

SENATE BILL NO. 256—SENATOR WASHINGTON

MARCH 12, 2007

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing preferences for bidding on public works. (BDR 28-776)

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; imposing under certain circumstances an inverse preference with respect to bids on contracts for public works which are submitted by contractors who are residents of another state; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth the requirements for bidding on public works projects and the procedures for awarding contracts for such projects. (NRS 338.1373-338.148) Existing law provides that a contractor may obtain up to a 5 percent preference in bidding on state or local governmental public works projects for which the estimated cost exceeds \$250,000 if the contractor has obtained a certificate of eligibility. To obtain a certificate of eligibility to receive a preference in bidding on public works, a contractor must demonstrate that he has paid certain sales and use taxes or governmental services taxes, or has acquired a construction firm that possesses such a certificate. (NRS 338.1389, 338.147) Existing law also requires that certificates of eligibility be given certain weight in the awarding of design-build contracts and certain contracts entered into by the Reno-Tahoe Airport Authority. (NRS 338.1727, 408.3886; Reno-Tahoe Airport Authority Act § 9.5)

This bill retains the concept of a "certificate of eligibility" but eliminates the 5 percent bidding preference given to contractors who possess such a certificate. Instead, this bill imposes an inverse preference (referred to in some jurisdictions as a reciprocal preference) with respect to bids on public works projects that are submitted by a contractor who is a resident of a state other than Nevada if that other state extends to contractors who are residents of that state a preference that it denies to contractors who are residents of Nevada. This inverse preference is similar to the inverse preference applied to state purchasing projects pursuant to NRS 333.336 and would apply to public works projects for which the estimated cost exceeds \$250,000, as well as design-build contracts and certain contracts of the Reno-Tahoe Airport Authority.



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Under the provisions of this bill, the inverse preference may not be applied against a contractor who possesses a certificate of eligibility issued by the State Contractors' Board, regardless of whether that contractor is a resident of Nevada. The inverse preference has no effect as between contractors who are both residents of Nevada.

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 ~~10~~ **11** 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 ~~10~~ **11** or limited by subsection ~~11, the lowest~~ **12, a** bid that is:

(a) Submitted by a responsive and responsible contractor who ~~is~~ **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 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; and~~

~~(b) Not more than 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who does not have, 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.]~~

(b) The lowest bid, after taking into account any applicable inverse preference imposed pursuant to subsection 10,

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

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



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1 or Indian colony, of not less than \$5,000 for each consecutive 12-
2 month period for 60 months immediately preceding the submission
3 of the affidavit from the certified public accountant;

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

25 (1) The sales and use taxes *imposed* pursuant to chapters
26 372, 374 and 377 of NRS on materials used for construction in this
27 State, including, without limitation, construction that is undertaken
28 or 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 12-
31 month period for 60 months immediately preceding the submission
32 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
35 business in this State of not less than \$5,000 for each consecutive
36 12-month period for 60 months immediately preceding the
37 submission of the affidavit from the certified public accountant; or

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

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

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



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

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. A contractor who has received a certificate of eligibility ~~{to receive a preference in bidding on public works}~~ from 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.

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

8. 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.}~~ *certificate of eligibility*. 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. If a contractor who applies to the State Contractors' Board for a certificate of eligibility ~~{to receive a 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}~~ *or hold such a certificate* for a period of 5 years after the date on which the Board becomes aware of the submission of the false information.

10. *For the purpose of awarding a contract pursuant to this section, if a contractor who submits a bid:*

(a) *Is a resident of a state other than the State of Nevada; and*

(b) *That other state, with respect to contracts for public works which are awarded by that other state or agencies of that other*



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1 *state, applies to contractors who are residents of that state a*
2 *preference which is not afforded to contractors who are residents*
3 *of the State of Nevada,*

4 *↳ the public body responsible for awarding the contract pursuant*
5 *to this section shall, insofar as is practicable, increase the*
6 *contractor's bid by an amount that is substantially equivalent to*
7 *the preference that the other state of which the person is a resident*
8 *denies to contractors who are residents of the State of Nevada. The*
9 *inverse preference described in this subsection must not be applied*
10 *against a contractor who holds a valid certificate of eligibility*
11 *issued by the State Contractors' Board pursuant to subsection 3*
12 *or 4.*

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

18 ~~[11.]~~ **12.** If a bid is submitted by two or more contractors as a
19 joint venture or by one of them as a joint venturer, the bid may be
20 deemed the best bid only if both or all of the joint venturers
21 separately meet the requirements of subsection 2.

22 ~~[12.]~~ **13.** The State Contractors' Board shall adopt regulations
23 and may assess reasonable fees relating to the ~~[certification of~~
24 ~~contractors for a preference in bidding on public works.~~
25 ~~—13.]~~ **issuance of certificates of eligibility.**

26 **14.** A person or entity who believes that a contractor
27 wrongfully holds a certificate of eligibility ~~[to receive a preference~~
28 ~~in bidding on public works]~~ may challenge the validity of the
29 certificate by filing a written objection with the public body to
30 which the contractor has submitted a bid on a contract for the
31 construction of a public work. A written objection authorized
32 pursuant to this subsection must:

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

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

40 ~~[14.]~~ **15.** If a public body receives a written objection pursuant
41 to subsection ~~[13.]~~ **14**, the public body shall determine whether the
42 objection is accompanied by the proof or substantiating evidence
43 required pursuant to paragraph (a) of that subsection. If the public
44 body determines that the objection is not accompanied by the
45 required proof or substantiating evidence, the public body shall



1 dismiss the objection and the public body or its authorized
2 representative may proceed immediately to award the contract. If
3 the public body determines that the objection is accompanied by the
4 required proof or substantiating evidence, the public body shall
5 determine whether the contractor qualifies for the certificate
6 pursuant to the provisions of this section and the public body or its
7 authorized representative may proceed to award the contract
8 accordingly.

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

10 338.147 1. Except as otherwise provided in subsection ~~[10]~~
11 **11** and NRS 338.143, 338.1442 and 338.1446, a local government
12 or its authorized representative shall award a contract for a public
13 work for which the estimated cost exceeds \$250,000 to the
14 contractor who submits the best bid.

15 2. Except as otherwise provided in subsection ~~[10]~~ **11** or
16 limited by subsection ~~[11, the lowest]~~ **12, a** bid that is:

17 (a) Submitted by a contractor who ~~[~~
18 ~~— (1) Has]~~ **has** been found to be a responsible and responsive
19 contractor by the local government or its authorized representative;
20 and

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

25 ~~— (b) Not more than 5 percent higher than the bid submitted by the~~
26 ~~lowest responsive and responsible bidder who does not have, at the~~
27 ~~time he submits the bid, a valid certificate of eligibility to receive a~~
28 ~~preference in bidding on public works issued to him by the State~~
29 ~~Contractors' Board pursuant to subsection 3 or 4.]~~

30 **(b) The lowest bid, after taking into account any applicable**
31 **inverse preference imposed pursuant to subsection 10,**

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 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 12-



1 month period for 60 months immediately preceding the submission
2 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
5 business in this State of not less than \$5,000 for each consecutive
6 12-month period for 60 months immediately preceding the
7 submission of the affidavit from the certified public accountant; or

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

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

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

15 (2) Certificate of eligibility . ~~{to receive a preference in~~
16 ~~bidding on public works.}~~

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

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

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

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

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

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

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

44 (2) Certificate of eligibility . ~~{to receive a preference in~~
45 ~~bidding on public works.}~~



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. A contractor who has received a certificate of eligibility ~~{to receive a preference in bidding on public works}~~ from 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.

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

8. 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}~~ *certificate of eligibility*. 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. If a contractor who applies to the State Contractors' Board for a certificate of eligibility ~~{to receive a 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}~~ *or hold such a certificate* for a period of 5 years after the date on which the Board becomes aware of the submission of the false information.

10. *For the purpose of awarding a contract pursuant to this section, if a contractor who submits a bid:*

(a) *Is a resident of a state other than the State of Nevada; and*

(b) *That other state, with respect to contracts for public works which are awarded by that other state or agencies of that other state, applies to contractors who are residents of that state a*



1 *preference which is not afforded to contractors who are residents*
2 *of the State of Nevada,*

3 *↳ the local government responsible for awarding the contract*
4 *pursuant to this section shall, insofar as is practicable, increase*
5 *the contractor's bid by an amount that is substantially equivalent*
6 *to the preference that the other state of which the person is a*
7 *resident denies to contractors who are residents of the State of*
8 *Nevada. The inverse preference described in this subsection must*
9 *not be applied against a contractor who holds a valid certificate of*
10 *eligibility issued by the State Contractors' Board pursuant to*
11 *subsection 3 or 4.*

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

17 ~~[11.]~~ **12.** If a bid is submitted by two or more contractors as a
18 joint venture or by one of them as a joint venturer, the bid may be
19 deemed a best bid only if both or all of the joint venturers separately
20 meet the requirements of subsection 2.

21 ~~[12.]~~ **13.** The State Contractors' Board shall adopt regulations
22 and may assess reasonable fees relating to the ~~certification of~~
23 ~~contractors for a preference in bidding on public works.~~

24 ~~—13.]~~ **issuance of certificates of eligibility.**

25 **14.** A person or entity who believes that a contractor
26 wrongfully holds a certificate of eligibility ~~[to receive a preference~~
27 ~~in bidding on public works]~~ may challenge the validity of the
28 certificate by filing a written objection with the local government to
29 which the contractor has submitted a bid on a contract for the
30 construction of a public work. A written objection authorized
31 pursuant to this subsection must:

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

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

39 ~~[14.]~~ **15.** If a local government receives a written objection
40 pursuant to subsection ~~[13.]~~ **14**, the local government shall
41 determine whether the objection is accompanied by the proof or
42 substantiating evidence required pursuant to paragraph (a) of that
43 subsection. If the local government determines that the objection is
44 not accompanied by the required proof or substantiating evidence,
45 the local government shall dismiss the objection and the local



1 government or its authorized representative may proceed
2 immediately to award the contract. If the local government
3 determines that the objection is accompanied by the required proof
4 or substantiating evidence, the local government shall determine
5 whether the contractor qualifies for the certificate pursuant to the
6 provisions of this section and the local government or its authorized
7 representative may proceed to award the contract accordingly.

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

9 338.1727 1. After selecting the finalists pursuant to NRS
10 338.1725, the public body shall provide to each finalist a request for
11 final proposals for the public work. The request for final proposals
12 must:

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

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

18 2. If one or more of the finalists selected pursuant to NRS
19 338.1725 is disqualified or withdraws, the public body may select a
20 design-build team from the remaining finalist or finalists.

21 3. Except as otherwise provided in this subsection, in assigning
22 the relative weight to each factor for selecting a design-build team
23 pursuant to subsection 1, the public body shall ~~[assign,]~~ :

24 (a) *Assign*, without limitation, ~~[a relative weight of 5 percent to~~
25 ~~the possession of a certificate of eligibility to receive a preference in~~
26 ~~bidding on public works and]~~ a relative weight of at least 30 percent
27 to the proposed cost of design and construction of the public work
28 ~~[; and~~

29 (b) *Take into account any applicable inverse preference*
30 *imposed pursuant to NRS 338.1389 or 338.147.*

31 ➡ If any federal statute or regulation precludes the granting of
32 federal assistance or reduces the amount of that assistance for a
33 particular public work because of the provisions of ~~[this subsection~~
34 ~~relating to preference in bidding on public works,]~~ *paragraph (b),*
35 those provisions ~~[of this subsection]~~ do not apply insofar as their
36 application would preclude or reduce federal assistance for that
37 public work.

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



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

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

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

9 (b) Reject all the final proposals.

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

13 (a) Partially reimburse the unsuccessful finalists if partial
14 reimbursement was provided for in the request for preliminary
15 proposals pursuant to paragraph (j) of subsection 2 of NRS
16 338.1723. The amount of reimbursement must not exceed, for each
17 unsuccessful finalist, 3 percent of the total amount to be paid to the
18 design-build team as set forth in the design-build contract.

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

24 8. A contract awarded pursuant to this section:

25 (a) Must comply with the provisions of NRS 338.020 to
26 338.090, inclusive.

27 (b) Must specify:

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

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

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

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

42 (d) Except as otherwise provided in paragraph (e), must not
43 require the design professional to defend, indemnify or hold
44 harmless the public body or the employees, officers or agents of that
45 public body from any liability, damage, loss, claim, action or



1 proceeding caused by the negligence, errors, omissions, recklessness
2 or intentional misconduct of the employees, officers and agents of
3 the public body.

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

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

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

19 **Sec. 4.** NRS 408.3883 is hereby amended to read as follows:

20 408.3883 1. The Department shall advertise for preliminary
21 proposals for the design and construction of a project by a design-
22 build team in a newspaper of general circulation in this State.

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

25 (a) A description of the proposed project;

26 (b) Separate estimates of the costs of designing and constructing
27 the project;

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

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

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

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

42 (a) The extent to which designs must be completed for both
43 preliminary and final proposals and any other requirements for the
44 design and construction of the project that the Department
45 determines to be necessary;



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

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

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

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

(d) Notice that a design-build team desiring to submit a proposal for the project must include with its proposal the information used by the Department to determine finalists among the design-build teams submitting proposals pursuant to subsection 2 of NRS 408.3885 and a description of that information;

(e) A statement that a design-build team whose prime contractor holds a certificate of eligibility ~~[to receive a preference in bidding on public works]~~ issued pursuant to NRS 338.1389 or 338.147 should submit a copy of the certificate of eligibility with its proposal; and

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

Sec. 5. 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,]~~:

(a) Assign, without limitation, ~~[a relative weight of 5 percent to the possession of a certificate of eligibility to receive a preference in bidding on public works and]~~ a relative weight of at least 30 percent for the proposed cost of design and construction of the project ~~[.]~~ ; and

(b) Take into account any applicable inverse preference imposed pursuant to NRS 338.1389 or 338.147.



1 ➡ If any federal statute or regulation precludes the granting of
2 federal assistance or reduces the amount of that assistance for a
3 particular project because of the provisions of ~~[this subsection~~
4 ~~relating to preference in bidding on public works,]~~ *paragraph (b)*,
5 those provisions ~~[of this subsection]~~ do not apply insofar as their
6 application would preclude or reduce federal assistance for that
7 project.

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

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

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

17 (b) Reject all the final proposals; or

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

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

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

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

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

42 (a) Review and ratify the selection.

43 (b) Partially reimburse the unsuccessful finalists if partial
44 reimbursement was provided for in the request for preliminary
45 proposals pursuant to paragraph (f) of subsection 3 of NRS



1 408.3883. The amount of reimbursement must not exceed, for each
2 unsuccessful finalist, 3 percent of the total amount to be paid to the
3 design-build team as set forth in the design-build contract.

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

10 7. A contract awarded pursuant to this section:

11 (a) Must comply with the provisions of NRS 338.020 to
12 338.090, inclusive; and

13 (b) Must specify:

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

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

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

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

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

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

31 **Sec. 6.** Section 9.5 of the Reno-Tahoe Airport Authority Act,
32 being chapter 369, Statutes of Nevada 2005, at page 1386, is hereby
33 amended to read as follows:

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

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

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

44 (1) Revenue bonds issued by the Authority; or



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(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 preference to a contractor who would qualify for a preference~~ *take into account any applicable inverse preference imposed* 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.



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(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



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(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



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1 regulation was adopted. Such petition may be based on the
2 following:

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

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

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

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

17 **Sec. 7.** 1. A certificate of eligibility to receive a preference
18 in bidding on public works that was issued pursuant to NRS
19 338.1389 or 338.147 before July 1, 2007, is void on and after that
20 date.

21 2. On and after July 1, 2007, a general contractor or specialty
22 contractor who wishes to receive a certificate of eligibility from the
23 State Contractors' Board must reapply to and be reapproved by the
24 Board.

25 3. If the amendatory provisions of this act cause a person's
26 certificate of eligibility to become void before it would normally
27 expire, the State Contractors' Board shall credit the person on a pro
28 rata basis toward the issuance of a new certificate of eligibility.

29 **Sec. 8.** This act becomes effective on July 1, 2007.

