

ASSEMBLY BILL NO. 160—ASSEMBLYMAN MANENDO (BY REQUEST)

MARCH 3, 2005

Referred to Committee on Government Affairs

SUMMARY—Requires participation in approved program of apprenticeship by bidder and certain subcontractors on public works projects. (BDR 28-890)

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; requiring that a bidder participate in an approved program of apprenticeship to be qualified to bid on or eligible to be awarded a contract for a public works project; requiring that certain subcontractors participate in an approved program of apprenticeship to be eligible to provide labor or work on certain public works projects; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires the State Public Works Board to adopt criteria for the
2 qualification of bidders on contracts for public works, and allows local
3 governments to either adopt criteria for the qualification of bidders or to deem
4 bidders qualified based on their qualification to bid on projects of other
5 governmental entities or to award contracts pursuant to an alternative procedure.
6 (NRS 338.1375, 338.1377, 338.1379, 338.1382, 338.143) Existing law requires
7 certain subcontractors to qualify, under criteria substantively identical to the criteria
8 used for the qualification of bidders, to be eligible to provide labor or work on
9 certain public works contracts awarded by the Board. (NRS 338.1376) Existing law
10 sets forth the qualifications for a design-build team to participate in a project for the
11 design and construction of a public work. (NRS 338.1721)

12 This bill provides that, to qualify to bid on or to be eligible to be awarded a
13 contract for a public work of the State Public Works Board or a local government, a
14 bidder must be a participant in a program of apprenticeship that is registered and
15 approved by the State Apprenticeship Council. This bill requires that a
16 subcontractor participate in such a program if the subcontractor is otherwise
17 required to qualify to be eligible to provide labor or work on a public works
18 contract of the Board. This bill requires that a design-build team participate in such



19 a program to be qualified to design and construct a public work. This bill also
20 requires the rejection of bids that are received from a bidder who does not
21 participate in such a program.

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

1 **Section 1.** NRS 338.1375 is hereby amended to read as
2 follows:

3 338.1375 1. The State Public Works Board shall not accept a
4 bid on a contract for a public work unless the contractor who
5 submits the bid has qualified pursuant to NRS 338.1379 to bid on
6 that contract.

7 2. The State Public Works Board shall by regulation adopt
8 criteria for the qualification of bidders on contracts for public works
9 of this State. The criteria adopted by the State Public Works Board
10 pursuant to this section must be used by the State Public Works
11 Board to determine the qualification of bidders on contracts for
12 public works of this State.

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

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

19 (b) ~~May~~ *Must require that an applicant participate in a*
20 *program of apprenticeship that is registered and approved by the*
21 *State Apprenticeship Council pursuant to chapter 610 of NRS.*

22 (c) *In addition to the requirements of paragraphs (a) and (b),*
23 *may* include only:

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

26 (2) The principal personnel of the applicant;

27 (3) Whether the applicant has breached any contracts with a
28 public body or person in this State or any other state;

29 (4) Whether the applicant has been disqualified from being
30 awarded a contract pursuant to NRS 338.017 or 338.13895;

31 (5) The performance history of the applicant concerning
32 other recent, similar contracts, if any, completed by the applicant;
33 and

34 (6) The truthfulness and completeness of the application.

35 **Sec. 2.** NRS 338.1376 is hereby amended to read as follows:

36 338.1376 1. Each subcontractor whose name is required to be
37 included in a bid pursuant to NRS 338.141 must, to be eligible to
38 provide labor or a portion of the work or improvement to a



1 contractor to whom the State Public Works Board awards a contract
2 pursuant to this chapter, be qualified in accordance with criteria
3 established by regulation by the State Public Works Board. The
4 criteria established by the State Public Works Board pursuant to this
5 subsection must be made applicable to a subcontractor but must
6 otherwise be substantively identical to the criteria set forth in
7 ~~[paragraph]~~ *paragraphs* (b) *and* (c) of subsection 3 of
8 NRS 338.1375.

9 2. A subcontractor shall be presumed to be qualified pursuant
10 to subsection 1 unless the State Public Works Board has received
11 information that:

12 (a) The State Public Works Board determines to be sufficient
13 and verifiable; and

14 (b) Indicates the subcontractor does not meet the criteria
15 established by regulation pursuant to subsection 1.

16 3. Upon receipt of sufficient and verifiable information of a
17 type described in subsection 2, the State Public Works Board shall
18 require a subcontractor regarding whom such information is
19 received to submit to the State Public Works Board, on a form
20 prescribed by the State Public Works Board, an application for
21 qualification in accordance with the criteria established by
22 regulation pursuant to subsection 1. After receiving such an
23 application, the State Public Works Board shall determine whether
24 the subcontractor is qualified in accordance with the criteria
25 established by regulation pursuant to subsection 1. Except as
26 otherwise provided in subsection 4, if the State Public Works Board
27 determines that the subcontractor does not meet such criteria, the
28 State Public Works Board may disqualify the subcontractor, for a
29 period set by the State Public Works Board, from participating in
30 public works projects which are sponsored by the State Public
31 Works Board. The State Public Works Board shall provide written
32 notice to the subcontractor of any such disqualification.

33 4. A subcontractor may appeal a disqualification pursuant to
34 subsection 3 in the manner set forth in NRS 338.1381.

35 **Sec. 3.** NRS 338.1377 is hereby amended to read as follows:

36 338.1377 Except as otherwise provided in NRS 338.1382, if a
37 governing body that sponsors or finances a public work elects to
38 award contracts for public works pursuant to the provisions of NRS
39 338.1377 to 338.139, inclusive, the governing body :

40 *1. Shall not determine that a person who has applied*
41 *pursuant to NRS 338.1379 is qualified to bid on contracts for*
42 *public works of the local government unless the person*
43 *participates in a program of apprenticeship that is registered and*



1 *approved by the State Apprenticeship Council pursuant to chapter*
2 *610 of NRS; and*

3 *2. In addition to the criterion set forth in subsection 1,* shall
4 adopt the following criteria for determining whether a person who
5 has applied pursuant to NRS 338.1379 is qualified to bid on
6 contracts for public works of the local government:

7 ~~[1-]~~ (a) Whether the applicant possesses a valid contractor's
8 license of a class corresponding to the work to be required by the
9 local government;

10 ~~[2-]~~ (b) Whether the applicant has the ability to obtain the
11 necessary bonding for the work to be required by the local
12 government;

13 ~~[3-]~~ (c) Whether the applicant has successfully completed one or
14 more projects during the 5 years immediately preceding the date of
15 application of similar size, scope or type as the work to be required
16 by the local government;

17 ~~[4-]~~ (d) Whether the principal personnel employed by the
18 applicant have the necessary professional qualifications and
19 experience for the work to be required by the local government;

20 ~~[5-]~~ (e) Whether the applicant has breached any contracts with a
21 public agency or person in this State or any other state during the 5
22 years immediately preceding the date of application;

23 ~~[6-]~~ (f) Whether the applicant has been disqualified from being
24 awarded a contract pursuant to NRS 338.017 or 338.13895;

25 ~~[7-]~~ (g) Whether the applicant has been convicted of a violation
26 for discrimination in employment during the 2 years immediately
27 preceding the date of application;

28 ~~[8-]~~ (h) Whether the applicant has the ability to obtain and
29 maintain insurance coverage for public liability and property
30 damage within limits sufficient to protect the applicant and all the
31 subcontractors of the applicant from claims for personal injury,
32 accidental death and damage to property that may arise in
33 connection with the work to be required by the local government;

34 ~~[9-]~~ (i) Whether the applicant has established a safety program
35 that complies with the requirements of chapter 618 of NRS;

36 ~~[10-]~~ (j) Whether the applicant has been disciplined or fined by
37 the State Contractors' Board or another state or federal agency for
38 conduct that relates to the ability of the applicant to perform the
39 work to be required by the local government;

40 ~~[11-]~~ (k) Whether, during the 5 years immediately preceding the
41 date of application, the applicant has filed as a debtor under the
42 provisions of the United States Bankruptcy Code;

43 ~~[12-]~~ (l) Whether the application of the applicant is truthful and
44 complete; and



1 ~~[(3)]~~ (m) Whether, during the 5 years immediately preceding the
2 date of application, the applicant has, as a result of causes within
3 the control of the applicant or a subcontractor or supplier of the
4 applicant, failed to perform any contract:

5 ~~[(a)]~~ (1) In the manner specified by the contract and any change
6 orders initiated or approved by the person or governmental entity
7 that awarded the contract or its authorized representative;

8 ~~[(b)]~~ (2) Within the time specified by the contract unless
9 extended by the person or governmental entity that awarded the
10 contract or its authorized representative; or

11 ~~[(e)]~~ (3) For the amount of money specified in the contract or as
12 modified by any change orders initiated or approved by the person
13 or governmental entity that awarded the contract or its authorized
14 representative.

15 ➔ Evidence of the failures described in this ~~[subsection]~~ *paragraph*
16 may include, without limitation, the assessment of liquidated
17 damages against the applicant, the forfeiture of any bonds posted by
18 the applicant, an arbitration award granted against the applicant or a
19 decision by a court of law against the applicant.

20 **Sec. 4.** NRS 338.1382 is hereby amended to read as follows:

21 338.1382 ~~[(a)]~~

22 *1. Except as otherwise provided in subsection 2, in* lieu of
23 adopting criteria pursuant to NRS 338.1377 and determining the
24 qualification of bidders pursuant to NRS 338.1379, a governing
25 body may deem a person to be qualified to bid on:

26 ~~[(1)]~~ (a) Contracts for public works of the local government if the
27 person has been determined by:

28 ~~[(a)]~~ (1) The State Public Works Board pursuant to NRS
29 338.1379 to be qualified to bid on contracts for public works of the
30 State pursuant to criteria adopted pursuant to NRS 338.1375; or

31 ~~[(b)]~~ (2) Another governing body pursuant to NRS 338.1379 to
32 be qualified to bid on contracts for public works of that local
33 government pursuant to the criteria set forth in NRS 338.1377.

34 ~~[(2)]~~ (b) A contract for a public work of the local government if:

35 ~~[(a)]~~ (1) The person has been determined by the Department of
36 Transportation pursuant to NRS 408.333 to be qualified to bid on
37 the contract for the public work;

38 ~~[(b)]~~ (2) The public work will be owned, operated or maintained
39 by the Department of Transportation after the public work is
40 constructed by the local government; and

41 ~~[(e)]~~ (3) The Department of Transportation requested that
42 bidders on the contract for the public work be qualified to bid on the
43 contract pursuant to NRS 408.333.

44 *2. A governing body shall not deem a person to be qualified*
45 *to bid on a public work of the local government pursuant to this*



1 *section unless the person participates in a program of*
2 *apprenticeship that is registered and approved by the State*
3 *Apprenticeship Council pursuant to chapter 610 of NRS.*

4 **Sec. 5.** NRS 338.1385 is hereby amended to read as follows:

5 338.1385 1. Except as otherwise provided in subsection 8
6 and NRS 338.1906 and 338.1907, this State, or a governing body or
7 its authorized representative that awards a contract for a public work
8 in accordance with paragraph (a) of subsection 1 of NRS 338.1373
9 shall not:

10 (a) Commence a public work for which the estimated cost
11 exceeds \$100,000 unless it advertises in a newspaper qualified
12 pursuant to chapter 238 of NRS that is published in the county
13 where the public work will be performed for bids for the public
14 work. If no qualified newspaper is published in the county where the
15 public work will be performed, the required advertisement must be
16 published in some qualified newspaper that is printed in the State of
17 Nevada and has a general circulation in the county.

18 (b) Commence a public work for which the estimated cost is
19 \$100,000 or less unless it complies with the provisions of NRS
20 338.1386, 338.13862 and 338.13864.

21 (c) Divide a public work into separate portions to avoid the
22 requirements of paragraph (a) or (b).

23 2. At least once each quarter, the authorized representative of a
24 public body shall report to the public body any contract that he
25 awarded pursuant to subsection 1 in the immediately preceding
26 quarter.

27 3. Each advertisement for bids must include a provision that
28 sets forth the requirement that a contractor must be qualified
29 pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

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 public work must be awarded on the basis
34 of bids received.

35 5. Except as otherwise provided in subsection 6 and NRS
36 338.1389, a public body shall award a contract to the lowest
37 responsive and responsible bidder.

38 6. Any bids received in response to an advertisement for bids :

39 (a) *Must be rejected if the person responsible for awarding the*
40 *contract determines that the bidder does not participate in a*
41 *program of apprenticeship that is registered and approved by the*
42 *State Apprenticeship Council pursuant to chapter 610 of NRS.*

43 (b) *Except as otherwise provided in paragraph (a),* may be
44 rejected if the public body or its authorized representative
45 responsible for awarding the contract determines that:



1 ~~(a)~~ (1) The bidder is not a qualified bidder pursuant to NRS
2 338.1379 or 338.1382;

3 ~~(b)~~ (2) The bidder is not responsive or responsible;

4 ~~(c)~~ (3) The quality of the services, materials, equipment or
5 labor offered does not conform to the approved plans or
6 specifications; or

7 ~~(d)~~ (4) The public interest would be served by such a rejection.

8 7. Before a public body may commence the performance of a
9 public work itself pursuant to the provisions of this section, based
10 upon a determination that the public interest would be served by
11 rejecting any bids received in response to an advertisement for bids,
12 the public body shall prepare and make available for public
13 inspection a written statement containing:

14 (a) A list of all persons, including supervisors, whom the public
15 body intends to assign to the public work, together with their
16 classifications and an estimate of the direct and indirect costs of
17 their labor;

18 (b) A list of all equipment that the public body intends to use on
19 the public work, together with an estimate of the number of hours
20 each item of equipment will be used and the hourly cost to use each
21 item of equipment;

22 (c) An estimate of the cost of administrative support for the
23 persons assigned to the public work;

24 (d) An estimate of the total cost of the public work, including
25 the fair market value of or, if known, the actual cost of all materials,
26 supplies, labor and equipment to be used for the public work; and

27 (e) An estimate of the amount of money the public body expects
28 to save by rejecting the bids and performing the public work itself.

29 8. This section does not apply to:

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

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

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

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

40 (e) The design and construction of a public work for which a
41 public body contracts with a design-build team pursuant to NRS
42 338.1711 to 338.1727, inclusive.

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

44 338.1385 1. Except as otherwise provided in subsection 8,
45 this State, or a governing body or its authorized representative that



1 awards a contract for a public work in accordance with paragraph
2 (a) of subsection 1 of NRS 338.1373 shall not:

3 (a) Commence a public work for which the estimated cost
4 exceeds \$100,000 unless it advertises in a newspaper qualified
5 pursuant to chapter 238 of NRS that is published in the county
6 where the public work will be performed for bids for the public
7 work. If no qualified newspaper is published in the county where the
8 public work will be performed, the required advertisement must be
9 published in some qualified newspaper that is printed in the State of
10 Nevada and having a general circulation within the county.

11 (b) Commence a public work for which the estimated cost is
12 \$100,000 or less unless it complies with the provisions of NRS
13 338.1386, 338.13862 and 338.13864.

14 (c) Divide a public work into separate portions to avoid the
15 requirements of paragraph (a) or (b).

16 2. At least once each quarter, the authorized representative of a
17 public body shall report to the public body any contract that he
18 awarded pursuant to subsection 1 in the immediately preceding
19 quarter.

20 3. Each advertisement for bids must include a provision that
21 sets forth the requirement that a contractor must be qualified
22 pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

23 4. Approved plans and specifications for the bids must be on
24 file at a place and time stated in the advertisement for the inspection
25 of all persons desiring to bid thereon and for other interested
26 persons. Contracts for the public work must be awarded on the basis
27 of bids received.

28 5. Except as otherwise provided in subsection 6 and NRS
29 338.1389, a public body shall award a contract to the lowest
30 responsive and responsible bidder.

31 6. Any bids received in response to an advertisement for bids :

32 *(a) Must be rejected if the person responsible for awarding the*
33 *contract determines that the bidder does not participate in a*
34 *program of apprenticeship that is registered and approved by the*
35 *State Apprenticeship Council pursuant to chapter 610 of NRS.*

36 *(b) Except as otherwise provided in paragraph (a),* may be
37 rejected if the public body or its authorized representative
38 responsible for awarding the contract determines that:

39 ~~(a)~~ (1) The bidder is not a qualified bidder pursuant to NRS
40 338.1379 or 338.1382;

41 ~~(b)~~ (2) The bidder is not responsive or responsible;

42 ~~(c)~~ (3) The quality of the services, materials, equipment or
43 labor offered does not conform to the approved plans or
44 specifications; or

45 ~~(d)~~ (4) The public interest would be served by such a rejection.



1 7. Before a public body may commence the performance of a
2 public work itself pursuant to the provisions of this section, based
3 upon a determination that the public interest would be served by
4 rejecting any bids received in response to an advertisement for bids,
5 the public body shall prepare and make available for public
6 inspection a written statement containing:

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

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

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

17 (d) An estimate of the total cost of the public work, including,
18 the fair market value of or, if known, the actual cost of all materials,
19 supplies, labor and equipment to be used for the public work; and

20 (e) An estimate of the amount of money the public body expects
21 to save by rejecting the bids and performing the public work itself.

22 8. This section does not apply to:

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

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

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

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

33 (e) The design and construction of a public work for which a
34 public body contracts with a design-build team pursuant to NRS
35 338.1711 to 338.1727, inclusive.

36 **Sec. 7.** NRS 338.143 is hereby amended to read as follows:

37 338.143 1. Except as otherwise provided in subsection 7 and
38 NRS 338.1907, a local government or its authorized representative
39 that awards a contract for a public work in accordance with
40 paragraph (b) of subsection 1 of NRS 338.1373 shall not:

41 (a) Commence a public work for which the estimated cost
42 exceeds \$100,000 unless it advertises in a newspaper qualified
43 pursuant to chapter 238 of NRS that is published in the county
44 where the public work will be performed for bids for the public
45 work. If no qualified newspaper is published in the county where the



1 public work will be performed, the required advertisement must be
2 published in some qualified newspaper that is printed in the State of
3 Nevada and has a general circulation in the county.

4 (b) Commence a public work for which the estimated cost is
5 \$100,000 or less unless it complies with the provisions of NRS
6 338.1442, 338.1444 and 338.1446.

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

9 2. At least once each quarter, the authorized representative of a
10 local government shall report to the local government any contract
11 that he awarded pursuant to subsection 1 in the immediately
12 preceding quarter.

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

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

21 5. Any bids received in response to an advertisement for bids :

22 *(a) Must be rejected if the person responsible for awarding the*
23 *contract determines that the bidder does not participate in a*
24 *program of apprenticeship that is registered and approved by the*
25 *State Apprenticeship Council pursuant to chapter 610 of NRS.*

26 *(b) Except as otherwise provided in paragraph (a),* may be
27 rejected if the local government or its authorized representative
28 responsible for awarding the contract determines that:

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

30 ~~(b)~~ (2) The quality of the services, materials, equipment or
31 labor offered does not conform to the approved plans or
32 specifications; or

33 ~~(c)~~ (3) The public interest would be served by such a rejection.

34 6. Before a local government may commence the performance
35 of a public work itself pursuant to the provisions of this section,
36 based upon a determination that the public interest would be served
37 by rejecting any bids received in response to an advertisement for
38 bids, the local government shall prepare and make available for
39 public inspection a written statement containing:

40 (a) A list of all persons, including supervisors, whom the local
41 government intends to assign to the public work, together with their
42 classifications and an estimate of the direct and indirect costs of
43 their labor;

44 (b) A list of all equipment that the local government intends to
45 use on the public work, together with an estimate of the number of



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

3 (c) An estimate of the cost of administrative support for the
4 persons assigned to the public work;

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

8 (e) An estimate of the amount of money the local government
9 expects to save by rejecting the bids and performing the public work
10 itself.

11 7. This section does not apply to:

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

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

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

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

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

25 **Sec. 8.** NRS 338.143 is hereby amended to read as follows:

26 338.143 1. Except as otherwise provided in subsection 7, a
27 local government or its authorized representative that awards a
28 contract for a public work in accordance with paragraph (b) of
29 subsection 1 of NRS 338.1373 shall not:

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

39 (b) Commence a public work for which the estimated cost is
40 \$100,000 or less unless it complies with the provisions of NRS
41 338.1442, 338.1444 or 338.1446.

42 (c) Divide a public work into separate portions to avoid the
43 requirements of paragraph (a) or (b).

44 2. At least once each quarter, the authorized representative of a
45 local government shall report to the local government any contract



1 that he awarded pursuant to subsection 1 in the immediately
2 preceding quarter.

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

8 4. Except as otherwise provided in subsection 5 and NRS
9 338.147, the local government or its authorized representative shall
10 award a contract to the lowest responsive and responsible bidder.

11 5. Any bids received in response to an advertisement for bids :

12 *(a) Must be rejected if the person responsible for awarding the*
13 *contract determines that the bidder does not participate in a*
14 *program of apprenticeship that is registered and approved by the*
15 *State Apprenticeship Council pursuant to chapter 610 of NRS.*

16 *(b) Except as otherwise provided in paragraph (a),* may be
17 rejected if the local government or its authorized representative
18 responsible for awarding the contract determines that:

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

20 ~~(b)~~ (2) The quality of the services, materials, equipment or
21 labor offered does not conform to the approved plans or
22 specifications; or

23 ~~(c)~~ (3) The public interest would be served by such a rejection.

24 6. Before a local government may commence the performance
25 of a public work itself pursuant to the provisions of this section,
26 based upon a determination that the public interest would be served
27 by rejecting any bids received in response to an advertisement for
28 bids, the local government shall prepare and make available for
29 public inspection a written statement containing:

30 (a) A list of all persons, including supervisors, whom the local
31 government intends to assign to the public work, together with their
32 classifications and an estimate of the direct and indirect costs of
33 their labor;

34 (b) A list of all equipment that the local government intends to
35 use on the public work, together with an estimate of the number of
36 hours each item of equipment will be used and the hourly cost to use
37 each item of equipment;

38 (c) An estimate of the cost of administrative support for the
39 persons assigned to the public work;

40 (d) An estimate of the total cost of the public work, including
41 the fair market value of or, if known, the actual cost of all materials,
42 supplies, labor and equipment to be used for the public work; and

43 (e) An estimate of the amount of money the local government
44 expects to save by rejecting the bids and performing the public work
45 itself.



- 1 7. This section does not apply to:
2 (a) Any utility subject to the provisions of chapter 318 or 710 of
3 NRS;
4 (b) Any work of construction, reconstruction, improvement and
5 maintenance of highways subject to NRS 408.323 or 408.327;
6 (c) Normal maintenance of the property of a school district;
7 (d) The Las Vegas Valley Water District created pursuant to
8 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
9 District created pursuant to chapter 477, Statutes of Nevada 1983 ,
10 or the Virgin Valley Water District created pursuant to chapter 100,
11 Statutes of Nevada 1993; or
12 (e) The design and construction of a public work for which a
13 public body contracts with a design-build team pursuant to NRS
14 338.1711 to 338.1727, inclusive.

15 **Sec. 9.** NRS 338.147 is hereby amended to read as follows:

16 338.147 1. Except as otherwise provided in subsection 10
17 and NRS 338.143, 338.1442 and 338.1446, a local government or
18 its authorized representative shall award a contract for a public work
19 for which the estimated cost exceeds \$250,000 to the contractor who
20 submits the best bid.

21 2. Except as otherwise provided in subsection 10 or limited by
22 subsection 11, the lowest bid that is:

23 (a) Submitted by a contractor who:

24 (1) Has been found to be a responsible and responsive
25 contractor by the local government or its authorized representative;
26 ~~and~~

27 (2) *Participates in a program of apprenticeship that is*
28 *registered and approved by the State Apprenticeship Council*
29 *pursuant to chapter 610 of NRS; and*

30 (3) At the time he submits his bid, has a valid certificate of
31 eligibility to receive a preference in bidding on public works issued
32 to the contractor by the State Contractors' Board pursuant to
33 subsection 3 or 4; and

34 (b) Not more than 5 percent higher than the bid submitted by the
35 lowest responsive and responsible bidder who does not have, at the
36 time he submits the bid, a valid certificate of eligibility to receive a
37 preference in bidding on public works issued to him by the State
38 Contractors' Board pursuant to subsection 3 or 4,

39 ↪ shall be deemed to be the best bid for the purposes of this section.

40 3. The State Contractors' Board shall issue a certificate of
41 eligibility to receive a preference in bidding on public works to a
42 general 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 general contractor
45 has, while licensed as a general contractor in this State:



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

2 (1) The sales and use taxes imposed pursuant to chapters
3 372, 374 and 377 of NRS on materials used for construction in this
4 State, including, without limitation, construction that is undertaken
5 or 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 general contractor pursuant to the provisions
21 of chapter 624 of NRS; and

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

24 4. The State Contractors' Board shall issue a certificate of
25 eligibility to receive a preference in bidding on public works to a
26 specialty contractor who is licensed pursuant to the provisions of
27 chapter 624 of NRS and submits to the Board an affidavit from a
28 certified public accountant setting forth that the specialty contractor
29 has, while licensed as a specialty contractor in this State:

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

31 (1) The sales and use taxes pursuant to chapters 372, 374 and
32 377 of NRS on materials used for construction in this State,
33 including, without limitation, construction that is undertaken or
34 carried out on land within the boundaries of this State that is
35 managed by the Federal Government or is on an Indian reservation
36 or Indian colony, of not less than \$5,000 for each consecutive
37 12-month period for 60 months immediately preceding the
38 submission of the affidavit from the certified public accountant;

39 (2) The governmental services tax imposed pursuant to
40 chapter 371 of NRS on the vehicles used in the operation of his
41 business in this State of not less than \$5,000 for each consecutive
42 12-month period for 60 months immediately preceding the
43 submission of the affidavit from the certified public accountant; or

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



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

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

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

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

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

15 (b) Sales and use taxes paid in this State by a joint venture in
16 which the contractor is a participant, in proportion to the amount of
17 interest the contractor has in the joint venture.

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

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

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

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

44 10. If any federal statute or regulation precludes the granting of
45 federal assistance or reduces the amount of that assistance for a



1 particular public work because of the provisions of subsection 2,
2 those provisions do not apply insofar as their application would
3 preclude or reduce federal assistance for that work.

4 11. If a bid is submitted by two or more contractors as a joint
5 venture or by one of them as a joint venturer, the bid may be
6 deemed a best bid only if both or all of the joint venturers separately
7 meet the requirements of subsection 2.

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

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

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

22 (b) Be filed with the local government not later than 3 business
23 days after the opening of the bids by the local government or its
24 authorized representative.

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

39 **Sec. 10.** NRS 338.1721 is hereby amended to read as follows:

40 338.1721 To qualify to participate in a project for the design
41 and construction of a public work, a design-build team must:

42 1. Obtain a performance bond and payment bond as required
43 pursuant to NRS 339.025;

44 2. Obtain insurance covering general liability and liability for
45 errors and omissions;



1 3. Not have been found liable for breach of contract with
2 respect to a previous project, other than a breach for legitimate
3 cause;

4 4. Not have been disqualified from being awarded a contract
5 pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333;

6 5. Ensure that the members of the design-build team possess
7 the licenses and certificates required to carry out the functions of
8 their respective professions within this State; ~~and~~

9 6. If the project is for the design and construction of a public
10 work of the State, ensure that the prime contractor is qualified to bid
11 on a public work of the State pursuant to NRS 338.1379 ~~and~~; *and*

12 *7. Participate in a program of apprenticeship that is*
13 *registered and approved by the State Apprenticeship Council*
14 *pursuant to chapter 610 of NRS.*

15 **Sec. 11.** 1. This section and sections 1 to 5, inclusive, 7, 9
16 and 10 of this act become effective on October 1, 2005.

17 2. Sections 5 and 7 of this act expire by limitation on April 30,
18 2013.

19 3. Sections 6 and 8 of this act become effective on May 1,
20 2013.



