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Proposed amendment to Senate Bill No. 19 for consideration of the Senate Committee on Government Affairs

Proposed by Mary Walker

Section 1. Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *If the estimated cost of a public work is \$100,000 or less, this state or a local government shall:*

1. *Award a contract for the completion of the project to a properly licensed contractor in accordance with section 3 of this act; or*

2. *Perform the project itself in accordance with section 4 of this act.*

Sec. 3. 1. *Before this state or a local government awards a contract for the completion of a public works project in accordance with subsection 1 of section 2 of this act, the State or the local government must:*

(a) *If the estimated cost of the public work is more than \$25,000 but not more than \$100,000, 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:*

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

~~(b) *As evidenced in a detailed written explanation setting forth the reasons for the determination, that:*~~

~~(b) (1) *The bidder is not responsive or responsible; or*~~

~~(c) (2) *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 works project 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 project; 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 or a local government from the duty to award the contract for the public work to a bidder who:*

~~(a) *Is is qualified pursuant to the applicable provisions of NRS 338.1375 to 338.1383, inclusive, and*~~

~~(b) *Submits the best bid, as determined pursuant to NRS 338.1389, if bids are required to be solicited from more than one properly licensed contractor pursuant to subsection 1.*~~

Sec. 4. 1. *Before this state or a local government the public officer responsible for the management of its public works projects commences work on a public works project that the State or the local government has elected to perform itself in accordance with subsection 2 of section 2 of this act, the State or the local government public officer responsible for the management of its public works projects must, if the estimated cost of the public work is more than \$25,000 but not more than \$100,000, prepare a signed attestation regarding the decision of the State or the local government to perform the project itself.*

2. *An attestation prepared pursuant to subsection 1:*

(a) *Must set forth:*

(1) *The estimated cost of the project;*

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

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

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

Sec. 5. If the estimated cost of a public work is \$100,000 or less, a local government shall:

1. Award a contract for the completion of the project to a properly licensed contractor in accordance with section 6 of this act; or
2. Perform the project itself in accordance with section 7 of this act.

Sec. 6. 1. Before a local government awards a contract for the completion of a public works project in accordance with subsection 1 of section 5 of this act, the local government must:

(a) If the estimated cost of the public work is more than \$25,000 but not more than \$100,000, 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:

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

~~(b) As evidenced in a detailed written explanation setting forth the reasons for the determination, that:~~

~~(b)(1) The bidder is not responsive or responsible; or~~

~~(c)(2) 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 works project 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 project; 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 submits the best bid, as determined pursuant to NRS 338.147, the lowest responsive and responsible bidder, if bids are required to be solicited from more than one properly licensed contractor pursuant to subsection 1 of this section.

Sec. 7. 1. ~~Before a local government the public officer responsible for the management of its public works projects commences work on a public works project that the local government has elected to perform itself in accordance with subsection 2 of section 5 of this act, the local government public officer responsible for the management of its public works projects must, if the estimated cost of the public work is more than \$25,000 but not more than \$100,000, prepare a signed attestation regarding the decision of the local government to perform the project itself.~~

2. An attestation prepared pursuant to subsection 1:

(a) Must set forth:

(1) The estimated cost of the project;

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

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

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

Sec. 8. NRS 338.010 is hereby amended to read as follows:

338.010 As used in this chapter:

1. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a workman or workmen employed by them on public works by the day and not under a contract in writing.

2. "Design-build contract" means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.

3. "Design-build team" means an entity that consists of:
- (a) At least one person who is licensed as a general engineering contractor or a general building contractor pursuant to chapter 624 of NRS; and
  - (b) For a public work that consists of:
    - (1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.
    - (2) Anything other than a building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS or is licensed as a professional engineer pursuant to chapter 625 of NRS.
4. "Design professional" means:
- (a) A person who is licensed as a professional engineer pursuant to chapter 625 of NRS;
  - (b) A person who is licensed as a professional land surveyor pursuant to chapter 625 of NRS;
  - (c) A person who holds a certificate of registration to engage in the practice of architecture pursuant to chapter 623 of NRS;
  - (d) A person who holds a certificate of registration to engage in the practice of landscape architecture pursuant to chapter 623A of NRS; or
  - (e) A business entity that engages in the practice of professional engineering, land surveying, architecture or landscape architecture.
5. "Eligible bidder" means a person who is:
- (a) Found to be a responsible and responsive contractor by a local government which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or
  - (b) Determined by a public body which awarded a contract for a public work pursuant to NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or was exempt from meeting such qualifications pursuant to NRS 338.1383.
6. "General contractor" means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business:
- (a) General engineering contracting, as described in subsection 2 of NRS 624.215.
  - (b) General building contracting, as described in subsection 3 of NRS 624.215.
7. "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision. "Local government" includes an authorized representative of the local government if one is designated by the local government to be responsible for the development and award of contracts for public works projects for the local government.
8. "Offense" means failing to:
- (a) Pay the prevailing wage required pursuant to this chapter;
  - (b) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS;
  - (c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; or
  - (d) Comply with subsection 4 or 5 of NRS 338.070.
9. "Prime contractor" means a person who:
- (a) Contracts to construct an entire project;
  - (b) Coordinates all work performed on the entire project;
  - (c) Uses his own workforce to perform all or a part of the construction, repair or reconstruction of the project; and
  - (d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors.
- The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to NRS 338.139 or 338.148.
10. "Public body" means the State, county, city, town, school district or any public agency of this state or its political subdivisions sponsoring or financing a public work.
11. "Public work" means any project for the new construction, repair or reconstruction of:
- (a) A project financed in whole or in part from public money for:
    - (1) Public buildings;

- (2) Jails and prisons;
- (3) Public roads;
- (4) Public highways;
- (5) Public streets and alleys;
- (6) Public utilities which are financed in whole or in part by public money;
- (7) Publicly owned water mains and sewers;
- (8) Public parks and playgrounds;
- (9) Public convention facilities which are financed at least in part with public ~~[[funds;]]~~ money; and

(10) All other publicly owned works and property . ~~[[whose cost as a whole exceeds \$20,000. Each separate unit that is a part of a project is included in the cost of the project to determine whether a project meets that threshold.]]~~

(b) A building for the University and Community College System of Nevada of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this state or from federal money.

12. "Specialty contractor" means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

13. "Stand-alone underground utility project" means an underground utility project that is not integrated into a larger project, including, without limitation:

(a) An underground sewer line or an underground pipeline for the conveyance of water, including facilities appurtenant thereto; and

(b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto, that is not located at the site of a public work for the design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 338.1711.

14. "Wages" means:

(a) The basic hourly rate of pay; and

(b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the workman.

16. "Workman" means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman. The term does not include a design professional.

**Sec. 9.** NRS 338.1373 is hereby amended to read as follows:

338.1373 1. A local government shall award a contract for the construction, alteration or repair of a public work pursuant to the provisions of:

(a) NRS 338.1377 to 338.139, inclusive ~~[[;]]~~, and sections 2, 3 and 4 of this act; or

(b) NRS 338.143 to 338.148, inclusive ~~[[;]]~~, and sections 5, 6 and 7 of this act.

2. The provisions of NRS 338.1375 to 338.1383, inclusive, and 338.139 do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.313 to 408.433, inclusive.

**Sec. 10.** NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection ~~[[7]]~~ 6 and NRS 338.1906 and 338.1907, this state, or a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents the State or the local government, shall not:

(a) Commence such a project for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper of general circulation in this state for bids for the project; ~~[[or]]~~

(b) Commence such a project for which the estimated cost is \$100,000 or less unless it complies with the provisions of sections 2, 3 and 4 of this act; or

(c) Divide such a project into separate portions to avoid the requirements of paragraph (a) ~~[[;]]~~

~~2. Except as otherwise provided in subsection 7, a public body that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than \$25,000 but less than \$100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the~~

construction, alteration or repair of a public work. The public body shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the public body to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.

~~3.~~ or (b).

2. Each advertisement for bids must include a provision that sets forth:

- (a) The requirement that a contractor must be qualified pursuant to NRS 338.1379 to bid on the contract or must be exempt from meeting such qualifications pursuant to NRS 338.1383; and
- (b) The period during which an application to qualify as a bidder on the contract must be submitted.

~~1.~~ 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 project must be awarded on the basis of bids received.

~~5.~~ 4. Any bids received in response to an advertisement for bids may be rejected if the person responsible for awarding the contract determines that:

- (a) The bidder is not a qualified bidder pursuant to NRS 338.1379, unless the bidder is exempt from meeting such qualifications pursuant to NRS 338.1383;
- (b) The bidder is not responsive ~~to~~ or responsible;
- (c) The quality of the services, materials, equipment or labor offered does not conform to the approved plan or specifications; or
- (d) The public interest would be served by such a rejection.

~~6.~~ 5. Before the State or a local government may commence a project subject 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, it shall prepare and make available for public inspection a written statement containing:

- (a) A list of all persons, including supervisors, whom the State or the local government intends to assign to the project, together with their classifications and an estimate of the direct and indirect costs of their labor;
- (b) A list of all equipment that the State or the local government intends to use on the project, 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 project;
- (d) An estimate of the total cost of the project; and
- (e) An estimate of the amount of money the State or the local government expects to save by rejecting the bids and performing the project itself.

~~7.~~ 6. This section does not apply to:

- (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;
- (b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;
- (c) Normal maintenance of the property of a school district;
- (d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993; or
- (e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727.

Sec. 11. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection ~~8.~~ 7, this state, or a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents the State or the local government, shall not:

- (a) Commence such a project for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper of general circulation in this state for bids for the project; ~~or~~
- (b) Commence such a project for which the estimated cost is \$100,000 or less unless it complies with the provisions of sections 2, 3 and 4 of this act; or
- (c) Divide such a project into separate portions to avoid the requirements of paragraph (a) ~~or~~.

~~2.~~ Except as otherwise provided in subsection ~~8~~, a public body that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than \$25,000 but less than \$100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The public body shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the public body to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.

~~3.~~ or (b).

2. Each advertisement for bids must include a provision that sets forth:

(a) The requirement that a contractor must be qualified pursuant to NRS 338.1379 to bid on the contract or must be exempt from meeting such qualifications pursuant to NRS 338.1383; and

(b) The period during which an application to qualify as a bidder on the contract must be submitted.

~~4.~~ 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 project must be awarded on the basis of bids received.

~~5.~~ 4. Any bids received in response to an advertisement for bids may be rejected if the person responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379, unless the bidder is exempt from meeting such qualifications pursuant to NRS 338.1383;

(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 plan or specifications; or

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

~~6.~~ 5. Before the State or a local government may commence a project subject 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, it shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the State or the local government intends to assign to the project, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the State or the local government intends to use on the project, 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 project;

(d) An estimate of the total cost of the project; and

(e) An estimate of the amount of money the State or the local government expects to save by rejecting the bids and performing the project itself.

~~7.~~ 6. In preparing the estimated cost of a project pursuant to subsection ~~6.~~ 5, the State or a local government must include the fair market value of, or, if known, the actual cost of, all materials, supplies, labor and equipment to be used for the project.

~~8.~~ 7. 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; or

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

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

**Sec. 12.** NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in *sections 2 and 4 of this act*, NRS 338.1385 and 338.1711 to 338.1727, inclusive, a public body shall award a contract for a public work to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, for the purposes of this section, a contractor who:

(a) Has been determined by the public body to be a qualified bidder pursuant to NRS 338.1379 or is exempt from meeting such requirements pursuant to NRS 338.1373 or 338.1383; and

(b) At the time he submits his bid, provides to the public body a copy of a certificate of eligibility to receive a preference in bidding on public works issued to him by the State Contractors' Board pursuant to subsection 3 or 4,

shall be deemed to have submitted a better bid than a competing contractor who has not provided a copy of such a valid certificate of eligibility if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.

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 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 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 own behalf:

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

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

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

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

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

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

5. 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 for the annual renewal of his contractor's license pursuant to NRS 624.283, submit to the Board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain his 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 he 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, he must submit a separate application for each license pursuant to which he wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

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

10. 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. The provisions of subsection 2 do not apply to any contract for a public work which is expected to cost less than \$250,000.

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 provisions of subsection 2 apply only if both or all of the joint venturers separately meet the requirements of that subsection.

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 or entity who believes that a contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the public body to which the contractor has submitted a bid or proposal 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 at or after the time at which the contractor submitted the bid or proposal to the public body and before the time at which the public body awards the contract for which the bid or proposal was submitted.

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 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 may proceed to award the contract accordingly.

Sec. 13. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection ~~{6}~~ 5 and NRS 338.1907, a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents that local government, shall not:

(a) Commence such a project for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper of general circulation in this state for bids for the project; ~~{6}~~

(b) Commence such a project for which the estimated cost is \$100,000 or less unless it complies with the provisions of sections 5, 6 and 7 of this act; or

(c) Divide such a project into separate portions to avoid the requirements of paragraph (a) [

~~2.~~ Except as otherwise provided in subsection 6, a local government that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than \$25,000 but less than \$100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The local government shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the local government to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.

~~3.] or (b).~~

2. 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 project must be awarded on the basis of bids received.

~~[4.]~~ 3. Any bids received in response to an advertisement for bids may be rejected if the person 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 plan or specifications; or

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

~~[5.]~~ 4. Before a local government may commence a project subject 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, it 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 project, 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 project, 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 project;

(d) An estimate of the total cost of the project; and

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the project itself.

~~[6.]~~ 5. This section does not apply to:

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

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

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

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

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

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

338.143 1. Except as otherwise provided in subsection ~~[7.]~~ 6, a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents that local government, shall not:

(a) Commence such a project for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper of general circulation in this state for bids for the project; ~~[or]~~

(b) Commence such a project for which the estimated cost is \$100,000 or less unless it complies with the provisions of sections 5, 6 and 7 of this act; or

(c) Divide such a project into separate portions to avoid the requirements of paragraph (a) [

~~2.~~ Except as otherwise provided in subsection 7, a local government that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than \$25,000 but less than \$100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The local government shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the local government to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.

~~3.~~ or (b).

2. 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 project must be awarded on the basis of bids received.

~~4.~~ 3. Any bids received in response to an advertisement for bids may be rejected if the person 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 plan or specifications; or
- (c) The public interest would be served by such a rejection.

~~5.~~ 4. Before a local government may commence a project subject 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, it 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 project, 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 project, 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 project;
- (d) An estimate of the total cost of the project; and
- (e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the project itself.

~~6.~~ 5. In preparing the estimated cost of a project pursuant to subsection ~~5.~~ 4, a local government must include the fair market value of, or, if known, the actual cost of, all materials, supplies, labor and equipment to be used for the project.

~~7.~~ 6. This section does not apply to:

- (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;
- (b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;
- (c) Normal maintenance of the property of a school district;
- (d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993; or
- (e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive.

**Sec. 15.** NRS 338.147 is hereby amended to read as follows:

338.147 1. Except as otherwise provided in *sections 5 and 7 of this act*, NRS 338.143 and 338.1711 to 338.1727, inclusive, a local government shall award a contract for a public work to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, for the purposes of this section, a contractor who:

(a) Has been found to be a responsible and responsive contractor by the local government; and

(b) At the time he submits his bid, provides to the local government a copy of a certificate of eligibility to receive a preference in bidding on public works issued to him by the State Contractors' Board pursuant to subsection 3 or 4,

shall be deemed to have submitted a better bid than a competing contractor who has not provided a copy of such a valid certificate of eligibility if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.

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 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 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 own behalf:

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

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

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

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

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

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

5. 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 annual renewal of his contractor's license pursuant to NRS 624.283, submit to the Board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain his 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 he 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, he must submit a separate application for each license pursuant to which he wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

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

10. 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. The provisions of subsection 2 do not apply to any contract for a public work which is expected to cost less than \$250,000.

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 provisions of subsection 2 apply only if both or all of the joint venturers separately meet the requirements of that subsection.

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 or entity who believes that a contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the public body to which the contractor has submitted a bid or proposal on a contract for the completion 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 at or after the time at which the contractor submitted the bid or proposal to the public body and before the time at which the public body awards the contract for which the bid or proposal was submitted.

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 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 may proceed to award the contract accordingly.

**Sec. 16.** NRS 341.148 is hereby amended to read as follows:

341.148 ~~{1. Except as otherwise provided in subsection 2, the}~~ The Board 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*. 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 Board 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 the lowest responsible and responsive bidder.

~~{2. The Board is not required to advertise for sealed bids for construction projects if the estimated cost is less than \$25,000, but the Board may solicit firm written bids from not less than two licensed contractors doing business in the area and may award the contract to the lowest responsible and responsive bidder or reject all bids.}~~

**Sec. 17.** NRS 341.166 is hereby amended to read as follows:

341.166 1. The Board may, with the approval of the Interim Finance Committee when the Legislature is not in regular or special session, or with the approval of the Legislature by

concurrent resolution when the Legislature is in regular or special session, enter into a contract for services with a contractor licensed pursuant to chapter 624 of NRS to assist the Board:

(a) In the development of designs, plans, specifications and estimates of costs for a proposed construction project.

(b) In the review of designs, plans, specifications and estimates of costs for a proposed construction project to ensure that the designs, plans, specifications and estimates of costs are complete and that the project is feasible to construct.

2. The Board is not required to advertise for bids for a contract for services pursuant to subsection 1, but may solicit bids from not fewer than three licensed contractors and may award the contract to the lowest responsible and responsive bidder.

3. The Board shall adopt regulations establishing procedures for:

(a) The determination of the qualifications of contractors to bid for the contracts for services described in subsection 1.

(b) The bidding and awarding of such contracts.

4. If a proposed construction project for which a contractor is awarded a contract for services by the Board pursuant to subsection 1 is advertised pursuant to NRS ~~[341.148.]~~ 338.1385, that contractor may submit a bid for the contract for the proposed construction project if he is qualified pursuant to NRS ~~[338.1377.]~~ 338.1375.

**Sec. 18.** 1. This section and sections 1 to 10, inclusive, 12, 13, 15, 16 and 17 of this act become effective on October 1, 2003.

2. Sections 10 and 13 of this act expire by limitation on April 30, 2013.

3. Sections 11 and 14 of this act become effective at 12:01 a.m. on May 1, 2013.