
ASSEMBLY BILL NO. 425—ASSEMBLYMAN PARKS

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions regarding public works.
(BDR 28-405)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public works; providing for a hearing for unsuccessful bidders; revising the exemption of contracts necessary to contend with certain emergencies from the requirements relating to contracts for public works; authorizing a public body to require a person who is found to have failed to pay the prevailing wage to pay the costs incurred by the public body for its investigation; requiring a governing body to adopt certain criteria regarding the past performance of a contractor in the qualification of bidders on public works; revising certain provisions regarding advertising for bids; removing certain provisions regarding the maintenance of lists of licensed contractors by public bodies for bidding on certain contracts; revising provisions governing the naming of subcontractors; requiring an authorized representative to make certain reports to public bodies regarding certain contracts; revising certain provisions regarding objections to the award of a certificate of eligibility for a preference in bidding; 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 4 2 5 *

1 **Section 1.** Chapter 338 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 1. *A person who makes an unsuccessful bid may file a notice*
4 *of appeal with a hearing officer designated by the public body to*
5 *hear such appeals within 5 business days after:*

6 (a) *The date of award, as entered on the bid record; and*
7 (b) *The notice of award has been posted in at least three public*
8 *buildings, including, without limitation, the location of the using*
9 *agency.*

10 2. *The notice of appeal must include a written statement*
11 *setting forth with specificity the reasons the person filing the*
12 *notice believes the applicable provisions of law were not adhered*
13 *to in awarding the contract.*

14 3. *A person filing a notice of appeal must post a bond with*
15 *good and solvent surety authorized to do business in this state or*
16 *submit other security, in a form approved by the public body, to*
17 *the public body who shall hold the bond or other security until a*
18 *determination is made on the appeal. A bond posted or other*
19 *security submitted with a notice of appeal must be in an amount*
20 *equal to 25 percent of the total value of the bid submitted by the*
21 *person filing the notice of appeal.*

22 4. *A notice of appeal filed in accordance with the provisions*
23 *of this section operates as a stay of action in relation to any*
24 *contract until a determination is made by the hearing officer on*
25 *the appeal.*

26 5. *A person who makes an unsuccessful bid may not seek any*
27 *type of judicial intervention until the hearing officer has made a*
28 *determination on the appeal.*

29 6. *Neither a public body nor any authorized representative of*
30 *the public body is liable for any costs, expenses, attorney's fees,*
31 *loss of income or other damages sustained by a person who makes*
32 *an unsuccessful bid, whether or not the person files a notice of*
33 *appeal pursuant to this section.*

34 7. *If the appeal is upheld and the award is cancelled, the*
35 *bond posted or other security submitted with the notice of appeal*
36 *must be returned to the person who posted the bond or submitted*
37 *the security. If the appeal is rejected and the award is upheld, a*
38 *claim may be made against the bond or other security by the*
39 *public body in an amount equal to the expenses incurred by the*
40 *public body because of the unsuccessful appeal. The hearing*
41 *officer shall hold a hearing on the claim. Any money not awarded*
42 *by the hearing officer must be returned to the person who posted*
43 *the bond or submitted the security.*

44 **Sec. 2.** NRS 338.010 is hereby amended to read as follows:
45 338.010 As used in this chapter:



- 1 1. *“Authorized representative” means a person designated by*
2 *a governing body to be responsible for the development and award*
3 *of contracts for public works pursuant to this chapter.*
- 4 2. *“Contract” means a written contract entered into between*
5 *a contractor and a person or public body for the provision of*
6 *labor, materials, equipment or supplies for a construction project.*
- 7 3. *“Contractor” means:*
- 8 (a) *A person who is licensed pursuant to the provisions of*
9 *chapter 624 of NRS or performs such work that he is not required*
10 *to be licensed pursuant to chapter 624 of NRS.*
- 11 (b) *A design-build team.*
- 12 4. “Day labor” means all cases where public bodies, their
13 officers, agents or employees, hire, supervise and pay the wages
14 thereof directly to a workman or workmen employed by them on
15 public works by the day and not under a contract in writing.
- 16 ~~[2-]~~ 5. “Design-build contract” means a contract between a
17 public body and a design-build team in which the design-build team
18 agrees to design and construct a public work.
- 19 ~~[3-]~~ 6. “Design-build team” means an entity that consists of:
- 20 (a) At least one person who is licensed as a general engineering
21 contractor or a general building contractor pursuant to chapter 624
22 of NRS; and
- 23 (b) For a public work that consists of:
- 24 (1) A building and its site, at least one person who holds a
25 certificate of registration to practice architecture pursuant to chapter
26 623 of NRS.
- 27 (2) Anything other than a building and its site, at least one
28 person who holds a certificate of registration to practice architecture
29 pursuant to chapter 623 of NRS or *landscape architecture pursuant*
30 *to chapter 623A of NRS or who* is licensed as a professional
31 engineer pursuant to chapter 625 of NRS.
- 32 ~~[4-]~~ 7. “Design professional” means:
- 33 (a) A person who is licensed as a professional engineer pursuant
34 to chapter 625 of NRS;
- 35 (b) A person who is licensed as a professional land surveyor
36 pursuant to chapter 625 of NRS;
- 37 (c) A person who holds a certificate of registration to engage in
38 the practice of architecture , *interior design or residential design*
39 *pursuant to chapter 623 of NRS;*
- 40 (d) A person who holds a certificate of registration to engage in
41 the practice of landscape architecture pursuant to chapter 623A of
42 NRS; or
- 43 (e) A business entity that engages in the practice of professional
44 engineering, land surveying, architecture or landscape architecture.
- 45 ~~[5-]~~ 8. “Eligible bidder” means a person who is:



1 (a) Found to be a responsible and responsive contractor by a
2 local government *or its authorized representative* which requests
3 bids for a public work in accordance with paragraph ~~[(b)]~~ (c) of
4 subsection 1 of NRS 338.1373; or

5 (b) Determined by a public body *or its authorized*
6 *representative* which awarded a contract for a public work pursuant
7 to NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that
8 contract pursuant to NRS 338.1379 . ~~for was exempt from meeting~~
9 ~~such qualifications pursuant to NRS 338.1383.~~

10 ~~—6.]~~ 9. “General contractor” means a person who is licensed to
11 conduct business in one, or both, of the following branches of the
12 contracting business:

13 (a) General engineering contracting, as described in subsection 2
14 of NRS 624.215.

15 (b) General building contracting, as described in subsection 3 of
16 NRS 624.215.

17 10. “Governing body” means the board, council, commission
18 or other body in which the general legislative and fiscal powers of
19 a local government are vested.

20 ~~[(7)]~~ 11. “Local government” means every political subdivision
21 or other entity which has the right to levy or receive money from ad
22 valorem or other taxes or any mandatory assessments, and includes,
23 without limitation, counties, cities, towns, boards, school districts
24 and other districts organized pursuant to chapters 244A, 309, 318,
25 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
26 inclusive, and any agency or department of a county or city which
27 prepares a budget separate from that of the parent political
28 subdivision.

29 ~~[(8)]~~ 12. “Offense” means failing to:

30 (a) Pay the prevailing wage required pursuant to this chapter;

31 (b) Pay the contributions for unemployment compensation
32 required pursuant to chapter 612 of NRS;

33 (c) Provide and secure compensation for employees required
34 pursuant to chapters 616A to 617, inclusive, of NRS; or

35 (d) Comply with subsection 4 or 5 of NRS 338.070.

36 ~~[(9)]~~ 13. “Prime contractor” means a ~~person~~ contractor who:

37 (a) Contracts to construct an entire project;

38 (b) Coordinates all work performed on the entire project;

39 (c) Uses his own workforce to perform all or a part of the
40 ~~construction, repair or reconstruction of the project;~~ public work;
41 and

42 (d) Contracts for the services of any subcontractor or
43 independent contractor or is responsible for payment to any
44 contracted subcontractors or independent contractors.



1 The term includes, without limitation, a general contractor or a
2 specialty contractor who is authorized to bid on a project pursuant to
3 NRS 338.139 or 338.148.

4 ~~{10.}~~ 14. "Public body" means the State, county, city, town,
5 school district or any public agency of this state or its political
6 subdivisions sponsoring or financing a public work.

7 ~~{11.}~~ 15. "Public work" means any project for the new
8 construction, repair or reconstruction of:

9 (a) A project financed in whole or in part from public money
10 for:

- 11 (1) Public buildings;
- 12 (2) Jails and prisons;
- 13 (3) Public roads;
- 14 (4) Public highways;
- 15 (5) Public streets and alleys;
- 16 (6) Public utilities ; ~~{which are financed in whole or in part~~
17 ~~by public money;}~~

- 18 (7) Publicly owned water mains and sewers;
- 19 (8) Public parks and playgrounds;
- 20 (9) Public convention facilities which are financed at least in
21 part with public funds; and

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

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

30 ~~{12.}~~ 16. "Specialty contractor" means a person who is
31 licensed to conduct business as described in subsection 4 of
32 NRS 624.215.

33 ~~{13.}~~ 17. "Stand-alone underground utility project" means an
34 underground utility project that is not integrated into a larger
35 project, including, without limitation:

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

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

44 ~~{14.}~~ 18. "*Subcontract*" means a written contract entered
45 into between:



- 1 (a) A contractor and a subcontractor or supplier; or
- 2 (b) A subcontractor and another subcontractor or supplier, for
- 3 the provision of labor, materials, equipment or supplies for a
- 4 construction project.

5 19. "Subcontractor" means a person who:

- 6 (a) Is licensed pursuant to the provisions of chapter 624 of
- 7 NRS or performs such work that he is not required to be licensed
- 8 pursuant to chapter 624 of NRS; and

- 9 (b) Contracts with a contractor, another subcontractor or a
- 10 supplier to provide labor, materials or services for a construction
- 11 project.

12 20. "Supplier" means a person who provides materials,

13 equipment or supplies for a construction project.

14 21. "Wages" means:

- 15 (a) The basic hourly rate of pay; and
- 16 (b) The amount of pension, health and welfare, vacation and
- 17 holiday pay, the cost of apprenticeship training or other similar
- 18 programs or other bona fide fringe benefits which are a benefit to
- 19 the workman.

20 ~~{15.}~~ 22. "Workman" means a skilled mechanic, skilled

21 workman, semiskilled mechanic, semiskilled workman or unskilled

22 workman. The term does not include a design professional.

23 **Sec. 3.** NRS 338.011 is hereby amended to read as follows:

24 338.011 The requirements of this chapter do not apply to a

25 contract ~~awarded in compliance with chapter 332 or 333 of NRS~~

26 ~~which is:~~

27 ~~—1. Directly} :~~

28 1. *Awarded in compliance with chapter 332 or 333 of NRS*

29 *which is directly* related to the normal operation of the public body

30 or the normal maintenance of its property.

31 2. Awarded to meet an emergency which results from a natural

32 or man-made disaster and which threatens the health, safety or

33 welfare of the public. *If the public body or its authorized*

34 *representative determines that an emergency exists, a contract or*

35 *contracts necessary to contend with the emergency may be let*

36 *without complying with the requirements of this chapter. If such*

37 *emergency action was taken by the authorized representative, the*

38 *authorized representative shall report the contract or contracts to*

39 *the public body at the next regularly scheduled meeting of the*

40 *public body.*

41 **Sec. 4.** NRS 338.013 is hereby amended to read as follows:

42 338.013 1. A public body that advertises for bids for a public

43 work shall request from the Labor Commissioner, and include in the

44 advertisement, an identifying number with his designation of the



1 work. That number must be included in any bid submitted in
2 response to the advertisement.

3 2. Each public body which awards a contract for any public
4 work shall report its award to the Labor Commissioner within 10
5 days after the award, giving the name and address of ~~each~~
6 ~~contractor who will be engaged on the work~~ *the contractor to*
7 *whom the public body awarded the contract* and the identifying
8 number ~~[]~~ *for the public work.*

9 3. Each contractor engaged on a public work shall report to the
10 Labor Commissioner *and the public body that awarded the*
11 *contract* the name and address of each subcontractor whom he
12 engages for work on the project within 10 days after the
13 subcontractor commences work on the contract ~~[]~~ *and the*
14 *identifying number for the public work.*

15 4. The public body which awarded the contract shall report the
16 completion of all work performed under the contract to the Labor
17 Commissioner before the final payment of money due the contractor
18 by the public body.

19 **Sec. 5.** NRS 338.030 is hereby amended to read as follows:

20 338.030 1. The public body awarding any contract for public
21 work, or otherwise undertaking any public work, shall ascertain
22 from the Labor Commissioner the prevailing wage in the county in
23 which the public work is to be performed for each craft or type of
24 work.

25 2. To establish a prevailing wage in each county, including
26 Carson City, the Labor Commissioner shall, annually, survey
27 contractors who have performed work in the county. Within 30 days
28 after the determination is issued:

29 (a) A public body or person entitled under subsection 5 to be
30 heard may submit an objection to the Labor Commissioner with
31 evidence to substantiate that a different wage prevails; and

32 (b) Any person may submit information to the Labor
33 Commissioner that would support a change in the prevailing wage
34 of a craft or type of work by 50 cents or more per hour in any
35 county.

36 3. The Labor Commissioner shall hold a hearing in the locality
37 in which the work is to be executed if he:

38 (a) Is in doubt as to the prevailing wage; or

39 (b) Receives an objection or information pursuant to
40 subsection 2.

41 The Labor Commissioner may hold only one hearing a year on the
42 prevailing wage of any craft or type of work in any county.

43 4. Notice of the hearing must be advertised in a newspaper
44 nearest to the locality of the work once a week for 2 weeks before
45 the time of the hearing.



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1 5. At the hearing, any public body, the crafts affiliated with the
2 state federation of labor or other recognized national labor
3 organizations, and the contractors of the locality or their
4 representatives must be heard. From the evidence presented, the
5 Labor Commissioner shall determine the prevailing wage.

6 6. The wages so determined must be filed by the Labor
7 Commissioner and must be available to any public body which
8 awards a contract for any public work.

9 7. Nothing contained in NRS 338.020 to 338.090, inclusive,
10 may be construed to authorize the fixing of any wage below any rate
11 which may now or hereafter be established as a minimum wage for
12 any person employed upon any public work, or employed by any
13 officer or agent of any ~~political subdivision of the State of Nevada.~~
14 *public body.*

15 **Sec. 6.** NRS 338.035 is hereby amended to read as follows:

16 338.035 The obligation of a contractor *engaged on a public*
17 *work* or subcontractor *engaged on a public work* to pay wages in
18 accordance with the determination of the Labor Commissioner may
19 be discharged by the making of payments in cash, or by making
20 contributions to a third person pursuant to a fund, plan or program in
21 the name of the workman.

22 **Sec. 7.** NRS 338.060 is hereby amended to read as follows:

23 338.060 1. A contractor engaged on *a public* ~~works~~ *work*
24 shall forfeit, as a penalty to the public body ~~in~~ *on* behalf of which
25 the contract has been made and awarded to the contractor, not less
26 than \$20 nor more than \$50 for each calendar day or portion thereof
27 that each workman employed on the public work:

28 (a) Is paid less than the designated rate for any work done under
29 the contract, by the contractor or any subcontractor ~~under him.~~
30 *engaged on the public work.*

31 (b) Is not reported to the public body awarding the contract as
32 required pursuant to NRS 338.070.

33 The public body awarding the contract shall cause a stipulation to
34 this effect to be inserted in the contract.

35 2. The Labor Commissioner shall, by regulation, establish a
36 sliding scale based on the size of the ~~contractor's~~ business *of a*
37 *contractor engaged on a public work* to determine the amount of
38 the penalty to be imposed pursuant to subsection 1.

39 3. If a penalty is imposed pursuant to this section, the costs of
40 the proceeding, including investigative costs and attorney's fees,
41 may be recovered by the Labor Commissioner ~~or~~ *or the public*
42 *body.*

43 **Sec. 8.** NRS 338.070 is hereby amended to read as follows:

44 338.070 1. Any public body ~~and its officers or agents~~
45 awarding a contract shall:



1 (a) Investigate possible violations of the provisions of NRS
2 338.010 to 338.090, inclusive, committed in the course of the
3 execution of the contract, and determine whether a violation has
4 been committed and inform the Labor Commissioner of any such
5 violations; and

6 (b) When making payments to the contractor *engaged on the*
7 *public work* of money becoming due under the contract, withhold
8 and retain all sums forfeited pursuant to the provisions of NRS
9 338.010 to 338.090, inclusive.

10 2. No sum may be withheld, retained or forfeited, except from
11 the final payment, without a full investigation being made by the
12 awarding *public* body . ~~for its agents.~~

13 3. It is lawful for any contractor *engaged on a public work* to
14 withhold from any subcontractor ~~under him~~ *engaged on the public*
15 *work* sufficient sums to cover any penalties withheld from ~~him~~ *the*
16 *contractor* by the awarding *public* body on account of the failure of
17 the subcontractor to comply with the terms of NRS 338.010 to
18 338.090, inclusive. If payment has already been made to the
19 subcontractor, the contractor may recover from ~~him~~ *the*
20 *subcontractor* the amount of the penalty or forfeiture in a suit at
21 law.

22 4. ~~The~~ A contractor *engaged on a public work* and each
23 subcontractor *engaged on the public work* shall keep or cause to be
24 kept an accurate record showing the name, the occupation and the
25 actual per diem, wages and benefits paid to each workman
26 employed by ~~him~~ *the contractor and subcontractor* in connection
27 with the public work.

28 5. The record *maintained pursuant to subsection 4* must be
29 open at all reasonable hours to the inspection of the public body
30 awarding the contract . ~~and its officers and agents.~~ The contractor
31 *engaged on the public work* or subcontractor *engaged on the public*
32 *work* shall ensure that a copy of the record for each calendar month
33 is received by the public body awarding the contract no later than
34 ~~10~~ 15 days after the end of the month. The copy must be open to
35 public inspection as provided in NRS 239.010. The record in the
36 possession of the public body awarding the contract may be
37 discarded by the public body 2 years after final payment is made by
38 the public body for the public work.

39 6. Any contractor or subcontractor, or agent or representative
40 thereof, performing work for a public work who neglects to comply
41 with the provisions of this section is guilty of a misdemeanor.

42 **Sec. 9.** NRS 338.080 is hereby amended to read as follows:

43 338.080 None of the provisions of NRS 338.020 to 338.090,
44 inclusive, apply to:



1 1. Any work, construction, alteration, repair or other
2 employment performed, undertaken or carried out, by or for any
3 railroad company or any person operating the same, whether such
4 work, construction, alteration or repair is incident to or in
5 conjunction with a contract to which ~~[this state or any of its political~~
6 ~~subdivisions]~~ *a public body* is a party, or otherwise.

7 2. Apprentices recorded under the provisions of chapter 610 of
8 NRS.

9 3. Any contract for a public work whose cost is less than
10 \$100,000. A unit of the project must not be separated from the total
11 project, even if that unit is to be completed at a later time, in order to
12 lower the cost of the project below \$100,000.

13 **Sec. 10.** NRS 338.090 is hereby amended to read as follows:

14 338.090 1. Any person, including the officers, agents or
15 employees of a public body, who violates any of the provisions of
16 NRS 338.010 to 338.090, inclusive, or any regulation adopted
17 pursuant thereto, is guilty of a misdemeanor.

18 2. The Labor Commissioner, in addition to any other penalty
19 provided in this chapter:

20 (a) Shall assess a person who, after a hearing, is found to have
21 failed to pay the prevailing wage required pursuant to NRS 338.020
22 to 338.090, inclusive, an amount equal to the difference between the
23 prevailing wages required to be paid and the wages ~~[he]~~ *that the*
24 *contractor or subcontractor* actually paid; and

25 (b) May, in addition, impose an administrative fine not to
26 exceed the costs ~~[he]~~ incurred *by the Labor Commissioner* to
27 investigate and prosecute the matter.

28 *3. If the Labor Commissioner finds that a person has failed to*
29 *pay the prevailing wage required pursuant to NRS 338.020 to*
30 *338.090, inclusive, the public body may, in addition to any other*
31 *penalty or administrative fine provided in this chapter, require the*
32 *person to pay the actual costs incurred by the public body to*
33 *investigate the matter.*

34 **Sec. 11.** NRS 338.125 is hereby amended to read as follows:

35 338.125 1. It is unlawful for any contractor in connection
36 with the performance of work under a contract with ~~[the State, or~~
37 ~~any of its political subdivisions,]~~ *a public body*, when payment of
38 the contract price, or any part of such payment, is to be made from
39 public money, to refuse to employ or to discharge from employment
40 any person because of his race, color, creed, national origin, sex,
41 sexual orientation or age, or to discriminate against a person with
42 respect to hire, tenure, advancement, compensation or other terms,
43 conditions or privileges of employment because of his race, creed,
44 color, national origin, sex, sexual orientation or age.



1 2. Contracts ~~[negotiated]~~ between contractors and ~~[the State, or~~
2 ~~any of its political subdivisions,]~~ **public bodies** must contain the
3 following contractual provisions:

4
5 In connection with the performance of work under this
6 contract, the contractor agrees not to discriminate against any
7 employee or applicant for employment because of race, creed,
8 color, national origin, sex, sexual orientation or age,
9 including, without limitation, with regard to employment,
10 upgrading, demotion or transfer, recruitment or recruitment
11 advertising, layoff or termination, rates of pay or other forms
12 of compensation, and selection for training, including,
13 without limitation, apprenticeship.

14 The contractor further agrees to insert this provision in all
15 subcontracts hereunder, except subcontracts for standard
16 commercial supplies or raw materials.

17
18 3. Any violation of such provision by a contractor constitutes a
19 material breach of contract.

20 4. As used in this section, "sexual orientation" means having or
21 being perceived as having an orientation for heterosexuality,
22 homosexuality or bisexuality.

23 **Sec. 12.** NRS 338.130 is hereby amended to read as follows:

24 338.130 1. In all cases where persons are employed in the
25 construction of public works, preference ~~[shall]~~ **must** be given ~~[]~~ **by**
26 **a public body**, the qualifications of the applicants being equal:

27 (a) First: To honorably discharged soldiers, sailors and marines
28 of the United States who are citizens of the State of Nevada.

29 (b) Second: To other citizens of the State of Nevada.

30 2. Nothing in this section shall be construed to prevent the
31 working of prisoners by ~~[the State of Nevada, or by any political~~
32 ~~subdivision of the State, on street or road work or other]~~ **a public**
33 **body on a** public work.

34 3. In each contract for the construction of public works a
35 ~~[proviso shall]~~ **clause must** be inserted to the effect that if the
36 provisions of this section are not complied with by the contractor ~~[]~~
37 **engaged on the public work**, the contract ~~[shall be]~~ **is** void, and any
38 failure or refusal to comply with any of the provisions of this section
39 ~~[shall render]~~ **renders** any such contract void. All boards,
40 commissions, officers, agents and employees having the power to
41 enter into contracts for the expenditure of public money on public
42 works shall file in the Office of the Labor Commissioner the names
43 and addresses of all contractors holding contracts with the ~~[State of~~
44 ~~Nevada, or with any political subdivision of the State. Upon]~~ **public**
45 **body and upon** the letting of new contracts the names and addresses



1 of such new contractors ~~shall~~ *must* likewise be filed ~~[-]~~ *with the*
2 *Labor Commissioner.* Upon the demand of the Labor
3 Commissioner, a contractor shall furnish a list of the names and
4 addresses of all subcontractors ~~[in his employ.]~~ *employed by the*
5 *contractor engaged on a public work.*

6 4. Subject to the exceptions contained in this section, no money
7 ~~shall~~ *may* be paid out of the State Treasury or out of the treasury
8 of any political subdivision of the State to any person employed on
9 any work mentioned in this section unless there has been
10 compliance with the provisions of this section.

11 5. Any contractor ~~[with the State of Nevada or with any~~
12 ~~political subdivision of the State]~~ *engaged on a public work* or any
13 other person who violates any of the provisions of this section ~~shall~~
14 ~~be~~ *is* guilty of a misdemeanor. The penalties provided for in this
15 section ~~shall~~ *do* not apply where violations thereof are due to
16 misrepresentations made by the employee or employees.

17 **Sec. 13.** NRS 338.1373 is hereby amended to read as follows:

18 338.1373 1. A local government *or its authorized*
19 *representative* shall award a contract for ~~[the construction, alteration~~
20 ~~or repair of]~~ a public work pursuant to the provisions of:

21 (a) NRS 338.1377 to 338.139, inclusive; ~~[or]~~

22 (b) NRS 338.143 to 338.148, inclusive ~~[-]~~; *or*

23 (c) *NRS 338.1711 to 338.1727, inclusive.*

24 2. The provisions of NRS 338.1375 to ~~[338.1383,]~~ *338.1381,*
25 *inclusive, and 338.139 and 338.1711 to 338.1727, inclusive,* do not
26 apply with respect to contracts for the construction, reconstruction,
27 improvement and maintenance of highways that are awarded by the
28 Department of Transportation pursuant to NRS 408.313 to 408.433,
29 inclusive.

30 **Sec. 14.** NRS 338.1375 is hereby amended to read as follows:

31 338.1375 1. The State Public Works Board shall not accept a
32 bid on a contract for a public work unless the ~~[person]~~ *contractor*
33 who submits the bid has qualified pursuant to NRS 338.1379 to bid
34 on that contract.

35 2. The State Public Works Board shall by regulation adopt
36 criteria for the qualification of bidders on contracts for public works
37 of this state. The criteria adopted by the State Public Works Board
38 pursuant to this section must be used by the State Public Works
39 Board to determine the qualification of bidders on contracts for
40 public works of this state.

41 3. The criteria adopted by the State Public Works Board
42 pursuant to this section:

43 (a) Must be adopted in such a form that the determination of
44 whether an applicant is qualified to bid on a contract for a public



1 work does not require or allow the exercise of discretion by any one
2 person.

3 (b) May include only:

- 4 (1) The financial ability of the applicant to perform a
5 contract;
6 (2) The principal personnel of the applicant;
7 (3) Whether the applicant has breached any contracts with a
8 public ~~[agency]~~ *body* or person in this state or any other state;
9 (4) Whether the applicant has been disqualified from being
10 awarded a contract pursuant to NRS 338.017 or 338.1387; and
11 (5) The performance history of the applicant concerning
12 other recent, similar contracts, if any, completed by the applicant.

13 **Sec. 15.** NRS 338.1377 is hereby amended to read as follows:

14 338.1377 1. ~~[Except as otherwise provided in NRS~~
15 ~~338.1383.]~~ *If* the governing body of each local government that
16 sponsors or finances a public work *elects to award contracts for*
17 *public works pursuant to the provisions of NRS 338.1377 to*
18 *338.139, inclusive, the governing body* shall adopt criteria for the
19 qualification of bidders on contracts for public works of the local
20 government. The governing body shall use the criteria to determine
21 the qualification of bidders on contracts for public works of the local
22 government.

23 2. Before adopting criteria pursuant to this section, the
24 governing body ~~[of a local government]~~ shall hold at least one
25 public hearing to solicit and evaluate public opinion regarding the
26 criteria to be adopted. Notice of such a hearing must be provided by
27 mail at least 10 days before the hearing to:

28 (a) Construction trade associations in this state; and

29 (b) Labor unions representing trades in the building industry in
30 this state.

31 3. The criteria adopted by a governing body pursuant to this
32 section to determine whether an applicant is qualified to bid on a
33 contract for a public work:

34 (a) Must be adopted in such a form that the determination of
35 whether an applicant is qualified to bid on a contract for a public
36 work does not require or allow the exercise of discretion by any one
37 person.

38 (b) May include only:

- 39 (1) The financial ability of the applicant to perform a
40 contract;
41 (2) The principal personnel of the applicant;
42 (3) Whether the applicant has breached any contracts with a
43 public ~~[agency]~~ *body* or person in this state or any other state; ~~[and]~~
44 (4) Whether the applicant has been disqualified from being
45 awarded a contract pursuant to NRS 338.017 or 338.1387 ~~[.]~~; *and*



1 (5) *The performance history of the applicant on other*
2 *recent contracts, if any, that have been completed by the applicant*
3 *and which are similar to the work that the governing body*
4 *requires.*

5 **Sec. 16.** NRS 338.1379 is hereby amended to read as follows:
6 338.1379 1. ~~Except as otherwise provided in NRS 338.1383,~~
7 ~~a person~~ **A contractor** who wishes to qualify as a bidder on a
8 contract for a public work must submit an application to the State
9 Public Works Board or the governing body.

10 2. Upon receipt of an application pursuant to subsection 1, the
11 State Public Works Board or the governing body shall:

12 (a) Investigate the applicant to determine whether he is qualified
13 to bid on a contract; and

14 (b) After conducting the investigation, determine whether the
15 applicant is qualified to bid on a contract. The determination must
16 be made within ~~30~~ **45** days after receipt of the application.

17 3. The State Public Works Board or the governing body shall
18 notify each applicant in writing of its determination. If an
19 application is denied, the notice must set forth the reasons for the
20 denial and inform the applicant of his right to a hearing pursuant to
21 NRS 338.1381.

22 4. The State Public Works Board or the governing body ~~of a~~
23 ~~local government~~ may determine an applicant is qualified to bid:

24 (a) On a specific project;

25 (b) On more than one project over a period of 12 months; or

26 (c) On more than one project over a period of 24 months.

27 5. The State Public Works Board shall not use any criteria
28 other than criteria adopted by regulation pursuant to NRS 338.1375
29 in determining whether to approve or deny an application.

30 6. The governing body ~~of a local government~~ shall not use
31 any criteria other than the criteria described in NRS 338.1377 in
32 determining whether to approve or deny an application.

33 7. Financial information and other data pertaining to the net
34 worth of an applicant which is gathered by or provided to the State
35 Public Works Board or a governing body to determine the financial
36 ability of an applicant to perform a contract is confidential and not
37 open to public inspection.

38 **Sec. 17.** NRS 338.1381 is hereby amended to read as follows:

39 338.1381 1. If, within 10 days after receipt of the notice
40 denying his application ~~is~~ **pursuant to NRS 338.1379**, the applicant
41 files a written request for a hearing with the State Public Works
42 Board or the governing body, ~~of the local government,~~ the Board
43 or governing body shall set the matter for a hearing within ~~10~~ **20**
44 days after receipt of the request. The hearing must be held not later
45 than ~~20~~ **30** days after the receipt of the request for a hearing.



1 2. The hearing must be held at a time and place prescribed by
2 the Board or governing body. At least 10 days before the date set for
3 the hearing, the Board or governing body shall serve the applicant
4 with written notice of the hearing. The notice may be served by
5 personal delivery to the applicant or by certified mail to the last
6 known business or residential address of the applicant.

7 3. The Board or governing body shall issue a decision ~~on the~~
8 ~~matter within 5 days after~~ at the hearing . ~~and notify the applicant,~~
9 ~~in writing, of its decision within 5 days after it is issued.]~~ The
10 decision of the Board or governing body is a final decision for
11 purposes of judicial review.

12 **Sec. 18.** NRS 338.1385 is hereby amended to read as follows:

13 338.1385 1. Except as otherwise provided in subsection ~~[7]~~ 8
14 and NRS 338.1906 and 338.1907, this state, or *the governing body*
15 *of a local government or its authorized representative* that awards a
16 contract for ~~the construction, alteration or repair of~~ a public work
17 in accordance with paragraph (a) of subsection 1 of NRS 338.1373,
18 ~~for a public officer, public employee or other person responsible for~~
19 ~~awarding a contract for the construction, alteration or repair of a~~
20 ~~public work who represents the State or the local government,~~ shall
21 not:

22 (a) Commence ~~such a project~~ *a public work* for which the
23 estimated cost exceeds \$100,000 unless it advertises in a newspaper
24 ~~of general circulation in this state~~ *qualified pursuant to chapter*
25 *238 of NRS that is published in the county where the public work*
26 *will be performed* for bids for the ~~project; or~~ *public work. If no*
27 *qualified newspaper is published in the county where the public*
28 *work will be performed, the required advertisement must be*
29 *published in some qualified newspaper that is printed in the State*
30 *of Nevada and has a general circulation in the county.*

31 (b) Divide ~~such a project~~ *a public work* into separate portions
32 to avoid the requirements of paragraph (a).

33 2. ~~Except as otherwise provided in subsection 7, a public body~~
34 ~~that maintains a list of properly licensed contractors who are~~
35 ~~interested in receiving offers to bid on public works projects for~~
36 ~~which the estimated cost is more than \$25,000 but less than~~
37 ~~\$100,000 shall solicit bids from not more than three of the~~
38 ~~contractors on the list for a contract of that value for the~~
39 ~~construction, alteration or repair of a public work. The public body~~
40 ~~shall select contractors from the list in such a manner as to afford~~
41 ~~each contractor an equal opportunity to bid on a public works~~
42 ~~project. A properly licensed contractor must submit a written~~
43 ~~request annually to the public body to remain on the list. Offers for~~
44 ~~bids which are made pursuant to this subsection must be sent by~~
45 ~~certified mail.] At least once each quarter, the authorized~~



1 *representative of a public body shall report to the public body any*
2 *contract that he awarded pursuant to subsection 1 in the*
3 *immediately preceding quarter.*

4 3. Each advertisement for bids must include a provision that
5 sets forth ~~;~~

6 ~~—(a) The~~ *the* requirement that a contractor must be qualified
7 pursuant to NRS 338.1379 to bid on the contract . ~~[or must be~~
8 ~~exempt from meeting such qualifications pursuant to NRS~~
9 ~~338.1383; and~~

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

12 4. Approved plans and specifications for the bids must be on
13 file at a place and time stated in the advertisement for the inspection
14 of all persons desiring to bid thereon and for other interested
15 persons. Contracts for the project must be awarded on the basis of
16 bids received.

17 5. *Except as otherwise provided in subsection 6 and NRS*
18 *338.1389, a public body shall award a contract to the lowest*
19 *responsive and responsible bidder.*

20 6. Any bids received in response to an advertisement for bids
21 may be rejected if the ~~[person]~~ *public body or its authorized*
22 *representative* responsible for awarding the contract determines
23 that:

24 (a) The bidder is not a qualified bidder pursuant to NRS
25 338.1379 ; ~~[, unless the bidder is exempt from meeting such~~
26 ~~qualifications pursuant to NRS 338.1383;]~~

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

28 (c) The quality of the services, materials, equipment or labor
29 offered does not conform to the approved ~~[plan]~~ *plans* or
30 specifications; or

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

32 ~~[6. — Before the State or a local government may]~~

33 7. *Before a public body may* commence *the performance of* a
34 ~~[project subject]~~ *public work itself pursuant* to the provisions of
35 this section, based upon a determination that the public interest
36 would be served by rejecting any bids received in response to an
37 advertisement for bids, ~~[it]~~ *the public body* shall prepare and make
38 available for public inspection a written statement containing:

39 (a) A list of all persons, including supervisors, whom the ~~[State~~
40 ~~or the local government]~~ *public body* intends to assign to the
41 ~~[project,]~~ *public work*, together with their classifications and an
42 estimate of the direct and indirect costs of their labor;

43 (b) A list of all equipment that the ~~[State or the local~~
44 ~~government]~~ *public body* intends to use on the ~~[project,]~~ *public*
45 *work*, together with an estimate of the number of hours each item of



1 equipment will be used and the hourly cost to use each item of
2 equipment;

3 (c) An estimate of the cost of administrative support for the
4 persons assigned to the ~~[project;]~~ *public work;*

5 (d) An estimate of the total cost of the ~~[project;]~~ *public work,*
6 *including the fair market value of or, if known, the actual cost of*
7 *all materials, supplies, labor and equipment to be used for the*
8 *public work;* and

9 (e) An estimate of the amount of money the ~~[State or the local~~
10 ~~government]~~ *public body* expects to save by rejecting the bids and
11 performing the ~~[project itself.~~
12 ~~7.]~~ *public work itself.*

13 8. This section does not apply to:

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

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

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

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

24 (e) The design and construction of a public work for which a
25 public body contracts with a design-build team pursuant to NRS
26 338.1711 to 338.1727.

27 **Sec. 19.** NRS 338.1385 is hereby amended to read as follows:

28 338.1385 1. Except as otherwise provided in subsection 8,
29 this state, or a local government *or its authorized representative*
30 that awards a contract for ~~[the construction, alteration or repair of]~~ a
31 public work in accordance with paragraph (a) of subsection 1 of
32 NRS 338.1373, ~~[or a public officer, public employee or other person~~
33 ~~responsible for awarding a contract for the construction, alteration~~
34 ~~or repair of a public work who represents the State or the local~~
35 ~~government,]~~ shall not:

36 (a) Commence ~~[such a project]~~ *a public work* for which the
37 estimated cost exceeds \$100,000 unless it advertises in a newspaper
38 ~~[of general circulation in this state]~~ *qualified pursuant to chapter*
39 *238 of NRS that is published in the county where the public work*
40 *will be performed* for bids for the ~~[project; or]~~ *public work. If no*
41 *qualified newspaper is published in the county where the public*
42 *work will be performed, the required advertisement must be*
43 *published in some qualified newspaper that is printed in the State*
44 *of Nevada and having a general circulation within the county.*



- 1 (b) Divide ~~[such a project]~~ **a public work** into separate portions
2 to avoid the requirements of paragraph (a).
- 3 2. ~~[Except as otherwise provided in subsection 8, a public body
4 that maintains a list of properly licensed contractors who are
5 interested in receiving offers to bid on public works projects for
6 which the estimated cost is more than \$25,000 but less than
7 \$100,000 shall solicit bids from not more than three of the
8 contractors on the list for a contract of that value for the
9 construction, alteration or repair of a public work. The public body
10 shall select contractors from the list in such a manner as to afford
11 each contractor an equal opportunity to bid on a public works
12 project. A properly licensed contractor must submit a written
13 request annually to the public body to remain on the list. Offers for
14 bids which are made pursuant to this subsection must be sent by
15 certified mail.] At least once each quarter, the authorized
16 representative of a public body shall report to the public body any
17 contract that he awarded pursuant to subsection 1 in the
18 immediately preceding quarter.~~
- 19 3. Each advertisement for bids must include a provision that
20 sets forth ~~[~~
21 ~~—(a) The]~~ **the** requirement that a contractor must be qualified
22 pursuant to NRS 338.1379 to bid on the contract . ~~[or must be
23 exempt from meeting such qualifications pursuant to NRS
24 338.1383; and
25 —(b) The period during which an application to qualify as a bidder
26 on the contract must be submitted.]~~
- 27 4. Approved plans and specifications for the bids must be on
28 file at a place and time stated in the advertisement for the inspection
29 of all persons desiring to bid thereon and for other interested
30 persons. Contracts for the project must be awarded on the basis of
31 bids received.
- 32 5. **Except as otherwise provided in subsection 6 and the
33 provisions of NRS 338.1389, a public body shall award a contract
34 to the lowest responsive and responsible bidder.**
- 35 6. Any bids received in response to an advertisement for bids
36 may be rejected if the ~~[person]~~ **public body or its authorized
37 representative** responsible for awarding the contract determines
38 that:
- 39 (a) The bidder is not a qualified bidder pursuant to NRS
40 338.1379 ; ~~[, unless the bidder is exempt from meeting such
41 qualifications pursuant to NRS 338.1383;]~~
- 42 (b) The bidder is not responsive ~~[;]~~ **or responsible;**
- 43 (c) The quality of the services, materials, equipment or labor
44 offered does not conform to the approved ~~[plan]~~ **plans** or
45 specifications; or



- 1 (d) The public interest would be served by such a rejection.
2 ~~{6. Before the State or a local government}~~
3 **7. Before a public body** may commence *the performance of a*
4 ~~{project subject}~~ *public work itself pursuant* to the provisions of
5 this section, based upon a determination that the public interest
6 would be served by rejecting any bids received in response to an
7 advertisement for bids, ~~{it}~~ *the public body* shall prepare and make
8 available for public inspection a written statement containing:
9 (a) A list of all persons, including supervisors, whom the ~~{State~~
10 ~~or the local government}~~ *public body* intends to assign to the
11 ~~{project,}~~ *public work*, together with their classifications and an
12 estimate of the direct and indirect costs of their labor;
13 (b) A list of all equipment that the ~~{State or the local~~
14 ~~government}~~ *public body* intends to use on the ~~{project,}~~ *public*
15 *work*, together with an estimate of the number of hours each item of
16 equipment will be used and the hourly cost to use each item of
17 equipment;
18 (c) An estimate of the cost of administrative support for the
19 persons assigned to the ~~{project,}~~
20 *public work*;
21 (d) An estimate of the total cost of the ~~{project,}~~ *public work*,
22 *including, the fair market value of or, if known, the actual cost of*
23 *all materials, supplies, labor and equipment to be used for the*
24 *public work*; and
25 (e) An estimate of the amount of money the ~~{State or the local~~
26 ~~government}~~ *public body* expects to save by rejecting the bids and
27 performing the ~~{project itself}~~.
28 ~~—7. In preparing the estimated cost of a project pursuant to~~
29 ~~subsection 6, the State or a local government must include the fair~~
30 ~~market value of, or, if known, the actual cost of, all materials,~~
31 ~~supplies, labor and equipment to be used for the project.}~~ *public*
32 *work itself*.
33 8. This section does not apply to:
34 (a) Any utility subject to the provisions of chapter 318 or 710 of
35 NRS;
36 (b) Any work of construction, reconstruction, improvement and
37 maintenance of highways subject to NRS 408.323 or 408.327;
38 (c) Normal maintenance of the property of a school district; or
39 (d) The Las Vegas Valley Water District created pursuant to
40 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
41 District created pursuant to chapter 477, Statutes of Nevada 1983 or
42 the Virgin Valley Water District created pursuant to chapter 100,
43 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. 20.** NRS 338.1387 is hereby amended to read as follows:

5 338.1387 1. A public body *or its authorized representative*
6 awarding a contract for a public work shall not award the contract to
7 a person who, at the time of the bid, is not properly licensed under
8 the provisions of chapter 624 of NRS or if the contract would
9 exceed the limit of his license. A subcontractor *who is* named by
10 ~~the~~ a contractor *who submitted a bid on the contract as a*
11 *subcontractor who will provide a portion of the work on the public*
12 *work pursuant to NRS 338.141 and* who is not properly licensed
13 for that portion of the work shall be deemed unacceptable. If the
14 subcontractor is deemed unacceptable ~~is~~ *pursuant to this*
15 *subsection*, the contractor shall provide an acceptable subcontractor
16 ~~. before the award of the contract.~~

17 2. If, after awarding the contract, *but before commencement of*
18 *the work*, the public body *or its authorized representative* discovers
19 that the person to whom the contract was awarded is not licensed, or
20 that the contract would exceed his license, the public body *or its*
21 *authorized representative* shall ~~reject the bid~~ *rescind the award of*
22 *the contract* and may accept the next lowest bid for that public work
23 from a responsive bidder who was determined by the public body *or*
24 *its authorized representative* to be a qualified bidder pursuant to
25 NRS 338.1379 ~~for was exempt from meeting such qualifications~~
26 ~~pursuant to NRS 338.1373 or 338.1383~~ without requiring that new
27 bids be submitted.

28 **Sec. 21.** NRS 338.1389 is hereby amended to read as follows:

29 338.1389 1. Except as otherwise provided in *subsection 10*
30 *and* NRS 338.1385, ~~and 338.1711 to 338.1727, inclusive,~~ a public
31 body *or its authorized representative* shall award a contract for a
32 public work *for which the estimated cost exceeds \$250,000* to the
33 contractor who submits the best bid.

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

36 ~~(a) Has~~ a bid that is:
37 (a) *Submitted by a contractor who has* been determined by the
38 public body to be a qualified bidder pursuant to NRS 338.1379 ~~or~~
39 ~~is exempt from meeting such requirements pursuant to NRS~~
40 ~~338.1373 or 338.1383; and~~

41 ~~(b) At the time he submits his bid, provides to the public body;~~
42 (b) *Accompanied by* a copy of a *valid* certificate of eligibility to
43 receive a preference in bidding on public works issued to ~~him~~ *the*
44 *contractor* by the State Contractors' Board pursuant to subsection 3
45 or 4 ~~is~~



1 ~~shall be deemed to have submitted a better bid than a competing~~
2 ~~contractor who has not provided a copy of such a valid certificate of~~
3 ~~eligibility if the amount of his bid is not] ; and~~

4 (c) *Not* more than 5 percent higher than the [amount] bid
5 submitted by the [competing contractor.] *next lowest responsive*
6 *and responsible bidder whose bid is not accompanied by a copy of*
7 *a valid certificate of eligibility to receive a preference in bidding*
8 *on public works issued to him by the State Contractors' Board*
9 *pursuant to subsection 3 or 4,*
10 *shall be deemed to be the best bid for the purposes of this section.*

11 3. The State Contractors' Board shall issue a certificate of
12 eligibility to receive a preference in bidding on public works to a
13 general contractor who is licensed pursuant to the provisions of
14 chapter 624 of NRS and submits to the Board an affidavit from a
15 certified public accountant setting forth that the general contractor
16 has, while licensed as a general contractor in this state:

17 (a) Paid directly, on his own behalf:

18 (1) The sales and use taxes imposed pursuant to chapters
19 372, 374 and 377 of NRS on materials used for construction in this
20 state, including, without limitation, construction that is undertaken
21 or carried out on land within the boundaries of this state that is
22 managed by the Federal Government or is on an Indian reservation
23 or Indian colony, of not less than \$5,000 for each consecutive
24 12-month period for 60 months immediately preceding the
25 submission of the affidavit from the certified public accountant;

26 (2) The governmental services tax imposed pursuant to
27 chapter 371 of NRS on the vehicles used in the operation of his
28 business in this state of not less than \$5,000 for each consecutive
29 12-month period for 60 months immediately preceding the
30 submission of the affidavit from the certified public accountant; or

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

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

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

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

40 4. The State Contractors' Board shall issue a certificate of
41 eligibility to receive a preference in bidding on public works to a
42 specialty contractor who is licensed pursuant to the provisions of
43 chapter 624 of NRS and submits to the Board an affidavit from a
44 certified public accountant setting forth that the specialty contractor
45 has, while licensed as a specialty contractor in this state:



- 1 (a) Paid directly, on his own behalf:
- 2 (1) The sales and use taxes pursuant to chapters 372, 374 and
- 3 377 of NRS on materials used for construction in this state,
- 4 including, without limitation, construction that is undertaken or
- 5 carried out on land within the boundaries of this state that is
- 6 managed by the Federal Government or is on an Indian reservation
- 7 or Indian colony, of not less than \$5,000 for each consecutive
- 8 12-month period for 60 months immediately preceding the
- 9 submission of the affidavit from the certified public accountant;
- 10 (2) The governmental services tax imposed pursuant to
- 11 chapter 371 of NRS on the vehicles used in the operation of his
- 12 business in this state of not less than \$5,000 for each consecutive
- 13 12-month period for 60 months immediately preceding the
- 14 submission of the affidavit from the certified public accountant; or
- 15 (3) Any combination of such sales and use taxes and
- 16 governmental services tax; or
- 17 (b) Acquired, by purchase, inheritance, gift or transfer through a
- 18 stock option plan, all the assets and liabilities of a viable, operating
- 19 construction firm that possesses a:
- 20 (1) License as a specialty contractor pursuant to the
- 21 provisions of chapter 624 of NRS; and
- 22 (2) Certificate of eligibility to receive a preference in bidding
- 23 on public works.
- 24 5. For the purposes of complying with the requirements set
- 25 forth in paragraph (a) of subsection 3 and paragraph (a) of
- 26 subsection 4, a contractor shall be deemed to have paid:
- 27 (a) Sales and use taxes and governmental services taxes that
- 28 were paid in this state by an affiliate or parent company of the
- 29 contractor, if the affiliate or parent company is also a general
- 30 contractor or specialty contractor, as applicable; and
- 31 (b) Sales and use taxes that were paid in this state by a joint
- 32 venture in which the contractor is a participant, in proportion to the
- 33 amount of interest the contractor has in the joint venture.
- 34 6. A contractor who has received a certificate of eligibility to
- 35 receive a preference in bidding on public works from the State
- 36 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
- 37 for the annual renewal of his contractor's license pursuant to NRS
- 38 624.283, submit to the Board an affidavit from a certified public
- 39 accountant setting forth that the contractor has, during the
- 40 immediately preceding 12 months, paid the taxes required pursuant
- 41 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
- 42 applicable, to maintain his eligibility to hold such a certificate.
- 43 7. A contractor who fails to submit an affidavit to the Board
- 44 pursuant to subsection 6 ceases to be eligible to receive a preference



1 in bidding on public works unless he reapplies for and receives a
2 certificate of eligibility pursuant to subsection 3 or 4, as applicable.

3 8. If a contractor holds more than one contractor's license, he
4 must submit a separate application for each license pursuant to
5 which he wishes to qualify for a preference in bidding. Upon
6 issuance, the certificate of eligibility to receive a preference in
7 bidding on public works becomes part of the contractor's license for
8 which the contractor submitted the application.

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

16 10. If any federal statute or regulation precludes the granting of
17 federal assistance or reduces the amount of that assistance for a
18 particular public work because of the provisions of subsection 2,
19 those provisions do not apply insofar as their application would
20 preclude or reduce federal assistance for that work. ~~["The provisions
21 of subsection 2 do not apply to any contract for a public work which
22 is expected to cost less than \$250,000."]~~

23 11. If a bid is submitted by two or more contractors as a joint
24 venture or by one of them as a joint venturer, the ~~["provisions of
25 subsection 2 apply"]~~ *bid may be deemed the best bid* only if both or
26 all of the joint venturers separately meet the requirements of ~~["that
27 subsection."]~~ *subsection 2.*

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

31 13. A person or entity who believes that a contractor
32 wrongfully holds a certificate of eligibility to receive a preference in
33 bidding on public works may challenge the validity of the certificate
34 by filing a written objection with the public body to which the
35 contractor has submitted a bid ~~["or proposal"]~~ on a contract for the
36 construction of a public work. A written objection authorized
37 pursuant to this subsection must:

38 (a) Set forth proof or substantiating evidence to support the
39 belief of the person or entity that the contractor wrongfully holds a
40 certificate of eligibility to receive a preference in bidding on public
41 works; and

42 (b) Be filed with the public body ~~["at or after the time at which
43 the contractor submitted the bid or proposal to the public body and
44 before the time at which the public body awards the contract for
45 which the bid or proposal was submitted."]~~ *not later than 3 business*



1 *days after the opening of the bids by the public body or its*
2 *authorized representative.*

3 14. If a public body receives a written objection pursuant to
4 subsection 13, the public body shall determine whether the objection
5 is accompanied by the proof or substantiating evidence required
6 pursuant to paragraph (a) of that subsection. If the public body
7 determines that the objection is not accompanied by the required
8 proof or substantiating evidence, the public body shall dismiss the
9 objection and *the public body or its authorized representative* may
10 proceed immediately to award the contract. If the public body
11 determines that the objection is accompanied by the required proof
12 or substantiating evidence, the public body shall determine whether
13 the contractor qualifies for the certificate pursuant to the provisions
14 of this section and *the public body or its authorized representative*
15 may proceed to award the contract accordingly.

16 **Sec. 22.** NRS 338.139 is hereby amended to read as follows:

17 338.139 1. A public body *or its authorized representative*
18 may award a contract for ~~the construction, alteration or repair of~~ a
19 public work pursuant to NRS 338.1375 to 338.1389, inclusive, to a
20 specialty contractor if:

21 (a) The majority of the work to be performed on the ~~project~~
22 *public work* to which the contract pertains consists of specialty
23 contracting for which the specialty contractor is licensed; and

24 (b) The ~~project~~ *public work* to which the contract pertains is
25 not part of a larger public work.

26 2. If a public body *or its authorized representative* awards a
27 contract to a specialty contractor pursuant to NRS 338.1375 to
28 338.1389, inclusive, all work to be performed on the ~~project~~ *public*
29 *work* to which the contract pertains that is outside the scope of the
30 license of the specialty contractor must be performed by a
31 subcontractor who is licensed to perform such work.

32 **Sec. 23.** NRS 338.140 is hereby amended to read as follows:

33 338.140 1. ~~An agency of this state, a political subdivision,~~
34 ~~municipal corporation or district, a public officer or a person~~
35 ~~charged with the letting of contracts for the construction, alteration~~
36 ~~or repair of public works] A public body~~ shall not draft or cause to
37 be drafted specifications for bids, in connection with ~~the~~
38 ~~construction, alteration or repair of public works:]~~
39 *a public work:*

40 (a) In such a manner as to limit the bidding, directly or
41 indirectly, to any one specific concern.

42 (b) Except in those instances where the product is designated to
43 match others in use on a particular public improvement either
44 completed or in the course of completion, calling for a designated
45 material, product, thing or service by specific brand or trade name



1 unless the specification lists at least two brands or trade names of
2 comparable quality or utility and is followed by the words “or
3 equal” so that bidders may furnish any equal material, product, thing
4 or service.

5 (c) In such a manner as to hold the bidder to whom such
6 contract is awarded responsible for extra costs incurred as a result of
7 errors or omissions by the public ~~[agency]~~ *body* in the contract
8 documents.

9 (d) In such a manner as to require a bidder to furnish to the
10 public ~~[agency,]~~ *body*, whether before or after the bid is submitted,
11 documents generated in the preparation or determination of prices
12 included in the bid, except when requested by the public ~~[agency]~~
13 *body* for:

14 (1) A determination of the price of additional work
15 performed pursuant to a change order;

16 (2) An evaluation of claims for costs incurred for the
17 performance of additional work;

18 (3) Preparation for arbitration or litigation; or

19 (4) Any combination thereof.

20 A document furnished to a public ~~[agency]~~ *body* pursuant to this
21 paragraph is confidential and must be returned to the bidder.

22 2. In those cases involving a unique or novel product
23 application required to be used in the public interest, or where only
24 one brand or trade name is known to the ~~[specifying agency,]~~ *public*
25 *body*, it may list only one.

26 3. Specifications must provide a period of time of at least 7
27 days after award of the contract for submission of data
28 substantiating a request for a substitution of “an equal” item.

29 **Sec. 24.** NRS 338.141 is hereby amended to read as follows:

30 338.141 1. ~~[Except as otherwise provided in subsection 2,~~
31 ~~each] Each~~ bid submitted to ~~[any officer, department, board or~~
32 ~~commission for the construction of] a public body for any public~~
33 work ~~[or improvement]~~ must include:

34 (a) *The name of each subcontractor who will provide labor or*
35 *a portion of the work on the public work which is estimated to*
36 *exceed 3 percent of the estimated cost of the public work; or*

37 (b) The name of each subcontractor who will provide labor or a
38 portion of the work ~~[or improvement]~~ *on the public work* to the
39 contractor for which ~~[he]~~ *the subcontractor* will be paid an amount
40 exceeding 5 percent of the prime contractor’s total bid. Within 2
41 hours after the completion of the opening of the bids, the contractors
42 who submitted the three lowest bids must submit a list containing
43 the name of each subcontractor who will provide labor or a portion
44 of the work ~~[or improvement]~~ *on the public work* to the contractor
45 for which ~~[he]~~ *the subcontractor* will be paid an amount exceeding



1 1 percent of the prime contractor's total bid or \$50,000, whichever
2 is greater, and the number of the license issued to the subcontractor
3 pursuant to chapter 624 of NRS. ~~If a contractor fails to submit such~~
4 ~~a list within the required time, his bid shall be deemed not~~
5 ~~responsive.~~

6 ~~b) A description of the portion of the work or improvement~~
7 ~~which each subcontractor named in the bid will complete.~~

8 ~~2. The contractor shall list in his bid pursuant to subsection 1~~
9 ~~the name of a subcontractor for each portion of the project that will~~
10 ~~be completed by a subcontractor.]~~

11 *2. The lists required by subsection 1 must include a*
12 *description of the labor or portion of the work which each*
13 *subcontractor named in the list will provide to the contractor.*

14 *3. A contractor shall include his name on a list required by*
15 *subsection 1 if he will perform any of the work required to be*
16 *listed pursuant to subsection 1.*

17 *4. If a contractor does not submit a list required by subsection*
18 *1, his bid shall be deemed not responsive.*

19 *5. A contractor whose bid is accepted shall not substitute a*
20 *subcontractor for any ~~person for a~~ subcontractor who is named in*
21 *the bid, unless:*

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

26 (b) The substitution is approved by the ~~awarding authority or~~
27 ~~an~~ *public body or its* authorized representative . ~~of the awarding~~
28 ~~authority.]~~ The substitution must be approved if the ~~awarding~~
29 ~~authority~~ *public body* or *its* authorized representative ~~of the~~
30 ~~awarding authority~~ determines that:

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

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

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

42 (4) *The named subcontractor is not properly licensed to*
43 *provide that labor or portion of the work.*

44 *6. If a contractor indicates pursuant to subsection 3 that he*
45 *will perform a portion of work on the public work and thereafter*



1 *requests to substitute a subcontractor to perform such work, the*
2 *contractor shall provide to the public body a written explanation in*
3 *the form required by the public body which contains the reasons*
4 *that:*

5 (a) *A subcontractor was not originally contemplated to be used*
6 *on that portion of the public work; and*

7 (b) *The substitution is in the best interest of the public body.*

8 7. As used in this section, "general terms" means the terms and
9 conditions of a contract that set the basic requirements for a
10 ~~[project]~~ *public work* and apply without regard to the particular
11 trade or specialty of a subcontractor, but does not include any
12 provision that controls or relates to the specific portion of the
13 ~~[project]~~ *public work* that will be completed by a subcontractor,
14 including, without limitation, the materials to be used by the
15 subcontractor or other details of the work to be performed by the
16 subcontractor.

17 **Sec. 25.** NRS 338.143 is hereby amended to read as follows:

18 338.143 1. Except as otherwise provided in subsection ~~[6]~~ 7
19 and NRS 338.1907, a local government *or its authorized*
20 *representative* that awards a contract for ~~[the construction, alteration~~
21 ~~or repair of]~~ a public work in accordance with paragraph (b) of
22 subsection 1 of NRS 338.1373 ~~[, or a public officer, public~~
23 ~~employee or other person responsible for awarding a contract for the~~
24 ~~construction, alteration or repair of a public work who represents~~
25 ~~that local government,]~~ shall not:

26 (a) Commence ~~[such a project]~~ *a public work* for which the
27 estimated cost exceeds \$100,000 unless it advertises in a newspaper
28 ~~[of general circulation in this state]~~ *qualified pursuant to chapter*
29 *238 of NRS that is published in the county where the project will*
30 *be performed* for bids for the ~~[project, or]~~ *public work. If no*
31 *qualified newspaper is published in the county where the public*
32 *work will be performed, the required advertisement must be*
33 *published in some qualified newspaper that is printed in the State*
34 *of Nevada and has a general circulation in the county.*

35 (b) Divide ~~[such a project]~~ *a public work* into separate portions
36 to avoid the requirements of paragraph (a).

37 2. ~~[Except as otherwise provided in subsection 6, a local~~
38 ~~government that maintains a list of properly licensed contractors~~
39 ~~who are interested in receiving offers to bid on public works~~
40 ~~projects for which the estimated cost is more than \$25,000 but less~~
41 ~~than \$100,000 shall solicit bids from not more than three of the~~
42 ~~contractors on the list for a contract of that value for the~~
43 ~~construction, alteration or repair of a public work. The local~~
44 ~~government shall select contractors from the list in such a manner as~~
45 ~~to afford each contractor an equal opportunity to bid on a public~~



1 ~~works project. A properly licensed contractor must submit a written~~
2 ~~request annually to the local government to remain on the list.~~
3 ~~Offers for bids which are made pursuant to this subsection must be~~
4 ~~sent by certified mail.] At least once each quarter, the authorized~~
5 ~~representative of a local government shall report to the local~~
6 ~~government any contract that he awarded pursuant to subsection 1~~
7 ~~in the immediately preceding quarter.~~

8 3. Approved plans and specifications for the bids must be on
9 file at a place and time stated in the advertisement for the inspection
10 of all persons desiring to bid thereon and for other interested
11 persons. Contracts for the project must be awarded on the basis of
12 bids received.

13 4. *Except as otherwise provided in subsection 5 and NRS*
14 *338.147, the local government or its authorized representative*
15 *shall award a contract to the lowest responsive and responsible*
16 *bidder.*

17 5. Any bids received in response to an advertisement for bids
18 may be rejected if the ~~{person}~~ *local government or its authorized*
19 *representative* responsible for awarding the contract determines
20 that:

- 21 (a) The bidder is not responsive or responsible;
- 22 (b) The quality of the services, materials, equipment or labor
23 offered does not conform to the approved ~~{plan}~~ *plans* or
24 specifications; or
- 25 (c) The public interest would be served by such a rejection.

26 ~~{5.}~~ 6. Before a local government may commence *the*
27 *performance of* a ~~{project-subject}~~ *public work itself pursuant* to
28 the provisions of this section, based upon a determination that the
29 public interest would be served by rejecting any bids received in
30 response to an advertisement for bids, ~~{it}~~ *the local government*
31 shall prepare and make available for public inspection a written
32 statement containing:

33 (a) A list of all persons, including supervisors, whom the local
34 government intends to assign to the ~~{project.}~~ *public work*, together
35 with their classifications and an estimate of the direct and indirect
36 costs of their labor;

37 (b) A list of all equipment that the local government intends to
38 use on the ~~{project.}~~ *public work*, together with an estimate of the
39 number of hours each item of equipment will be used and the hourly
40 cost to use each item of equipment;

41 (c) An estimate of the cost of administrative support for the
42 persons assigned to the ~~{project.}~~ *public work*;

43 (d) An estimate of the total cost of the ~~{project.}~~ *public work*,
44 *including the fair market value of or, if known, the actual cost of*



1 *all materials, supplies, labor and equipment to be used for the*
2 *public work;* and

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

6 ~~6.] public work itself.~~

7 7. This section does not apply to:

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

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

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

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

18 (e) The design and construction of a public work for which a
19 public body contracts with a design-build team pursuant to NRS
20 338.1711 to 338.1727, inclusive.

21 **Sec. 26.** NRS 338.143 is hereby amended to read as follows:

22 338.143 1. Except as otherwise provided in subsection 7, a
23 local government *or its authorized representative* that awards a
24 contract for ~~the construction, alteration or repair of~~ a public work
25 in accordance with paragraph (b) of subsection 1 of NRS 338.1373
26 ~~[, or a public officer, public employee or other person responsible~~
27 ~~for awarding a contract for the construction, alteration or repair of a~~
28 ~~public work who represents that local government.]~~ shall not:

29 (a) Commence ~~such a project~~ *a public work* for which the
30 estimated cost exceeds \$100,000 unless it advertises in a newspaper
31 ~~of general circulation in this state~~ *qualified pursuant to chapter*
32 *238 or NRS that is published in the county where the public work*
33 *will be performed* for bids for the ~~project; or~~ *public work. If no*
34 *qualified newspaper is published within the county where the*
35 *public work will be performed, the required advertisement must be*
36 *published in some qualified newspaper that is printed in the State*
37 *of Nevada and has a general circulation within the county.*

38 (b) Divide ~~such a project~~ *a public work* into separate portions
39 to avoid the requirements of paragraph (a).

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



1 ~~construction, alteration or repair of a public work. The local~~
2 ~~government shall select contractors from the list in such a manner as~~
3 ~~to afford each contractor an equal opportunity to bid on a public~~
4 ~~works project. A properly licensed contractor must submit a written~~
5 ~~request annually to the local government to remain on the list.~~
6 ~~Offers for bids which are made pursuant to this subsection must be~~
7 ~~sent by certified mail.]~~ *At least once each quarter, the authorized*
8 *representative of a local government shall report to the local*
9 *government any contract that he awarded pursuant to subsection 1*
10 *in the immediately preceding quarter.*

11 3. Approved plans and specifications for the bids must be on
12 file at a place and time stated in the advertisement for the inspection
13 of all persons desiring to bid thereon and for other interested
14 persons. Contracts for the project must be awarded on the basis of
15 bids received.

16 4. *Except as otherwise provided in subsection 5 and NRS*
17 *338.147, the local government or its authorized representative*
18 *shall award a contract to the lowest responsive and responsible*
19 *bidder.*

20 5. Any bids received in response to an advertisement for bids
21 may be rejected if the ~~[person]~~ *local government or its authorized*
22 *representative* responsible for awarding the contract determines
23 that:

- 24 (a) The bidder is not responsive or responsible;
- 25 (b) The quality of the services, materials, equipment or labor
26 offered does not conform to the approved ~~[plan]~~ *plans* or
27 specifications; or
- 28 (c) The public interest would be served by such a rejection.

29 ~~[5.]~~ 6. Before a local government may commence *the*
30 *performance of* a ~~[project subject]~~ *public work itself pursuant to*
31 *the provisions of this section, based upon a determination that the*
32 *public interest would be served by rejecting any bids received in*
33 *response to an advertisement for bids, [it] the local government*
34 *shall prepare and make available for public inspection a written*
35 *statement containing:*

36 (a) A list of all persons, including supervisors, whom the local
37 government intends to assign to the ~~[project,]~~ *public work*, together
38 with their classifications and an estimate of the direct and indirect
39 costs of their labor;

40 (b) A list of all equipment that the local government intends to
41 use on the ~~[project,]~~ *public work*, together with an estimate of the
42 number of hours each item of equipment will be used and the hourly
43 cost to use each item of equipment;

44 (c) An estimate of the cost of administrative support for the
45 persons assigned to the ~~[project,]~~ *public work*;



1 (d) An estimate of the total cost of the ~~[project.]~~ *public work,*
2 *including the fair market value of or, if known, the actual cost of,*
3 *all materials, supplies, labor and equipment to be used for the*
4 *public work;* and

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

8 ~~6.—In preparing the estimated cost of a project pursuant to~~
9 ~~subsection 5, a local government must include the fair market value~~
10 ~~of, or, if known, the actual cost of, all materials, supplies, labor and~~
11 ~~equipment to be used for the project.]~~ *public work itself.*

12 7. This section does not apply to:

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

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

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

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

23 (e) The design and construction of a public work for which a
24 public body contracts with a design-build team pursuant to NRS
25 338.1711 to 338.1727, inclusive.

26 **Sec. 27.** NRS 338.145 is hereby amended to read as follows:

27 338.145 1. A local government *or its authorized*
28 *representative* awarding a contract for a public work shall not award
29 the contract to a person who, at the time of the bid, is not properly
30 licensed under the provisions of chapter 624 of NRS or if the
31 contract would exceed the limit of his license. A subcontractor *who*
32 *is* named by ~~[the]~~ *a contractor who submits a bid to a local*
33 *government or its authorized representative as a subcontractor*
34 *who will provide a portion of the work on the public work*
35 *pursuant to NRS 338.141 and* who is not properly licensed for that
36 portion of the work shall be deemed unacceptable. If the
37 subcontractor is deemed unacceptable ~~[.]~~ *pursuant to this*
38 *subsection,* the contractor shall provide an acceptable subcontractor
39 ~~. [before the award of the contract.]~~

40 2. If, after awarding the contract, *but before commencement of*
41 *the work,* the local government *or its authorized representative*
42 discovers that the person to whom the contract was awarded is not
43 licensed, or that the contract would exceed his license, the local
44 government *or its authorized representative* shall ~~[reject the bid]~~
45 *rescind the award of the contract* and may accept the next lowest



1 bid for that public work from a responsive and responsible bidder
2 without requiring that new bids be submitted.

3 **Sec. 28.** NRS 338.147 is hereby amended to read as follows:

4 338.147 1. Except as otherwise provided in *subsection 10*
5 *and* NRS 338.143 , ~~[and 338.1711 to 338.1727, inclusive,]~~ a local
6 government *or its authorized representative* shall award a contract
7 for a public work *for which the estimated cost exceeds \$250,000*
8 to the contractor who submits the best bid.

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

11 ~~—(a) Has] a bid that is:~~

12 (a) *Submitted by a contractor who has* been found to be a
13 responsible and responsive contractor by the local government ~~;~~
14 ~~and~~

15 ~~—(b) At the time he submits his bid, provides to the local~~
16 ~~government a] or its authorized representative;~~

17 (b) *Accompanied by a* copy of a *valid* certificate of eligibility to
18 receive a preference in bidding on public works issued to ~~[him]~~ *the*
19 *contractor* by the State Contractors' Board pursuant to subsection 3
20 or 4 ~~;~~

21 ~~shall be deemed to have submitted a better bid than a competing~~
22 ~~contractor who has not provided a copy of such a valid certificate of~~
23 ~~eligibility if the amount of his bid is not] ; and~~

24 (c) *Not* more than 5 percent higher than the ~~[amount bid]~~ *bid*
25 *submitted* by the ~~[competing contractor.]~~ *next lowest responsive*
26 *and responsible bidder whose bid is not accompanied by a copy of*
27 *a valid certificate of eligibility to receive a preference in bidding*
28 *on public works issued to him by the State Contractors' Board*
29 *pursuant to subsection 3 or 4,*

30 *shall be deemed to be the best bid for the purposes of this section.*

31 3. The State Contractors' Board shall issue a certificate of
32 eligibility to receive a preference in bidding on public works to a
33 general contractor who is licensed pursuant to the provisions of
34 chapter 624 of NRS and submits to the Board an affidavit from a
35 certified public accountant setting forth that the general contractor
36 has, while licensed as a general contractor in this state:

37 (a) Paid directly, on his own behalf:

38 (1) The sales and use taxes imposed pursuant to chapters
39 372, 374 and 377 of NRS on materials used for construction in this
40 state, including, without limitation, construction that is undertaken
41 or carried out on land within the boundaries of this state that is
42 managed by the Federal Government or is on an Indian reservation
43 or Indian colony, 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;



1 (2) The governmental services tax imposed pursuant to
2 chapter 371 of NRS on the vehicles used in the operation of his
3 business in this state of not less than \$5,000 for each consecutive
4 12-month period for 60 months immediately preceding the
5 submission of the affidavit from the certified public accountant; or

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

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

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

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

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

21 (a) Paid directly, on his own behalf:

22 (1) The sales and use taxes pursuant to chapters 372, 374 and
23 377 of NRS on materials used for construction in this state,
24 including, without limitation, construction that is undertaken or
25 carried out on land within the boundaries of this state that is
26 managed by the Federal Government or is on an Indian reservation
27 or Indian colony, of not less than \$5,000 for each consecutive
28 12-month period for 60 months immediately preceding the
29 submission of the affidavit from the certified public accountant;

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

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

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

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

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



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

4 (a) Sales and use taxes and governmental services taxes paid in
5 this state by an affiliate or parent company of the contractor, if the
6 affiliate or parent company is also a general contractor or specialty
7 contractor, as applicable; and

8 (b) Sales and use taxes paid in this state by a joint venture in
9 which the contractor is a participant, in proportion to the amount of
10 interest the contractor has in the joint venture.

11 6. A contractor who has received a certificate of eligibility to
12 receive a preference in bidding on public works from the State
13 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
14 for the annual renewal of his contractor's license pursuant to NRS
15 624.283, submit to the Board an affidavit from a certified public
16 accountant setting forth that the contractor has, during the
17 immediately preceding 12 months, paid the taxes required pursuant
18 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
19 applicable, to maintain his eligibility to hold such a certificate.

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

24 8. If a contractor holds more than one contractor's license, he
25 must submit a separate application for each license pursuant to
26 which he wishes to qualify for a preference in bidding. Upon
27 issuance, the certificate of eligibility to receive a preference in
28 bidding on public works becomes part of the contractor's license for
29 which the contractor submitted the application.

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

37 10. If any federal statute or regulation precludes the granting of
38 federal assistance or reduces the amount of that assistance for a
39 particular public work because of the provisions of subsection 2,
40 those provisions do not apply insofar as their application would
41 preclude or reduce federal assistance for that work. ~~[The provisions
42 of subsection 2 do not apply to any contract for a public work which
43 is expected to cost less than \$250,000.]~~

44 11. If a bid is submitted by two or more contractors as a joint
45 venture or by one of them as a joint venturer, ~~[the provisions of~~



1 ~~subsection 2 apply~~ *the bid may be deemed a best bid* only if both or
2 all of the joint venturers separately meet the requirements of ~~that~~
3 ~~subsection.~~ *subsection 2.*

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

7 13. A person or entity who believes that a contractor
8 wrongfully holds a certificate of eligibility to receive a preference in
9 bidding on public works may challenge the validity of the certificate
10 by filing a written objection with the ~~public body~~ *local*
11 *government* to which the contractor has submitted a bid ~~or~~
12 ~~proposal~~ on a contract for the ~~completion~~ *construction* of a public
13 work. A written objection authorized pursuant to this subsection
14 must:

15 (a) Set forth proof or substantiating evidence to support the
16 belief of the person or entity that the contractor wrongfully holds a
17 certificate of eligibility to receive a preference in bidding on public
18 works; and

19 (b) Be filed with the ~~public body at or after the time at which~~
20 ~~the contractor submitted the bid or proposal to the public body and~~
21 ~~before the time at which the public body awards the contract for~~
22 ~~which the bid or proposal was submitted.~~

23 ~~14. If a public body~~ *local government not later than 3*
24 *business days after the date the local government sets for the*
25 *opening of the bids.*

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

41 **Sec. 29.** NRS 338.148 is hereby amended to read as follows:

42 338.148 1. A local government *or its authorized*
43 *representative* may award a contract for ~~the construction, alteration~~
44 ~~or repair of~~ a public work to a specialty contractor pursuant to NRS
45 338.147 if:



1 (a) The majority of the work to be performed on the ~~project~~
2 *public work* to which the contract pertains consists of specialty
3 contracting for which the specialty contractor is licensed; and

4 (b) The ~~project~~ *public work* to which the contract pertains is
5 not part of a larger public work.

6 2. If a local government *or its authorized representative*
7 awards a contract to a specialty contractor pursuant to NRS ~~338.143~~
8 *or* 338.147, all work to be performed on the ~~project~~ *public work* to
9 which the contract pertains that is outside the scope of the license of
10 the specialty contractor must be performed by a subcontractor who
11 is licensed to perform such work.

12 **Sec. 30.** NRS 338.150 is hereby amended to read as follows:

13 338.150 1. ~~Any agency of this state and any political~~
14 ~~subdivision, municipal corporation or district and any public officer~~
15 ~~or person~~ *Except as otherwise provided in subsection 3, any*
16 *public body* charged with the drafting of specifications for ~~the~~
17 ~~construction, alteration or repair of public works,~~ *a public work*
18 shall include in the specifications a clause permitting arbitration of a
19 dispute arising between the ~~agency and a~~ *public body and the*
20 contractor *engaged on a public work* if the dispute cannot otherwise
21 be settled.

22 2. Any dispute requiring arbitration must be handled in
23 accordance with the *construction* industry's rules for arbitration as
24 administered by the American Arbitration Association or the
25 Nevada Arbitration Association.

26 3. The provisions of subsection 1 do not require the
27 Department of Transportation to include such a clause in any
28 contract entered into by the Department.

29 **Sec. 31.** NRS 338.155 is hereby amended to read as follows:

30 338.155 ~~(1)~~ If a public body enters into a contract with a
31 design professional who is not a member of a design-build team, for
32 the provision of services in connection with a public work, the
33 contract:

34 ~~(a)~~ 1. Must set forth:

35 ~~(1)~~ (a) The specific period within which the public body
36 must pay the design professional.

37 ~~(2)~~ (b) The specific period and manner in which the public
38 body may dispute a payment or portion thereof that the design
39 professional alleges is due.

40 ~~(3)~~ (c) The terms of any penalty that will be imposed upon
41 the public body if the public body fails to pay the design
42 professional within the specific period set forth in the contract
43 pursuant to ~~subparagraph (1).~~

44 ~~(4)~~ *paragraph (a).*



1 (d) That the prevailing party in an action to enforce the contract
2 is entitled to reasonable attorney's fees and costs.

3 ~~[(b)]~~ 2. May set forth the terms of any discount that the public
4 body will receive if the public body pays the design professional
5 within the specific period set forth in the contract pursuant to
6 ~~[subparagraph (1) of]~~ paragraph (a)~~[-~~
7 ~~-(e)]~~ of subsection 1.

8 3. May set forth the terms by which the design professional
9 agrees to name the public body, at the cost of the public body, as an
10 additional insured in an insurance policy held by the design
11 professional.

12 ~~[(d)]~~ 4. Except as otherwise provided in ~~[paragraph (e),]~~
13 subsection 5, must not require the design professional to defend,
14 indemnify or hold harmless the public body or the employees,
15 officers or agents of that public body from any liability, damage,
16 loss, claim, action or proceeding caused by the negligence, errors,
17 omissions, recklessness or intentional misconduct of the employees,
18 officers or agents of the public body.

19 ~~[(e)]~~ 5. May require the design professional to defend,
20 indemnify and hold harmless the public body, and the employees,
21 officers and agents of the public body from any liabilities, damages,
22 losses, claims, actions or proceedings, including, without limitation,
23 reasonable attorneys' fees, that are caused by the negligence, errors,
24 omissions, recklessness or intentional misconduct of the design
25 professional or the employees or agents of the design professional in
26 the performance of the contract.

27 ~~[2.—Any provision of a contract that is in violation of paragraph~~
28 ~~(d) of subsection 1 is declared to be contrary to the public policy of~~
29 ~~this state and is void.]~~

30 **Sec. 32.** NRS 338.1711 is hereby amended to read as follows:

31 338.1711 1. Except as otherwise provided in this section, a
32 public body shall contract with a prime contractor for the
33 construction of a public work for which the estimated cost exceeds
34 \$100,000.

35 2. A public body may contract with a design-build team for the
36 design and construction of a public work that is a discrete project if
37 the public body determines that:

38 (a) The public work is:

39 (1) A plant or facility for the treatment and pumping of water
40 or the treatment and disposal of wastewater or sewage, the estimated
41 cost of which exceeds \$100,000,000; or

42 (2) Any other type of public work, except a stand-alone
43 underground utility project, the estimated cost of which exceeds
44 \$30,000,000; and



- 1 (b) Contracting with a design-build team will enable the public
2 body to:
- 3 (1) Design and construct the public work at a cost that is
4 significantly lower than the cost that the public body would incur to
5 design and construct the public work using a different method;
6 (2) Design and construct the public work in a shorter time
7 than would be required to design and construct the public work
8 using a different method, if exigent circumstances require that the
9 public work be designed and constructed within a short time; or
10 (3) Ensure that the design and construction of the public
11 work is properly coordinated, if the public work is unique, highly
12 technical and complex in nature.
- 13 3. Each state agency and each local government may contract
14 with a design-build team once in each fiscal year for the design and
15 construction of a public work if the governing body of the entity that
16 is responsible for financing the public work determines that:
- 17 (a) The estimated cost of the public work is:
- 18 (1) At least \$250,000 but less than \$30,000,000 if the public
19 work is the construction of a park and appurtenances thereto, the
20 rehabilitation or remodeling of a public building, or the construction
21 of an addition to a public building;
22 (2) At least \$500,000 but less than \$30,000,000 if the public
23 work is the construction of a new public building;
24 (3) At least \$5,000,000 but less than \$100,000,000 if the
25 public work is the construction, alteration or repair of a plant or
26 facility for the treatment and pumping of water or the treatment and
27 disposal of wastewater or sewage; or
28 (4) At least \$5,000,000 but less than \$30,000,000 if the
29 public work is the construction, alteration or repair of any other
30 fixed works as described in subsection 2 of NRS 624.215; and
31 (b) Contracting with a design-build team will enable the public
32 body to:
- 33 (1) Design and construct the public work at a cost that is
34 significantly lower than the cost that the public body would incur to
35 design and construct the public work using a different method;
36 (2) Design and construct the public work in a shorter time
37 than would be required to design and construct the public work
38 using a different method, if exigent circumstances require that the
39 public work be designed and constructed within a short time; or
40 (3) Ensure that the design and construction of the public
41 work is properly coordinated, if the public work is unique, highly
42 technical and complex in nature.
- 43 4. Notwithstanding the provisions of subsections 1, 2 and 3, a
44 public body may contract with:



- 1 (a) A nonprofit organization for the design and construction of a
- 2 project to restore, enhance or develop wetlands.
- 3 (b) A prime contractor or design-build team with respect to a
- 4 public work if the public body determines that the public work is:
- 5 (1) Not part of a larger public work; and
- 6 (2) Limited in scope to:
- 7 (I) Removal of asbestos;
- 8 (II) Replacement of equipment or systems for heating,
- 9 ventilation and air-conditioning;
- 10 (III) Replacement of a roof;
- 11 (IV) Landscaping; or
- 12 (V) Restoration, enhancement or development of
- 13 wetlands.

14 5. *A public body that is required to contract with a prime*

15 *contractor pursuant to subsection 1 or elects to contract with a*

16 *prime contractor pursuant to subsection 4 shall select the prime*

17 *contractor in accordance with the procedures for bidding that are*

18 *set forth in:*

- 19 (a) *The provisions of NRS 338.1375 to 338.139, inclusive; or*
- 20 (b) *NRS 338.143 to 338.148, inclusive, if the public body is a*
- 21 *local government that elects to award a contract for a public work*
- 22 *in accordance with paragraph (b) of subsection 1 of*
- 23 *NRS 338.1373.*

24 6. As used in this section, "state agency" includes an agency,

25 bureau, board, commission, department, division or any other unit of

26 the Legislative Department, Judicial Department or Executive

27 Department of State Government or the University and Community

28 College System of Nevada.

29 **Sec. 33.** NRS 338.1713 is hereby amended to read as follows:

30 338.1713 1. A public body shall not contract with a design-

31 build team with respect to a public work unless the ~~governing body~~

32 ~~of the~~ public body makes the determinations, at a public hearing,

33 that are required pursuant to subsection 2, 3 or 4 of NRS 338.1711,

34 as applicable.

35 2. A public body that is required to hold a public hearing

36 pursuant to this section shall publish notice of the hearing in a

37 newspaper ~~of~~ *qualified pursuant to chapter 238 of NRS that is*

38 *published in the county where the work will be performed. If no*

39 *qualified newspaper is published in the county where the public*

40 *work will be performed, the required advertisement must be*

41 *published in some qualified newspaper that is printed in the State*

42 *of Nevada and has a general circulation in ~~this state.~~ the county.*

43 **Sec. 34.** NRS 338.1715 is hereby amended to read as follows:

44 338.1715 ~~1.—A public body that is required to contract with a~~

45 ~~prime contractor pursuant to subsection 1 of NRS 338.1711 or elects~~



1 ~~to contract with a prime contractor pursuant to subsection 4 of NRS~~
2 ~~338.1711 shall select the prime contractor in accordance with the~~
3 ~~procedures for bidding that are set forth in:~~

4 ~~—(a) The provisions of NRS 338.1375 to 338.139, inclusive; or~~
5 ~~—(b) NRS 338.143 to 338.148, inclusive, if the public body is a~~
6 ~~local government that elects to award a contract for a public work in~~
7 ~~accordance with paragraph (b) of subsection 1 of NRS 338.1373.~~

8 ~~—2.]~~ A public body that contracts with a design-build team
9 pursuant to NRS 338.1711 and 338.1713 shall select the design-
10 build team in accordance with *the provisions of* NRS 338.1721 to
11 338.1727, inclusive.

12 **Sec. 35.** NRS 338.1717 is hereby amended to read as follows:

13 338.1717 A public body may employ a registered architect ,
14 *landscape architect* or licensed professional engineer as a
15 consultant to assist the public body in overseeing the construction of
16 a public work. An architect , *landscape architect* or engineer so
17 employed shall not:

- 18 1. Construct the public work; or
- 19 2. Assume overall responsibility for ensuring that the
20 construction of the public work is completed in a satisfactory
21 manner.

22 **Sec. 36.** NRS 338.1723 is hereby amended to read as follows:

23 338.1723 1. A public body shall advertise for preliminary
24 proposals for the design and construction of a public work by a
25 design-build team in a newspaper ~~[of]~~ *qualified pursuant to chapter*
26 *238 of NRS that is published in the county where the public work*
27 *will be performed. If no qualified newspaper is published within*
28 *the county where the public will be performed, the required*
29 *advertisement must be published in some qualified newspaper that*
30 *is printed in the State of Nevada and has a general circulation in*
31 ~~[this state.]~~ *the county.*

32 2. A request for preliminary proposals published pursuant to
33 subsection 1 must include, without limitation:

- 34 (a) A description of the public work to be designed and
35 constructed;
- 36 (b) Separate estimates of the costs of designing and constructing
37 the public work;
- 38 (c) The dates on which it is anticipated that the separate phases
39 of the design and construction of the public work will begin and
40 end;
- 41 (d) The date by which preliminary proposals must be submitted
42 to the public body, which must not be less than 30 days after the
43 date that the request for preliminary proposals is first published in a
44 newspaper pursuant to subsection 1; and



1 (e) A statement setting forth the place and time in which a
2 design-build team desiring to submit a proposal for the public work
3 may obtain the information necessary to submit a proposal,
4 including, without limitation, the information set forth in
5 subsection 3.

6 3. A public body shall maintain at the time and place set forth
7 in the request for preliminary proposals the following information
8 for inspection by a design-build team desiring to submit a proposal
9 for the public work:

10 (a) The extent to which designs must be completed for both
11 preliminary and final proposals and any other requirements for the
12 design and construction of the public work that the public body
13 determines to be necessary;

14 (b) A list of the requirements set forth in NRS 338.1721;

15 (c) A list of the factors that the public body will use to evaluate
16 design-build teams who submit a proposal for the public work,
17 including, without limitation:

18 (1) The relative weight to be assigned to each factor pursuant
19 to NRS 338.1727; and

20 (2) A disclosure of whether the factors that are not related to
21 cost are, when considered as a group, more or less important in the
22 process of evaluation than the factor of cost;

23 (d) Notice that a design-build team desiring to submit a proposal
24 for the public work must include with its proposal the information
25 used by the public body to determine finalists among the design-
26 build teams submitting proposals pursuant to subsection 2 of NRS
27 338.1725 and a description of that information;

28 (e) A statement that a design-build team whose prime contractor
29 holds a certificate of eligibility to receive a preference in bidding on
30 public works issued pursuant to NRS 338.1389 or 338.147 should
31 submit a copy of the certificate of eligibility with its proposal; and

32 (f) A statement as to whether a design-build team that is selected
33 as a finalist pursuant to NRS 338.1725 but is not awarded the
34 design-build contract pursuant to NRS 338.1727 will be partially
35 reimbursed for the cost of preparing a final proposal and, if so, an
36 estimate of the amount of the partial reimbursement.

37 **Sec. 37.** NRS 338.1727 is hereby amended to read as follows:

38 338.1727 1. After selecting the finalists pursuant to NRS
39 338.1725, the public body shall provide to each finalist a request for
40 final proposals for the public work. The request for final proposals
41 must:

42 (a) Set forth the factors that the public body will use to select a
43 design-build team to design and construct the public work, including
44 the relative weight to be assigned to each factor; and



- 1 (b) Set forth the date by which final proposals must be
2 submitted to the public body.
- 3 2. Except as otherwise provided in this subsection, in assigning
4 the relative weight to each factor for selecting a design-build team
5 pursuant to subsection 1, the public body shall assign, without
6 limitation, a relative weight of 5 percent to the possession of a
7 certificate of eligibility to receive a preference in bidding on public
8 works and a relative weight of at least 30 percent to the proposed
9 cost of design and construction of the public work. If any federal
10 statute or regulation precludes the granting of federal assistance or
11 reduces the amount of that assistance for a particular public work
12 because of the provisions of this subsection relating to preference in
13 bidding on public works, those provisions of this subsection do not
14 apply insofar as their application would preclude or reduce federal
15 assistance for that public work.
- 16 3. A final proposal submitted by a design-build team pursuant
17 to this section must be prepared thoroughly, be responsive to the
18 criteria that the public body will use to select a design-build team to
19 design and construct the public work described in subsection 1 and
20 comply with the provisions of NRS 338.141.
- 21 4. After receiving the final proposals for the public work, the
22 public body, *at a regularly scheduled meeting*, shall:
- 23 (a) Select the most cost-effective and responsive final proposal,
24 using the criteria set forth pursuant to subsections 1 and 2; or
25 (b) Reject all the final proposals.
- 26 5. If a public body selects a final proposal pursuant to
27 paragraph (a) of subsection 4, the public body shall, at ~~its next~~ a
28 regularly scheduled meeting:
- 29 (a) Review and ratify the selection.
30 (b) Award the design-build contract to the design-build team
31 whose proposal is selected.
32 (c) Partially reimburse the unsuccessful finalists if partial
33 reimbursement was provided for in the request for preliminary
34 proposals pursuant to paragraph (f) of subsection 3 of NRS
35 338.1723. The amount of reimbursement must not exceed, for each
36 unsuccessful finalist, 3 percent of the total amount to be paid to the
37 design-build team as set forth in the design-build contract.
38 (d) Make available to the public a summary setting forth the
39 factors used by the public body to select the successful design-build
40 team and the ranking of the design-build teams who submitted final
41 proposals. The public body shall not release to a third party, or
42 otherwise make public, financial or proprietary information
43 submitted by a design-build team.
- 44 6. A contract awarded pursuant to this section:
45 (a) Must specify:



1 (1) An amount that is the maximum amount that the public
2 body will pay for the performance of all the work required by the
3 contract, excluding any amount related to costs that may be incurred
4 as a result of unexpected conditions or occurrences as authorized by
5 the contract;

6 (2) An amount that is the maximum amount that the public
7 body will pay for the performance of the professional services
8 required by the contract; and

9 (3) A date by which performance of the work required by the
10 contract must be completed.

11 (b) May set forth the terms by which the design-build team
12 agrees to name the public body, at the cost of the public body, as an
13 additional insured in an insurance policy held by the design-build
14 team.

15 (c) Except as otherwise provided in paragraph (d), must not
16 require the design professional to defend, indemnify or hold
17 harmless the public body or the employees, officers or agents of that
18 public body from any liability, damage, loss, claim, action or
19 proceeding caused by the negligence, errors, omissions, recklessness
20 or intentional misconduct of the employees, officers and agents of
21 the public body.

22 (d) May require the design-build team to defend, indemnify and
23 hold harmless the public body, and the employees, officers and
24 agents of the public body from any liabilities, damages, losses,
25 claims, actions or proceedings, including, without limitation,
26 reasonable attorneys' fees, that are caused by the negligence, errors,
27 omissions, recklessness or intentional misconduct of the design-
28 build team or the employees or agents of the design-build team in
29 the performance of the contract.

30 7. ~~Any provision of a contract that is in violation of paragraph~~
31 ~~(e) of subsection 6 is declared to be contrary to the public policy of~~
32 ~~this state and is void.~~

33 ~~8.]~~ A design-build team to whom a contract is awarded
34 pursuant to this section shall:

35 (a) Assume overall responsibility for ensuring that the design
36 and construction of the public work is completed in a satisfactory
37 manner; and

38 (b) Use the workforce of the prime contractor on the design-
39 build team to construct at least 15 percent of the public work.

40 **Sec. 38.** NRS 338.175 is hereby amended to read as follows:

41 338.175 A public body shall notify the State Board of
42 Architecture, Interior Design and Residential Design *or the State*
43 *Board of Landscape Architecture, as applicable*, in writing if a
44 registered architect, interior designer, ~~or~~ residential designer ~~or~~
45 *landscape architect*:



1 1. Submits plans for a project which are substantially
2 incomplete; or

3 2. Submits plans for the same project which are rejected by the
4 public body at least three times.

5 **Sec. 39.** NRS 338.177 is hereby amended to read as follows:

6 338.177 1. Real property acquired by *the governing body of*
7 a local government for a public work may be leased, pending the
8 completion of the public work but for not more than 5 years, upon
9 such terms and conditions as the governing body ~~[of the local~~
10 ~~government]~~ prescribes.

11 2. The governing body ~~[of the local government]~~ shall:

12 (a) Adopt the procedures for entering into such a lease at a
13 public hearing held thereon; and

14 (b) Offer to lease the property to the person from whom it was
15 acquired before offering to lease the property to any other person.

16 3. Except as otherwise provided in this subsection, revenue
17 from the lease must be used to maintain the property in order to
18 mitigate any adverse effect upon the adjacent area. Any revenue
19 from the lease that is not needed to maintain the property must be
20 used to offset the cost of the public work for which the property was
21 acquired.

22 **Sec. 40.** NRS 338.180 is hereby amended to read as follows:

23 338.180 1. The Legislature of the State of Nevada declares
24 that:

25 (a) The primary purpose of this section is to provide, subject to
26 the limitations set forth in this section, for the removal and
27 elimination of architectural barriers to the physically handicapped in
28 public buildings and facilities designed after July 1, 1973, in order
29 to encourage and facilitate the employment of the physically
30 handicapped and to make public buildings accessible to and usable
31 by the physically handicapped; and

32 (b) It is the intent of the Legislature that insofar as possible all
33 buildings and facilities used by the public be accessible to, and
34 functional for, the physically handicapped, without loss of function,
35 space or facility where the general public is concerned.

36 2. All plans and specifications for the construction of public
37 buildings and facilities owned by ~~[the State of Nevada or by a~~
38 ~~political subdivision thereof]~~ *a public body* must, after July 1, 1973,
39 provide facilities and features for the physically handicapped so that
40 buildings which are normally used by the public are constructed
41 with entrance ramps, toilet facilities, drinking fountains, doors and
42 public telephones accessible to and usable by the physically
43 handicapped. In addition, all plans and specifications for the
44 construction or alteration of public buildings and facilities owned by



1 ~~the State of Nevada or a political subdivision thereof~~ **a public body**
2 must comply with the applicable requirements of the:

3 (a) Americans with Disabilities Act of 1990, 42 U.S.C. §§
4 12101 et seq., and the regulations adopted pursuant thereto,
5 including, without limitation, the Americans with Disabilities Act
6 Accessibility Guidelines for Buildings and Facilities set forth in
7 Appendix A of Part 36 of Title 28 of the Code of Federal
8 Regulations;

9 (b) Minimum Guidelines and Requirements for Accessible
10 Design, 36 C.F.R. §§ 1190.1 et seq.; and

11 (c) Fair Housing Act, 42 U.S.C. § 3604, and the regulations
12 adopted pursuant thereto.

13 The requirements of paragraph (a) of this subsection are not
14 satisfied if the plans and specifications comply solely with the
15 Uniform Federal Accessibility Standards set forth in Appendix A of
16 Part 101-19.6 of Title 41 of the Code of Federal Regulations.

17 3. ~~The State of Nevada and each political subdivision thereof~~
18 **All public bodies** shall, in the design, construction and alteration of
19 public buildings and facilities comply with the applicable
20 requirements of the:

21 (a) Americans with Disabilities Act of 1990, 42 U.S.C. §§
22 12101 et seq., and the regulations adopted pursuant thereto,
23 including, without limitation, the Americans with Disabilities Act
24 Accessibility Guidelines for Buildings and Facilities set forth in
25 Appendix A of Part 36 of Title 28 of the Code of Federal
26 Regulations;

27 (b) Minimum Guidelines and Requirements for Accessible
28 Design, 36 C.F.R. §§ 1190.1 et seq.; and

29 (c) Fair Housing Act, 42 U.S.C. § 3604, and the regulations
30 adopted pursuant thereto.

31 The requirements of paragraph (a) of this subsection are not
32 satisfied if the ~~State of Nevada or a political subdivision thereof~~
33 **public body** complies solely with the Uniform Federal Accessibility
34 Standards set forth in Appendix A of Part 101-19.6 of Title 41 of the
35 Code of Federal Regulations.

36 4. In each public building and facility owned by ~~this state or a~~
37 ~~political subdivision of this state,~~ **a public body**, each entrance to a
38 corridor which leads to a toilet facility must be marked with a sign
39 which:

40 (a) Conforms to the requirements related to signage contained in
41 §§ 4.30 et seq. of the Americans with Disabilities Act Accessibility
42 Guidelines for Buildings and Facilities set forth in Appendix A of
43 Part 36 of Title 28 of the Code of Federal Regulations; and

44 (b) Uses symbols, raised letters and Braille to:



1 (1) Identify the toilet facility and the gender of persons who
2 may use the toilet facility; and

3 (2) If the toilet facility is for the exclusive use of persons of
4 one gender:

5 (I) Indicate that the toilet facility is for the exclusive use
6 of persons of that gender; and

7 (II) Provide direction to a toilet facility that may be used
8 by persons of the other gender.

9 5. The State Public Works Board shall verify that all public
10 buildings and facilities owned by the State of Nevada conform with
11 the requirements of this section. Each political subdivision shall
12 verify that all public buildings and facilities owned by the political
13 subdivision conform with the requirements of this section.

14 6. A person may report a violation of this section to the
15 Attorney General.

16 7. Upon receiving a report pursuant to subsection 6, the
17 Attorney General shall notify the public body responsible for the
18 alleged violation. Not later than 30 days after receiving such a
19 notification, the public body shall:

20 (a) Present evidence to the Attorney General that it is in
21 compliance with this section; or

22 (b) Begin any action necessary to comply with the requirements
23 of this section and notify the Attorney General of the date on which
24 it will be in compliance with those requirements.

25 8. If the public body responsible for the alleged violation fails
26 to comply with this section, the Attorney General shall take such
27 action as is necessary to ensure compliance with this section,
28 including, without limitation, commencing proceedings in a court of
29 competent jurisdiction, if appropriate.

30 **Sec. 41.** NRS 338.1907 is hereby amended to read as follows:

31 338.1907 1. The governing body of a local government may
32 designate one or more energy retrofit coordinators for the buildings
33 occupied by the local government.

34 2. If such a coordinator is designated, upon request by or
35 consultation with an officer or employee of the local government
36 who is responsible for the budget of a department, board,
37 commission or other entity of the local government, the coordinator
38 may request the approval of the governing body to advertise a
39 request for proposals to retrofit a building, or any portion thereof,
40 that is occupied by the department, board, commission or other
41 entity, to make the use of energy in the building, or portion thereof,
42 more efficient.

43 3. Upon approval of the governing body, the coordinator shall
44 prepare a request for proposals for the retrofitting of one or more
45 buildings, or any portion thereof, which includes:



- 1 (a) The name and location of the coordinator;
- 2 (b) A brief description of the requirements for the initial audit of
3 the use of energy and the retrofitting;
- 4 (c) Where and how specifications of the requirements for the
5 initial audit of the use of energy and the retrofitting may be
6 obtained;
- 7 (d) The date and time not later than which proposals must be
8 received by the coordinator; and
- 9 (e) The date and time when responses will be opened.
- 10 4. The request for proposals must be published in ~~at least one~~
11 ~~newspaper of~~ *a newspaper qualified pursuant to chapter 238 of*
12 *NRS that is published in the county where the work will be*
13 *performed. If no qualified newspaper is published in the county*
14 *where the public work will be performed, the required*
15 *advertisement must be published in some qualified newspaper that*
16 *is printed in the State of Nevada and has a general circulation in*
17 the county ~~in which the local government is located.~~ *where the*
18 *work will be performed.*
- 19 5. After receiving the proposals but before making a decision
20 on the proposals, the coordinator shall consider:
- 21 (a) The best interests of the local government;
- 22 (b) The experience and financial stability of the persons
23 submitting the proposals;
- 24 (c) Whether the proposals conform with the terms of the request
25 for proposals;
- 26 (d) The prices of the proposals; and
- 27 (e) Any other factor disclosed in the request for proposals.
- 28 6. The coordinator shall determine the relative weight of each
29 factor before a request for proposals is advertised. The weight of
30 each factor must not be disclosed before the date proposals are
31 required to be submitted to the coordinator.
- 32 7. After reviewing the proposals, if the coordinator determines
33 that sufficient energy could be saved to justify retrofitting the
34 building or buildings, or portion thereof, the coordinator shall select
35 the best proposal and request the approval of the governing body to
36 award the contract. The request for approval must include the
37 proposed method of financing the audit and retrofit, which may
38 include an installment contract, a shared savings contract or any
39 other contract for a reasonable financing arrangement. Such a
40 contract may commit the local government to make payments
41 beyond the fiscal year in which the contract is executed or beyond
42 the terms of office of the governing body, or both.
- 43 8. Before approving a retrofit pursuant to this section, the
44 governing body shall evaluate any projects that would utilize shared
45 savings as a method of payment or any method of financing that



1 would commit the local government to make payments beyond the
2 fiscal year in which the contract is executed or beyond the terms of
3 office of the governing body to ensure that:

4 (a) The amount of energy to be saved will likely justify the cost
5 of the retrofit; and

6 (b) The local government is likely to continue to occupy the
7 building for the entire period required to recoup the cost of the
8 retrofit in energy savings.

9 9. Upon approval of the governing body, the coordinator shall
10 execute the contract and notify each officer or employee who is
11 responsible for the budget of a department, board, commission or
12 other entity which occupies a portion of a building that will be
13 retrofitted of the amount of money it will be required to pay
14 annually for its portion of the retrofit.

15 10. NRS 338.1385 and 338.143 do not apply to a project for
16 which a request for proposals is advertised and the contract is
17 awarded pursuant to the provisions of this section.

18 **Sec. 42.** NRS 338.515 is hereby amended to read as follows:

19 338.515 1. Except as otherwise provided in NRS 338.525, a
20 public body and its officers or agents awarding a contract for a
21 public work shall pay or cause to be paid to a contractor the progress
22 payments due under the contract within 30 days after the date the
23 public body receives the progress bill or within a shorter period if
24 the provisions of the contract so provide. Not more than 90 percent
25 of the amount of any progress payment may be paid until 50 percent
26 of the work required by the contract has been performed. Thereafter
27 the public body may pay any of the remaining progress payments
28 without withholding additional retainage if, in the opinion of the
29 public body, satisfactory progress is being made in the work.

30 2. Except as otherwise provided in NRS 338.525, a public
31 body shall identify in the contract and pay or cause to be paid to a
32 contractor the actual cost of the supplies, materials and equipment
33 that:

34 (a) Are identified in the contract;

35 (b) Have been delivered and stored at a location, and in the time
36 and manner, specified in a contract by the contractor or a
37 subcontractor or supplier for use in ~~the construction, repair or~~
38 ~~reconstruction of the~~ a public work; and

39 (c) Are in short supply or were specially made for the public
40 work,
41 within 30 days after the public body receives a progress bill from
42 the contractor for those supplies, materials or equipment.

43 3. A public body shall pay or cause to be paid to the contractor
44 at the end of each quarter interest for the quarter on any amount
45 withheld by the public body pursuant to NRS 338.400 to 338.645,



1 inclusive, at a rate equal to the rate quoted by at least three financial
2 institutions as the highest rate paid on a certificate of deposit whose
3 duration is approximately 90 days on the first day of the quarter. If
4 the amount due to a contractor pursuant to this subsection for any
5 quarter is less than \$500, the public body may hold the interest until:

6 (a) The end of a subsequent quarter after which the amount of
7 interest due is \$500 or more;

8 (b) The end of the fourth consecutive quarter for which no
9 interest has been paid to the contractor; or

10 (c) The amount withheld under the contract is due pursuant to
11 NRS 338.520,
12 whichever occurs first.

13 4. If the Labor Commissioner has reason to believe that an
14 employee has a valid and enforceable claim for wages against a
15 contractor ~~or~~ *or subcontractor*, he may require the public body to
16 withhold from any payment due the contractor under this section
17 and pay the Labor Commissioner instead, an amount equal to the
18 amount claimed by the employee. This amount must be paid to the
19 employee *by the Labor Commissioner* if the claim is resolved in his
20 favor, otherwise it must be returned to the public body for payment
21 to the contractor.

22 **Sec. 43.** NRS 338.560 is hereby amended to read as follows:

23 338.560 1. A contractor may withhold from a progress
24 payment or retainage payment an amount sufficient to pay ~~the~~ :

25 (a) *The* expenses the contractor reasonably expects to incur as a
26 result of the failure of his subcontractor or supplier to comply with
27 the subcontract or applicable building code, law or regulation.

28 (b) *An amount withheld from payment to the contractor by a*
29 *public body pursuant to subsection 4 of NRS 338.515 for a claim*
30 *for wages against the subcontractor.*

31 2. A contractor shall, within 10 days after he receives:

32 (a) A progress payment or retainage payment from the public
33 body for an amount that is less than the amount set forth in the
34 applicable progress bill or retainage bill; or

35 (b) A progress bill or retainage bill from his subcontractor or
36 supplier,

37 give a written notice to his subcontractor or supplier of any amount
38 that will be withheld pursuant to this section.

39 3. The written notice must:

40 (a) Set forth:

41 (1) The amount of the progress payment or retainage
42 payment that will be withheld from his subcontractor or supplier;
43 and

44 (2) A detailed explanation of the reason the contractor will
45 withhold that amount, including, without limitation, a specific



1 reference to the provision or section of the subcontract, or
2 documents related thereto, or applicable building code, law or
3 regulation with which his subcontractor or supplier has failed to
4 comply; and

5 (b) Be signed by an authorized agent of the contractor.

6 4. The contractor shall pay to his subcontractor or supplier the
7 amount withheld by the public body or the contractor within 10 days
8 after:

9 (a) The contractor receives a written notice of the correction of
10 the condition that is the reason for the withholding, signed by an
11 authorized agent of the subcontractor or supplier; or

12 (b) The public body pays to the contractor the amount
13 withheld,
14 whichever occurs later.

15 **Sec. 44.** NRS 338.595 is hereby amended to read as follows:

16 338.595 1. If a subcontractor and another subcontractor or
17 supplier enter into a subcontract for a public work, the subcontractor
18 may withhold as retainage not more than 10 percent from the
19 amount of any progress payment due under a subcontract which is
20 made before 50 percent of the work has been completed under the
21 subcontract. The subcontractor shall pay any additional progress
22 payments due under the subcontract without withholding any
23 additional retainage if, in the opinion of the subcontractor,
24 satisfactory progress is being made in the work under the
25 subcontract. The payment must be equal to that paid by the
26 contractor to him for the work performed or supplies provided by
27 his subcontractor or supplier.

28 2. If the subcontractor receives a payment of interest earned on
29 the retainage or an amount withheld from a progress payment, he
30 shall, within 10 days after receiving the money, pay to each of his
31 subcontractors or suppliers that portion of the interest received from
32 the contractor which is attributable to the retainage or amount
33 withheld from a progress payment by ~~him to~~ *the subcontractor to*
34 his subcontractor or supplier.

35 **Sec. 45.** NRS 338.600 is hereby amended to read as follows:

36 338.600 1. A subcontractor may withhold from a progress
37 payment or retainage payment an amount sufficient to pay the
38 expenses the subcontractor reasonably expects to incur as a result of
39 the failure of his subcontractor or supplier to comply with the
40 subcontract or applicable building code, law or regulation.

41 2. A subcontractor shall, within 10 days after he receives:

42 (a) A progress payment or retainage payment from a contractor
43 for an amount that is less than the amount set forth in the applicable
44 progress bill or retainage bill; or



1 (b) A progress bill or retainage bill from his subcontractor or
2 supplier,
3 give a written notice to his subcontractor or supplier of any amount
4 that will be withheld pursuant to this section.

5 3. The written notice must:

6 (a) Set forth:

7 (1) The amount of the progress payment or retainage
8 payment that will be withheld from his subcontractor or supplier;
9 and

10 (2) A detailed explanation of the reason the subcontractor
11 will withhold that amount, including, without limitation, a specific
12 reference to the provision or section of the subcontract, or
13 documents related thereto, or applicable building code, law or
14 regulation with which the subcontractor or supplier has failed to
15 comply; and

16 (b) Be signed by an authorized agent of the subcontractor.

17 4. The subcontractor shall pay to his subcontractor or supplier
18 the amount withheld by the public body, contractor or subcontractor
19 within 10 days after:

20 (a) The subcontractor receives a written notice of the correction
21 of the condition that is the reason for the withholding, signed by an
22 authorized agent of his subcontractor or supplier; or

23 (b) The contractor pays to ~~him~~ *the subcontractor* the amount
24 withheld,
25 whichever occurs later.

26 **Sec. 46.** NRS 338.1383 is hereby repealed.

27 **Sec. 47.** 1. This section and sections 1 to 18, inclusive, 20 to
28 25, inclusive, and 27 to 46, inclusive, of this act become effective on
29 July 1, 2003.

30 2. Sections 18 and 25 of this act expire by limitation on
31 April 30, 2013.

32 3. Sections 19 and 26 of this act become effective on May 1,
33 2013.

TEXT OF REPEALED SECTION

338.1383 Requirements for acceptance of bids by local government which has not adopted criteria for qualification of bidders. If a local government does not adopt criteria for the qualification of bidders on a public work pursuant to NRS 338.1377, the governing body may only accept a bid on a contract for a public work from a person who holds:



1. An unlimited contractor's license issued by the State Contractors' Board in the branch of general engineering contracting or general building contracting, or in both branches, and:

(a) At the time he submits his bid, he provides a bid bond equal to 10 percent of the amount of the bid; and

(b) At the time the contract is awarded, he provides a performance bond, a labor and material bond and a guaranty bond, each equal to 100 percent of the amount of the contract; or

2. A contractor's license issued by the State Contractors' Board that is designated in any classification if he:

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

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

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

