

SENATE BILL NO. 268—SENATOR LEE

MARCH 18, 2011

Referred to Committee on Government Affairs

**SUMMARY**—Revises provisions relating to competing for public works by design professionals. (BDR 28-740)

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

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

AN ACT relating to public works; revising provisions relating to preferences when competing for contracts for certain public works projects; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, a contract for a public work involving a design-build team is awarded by a public body based on the application of certain criteria. A design-build team may qualify for a preference in bidding on such a contract if the contractor on the design-build team has submitted proof to the State Contractors' Board that the contractor has paid certain taxes to the State for the past 5 years. (NRS 338.1389, 338.147, 338.1727, 408.3886)

**Section 1** of this bill allows a person who holds a certificate of registration to engage in the practice of architecture or landscape architecture or who holds a license as a professional engineer or professional land surveyor to qualify for a preference when competing for public works if the person has submitted proof to the appropriate licensing board that the person has paid certain taxes to the State for the past 5 years. **Sections 4 and 7** of this bill allow a design-build team to receive a preference in selection as a finalist for a public work or a project for the construction, reconstruction or improvement of a highway if both the contractor and the design professionals on the design-build team possess a certificate of eligibility to receive their respective preferences. **Sections 5 and 8** of this bill allow a design-build team that has been selected as a finalist for a public work or a project for the construction, reconstruction or improvement of a highway to receive a preference in selection for a contract only if both the contractor and the design professionals on the design-build team possess a certificate of eligibility to receive their respective preferences. **Section 9** of this bill allows an architect, professional engineer or professional land surveyor to receive a preference in selection for certain public works if the architect, professional engineer or professional land surveyor possesses a certificate of eligibility to receive a preference when competing for public works.



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Existing law provides that a public body which selects a design-build team as a finalist in the selection process for a contract for a public work must make public specified information concerning the design-build team and its selection. (NRS 338.1725) **Section 7** of this bill adds a similar requirement for the Department of Transportation to make public specified information concerning a design-build team and the selection of that design-build team as a finalist in the selection process for a contract for a project for the construction, reconstruction or improvement of a highway. **Section 3** of this bill requires that a public body must, after selecting but before entering into a contract with a design professional who is not a member of a design-build team, transmit certain information concerning the selection of the design profession to the licensing board that regulates the design professional. That licensing board must post the information on its Internet website.

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

**Section 1.** Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. The State Board of Architecture, Interior Design and Residential Design shall issue a certificate of eligibility to receive a preference when competing for public works to a person who holds a certificate of registration to engage in the practice of architecture pursuant to the provisions of chapter 623 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the person has, while holding a certificate of registration to engage in the practice of architecture in this State:*

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

*(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for design or construction in this State, including, without limitation, design or 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 or her 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*



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(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating business that engages in the practice of architecture that:

(1) Satisfies the requirements of NRS 623.350; and

(2) Possesses a certificate of eligibility to receive a preference when competing for public works.

2. The State Board of Landscape Architecture shall issue a certificate of eligibility to receive a preference when competing for public works to a person who holds a certificate of registration to engage in the practice of landscape architecture pursuant to the provisions of chapter 623A of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the person has, while holding a certificate of registration to engage in the practice of landscape architecture in this State:

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

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for design or construction in this State, including, without limitation, design or 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 or her 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 business that engages in the practice of landscape architecture that:

(1) Satisfies the requirements of NRS 623A.250; and

(2) Possesses a certificate of eligibility to receive a preference when competing for public works.

3. The State Board of Professional Engineers and Land Surveyors shall issue a certificate of eligibility to receive a preference when competing for public works to a professional engineer or professional land surveyor who is licensed pursuant to the provisions of chapter 625 of NRS and submits to the Board an



1 *affidavit from a certified public accountant setting forth that the*  
2 *professional engineer or professional land surveyor has, while*  
3 *licensed as a professional engineer or professional land surveyor*  
4 *in this State:*

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

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

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

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

23 (b) *Acquired, by purchase, inheritance, gift or transfer*  
24 *through a stock option plan, all the assets and liabilities of a*  
25 *viable, operating business that engages in engineering or land*  
26 *surveying that:*

27 (1) *Satisfies the requirements of NRS 625.407; and*

28 (2) *Possesses a certificate of eligibility to receive a*  
29 *preference when competing for public works.*

30 4. *For the purposes of complying with the requirements set*  
31 *forth in paragraph (a) of subsection 1, paragraph (a) of subsection*  
32 *2 and paragraph (a) of subsection 3, a person shall be deemed to*  
33 *have paid:*

34 (a) *Sales and use taxes and governmental services taxes paid*  
35 *in this State by an affiliate or parent company of the person, if the*  
36 *affiliate or parent company also satisfies the requirements of NRS*  
37 *623.350, 623A.250 or 625.407, as applicable; and*

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

41 5. *A design professional who has received a certificate of*  
42 *eligibility to receive a preference when competing for public works*  
43 *pursuant to subsection 1, 2 or 3 must, at the time for the renewal*  
44 *of his or her professional license or certificate of registration, as*  
45 *applicable, pursuant to chapter 623, 623A or 625 of NRS, submit*



1 *to the applicable licensing board an affidavit from a certified*  
2 *public accountant setting forth that the design professional has,*  
3 *during the immediately preceding 12 months, paid the taxes*  
4 *required pursuant to paragraph (a) of subsection 1, paragraph (a)*  
5 *of subsection 2 or paragraph (a) of subsection 3, as applicable, to*  
6 *maintain eligibility to hold such a certificate.*

7 6. *A design professional who fails to submit an affidavit to*  
8 *the applicable licensing board pursuant to subsection 5 ceases to*  
9 *be eligible to receive a preference when competing for public*  
10 *works unless the design professional reapplies for and receives a*  
11 *certificate of eligibility pursuant to subsection 1, 2 or 3, as*  
12 *applicable.*

13 7. *If a design professional holds more than one license or*  
14 *certificate of registration, the design professional must submit a*  
15 *separate application for each license or certificate of registration*  
16 *pursuant to which the design professional wishes to qualify for a*  
17 *preference when competing for public works. Upon issuance, the*  
18 *certificate of eligibility to receive a preference when competing for*  
19 *public works becomes part of the design professional's license or*  
20 *certificate of registration for which the design professional*  
21 *submitted the application.*

22 8. *If a design professional who applies to a licensing board*  
23 *for a certificate of eligibility to receive a preference when*  
24 *competing for public works pursuant to subsection 1, 2 or 3*  
25 *submits false information to the licensing board regarding the*  
26 *required payment of taxes, the design professional is not eligible to*  
27 *receive a preference when competing for public works for a period*  
28 *of 5 years after the date on which the licensing board becomes*  
29 *aware of the submission of the false information.*

30 9. *The State Board of Architecture, Interior Design and*  
31 *Residential Design, the State Board of Landscape Architecture*  
32 *and the State Board of Professional Engineers and Land*  
33 *Surveyors shall adopt regulations and may assess reasonable fees*  
34 *relating to their respective certification of design professionals for*  
35 *a preference when competing for public works.*

36 10. *A person or entity who believes that a design professional*  
37 *wrongfully holds a certificate of eligibility to receive a preference*  
38 *when competing for public works may challenge the validity of the*  
39 *certificate by filing a written objection with the public body which*  
40 *selected, for the purpose of providing services for a public work,*  
41 *the design professional who holds the certificate. A written*  
42 *objection authorized pursuant to this subsection must:*

43 (a) *Set forth proof or substantiating evidence to support the*  
44 *belief of the person or entity that the design professional*



1 *wrongfully holds a certificate of eligibility to receive a preference*  
2 *when competing for public works; and*

3 *(b) Be filed with the public body not later than 3 business days*  
4 *after:*

5 *(1) The date on which the public body makes available to*  
6 *the public pursuant to subsection 3 of NRS 338.1725 the*  
7 *information required by that subsection, if the design-build team*  
8 *of which the design profession who holds the certificate is a part*  
9 *was selected as a finalist pursuant to NRS 338.1725;*

10 *(2) The date on which the Department of Transportation*  
11 *makes available to the public pursuant to subsection 3 of NRS*  
12 *408.3885 the information required by that subsection, if the*  
13 *design-build team of which the design professional who holds the*  
14 *certificate is a part was selected as a finalist pursuant to NRS*  
15 *408.3885; or*

16 *(3) The date on which the licensing board which issued the*  
17 *certificate to the design professional posted on its Internet website*  
18 *the information required by subsection 3 of NRS 338.155, if the*  
19 *design professional is identified in that information as being*  
20 *selected for a contract governed by NRS 338.155.*

21 *11. If a public body receives a written objection pursuant to*  
22 *subsection 10, the public body shall determine whether the*  
23 *objection is accompanied by the proof or substantiating evidence*  
24 *required pursuant to paragraph (a) of that subsection. If the*  
25 *public body determines that the objection is not accompanied by*  
26 *the required proof or substantiating evidence, the public body*  
27 *shall dismiss the objection and the public body or its authorized*  
28 *representative may proceed immediately to award the contract. If*  
29 *the public body determines that the objection is accompanied by*  
30 *the required proof or substantiating evidence, the public body*  
31 *shall determine whether the design professional qualifies for the*  
32 *certificate pursuant to the provisions of this section and the public*  
33 *body or its authorized representative may proceed to award the*  
34 *contract accordingly.*

35 **Sec. 2.** NRS 338.1373 is hereby amended to read as follows:

36 338.1373 1. A local government or its authorized  
37 representative shall award a contract for a public work pursuant to  
38 the provisions of:

39 (a) NRS 338.1377 to 338.139, inclusive;

40 (b) NRS 338.143 to 338.148, inclusive;

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

42 (d) NRS 338.1711 to 338.1727, inclusive **H**, *and section 1 of*  
43 *this act.*

44 2. The provisions of NRS 338.1375 to 338.1382, inclusive,  
45 338.1386, 338.13862, 338.13864, 338.139, 338.142, 338.169 to



1 338.1699, inclusive, and 338.1711 to 338.1727, inclusive, do not  
2 apply with respect to contracts for the construction, reconstruction,  
3 improvement and maintenance of highways that are awarded by the  
4 Department of Transportation pursuant to NRS 408.313 to 408.433,  
5 inclusive.

6 **Sec. 3.** NRS 338.155 is hereby amended to read as follows:

7 338.155 1. If a public body enters into a contract with a  
8 design professional who is not a member of a design-build team, for  
9 the provision of services in connection with a public work, the  
10 contract:

11 (a) Must set forth:

12 (1) The specific period within which the public body must  
13 pay the design professional.

14 (2) The specific period and manner in which the public body  
15 may dispute a payment or portion thereof that the design  
16 professional alleges is due.

17 (3) The terms of any penalty that will be imposed upon the  
18 public body if the public body fails to pay the design professional  
19 within the specific period set forth in the contract pursuant to  
20 subparagraph (1).

21 (4) That the prevailing party in an action to enforce the  
22 contract is entitled to reasonable attorney's fees and costs.

23 (b) May set forth the terms of any discount that the public body  
24 will receive if the public body pays the design professional within  
25 the specific period set forth in the contract pursuant to subparagraph  
26 (1) of paragraph (a).

27 (c) May set forth the terms by which the design professional  
28 agrees to name the public body, at the cost of the public body, as an  
29 additional insured in an insurance policy held by the design  
30 professional, if the policy allows such an addition.

31 (d) Must not require the design professional to defend,  
32 indemnify or hold harmless the public body or the employees,  
33 officers or agents of that public body from any liability, damage,  
34 loss, claim, action or proceeding caused by the negligence, errors,  
35 omissions, recklessness or intentional misconduct of the employees,  
36 officers or agents of the public body.

37 (e) Except as otherwise provided in this paragraph, may require  
38 the design professional to defend, indemnify and hold harmless the  
39 public body, and the employees, officers and agents of the public  
40 body from any liabilities, damages, losses, claims, actions or  
41 proceedings, including, without limitation, reasonable attorneys'  
42 fees and costs, to the extent that such liabilities, damages, losses,  
43 claims, actions or proceedings are caused by the negligence, errors,  
44 omissions, recklessness or intentional misconduct of the design  
45 professional or the employees or agents of the design professional in





1 the performance of the contract. If the insurer by which the design  
2 professional is insured against professional liability does not so  
3 defend the public body and the employees, officers and agents of the  
4 public body and the design professional is adjudicated to be liable  
5 by a trier of fact, the trier of fact shall award reasonable attorney's  
6 fees and costs to be paid to the public body by the design  
7 professional in an amount which is proportionate to the liability of  
8 the design professional.

9 2. Any provision of a contract entered into by a public body  
10 and a design professional who is not a member of a design-build  
11 team that conflicts with the provisions of paragraph (d) or (e) of  
12 subsection 1 is void.

13 3. *A public body shall not enter into a contract with a design  
14 professional who is not a member of a design-build team for the  
15 provision of services in connection with a public work until 3 days  
16 after the public body has transmitted the information relating to  
17 the selection of the design professional to the licensing board that  
18 regulates the design professional, including, without limitation,  
19 the name of the public body, the name of the design professional,  
20 whether the design professional possesses a certificate of eligibility  
21 to receive a preference when competing for public works and a  
22 brief description of the project and services the design professional  
23 was selected for, and the licensing board has posted such  
24 information on its Internet website. A licensing board shall post  
25 any information received pursuant to this subsection within 1  
26 business day after receiving such information.*

27 4. As used in this section, "agents" means those persons who  
28 are directly involved in and acting on behalf of the public body or  
29 the design professional, as applicable, in furtherance of the contract  
30 or the public work to which the contract pertains.

31 **Sec. 4.** NRS 338.1725 is hereby amended to read as follows:

32 338.1725 1. The public body shall select at least two but not  
33 more than four finalists from among the design-build teams that  
34 submitted preliminary proposals. If the public body does not receive  
35 at least two preliminary proposals from design-build teams that the  
36 public body determines to be qualified pursuant to this section and  
37 NRS 338.1721, the public body may not contract with a design-  
38 build team for the design and construction of the public work.

39 2. The public body shall select finalists pursuant to subsection  
40 1 by:

41 (a) Verifying that each design-build team which submitted a  
42 preliminary proposal satisfies the requirements of NRS 338.1721;

43 ~~{and}~~





(b) Conducting an evaluation of the qualifications of each design-build team that submitted a preliminary proposal, including, without limitation, an evaluation of:

(1) The professional qualifications and experience of the members of the design-build team;

(2) The performance history of the members of the design-build team concerning other recent, similar projects completed by those members, if any;

(3) The safety programs established and the safety records accumulated by the members of the design-build team; and

(4) The proposed plan of the design-build team to manage the design and construction of the public work that sets forth in detail the ability of the design-build team to design and construct the public work **H**; and

*(c) Except as otherwise provided in this paragraph, assigning, without limitation, a relative weight of 5 percent to the possession of both a certificate of eligibility to receive a preference in bidding on public works by all contractors on the design-build team and a certificate of eligibility to receive a preference when competing for public works by all design professionals on the design-build team. 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 paragraph relating to a preference in bidding on public works or a preference when competing for public works, those provisions of this paragraph do not apply insofar as their application would preclude or reduce federal assistance for that public work.*

3. After the selection of finalists pursuant to this section, the public body shall make available to the public the results of the evaluations of preliminary proposals conducted pursuant to paragraph (b) of subsection 2 and the rankings of the design-build teams who submitted preliminary proposals.

**Sec. 5.** NRS 338.1727 is hereby amended to read as follows:

338.1727 1. After selecting the finalists pursuant to NRS 338.1725, the public body shall provide to each finalist a request for final proposals for the public work. The request for final proposals 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 percent to the possession of *both* a certificate of eligibility to receive a preference in bidding on public works *by all contractors on the design-build team and a certificate of eligibility to receive a preference when competing for public works by all design professionals on the design-build team*, and a relative weight of 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 *a* preference in bidding on public works ~~or~~ *or a preference when competing for 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



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

3 8. A contract awarded pursuant to this section:

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

6 (b) Must specify:

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

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

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

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

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

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

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

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



**Sec. 6.** NRS 408.3883 is hereby amended to read as follows:

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

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

(a) A description of the proposed project;

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

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

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

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

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

(a) The extent to which designs must be completed for both preliminary and final proposals and any other requirements for the design and construction of the project that the Department 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 *and whose members who hold a certificate of registration to practice*



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1 *architecture or a license as a professional engineer and who hold*  
2 *a certificate of eligibility to receive a preference when competing*  
3 *for public works issued pursuant to section 1 of this act* should  
4 submit a copy of ~~the~~ *each* certificate of eligibility with its  
5 proposal; and

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

12 **Sec. 7.** NRS 408.3885 is hereby amended to read as follows:

13 408.3885 1. The Department shall select at least three but not  
14 more than five finalists from among the design-build teams that  
15 submitted preliminary proposals. If the Department does not receive  
16 at least three preliminary proposals from design-build teams that the  
17 Department determines to be qualified pursuant to this section and  
18 NRS 408.3884, the Department may not contract with a design-  
19 build team for the design and construction of the project.

20 2. The Department shall select finalists pursuant to subsection  
21 1 by:

22 (a) Verifying that each design-build team which submitted a  
23 preliminary proposal satisfies the requirements of NRS 408.3884;  
24 ~~and~~

25 (b) Conducting an evaluation of the qualifications of each  
26 design-build team that submitted a preliminary proposal, including,  
27 without limitation, an evaluation of:

28 (1) The professional qualifications and experience of the  
29 members of the design-build team;

30 (2) The performance history of the members of the design-  
31 build team concerning other recent, similar projects completed by  
32 those members, if any;

33 (3) The safety programs established and the safety records  
34 accumulated by the members of the design-build team;

35 (4) The proposed plan of the design-build team to manage  
36 the design and construction of the project that sets forth in detail the  
37 ability of the design-build team to design and construct the project;  
38 and

39 (5) The degree to which the preliminary proposal is  
40 responsive to the requirements of the Department for the submittal  
41 of a preliminary proposal ~~and~~ *and*

42 *(c) Except as otherwise provided in this paragraph, assigning,*  
43 *without limitation, a relative weight of 5 percent to the possession*  
44 *of both a certificate of eligibility to receive a preference in bidding*  
45 *on public works by the prime contractor on the design-build team*



1 *and a certificate of eligibility to receive a preference when*  
2 *competing for public works by all persons who hold a certificate of*  
3 *registration to practice architecture or a license as a professional*  
4 *engineer on the design-build team. If any federal statute or*  
5 *regulation precludes the granting of federal assistance or reduces*  
6 *the amount of that assistance for a particular public work because*  
7 *of the provisions of this paragraph relating to a preference in*  
8 *bidding on public works or a preference when competing for*  
9 *public works, those provisions of this paragraph do not apply*  
10 *insofar as their application would preclude or reduce federal*  
11 *assistance for that public work.*

12 3. *After the selection of finalists pursuant to this section, the*  
13 *Department shall make available to the public the results of the*  
14 *evaluations of preliminary proposals conducted pursuant to*  
15 *paragraph (b) of subsection 2 and the rankings of the design-build*  
16 *teams who submitted preliminary proposals.*

17 **Sec. 8.** NRS 408.3886 is hereby amended to read as follows:

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

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

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

26 2. Except as otherwise provided in this subsection, in assigning  
27 the relative weight to each factor for selecting a design-build team  
28 pursuant to subsection 1, the Department shall assign, without  
29 limitation, a relative weight of 5 percent to the possession of *both* a  
30 certificate of eligibility to receive a preference in bidding on public  
31 works *by the prime contractor on the design-build team and a*  
32 *certificate of eligibility to receive a preference when competing for*  
33 *public works by all persons who hold a certificate of registration to*  
34 *practice architecture or a license as a professional engineer on the*  
35 *design-build team*, and a relative weight of at least 30 percent for  
36 the proposed cost of design and construction of the project. If any  
37 federal statute or regulation precludes the granting of federal  
38 assistance or reduces the amount of that assistance for a particular  
39 project because of the provisions of this subsection relating to *a*  
40 *preference in bidding on public works* ~~or~~ *or a preference when*  
41 *competing for public works*, those provisions of this subsection do  
42 not apply insofar as their application would preclude or reduce  
43 federal assistance for that project.

44 3. A final proposal submitted by a design-build team pursuant  
45 to this section must be prepared thoroughly, be responsive to the



1 criteria that the Department will use to select a design-build team to  
2 design and construct the project described in subsection 1 and  
3 comply with the provisions of NRS 338.141.

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

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

8 (b) Reject all the final proposals; or

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

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

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

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

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

33 (a) Review and ratify the selection.

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

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





1       7. A contract awarded pursuant to this section:  
2       (a) Must comply with the provisions of NRS 338.020 to  
3       338.090, inclusive; and

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

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

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

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

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

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

22       **Sec. 9.** NRS 625.530 is hereby amended to read as follows:

23       625.530 Except as otherwise provided in NRS 338.1711 to  
24       338.1727, inclusive, *and section 1 of this act* and 408.3875 to  
25       408.3887, inclusive:

26       1. The State of Nevada or any of its political subdivisions,  
27       including a county, city or town, shall not engage in any public  
28       work requiring the practice of professional engineering or land  
29       surveying, unless the maps, plans, specifications, reports and  
30       estimates have been prepared by, and the work executed under the  
31       supervision of, a professional engineer, professional land surveyor  
32       or registered architect.

33       2. The provisions of this section do not:

34       (a) Apply to any public work wherein the expenditure for the  
35       complete project of which the work is a part does not exceed  
36       \$35,000.

37       (b) Include any maintenance work undertaken by the State of  
38       Nevada or its political subdivisions.

39       (c) Authorize a professional engineer, registered architect or  
40       professional land surveyor to practice in violation of any of the  
41       provisions of this chapter or chapter 623 of NRS.

42       (d) Require the services of an architect registered pursuant to the  
43       provisions of chapter 623 of NRS for the erection of buildings or  
44       structures manufactured in an industrial plant, if those buildings or



1 structures meet the requirements of local building codes of the  
2 jurisdiction in which they are being erected.

3 3. The selection of a professional engineer, professional land  
4 surveyor or registered architect to perform services pursuant to  
5 subsection 1 must be made on the basis of the competence and  
6 qualifications of the engineer, land surveyor or architect for the type  
7 of services to be performed and not on the basis of competitive fees.  
8 If, after selection of the engineer, land surveyor or architect, an  
9 agreement upon a fair and reasonable fee cannot be reached with  
10 him or her, the public agency may terminate negotiations and select  
11 another engineer, land surveyor or architect. *Except as otherwise  
12 provided in this subsection, in assigning the relative weight to  
13 each factor for selecting a professional engineer, professional  
14 land surveyor or registered architect pursuant to this subsection,  
15 the public agency shall assign, without limitation, a relative weight  
16 of 5 percent to the possession of a certificate of eligibility to  
17 receive a preference when competing for public works. If any  
18 federal statute or regulation precludes the granting of federal  
19 assistance or reduces the amount of that assistance for a  
20 particular public work because of the provisions of this subsection  
21 relating to a preference when competing for public works, those  
22 provisions of this subsection do not apply insofar as their  
23 application would preclude or reduce federal assistance for that  
24 public work.*

25 **Sec. 10.** The State Board of Architecture, Interior Design and  
26 Residential Design, the State Board of Landscape Architecture and  
27 the State Board of Professional Engineers and Land Surveyors shall,  
28 before October 1, 2011, adopt any regulations which are required by  
29 or necessary to carry out the provisions of this act.

30 **Sec. 11.** This act becomes effective:

31 1. Upon passage and approval for the purposes of adopting  
32 regulations and performing any other preparatory administrative  
33 tasks that are necessary to carry out the provisions of this act; and

34 2. On October 1, 2011, for all other purposes.

