

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.

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 the excise tax imposed upon an employer by NRS 363B.110 of not less than \$1,500 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; 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 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



1 *person has, while holding a certificate of registration to engage in*
2 *the practice of landscape architecture in this State:*

3 *(a) Paid directly, on his or her own behalf the excise tax*
4 *imposed upon an employer by NRS 363B.110 of not less than*
5 *\$1,500 for each consecutive 12-month period for 60 months*
6 *immediately preceding the submission of the affidavit from the*
7 *certified public accountant; or*

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

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

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

15 *3. The State Board of Professional Engineers and Land*
16 *Surveyors shall issue a certificate of eligibility to receive a*
17 *preference when competing for public works to a professional*
18 *engineer or professional land surveyor who is licensed pursuant to*
19 *the provisions of chapter 625 of NRS and submits to the Board an*
20 *affidavit from a certified public accountant setting forth that the*
21 *professional engineer or professional land surveyor has, while*
22 *licensed as a professional engineer or professional land surveyor*
23 *in this State:*

24 *(a) Paid directly, on his or her own behalf the excise tax*
25 *imposed upon an employer by NRS 363B.110 of not less than*
26 *\$1,500 for each consecutive 12-month period for 60 months*
27 *immediately preceding the submission of the affidavit from the*
28 *certified public accountant; or*

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

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

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

36 *4. For the purposes of complying with the requirements set*
37 *forth in paragraph (a) of subsection 1, paragraph (a) of subsection*
38 *2 and paragraph (a) of subsection 3, a person shall be deemed to*
39 *have paid:*

40 *(a) The excise tax imposed upon an employer by NRS*
41 *363B.110 by an affiliate or parent company of the person, if the*
42 *affiliate or parent company also satisfies the requirements of NRS*
43 *623.350, 623A.250 or 625.407, as applicable; and*

44 *(b) The excise tax imposed upon an employer by NRS*
45 *363B.110 by a joint venture in which the person is a participant, in*



1 *proportion to the amount of interest the person has in the joint*
2 *venture.*

3 5. *A design professional who has received a certificate of*
4 *eligibility to receive a preference when competing for public works*
5 *pursuant to subsection 1, 2 or 3 must, at the time for the renewal*
6 *of his or her professional license or certificate of registration, as*
7 *applicable, pursuant to chapter 623, 623A or 625 of NRS, submit*
8 *to the applicable licensing board an affidavit from a certified*
9 *public accountant setting forth that the design professional has,*
10 *during the immediately preceding 12 months, paid the taxes*
11 *required pursuant to paragraph (a) of subsection 1, paragraph (a)*
12 *of subsection 2 or paragraph (a) of subsection 3, as applicable, to*
13 *maintain eligibility to hold such a certificate.*

14 6. *A design professional who fails to submit an affidavit to*
15 *the applicable licensing board pursuant to subsection 5 ceases to*
16 *be eligible to receive a preference when competing for public*
17 *works unless the design professional reapplies for and receives a*
18 *certificate of eligibility pursuant to subsection 1, 2 or 3, as*
19 *applicable.*

20 7. *If a design professional holds more than one license or*
21 *certificate of registration, the design professional must submit a*
22 *separate application for each license or certificate of registration*
23 *pursuant to which the design professional wishes to qualify for a*
24 *preference when competing for public works. Upon issuance, the*
25 *certificate of eligibility to receive a preference when competing for*
26 *public works becomes part of the design professional's license or*
27 *certificate of registration for which the design professional*
28 *submitted the application.*

29 8. *If a design professional who applies to a licensing board*
30 *for a certificate of eligibility to receive a preference when*
31 *competing for public works pursuant to subsection 1, 2 or 3*
32 *submits false information to the licensing board regarding the*
33 *required payment of taxes, the design professional is not eligible to*
34 *receive a preference when competing for public works for a period*
35 *of 5 years after the date on which the licensing board becomes*
36 *aware of the submission of the false information.*

37 9. *The State Board of Architecture, Interior Design and*
38 *Residential Design, the State Board of Landscape Architecture*
39 *and the State Board of Professional Engineers and Land*
40 *Surveyors shall adopt regulations and may assess reasonable fees*
41 *relating to their respective certification of design professionals for*
42 *a preference when competing for public works.*

43 10. *A person or entity who believes that a design professional*
44 *wrongfully holds a certificate of eligibility to receive a preference*
45 *when competing for public works may challenge the validity of the*



1 *certificate by filing a written objection with the public body which*
2 *selected, for the purpose of providing services for a public work,*
3 *the design professional who holds the certificate. A written*
4 *objection authorized pursuant to this subsection must:*

5 *(a) Set forth proof or substantiating evidence to support the*
6 *belief of the person or entity that the design professional*
7 *wrongfully holds a certificate of eligibility to receive a preference*
8 *when competing for public works; and*

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

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

16 *(2) The date on which the Department of Transportation*
17 *makes available to the public pursuant to subsection 3 of NRS*
18 *408.3885 the information required by that subsection, if the*
19 *design-build team of which the design professional who holds the*
20 *certificate is a part was selected as a finalist pursuant to NRS*
21 *408.3885; or*

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

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

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

42 338.1373 1. A local government or its authorized
43 representative shall award a contract for a public work pursuant to
44 the provisions of:

45 (a) NRS 338.1377 to 338.139, inclusive;



- 1 (b) NRS 338.143 to 338.148, inclusive;
2 (c) NRS 338.169 to 338.1699, inclusive; or
3 (d) NRS 338.1711 to 338.1727, inclusive **H**, and section 1 of
4 *this act*.

5 2. The provisions of NRS 338.1375 to 338.1382, inclusive,
6 338.1386, 338.13862, 338.13864, 338.139, 338.142, 338.169 to
7 338.1699, inclusive, and 338.1711 to 338.1727, inclusive, do not
8 apply with respect to contracts for the construction, reconstruction,
9 improvement and maintenance of highways that are awarded by the
10 Department of Transportation pursuant to NRS 408.313 to 408.433,
11 inclusive.

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

13 338.155 1. If a public body enters into a contract with a
14 design professional who is not a member of a design-build team, for
15 the provision of services in connection with a public work, the
16 contract:

17 (a) Must set forth:

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

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

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

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

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

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

37 (d) Must not require the design professional to defend,
38 indemnify or hold harmless the public body or the employees,
39 officers or agents of that public body from any liability, damage,
40 loss, claim, action or proceeding caused by the negligence, errors,
41 omissions, recklessness or intentional misconduct of the employees,
42 officers or agents of the public body.

43 (e) Except as otherwise provided in this paragraph, may require
44 the design professional to defend, indemnify and hold harmless the
45 public body, and the employees, officers and agents of the public



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1 body from any liabilities, damages, losses, claims, actions or
2 proceedings, including, without limitation, reasonable attorneys'
3 fees and costs, to the extent that such liabilities, damages, losses,
4 claims, actions or proceedings are caused by the negligence, errors,
5 omissions, recklessness or intentional misconduct of the design
6 professional or the employees or agents of the design professional in
7 the performance of the contract. If the insurer by which the design
8 professional is insured against professional liability does not so
9 defend the public body and the employees, officers and agents of the
10 public body and the design professional is adjudicated to be liable
11 by a trier of fact, the trier of fact shall award reasonable attorney's
12 fees and costs to be paid to the public body by the design
13 professional in an amount which is proportionate to the liability of
14 the design professional.

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

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

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

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

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



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

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

~~{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.}~~ *identify which of the finalists, if any, received an assignment of 5 percent pursuant to paragraph (c) of subsection 2.*

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

8. A contract awarded pursuant to this section:

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

(b) Must specify:

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

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

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

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

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

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



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

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

Sec. 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



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

4 (e) A statement that a design-build team whose prime contractor
5 holds a certificate of eligibility to receive a preference in bidding on
6 public works issued pursuant to NRS 338.1389 or 338.147 *and*
7 *whose members who hold a certificate of registration to practice*
8 *architecture or a license as a professional engineer and who hold*
9 *a certificate of eligibility to receive a preference when competing*
10 *for public works issued pursuant to section 1 of this act* should
11 submit a copy of ~~{the}~~ *each* certificate of eligibility with its
12 proposal; and

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

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

20 408.3885 1. The Department shall select at least three but not
21 more than five finalists from among the design-build teams that
22 submitted preliminary proposals. If the Department does not receive
23 at least three preliminary proposals from design-build teams that the
24 Department determines to be qualified pursuant to this section and
25 NRS 408.3884, the Department may not contract with a design-
26 build team for the design and construction of the project.

27 2. The Department shall select finalists pursuant to subsection
28 1 by:

29 (a) Verifying that each design-build team which submitted a
30 preliminary proposal satisfies the requirements of NRS 408.3884;
31 ~~{and}~~

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

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

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

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

42 (4) The proposed plan of the design-build team to manage
43 the design and construction of the project that sets forth in detail the
44 ability of the design-build team to design and construct the project;
45 and



(5) The degree to which the preliminary proposal is responsive to the requirements of the Department for the submittal of a preliminary proposal ~~is~~; 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 the prime contractor on the design-build team and a certificate of eligibility to receive a preference when competing for public works by all persons who hold a certificate of registration to practice architecture or a license as a professional engineer 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 Department shall make available to the public the results of the evaluations of preliminary proposals conducted pursuant to paragraph (b) of subsection 2 and identify which of the finalists, if any, received an assignment of 5 percent pursuant to paragraph (c) of subsection 2.

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

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

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

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

2. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the Department shall assign, without limitation, a relative weight of 5 percent to the possession of *both* a certificate of eligibility to receive a preference in bidding on public works *by the prime contractor on the design-build team and a certificate of eligibility to receive a preference when competing for public works by all persons who hold a certificate of registration to practice architecture or a license as a professional engineer on the design-build team*, and a relative weight of at least 30 percent for the proposed cost of design and construction of the project. If any federal statute or regulation precludes the granting of federal



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1 assistance or reduces the amount of that assistance for a particular
2 project because of the provisions of this subsection relating to *a*
3 preference in bidding on public works ~~§~~ *or a preference when*
4 *competing for public works*, those provisions of this subsection do
5 not apply insofar as their application would preclude or reduce
6 federal assistance for that project.

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

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

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

16 (b) Reject all the final proposals; or

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

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

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

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

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

41 (a) Review and ratify the selection.

42 (b) Partially reimburse the unsuccessful finalists if partial
43 reimbursement was provided for in the request for preliminary
44 proposals pursuant to paragraph (f) of subsection 3 of NRS
45 408.3883. The amount of reimbursement must not exceed, for each



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1 unsuccessful finalist, 3 percent of the total amount to be paid to the
2 design-build team as set forth in the design-build contract.

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

9 7. A contract awarded pursuant to this section:

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

12 (b) Must specify:

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

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

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

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

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

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

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

31 625.530 Except as otherwise provided in NRS 338.1711 to
32 338.1727, inclusive, *and section 1 of this act* and 408.3875 to
33 408.3887, inclusive:

34 1. The State of Nevada or any of its political subdivisions,
35 including a county, city or town, shall not engage in any public
36 work requiring the practice of professional engineering or land
37 surveying, unless the maps, plans, specifications, reports and
38 estimates have been prepared by, and the work executed under the
39 supervision of, a professional engineer, professional land surveyor
40 or registered architect.

41 2. The provisions of this section do not:

42 (a) Apply to any public work wherein the expenditure for the
43 complete project of which the work is a part does not exceed
44 \$35,000.



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

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

(d) Require the services of an architect registered pursuant to the provisions of chapter 623 of NRS for the erection of buildings or structures manufactured in an industrial plant, if those buildings or structures meet the requirements of local building codes of the jurisdiction in which they are being erected.

3. The selection of a professional engineer, professional land surveyor or registered architect to perform services pursuant to subsection 1 must be made on the basis of the competence and qualifications of the engineer, land surveyor or architect for the type of services to be performed and not on the basis of competitive fees. If, after selection of the engineer, land surveyor or architect, an agreement upon a fair and reasonable fee cannot be reached with him or her, the public agency may terminate negotiations and select another engineer, land surveyor or architect. *Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a professional engineer, professional land surveyor or registered architect pursuant to this subsection, the public agency shall assign, without limitation, a relative weight of 5 percent to the possession of a certificate of eligibility to receive a preference when competing for public works. 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 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.*

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

Sec. 11. This act becomes effective:

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

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

