective.

(b) The procedures for awarding a contract for a public work authorized by existing law may create barriers to the efficient and cost-effective awarding of contracts for the maintenance, repair, alteration, demolition, renovation, remediation or minor construction of a public work.

(c) Reducing any such barriers will benefit the public and promote the timely completion of certain public works projects that are critical for the health and safety of members of the public who use public buildings and facilities.

(d) The voluminous and unpredictable amount of work for which certain public bodies in large counties in this State must award contracts presents unique challenges for these bodies.

(e) The use of job order contracting eliminates certain administrative burdens associated with traditional procurement methods and enables such a public body to efficiently manage the numerous renovation, repair and maintenance projects required for facilities.

(f) The provisions of this act are not intended to prohibit a public body from awarding a contract for a public work pursuant to any other procedure authorized pursuant to chapter 338 of NRS.

2. The Legislature therefore:

(a) Establishes a pilot program to gather data on the use of job order contracts for the maintenance, repair, alteration, demolition, renovation, remediation and minor construction of a public work; and

(b) Directs each public body in the pilot program to gather and report data on the use of job order contracts in this State in the manner prescribed by section 14 of this act.

Sec. 2. As used in sections 1 to 14, inclusive, of this act, unless the context otherwise requires, the words and terms defined in NRS 338.010 and sections ~~3, 4 and 2, 3 to 5~~ 2, 3 to 5, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 2.3. “Adjustment factor” means the adjustment that is multiplied by a contractor against the unit price listed in the unit price catalog for the job order contract, which must reflect any overhead cost or profit to which a selected contractor is entitled.

Sec. 2.5. “Construction task” means an item of work:

1. That is included in a job order; and

2. For which a unit price is set forth in a unit price catalog or priced using the formula or method prescribed by section 9 of this act.

Sec. 3. “Job order” means an order issued by a public body for a definite scope of work to be performed for a fixed price pursuant to a job order contract.

Sec. 4. “Job order contract” means a contract entered into pursuant to section 11 of this act.

Sec. 5. “Public body” means:

1. Clark County.

2. The City of Henderson.

3. The City of Las Vegas.

4. The City of North Las Vegas.

5. The Clark County Water Reclamation District.

Sec. 6. ~~[Any requirement prescribed by]~~ The Labor Commissioner shall enforce the provisions of chapter 338 of NRS and any regulations adopted pursuant thereto for a job order contract in the same manner in which he or she enforces those provisions for a contract for a public work ~~[for which]~~ with the same estimated cost ~~[for the public work is the same as the estimated cost for a]~~ as the job order contract ~~[applies to the job order contract, including, without limitation, the requirements relating to the use of apprentices prescribed by NRS 338.01165 and the prevailing wage requirements prescribed by NRS 338.020, as applicable.]~~ , including, without limitation, by imposing administrative penalties in accordance with subsections 2 and 3 of NRS 338.015.

1 **Sec. 7.** 1. Except as otherwise provided in ~~subsections~~ subsection 2, and
2 ~~3,~~ a public body may award a job order contract for the maintenance, repair,
3 alteration, demolition, renovation, remediation or minor construction of a public
4 work. A job order contract must:

5 (a) Be for a fixed period;
6 (b) Provide for indefinite times of delivery and indefinite types and quantities
7 of work;

8 (c) Provide for the use of job orders; ~~and~~

9 (d) Require a contractor to prepare and submit a proposal for each job
10 order, which must include, without limitation, a proposed price for the job
11 order, each construction task required to perform the job order, the unit price
12 for each such task and the adjustment factor applicable to the performance of
13 the task; and

14 (e) Not be for work exclusive to one trade for which a license as a specialty
15 contractor is required.

16 2. Except as otherwise provided in subsection 3, a public body may not award
17 more than \$25,000,000 annually in job order contracts.

18 3. ~~Except as otherwise provided in this subsection, if~~ If the total dollar
19 amount of all job order contracts awarded by a public body in any 1 year is less
20 than the maximum dollar amount of job order contracts allowed to be awarded for
21 that year, the difference between those amounts may be added to the total dollar
22 amount of job order contracts that a public body may award in the immediately
23 following year. ~~[, up to a maximum amount of \$50,000,000 in any 1 year.]~~

24 4. A public body shall adopt a written policy for the assignment of job
25 orders, which must include, without limitation, the procedure by which a job
26 order will be issued.

27 **Sec. 8.** To qualify to enter into a job order contract with a public body, a
28 contractor must:

29 1. Not have been found liable for breach of contract with respect to a previous
30 project, other than a breach for legitimate cause, during the 5 years immediately
31 preceding the date of the advertisement for proposals pursuant to section 9 of this
32 act;

33 2. Not have been disqualified from being awarded a contract pursuant to NRS
34 338.017, 338.13845, 338.13895, 338.1475 or 408.333; and

35 3. Be licensed as a contractor pursuant to chapter 624 of NRS.

36 **Sec. 9.** 1. A public body or its authorized representative shall advertise for
37 a job order contract in the manner set forth in paragraph (a) of subsection 1 of NRS
38 338.1385.

39 2. Each request for proposals or similar solicitation document for a job order
40 contract must include, without limitation:

41 (a) A detailed description of the work that the public body expects a contractor
42 to perform, which must include, without limitation:

43 (1) ~~[Any]~~ Construction tasks and any technical specifications for the
44 work;

45 (2) A unit price catalog for units of work; and

46 (3) A description of the formula or method for pricing a unit of work that is
47 not included in the unit price catalog;

48 (b) A statement explaining why the public body elected to use a job order
49 contract for the public work;

50 (c) A statement requiring that a proposal list an adjustment factor; ~~[for each~~
51 ~~unit of work;]~~

52 (d) A description of the qualifications which are required for a contractor,
53 including, without limitation, any certification required;

(e) A description of the bonding requirements for a contractor;
(f) The minimum amount of work committed to the selected contractor under the job order contract;
(g) The proposed form of the job order contract ~~; [which must include, without limitation, the procedure by which a job order will be issued.];~~
(h) A copy of the policy for the assignment of job orders for the job order contract adopted pursuant to section 7 of this act;
(i) A description of the method for pricing a renewal or extension of the job order contract;

~~[(j)] (i)~~ The date by which proposals must be submitted to the public body; and
~~[(k)] (k)~~ A list of the factors and relative weight of the factors that will be used pursuant to section 11 of this act to rank proposals submitted by applicants.

3. A proposal submitted to a public body pursuant to this section must include, without limitation:

(a) The professional qualifications and experience of the applicant;
(b) An adjustment factor ~~; [for each unit of work.];~~
(c) Evidence of the ability of the applicant to obtain the necessary bonding for the work to be required by the public body;
(d) Evidence that the applicant has obtained or has the ability to obtain such insurance as may be required by law;

(e) A statement of whether the applicant has been:
(1) Found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause, during the 5 years immediately preceding the date of the advertisement; or

(2) Disqualified from being awarded a contract pursuant to NRS 338.017, 338.13845, 338.13895, 338.1475 or 408.333; and

(f) Evidence that the applicant is licensed as a contractor pursuant to chapter 624 of NRS.

4. The public body or its authorized representative shall make available to the public the name of each applicant who submits a proposal pursuant to this section.

~~[5. As used in this section, "adjustment factor" means the adjustment a contractor will multiply against the unit price listed in the unit price catalog for the job order contract.]~~

Sec. 10. Except as otherwise provided in subsection 4 of section 9 of this act, any document or other information submitted by an applicant to a public body in response to a request for proposals or similar solicitation document pursuant to section 9 of this act, including, without limitation, a proposal made pursuant to section 9 of this act, is confidential and may not be disclosed until notice of intent to award the contract is issued.

Sec. 11. 1. The public body or its authorized representative shall appoint a panel to rank the proposals submitted by applicants to the public body pursuant to section 9 of this act. At least one member appointed to a panel pursuant to this subsection must have experience in the construction industry.

2. The panel appointed pursuant to subsection 1 shall rank the proposals by:

(a) Verifying that each applicant satisfies the requirements of section 8 of this act; and

(b) Evaluating and assigning a score to each of the proposals based on the factors and relative weight assigned to each factor that the public body specified in the request for proposals.

3. When ranking the proposals, the panel appointed pursuant to subsection 1 shall assign a relative weight of 5 percent to the applicant's possession of a certificate of eligibility to receive a preference in bidding on public works if the applicant submits a signed affidavit that meets the requirements of subsection 1 of

1 NRS 338.0117. If any federal statute or regulation precludes the granting of federal
2 assistance or reduces the amount of that assistance for a particular public work
3 because of the provisions of this subsection, those provisions of this subsection do
4 not apply insofar as their application would preclude or reduce federal assistance
5 for that work.

6 4. Upon receipt of the rankings of the applicants from the panel, the public
7 body or its authorized representative shall award a job order contract to one or more
8 of the applicants.

9 5. The initial term of a job order contract must not exceed 2 years. A public
10 body may renew a job order contract for not more than 1 year after the expiration of
11 the initial term of the contract or such other period of time as is necessary to
12 complete any outstanding job order issued before the expiration of the initial
13 contract, whichever is sooner.

14 **Sec. 12.** 1. A contractor who enters into a job order contract pursuant to
15 section 11 of this act is responsible for:

16 (a) Contracting for the services of any necessary subcontractor, supplier or
17 ~~independent contractor~~ professional necessary to complete a job order;

18 (b) Ensuring a subcontractor complies with the requirements prescribed in
19 subsections 5 and 6 of NRS 338.070; and

20 (c) The performance of and payment to any subcontractor, supplier or
21 ~~independent contractor~~ professional.

22 2. A contractor who enters into a job order contract pursuant to section 11 of
23 this act may not perform more than 50 percent of the estimated cost of the job order
24 himself or herself, or using his or her own employees.

25 3. Except as otherwise provided in subsection 5 of NRS 624.220, a
26 contractor who enters into a job order contract shall not perform specialty
27 contracting in plumbing, electrical, refrigeration, air-conditioning or fire
28 protection without a license for the specialty.

29 **Sec. 13.** ~~{A}~~

30 1. Before a public body issues a job order, a contractor ~~{shall}~~ must submit
31 a list of each subcontractor whom the contractor intends to engage for work on ~~{a}~~
32 the job order. ~~{before performing}~~

33 2. A contractor shall not:

34 (a) Perform any work required by ~~{the}~~ a job order. ~~{A contractor shall notify~~
35 ~~the public body of any substitution made to the list as soon as practicable.}~~ unless
36 the requirements of subsection 1 are met.

37 (b) Substitute a subcontractor for any subcontractor who is named in the
38 list provided pursuant to subsection 1 unless the requirements prescribed by
39 subsection 5 of NRS 338.141 are met.

40 **Sec. 14.** 1. Each quarter, a public body shall provide to the ~~{Director of the~~
41 ~~Legislative Counsel Bureau for transmittal to the Legislature}~~ governing body of
42 the public body a written report containing, for each job order contract, if any:

43 ~~{1.}~~ (a) A list of each job order issued;

44 ~~{2.}~~ (b) The cost of each job order issued; ~~{and}~~

45 ~~{3.}~~ (c) A list of each subcontractor hired to perform work for each job order. ~~{}~~
46 ;

47 (d) A statement regarding whether the contractor is a minority-owned
48 business, a woman-owned business, a veteran-owned business, a business
49 enterprise owned by persons with physical disabilities, a business enterprise
50 owned by persons who are disabled veterans or a local emerging small
51 business; and

52 (e) Any other information requested by the governing body.

1 2. A governing body shall prepare and submit a written report that
2 includes any information provided to the governing body pursuant to
3 subsection 1 for the immediately preceding calendar year to the Director of the
4 Legislative Counsel Bureau for transmittal to:

5 (a) The Legislature at the beginning of each regular session; and

6 (b) The Legislative Commission on or before February 1 of each even-
7 numbered year.

8 3. For the purposes of this section, a business shall be deemed to be
9 owned by a person who possesses characteristics described in paragraph (d) of
10 subsection 1 if:

11 (a) The business is owned by a natural person who possesses those
12 characteristics; or

13 (b) Fifty-one percent of the ownership interest in the business is held by
14 one or more natural persons who possess those characteristics.

15 4. As used in this section, "local emerging small business" has the
16 meaning ascribed to it in NRS 231.1402.

17 Sec. 15. This act becomes effective on ~~July~~ October 1, 2021, and expires
18 by limitation on June 30, 2025.