

ASSEMBLY BILL NO. 280—ASSEMBLYMEN FRIERSON, CARRILLO, MONROE-MORENO, SPRINKLE, NEAL; ARAUJO, BENITEZ-THOMPSON, BILBRAY-AXELROD, CARLTON, COHEN, DALY, FUMO, JAUREGUI, JOINER, MCCURDY II, MILLER, OHRENSCHALL, SPIEGEL, THOMPSON, WATKINS AND YEAGER

MARCH 13, 2017

JOINT SPONSORS: SENATORS FORD AND CANNIZZARO

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to preferences in bidding for certain contracts for businesses based in this State. (BDR 27-1060)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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 procurement; establishing provisions relating to preferences in bidding for certain contracts with Nevada-based businesses for state purchasing; revising provisions relating to preferences in bidding for contracts for certain public works projects; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law grants a preference of 5 percent for a bid or proposal for a state
2 purchasing contract which is submitted by a local business owned and operated by
3 a veteran with a service-connected disability. (NRS 333.3361-333.3369) **Sections**
4 **2-8** of this bill create a preference of 5 percent for a bid or proposal for a state
5 purchasing contract which is submitted by a Nevada-based business. To qualify for
6 this preference, **section 3** requires such a business to certify that: (1) at least 50
7 percent of all workers employed for the state purchasing contract will hold a valid
8 Nevada driver’s license or identification card; (2) all vehicles used primarily for the
9 state purchasing contract will be either registered in this State or partially
10 apportioned to this State; and (3) certain records will be maintained and made
11 available for inspection within this State. **Section 5** establishes that a bid or
12 proposal which qualifies for the preference will be deemed to be 5 percent lower



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13 than the bid or proposal actually submitted. **Section 6** imposes certain penalties and
14 restrictions upon a business that makes a material misrepresentation or commits a
15 fraudulent act in applying for a preference or fails to comply with the requirements
16 for a preference.

17 Existing law requires that a contractor, applicant to serve as a construction
18 manager at risk or design-build team that wishes to receive a preference in bidding
19 for a contract for a public work submit an affidavit to the public body sponsoring or
20 financing the public work certifying that: (1) at least 50 percent of all workers
21 employed on the public work will hold a valid Nevada driver's license or
22 identification card; (2) all vehicles used primarily for the public work will be either
23 registered in this State or partially apportioned to this State; (3) at least 50 percent
24 of all design professionals working on the public work will hold a valid Nevada
25 driver's license or identification card; and (4) certain records will be maintained
26 and made available for inspection within this State. (NRS 338.0117) **Sections**
27 **12-16** of this bill revise the bidding preference that a contractor, applicant to serve
28 as a construction manager at risk or design-build team who meets these
29 requirements receives for certain public works contracts from 5 percent to 10
30 percent.

31 Existing law prohibits a contractor from being qualified to bid on certain state
32 and local public works if the contractor has, within the preceding year, materially
33 breached a contract for a public work that cost more than \$25,000,000 and prohibits
34 a contractor who has materially breached a contract for a public work which
35 exceeds \$5,000,000 from receiving a preference in bidding for public works for 5
36 years. (NRS 338.1379, 338.1382, 338.1389, 338.1415, 338.147, 408.333) Existing
37 law also imposes a penalty of 1 percent of the cost of the contract upon a
38 contractor, applicant or design-build team who is awarded a contract as a result of a
39 bidding preference and subsequently fails to comply with the requirements to
40 receive that preference. (NRS 338.0117) **Section 11** of this bill makes a willful
41 failure to comply with the requirements to receive a bidding preference a
42 misdemeanor and creates a separate violation for each worker, vehicle or design
43 professional by which the contractor, applicant or design-build team falls below the
44 requirements. **Section 7** creates a similar misdemeanor for a business that receives
45 a preference on a state purchasing contract as a Nevada-based business and
46 willfully fails to comply with the requirements for such a preference.

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

1 **Section 1.** Chapter 333 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 8, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 8, inclusive, of this act, unless*
5 *the context otherwise requires, the words and terms defined in*
6 *sections 3 and 4 of this act have the meanings ascribed to them in*
7 *those sections.*

8 **Sec. 3.** *“Nevada-based business” means a business which*
9 *certifies that, for the duration of a state purchasing contract,*
10 *collectively, and not on any specific day:*

11 1. *At least 50 percent of the workers employed by the business*
12 *for the state purchasing contract will hold a valid driver's license*



1 *or identification card issued by the Department of Motor Vehicles*
2 *of the State of Nevada;*

3 2. *All vehicles used primarily for the state purchasing*
4 *contract will be:*

5 (a) *Registered and partially apportioned to Nevada pursuant to*
6 *the International Registration Plan, as adopted by the Department*
7 *of Motor Vehicles pursuant to NRS 706.826; or*

8 (b) *Registered in this State; and*

9 3. *The business will maintain and make available for*
10 *inspection within this State its records concerning payroll relating*
11 *to the state purchasing contract.*

12 **Sec. 4.** *“State purchasing contract” means a contract*
13 *awarded pursuant to the provisions of this chapter.*

14 **Sec. 5.** 1. *For the purposes of awarding a formal contract*
15 *solicited pursuant to subsection 2 of NRS 333.300, if a business*
16 *qualifies as a Nevada-based business and submits a bid or*
17 *proposal and is a responsive and responsible bidder, the bid or*
18 *proposal shall be deemed to be 5 percent lower than the bid*
19 *or proposal actually submitted.*

20 2. *The preference described in subsection 1 may not be*
21 *combined with any other preference.*

22 **Sec. 6.** 1. *In addition to any other remedy or penalty*
23 *provided by law, if the Purchasing Division determines that a*
24 *business has made a material misrepresentation or otherwise*
25 *committed a fraudulent act in applying for a preference described*
26 *in section 5 of this act or has failed to comply with the*
27 *requirements of that section, the business:*

28 (a) *Shall pay to the Purchasing Division, if awarded a state*
29 *purchasing contract, a penalty in the amount of 1 percent of the*
30 *cost of the state purchasing contract;*

31 (b) *Shall not bid on a state purchasing contract or a contract*
32 *awarded by any local government for 1 year after the date upon*
33 *which the Purchasing Division makes such a determination; and*

34 (c) *Shall not apply for or receive a preference described in*
35 *section 5 of this act for 5 years after the date upon which the*
36 *Purchasing Division makes such a determination.*

37 2. *If the Purchasing Division determines, as described in*
38 *subsection 1, that a business has made a material*
39 *misrepresentation or otherwise committed a fraudulent act in*
40 *applying for a preference described in section 5 of this act or has*
41 *failed to comply with the requirements of that section, the business*
42 *may apply to the Administrator to review the decision pursuant to*
43 *chapter 233B of NRS.*

44 **Sec. 7.** *In addition to any other remedy or penalty provided*
45 *by law, any person who willfully makes a material*



1 *misrepresentation or otherwise commits a fraudulent act in*
2 *applying for a preference described in section 5 of this act or who*
3 *willfully fails to comply with the requirements of that section is*
4 *guilty of a misdemeanor and shall be punished by a fine of not*
5 *more than \$10,000. For the purposes of this section, a separate*
6 *violation occurs for each:*

7 *1. Worker who would need to hold a valid driver's license or*
8 *identification card issued by the Department of Motor Vehicles of*
9 *the State of Nevada in order for at least 50 percent of the workers*
10 *employed by the business for the state purchasing contract to hold*
11 *such a license or card; and*

12 *2. Vehicle used primarily for the state purchasing contract*
13 *which is not registered and partially apportioned to Nevada*
14 *pursuant to the International Registration Plan, as adopted by the*
15 *Department of Motor Vehicles pursuant to NRS 706.826, or*
16 *registered in this State.*

17 **Sec. 8.** *The Purchasing Division may adopt such regulations*
18 *as it determines to be necessary or advisable to carry out the*
19 *provisions of sections 2 to 8, inclusive, of this act. The regulations*
20 *may include, without limitation, provisions setting forth:*

21 *1. The method by which a business may apply to receive a*
22 *preference described in section 5 of this act;*

23 *2. The documentation or other proof that a business must*
24 *submit to demonstrate that it qualifies for a preference described*
25 *in section 5 of this act; and*

26 *3. Such other matters as the Purchasing Division deems*
27 *relevant.*

28 **Sec. 9.** NRS 333.310 is hereby amended to read as follows:

29 333.310 1. An advertisement must contain a general
30 description of the classes of commodities or services for which a bid
31 or proposal is wanted and must state:

32 (a) The name and location of the department, agency, local
33 government, district or institution for which the purchase is to be
34 made.

35 (b) Where and how specifications and quotation forms may be
36 obtained.

37 (c) If the advertisement is for bids, whether the Administrator is
38 authorized by the using agency to be supplied to consider a bid for
39 an article that is an alternative to the article listed in the original
40 request for bids if:

41 (1) The specifications of the alternative article meet or
42 exceed the specifications of the article listed in the original request
43 for bids;

44 (2) The purchase of the alternative article results in a lower
45 price; and



1 (3) The Administrator deems the purchase of the alternative
2 article to be in the best interests of the State of Nevada.

3 (d) Notice of the ~~preference~~ *preferences* set forth in NRS
4 333.3366 ~~+~~ *and section 5 of this act.*

5 (e) The date and time not later than which responses must be
6 received by the Purchasing Division.

7 (f) The date and time when responses will be opened.

8 ➔ The Administrator or a designated agent of the Administrator
9 shall approve the copy for the advertisement.

10 2. Each advertisement must be published:

11 (a) In at least one newspaper of general circulation in the State.
12 The selection of the newspaper to carry the advertisement must be
13 made in the manner provided by this chapter for other purchases, on
14 the basis of the lowest price to be secured in relation to the paid
15 circulation; and

16 (b) On the Internet website of the Purchasing Division.

17 **Sec. 10.** NRS 333.340 is hereby amended to read as follows:

18 333.340 1. Every contract or order for goods must be
19 awarded to the lowest responsible bidder. To determine the lowest
20 responsible bidder, the Administrator:

21 (a) Shall consider, if applicable:

22 (1) The granting of the preference described in
23 NRS 333.3366.

24 (2) *The granting of the preference described in section 5 of*
25 *this act.*

26 (3) The required standards adopted pursuant to
27 NRS 333.4611.

28 (b) May consider:

29 (1) The location of the using agency to be supplied.

30 (2) The qualities of the articles to be supplied.

31 (3) The total cost of ownership of the articles to be supplied.

32 (4) Except as otherwise provided in subparagraph (5), the
33 conformity of the articles to be supplied with the specifications.

34 (5) If the articles are an alternative to the articles listed in the
35 original request for bids, whether the advertisement for bids
36 included a statement that bids for an alternative article will be
37 considered if:

38 (I) The specifications of the alternative article meet or
39 exceed the specifications of the article listed in the original request
40 for bids;

41 (II) The purchase of the alternative article results in a
42 lower price; and

43 (III) The Administrator deems the purchase of the
44 alternative article to be in the best interests of the State of Nevada.



1 (6) The purposes for which the articles to be supplied are
2 required.

3 (7) The dates of delivery of the articles to be supplied.

4 2. If a contract or an order is not awarded to the lowest bidder,
5 the Administrator shall provide the lowest bidder with a written
6 statement which sets forth the specific reasons that the contract or
7 order was not awarded to him or her.

8 3. As used in this section, "total cost of ownership" includes,
9 but is not limited to:

10 (a) The history of maintenance or repair of the articles;

11 (b) The cost of routine maintenance and repair of the articles;

12 (c) Any warranties provided in connection with the articles;

13 (d) The cost of replacement parts for the articles; and

14 (e) The value of the articles as used articles when given in trade
15 on a subsequent purchase.

16 **Sec. 11.** NRS 338.0117 is hereby amended to read as follows:

17 338.0117 1. To qualify to receive a preference in bidding
18 pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS
19 338.147, subsection 3 of NRS 338.1693, subsection 3 of NRS
20 338.1727 or subsection 2 of NRS 408.3886, a contractor, an
21 applicant or a design-build team, respectively, must submit to the
22 public body sponsoring or financing a public work a signed affidavit
23 which certifies that, for the duration of the project, collectively, and
24 not on any specific day:

25 (a) At least 50 percent of the workers employed on the public
26 work, including, without limitation, any employees of the
27 contractor, applicant or design-build team and of any subcontractor
28 engaged on the public work, will hold a valid driver's license or
29 identification card issued by the Department of Motor Vehicles of
30 the State of Nevada;

31 (b) All vehicles used primarily for the public work will be:

32 (1) Registered and partially apportioned to Nevada pursuant
33 to the International Registration Plan, as adopted by the Department
34 of Motor Vehicles pursuant to NRS 706.826; or

35 (2) Registered in this State;

36 (c) If applying to receive a preference in bidding pursuant to
37 subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, at
38 least 50 percent of the design professionals working on the public
39 work, including, without limitation, employees of the design-build
40 team and of any subcontractor or consultant engaged in the design
41 of the public work, will have a valid driver's license or
42 identification card issued by the Department of Motor Vehicles of
43 the State of Nevada; and

44 (d) The contractor, applicant or design-build team and any
45 subcontractor engaged on the public work will maintain and make



1 available for inspection within this State his or her records
2 concerning payroll relating to the public work.

3 2. Any contract for a public work that is awarded to a
4 contractor, applicant or design-build team who submits the affidavit
5 described in subsection 1 as a result of the contractor, applicant or
6 design-build team receiving a preference in bidding described in
7 subsection 1 must:

8 (a) Include a provision in the contract that substantially
9 incorporates the requirements of paragraphs (a) to (d), inclusive, of
10 subsection 1; and

11 (b) Provide that a failure to comply with any requirement of
12 paragraphs (a) to (d), inclusive, of subsection 1 entitles the public
13 body to a penalty only as provided in subsections 5 and 6.

14 3. A person who submitted a bid on the public work or an
15 entity who believes that a contractor, applicant or design-build team
16 has obtained a preference in bidding as described in subsection 1 but
17 has failed to comply with a requirement of paragraphs (a) to (d),
18 inclusive, of subsection 1 may file, before the substantial completion
19 of the public work, a written objection with the public body for
20 which the contractor, applicant or design-build team is performing
21 the public work. A written objection authorized pursuant to this
22 subsection must set forth proof or substantiating evidence to support
23 the belief of the person or entity that the contractor, applicant or
24 design-build team has failed to comply with a requirement of
25 paragraphs (a) to (d), inclusive, of subsection 1.

26 4. If a public body receives a written objection pursuant to
27 subsection 3, the public body shall determine whether the objection
28 is accompanied by the proof or substantiating evidence required
29 pursuant to that subsection. If the public body determines that the
30 objection is not accompanied by the required proof or substantiating
31 evidence, the public body shall dismiss the objection. If the public
32 body determines that the objection is accompanied by the required
33 proof or substantiating evidence or if the public body determines on
34 its own initiative that proof or substantiating evidence of a failure to
35 comply with a requirement of paragraphs (a) to (d), inclusive, of
36 subsection 1 exists, the public body shall determine whether the
37 contractor, applicant or design-build team has failed to comply with
38 a requirement of paragraphs (a) to (d), inclusive, of subsection 1 and
39 the public body or its authorized representative may proceed to
40 award the contract accordingly or, if the contract has already been
41 awarded, seek the remedy authorized in subsection 5.

42 5. ~~1A~~ *In addition to any other remedy or penalty provided by*
43 *law, a* public body may recover, by civil action against the party
44 responsible for a failure to comply with a requirement of paragraphs
45 (a) to (d), inclusive, of subsection 1, a penalty as described in



1 subsection 6 for a failure to comply with a requirement of
2 paragraphs (a) to (d), inclusive, of subsection 1. If a public body
3 recovers a penalty pursuant to this subsection, the public body shall
4 report to the State Contractors' Board the date of the failure to
5 comply, the name of each entity which failed to comply and the cost
6 of the contract to which the entity that failed to comply was a party.
7 The Board shall maintain this information for not less than 6 years.
8 Upon request, the Board shall provide this information to any public
9 body or its authorized representative.

10 6. If a contractor, applicant or design-build team submits the
11 affidavit described in subsection 1, receives a preference in bidding
12 described in subsection 1 and is awarded the contract as a result of
13 that preference, the contract between the contractor, applicant or
14 design-build team and the public body, each contract between the
15 contractor, applicant or design-build team and a subcontractor and
16 each contract between a subcontractor and a lower tier subcontractor
17 must provide that:

18 (a) If a party to the contract causes the contractor, applicant or
19 design-build team to fail to comply with a requirement of
20 paragraphs (a) to (d), inclusive, of subsection 1, the party is liable to
21 the public body for a penalty in the amount of 1 percent of the cost
22 of the largest contract to which he or she is a party;

23 (b) The right to recover the amount determined pursuant to
24 paragraph (a) by the public body pursuant to subsection 5 may be
25 enforced by the public body directly against the party that caused
26 the failure to comply with a requirement of paragraphs (a) to (d),
27 inclusive, of subsection 1; and

28 (c) No other party to the contract is liable to the public body for
29 a penalty.

30 7. A public body that awards a contract for a public work to a
31 contractor, applicant or design-build team who submits the affidavit
32 described in subsection 1 and who receives a preference in bidding
33 described in subsection 1 shall, on or before July 31 of each year,
34 submit a written report to the Director of the Legislative Counsel
35 Bureau for transmittal to the Legislative Commission. The report
36 must include information on each contract for a public work
37 awarded to a contractor, applicant or design-build team who submits
38 the affidavit described in subsection 1 and who receives a
39 preference in bidding described in subsection 1, including, without
40 limitation, the name of the contractor, applicant or design-build
41 team who was awarded the contract, the cost of the contract, a brief
42 description of the public work and a description of the degree to
43 which the contractor, applicant or design-build team and each
44 subcontractor complied with the requirements of paragraphs (a) to
45 (d), inclusive, of subsection 1.



1 8. *In addition to any other remedy or penalty provided by law,*
2 *any person who willfully fails to comply with the requirements of*
3 *paragraphs (a), (b) and (c) of subsection 1 is guilty of a*
4 *misdemeanor and shall be punished by a fine of not more than*
5 *\$10,000. For the purpose of this subsection, a separate violation*
6 *occurs for:*

7 (a) *Each worker who would need to hold a valid driver's*
8 *license or identification card issued by the Department of Motor*
9 *Vehicles of the State of Nevada in order for at least 50 percent of*
10 *the workers employed on the public work to hold such a license or*
11 *card;*

12 (b) *Each vehicle used primarily for the public work which is*
13 *not registered and partially apportioned to Nevada pursuant to the*
14 *International Registration Plan, as adopted by the Department of*
15 *Motor Vehicles pursuant to NRS 706.826, or registered in this*
16 *State; and*

17 (c) *If receiving a preference in bidding pursuant to subsection*
18 *3 of NRS 338.1727 or subsection 2 of NRS 408.3886, each design*
19 *professional who would need to hold a valid driver's license or*
20 *identification card issued by the Department of Motor Vehicles of*
21 *the State of Nevada in order for at least 50 percent of the design*
22 *professionals working on the public work to hold such a license or*
23 *card.*

24 9. As used in this section:

25 (a) "Lower tier subcontractor" means a subcontractor who
26 contracts with another subcontractor to provide labor, materials or
27 services to the other subcontractor for a construction project.

28 (b) "Vehicle used primarily for the public work" does not
29 include any vehicle that is present at the site of the public work only
30 occasionally and for a purpose incidental to the public work
31 including, without limitation, the delivery of materials.
32 Notwithstanding the provisions of this paragraph, the term includes
33 any vehicle which is:

34 (1) Owned or operated by the contractor or any subcontractor
35 who is engaged on the public work; and

36 (2) Present at the site of the public work.

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

38 338.1389 1. Except as otherwise provided in subsection 10
39 and NRS 338.1385, 338.1386 and 338.13864, a public body or its
40 authorized representative shall award a contract for a public work
41 for which the estimated cost exceeds \$250,000 to the contractor who
42 submits the best bid.

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

45 (a) Submitted by a responsive and responsible contractor who:



1 (1) Has been determined by the public body to be a qualified
2 bidder pursuant to NRS 338.1379 or 338.1382;

3 (2) At the time the contractor submits his or her bid, provides
4 a valid certificate of eligibility to receive a preference in bidding on
5 public works issued to the contractor by the State Contractors'
6 Board pursuant to subsection 3 or 4; and

7 (3) Within 2 hours after the completion of the opening of the
8 bids by the public body or its authorized representative, submits a
9 signed affidavit that meets the requirements of subsection 1 of NRS
10 338.0117; and

11 (b) Not more than ~~15~~ 10 percent higher than the bid submitted
12 by the lowest responsive and responsible bidder who:

13 (1) Does not provide, at the time he or she submits the bid, a
14 valid certificate of eligibility to receive a preference in bidding on
15 public works issued to him or her by the State Contractors' Board
16 pursuant to subsection 3 or 4; or

17 (2) Does not submit, within 2 hours after the completion of
18 the opening of the bids by the public body or its authorized
19 representative, a signed affidavit certifying that he or she will
20 comply with the requirements of paragraphs (a) to (d), inclusive, of
21 subsection 1 of NRS 338.0117 for the duration of the contract,

22 ➤ shall be deemed to be the best bid for the purposes of this section.

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

29 (a) Paid directly, on his or her own behalf:

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

38 (2) The governmental services tax imposed pursuant to
39 chapter 371 of NRS on the vehicles used in the operation of his or
40 her business in this State of not less than \$5,000 for each
41 consecutive 12-month period for 60 months immediately preceding
42 the submission of the affidavit from the certified public accountant;
43 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 general contractor pursuant to the provisions
5 of chapter 624 of NRS; and

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

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

14 (a) Paid directly, on his or her own behalf:

15 (1) The sales and use taxes pursuant to chapters 372, 374 and
16 377 of NRS on materials used for construction in this State,
17 including, without limitation, construction that is undertaken or
18 carried out on land within the boundaries of this State that is
19 managed by the Federal Government or is on an Indian reservation
20 or Indian colony, of not less than \$5,000 for each consecutive
21 12-month period for 60 months immediately preceding the
22 submission of the affidavit from the certified public accountant;

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

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

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

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

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

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

41 (a) Sales and use taxes and governmental services taxes that
42 were paid in this State by an affiliate or parent company of the
43 contractor, if the affiliate or parent company is also a general
44 contractor or specialty contractor, as applicable; and



1 (b) Sales and use taxes that were paid in this State by a joint
2 venture in which the contractor is a participant, in proportion to the
3 amount of interest the contractor has in the joint venture.

4 6. A contractor who has received a certificate of eligibility to
5 receive a preference in bidding on public works from the State
6 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
7 for the renewal of his or her contractor's license pursuant to NRS
8 624.283, submit to the Board an affidavit from a certified public
9 accountant setting forth that the contractor has, during the
10 immediately preceding 12 months, paid the taxes required pursuant
11 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
12 applicable, to maintain eligibility to hold such a certificate.

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

18 8. If a contractor holds more than one contractor's license, the
19 contractor must submit a separate application for each license
20 pursuant to which the contractor wishes to qualify for a preference
21 in bidding. Upon issuance, the certificate of eligibility to receive a
22 preference in bidding on public works becomes part of the
23 contractor's license for which the contractor submitted the
24 application.

25 9. If a contractor who applies to the State Contractors' Board
26 for a certificate of eligibility to receive a preference in bidding on
27 public works:

28 (a) Submits false information to the Board regarding the
29 required payment of taxes, the contractor is not eligible to receive a
30 preference in bidding on public works for a period of 5 years after
31 the date on which the Board becomes aware of the submission of the
32 false information; or

33 (b) Is found by the Board to have, within the preceding 5 years,
34 materially breached a contract for a public work for which the cost
35 exceeds \$5,000,000, the contractor is not eligible to receive a
36 preference in bidding on public works.

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.

42 11. If a bid is submitted by two or more contractors as a joint
43 venture or by one of them as a joint venturer, the bid may receive a
44 preference in bidding only if both or all of the joint venturers
45 separately meet the requirements of subsection 2.



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

4 13. A person who submitted a bid on the public work or an
5 entity who believes that the contractor who was awarded the
6 contract for the public work wrongfully holds a certificate of
7 eligibility to receive a preference in bidding on public works may
8 challenge the validity of the certificate by filing a written objection
9 with the public body to which the contractor has submitted a bid on
10 a contract for the construction of a public work. A written objection
11 authorized pursuant to this subsection must:

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

16 (b) Be filed with the public body not later than 3 business days
17 after the opening of the bids by the public body or its authorized
18 representative.

19 14. If a public body receives a written objection pursuant to
20 subsection 13, the public body shall determine whether the objection
21 is accompanied by the proof or substantiating evidence required
22 pursuant to paragraph (a) of that subsection. If the public body
23 determines that the objection is not accompanied by the required
24 proof or substantiating evidence, the public body shall dismiss the
25 objection and the public body or its authorized representative may
26 proceed immediately to award the contract. If the public body
27 determines that the objection is accompanied by the required proof
28 or substantiating evidence, the public body shall determine whether
29 the contractor qualifies for the certificate pursuant to the provisions
30 of this section and the public body or its authorized representative
31 may proceed to award the contract accordingly.

32 **Sec. 13.** NRS 338.147 is hereby amended to read as follows:

33 338.147 1. Except as otherwise provided in subsection 10
34 and NRS 338.143, 338.1442 and 338.1446, a local government or
35 its authorized representative shall award a contract for a public work
36 for which the estimated cost exceeds \$250,000 to the contractor who
37 submits the best bid.

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

40 (a) Submitted by a contractor who:

41 (1) Has been found to be a responsible and responsive
42 contractor by the local government or its authorized representative;

43 (2) At the time the contractor submits his or her bid, provides
44 a valid certificate of eligibility to receive a preference in bidding on



1 public works issued to the contractor by the State Contractors'
2 Board pursuant to subsection 3 or 4; and

3 (3) Within 2 hours after the completion of the opening of the
4 bids by the local government or its authorized representative,
5 submits a signed affidavit that meets the requirements of subsection
6 1 of NRS 338.0117; and

7 (b) Not more than ~~15~~ 10 percent higher than the bid submitted
8 by the lowest responsive and responsible bidder who:

9 (1) Does not provide, at the time he or she submits the bid, a
10 valid certificate of eligibility to receive a preference in bidding on
11 public works issued to him or her by the State Contractors' Board
12 pursuant to subsection 3 or 4; or

13 (2) Does not submit, within 2 hours after the completion of
14 the opening of the bids by the public body or its authorized
15 representative, a signed affidavit certifying that he or she will
16 comply with the requirements of paragraphs (a) to (d), inclusive, of
17 subsection 1 of NRS 338.0117 for the duration of the contract,

18 ➤ shall be deemed to be the best bid for the purposes of this section.

19 3. The State Contractors' Board shall issue a certificate of
20 eligibility to receive a preference in bidding on public works to a
21 general contractor who is licensed pursuant to the provisions of
22 chapter 624 of NRS and submits to the Board an affidavit from a
23 certified public accountant setting forth that the general contractor
24 has, while licensed as a general contractor in this State:

25 (a) Paid directly, on his or her own behalf:

26 (1) The sales and use taxes imposed pursuant to chapters
27 372, 374 and 377 of NRS on materials used for construction in this
28 State, including, without limitation, construction that is undertaken
29 or carried out on land within the boundaries of this State that is
30 managed by the Federal Government or is on an Indian reservation
31 or Indian colony, of not less than \$5,000 for each consecutive
32 12-month period for 60 months immediately preceding the
33 submission of the affidavit from the certified public accountant;

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

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

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



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

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

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

11 (a) Paid directly, on his or her own behalf:

12 (1) The sales and use taxes pursuant to chapters 372, 374 and
13 377 of NRS on materials used for construction in this State,
14 including, without limitation, construction that is undertaken or
15 carried out on land within the boundaries of this State that is
16 managed by the Federal Government or is on an Indian reservation
17 or Indian colony, of not less than \$5,000 for each consecutive
18 12-month period for 60 months immediately preceding the
19 submission of the affidavit from the certified public accountant;

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

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

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

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

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

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

38 (a) Sales and use taxes and governmental services taxes paid in
39 this State by an affiliate or parent company of the contractor, if the
40 affiliate or parent company is also a general contractor or specialty
41 contractor, as applicable; and

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



1 6. A contractor who has received a certificate of eligibility to
2 receive a preference in bidding on public works from the State
3 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
4 for the renewal of his or her contractor's license pursuant to NRS
5 624.283, submit to the Board an affidavit from a certified public
6 accountant setting forth that the contractor has, during the
7 immediately preceding 12 months, paid the taxes required pursuant
8 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
9 applicable, to maintain eligibility to hold such a certificate.

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

15 8. If a contractor holds more than one contractor's license, the
16 contractor must submit a separate application for each license
17 pursuant to which the contractor wishes to qualify for a preference
18 in bidding. Upon issuance, the certificate of eligibility to receive a
19 preference in bidding on public works becomes part of the
20 contractor's license for which the contractor submitted the
21 application.

22 9. If a contractor who applies to the State Contractors' Board
23 for a certificate of eligibility to receive a preference in bidding on
24 public works:

25 (a) Submits false information to the Board regarding the
26 required payment of taxes, the contractor is not eligible to receive a
27 preference in bidding on public works for a period of 5 years after
28 the date on which the Board becomes aware of the submission of the
29 false information; or

30 (b) Is found by the Board to have, within the preceding 5 years,
31 materially breached a contract for a public work for which the cost
32 exceeds \$5,000,000, the contractor is not eligible to receive a
33 preference in bidding on public works.

34 10. If any federal statute or regulation precludes the granting of
35 federal assistance or reduces the amount of that assistance for a
36 particular public work because of the provisions of subsection 2,
37 those provisions do not apply insofar as their application would
38 preclude or reduce federal assistance for that work.

39 11. If a bid is submitted by two or more contractors as a joint
40 venture or by one of them as a joint venturer, the bid may receive a
41 preference in bidding only if both or all of the joint venturers
42 separately meet the requirements of subsection 2.

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



1 13. A person who submitted a bid on the public work or an
2 entity who believes that the contractor who was awarded the
3 contract for the public work wrongfully holds a certificate of
4 eligibility to receive a preference in bidding on public works may
5 challenge the validity of the certificate by filing a written objection
6 with the local government to which the contractor has submitted a
7 bid on a contract for the construction of a public work. A written
8 objection authorized pursuant to this subsection must:

9 (a) Set forth proof or substantiating evidence to support the
10 belief of the person or entity that the contractor wrongfully holds a
11 certificate of eligibility to receive a preference in bidding on public
12 works; and

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

16 14. If a local government receives a written objection pursuant
17 to subsection 13, the local government shall determine whether the
18 objection is accompanied by the proof or substantiating evidence
19 required pursuant to paragraph (a) of that subsection. If the local
20 government determines that the objection is not accompanied by the
21 required proof or substantiating evidence, the local government shall
22 dismiss the objection and the local government or its authorized
23 representative may proceed immediately to award the contract. If
24 the local government determines that the objection is accompanied
25 by the required proof or substantiating evidence, the local
26 government shall determine whether the contractor qualifies for the
27 certificate pursuant to the provisions of this section and the local
28 government or its authorized representative may proceed to award
29 the contract accordingly.

30 **Sec. 14.** NRS 338.1693 is hereby amended to read as follows:

31 338.1693 1. The public body or its authorized representative
32 shall appoint a panel consisting of at least three but not more than
33 seven members, a majority of whom must have experience in the
34 construction industry, to rank the proposals submitted to the public
35 body by evaluating the proposals as required pursuant to subsections
36 2 and 3.

37 2. The panel appointed pursuant to subsection 1 shall rank the
38 proposals by:

39 (a) Verifying that each applicant satisfies the requirements of
40 NRS 338.1691; and

41 (b) Evaluating and assigning a score to each of the proposals
42 received by the public body based on the factors and relative weight
43 assigned to each factor that the public body specified in the request
44 for proposals.



1 3. When ranking the proposals, the panel appointed pursuant to
2 subsection 1 shall assign a relative weight of ~~15~~ 10 percent to the
3 applicant's possession of a certificate of eligibility to receive a
4 preference in bidding on public works if the applicant submits a
5 signed affidavit that meets the requirements of subsection 1 of NRS
6 338.0117. If any federal statute or regulation precludes the granting
7 of federal assistance or reduces the amount of that assistance for a
8 particular public work because of the provisions of this subsection,
9 those provisions of this subsection do not apply insofar as their
10 application would preclude or reduce federal assistance for that
11 work.

12 4. After the panel appointed pursuant to subsection 1 ranks the
13 proposals, the public body or its authorized representative shall,
14 except as otherwise provided in subsection 8, select at least the two
15 but not more than the five applicants whose proposals received the
16 highest scores for interviews.

17 5. The public body or its authorized representative may appoint
18 a separate panel to interview and rank the applicants selected
19 pursuant to subsection 4. If a separate panel is appointed pursuant to
20 this subsection, the panel must consist of at least three but not more
21 than seven members, a majority of whom must have experience in
22 the construction industry.

23 6. During the interview process, the panel conducting the
24 interview may require the applicants to submit a preliminary
25 proposed amount of compensation for managing the preconstruction
26 and construction of the public work, but in no event shall the
27 proposed amount of compensation exceed 20 percent of the scoring
28 for the selection of the most qualified applicant. All presentations
29 made at any interview conducted pursuant to this subsection or
30 subsection 5 may be made only by key personnel employed by
31 the applicant, as determined by the applicant, and the employees of
32 the applicant who will be directly responsible for managing the
33 preconstruction and construction of the public work.

34 7. After conducting such interviews, the panel that conducted
35 the interviews shall rank the applicants by using a ranking process
36 that is separate from the process used to rank the applicants pursuant
37 to subsection 2 and is based only on information submitted during
38 the interview process. The score to be given for the proposed
39 amount of compensation, if any, must be calculated by dividing
40 the lowest of all the proposed amounts of compensation by the
41 applicant's proposed amount of compensation multiplied by the
42 total possible points available to each applicant. When ranking
43 the applicants, the panel that conducted the interviews shall assign a
44 relative weight of 5 percent to the applicant's possession of a
45 certificate of eligibility to receive a preference in bidding on public



1 works if the applicant submits a signed affidavit that meets the
2 requirements of subsection 1 of NRS 338.0117. If any federal
3 statute or regulation precludes the granting of federal assistance or
4 reduces the amount of that assistance for a particular public work
5 because of the provisions of this subsection, those provisions of this
6 subsection do not apply insofar as their application would preclude
7 or reduce federal assistance for that work.

8 8. If the public body did not receive at least two proposals, the
9 public body may not contract with a construction manager at risk.

10 9. Upon receipt of the final rankings of the applicants from the
11 panel that conducted the interviews, the public body or its
12 authorized representative shall enter into negotiations with the most
13 qualified applicant determined pursuant to the provisions of this
14 section for a contract for preconstruction services, unless the public
15 body required the submission of a proposed amount of
16 compensation, in which case the proposed amount of compensation
17 submitted by the applicant must be the amount offered for the
18 contract. If the public body or its authorized representative is unable
19 to negotiate a contract with the most qualified applicant for an
20 amount of compensation that the public body or its authorized
21 representative and the most qualified applicant determine to be fair
22 and reasonable, the public body or its authorized representative shall
23 terminate negotiations with that applicant. The public body or its
24 authorized representative may then undertake negotiations with the
25 next most qualified applicant in sequence until an agreement is
26 reached and, if the negotiation is undertaken by an authorized
27 representative of the public body, approved by the public body or
28 until a determination is made by the public body to reject all
29 applicants.

30 10. The public body or its authorized representative shall:

31 (a) Make available to all applicants and the public the following
32 information, as determined by the panel appointed pursuant to
33 subsection 1 and the panel that conducted the interviews, as
34 applicable:

35 (1) The final rankings of the applicants;

36 (2) The score assigned to each proposal received by the
37 public body; and

38 (3) For each proposal received by the public body, the score
39 assigned to each factor that the public body specified in the request
40 for proposals; and

41 (b) Provide, upon request, an explanation to any unsuccessful
42 applicant of the reasons why the applicant was unsuccessful.

43 **Sec. 15.** NRS 338.1727 is hereby amended to read as follows:

44 338.1727 1. After selecting the finalists pursuant to NRS
45 338.1725, the public body shall provide to each finalist a request for



1 final proposals for the public work. The request for final proposals
2 must:

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

6 (b) Set forth the date by which final proposals must be
7 submitted to the public body.

8 2. If one or more of the finalists selected pursuant to NRS
9 338.1725 is disqualified or withdraws, the public body may select a
10 design-build team from the remaining finalist or finalists.

11 3. Except as otherwise provided in this subsection, in assigning
12 the relative weight to each factor for selecting a design-build team
13 pursuant to subsection 1, the public body shall assign, without
14 limitation, a relative weight of ~~15~~ 10 percent to the possession of
15 both a certificate of eligibility to receive a preference in bidding on
16 public works by all contractors on the design-build team if the
17 contractors submit signed affidavits that meet the requirements of
18 subsection 1 of NRS 338.0117, and a certificate of eligibility to
19 receive a preference when competing for public works by all design
20 professionals on the design-build team, and a relative weight of at
21 least 30 percent to the proposed cost of design and construction of
22 the public work. If any federal statute or regulation precludes the
23 granting of federal assistance or reduces the amount of that
24 assistance for a particular public work because of the provisions of
25 this subsection relating to a preference in bidding on public works,
26 or a preference when competing for public works, those provisions
27 of this subsection do not apply insofar as their application would
28 preclude or reduce federal assistance for that public work.

29 4. A final proposal submitted by a design-build team pursuant
30 to this section must be prepared thoroughly and be responsive to the
31 criteria that the public body will use to select a design-build team to
32 design and construct the public work described in subsection 1. A
33 design-build team that submits a final proposal which is not
34 responsive shall not be awarded the contract and shall not be eligible
35 for the partial reimbursement of costs provided for in subsection 7.

36 5. A final proposal is exempt from the requirements of
37 NRS 338.141.

38 6. After receiving and evaluating the final proposals for the
39 public work, the public body or its authorized representative shall
40 enter into negotiations with the most qualified applicant, as
41 determined pursuant to the criteria set forth pursuant to subsections
42 1 and 3, and award the design-build contract to the design-build
43 team whose proposal is selected. If the public body or its authorized
44 representative is unable to negotiate with the most qualified
45 applicant a contract that is determined by the parties to be fair and



1 reasonable, the public body may terminate negotiations with that
2 applicant. The public body or its authorized representative may then
3 undertake negotiations with the next most qualified applicant in
4 sequence until an agreement is reached and, if the negotiation is
5 undertaken by an authorized representative of the public body,
6 approved by the public body or until a determination is made by the
7 public body to reject all applicants.

8 7. If a public body selects a final proposal and awards a design-
9 build contract pursuant to subsection 6, the public body shall:

10 (a) Partially reimburse the unsuccessful finalists if partial
11 reimbursement was provided for in the request for preliminary
12 proposals pursuant to paragraph (j) of subsection 2 of NRS
13 338.1723. The amount of reimbursement must not exceed, for each
14 unsuccessful finalist, 3 percent of the total amount to be paid to the
15 design-build team as set forth in the design-build contract.

16 (b) Make available to the public the results of the evaluation of
17 final proposals that was conducted and the ranking of the design-
18 build teams who submitted final proposals. The public body shall
19 not release to a third party, or otherwise make public, financial or
20 proprietary information submitted by a design-build team.

21 8. A contract awarded pursuant to this section:

22 (a) Must comply with the provisions of NRS 338.020 to
23 338.090, inclusive.

24 (b) Must specify:

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

30 (2) An amount that is the maximum amount that the public
31 body will pay for the performance of the professional services
32 required by the contract; and

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

35 (c) May set forth the terms by which the design-build team
36 agrees to name the public body, at the cost of the public body, as an
37 additional insured in an insurance policy held by the design-build
38 team.

39 (d) Except as otherwise provided in paragraph (e), must not
40 require the design professional to defend, indemnify or hold
41 harmless the public body or the employees, officers or agents of that
42 public body from any liability, damage, loss, claim, action or
43 proceeding caused by the negligence, errors, omissions, recklessness
44 or intentional misconduct of the employees, officers and agents of
45 the public body.



1 (e) May require the design-build team to defend, indemnify and
2 hold harmless the public body, and the employees, officers and
3 agents of the public body from any liabilities, damages, losses,
4 claims, actions or proceedings, including, without limitation,
5 reasonable attorneys' fees, that are caused by the negligence, errors,
6 omissions, recklessness or intentional misconduct of the design-
7 build team or the employees or agents of the design-build team in
8 the performance of the contract.

9 (f) Must require that the design-build team to whom a contract is
10 awarded assume overall responsibility for ensuring that the design
11 and construction of the public work is completed in a satisfactory
12 manner.

13 9. Upon award of the design-build contract, the public body
14 shall make available to the public copies of all preliminary and final
15 proposals received.

16 **Sec. 16.** NRS 408.3886 is hereby amended to read as follows:

17 408.3886 1. After selecting the finalists pursuant to NRS
18 408.3885, the Department shall provide to each finalist a request for
19 final proposals for the project. The request for final proposals must:

20 (a) Set forth the factors that the Department will use to select a
21 design-build team to design and construct the project, including the
22 relative weight to be assigned to each factor; and

23 (b) Set forth the date by which final proposals must be
24 submitted to the Department.

25 2. Except as otherwise provided in this subsection, in assigning
26 the relative weight to each factor for selecting a design-build team
27 pursuant to subsection 1, the Department shall assign, without
28 limitation, a relative weight of ~~15~~ 10 percent to the design-build
29 team's possession of both a certificate of eligibility to receive a
30 preference in bidding on public works by the prime contractor on
31 the design-build team, if the design-build team submits a signed
32 affidavit that meets the requirements of subsection 1 of NRS
33 338.0117, and a certificate of eligibility to receive a preference
34 when competing for public works by all persons who hold a
35 certificate of registration to practice architecture or a license as a
36 professional engineer on the design-build team, and a relative
37 weight of at least 30 percent for the proposed cost of design and
38 construction of the project. If any federal statute or regulation
39 precludes the granting of federal assistance or reduces the amount of
40 that assistance for a particular project because of the provisions of
41 this subsection relating to a preference in bidding on public works or
42 a preference when competing for public works, those provisions of
43 this subsection do not apply insofar as their application would
44 preclude or reduce federal assistance for that project.



1 3. A final proposal submitted by a design-build team pursuant
2 to this section must be prepared thoroughly, be responsive to the
3 criteria that the Department will use to select a design-build team to
4 design and construct the project described in subsection 1 and
5 comply with the provisions of NRS 338.141.

6 4. After receiving the final proposals for the project, the
7 Department shall:

8 (a) Select the most cost-effective and responsive final proposal,
9 using the criteria set forth pursuant to subsections 1 and 2;

10 (b) Reject all the final proposals; or

11 (c) Request best and final offers from all finalists in accordance
12 with subsection 5.

13 5. If the Department determines that no final proposal received
14 is cost-effective or responsive and the Department further
15 determines that requesting best and final offers pursuant to this
16 subsection will likely result in the submission of a satisfactory offer,
17 the Department may prepare and provide to each finalist a request
18 for best and final offers for the project. In conjunction with
19 preparing a request for best and final offers pursuant to this
20 subsection, the Department may alter the scope of the project, revise
21 the estimates of the costs of designing and constructing the project,
22 and revise the selection factors and relative weights described in
23 paragraph (a) of subsection 1. A request for best and final offers
24 prepared pursuant to this subsection must set forth the date by which
25 best and final offers must be submitted to the Department. After
26 receiving the best and final offers, the Department shall:

27 (a) Select the most cost-effective and responsive best and final
28 offer, using the criteria set forth in the request for best and final
29 offers; or

30 (b) Reject all the best and final offers.

31 6. If the Department selects a final proposal pursuant to
32 paragraph (a) of subsection 4 or selects a best and final offer
33 pursuant to paragraph (a) of subsection 5, the Department shall hold
34 a public meeting to:

35 (a) Review and ratify the selection.

36 (b) Partially reimburse the unsuccessful finalists if partial
37 reimbursement was provided for in the request for preliminary
38 proposals pursuant to paragraph (f) of subsection 3 of NRS
39 408.3883. The amount of reimbursement must not exceed, for each
40 unsuccessful finalist, 3 percent of the total amount to be paid to the
41 design-build team as set forth in the design-build contract.

42 (c) Make available to the public a summary setting forth the
43 factors used by the Department to select the successful design-build
44 team and the ranking of the design-build teams who submitted final
45 proposals and, if applicable, best and final offers. The Department



1 shall not release to a third party, or otherwise make public, financial
2 or proprietary information submitted by a design-build team.

3 7. A contract awarded pursuant to this section:

4 (a) Must comply with the provisions of NRS 338.020 to
5 338.090, inclusive; and

6 (b) Must specify:

7 (1) An amount that is the maximum amount that the
8 Department will pay for the performance of all the work required by
9 the contract, excluding any amount related to costs that may be
10 incurred as a result of unexpected conditions or occurrences as
11 authorized by the contract;

12 (2) An amount that is the maximum amount that the
13 Department will pay for the performance of the professional
14 services required by the contract; and

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

17 8. A design-build team to whom a contract is awarded pursuant
18 to this section shall:

19 (a) Assume overall responsibility for ensuring that the design
20 and construction of the project is completed in a satisfactory
21 manner; and

22 (b) Use the workforce of the prime contractor on the design-
23 build team to construct at least 15 percent of the project.

24 **Sec. 17.** This act becomes effective on July 1, 2017.

