

ASSEMBLY BILL No. 144—ASSEMBLYMEN KIRKPATRICK, OCEGUERA, SMITH, CONKLIN, ATKINSON; AIZLEY, ANDERSON, BENITEZ-THOMPSON, BOBZIEN, BROOKS, BUSTAMANTE ADAMS, CARRILLO, DALY, DIAZ, DONDERO LOOP, ELLISON, FLORES, FRIERSON, GOICOECHEA, GRADY, HAMMOND, HARDY, HOGAN, HORNE, LIVERMORE, MASTROLUCA, MUNFORD, NEAL, OHRENSCHALL, PIERCE AND STEWART

FEBRUARY 11, 2011

Referred to Committee on Government Affairs

SUMMARY—Makes various changes relating to bidder preferences on state and local public works projects. (BDR 28-64)

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; revising provisions relating to preferences in bidding for contracts for certain public works projects; requiring the inclusion in a contract for a public work of certain conditions that must be satisfied to obtain such a preference in bidding; providing for the investigation of a failure to satisfy the conditions for such a preference in bidding; providing for the recovery of damages for a failure to satisfy the provisions in a contract relating to preferences in bidding; prohibiting the use of a certificate of eligibility to receive a preference in bidding in certain circumstances; prohibiting a person from bidding on a public work in certain circumstances; revising provisions relating to the keeping, by certain persons, of records relating to public works; and providing other matters properly relating thereto.



* A B 1 4 4 *

Legislative Counsel's Digest:

1 Under existing law, a contract for a public work is awarded to the contractor
2 who submits the best bid. A contractor may qualify for a preference in bidding on a
3 contract for a public work if the contractor has submitted proof to the State
4 Contractors' Board that the contractor has paid certain taxes to the State for the past
5 5 years. (NRS 338.1389, 338.147)

6 **Sections 2, 9-11, 13 and 16** of this bill require that a contractor, an applicant or
7 a design-build team, respectively, must meet five additional criteria to receive a
8 preference in bidding on a contract for a public work. Specifically, **section 2**
9 requires that, in addition to the existing requirements for a preference in bidding on
10 a contract for a public work, the contractor, applicant or design-build team must
11 ensure that: (1) at least 50 percent of the workers on the public work have a Nevada
12 driver's license or identification card; (2) all of the non-apportioned vehicles
13 primarily used on the public work are registered in Nevada; (3) at least 50 percent
14 of the design professionals who work on the public work have a Nevada driver's
15 license or identification card; (4) at least 25 percent of the materials used in the
16 public work are purchased in Nevada; and (5) certain payroll records related to the
17 public work are maintained and available within this State.

18 **Section 2** also requires that, if a contractor, applicant or design-build team who
19 receives a preference in bidding is awarded a contract for a public work, the
20 contract must include those five requirements for a preference in bidding on a
21 contract for a public work and provide that failure to comply with any of those five
22 requirements is a material breach of the contract that entitles the public body to
23 damages in the amount of 10 percent of the cost of the contract. **Sections 9 and 10**
24 of this bill provide that a contractor who breaches any of those five requirements
25 for a contract for a public work the cost of which exceeds \$5,000,000 loses his or
26 her certification for a preference in bidding for 5 years. **Sections 3, 6-8 and 14** of
27 this bill provide that a contractor, applicant or design-build team who breaches any
28 of those five requirements for a contract for a public work the cost of which
29 exceeds \$25,000,000 loses his or her ability to bid on any contracts for public
30 works for one year.

31 **Section 17** of this bill provides that those five requirements for a preference in
32 bidding on a contract for a public work apply to any public work that is first
33 advertised for bid after the effective date of this bill. **Section 17** also declares that
34 any contract for such a public work that fails to comply with this bill is void.

35 **Section 5** of this bill revises the records that a contractor or subcontractor
36 engaged on a public work must keep relating to their workers.

1 WHEREAS, The State of Nevada has been disproportionately
2 affected by the Great Recession, suffering from the nation's highest
3 unemployment rate at 14.5 percent as of December 2010, which is
4 also the highest unemployment rate in state history; and

5 WHEREAS, According to the current employment statistics
6 compiled by the Research and Analysis Bureau of the Department
7 of Employment, Training and Rehabilitation, the construction sector
8 in the State has been particularly hard-hit, with over 60 percent of
9 all construction jobs in the State eliminated from June 2006 through
10 December 2010, accounting for a loss of about 91,700 jobs; and

11 WHEREAS, Investment in the State's public works and
12 infrastructure is both crucial to the economic recovery of the State
13 today and essential to investing in Nevada's future; and



1 WHEREAS, Giving priority in bidding on state and local public
2 works projects to Nevada businesses that employ Nevada workers is
3 critically important in addressing both the historically high state
4 unemployment rate in general and the incredible damage done to the
5 construction sector in particular by the Great Recession; and

6 WHEREAS, The Nevada Legislature has determined that the
7 extreme shortage of jobs for Nevada workers poses a serious threat
8 to the economy of the State which necessitates a reasonable yet
9 immediately effective response to put Nevadans back to work; now,
10 therefore,

11
12 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
13 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
14

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

17 **Sec. 2. 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*
23 *affidavit which certifies that, for the duration of the project:*

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

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

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

34 (2) *Registered in this State;*

35 (c) *At least 50 percent of the design professionals working on*
36 *the public work, including, without limitation, any employees of*
37 *the contractor, applicant or design-build team and of any*
38 *subcontractor engaged on the public work, will have a valid*
39 *driver's license or identification card issued by the Department of*
40 *Motor Vehicles;*

41 (d) *At least 25 percent of the materials used for the public*
42 *work will be purchased in this State; and*

43 (e) *The contractor, applicant or design-build team and any*
44 *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 awarded to a contractor,
4 applicant or design-build team who submits the affidavit described
5 in subsection 1 and who receives a preference in bidding described
6 in subsection 1 must:

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

10 (b) Provide that a failure to comply with any requirement of
11 paragraphs (a) to (e), inclusive, of subsection 1 is a material
12 breach of the contract and entitles the public body to liquidated
13 damages in the amount of 10 percent of the cost of the contract.

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

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

42 5. A public body may recover by civil action liquidated
43 damages as described in paragraph (b) of subsection 2 for a
44 breach of a contract for a public work caused by a failure to
45 comply with a requirement of paragraphs (a) to (e), inclusive, of



1 *subsection 1. If a public body recovers liquidated damages*
2 *pursuant to this subsection for a breach of a contract for a public*
3 *work, the public body shall report to the State Contractors' Board*
4 *the date of the breach, the name of each entity which breached the*
5 *contract and the cost of the contract. The Board shall maintain*
6 *this information for not less than 6 years. Upon request, the Board*
7 *shall provide this information to any public body or its authorized*
8 *representative.*

9 **Sec. 3.** *A local government or its authorized representative*
10 *shall not accept a bid on a contract for a public work if the*
11 *contractor who submits the bid has, within the preceding year,*
12 *breached a contract for a public work for which the cost exceeds*
13 *\$25,000,000 by failing to comply with a requirement of*
14 *paragraphs (a) to (e), inclusive, of subsection 1 of section 2 of this*
15 *act.*

16 **Sec. 4.** NRS 338.0115 is hereby amended to read as follows:

17 338.0115 1. Except as otherwise provided in subsection 2,
18 the provisions of this chapter and chapters 332 and 339 of NRS do
19 not apply to a contract under which a private developer, for the
20 benefit of a private development, constructs a water or sewer line
21 extension and any related appurtenances:

22 (a) Which qualify as a public work pursuant to NRS 338.010;
23 and

24 (b) For which the developer will receive a monetary contribution
25 or refund from a public body as reimbursement for a portion of the
26 costs of the project.

27 2. If, pursuant to the provisions of such a contract, the
28 developer is not responsible for paying all of the initial construction
29 costs of the project, the provisions of NRS 338.013 to 338.090,
30 inclusive, and 338.1373 to 338.148, inclusive, *and sections 2 and 3*
31 *of this act* apply to the contract.

32 **Sec. 5.** NRS 338.070 is hereby amended to read as follows:

33 338.070 1. Any public body awarding a contract shall:

34 (a) Investigate possible violations of the provisions of NRS
35 338.010 to 338.090, inclusive, committed in the course of the
36 execution of the contract, and determine whether a violation has
37 been committed and inform the Labor Commissioner of any such
38 violations; and

39 (b) When making payments to the contractor engaged on the
40 public work of money becoming due under the contract, withhold
41 and retain all sums forfeited pursuant to the provisions of NRS
42 338.010 to 338.090, inclusive.

43 2. No sum may be withheld, retained or forfeited, except from
44 the final payment, without a full investigation being made by the
45 awarding public body.



1 3. Except as otherwise provided in subsection 6, it is lawful for
2 any contractor engaged on a public work to withhold from any
3 subcontractor engaged on the public work sufficient sums to cover
4 any penalties withheld from the contractor by the awarding public
5 body on account of the failure of the subcontractor to comply with
6 the terms of NRS 338.010 to 338.090, inclusive. If payment has
7 already been made to the subcontractor, the contractor may recover
8 from the subcontractor the amount of the penalty or forfeiture in a
9 suit at law.

10 4. A contractor engaged on a public work and each
11 subcontractor engaged on the public work shall keep or cause to be
12 kept an accurate record showing ~~the~~, *for each worker employed*
13 *by the contractor or subcontractor in connection with the public*
14 *work:*

15 (a) *The name of the worker;*

16 (b) *The occupation of the worker;*

17 (c) *If any, the driver's license number or identification card*
18 *number of the worker, including, without limitation, an indication*
19 *of the state or other jurisdiction that issued the license or card;*
20 and ~~the~~

21 (d) *The actual per diem, wages and benefits paid to each the*
22 *worker . ~~employed by the contractor and subcontractor in~~*
23 *connection with the public work.]*

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

34 6. A contractor engaged on a public work shall not withhold
35 from a subcontractor engaged on the public work the sums
36 necessary to cover any penalties provided pursuant to subsection 3
37 of NRS 338.060 that may be withheld from the contractor by the
38 public body awarding the contract because the public body did not
39 receive a copy of the record maintained by the subcontractor
40 pursuant to subsection 4 for a calendar month by the time specified
41 in subsection 5 if:

42 (a) The subcontractor provided to the contractor, for submission
43 to the public body by the contractor, a copy of the record not later
44 than the later of:

45 (1) Ten days after the end of the month; or



1 (2) A date agreed upon by the contractor and subcontractor;
2 and

3 (b) The contractor failed to submit the copy of the record to the
4 public body by the time specified in subsection 5.

5 ↪ Nothing in this subsection prohibits a subcontractor from
6 submitting a copy of a record for a calendar month directly to the
7 public body by the time specified in subsection 5.

8 7. Any contractor or subcontractor, or agent or representative
9 thereof, performing work for a public work who neglects to comply
10 with the provisions of this section is guilty of a misdemeanor.

11 **Sec. 6.** NRS 338.1373 is hereby amended to read as follows:

12 338.1373 1. A local government or its authorized
13 representative shall award a contract for a public work pursuant to
14 the provisions of ~~§~~ *section 3 of this act and:*

15 (a) NRS 338.1377 to 338.139, inclusive;

16 (b) NRS 338.143 to 338.148, inclusive;

17 (c) NRS 338.169 to 338.1699, inclusive; or

18 (d) NRS 338.1711 to 338.1727, inclusive.

19 2. The provisions of NRS 338.1375 to 338.1382, inclusive,
20 338.1386, 338.13862, 338.13864, 338.139, 338.142, 338.169 to
21 338.1699, inclusive, and 338.1711 to 338.1727, inclusive, do not
22 apply with respect to contracts for the construction, reconstruction,
23 improvement and maintenance of highways that are awarded by the
24 Department of Transportation pursuant to NRS 408.313 to 408.433,
25 inclusive.

26 **Sec. 7.** NRS 338.1379 is hereby amended to read as follows:

27 338.1379 1. Except as otherwise provided in NRS 338.1382,
28 a contractor who wishes to qualify as a bidder on a contract for a
29 public work must submit an application to the State Public Works
30 Board or the local government.

31 2. Upon receipt of an application pursuant to subsection 1, the
32 State Public Works Board or the local government shall:

33 (a) Investigate the applicant to determine whether the applicant
34 is qualified to bid on a contract; and

35 (b) After conducting the investigation, determine whether the
36 applicant is qualified to bid on a contract. The determination must
37 be made within 45 days after receipt of the application.

38 3. The State Public Works Board or the local government shall
39 notify each applicant in writing of its determination. If an
40 application is denied, the notice must set forth the reasons for the
41 denial and inform the applicant of the right to a hearing pursuant to
42 NRS 338.1381.

43 4. The State Public Works Board or the local government may
44 determine an applicant is qualified to bid:

45 (a) On a specific project; or



1 (b) On more than one project over a period of time to be
2 determined by the State Public Works Board or the local
3 government.

4 5. ~~[The]~~ *Except as otherwise provided in subsection 8, the*
5 State Public Works Board shall not use any criteria other than
6 criteria adopted by regulation pursuant to NRS 338.1375 in
7 determining whether to approve or deny an application.

8 6. ~~[The]~~ *Except as otherwise provided in subsection 8, the*
9 local government shall not use any criteria other than the criteria
10 described in NRS 338.1377 in determining whether to approve or
11 deny an application.

12 7. Except as otherwise provided in NRS 239.0115, financial
13 information and other data pertaining to the net worth of an
14 applicant which is gathered by or provided to the State Public
15 Works Board or a local government to determine the financial
16 ability of an applicant to perform a contract is confidential and not
17 open to public inspection.

18 *8. The State Public Works Board or the local government*
19 *shall deny an application and revoke any existing qualification to*
20 *bid if it finds that the applicant has, within the preceding year,*
21 *breached a contract for a public work for which the cost exceeds*
22 *\$25,000,000 by failing to comply with a requirement of*
23 *paragraphs (a) to (e), inclusive, of subsection 1 of section 2 of this*
24 *act.*

25 **Sec. 8.** NRS 338.1382 is hereby amended to read as follows:

26 338.1382 In lieu of adopting criteria pursuant to NRS 338.1377
27 and determining the qualification of bidders pursuant to NRS
28 338.1379, a governing body may deem a person to be qualified to
29 bid on:

30 1. Contracts for public works of the local government if the
31 person *has not, within the preceding year, breached a contract for*
32 *a public work for which the cost exceeds \$25,000,000 by failing to*
33 *comply with a requirement of paragraphs (a) to (e), inclusive, of*
34 *subsection 1 of section 2 of this act, and* has been determined by:

35 (a) The State Public Works Board pursuant to NRS 338.1379 to
36 be qualified to bid on contracts for public works of the State
37 pursuant to criteria adopted pursuant to NRS 338.1375; or

38 (b) Another governing body pursuant to NRS 338.1379 to be
39 qualified to bid on contracts for public works of that local
40 government pursuant to the criteria set forth in NRS 338.1377.

41 2. A contract for a public work of the local government if:

42 (a) The person has been determined by the Department of
43 Transportation pursuant to NRS 408.333 to be qualified to bid on
44 the contract for the public work;



1 (b) The public work will be owned, operated or maintained by
2 the Department of Transportation after the public work is
3 constructed by the local government; and

4 (c) The Department of Transportation requested that bidders on
5 the contract for the public work be qualified to bid on the contract
6 pursuant to NRS 408.333.

7 **Sec. 9.** NRS 338.1389 is hereby amended to read as follows:

8 338.1389 1. Except as otherwise provided in subsection 10
9 and NRS 338.1385, 338.1386 and 338.13864, a public body or its
10 authorized representative shall award a contract for a public work
11 for which the estimated cost exceeds \$250,000 to the contractor who
12 submits the best bid.

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

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

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

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

22 *(3) At the time the contractor submits his or her bid,*
23 *submits a signed affidavit that meets the requirements of*
24 *subsection 1 of section 2 of this act; and*

25 (b) Not more than 5 percent higher than the bid submitted by the
26 lowest responsive and responsible bidder who ~~does~~:

27 *(1) Does* not have, at the time he or she submits the bid, a
28 valid certificate of eligibility to receive a preference in bidding on
29 public works issued to him or her by the State Contractors' Board
30 pursuant to subsection 3 or 4 ~~;~~; *or*

31 *(2) Does not submit, at the time he or she submits the bid, a*
32 *signed affidavit certifying that he or she will comply with the*
33 *requirements of paragraphs (a) to (e), inclusive, of subsection 1 of*
34 *section 2 of this act for the duration of the contract,*

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

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

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

43 (1) The sales and use taxes imposed pursuant to chapters
44 372, 374 and 377 of NRS on materials used for construction in this
45 State, including, without limitation, construction that is undertaken



1 or carried out on land within the boundaries of this State that is
2 managed by the Federal Government or is on an Indian reservation
3 or Indian colony, of not less than \$5,000 for each consecutive 12-
4 month period for 60 months immediately preceding the submission
5 of the affidavit from the certified public accountant;

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

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

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

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

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

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

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

28 (1) The sales and use taxes pursuant to chapters 372, 374 and
29 377 of NRS on materials used for construction in this State,
30 including, without limitation, construction that is undertaken or
31 carried out on land within the boundaries of this State that is
32 managed by the Federal Government or is on an Indian reservation
33 or Indian colony, of not less than \$5,000 for each consecutive
34 12-month period for 60 months immediately preceding the
35 submission of the affidavit from the certified public accountant;

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

42 (3) Any combination of such sales and use taxes and
43 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 that
12 were paid in this State by an affiliate or parent company of the
13 contractor, if the affiliate or parent company is also a general
14 contractor or specialty contractor, as applicable; and

15 (b) Sales and use taxes that were paid in this State by a joint
16 venture in which the contractor is a participant, in proportion to the
17 amount of 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 renewal of his or her 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 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 the contractor reapplies for and
30 receives a certificate of eligibility pursuant to subsection 3 or 4, as
31 applicable.

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

39 9. If a contractor who applies to the State Contractors' Board
40 for a certificate of eligibility to receive a preference in bidding on
41 public works **[submits]** :

42 (a) **Submits** false information to the Board regarding the
43 required payment of taxes, the contractor is not eligible to receive a
44 preference in bidding on public works for a period of 5 years after



1 the date on which the Board becomes aware of the submission of the
2 false information ~~(f)~~; or

3 *(b) Is found by the Board to have, within the preceding 5*
4 *years, breached a contract for a public work for which the cost*
5 *exceeds \$5,000,000 by failing to comply with a requirement of*
6 *paragraphs (a) to (e), inclusive, of subsection 1 of section 2 of this*
7 *act, the contractor is not eligible to receive a preference in bidding*
8 *on public works.*

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

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

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

21 13. A person or entity who believes that a contractor
22 wrongfully holds a certificate of eligibility to receive a preference in
23 bidding on public works may challenge the validity of the certificate
24 by filing a written objection with the public body to which the
25 contractor has submitted a bid on a contract for the construction of a
26 public work. A written objection authorized pursuant to this
27 subsection must:

28 (a) Set forth proof or substantiating evidence to support the
29 belief of the person or entity that the contractor wrongfully holds a
30 certificate of eligibility to receive a preference in bidding on public
31 works; and

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

35 14. If a public body receives a written objection pursuant to
36 subsection 13, the public body shall determine whether the objection
37 is accompanied by the proof or substantiating evidence required
38 pursuant to paragraph (a) of that subsection. If the public body
39 determines that the objection is not accompanied by the required
40 proof or substantiating evidence, the public body shall dismiss the
41 objection and the public body or its authorized representative may
42 proceed immediately to award the contract. If the public body
43 determines that the objection is accompanied by the required proof
44 or substantiating evidence, the public body shall determine whether
45 the contractor qualifies for the certificate pursuant to the provisions



1 of this section and the public body or its authorized representative
2 may proceed to award the contract accordingly.

3 **Sec. 10.** NRS 338.147 is hereby amended to read as follows:

4 338.147 1. Except as otherwise provided in subsection 10
5 and NRS 338.143, 338.1442 and 338.1446, a local government or
6 its authorized representative shall award a contract for a public work
7 for which the estimated cost exceeds \$250,000 to the contractor who
8 submits the best bid.

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

11 (a) Submitted by a contractor who:

12 (1) Has been found to be a responsible and responsive
13 contractor by the local government or its authorized representative;
14 ~~and~~

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

19 *(3) At the time the contractor submits his or her bid,*
20 *submits a signed affidavit that meets the requirements of*
21 *subsection 1 of section 2 of this act; and*

22 (b) Not more than 5 percent higher than the bid submitted by the
23 lowest responsive and responsible bidder who ~~does~~ :

24 *(1) Does* not have, at the time he or she submits the bid, a
25 valid certificate of eligibility to receive a preference in bidding on
26 public works issued to him or her by the State Contractors' Board
27 pursuant to subsection 3 or 4 ~~;~~ ; *or*

28 *(2) Does not submit, at the time he or she submits the bid, a*
29 *signed affidavit certifying that he or she will comply with the*
30 *requirements of paragraphs (a) to (e), inclusive, of subsection 1 of*
31 *section 2 of this act for the duration of the contract,*

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

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

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

40 (1) The sales and use taxes imposed pursuant to chapters
41 372, 374 and 377 of NRS on materials used for construction in this
42 State, including, without limitation, construction that is undertaken
43 or carried out on land within the boundaries of this State that is
44 managed by the Federal Government or is on an Indian reservation
45 or Indian colony, of not less than \$5,000 for each consecutive



1 12-month period for 60 months immediately preceding the
2 submission of the affidavit from the certified public accountant;

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

34 9. If a contractor who applies to the State Contractors' Board
35 for a certificate of eligibility to receive a preference in bidding on
36 public works ~~submits~~:

37 (a) *Submits* false information to the Board regarding the
38 required payment of taxes, the contractor is not eligible to receive a
39 preference in bidding on public works for a period of 5 years after
40 the date on which the Board becomes aware of the submission of the
41 false information ~~[-];~~ or

42 (b) *Is found by the Board to have, within the preceding 5*
43 *years, breached a contract for a public work for which the cost*
44 *exceeds \$5,000,000 by failing to comply with a requirement of*
45 *paragraphs (a) to (e), inclusive, of subsection 1 of section 2 of this*



1 *act, the contractor is not eligible to receive a preference in bidding*
2 *on public works.*

3 10. If any federal statute or regulation precludes the granting of
4 federal assistance or reduces the amount of that assistance for a
5 particular public work because of the provisions of subsection 2,
6 those provisions do not apply insofar as their application would
7 preclude or reduce federal assistance for that work.

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

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

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

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

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

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

43 **Sec. 11.** NRS 338.1693 is hereby amended to read as follows:

44 338.1693 1. The local government shall appoint a panel
45 consisting of at least three members to rank the statements of



1 qualifications submitted to the local government by evaluating the
2 statements of qualifications as required pursuant to subsections 2
3 and 3.

4 2. The panel shall rank the statements of qualifications by:

5 (a) Verifying that each applicant satisfies the requirements of
6 NRS 338.1691; and

7 (b) Conducting an evaluation of the qualifications of each
8 applicant based on the factors and relative weight assigned to each
9 factor that the local government specified in the request for
10 statements of qualifications advertised pursuant to NRS 338.1692.

11 3. When ranking the statements of qualifications, the panel
12 shall assign a relative weight of 5 percent to the *applicant's*
13 possession of a certificate of eligibility to receive a preference in
14 bidding on public works ~~H~~ *if the applicant submits a signed*
15 *affidavit that meets the requirements of subsection 1 of section 2*
16 *of this act.*

17 4. After the panel ranks the statements of qualifications, the
18 local government shall:

19 (a) Make available to the public the rankings of the applicants;
20 and

21 (b) Except as otherwise provided in subsection 5, select at least
22 the two but not more than the five applicants that the panel
23 determined to be most qualified as finalists to submit final proposals
24 to the local government pursuant to NRS 338.1694.

25 5. If the local government did not receive at least two
26 statements of qualifications from applicants that the panel
27 determines to be qualified pursuant to this section and NRS
28 338.1691, the local government may not contract with a
29 construction manager at risk.

30 **Sec. 12.** NRS 338.1699 is hereby amended to read as follows:

31 338.1699 1. To be eligible to provide materials, equipment,
32 work or other services on a public work for which a construction
33 manager at risk was awarded a contract pursuant to NRS 338.1696,
34 a subcontractor must be:

35 (a) Licensed pursuant to chapter 624 of NRS; and

36 (b) Selected by the construction manager at risk based on the
37 process of competitive bidding set forth in the applicable provisions
38 of NRS 338.1373 to 338.148, inclusive ~~H~~, *and sections 2 and 3 of*
39 *this act.*

40 2. A construction manager at risk to whom a contract for the
41 construction of a public work is awarded pursuant to NRS 338.1696
42 shall submit to the local government that awarded the contract or its
43 authorized representative a list containing the names of each
44 subcontractor with whom the construction manager at risk intends to



1 enter into a contract for the provision of materials, equipment, work
2 or other services on the public work.

3 **Sec. 13.** NRS 338.1727 is hereby amended to read as follows:

4 338.1727 1. After selecting the finalists pursuant to NRS
5 338.1725, the public body shall provide to each finalist a request for
6 final proposals for the public work. The request for final proposals
7 must:

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

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

13 2. If one or more of the finalists selected pursuant to NRS
14 338.1725 is disqualified or withdraws, the public body may select a
15 design-build team from the remaining finalist or finalists.

16 3. Except as otherwise provided in this subsection, in assigning
17 the relative weight to each factor for selecting a design-build team
18 pursuant to subsection 1, the public body shall assign, without
19 limitation, a relative weight of 5 percent to the *design-build team's*
20 possession of a certificate of eligibility to receive a preference in
21 bidding on public works *if the design-build team submits a signed*
22 *affidavit that meets the requirements of subsection 1 of section 2*
23 *of this act*, and a relative weight of at least 30 percent to the
24 proposed cost of design and construction of the public work. If any
25 federal statute or regulation precludes the granting of federal
26 assistance or reduces the amount of that assistance for a particular
27 public work because of the provisions of this subsection relating to
28 preference in bidding on public works, those provisions of this
29 subsection do not apply insofar as their application would preclude
30 or reduce federal assistance for that public work.

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

38 5. A final proposal is exempt from the requirements of
39 NRS 338.141.

40 6. After receiving and evaluating the final proposals for the
41 public work, the public body, at a regularly scheduled meeting,
42 shall:

43 (a) Select the final proposal, using the criteria set forth pursuant
44 to subsections 1 and 3, and award the design-build contract to the
45 design-build team whose proposal is selected; or



1 (b) Reject all the final proposals.

2 7. If a public body selects a final proposal and awards a design-
3 build contract pursuant to paragraph (a) of subsection 6, the public
4 body shall:

5 (a) Partially reimburse the unsuccessful finalists if partial
6 reimbursement was provided for in the request for preliminary
7 proposals pursuant to paragraph (j) of subsection 2 of NRS
8 338.1723. The amount of reimbursement must not exceed, for each
9 unsuccessful finalist, 3 percent of the total amount to be paid to the
10 design-build team as set forth in the design-build contract.

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

16 8. A contract awarded pursuant to this section:

17 (a) Must comply with the provisions of NRS 338.020 to
18 338.090, inclusive.

19 (b) Must specify:

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

25 (2) An amount that is the maximum amount that the public
26 body will pay for the performance of the professional services
27 required by the contract; and

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

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

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

41 (e) May require the design-build team to defend, indemnify and
42 hold harmless the public body, and the employees, officers and
43 agents of the public body from any liabilities, damages, losses,
44 claims, actions or proceedings, including, without limitation,
45 reasonable attorneys' fees, that are caused by the negligence, errors,



1 omissions, recklessness or intentional misconduct of the design-
2 build team or the employees or agents of the design-build team in
3 the performance of the contract.

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

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

11 **Sec. 14.** NRS 408.333 is hereby amended to read as follows:

12 408.333 Except as otherwise provided in NRS 408.3875 to
13 408.3887, inclusive:

14 1. Before furnishing any person proposing to bid on any
15 advertised work with the plans and specifications for such work, the
16 Director shall require from the person a statement, verified under
17 oath, in the form of answers to questions contained in a standard
18 form of questionnaire and financial statement, which must include a
19 complete statement of the person's financial ability and experience
20 in performing public work of a similar nature.

21 2. Such statements must be filed with the Director in ample
22 time to permit the Department to verify the information contained
23 therein in advance of furnishing proposal forms, plans and
24 specifications to any person proposing to bid on the advertised
25 public work, in accordance with the regulations of the Department.

26 3. Whenever the Director is not satisfied with the sufficiency
27 of the answers contained in the questionnaire and financial
28 statement, the Director may refuse to furnish the person with plans
29 and specifications and the official proposal forms on the advertised
30 project. *If the Director determines that the person has, within the*
31 *preceding year, breached a contract for a public work for which*
32 *the cost exceeds \$25,000,000 by failing to comply with a*
33 *requirement of paragraphs (a) to (e), inclusive, of subsection 1 of*
34 *section 2 of this act, the Director shall refuse to furnish the person*
35 *with plans and specifications and the official proposal forms on*
36 *the advertised project.* Any bid of any person to whom plans and
37 specifications and the official proposal forms have not been issued
38 in accordance with this section must be disregarded, and the
39 certified check, cash or undertaking of such a bidder returned
40 forthwith.

41 4. Any person who is disqualified by the Director, in
42 accordance with the provisions of this section, may request, in
43 writing, a hearing before the Director and present again the person's
44 check, cash or undertaking and such further evidence with respect to
45 the person's financial responsibility, organization, plant and



1 equipment, or experience, as might tend to justify, in his or her
2 opinion, issuance to him or her of the plans and specifications for
3 the work.

4 5. Such a person may appeal the decision of the Director to the
5 Board no later than 5 days before the opening of the bids on the
6 project. If the appeal is sustained by the Board, the person must be
7 granted the rights and privileges of all other bidders.

8 **Sec. 15.** NRS 408.3883 is hereby amended to read as follows:

9 408.3883 1. The Department shall advertise for preliminary
10 proposals for the design and construction of a project by a design-
11 build team in a newspaper of general circulation in this State.

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

14 (a) A description of the proposed project;

15 (b) Separate estimates of the costs of designing and constructing
16 the project;

17 (c) The dates on which it is anticipated that the separate phases
18 of the design and construction of the project will begin and end;

19 (d) The date by which preliminary proposals must be submitted
20 to the Department, which must not be less than 30 days after the
21 date that the request for preliminary proposals is first published in a
22 newspaper pursuant to subsection 1; and

23 (e) A statement setting forth the place and time in which a
24 design-build team desiring to submit a proposal for the project may
25 obtain the information necessary to submit a proposal, including,
26 without limitation, the information set forth in subsection 3.

27 3. The Department shall maintain at the time and place set
28 forth in the request for preliminary proposals the following
29 information for inspection by a design-build team desiring to submit
30 a proposal for the project:

31 (a) The extent to which designs must be completed for both
32 preliminary and final proposals and any other requirements for the
33 design and construction of the project that the Department
34 determines to be necessary;

35 (b) A list of the requirements set forth in NRS 408.3884;

36 (c) A list of the factors that the Department will use to evaluate
37 design-build teams who submit a proposal for the project, including,
38 without limitation:

39 (1) The relative weight to be assigned to each factor pursuant
40 to NRS 408.3886; and

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

44 (d) Notice that a design-build team desiring to submit a proposal
45 for the project must include with its proposal the information used



1 by the Department to determine finalists among the design-build
2 teams submitting proposals pursuant to subsection 2 of NRS
3 408.3885 and a description of that information;

4 (e) A statement that a design-build team whose prime contractor
5 holds a certificate of eligibility to receive a preference in bidding on
6 public works issued pursuant to NRS 338.1389 or 338.147 should
7 submit *with its proposal* a copy of the certificate of eligibility ~~[with~~
8 ~~its proposal;]~~ *and a signed affidavit that meets the requirements of*
9 *subsection 1 of section 2 of this act;* and

10 (f) A statement as to whether a bidding design-build team that is
11 selected as a finalist pursuant to NRS 408.3885 but is not awarded
12 the design-build contract pursuant to NRS 408.3886 will be partially
13 reimbursed for the cost of preparing a final proposal or best and
14 final offer, or both, and, if so, an estimate of the amount of the
15 partial reimbursement.

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 5 percent to the *design-build team's*
29 possession of a certificate of eligibility to receive a preference in
30 bidding on public works *if the design-build team submits a signed*
31 *affidavit that meets the requirements of subsection 1 of section 2*
32 *of this act*, and a relative weight of at least 30 percent for the
33 proposed cost of design and construction of the project. If any
34 federal statute or regulation precludes the granting of federal
35 assistance or reduces the amount of that assistance for a particular
36 project because of the provisions of this subsection relating to
37 preference in bidding on public works, those provisions of this
38 subsection do not apply insofar as their application would preclude
39 or reduce federal assistance for that project.

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



1 4. After receiving the final proposals for the project, the
2 Department shall:

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

5 (b) Reject all the final proposals; or

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

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

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

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

26 6. If the Department selects a final proposal pursuant to
27 paragraph (a) of subsection 4 or selects a best and final offer
28 pursuant to paragraph (a) of subsection 5, the Department shall hold
29 a public meeting to:

30 (a) Review and ratify the selection.

31 (b) Partially reimburse the unsuccessful finalists if partial
32 reimbursement was provided for in the request for preliminary
33 proposals pursuant to paragraph (f) of subsection 3 of NRS
34 408.3883. The amount of reimbursement must not exceed, for each
35 unsuccessful finalist, 3 percent of the total amount to be paid to the
36 design-build team as set forth in the design-build contract.

37 (c) Make available to the public a summary setting forth the
38 factors used by the Department to select the successful design-build
39 team and the ranking of the design-build teams who submitted final
40 proposals and, if applicable, best and final offers. The Department
41 shall not release to a third party, or otherwise make public, financial
42 or proprietary information submitted by a design-build team.

43 7. A contract awarded pursuant to this section:

44 (a) Must comply with the provisions of NRS 338.020 to
45 338.090, inclusive; and



- 1 (b) Must specify:
2 (1) An amount that is the maximum amount that the
3 Department will pay for the performance of all the work required by
4 the contract, excluding any amount related to costs that may be
5 incurred as a result of unexpected conditions or occurrences as
6 authorized by the contract;
7 (2) An amount that is the maximum amount that the
8 Department will pay for the performance of the professional
9 services required by the contract; and
10 (3) A date by which performance of the work required by the
11 contract must be completed.

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

14 (a) Assume overall responsibility for ensuring that the design
15 and construction of the project is completed in a satisfactory
16 manner; and

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

19 **Sec. 17.** 1. The amendatory provisions of this act apply to all
20 public works for which bids are first advertised after the effective
21 date of this act.

22 2. Any contract awarded for a public work to which the
23 amendatory provisions of this act apply pursuant to subsection 1
24 and:

25 (a) Which was not advertised in compliance with the
26 amendatory provisions of this act;

27 (b) For which bids were not accepted in compliance with the
28 amendatory provisions of this act; or

29 (c) For which the contract was not awarded in compliance with
30 the amendatory provisions of this act,

31 ↪ is void.

32 3. As used in this section, “contract” and “public work” have
33 the meanings ascribed to them in NRS 338.010.

34 **Sec. 18.** This act becomes effective upon passage and
35 approval.

