
ASSEMBLY BILL NO. 140—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE SOUTHWEST REGIONAL
COUNCIL OF CARPENTERS)

FEBRUARY 21, 2007

Referred to Committee on Government Affairs

SUMMARY—Provides for certain contractors to receive an additional preference in bidding on public works. (BDR 28-773)

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

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

AN ACT relating to public works; providing for certain contractors to receive an additional preference in bidding on public works; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the State Contractors' Board is required to issue a certificate of eligibility to receive a preference in bidding on certain public works to a contractor who has paid certain taxes for a certain period, or who has acquired a construction firm that already possesses such a certificate. The current certificate of eligibility available from the Board conveys a preference of 5 percent in bidding on public works. (NRS 338.1389, 338.147, 338.1727, 408.3886)

This bill provides that the certificate of eligibility currently available from the State Contractors' Board is a "basic certificate of eligibility," and that a contractor who already possesses such a basic certificate, or who has paid the taxes necessary to have possessed such a certificate, may obtain an "enhanced certificate of eligibility" conveying an additional preference of 1 percent if the contractor, in addition to paying the taxes necessary to obtain the basic certificate: (1) participates in an approved apprenticeship program; (2) makes contributions on behalf of his employees to a plan that is defined as a "defined benefit plan" for the purposes of the Employee Retirement Income Security Act of 1974; and (3) provides health insurance or a health benefit plan to his employees. This bill clarifies that a person may hold either a basic certificate of eligibility conveying a 5 percent preference or an enhanced certificate of eligibility conveying a 6 percent preference, but not both.



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

Section 1. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in subsection ~~[40]~~ **13** and NRS 338.1385, 338.1386 and 338.13864, a public body or its authorized representative shall award a contract for a public work for which the estimated cost exceeds \$250,000 to the contractor who submits the best bid.

2. Except as otherwise provided in subsection ~~[40]~~ **13** or limited by subsection ~~[11,]~~ **14**, the lowest bid that : ~~[is:]~~

(a) ~~[Submitted]~~ **Is submitted** by a responsive and responsible contractor who:

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

(2) At the time he submits his bid, ~~[has]~~ **possesses** a valid certificate of eligibility ; ~~[to receive a preference in bidding on public works issued to the contractor by the State Contractors' Board pursuant to subsection 3 or 4;]~~

(b) ~~[Not:]~~ **Is:**

(1) If the contractor possesses a basic certificate of eligibility, not more than 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who does not ~~[have,]~~ **possess**, at the time he submits his bid, a valid certificate of eligibility ~~[to receive a preference in bidding on public works issued to him by the State Contractors' Board pursuant to subsection 3 or 4;~~

~~↪ shall be deemed to be the best bid for the purposes of this section.] ; or~~

(2) If the contractor possesses an enhanced certificate of eligibility:

(I) Not more than 6 percent higher than the bid submitted by the lowest responsive and responsible bidder who does not possess, at the time he submits his bid, a valid certificate of eligibility; and

(II) Not more than 1 percent higher than the bid submitted by the lowest responsive and responsible bidder who, at the time he submits his bid, possesses only a basic certificate of eligibility,

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

3. The State Contractors' Board shall issue a **basic** certificate of eligibility to receive a **5 percent** preference in bidding on public works to a general contractor who is licensed pursuant to the



1 provisions of chapter 624 of NRS and submits to the Board an
2 affidavit from a certified public accountant setting forth that the
3 general contractor has, while licensed as a general contractor in this
4 State:

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

6 (1) The sales and use taxes imposed pursuant to chapters
7 372, 374 and 377 of NRS on materials used for construction in this
8 State, including, without limitation, construction that is undertaken
9 or carried out on land within the boundaries of this State that is
10 managed by the Federal Government or is on an Indian reservation
11 or Indian colony, of not less than \$5,000 for each consecutive 12-
12 month period for 60 months immediately preceding the submission
13 of the affidavit from the certified public accountant;

14 (2) The governmental services tax imposed pursuant to
15 chapter 371 of NRS on the vehicles used in the operation of his
16 business in this State of not less than \$5,000 for each consecutive
17 12-month period for 60 months immediately preceding the
18 submission of the affidavit from the certified public accountant; or

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

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

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

26 (2) ~~[Certificate]~~ *Basic certificate* of eligibility to receive a *5*
27 *percent* preference in bidding on public works ~~[]~~ *that was issued by*
28 *the State Contractors' Board pursuant to this subsection.*

29 4. The State Contractors' Board shall issue a *basic* certificate
30 of eligibility to receive a *5 percent* preference in bidding on public
31 works to a specialty contractor who is licensed pursuant to the
32 provisions of chapter 624 of NRS and submits to the Board an
33 affidavit from a certified public accountant setting forth that the
34 specialty contractor has, while licensed as a specialty contractor in
35 this State:

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

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



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

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

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

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

(2) ~~[Certificate]~~ *Basic certificate* of eligibility to receive a *5 percent* preference in bidding on public works ~~[that was issued by the State Contractors' Board pursuant to this subsection]~~.

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

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

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

6. *The State Contractors' Board shall issue an enhanced certificate of eligibility to receive a 6 percent preference in bidding on public works to a general contractor who:*

(a) Is licensed pursuant to the provisions of chapter 624 of NRS; and

(b) Submits to the Board evidence satisfactory to the Board that the general contractor has, during the immediately preceding 12 months, while licensed as a general contractor in this State:

(1) Possessed or qualified to possess a basic certificate of eligibility issued by the State Contractors' Board pursuant to subsection 3;

(2) Participated in an apprenticeship program registered and approved by the State Apprenticeship Council pursuant to chapter 610 of NRS;

(3) Made contributions on behalf of his employees to a defined benefit plan, as that term is defined in 29 U.S.C. § 1002; and

(4) Provided to his employees health insurance or a health benefit plan.



1 7. *The State Contractors' Board shall issue an enhanced*
2 *certificate of eligibility to receive a 6 percent preference in bidding*
3 *on public works to a specialty contractor who:*

4 (a) *Is licensed pursuant to the provisions of chapter 624 of*
5 *NRS; and*

6 (b) *Submits to the Board evidence satisfactory to the Board*
7 *that the specialty contractor has, during the immediately*
8 *preceding 12 months, while licensed as a specialty contractor in*
9 *this State:*

10 (1) *Possessed or qualified to possess a basic certificate of*
11 *eligibility issued by the State Contractors' Board pursuant to*
12 *subsection 4;*

13 (2) *Participated in an apprenticeship program registered*
14 *and approved by the State Apprenticeship Council pursuant to*
15 *chapter 610 of NRS;*

16 (3) *Made contributions on behalf of his employees to a*
17 *defined benefit plan, as that term is defined in 29 U.S.C. § 1002;*
18 *and*

19 (4) *Provided to his employees health insurance or a health*
20 *benefit plan.*

21 8. *A contractor who qualifies may possess either a basic*
22 *certificate of eligibility to receive a 5 percent preference in bidding*
23 *on public works that is issued by the State Contractors' Board*
24 *pursuant to subsection 3 or 4, or an enhanced certificate of*
25 *eligibility to receive a 6 percent preference in bidding on public*
26 *works that is issued by the State Contractors' Board pursuant to*
27 *subsection 6 or 7, but not both.*

28 9. A contractor who has received ~~that~~ :

29 (a) A *basic* certificate of eligibility to receive a *5 percent*
30 *preference in bidding on public works* ~~from~~ *that is issued by the*
31 *State Contractors' Board pursuant to subsection 3 or 4 shall, at the*
32 *time for the annual renewal of his contractor's license pursuant to*
33 *NRS 624.283, submit to the Board an affidavit from a certified*
34 *public accountant setting forth that the contractor has, during the*
35 *immediately preceding 12 months, paid the taxes required pursuant*
36 *to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as*
37 *applicable, to maintain his eligibility to hold such a certificate.*

38 (b) *An enhanced certificate of eligibility to receive a 6 percent*
39 *preference in bidding on public works that is issued by the State*
40 *Contractors' Board pursuant to subsection 6 or 7 shall, at the time*
41 *for the annual renewal of his contractor's license pursuant to*
42 *NRS 624.283, submit to the Board:*

43 (1) *The affidavit described in paragraph (a); and*

44 (2) *Evidence satisfactory to the Board that the contractor*
45 *has, during the immediately preceding 12 months:*



1 (I) *Participated in an apprenticeship program registered*
2 *and approved by the State Apprenticeship Council pursuant to*
3 *chapter 610 of NRS;*

4 (II) *Made contributions on behalf of his employees to a*
5 *defined benefit plan, as that term is defined in 29 U.S.C. § 1002;*
6 *and*

7 (III) *Provided to his employees health insurance or a*
8 *health benefit plan.*

9 ~~[7-]~~ 10. A contractor who :

10 (a) *Possesses a basic certificate of eligibility to receive a 5*
11 *percent preference in bidding on public works that is issued by the*
12 *State Contractors' Board pursuant to subsection 3 or 4 and fails to*
13 *submit an affidavit to the Board pursuant to paragraph (a) of*
14 *subsection ~~[6-]~~ 9 ceases to be eligible to possess that certificate to*
15 *receive a 5 percent preference in bidding on public works unless he*
16 *reapplies for and receives such a certificate ~~[of-eligibility]~~ pursuant*
17 *to subsection 3 or 4, as applicable.*

18 (b) *Possesses an enhanced certificate of eligibility to receive a*
19 *6 percent preference in bidding on public works that is issued by*
20 *the State Contractors' Board pursuant to subsection 6 or 7 and*
21 *fails to comply with any part of paragraph (b) of subsection 9*
22 *ceases to be eligible to possess that certificate to receive a 6*
23 *percent preference in bidding on public works unless he reapplies*
24 *for and receives such a certificate pursuant to subsection 6 or 7, as*
25 *applicable.*

26 ~~[8-]~~ 11. If a contractor holds more than one contractor's
27 license, he must submit a separate application for each license
28 pursuant to which he wishes to qualify for a preference in bidding.
29 Upon issuance, the certificate of eligibility to receive a preference in
30 bidding on public works becomes part of the contractor's license for
31 which the contractor submitted the application.

32 ~~[9-]~~ 12. If a contractor who applies to the State Contractors'
33 Board for ~~[a]~~ :

34 (a) *A basic certificate of eligibility to receive a 5 percent*
35 *preference in bidding on public works submits false information to*
36 *the Board regarding the required payment of taxes, the contractor is*
37 *not eligible to receive a preference in bidding on public works for a*
38 *period of 5 years after the date on which the Board becomes aware*
39 *of the submission of the false information.*

40 (b) *An enhanced certificate of eligibility to receive a 6 percent*
41 *preference in bidding on public works submits to the Board the*
42 *information required to be submitted pursuant to subsection 6 or*
43 *7, as applicable, and any such information is materially false, the*
44 *contractor is not eligible to receive a preference in bidding on*



public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information.

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

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

~~{12.}~~ 15. The State Contractors' Board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

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

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

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

~~{14.}~~ 17. If a public body receives a written objection pursuant to subsection ~~{13.}~~ 16, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and the public body or its authorized representative may proceed immediately to award the contract. If the public body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and the public body or its authorized representative may proceed to award the contract accordingly.



1 **Sec. 2.** NRS 338.147 is hereby amended to read as follows:

2 338.147 1. Except as otherwise provided in subsection ~~[40]~~
3 **13** and NRS 338.143, 338.1442 and 338.1446, a local government
4 or its authorized representative shall award a contract for a public
5 work for which the estimated cost exceeds \$250,000 to the
6 contractor who submits the best bid.

7 2. Except as otherwise provided in subsection ~~[40]~~ **13** or
8 limited by subsection ~~[11,]~~ **14**, the lowest bid that : ~~[is:]~~

9 (a) ~~[Submitted]~~ **Is submitted** by a contractor who:

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

13 (2) At the time he submits his bid, ~~[has]~~ **possesses** a valid
14 certificate of eligibility ; ~~[to receive a preference in bidding on~~
15 ~~public works issued to the contractor by the State Contractors'~~
16 ~~Board pursuant to subsection 3 or 4;]~~ and

17 (b) ~~[Not:]~~ **Is:**

18 **(1) If the contractor possesses a basic certificate of**
19 **eligibility, not** more than 5 percent higher than the bid submitted by
20 the lowest responsive and responsible bidder who does not ~~[have,]~~
21 **possess**, at the time he submits ~~[the]~~ **his** bid, a valid certificate of
22 eligibility ~~[to receive a preference in bidding on public works issued~~
23 ~~to him by the State Contractors' Board pursuant to subsection 3~~
24 ~~or 4,~~

25 ~~↪ shall be deemed to be the best bid for the purposes of this~~
26 ~~section.]; or~~

27 **(2) If the contractor possesses an enhanced certificate of**
28 **eligibility:**

29 **(I) Not more than 6 percent higher than the bid**
30 **submitted by the lowest responsive and responsible bidder who**
31 **does not possess, at the time he submits his bid, a valid certificate**
32 **of eligibility; and**

33 **(II) Not more than 1 percent higher than the bid**
34 **submitted by the lowest responsive and responsible bidder who, at**
35 **the time he submits his bid, possesses only a basic certificate of**
36 **eligibility,**

37 ~~↪ shall be deemed to be the best bid for the purposes of this~~
38 ~~section.~~

39 3. The State Contractors' Board shall issue a **basic** certificate
40 of eligibility to receive a **5 percent** preference in bidding on public
41 works to a general contractor who is licensed pursuant to the
42 provisions of chapter 624 of NRS and submits to the Board an
43 affidavit from a certified public accountant setting forth that the
44 general contractor has, while licensed as a general contractor in this
45 State:



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(a) Paid directly, on his own behalf:

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

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

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

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

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

(2) ~~[Certificate]~~ *Basic certificate* of eligibility to receive a *5 percent* preference in bidding on public works ~~[]~~ *that was issued by the State Contractors' Board pursuant to this subsection.*

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

(a) Paid directly, on his own behalf:

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

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



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

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

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

(2) ~~[Certificate]~~ *Basic certificate* of eligibility to receive a *5 percent* preference in bidding on public works ~~that was issued by the State Contractors' Board pursuant to this subsection.~~

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

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

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

6. *The State Contractors' Board shall issue an enhanced certificate of eligibility to receive a 6 percent preference in bidding on public works to a general contractor who:*

(a) Is licensed pursuant to the provisions of chapter 624 of NRS; and

(b) Submits to the Board evidence satisfactory to the Board that the general contractor has, during the immediately preceding 12 months, while licensed as a general contractor in this State:

(1) Possessed or qualified to possess a basic certificate of eligibility issued by the State Contractors' Board pursuant to subsection 3;

(2) Participated in an apprenticeship program registered and approved by the State Apprenticeship Council pursuant to chapter 610 of NRS;

(3) Made contributions on behalf of his employees to a defined benefit plan, as that term is defined in 29 U.S.C. § 1002; and

(4) Provided to his employees health insurance or a health benefit plan.

7. *The State Contractors' Board shall issue an enhanced certificate of eligibility to receive a 6 percent preference in bidding on public works to a specialty contractor who:*

(a) Is licensed pursuant to the provisions of chapter 624 of NRS; and



(b) Submits to the Board evidence satisfactory to the Board that the specialty contractor has, during the immediately preceding 12 months, while licensed as a specialty contractor in this State:

(1) Possessed or qualified to possess a basic certificate of eligibility issued by the State Contractors' Board pursuant to subsection 4;

(2) Participated in an apprenticeship program registered and approved by the State Apprenticeship Council pursuant to chapter 610 of NRS;

(3) Made contributions on behalf of his employees to a defined benefit plan, as that term is defined in 29 U.S.C. § 1002; and

(4) Provided to his employees health insurance or a health benefit plan.

8. A contractor who qualifies may possess either a basic certificate of eligibility to receive a 5 percent preference in bidding on public works that is issued by the State Contractors' Board pursuant to subsection 3 or 4, or an enhanced certificate of eligibility to receive a 6 percent preference in bidding on public works that is issued by the State Contractors' Board pursuant to subsection 6 or 7, but not both.

9. A contractor who has received [a] :

(a) A basic certificate of eligibility to receive a 5 percent preference in bidding on public works ~~from~~ that is issued by the State Contractors' Board pursuant to subsection 3 or 4 shall, at the time for the annual renewal of his contractor's license pursuant to NRS 624.283, submit to the Board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain his eligibility to hold such a certificate.

(b) An enhanced certificate of eligibility to receive a 6 percent preference in bidding on public works that is issued by the State Contractors' Board pursuant to subsection 6 or 7 shall, at the time for the annual renewal of his contractor's license pursuant to NRS 624.283, submit to the Board:

(1) The affidavit described in paragraph (a); and

(2) Evidence satisfactory to the Board that the contractor has, during the immediately preceding 12 months:

(I) Participated in an apprenticeship program registered and approved by the State Apprenticeship Council pursuant to chapter 610 of NRS;



(II) *Made contributions on behalf of his employees to a defined benefit plan, as that term is defined in 29 U.S.C. § 1002; and*

(III) *Provided to his employees health insurance or a health benefit plan.*

~~[7-]~~ 10. A contractor who :

(a) *Possesses a basic certificate of eligibility to receive a 5 percent preference in bidding on public works that is issued by the State Contractors' Board pursuant to subsection 3 or 4 and fails to submit an affidavit to the Board pursuant to paragraph (a) of subsection ~~[6-]~~ 9 ceases to be eligible to possess that certificate to receive a 5 percent preference in bidding on public works unless he reapplies for and receives such a certificate ~~[of eligibility]~~ pursuant to subsection 3 or 4, as applicable.*

(b) *Possesses an enhanced certificate of eligibility to receive a 6 percent preference in bidding on public works that is issued by the State Contractors' Board pursuant to subsection 6 or 7 and fails to comply with any part of paragraph (b) of subsection 9 ceases to be eligible to possess that certificate to receive a 6 percent preference in bidding on public works unless he reapplies for and receives such a certificate pursuant to subsection 6 or 7, as applicable.*

~~[8-]~~ 11. If a contractor holds more than one contractor's license, he must submit a separate application for each license pursuant to which he wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

~~[9-]~~ 12. If a contractor who applies to the State Contractors' Board for ~~[a-]~~ :

(a) *A basic certificate of eligibility to receive a 5 percent preference in bidding on public works submits false information to the Board regarding the required payment of taxes, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information.*

(b) *An enhanced certificate of eligibility to receive a 6 percent preference in bidding on public works submits to the Board the information required to be submitted pursuant to subsection 6 or 7, as applicable, and any such information is materially false, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information.*

~~[10-]~~ 13. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that



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

5 ~~[H1.]~~ 14. If a bid is submitted by two or more contractors as a
6 joint venture or by one of them as a joint venturer, the bid may be
7 deemed ~~[a]~~ *the* best bid only if both or all of the joint venturers
8 separately meet the requirements of subsection 2.

9 ~~[H2.]~~ 15. The State Contractors' Board shall adopt regulations
10 and may assess reasonable fees relating to the certification of
11 contractors for a preference in bidding on public works.

12 ~~[H3.]~~ 16. A person or entity who believes that a contractor
13 wrongfully holds a certificate of eligibility to receive a preference in
14 bidding on public works may challenge the validity of the certificate
15 by filing a written objection with the local government to which the
16 contractor has submitted a bid on a contract for the construction of a
17 public work. A written objection authorized pursuant to this
18 subsection must:

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

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

26 ~~[H4.]~~ 17. If a local government receives a written objection
27 pursuant to subsection ~~[H3.]~~ 16, the local government shall
28 determine whether the objection is accompanied by the proof or
29 substantiating evidence required pursuant to paragraph (a) of that
30 subsection. If the local government determines that the objection is
31 not accompanied by the required proof or substantiating evidence,
32 the local government shall dismiss the objection and the local
33 government or its authorized representative may proceed
34 immediately to award the contract. If the local government
35 determines that the objection is accompanied by the required proof
36 or substantiating evidence, the local government shall determine
37 whether the contractor qualifies for the certificate pursuant to the
38 provisions of this section and the local government or its authorized
39 representative may proceed to award the contract accordingly.

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

41 338.1727 1. After selecting the finalists pursuant to NRS
42 338.1725, the public body shall provide to each finalist a request for
43 final proposals for the public work. The request for final proposals
44 must:



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

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

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

3. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the public body shall assign, without limitation, a relative weight of ~~{5}~~:

(a) *Five* percent to the possession of a *basic* certificate of eligibility to receive a preference in bidding on public works ~~{and a relative weight of at}~~;

(b) *Six percent to the possession of an enhanced certificate of eligibility to receive a preference in bidding on public works; and*

(c) *At least 30 percent to the proposed cost of design and construction of the public work.*

➡ If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection relating to preference in bidding on public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that public work.

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

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

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

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

(b) Reject all the final proposals.

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



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

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

8. A contract awarded pursuant to this section:

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

(b) Must specify:

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

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

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

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

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

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



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

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

Sec. 4. NRS 408.3886 is hereby amended to read as follows:

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

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

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

2. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the Department shall assign, without limitation, a relative weight of ~~{5}~~:

(a) *Five* percent to the possession of a *basic* certificate of eligibility to receive a preference in bidding on public works ~~and a relative weight of at~~;

(b) *Six percent to the possession of an enhanced certificate of eligibility to receive a preference in bidding on public works; and*

(c) *At* least 30 percent for the proposed cost of design and construction of the project.

➡ If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular project because of the provisions of this subsection relating to preference in bidding on public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that project.

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

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

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

(b) Reject all the final proposals; or

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



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

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

(b) Reject all the best and final offers.

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

(a) Review and ratify the selection.

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

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

7. A contract awarded pursuant to this section:

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

(b) Must specify:

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



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

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

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

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

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

Sec. 5. Section 9.5 of the Reno-Tahoe Airport Authority Act, being chapter 369, Statutes of Nevada 2005, at page 1386, is hereby amended to read as follows:

Sec. 9.5. 1. Except as otherwise determined by the Board or provided in subsection 2, the provisions of any law requiring public bidding or otherwise imposing requirements on any public contract, project, acquisition, works or improvements, including, without limitation, the provisions of chapters 332, 338 and 339 of NRS, do not apply to any contract entered into by the Board if the Board:

(a) Complies with the provisions of subsection 3; and

(b) Finances the contract, project, acquisition, works or improvement by means of:

(1) Revenue bonds issued by the Authority; or

(2) An installment obligation of the Authority in a transaction in which:

(I) The Authority acquires real or personal property and another person acquires or retains a security interest in that or other property; and

(II) The obligation by its terms is extinguished by failure of the Board to appropriate money for the ensuing fiscal year for payment of the amounts then due.

2. A contract entered into by the Board pursuant to this section must:

(a) Contain a provision stating that the requirements of NRS 338.010 to 338.090, inclusive, apply to any construction work performed pursuant to the contract; and

(b) If the contract is with a design professional who is not a member of a design-build team, comply with the provisions of NRS 338.155. As used in this paragraph, "design professional" has the meaning ascribed to it in subsection 7 of NRS 338.010.



3. For contracts entered into pursuant to this section that are exempt from the provisions of chapters 332, 338 and 339 of NRS pursuant to subsection 1, the Board shall adopt regulations pursuant to subsection 4 which establish:

(a) One or more competitive procurement processes for letting such a contract; and

(b) A method by which a bid on such a contract will be adjusted to give a 5 percent *or 6 percent* preference, *as applicable*, to a contractor who would qualify for *such* a preference pursuant to NRS 338.147, if:

(1) The estimated cost of the contract exceeds \$250,000; and

(2) Price is a factor in determining the successful bid on the contract.

4. The Board:

(a) Shall, before adopting, amending or repealing a permanent or temporary regulation pursuant to subsection 3, give at least 30 days' notice of its intended action. The notice must:

(1) Include:

(I) A statement of the need for and purpose of the proposed regulation.

(II) Either the terms or substance of the proposed regulation or a description of the subjects and issues involved.

(III) The estimated cost to the Board for enforcement of the proposed regulation.

(IV) The time when, the place where and the manner in which interested persons may present their views regarding the proposed regulation.

(V) A statement indicating whether the regulation establishes a new fee or increases an existing fee.

(2) State each address at which the text of the proposed regulation may be inspected and copied.

(3) Be mailed to all persons who have requested in writing that they be placed upon a mailing list, which must be kept by the Authority for that purpose.

(b) May adopt, if it has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this subsection, after providing a second notice and the opportunity for a hearing, a permanent regulation.

(c) Shall, in addition to distributing the notice to each recipient of the Board's regulations, solicit comment generally from the public and from businesses to be affected by the proposed regulation.



(d) Shall, before conducting a workshop pursuant to paragraph (g), determine whether the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business. If the Board determines that such an impact is likely to occur, the Board shall:

(1) Insofar as practicable, consult with owners and officers of small businesses that are likely to be affected by the proposed regulation.

(2) Consider methods to reduce the impact of the proposed regulation on small businesses.

(3) Prepare a small business impact statement and make copies of the statement available to the public at the workshop conducted pursuant to paragraph (g) and the public hearing held pursuant to paragraph (h).

(e) Shall ensure that a small business impact statement prepared pursuant to subparagraph (3) of paragraph (d) sets forth the following information:

(1) A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

(2) The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:

(I) Both adverse and beneficial effects; and

(II) Both direct and indirect effects.

(3) A description of the methods that the Board considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the Board actually used any of those methods.

(4) The estimated cost to the Board for enforcement of the proposed regulation.

(5) If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the Board expects to collect and the manner in which the money will be used.

(f) Shall afford a reasonable opportunity for all interested persons to submit data, views or arguments upon the proposed regulation, orally or in writing.

(g) Shall, before holding a public hearing pursuant to paragraph (h), conduct at least one workshop to solicit comments from interested persons on the proposed regulation. Not less than 15 days before the workshop, the



Board shall provide notice of the time and place set for the workshop:

(1) In writing to each person who has requested to be placed on a mailing list; and

(2) In any other manner reasonably calculated to provide such notice to the general public and any business that may be affected by a proposed regulation which addresses the general topics to be considered at the workshop.

(h) Shall set a time and place for an oral public hearing, but if no one appears who will be directly affected by the proposed regulation and requests an oral hearing, the Board may proceed immediately to act upon any written submissions. The Board shall consider fully all written and oral submissions respecting the proposed regulation.

(i) Shall keep, retain and make available for public inspection written minutes of each public hearing held pursuant to paragraph (h) in the manner provided in subsections 1 and 2 of NRS 241.035.

(j) May record each public hearing held pursuant to paragraph (h) and make those recordings available for public inspection in the manner provided in subsection 4 of NRS 241.035.

(k) Shall ensure that a small business which is aggrieved by a regulation adopted pursuant to this subsection may object to all or a part of the regulation by filing a petition with the Board within 90 days after the date on which the regulation was adopted. Such petition may be based on the following:

(1) The Board failed to prepare a small business impact statement as required pursuant to subparagraph (3) of paragraph (d); or

(2) The small business impact statement prepared by the Board did not consider or significantly underestimated the economic effect of the regulation on small businesses.

➤ After receiving a petition pursuant to this paragraph, the Board shall determine whether the petition has merit. If the Board determines that the petition has merit, the Board may, pursuant to this subsection, take action to amend the regulation to which the small business objected.

5. The determinations made by the Board pursuant to this section are conclusive unless it is shown that the Board acted with fraud or a gross abuse of discretion.

