

ASSEMBLY BILL NO. 295—ASSEMBLYMEN McCLAIN, CLABORN, OHRENSCHALL, ATKINSON, GIBBONS, ANDERSON, ANDONOV, ARBERRY, BEERS, CARPENTER, CHRISTENSEN, COLLINS, CONKLIN, GIUNCHIGLIANI, GRADY, GRIFFIN, HETTRICK, KNECHT, KOIVISTO, MANENDO, PARKS, PIERCE, SHERER AND WILLIAMS (BY REQUEST)

MARCH 13, 2003

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing criteria for determining qualification of bidders on public works of local governments. (BDR 28-747)

FISCAL NOTE: Effect on Local Government: Yes.
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; allowing the governing body of a local government, in certain circumstances, to deem a person to be qualified to bid on contracts for public works of the local government; establishing requirements relating to the advertisement of the acceptance of certain applications to qualify as a bidder on a contract for a public work; revising the provisions governing the criteria for determining the qualification of bidders on public works of local governments; expanding the circumstances in which a subcontractor who is named in a bid on a contract for a public work of a local government may be substituted; and providing other matters properly relating thereto.

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



* A B 2 9 5 R 1 *

1 **Section 1.** Chapter 338 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2.** *In lieu of adopting criteria pursuant to NRS 338.1377
4 and determining the qualification of bidders pursuant to NRS
5 338.1379, the governing body of a local government may deem a
6 person to be qualified to bid on contracts for public works of the
7 local government if the person has been determined pursuant to
8 NRS 338.1379 by:*

9 *1. The State Public Works Board to be qualified to bid on
10 contracts for public works of the State pursuant to the criteria set
11 forth in NRS 338.1375; or*

12 *2. The governing body of another local government to be
13 qualified to bid on contracts for public works of that local
14 government pursuant to the criteria set forth in NRS 338.1377.*

15 **Sec. 3.** *1. Before the governing body of a local government
16 accepts applications pursuant to NRS 338.1379, the governing
17 body must, in accordance with subsection 2, advertise in a
18 newspaper that is:*

19 *(a) Qualified pursuant to the provisions of chapter 238 of
20 NRS; and*

21 *(b) Published in a county in which the contracts for the
22 potential public works will be performed or, if no qualified
23 newspaper is published in that county, published in a qualified
24 newspaper that is published in the State of Nevada and which has
25 a general circulation in the county in which the contracts for the
26 potential public works will be performed.*

27 *2. An advertisement required pursuant to subsection 1:*

28 *(a) Must be published at least once not less than 21 days
29 before applications are to be submitted to the governing body; and*

30 *(b) Must include:*

31 *(1) A description of the potential public works for which
32 applications to qualify as a bidder are being accepted;*

33 *(2) The time and place at which applications are to be
34 submitted to the governing body;*

35 *(3) The place at which applications may be obtained; and*

36 *(4) Any other information that the governing body deems
37 necessary.*

38 **Sec. 4.** NRS 338.010 is hereby amended to read as follows:

39 338.010 As used in this chapter:

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



- 1 2. "Design-build contract" means a contract between a public
2 body and a design-build team in which the design-build team agrees
3 to design and construct a public work.
- 4 3. "Design-build team" means an entity that consists of:
5 (a) At least one person who is licensed as a general engineering
6 contractor or a general building contractor pursuant to chapter 624
7 of NRS; and
8 (b) For a public work that consists of:
9 (1) A building and its site, at least one person who holds a
10 certificate of registration to practice architecture pursuant to chapter
11 623 of NRS.
12 (2) Anything other than a building and its site, at least one
13 person who holds a certificate of registration to practice architecture
14 pursuant to chapter 623 of NRS or is licensed as a professional
15 engineer pursuant to chapter 625 of NRS.
- 16 4. "Design professional" means:
17 (a) A person who is licensed as a professional engineer pursuant
18 to chapter 625 of NRS;
19 (b) A person who is licensed as a professional land surveyor
20 pursuant to chapter 625 of NRS;
21 (c) A person who holds a certificate of registration to engage in
22 the practice of architecture pursuant to chapter 623 of NRS;
23 (d) A person who holds a certificate of registration to engage in
24 the practice of landscape architecture pursuant to chapter 623A of
25 NRS; or
26 (e) A business entity that engages in the practice of professional
27 engineering, land surveying, architecture or landscape architecture.
- 28 5. "Eligible bidder" means a person who is:
29 (a) Found to be a responsible and responsive contractor by a
30 local government which requests bids for a public work in
31 accordance with paragraph (b) of subsection 1 of NRS 338.1373; or
32 (b) Determined by a public body which awarded a contract for a
33 public work pursuant to NRS 338.1375 to 338.139, inclusive, to be
34 qualified to bid on that contract pursuant to NRS 338.1379 *or*
35 *section 2 of this act* or was exempt from meeting such qualifications
36 pursuant to NRS 338.1383.
- 37 6. "General contractor" means a person who is licensed to
38 conduct business in one, or both, of the following branches of the
39 contracting business:
40 (a) General engineering contracting, as described in subsection 2
41 of NRS 624.215.
42 (b) General building contracting, as described in subsection 3 of
43 NRS 624.215.
- 44 7. "Local government" means every political subdivision or
45 other entity which has the right to levy or receive money from ad



1 valorem or other taxes or any mandatory assessments, and includes,
2 without limitation, counties, cities, towns, boards, school districts
3 and other districts organized pursuant to chapters 244A, 309, 318,
4 379, 474, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
5 inclusive, and any agency or department of a county or city which
6 prepares a budget separate from that of the parent political
7 subdivision.

8 8. "Offense" means failing to:
9 (a) Pay the prevailing wage required pursuant to this chapter;
10 (b) Pay the contributions for unemployment compensation
11 required pursuant to chapter 612 of NRS;
12 (c) Provide and secure compensation for employees required
13 pursuant to chapters 616A to 617, inclusive, of NRS; or
14 (d) Comply with subsection 4 or 5 of NRS 338.070.

15 9. "Prime contractor" means a person who:
16 (a) Contracts to construct an entire project;
17 (b) Coordinates all work performed on the entire project;
18 (c) Uses his own workforce to perform all or a part of the
19 construction, repair or reconstruction of the project; and
20 (d) Contracts for the services of any subcontractor or
21 independent contractor or is responsible for payment to any
22 contracted subcontractors or independent contractors.

23 The term includes, without limitation, a general contractor or a
24 specialty contractor who is authorized to bid on a project pursuant to
25 NRS 338.139 or 338.148.

26 10. "Public body" means the State, county, city, town, school
27 district or any public agency of this state or its political subdivisions
28 sponsoring or financing a public work.

29 11. "Public work" means any project for the new construction,
30 repair or reconstruction of:

31 (a) A project financed in whole or in part from public money
32 for:

- 33 (1) Public buildings;
- 34 (2) Jails and prisons;
- 35 (3) Public roads;
- 36 (4) Public highways;
- 37 (5) Public streets and alleys;
- 38 (6) Public utilities which are financed in whole or in part by
39 public money;
- 40 (7) Publicly owned water mains and sewers;
- 41 (8) Public parks and playgrounds;
- 42 (9) Public convention facilities which are financed at least in
43 part with public funds; and

44 (10) All other publicly owned works and property whose cost
45 as a whole exceeds \$20,000. Each separate unit that is a part of a



1 project is included in the cost of the project to determine whether a
2 project meets that threshold.

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

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

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

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

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

20 14. "Wages" means:

21 (a) The basic hourly rate of pay; and

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

26 15. "Workman" means a skilled mechanic, skilled workman,
27 semiskilled mechanic, semiskilled workman or unskilled workman.
28 The term does not include a design professional.

29 **Sec. 5.** NRS 338.1373 is hereby amended to read as follows:

30 338.1373 1. A local government shall award a contract for
31 the construction, alteration or repair of a public work pursuant to the
32 provisions of:

33 (a) NRS 338.1377 to 338.139, inclusive ~~{-}~~, *and sections 2 and*
34 *3 of this act;* or

35 (b) NRS 338.143 to 338.148, inclusive.

36 2. The provisions of NRS 338.1375 to 338.1383, inclusive, and
37 338.139 do not apply with respect to contracts for the construction,
38 reconstruction, improvement and maintenance of highways that are
39 awarded by the Department of Transportation pursuant to NRS
40 408.313 to 408.433, inclusive.

41 **Sec. 6.** NRS 338.1377 is hereby amended to read as follows:

42 338.1377 ~~{-}~~ Except as otherwise provided in NRS 338.1383
43 ~~{-}~~ *and section 2 of this act*, the governing body of each local
44 government that sponsors or finances a public work shall adopt *the*
45 *following* criteria for ~~{the-qualification-of-bidders}~~ *determining*



1 *whether a person who has applied pursuant to NRS 338.1379 is*
2 *qualified to bid* on contracts for public works of the local
3 government ~~[The governing body shall use the criteria to determine~~
4 ~~the qualification of bidders on contracts for public works of the local~~
5 ~~government.~~
6 ~~2. Before adopting criteria pursuant to this section, the~~
7 ~~governing body of a local government shall hold at least one public~~
8 ~~hearing to solicit and evaluate public opinion regarding the criteria~~
9 ~~to be adopted. Notice of such a hearing must be provided by mail at~~
10 ~~least 10 days before the hearing to:~~
11 ~~—(a) Construction trade associations in this state; and~~
12 ~~—(b) Labor unions representing trades in the building industry in~~
13 ~~this state.~~
14 ~~3. The criteria adopted by a governing body pursuant to this~~
15 ~~section to determine whether an applicant is qualified to bid on a~~
16 ~~contract for a public work:~~
17 ~~—(a) Must be adopted in such a form that the determination of~~
18 ~~whether an applicant is qualified to bid on a contract for a public~~
19 ~~work does not require or allow the exercise of discretion by any one~~
20 ~~person.~~
21 ~~—(b) May include only:~~
22 ~~—(1) The financial ability of the applicant to perform a~~
23 ~~contract;~~
24 ~~—(2) The principal personnel of the applicant;~~
25 ~~—(3)]:~~
26 *1. Whether the applicant possesses a valid contractor's*
27 *license of a class corresponding to the work to be required by the*
28 *local government;*
29 *2. Whether the applicant has the ability to obtain the*
30 *necessary bonding for the work to be required by the local*
31 *government;*
32 *3. Whether the applicant has successfully completed one or*
33 *more projects during the 5 years immediately preceding the date of*
34 *application of similar size, scope or type as the work to be required*
35 *by the local government;*
36 *4. Whether the principal personnel employed by the applicant*
37 *have the necessary professional qualifications and experience for*
38 *the work to be required by the local government;*
39 *5. Whether the applicant has breached any contracts with a*
40 *public agency or person in this state or any other state* ~~[; and~~
41 ~~—(4)]~~ *during the 5 years immediately preceding the date of*
42 *application;*
43 *6. Whether the applicant has been disqualified from being*
44 *awarded a contract pursuant to NRS 338.017 or 338.1387* ~~[;];~~



- 1 7. *Whether the applicant has been convicted of a violation for*
- 2 *discrimination in employment during the 2 years immediately*
- 3 *preceding the date of application;*
- 4 8. *Whether the applicant has the ability to obtain and*
- 5 *maintain insurance coverage for public liability and property*
- 6 *damage within limits sufficient to protect the applicant and all the*
- 7 *subcontractors of the applicant from claims for personal injury,*
- 8 *accidental death and damage to property that may arise in*
- 9 *connection with the work to be required by the local government;*
- 10 9. *Whether the applicant has established a safety program*
- 11 *that complies with the requirements of chapter 618 of NRS;*
- 12 10. *Whether the applicant has been disciplined or fined by*
- 13 *the State Contractors' Board or another state or federal agency for*
- 14 *conduct that relates to the ability of the applicant to perform the*
- 15 *work to be required by the local government;*
- 16 11. *Whether, during the 5 years immediately preceding the*
- 17 *date of application, the applicant has filed as a debtor under the*
- 18 *provisions of the United States Bankruptcy Code;*
- 19 12. *Whether the application of the applicant is truthful and*
- 20 *complete; and*
- 21 13. *Whether, during the 5 years immediately preceding the*
- 22 *date of application, the applicant has, as a result of causes within*
- 23 *the control of the applicant or a subcontractor or supplier of the*
- 24 *applicant, failed to perform any contract:*
- 25 (a) *In the manner specified by the contract and any change*
- 26 *orders initiated or approved by the person or governmental entity*
- 27 *that awarded the contract or its authorized representative;*
- 28 (b) *Within the time specified by the contract unless extended*
- 29 *by the person or governmental entity that awarded the contract or*
- 30 *its authorized representative; or*
- 31 (c) *For the amount of money specified in the contract or as*
- 32 *modified by any change orders initiated or approved by the person*
- 33 *or governmental entity that awarded the contract or its authorized*
- 34 *representative.*
- 35 *Evidence of the failures described in this subsection may include,*
- 36 *without limitation, the assessment of liquidated damages against*
- 37 *the applicant, the forfeiture of any bonds posted by the applicant,*
- 38 *an arbitration award granted against the applicant or a decision*
- 39 *by a court of law against the applicant.*
- 40 **Sec. 7.** NRS 338.1379 is hereby amended to read as follows:
- 41 338.1379 1. Except as otherwise provided in NRS 338.1383
- 42 **§** *and section 2 of this act,* a person who wishes to qualify as a
- 43 bidder on a contract for a public work must submit an application to
- 44 the State Public Works Board or the governing body.



- 1 2. Upon receipt of an application pursuant to subsection 1, the
2 State Public Works Board or the governing body shall:
- 3 (a) Investigate the applicant to determine whether he is qualified
4 to bid on a contract; and
- 5 (b) After conducting the investigation, determine whether the
6 applicant is qualified to bid on a contract. The determination must
7 be made within 30 days after receipt of the application.
- 8 3. The State Public Works Board or the governing body shall
9 notify each applicant in writing of its determination. If an
10 application is denied, the notice must set forth the reasons for the
11 denial and inform the applicant of his right to a hearing pursuant to
12 NRS 338.1381.
- 13 4. The State Public Works Board or the governing body of a
14 local government may determine an applicant is qualified to bid:
- 15 (a) On a specific project;
- 16 (b) On more than one project over a period of 12 months; or
- 17 (c) On more than one project over a period of 24 months.
- 18 5. The State Public Works Board shall not use any criteria
19 other than criteria adopted by regulation pursuant to NRS 338.1375
20 in determining whether to approve or deny an application.
- 21 6. The governing body of a local government shall not use any
22 criteria other than the criteria described in NRS 338.1377 in
23 determining whether to approve or deny an application.
- 24 7. Financial information and other data pertaining to the net
25 worth of an applicant which is gathered by or provided to the State
26 Public Works Board or a governing body to determine the financial
27 ability of an applicant to perform a contract is confidential and not
28 open to public inspection.
- 29 **Sec. 8.** NRS 338.1383 is hereby amended to read as follows:
- 30 338.1383 ~~§~~ *Except as otherwise provided in section 2 of this*
31 *act, if* a local government does not adopt criteria for the
32 qualification of bidders on a public work pursuant to NRS 338.1377,
33 the governing body may only accept a bid on a contract for a public
34 work from a person who holds:
- 35 1. An unlimited contractor's license issued by the State
36 Contractors' Board in the branch of general engineering contracting
37 or general building contracting, or in both branches, and:
- 38 (a) At the time he submits his bid, he provides a bid bond equal
39 to 10 percent of the amount of the bid; and
- 40 (b) At the time the contract is awarded, he provides a
41 performance bond, a labor and material bond and a guaranty bond,
42 each equal to 100 percent of the amount of the contract; or
- 43 2. A contractor's license issued by the State Contractors' Board
44 that is designated in any classification if he:



1 (a) Has, in the 5 years immediately preceding the submission of
2 the bid, been found to be a responsible contractor in the
3 classification in which his contractor's license is designated;

4 (b) Provides a bid bond, a performance bond, a guaranty bond,
5 and a labor and material bond in such amounts as the governing
6 body may require; and

7 (c) Employs a person determined by the State Contractors'
8 Board to be qualified to supervise each classification of construction
9 upon which the person submitting the bid is bidding.

10 **Sec. 9.** NRS 338.1385 is hereby amended to read as follows:

11 338.1385 1. Except as otherwise provided in subsection 7
12 and NRS 338.1906 and 338.1907, this state, or a local government
13 that awards a contract for the construction, alteration or repair of a
14 public work in accordance with paragraph (a) of subsection 1 of
15 NRS 338.1373, or a public officer, public employee or other person
16 responsible for awarding a contract for the construction, alteration
17 or repair of a public work who represents the State or the local
18 government, shall not:

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

22 (b) Divide such a project into separate portions to avoid the
23 requirements of paragraph (a).

24 2. Except as otherwise provided in subsection 7, a public body
25 that maintains a list of properly licensed contractors who are
26 interested in receiving offers to bid on public works projects for
27 which the estimated cost is more than \$25,000 but less than
28 \$100,000 shall solicit bids from not more than three of the
29 contractors on the list for a contract of that value for the
30 construction, alteration or repair of a public work. The public body
31 shall select contractors from the list in such a manner as to afford
32 each contractor an equal opportunity to bid on a public works
33 project. A properly licensed contractor must submit a written
34 request annually to the public body to remain on the list. Offers for
35 bids which are made pursuant to this subsection must be sent by
36 certified mail.

37 3. Each advertisement for bids must include a provision that
38 sets forth:

39 (a) The requirement that a contractor must be qualified pursuant
40 to NRS 338.1379 *or section 2 of this act* to bid on the contract or
41 must be exempt from meeting such qualifications pursuant to NRS
42 338.1383; and

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



1 4. Approved plans and specifications for the bids must be on
2 file at a place and time stated in the advertisement for the inspection
3 of all persons desiring to bid thereon and for other interested
4 persons. Contracts for the project must be awarded on the basis of
5 bids received.

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

9 (a) The bidder is not a qualified bidder pursuant to NRS
10 338.1379 ~~§~~ *or section 2 of this act*, unless the bidder is exempt
11 from meeting such qualifications pursuant to NRS 338.1383;

12 (b) The bidder is not responsive;

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

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

16 6. Before the State or a local government may commence a
17 project subject to the provisions of this section, based upon a
18 determination that the public interest would be served by rejecting
19 any bids received in response to an advertisement for bids, it shall
20 prepare and make available for public inspection a written statement
21 containing:

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

26 (b) A list of all equipment that the State or the local government
27 intends to use on the project, together with an estimate of the
28 number of hours each item of equipment will be used and the hourly
29 cost to use each item of equipment;

30 (c) An estimate of the cost of administrative support for the
31 persons assigned to the project;

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

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

36 7. This section does not apply to:

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

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

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

42 (d) The Las Vegas Valley Water District created pursuant to
43 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
44 District created pursuant to chapter 477, Statutes of Nevada 1983 or



1 the Virgin Valley Water District created pursuant to chapter 100,
2 Statutes of Nevada 1993; or

3 (e) The design and construction of a public work for which a
4 public body contracts with a design-build team pursuant to NRS
5 338.1711 to 338.1727.

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

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

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

17 (b) Divide such a project into separate portions to avoid the
18 requirements of paragraph (a).

19 2. Except as otherwise provided in subsection 8, a public body
20 that maintains a list of properly licensed contractors who are
21 interested in receiving offers to bid on public works projects for
22 which the estimated cost is more than \$25,000 but less than
23 \$100,000 shall solicit bids from not more than three of the
24 contractors on the list for a contract of that value for the
25 construction, alteration or repair of a public work. The public body
26 shall select contractors from the list in such a manner as to afford
27 each contractor an equal opportunity to bid on a public works
28 project. A properly licensed contractor must submit a written
29 request annually to the public body to remain on the list. Offers for
30 bids which are made pursuant to this subsection must be sent by
31 certified mail.

32 3. Each advertisement for bids must include a provision that
33 sets forth:

34 (a) The requirement that a contractor must be qualified pursuant
35 to NRS 338.1379 *or section 2 of this act* to bid on the contract or
36 must be exempt from meeting such qualifications pursuant to NRS
37 338.1383; and

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

40 4. Approved plans and specifications for the bids must be on
41 file at a place and time stated in the advertisement for the inspection
42 of all persons desiring to bid thereon and for other interested
43 persons. Contracts for the project must be awarded on the basis of
44 bids received.



- 1 5. Any bids received in response to an advertisement for bids
2 may be rejected if the person responsible for awarding the contract
3 determines that:
- 4 (a) The bidder is not a qualified bidder pursuant to NRS
5 338.1379 ~~H~~ or *section 2 of this act*, unless the bidder is exempt
6 from meeting such qualifications pursuant to NRS 338.1383;
 - 7 (b) The bidder is not responsive;
 - 8 (c) The quality of the services, materials, equipment or labor
9 offered does not conform to the approved plan or specifications; or
 - 10 (d) The public interest would be served by such a rejection.
- 11 6. Before the State or a local government may commence a
12 project subject to the provisions of this section, based upon a
13 determination that the public interest would be served by rejecting
14 any bids received in response to an advertisement for bids, it shall
15 prepare and make available for public inspection a written statement
16 containing:
- 17 (a) A list of all persons, including supervisors, whom the State
18 or the local government intends to assign to the project, together
19 with their classifications and an estimate of the direct and indirect
20 costs of their labor;
 - 21 (b) A list of all equipment that the State or the local government
22 intends to use on the project, together with an estimate of the
23 number of hours each item of equipment will be used and the hourly
24 cost to use each item of equipment;
 - 25 (c) An estimate of the cost of administrative support for the
26 persons assigned to the project;
 - 27 (d) An estimate of the total cost of the project; and
 - 28 (e) An estimate of the amount of money the State or the local
29 government expects to save by rejecting the bids and performing the
30 project itself.
- 31 7. In preparing the estimated cost of a project pursuant to
32 subsection 6, the State or a local government must include the fair
33 market value of, or, if known, the actual cost of, all materials,
34 supplies, labor and equipment to be used for the project.
- 35 8. This section does not apply to:
- 36 (a) Any utility subject to the provisions of chapter 318 or 710 of
37 NRS;
 - 38 (b) Any work of construction, reconstruction, improvement and
39 maintenance of highways subject to NRS 408.323 or 408.327;
 - 40 (c) Normal maintenance of the property of a school district; or
 - 41 (d) The Las Vegas Valley Water District created pursuant to
42 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
43 District created pursuant to chapter 477, Statutes of Nevada 1983 or
44 the Virgin Valley Water District created pursuant to chapter 100,
45 Statutes of Nevada 1993; or



1 (e) The design and construction of a public work for which a
2 public body contracts with a design-build team pursuant to NRS
3 338.1711 to 338.1727, inclusive.

4 **Sec. 11.** NRS 338.1387 is hereby amended to read as follows:

5 338.1387 1. A public body awarding a contract for a public
6 work shall not award the contract to a person who, at the time of the
7 bid, is not properly licensed under the provisions of chapter 624 of
8 NRS or if the contract would exceed the limit of his license. A
9 subcontractor named by the contractor who is not properly licensed
10 for that portion of the work shall be deemed unacceptable. If the
11 subcontractor is deemed unacceptable, the contractor shall provide
12 an acceptable subcontractor before the award of the contract.

13 2. If, after awarding the contract, the public body discovers that
14 the person to whom the contract was awarded is not licensed, or that
15 the contract would exceed his license, the public body shall
16 reject the bid and may accept the next lowest bid for that public
17 work from a responsive bidder who was determined by the public
18 body to be a qualified bidder pursuant to NRS 338.1379 *or section 2*
19 *of this act* or was exempt from meeting such qualifications pursuant
20 to NRS 338.1373 or 338.1383 without requiring that new bids be
21 submitted.

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

23 338.1389 1. Except as otherwise provided in NRS 338.1385
24 and 338.1711 to 338.1727, inclusive, a public body shall award a
25 contract for a public work to the contractor who submits the best
26 bid.

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

29 (a) Has been determined by the public body to be a qualified
30 bidder pursuant to NRS 338.1379 *or section 2 of this act* or is
31 exempt from meeting such requirements pursuant to NRS 338.1373
32 or 338.1383; and

33 (b) At the time he submits his bid, provides to the public body a
34 copy of a certificate of eligibility to receive a preference in bidding
35 on public works issued to him by the State Contractors' Board
36 pursuant to subsection 3 or 4,
37 shall be deemed to have submitted a better bid than a competing
38 contractor who has not provided a copy of such a valid certificate of
39 eligibility if the amount of his bid is not more than 5 percent higher
40 than the amount bid by the competing contractor.

41 3. The State Contractors' Board shall issue a certificate of
42 eligibility to receive a preference in bidding on public works to a
43 general contractor who is licensed pursuant to the provisions of
44 chapter 624 of NRS and submits to the Board an affidavit from a



1 certified public accountant setting forth that the general contractor
2 has, while licensed as a general contractor in this state:
3 (a) Paid directly, on his own behalf:
4 (1) The sales and use taxes imposed pursuant to chapters
5 372, 374 and 377 of NRS on materials used for construction in this
6 state, including, without limitation, construction that is undertaken
7 or carried out on land within the boundaries of this state that is
8 managed by the Federal Government or is on an Indian reservation
9 or Indian colony, of not less than \$5,000 for each consecutive 12-
10 month period for 60 months immediately preceding the submission
11 of the affidavit from the certified public accountant;
12 (2) The governmental services tax imposed pursuant to
13 chapter 371 of NRS on the vehicles used in the operation of his
14 business in this state of not less than \$5,000 for each consecutive
15 12-month period for 60 months immediately preceding the
16 submission of the affidavit from the certified public accountant; or
17 (3) Any combination of such sales and use taxes and
18 governmental services tax; or
19 (b) Acquired, by purchase, inheritance, gift or transfer through a
20 stock option plan, all the assets and liabilities of a viable, operating
21 construction firm that possesses a:
22 (1) License as a general contractor pursuant to the provisions
23 of chapter 624 of NRS; and
24 (2) Certificate of eligibility to receive a preference in bidding
25 on public works.
26 4. The State Contractors' Board shall issue a certificate of
27 eligibility to receive a preference in bidding on public works to a
28 specialty contractor who is licensed pursuant to the provisions of
29 chapter 624 of NRS and submits to the Board an affidavit from a
30 certified public accountant setting forth that the specialty contractor
31 has, while licensed as a specialty contractor in this state:
32 (a) Paid directly, on his own behalf:
33 (1) The sales and use taxes pursuant to chapters 372, 374 and
34 377 of NRS on materials used for construction in this state,
35 including, without limitation, construction that is undertaken or
36 carried out on land within the boundaries of this state that is
37 managed by the Federal Government or is on an Indian reservation
38 or Indian colony, of not less than \$5,000 for each consecutive 12-
39 month period for 60 months immediately preceding the submission
40 of the affidavit from the certified public accountant;
41 (2) The governmental services tax imposed pursuant to
42 chapter 371 of NRS on the vehicles used in the operation of his
43 business in this state of not less than \$5,000 for each consecutive
44 12-month period for 60 months immediately preceding the
45 submission of the affidavit from the certified public accountant; or



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

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

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

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

10 5. For the purposes of complying with the requirements set
11 forth in paragraph (a) of subsection 3 and paragraph (a) of
12 subsection 4, a contractor shall be deemed to have paid:

13 (a) Sales and use taxes and governmental services taxes that
14 were paid in this state by an affiliate or parent company of the
15 contractor, if the affiliate or parent company is also a general
16 contractor or specialty contractor, as applicable; and

17 (b) Sales and use taxes that were paid in this state by a joint
18 venture in which the contractor is a participant, in proportion to the
19 amount of interest the contractor has in the joint venture.

20 6. A contractor who has received a certificate of eligibility to
21 receive a preference in bidding on public works from the State
22 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
23 for the annual renewal of his contractor's license pursuant to NRS
24 624.283, submit to the Board an affidavit from a certified public
25 accountant setting forth that the contractor has, during the
26 immediately preceding 12 months, paid the taxes required pursuant
27 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
28 applicable, to maintain his eligibility to hold such a certificate.

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

33 8. If a contractor holds more than one contractor's license, he
34 must submit a separate application for each license pursuant to
35 which he wishes to qualify for a preference in bidding. Upon
36 issuance, the certificate of eligibility to receive a preference in
37 bidding on public works becomes part of the contractor's license for
38 which the contractor submitted the application.

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



1 10. If any federal statute or regulation precludes the granting of
2 federal assistance or reduces the amount of that assistance for a
3 particular public work because of the provisions of subsection 2,
4 those provisions do not apply insofar as their application would
5 preclude or reduce federal assistance for that work. The provisions
6 of subsection 2 do not apply to any contract for a public work which
7 is expected to cost less than \$250,000.

8 11. If a bid is submitted by two or more contractors as a joint
9 venture or by one of them as a joint venturer, the provisions of
10 subsection 2 apply only if both or all of the joint venturers
11 separately meet the requirements of that subsection.

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

15 13. A person or entity who believes that a contractor
16 wrongfully holds a certificate of eligibility to receive a preference in
17 bidding on public works may challenge the validity of the certificate
18 by filing a written objection with the public body to which the
19 contractor has submitted a bid or proposal on a contract for the
20 construction of a public work. A written objection authorized
21 pursuant to this subsection must:

22 (a) Set forth proof or substantiating evidence to support the
23 belief of the person or entity that the contractor wrongfully holds a
24 certificate of eligibility to receive a preference in bidding on public
25 works; and

26 (b) Be filed with the public body at or after the time at which the
27 contractor submitted the bid or proposal to the public body and
28 before the time at which the public body awards the contract for
29 which the bid or proposal was submitted.

30 14. If a public body receives a written objection pursuant to
31 subsection 13, the public body shall determine whether the objection
32 is accompanied by the proof or substantiating evidence required
33 pursuant to paragraph (a) of that subsection. If the public body
34 determines that the objection is not accompanied by the required
35 proof or substantiating evidence, the public body shall dismiss the
36 objection and may proceed immediately to award the contract. If
37 the public body determines that the objection is accompanied by the
38 required proof or substantiating evidence, the public body shall
39 determine whether the contractor qualifies for the certificate
40 pursuant to the provisions of this section and may proceed to award
41 the contract accordingly.

42 **Sec. 13.** NRS 338.141 is hereby amended to read as follows:
43 338.141 1. Except as otherwise provided in subsection 2,
44 each bid submitted to any officer, department, board or commission



1 for the construction of any public work or improvement must
2 include:

3 (a) The name of each subcontractor who will provide labor or a
4 portion of the work or improvement to the contractor for which he
5 will be paid an amount exceeding 5 percent of the prime
6 contractor's total bid. Within 2 hours after the completion of the
7 opening of the bids, the contractors who submitted the three lowest
8 bids must submit a list containing the name of each subcontractor
9 who will provide labor or a portion of the work or improvement to
10 the contractor for which he will be paid an amount exceeding 1
11 percent of the prime contractor's total bid or \$50,000, whichever is
12 greater, and the number of the license issued to the subcontractor
13 pursuant to chapter 624 of NRS. If a contractor fails to submit such
14 a list within the required time, his bid shall be deemed not
15 responsive.

16 (b) A description of the portion of the work or improvement
17 which each subcontractor named in the bid will complete.

18 2. The contractor shall list in his bid pursuant to subsection 1
19 the name of a subcontractor for each portion of the project that will
20 be completed by a subcontractor.

21 3. A contractor whose bid is accepted shall not substitute any
22 person for a subcontractor who is named in the bid, unless:

23 (a) The awarding authority objects to the subcontractor, requests
24 in writing a change in the subcontractor and pays any increase in
25 costs resulting from the change; ~~or~~

26 (b) The substitution is approved by the awarding authority or an
27 authorized representative of the awarding authority. The substitution
28 must be approved if the awarding authority or authorized
29 representative of the awarding authority determines that:

30 (1) The named subcontractor, after having a reasonable
31 opportunity, fails or refuses to execute a written contract with the
32 contractor which was offered to the subcontractor with the same
33 general terms that all other subcontractors on the project were
34 offered;

35 (2) The named subcontractor files for bankruptcy or becomes
36 insolvent; or

37 (3) The named subcontractor fails or refuses to perform his
38 subcontract within a reasonable time or is unable to furnish a
39 performance bond and payment bond pursuant to NRS 339.025 ~~;~~
40 *or*

41 *(c) If the awarding body is the governing body of a local*
42 *government, the awarding authority or an authorized*
43 *representative of the awarding body, in awarding a contract for a*
44 *public work pursuant to NRS 338.1375 to 338.139, inclusive, and*
45 *sections 2 and 3 of this act:*



1 (1) *Applies such criteria set forth in NRS 338.1377 as are*
2 *appropriate for subcontractors and determines that the*
3 *subcontractor does not meet that criteria; and*

4 (2) *Requests in writing a substitution of the subcontractor.*
5 4. As used in this section, "general terms" means the terms and
6 conditions of a contract that set the basic requirements for a project
7 and apply without regard to the particular trade or specialty of a
8 subcontractor, but does not include any provision that controls or
9 relates to the specific portion of the project that will be completed
10 by a subcontractor, including, without limitation, the materials to be
11 used by the subcontractor or other details of the work to be
12 performed by the subcontractor.

13 **Sec. 14.** 1. This section and sections 1 to 9, inclusive, 11, 12
14 and 13 of this act become effective on October 1, 2003.

15 2. Section 9 of this act expires by limitation on April 30, 2013.

16 3. Section 10 of this act becomes effective on May 1, 2013.

