

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.

~

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:

1 Existing law prescribes general procedures for awarding a contract for a public
2 work. (Chapter 338 of NRS) Existing law also authorizes a local government to
3 comply with alternative procedures for awarding a contract for a public work. (NRS
4 338.1373) **Sections 1 and 15** of this bill establish a 4-year pilot program to gather
5 data on the use of job order contracts for certain public works in Clark County, the
6 City of Henderson, the City of Las Vegas, the City of North Las Vegas and the
7 Clark County Water Reclamation District. As part of that pilot program, **section 7**
8 of this bill authorizes a public body to enter into job order contracts for the



9 maintenance, repair, alteration, demolition, renovation, remediation or minor
10 construction of a public work. **Section 5** of this bill defines "public body" for
11 purposes of this authorization to mean Clark County, the City of Henderson, the
12 City of Las Vegas, the City of North Las Vegas and the Clark County Water
13 Reclamation District. **Section 6** of this bill requires the Labor Commissioner to
14 enforce the provisions of existing law governing public works for a job order
15 contract in the same manner in which he or she enforces those provisions for a
16 contract for a public work with the same estimated cost as the job order contract.
17 **Section 7** of this bill requires a job order contract to be for a fixed period and
18 provide for indefinite types and quantities of work and delivery times. **Section 7**
19 provides that a job order contract: (1) must not be for work exclusive to one trade
20 for which a license as a specialty contractor is required; and (2) must require a
21 contractor to prepare and submit a proposal for each job order. **Section 7** requires
22 such a proposal to include the proposed price for the job order, each construction
23 task required to perform the job order, the unit price for each such task and the
24 adjustment factor applicable to the performance of the task. **Sections 2.3 and 2.5** of
25 this bill define the terms "adjustment factor" and "construction task," respectively.
26 **Section 7** also requires a public body to adopt a written policy for the assignment of
27 job orders and limits the total dollar amount of job order contracts that may be
28 awarded annually by each public body.

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

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

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

54 **Section 7** requires a job order contract to provide for the use of job orders,
55 which are defined in **section 3** of this bill as an order issued for a definite scope of
56 work to be performed for a fixed price pursuant to a job order contract. **Section 13**
57 of this bill requires a contractor to submit a list of each subcontractor whom the
58 contractor intends to engage before a public body issues a job order. **Section 14** of
59 this bill requires a public body to submit a quarterly report for the pilot
60 program that contains certain information relating to job order contracts to the
61 governing body of the public body. **Section 14** also requires a governing body to
62 annually submit to Director of the Legislative Counsel Bureau a written report
63 including the information reported to the governing body during the immediately



64 preceding calendar year. **Section 15** of this bill expires this bill by limitation on
65 June 30, 2025.

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

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

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

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

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

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

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

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

25 2. The Legislature therefore:

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

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

33 **Sec. 2.** As used in sections 1 to 14, inclusive, of this act,
34 unless the context otherwise requires, the words and terms defined
35 in NRS 338.010 and sections 2.3 to 5, inclusive, of this act have the
36 meanings ascribed to them in those sections.

37 **Sec. 2.3.** “Adjustment factor” means the adjustment that is
38 multiplied by a contractor against the unit price listed in the unit



1 price catalog for the job order contract, which must reflect any
2 overhead cost or profit to which a selected contractor is entitled.

3 **Sec. 2.5.** "Construction task" means an item of work:

4 1. That is included in a job order; and

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

8 **Sec. 3.** "Job order" means an order issued by a public body for
9 a definite scope of work to be performed for a fixed price pursuant
10 to a job order contract.

11 **Sec. 4.** "Job order contract" means a contract entered into
12 pursuant to section 11 of this act.

13 **Sec. 5.** "Public body" means:

14 1. Clark County.

15 2. The City of Henderson.

16 3. The City of Las Vegas.

17 4. The City of North Las Vegas.

18 5. The Clark County Water Reclamation District.

19 **Sec. 6.** The Labor Commissioner shall enforce the provisions
20 of chapter 338 of NRS and any regulations adopted pursuant thereto
21 for a job order contract in the same manner in which he or she
22 enforces those provisions for a contract for a public work with the
23 same estimated cost as the job order contract, including, without
24 limitation, by imposing administrative penalties in accordance with
25 subsections 2 and 3 of NRS 338.015.

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

30 (a) Be for a fixed period;

31 (b) Provide for indefinite times of delivery and indefinite types
32 and quantities of work;

33 (c) Provide for the use of job orders;

34 (d) Require a contractor to prepare and submit a proposal for
35 each job order, which must include, without limitation, a proposed
36 price for the job order, each construction task required to perform
37 the job order, the unit price for each such task and the adjustment
38 factor applicable to the performance of the task; and

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

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

44 3. If the total dollar amount of all job order contracts awarded
45 by a public body in any 1 year is less than the maximum dollar



1 amount of job order contracts allowed to be awarded for that year,
2 the difference between those amounts may be added to the total
3 dollar amount of job order contracts that a public body may award
4 in the immediately following year.

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

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

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

14 2. Not have been disqualified from being awarded a contract
15 pursuant to NRS 338.017, 338.13845, 338.13895, 338.1475 or
16 408.333; and

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

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

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

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

26 (1) Construction tasks and any technical specifications for
27 the work;

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

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

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

33 (c) A statement requiring that a proposal list an adjustment
34 factor;

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

37 (e) A description of the bonding requirements for a contractor;

38 (f) The minimum amount of work committed to the selected
39 contractor under the job order contract;

40 (g) The proposed form of the job order contract;

41 (h) A copy of the policy for the assignment of job orders for the
42 job order contract adopted pursuant to section 7 of this act;

43 (i) A description of the method for pricing a renewal or
44 extension of the job order contract;



(j) The date by which proposals must be submitted to the public body; and

(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;

(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.

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 NRS 338.0117. 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 this subsection, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that work.

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

5. The initial term of a job order contract must not exceed 2 years. A public body may renew a job order contract for not more than 1 year after the expiration of the initial term of the 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.

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

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

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

(c) The performance of and payment to any subcontractor, supplier or professional.

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

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

Sec. 13. 1. Before a public body issues a job order, a contractor must submit a list of each subcontractor whom the contractor intends to engage for work on the job order.

2. A contractor shall not:

(a) Perform any work required by a job order unless the requirements of subsection 1 are met.

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



Sec. 14. 1. Each quarter, a public body shall provide to the governing body of the public body a written report containing, for each job order contract, if any:

(a) A list of each job order issued;

(b) The cost of each job order issued;

(c) A list of each subcontractor hired to perform work for each job order;

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

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

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

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

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

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

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

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

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

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

