

SENATE BILL NO. 401—SELECT COMMITTEE ON
ECONOMIC GROWTH AND EMPLOYMENT

MARCH 28, 2011

Referred to Select Committee on Economic
Growth and Employment

SUMMARY—Revises provisions relating to public works.
(BDR 28-1142)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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; requiring certain public bodies to award a contract for certain public works based on the bid that provides the best value to the public body; requiring contracts for certain public works to be awarded individually; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, most contracts for public works must be awarded to the
2 lowest responsive and responsible bidder. (NRS 338.1385, 338.1389, 338.143,
3 338.147) Under **section 2** of this bill, a contract for a public work that is the new
4 construction, repair or reconstruction of a public building must instead go to the
5 contractor whose bid provides the best value to the public body awarding the
6 contract.

7 Under **section 3** of this bill, a contract for a public work relating to the
8 generation of renewable energy must be awarded individually and not in
9 conjunction with a contract for any other public work.

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

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

3 **Sec. 2. 1. *A public body or its authorized representative***
4 ***shall award a contract for a public work which is the new***



1 *construction, repair or reconstruction of a public building to the*
2 *contractor whose bid provides the best value to the public body.*

3 2. As used in this section, "best value" means the greatest
4 possible economy consistent with the quality of new construction,
5 repair or reconstruction.

6 **Sec. 3.** 1. A contract for a public work relating to the
7 generation of renewable energy must be awarded individually and
8 not in conjunction with a contract for any other public work.

9 2. As used in this section, "renewable energy" has the
10 meaning ascribed to it in NRS 338.1908.

11 **Sec. 4.** NRS 338.1373 is hereby amended to read as follows:

12 338.1373 1. A local government or its authorized
13 representative shall award a contract for a public work pursuant to
14 the provisions of ~~§~~ *section 2 of this act and:*

- 15 (a) NRS 338.1377 to 338.139, inclusive;
16 (b) NRS 338.143 to 338.148, inclusive;
17 (c) NRS 338.169 to 338.1699, inclusive; or
18 (d) NRS 338.1711 to 338.1727, inclusive.

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

26 **Sec. 5.** NRS 338.1385 is hereby amended to read as follows:

27 338.1385 1. Except as otherwise provided in subsection 9
28 and NRS 338.1906 and 338.1907, this State, or a governing body or
29 its authorized representative that awards a contract for a public work
30 in accordance with paragraph (a) of subsection 1 of NRS 338.1373
31 shall not:

32 (a) Commence a public work for which the estimated cost
33 exceeds \$100,000 unless it advertises in a newspaper qualified
34 pursuant to chapter 238 of NRS that is published in the county
35 where the public work will be performed for bids for the public
36 work. If no qualified newspaper is published in the county where the
37 public work will be performed, the required advertisement must be
38 published in some qualified newspaper that is printed in the State of
39 Nevada and has a general circulation in the county.

40 (b) Commence a public work for which the estimated cost is
41 \$100,000 or less unless it complies with the provisions of NRS
42 338.1386, 338.13862 and 338.13864 and, with respect to the State,
43 NRS 338.1384 to 338.13847, inclusive.

44 (c) Divide a public work into separate portions to avoid the
45 requirements of paragraph (a) or (b).



2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Each advertisement for bids must include a provision that sets forth the requirement that a contractor must be qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

4. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

5. Except as otherwise provided in subsection 6, ~~and~~ NRS 338.1389 ~~and~~ *and section 2 of this act*, a public body or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

6. Any bids received in response to an advertisement for bids may be rejected if the public body or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(b) The bidder is not responsive or responsible;

(c) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

(d) The public interest would be served by such a rejection.

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the bidder who has submitted the lowest responsive and responsible bid.

8. Before a public body may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the public body shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the public body intends to assign to the public work, together with their



1 classifications and an estimate of the direct and indirect costs of
2 their labor;

3 (b) A list of all equipment that the public body intends to use on
4 the public work, together with an estimate of the number of hours
5 each item of equipment will be used and the hourly cost to use each
6 item of equipment;

7 (c) An estimate of the cost of administrative support for the
8 persons assigned to the public work;

9 (d) An estimate of the total cost of the public work, including
10 the fair market value of or, if known, the actual cost of all materials,
11 supplies, labor and equipment to be used for the public work; and

12 (e) An estimate of the amount of money the public body expects
13 to save by rejecting the bids and performing the public work itself.

14 9. This section does not apply to:

15 (a) Any utility subject to the provisions of chapter 318 or 710 of
16 NRS;

17 (b) Any work of construction, reconstruction, improvement and
18 maintenance of highways subject to NRS 408.323 or 408.327;

19 (c) Normal maintenance of the property of a school district;

20 (d) The Las Vegas Valley Water District created pursuant to
21 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
22 District created pursuant to chapter 477, Statutes of Nevada 1983 or
23 the Virgin Valley Water District created pursuant to chapter 100,
24 Statutes of Nevada 1993;

25 (e) The design and construction of a public work for which a
26 public body contracts with a design-build team pursuant to NRS
27 338.1711 to 338.1727, inclusive;

28 (f) A constructability review of a public work, which review a
29 local government or its authorized representative is required to
30 perform pursuant to NRS 338.1435; or

31 (g) The preconstruction or construction of a public work for
32 which a public body enters into a contract with a construction
33 manager at risk pursuant to NRS 338.169 to 338.1699, inclusive.

34 **Sec. 6.** NRS 338.1389 is hereby amended to read as follows:

35 338.1389 1. Except as otherwise provided in subsection 10 ,
36 ~~and~~ NRS 338.1385, 338.1386 and 338.13864 ~~;~~ *and section 2 of*
37 *this act*, a public body or its authorized representative shall award a
38 contract for a public work for which the estimated cost exceeds
39 \$250,000 to the contractor who submits the best bid.

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

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

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



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

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

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 or her own behalf:

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

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his 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 construction firm that possesses a:

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

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

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a



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1 certified public accountant setting forth that the specialty contractor
2 has, while licensed as a specialty contractor in this State:

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

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

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

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

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

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

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

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

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

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

37 6. A contractor who has received a certificate of eligibility to
38 receive a preference in bidding on public works from the State
39 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
40 for the renewal of his or her contractor's license pursuant to NRS
41 624.283, submit to the Board an affidavit from a certified public
42 accountant setting forth that the contractor has, during the
43 immediately preceding 12 months, paid the taxes required pursuant
44 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
45 applicable, to maintain eligibility to hold such a certificate.



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

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

13 9. If a contractor who applies to the State Contractors' Board
14 for a certificate of eligibility to receive a preference in bidding on
15 public works submits false information to the Board regarding the
16 required payment of taxes, the contractor is not eligible to receive a
17 preference in bidding on public works for a period of 5 years after
18 the date on which the Board becomes aware of the submission of the
19 false information.

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

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

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

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

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

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



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

Sec. 7. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 8 and NRS 338.1907, a local government or its authorized representative that awards a contract for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1442, 338.1444 and 338.1446.

(c) Divide a project work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a local government shall report to the governing body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

4. Except as otherwise provided in subsection 5, ~~and~~ NRS 338.147 ~~and~~ *section 2 of this act*, the local government or its authorized representative shall award a contract to the lowest responsive and responsible bidder.



1 5. Any bids received in response to an advertisement for bids
2 may be rejected if the local government or its authorized
3 representative responsible for awarding the contract determines that:

4 (a) The bidder is not responsive or responsible;

5 (b) The quality of the services, materials, equipment or labor
6 offered does not conform to the approved plans or specifications; or

7 (c) The public interest would be served by such a rejection.

8 6. A local government may let a contract without competitive
9 bidding if no bids were received in response to an advertisement for
10 bids and:

11 (a) The local government publishes a notice stating that no bids
12 were received and that the contract may be let without further
13 bidding;

14 (b) The local government considers any bid submitted in
15 response to the notice published pursuant to paragraph (a);

16 (c) The local government lets the contract not less than 7 days
17 after publishing a notice pursuant to paragraph (a); and

18 (d) The contract is awarded to the lowest responsive and
19 responsible bidder.

20 7. Before a local government may commence the performance
21 of a public work itself pursuant to the provisions of this section,
22 based upon a determination that the public interest would be served
23 by rejecting any bids received in response to an advertisement for
24 bids, the local government shall prepare and make available for
25 public inspection a written statement containing:

26 (a) A list of all persons, including supervisors, whom the local
27 government intends to assign to the public work, together with their
28 classifications and an estimate of the direct and indirect costs of
29 their labor;

30 (b) A list of all equipment that the local government intends to
31 use on the public work, together with an estimate of the number of
32 hours each item of equipment will be used and the hourly cost to use
33 each item of equipment;

34 (c) An estimate of the cost of administrative support for the
35 persons assigned to the public work;

36 (d) An estimate of the total cost of the public work, including
37 the fair market value of or, if known, the actual cost of all materials,
38 supplies, labor and equipment to be used for the public work; and

39 (e) An estimate of the amount of money the local government
40 expects to save by rejecting the bids and performing the public work
41 itself.

42 8. This section does not apply to:

43 (a) Any utility subject to the provisions of chapter 318 or 710 of
44 NRS;



(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.1699, inclusive.

Sec. 8. NRS 338.147 is hereby amended to read as follows:

338.147 1. Except as otherwise provided in subsection 10 , ~~and~~ NRS 338.143, 338.1442 and 338.1446 ~~and~~ *and section 2 of this act*, a local government 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 or limited by subsection 11, the lowest bid that is:

(a) Submitted by a contractor who:

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

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

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

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 or her own behalf:

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

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his 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 construction firm that possesses a:

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

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

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

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

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

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his 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



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

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

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

(2) Certificate 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 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 renewal of his or her 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 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 unless the contractor 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, the contractor must submit a separate application for each license pursuant to which the contractor wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

9. 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 for a period of 5 years after



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1 the date on which the Board becomes aware of the submission of the
2 false information.

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

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

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

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

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

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

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

43 **Sec. 9.** This act becomes effective on July 1, 2011.

