
ASSEMBLY BILL NO. 540—COMMITTEE ON
GOVERNMENT AFFAIRS

MARCH 24, 2003

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing bidders and subcontractors on contracts for public works. (BDR 28-361)

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; authorizing the State Public Works Board and the governing body of a local government to qualify subcontractors on contracts for public works or to object to subcontractors on public works using the criteria for determining the qualification of bidders on contracts for public works; revising the provisions governing such criteria; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 338 of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 ***1. The State Public Works Board and the governing body of a***
4 ***local government may use the criteria set forth in NRS 338.1375***
5 ***to:***
6 ***(a) Qualify applicants to be subcontractors on a contract for a***
7 ***public work; or***
8 ***(b) Object to a subcontractor pursuant to NRS 338.141 who***
9 ***has been named or is performing work on a contract for a public***
10 ***work and regarding whom the Board or the governing body has***
11 ***received a complaint.***
12 ***2. A person may appeal:***



1 (a) *A denial of his application for qualification as a*
2 *subcontractor; or*

3 (b) *An objection based on a complaint pursuant to paragraph*
4 *(b) of subsection 1,*
5 *in the manner provided for a hearing pursuant to NRS 338.1381.*

6 **Sec. 2.** NRS 338.010 is hereby amended to read as follows:
7 338.010 As used in this chapter:

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

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

15 3. "Design-build team" means an entity that consists of:

16 (a) At least one person who is licensed as a general engineering
17 contractor or a general building contractor pursuant to chapter 624
18 of NRS; and

19 (b) For a public work that consists of:

20 (1) A building and its site, at least one person who holds a
21 certificate of registration to practice architecture pursuant to chapter
22 623 of NRS.

23 (2) Anything other than a building and its site, at least one
24 person who holds a certificate of registration to practice architecture
25 pursuant to chapter 623 of NRS or is licensed as a professional
26 engineer pursuant to chapter 625 of NRS.

27 4. "Design professional" means:

28 (a) A person who is licensed as a professional engineer pursuant
29 to chapter 625 of NRS;

30 (b) A person who is licensed as a professional land surveyor
31 pursuant to chapter 625 of NRS;

32 (c) A person who holds a certificate of registration to engage in
33 the practice of architecture pursuant to chapter 623 of NRS;

34 (d) A person who holds a certificate of registration to engage in
35 the practice of landscape architecture pursuant to chapter 623A of
36 NRS; or

37 (e) A business entity that engages in the practice of professional
38 engineering, land surveying, architecture or landscape architecture.

39 5. "Eligible bidder" means a person who is:

40 (a) Found to be a responsible and responsive contractor by a
41 local government which requests bids for a public work in
42 accordance with paragraph (b) of subsection 1 of NRS 338.1373; or

43 (b) Determined by a public body which awarded a contract for a
44 public work pursuant to NRS 338.1375 to 338.139, inclusive, to be
45 qualified to bid on that contract pursuant to NRS 338.1379 or ~~was~~



- 1 ~~exempt from meeting such qualifications pursuant to]~~ *who meets the*
2 *qualifications set forth in* NRS 338.1383.
- 3 6. "General contractor" means a person who is licensed to
4 conduct business in one, or both, of the following branches of the
5 contracting business:
- 6 (a) General engineering contracting, as described in subsection 2
7 of NRS 624.215.
- 8 (b) General building contracting, as described in subsection 3 of
9 NRS 624.215.
- 10 7. "Local government" means every political subdivision or
11 other entity which has the right to levy or receive money from ad
12 valorem or other taxes or any mandatory assessments, and includes,
13 without limitation, counties, cities, towns, boards, school districts
14 and other districts organized pursuant to chapters 244A, 309, 318,
15 379, 474, 541, 543 and 555 of NRS ~~§~~ *and* NRS 450.550 to
16 450.750, inclusive, and any agency or department of a county or city
17 which prepares a budget separate from that of the parent political
18 subdivision.
- 19 8. "Offense" means failing to:
- 20 (a) Pay the prevailing wage required pursuant to this chapter;
- 21 (b) Pay the contributions for unemployment compensation
22 required pursuant to chapter 612 of NRS;
- 23 (c) Provide and secure compensation for employees required
24 pursuant to chapters 616A to 617, inclusive, of NRS; or
- 25 (d) Comply with subsection 4 or 5 of NRS 338.070.
- 26 9. "Prime contractor" means a person who:
- 27 (a) Contracts to construct an entire project;
- 28 (b) Coordinates all work performed on the entire project;
- 29 (c) Uses his own workforce to perform all or a part of the
30 construction, repair or reconstruction of the project; and
- 31 (d) Contracts for the services of any subcontractor or
32 independent contractor or is responsible for payment to any
33 contracted subcontractors or independent contractors.
- 34 The term includes, without limitation, a general contractor or a
35 specialty contractor who is authorized to bid on a project pursuant to
36 NRS 338.139 or 338.148.
- 37 10. "Public body" means the state, county, city, town, school
38 district or any public agency of this state or its political subdivisions
39 sponsoring or financing a public work.
- 40 11. "Public work" means any project for the new construction,
41 repair or reconstruction of:
- 42 (a) A project financed in whole or in part from public money
43 for:
- 44 (1) Public buildings;
- 45 (2) Jails and prisons;



- 1 (3) Public roads;
- 2 (4) Public highways;
- 3 (5) Public streets and alleys;
- 4 (6) Public utilities which are financed in whole or in part by
- 5 public money;
- 6 (7) Publicly owned water mains and sewers;
- 7 (8) Public parks and playgrounds;
- 8 (9) Public convention facilities which are financed at least in
- 9 part with public funds; and
- 10 (10) All other publicly owned works and property whose cost
- 11 as a whole exceeds \$20,000. Each separate unit that is a part of a
- 12 project is included in the cost of the project to determine whether a
- 13 project meets that threshold.
- 14 (b) A building for the University and Community College
- 15 System of Nevada of which 25 percent or more of the costs of the
- 16 building as a whole are paid from money appropriated by this state
- 17 or from federal money.
- 18 12. "Specialty contractor" means a person who is licensed to
- 19 conduct business as described in subsection 4 of NRS 624.215.
- 20 13. "Stand-alone underground utility project" means an
- 21 underground utility project that is not integrated into a larger
- 22 project, including, without limitation:
- 23 (a) An underground sewer line or an underground pipeline for
- 24 the conveyance of water, including facilities appurtenant thereto;
- 25 and
- 26 (b) A project for the construction or installation of a storm drain,
- 27 including facilities appurtenant thereto,
- 28 that is not located at the site of a public work for the design and
- 29 construction of which a public body is authorized to contract with a
- 30 design-build team pursuant to subsection 2 of NRS 338.1711.
- 31 14. "Wages" means:
- 32 (a) The basic hourly rate of pay; and
- 33 (b) The amount of pension, health and welfare, vacation and
- 34 holiday pay, the cost of apprenticeship training or other similar
- 35 programs or other bona fide fringe benefits which are a benefit to
- 36 the workman.
- 37 15. "Workman" means a skilled mechanic, skilled workman,
- 38 semiskilled mechanic, semiskilled workman or unskilled workman.
- 39 The term does not include a design professional.
- 40 **Sec. 3.** NRS 338.1373 is hereby amended to read as follows:
- 41 338.1373 1. A local government shall award a contract for
- 42 the construction, alteration or repair of a public work pursuant to the
- 43 provisions of:
- 44 (a) NRS ~~338.1377~~ **338.1375** to 338.139, inclusive; or
- 45 (b) NRS 338.143 to 338.148, inclusive.



1 2. The provisions of NRS 338.1375 to 338.1383, inclusive, and
2 338.139 do not apply with respect to contracts for the construction,
3 reconstruction, improvement and maintenance of highways that are
4 awarded by the Department of Transportation pursuant to NRS
5 408.313 to 408.433, inclusive.

6 **Sec. 4.** NRS 338.1375 is hereby amended to read as follows:

7 338.1375 ~~[1.—The State Public Works Board shall not accept
8 a bid on a contract for a public work unless the person who submits
9 the bid has qualified pursuant to NRS 338.1379 to bid on that
10 contract.~~

11 ~~—2.—The State Public Works Board shall by regulation adopt
12 criteria for the qualification of bidders on contracts for public works
13 of this state. The criteria adopted by the State Public Works Board
14 pursuant to this section must be used by the State Public Works
15 Board to determine the qualification of bidders on contracts for
16 public works of this state.~~

17 ~~—3.—The criteria adopted by the State Public Works Board
18 pursuant to this section:~~

19 ~~—(a) Must be adopted in such a form that the determination of
20 whether an applicant is qualified to bid on a contract for a public
21 work does not require or allow the exercise of discretion by any one
22 person.~~

23 ~~—(b) May include only:~~

24 ~~—(1) The financial ability of the applicant to perform a
25 contract;~~

26 ~~—(2)] To determine whether an applicant is qualified to bid
27 on a contract for one or more public works, the State Public
28 Works Board and the governing body of a local government that
29 sponsors or finances a public work shall determine whether:~~

30 *1. The applicant possesses a valid contractor’s license of the
31 appropriate classification or subclassification corresponding to the
32 work to be performed on the contract;*

33 *2. The applicant has the ability to obtain the necessary
34 bonding required for the work to be performed on the contract;*

35 *3. The applicant has successfully completed one or more
36 projects during the 5 years immediately preceding the date of
37 application of similar size, scope or type as the work to be
38 performed on the contract;*

39 *4. The principal personnel of the applicant [;*

40 ~~—(3) Whether the] have the professional qualifications and
41 experience needed for the work to be performed on the contract;~~

42 *5. The applicant has breached any contracts with a public
43 agency or person in this state or any other state [;*

44 ~~—(4) Whether the] during the 5 years immediately preceding
45 the date of application;~~



- 1 **6. The applicant has been disqualified from being awarded a**
2 **contract pursuant to NRS 338.017 or 338.1387; ~~and~~**
3 **~~—(5) The performance history of the applicant concerning~~**
4 **~~other recent, similar contracts, if any, completed by the applicant.]~~**
5 **7. The applicant has been convicted of a violation of a**
6 **discrimination in employment during the 2 years immediately**
7 **preceding the date of application;**
8 **8. The applicant has the ability to obtain and maintain**
9 **insurance coverage for public liability and property damage within**
10 **limits sufficient to protect the applicant and all the subcontractors**
11 **of the applicant from claims for personal injury, accidental death**
12 **and damage to property that may arise in connection with the**
13 **work to be performed on the contract;**
14 **9. The applicant has established a safety program that**
15 **complies with the requirements of chapter 618 of NRS; and**
16 **10. Any complaints against the applicant have been filed with**
17 **and substantiated by the State Contractors' Board or another state**
18 **or federal agency that relate to the ability of the applicant to**
19 **perform the work on the contract.**

20 **Sec. 5.** NRS 338.1379 is hereby amended to read as follows:
21 338.1379 ~~[1.]~~ Except as otherwise provided in NRS 338.1383
22 ~~[, a]:~~

23 **1. The State Public Works Board and the governing body of a**
24 **local government that sponsors or finances a public work shall not**
25 **accept a bid on a contract for a public work unless the person who**
26 **submits the bid has qualified to bid on the contract pursuant to**
27 **this section.**

28 **2. A person who wishes to qualify as a bidder on a contract for**
29 **a public work must submit an application to the State Public Works**
30 **Board or the governing body.**

31 ~~[2.]~~ **3. Upon receipt of an application pursuant to subsection**
32 **~~[1.] 2,~~ the State Public Works Board or the governing body shall ~~[-~~**
33 **~~—(a) Investigate] investigate~~ the applicant to determine whether**
34 **~~[he is qualified to bid on a contract; and~~**
35 **~~—(b) After conducting the investigation, determine whether]~~ the**
36 **applicant ~~[is qualified to bid on a contract.]~~ *meets the criteria set***
37 ***forth in NRS 338.1375.* The determination must be made within 30**
38 **days after receipt of the application.**

39 ~~[3.]~~ **4. The State Public Works Board or the governing body**
40 **shall notify each applicant in writing of its determination. If an**
41 **application is denied, the notice must set forth the reasons for the**
42 **denial and inform the applicant of his right to a hearing pursuant to**
43 **NRS 338.1381.**



1 ~~[4.]~~ 5. The State Public Works Board or the governing body
2 ~~[of a local government]~~ may determine an applicant is qualified to
3 bid:

- 4 (a) On a specific project;
- 5 (b) On more than one project over a period of 12 months; or
- 6 (c) On more than one project over a period of 24 months.

7 ~~[5.]~~ 6. The State Public Works Board *and the governing body*
8 shall not use any criteria other than *the* criteria ~~[adopted by~~
9 ~~regulation pursuant to]~~ *set forth in* NRS 338.1375 in determining
10 whether to approve or deny an application.

11 ~~[6.—The governing body of a local government shall not use any~~
12 ~~criteria other than the criteria described in NRS 338.1377 in~~
13 ~~determining whether to approve or deny an application.]~~

14 7. Financial information and other data pertaining to the net
15 worth of an applicant which is gathered by or provided to the State
16 Public Works Board or a governing body to determine the financial
17 ability of an applicant to perform a contract is confidential and not
18 open to public inspection.

19 **Sec. 6.** NRS 338.1383 is hereby amended to read as follows:

20 338.1383 ~~[H]~~ *As an alternative to the requirements set forth*
21 *in NRS 338.1379*, a local government ~~[does not adopt criteria for~~
22 ~~the qualification of bidders on a public work pursuant to NRS~~
23 ~~338.1377, the governing body may only]~~ *may* accept a bid on a
24 contract for a public work from a person who holds:

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

- 28 (a) At the time he submits his bid, he provides a bid bond equal
29 to 10 percent of the amount of the bid; and
- 30 (b) At the time the contract is awarded, he provides a
31 performance bond, a labor and material bond and a guaranty bond,
32 each equal to 100 percent of the amount of the contract; or

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

- 35 (a) Has, in the 5 years immediately preceding the submission of
36 the bid, been found to be a responsible contractor in the
37 classification in which his contractor's license is designated;
- 38 (b) Provides a bid bond, a performance bond, a guaranty bond,
39 and a labor and material bond in such amounts as the governing
40 body may require; and
- 41 (c) Employs a person determined by the State Contractors'
42 Board to be qualified to supervise each classification of construction
43 upon which the person submitting the bid is bidding.



1 **Sec. 7.** NRS 338.1385 is hereby amended to read as follows:
2 338.1385 1. Except as otherwise provided in subsection 7
3 and NRS 338.1906 and 338.1907, this state, or a local government
4 that awards a contract for the construction, alteration or repair of a
5 public work in accordance with paragraph (a) of subsection 1 of
6 NRS 338.1373, or a public officer, public employee or other person
7 responsible for awarding a contract for the construction, alteration
8 or repair of a public work who represents the State or the local
9 government, shall not:
10 (a) Commence such a project for which the estimated cost
11 exceeds \$100,000 unless it advertises in a newspaper of general
12 circulation in this state for bids for the project; or
13 (b) Divide such a project into separate portions to avoid the
14 requirements of paragraph (a).
15 2. Except as otherwise provided in subsection 7, a public body
16 that maintains a list of properly licensed contractors who are
17 interested in receiving offers to bid on public works projects for
18 which the estimated cost is more than \$25,000 but less than
19 \$100,000 shall solicit bids from not more than three of the
20 contractors on the list for a contract of that value for the
21 construction, alteration or repair of a public work. The public body
22 shall select contractors from the list in such a manner as to afford
23 each contractor an equal opportunity to bid on a public works
24 project. A properly licensed contractor must submit a written
25 request annually to the public body to remain on the list. Offers for
26 bids which are made pursuant to this subsection must be sent by
27 certified mail.
28 3. Each advertisement for bids must include a provision that
29 sets forth:
30 (a) The requirement that a contractor must be qualified pursuant
31 to NRS 338.1379 to bid on the contract or must ~~be exempt from~~
32 ~~meeting such qualifications pursuant to~~ *meet the qualifications set*
33 *forth in* NRS 338.1383; and
34 (b) The period during which an application to qualify as a bidder
35 on the contract must be submitted.
36 4. Approved plans and specifications for the bids must be on
37 file at a place and time stated in the advertisement for the inspection
38 of all persons desiring to bid thereon and for other interested
39 persons. Contracts for the project must be awarded on the basis of
40 bids received.
41 5. Any bids received in response to an advertisement for bids
42 may be rejected if the person responsible for awarding the contract
43 determines that:
44 (a) The bidder is not a qualified bidder pursuant to NRS
45 338.1379, unless the bidder ~~is exempt from meeting such~~



1 ~~qualifications pursuant to~~ *meets the qualifications set forth in*
2 NRS 338.1383;
3 (b) The bidder is not responsive;
4 (c) The quality of the services, materials, equipment or labor
5 offered does not conform to the approved plan or specifications; or
6 (d) The public interest would be served by such a rejection.
7 6. Before the State or a local government may commence a
8 project subject to the provisions of this section, based upon a
9 determination that the public interest would be served by rejecting
10 any bids received in response to an advertisement for bids, it shall
11 prepare and make available for public inspection a written statement
12 containing:
13 (a) A list of all persons, including supervisors, whom the State
14 or the local government intends to assign to the project, together
15 with their classifications and an estimate of the direct and indirect
16 costs of their labor;
17 (b) A list of all equipment that the State or the local government
18 intends to use on the project, together with an estimate of the
19 number of hours each item of equipment will be used and the hourly
20 cost to use each item of equipment;
21 (c) An estimate of the cost of administrative support for the
22 persons assigned to the project;
23 (d) An estimate of the total cost of the project; and
24 (e) An estimate of the amount of money the State or the local
25 government expects to save by rejecting the bids and performing the
26 project itself.
27 7. This section does not apply to:
28 (a) Any utility subject to the provisions of chapter 318 or 710 of
29 NRS;
30 (b) Any work of construction, reconstruction, improvement and
31 maintenance of highways subject to NRS 408.323 or 408.327;
32 (c) Normal maintenance of the property of a school district;
33 (d) The Las Vegas Valley Water District created pursuant to
34 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
35 District created pursuant to chapter 477, Statutes of Nevada 1983 or
36 the Virgin Valley Water District created pursuant to chapter 100,
37 Statutes of Nevada 1993; or
38 (e) The design and construction of a public work for which a
39 public body contracts with a design-build team pursuant to NRS
40 338.1711 to 338.1727.
41 **Sec. 8.** NRS 338.1385 is hereby amended to read as follows:
42 338.1385 1. Except as otherwise provided in subsection 8,
43 this state, or a local government that awards a contract for the
44 construction, alteration or repair of a public work in accordance with
45 paragraph (a) of subsection 1 of NRS 338.1373, or a public officer,



1 public employee or other person responsible for awarding a contract
2 for the construction, alteration or repair of a public work who
3 represents the State or the local government, shall not:

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

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

9 2. Except as otherwise provided in subsection 8, a public body
10 that maintains a list of properly licensed contractors who are
11 interested in receiving offers to bid on public works projects for
12 which the estimated cost is more than \$25,000 but less than
13 \$100,000 shall solicit bids from not more than three of the
14 contractors on the list for a contract of that value for the
15 construction, alteration or repair of a public work. The public body
16 shall select contractors from the list in such a manner as to afford
17 each contractor an equal opportunity to bid on a public works
18 project. A properly licensed contractor must submit a written
19 request annually to the public body to remain on the list. Offers for
20 bids which are made pursuant to this subsection must be sent by
21 certified mail.

22 3. Each advertisement for bids must include a provision that
23 sets forth:

24 (a) The requirement that a contractor must be qualified pursuant
25 to NRS 338.1379 to bid on the contract or must ~~be exempt from~~
26 ~~meeting such qualifications pursuant to~~ *meet the qualifications set*
27 *forth in* NRS 338.1383; and

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

30 4. Approved plans and specifications for the bids must be on
31 file at a place and time stated in the advertisement for the inspection
32 of all persons desiring to bid thereon and for other interested
33 persons. Contracts for the project must be awarded on the basis of
34 bids received.

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

38 (a) The bidder is not a qualified bidder pursuant to NRS
39 338.1379, unless the bidder ~~is exempt from meeting such~~
40 ~~qualifications pursuant to~~ *meets the qualifications set forth in*
41 NRS 338.1383;

42 (b) The bidder is not responsive;

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

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



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

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

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

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

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

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

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

25 8. This section does not apply to:

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

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

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

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

36 (e) The design and construction of a public work for which a
37 public body contracts with a design-build team pursuant to NRS
38 338.1711 to 338.1727, inclusive.

39 **Sec. 9.** NRS 338.1387 is hereby amended to read as follows:

40 338.1387 1. A public body awarding a contract for a public
41 work shall not award the contract to a person who, at the time of the
42 bid, is not properly licensed under the provisions of chapter 624 of
43 NRS or if the contract would exceed the limit of his license. A
44 subcontractor named by the contractor who is not properly licensed
45 for that portion of the work shall be deemed unacceptable. If the



1 subcontractor is deemed unacceptable, the contractor shall provide
2 an acceptable subcontractor before the award of the contract.

3 2. If, after awarding the contract, the public body discovers that
4 the person to whom the contract was awarded is not licensed, or
5 that the contract would exceed his license, the public body shall
6 reject the bid and may accept the next lowest bid for that public
7 work from a responsive bidder who was determined by the public
8 body to be a qualified bidder pursuant to NRS 338.1379 or ~~was~~
9 ~~exempt from meeting such qualifications pursuant to NRS 338.1373~~
10 ~~or~~ *who meets the qualifications set forth in NRS* 338.1383 without
11 requiring that new bids be submitted.

12 **Sec. 10.** NRS 338.141 is hereby amended to read as follows:

13 338.141 1. Except as otherwise provided in subsection 2,
14 each bid submitted to any officer, department, board or commission
15 for the construction of any public work or improvement must
16 include:

17 (a) The name of each subcontractor who will provide labor or a
18 portion of the work or improvement to the contractor for which he
19 will be paid an amount exceeding 5 percent of the prime
20 contractor's total bid. Within 2 hours after the completion of the
21 opening of the bids, the contractors who submitted the three lowest
22 bids must submit a list containing the name of each subcontractor
23 who will provide labor or a portion of the work or improvement to
24 the contractor for which he will be paid an amount exceeding 1
25 percent of the prime contractor's total bid or \$50,000, whichever is
26 greater, and the number of the license issued to the subcontractor
27 pursuant to chapter 624 of NRS. If a contractor fails to submit such
28 a list within the required time, his bid shall be deemed not
29 responsive.

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

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

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

37 (a) The awarding authority objects to the subcontractor, requests
38 in writing a change in the subcontractor and pays any increase in
39 costs resulting from the change; or

40 (b) The substitution is approved by the awarding authority or an
41 authorized representative of the awarding authority. The substitution
42 must be approved if the awarding authority or authorized
43 representative of the awarding authority determines that:

44 (1) The named subcontractor, after having a reasonable
45 opportunity, fails or refuses to execute a written contract with the



1 contractor which was offered to the subcontractor with the same
2 general terms that all other subcontractors on the project were
3 offered;

4 (2) The named subcontractor files for bankruptcy or becomes
5 insolvent; or

6 (3) The named subcontractor fails or refuses to perform his
7 subcontract within a reasonable time or is unable to furnish a
8 performance bond and payment bond pursuant to NRS 339.025.

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

17 **Sec. 11.** NRS 341.166 is hereby amended to read as follows:

18 341.166 1. The Board may, with the approval of the Interim
19 Finance Committee when the Legislature is not in regular or special
20 session, or with the approval of the Legislature by concurrent
21 resolution when the Legislature is in regular or special session, enter
22 into a contract for services with a contractor licensed pursuant to
23 chapter 624 of NRS to assist the Board:

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

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

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

34 3. The Board shall adopt regulations establishing procedures
35 for:

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

38 (b) The bidding and awarding of such contracts.

39 4. If a proposed construction project for which a contractor is
40 awarded a contract for services by the Board pursuant to subsection
41 1 is advertised pursuant to NRS 341.148, that contractor may submit
42 a bid for the contract for the proposed construction project if he is
43 qualified pursuant to NRS ~~338.1377.~~ **338.1379.**



- 1 **Sec. 12.** NRS 338.1377 is hereby repealed.
2 **Sec. 13.** 1. This section and sections 1 to 7, inclusive, and 9
3 to 12, inclusive, of this act become effective on July 1, 2003.
4 2. Section 7 of this act expires by limitation on April 30, 2013.
5 3. Section 8 of this act becomes effective on May 1, 2013.

TEXT OF REPEALED SECTION

338.1377 Local governments: Adoption and use of criteria for qualification of bidders; notice and public hearing required.

1. Except as otherwise provided in NRS 338.1383, the governing body of each local government that sponsors or finances a public work shall adopt criteria for the qualification of bidders on contracts for public works of the local government. The governing body shall use the criteria to determine the qualification of bidders on contracts for public works of the local government.

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

- (a) Construction trade associations in this state; and
- (b) Labor unions representing trades in the building industry in this state.

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

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

- (b) May include only:
- (1) The financial ability of the applicant to perform a contract;
 - (2) The principal personnel of the applicant;
 - (3) Whether the applicant has breached any contracts with a public agency or person in this state or any other state; and
 - (4) Whether the applicant has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.1387.

