

Amendment No. 615

Senate Amendment to Assembly Bill No. 172 Second Reprint (BDR 28-110)

Proposed by: Senate Committee on Government Affairs

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

AAK/WLK



Date: 5/18/2013

A.B. No. 172—Revises provisions governing bidder preferences on certain public works. (BDR 28-110)



ASSEMBLY BILL NO. 172—ASSEMBLYMEN HORNE, KIRKPATRICK, BOBZIEN, BENITEZ-THOMPSON, HICKEY; AND BUSTAMANTE ADAMS

FEBRUARY 25, 2013

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing bidder preferences on certain public works. (BDR 28-110)

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; revising provisions relating to preferences in bidding for contracts for certain public works projects; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires that a contractor, applicant to serve as a construction manager at risk or design-build team that wishes to receive a preference in bidding for a contract for a public work submit an affidavit to the public body sponsoring or financing the public work certifying that: (1) at least 50 percent of all workers employed on the public work will hold a valid Nevada driver's license or identification card; (2) all vehicles used primarily for the public work will be either registered in this State or partially apportioned to this State; (3) at least 50 percent of all design professionals working on the public work will hold a valid Nevada driver's license or identification card; (4) at least 25 percent of the suppliers of the materials used for the public work will be located in this State unless the public body requires the acquisition of materials or equipment that cannot be obtained from a supplier located in this State; and (5) certain records will be maintained and made available for inspection within this State. (NRS 338.0117) **Section 1** of this bill revises the requirements for such a preference in bidding by: (1) limiting the requirement for design professionals to design-build teams; and (2) eliminating the requirement that a percentage of suppliers of the materials used for the public work be located in this State. **Section 1** clarifies that the driver's licenses and identification cards used to satisfy the statutory requirements must be issued by the Department of Motor Vehicles of the State of Nevada. **Section 1** requires a contractor to meet those requirements only if the contractor was awarded the contract for a public work as a result of the preference in bidding. ~~(Section 1 restricts)~~ **Sections 1, 5 and 7 of this bill restrict** who can file a written objection alleging a violation of those requirements to only persons who submitted a bid on the public work ~~or entities~~.

Existing law prohibits a contractor from being qualified to bid on certain state and local public works if the contractor has failed to comply with certain requirements within the preceding year for a contract for a public work that cost more than \$25,000,000 and prohibits a contractor who has failed to comply with certain requirements for a contract for a public work which exceeds \$5,000,000 from receiving a preference in bidding for public works for 5 years. (NRS 338.1379, 338.1382, 338.1389, 338.1415, 338.147, 408.333) **Sections 3-8** of this bill instead condition those prohibitions on a material breach of a contract for a public work which exceeds \$25,000,000 or \$5,000,000, as applicable.

Section 9 of this bill provides that the revised requirements for a preference in bidding on a contract for a public work apply to any public work that is first advertised for bid after July 1, 2013. **Section 9** also declares that any contract for such a public work that fails to comply with this bill is void.

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

Section 1. NRS 338.0117 is hereby amended to read as follows:

338.0117 1. To qualify to receive a preference in bidding pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS 338.147, subsection 3 of NRS 338.1693, subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, a contractor, an applicant or a design-build team, respectively, must submit to the public body sponsoring or financing a public work a signed affidavit which certifies that, for the duration of the project ~~it~~, *collectively, and not on any specific day:*

(a) At least 50 percent of ~~that~~ *the* workers employed on the public work, including, without limitation, any employees of the contractor, applicant or design-build team and of any subcontractor engaged on the public work, will hold a valid driver's license or identification card issued by the Department of Motor Vehicles ~~of the State of Nevada;~~

(b) All vehicles used primarily for the public work will be:

(1) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to NRS 706.826; or

(2) Registered in this State;

(c) ~~It~~ *If applying to receive a preference in bidding pursuant to subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, at least 50 percent of the design professionals working on the public work, including, without limitation, any employees of the contractor, applicant or design-build team and of any subcontractor or consultant engaged in the design of the public work, will have a valid driver's license or identification card issued by the Department of Motor Vehicles of the State of Nevada; and*

(d) ~~At least 25 percent of the suppliers of the materials used for the public work will be located in this State unless the public body requires the acquisition of materials or equipment that cannot be obtained from a supplier located in this State; and~~

~~(e)~~ The contractor, applicant or design-build team and any subcontractor engaged on the public work will maintain and make available for inspection within this State his or her records concerning payroll relating to the public work.

2. Any contract for a public work *that is* awarded to a contractor, applicant or design-build team who submits the affidavit described in subsection 1 ~~and who receives~~ *as a result of the contractor, applicant or design-build team receiving* a preference in bidding described in subsection 1 must:

(a) Include a provision in the contract that substantially incorporates the requirements of paragraphs (a) to ~~(e)~~ *(d)*, inclusive, of subsection 1; and

(b) Provide that a failure to comply with any requirement of paragraphs (a) to ~~(e)~~ *(d)*, inclusive, of subsection 1 ~~is a material breach of the contract and~~ entitles the public body to ~~liquidated damages~~ *a penalty* only as provided in subsections 5 and 6.

3. A person ~~for entity~~ *who submitted a bid on the public work or an entity* who believes that a contractor, applicant or design-build team has obtained a

1 preference in bidding as described in subsection 1 but has failed to comply with a
2 requirement of paragraphs (a) to ~~[(e)]~~ (d), inclusive, of subsection 1
3 may file *, before the substantial completion of the public work,* a written objection
4 with the public body for which the contractor, applicant or design-build team is
5 performing the public work. A written objection authorized pursuant to this
6 subsection must set forth proof or substantiating evidence to support the belief of
7 the person or entity that the contractor, applicant or design-build team has failed to
8 comply with a requirement of paragraphs (a) to ~~[(e)]~~ (d), inclusive, of subsection 1.

9 4. If a public body receives a written objection pursuant to subsection 3, the
10 public body shall determine whether the objection is accompanied by the proof or
11 substantiating evidence required pursuant to that subsection. If the public body
12 determines that the objection is not accompanied by the required proof or
13 substantiating evidence, the public body shall dismiss the objection. If the public
14 body determines that the objection is accompanied by the required proof or
15 substantiating evidence or if the public body determines on its own initiative that
16 proof or substantiating evidence of a failure to comply with a requirement of
17 paragraphs (a) to ~~[(e)]~~ (d), inclusive, of subsection 1 exists, the public body shall
18 determine whether the contractor, applicant or design-build team has failed to
19 comply with a requirement of paragraphs (a) to ~~[(e)]~~ (d), inclusive, of subsection 1
20 and the public body or its authorized representative may proceed to award the
21 contract accordingly or, if the contract has already been awarded, seek the remedy
22 authorized in subsection 5.

23 5. A public body may recover, by civil action against the party responsible for
24 a failure to comply with a requirement of paragraphs (a) to ~~[(e)]~~ (d), inclusive, of
25 subsection 1, ~~liquidated damages~~ *a penalty* as described in subsection 6 for ~~a~~
26 ~~breach of a contract for a public work caused by~~ a failure to comply with a
27 requirement of paragraphs (a) to ~~[(e)]~~ (d), inclusive, of subsection 1. If a public
28 body recovers ~~liquidated damages~~ *a penalty* pursuant to this subsection, ~~for a~~
29 ~~breach of a contract for a public work,~~ the public body shall report to the State
30 Contractors' Board the date of the ~~breach,~~ *failure to comply*, the name of each
31 entity which ~~breached the contract~~ *failed to comply* and the cost of the contract ~~+~~
32 *to which the entity that failed to comply was a party*. The Board shall maintain this
33 information for not less than 6 years. Upon request, the Board shall provide this
34 information to any public body or its authorized representative.

35 6. If a contractor, applicant or design-build team submits the affidavit
36 described in subsection 1, receives a preference in bidding described in subsection
37 1 and is awarded the contract ~~+~~ *as a result of that preference*, the contract
38 between the contractor, applicant or design-build team and the public body, each
39 contract between the contractor, applicant or design-build team and a subcontractor
40 ~~for supplier~~ and each contract between a subcontractor and a *lower tier*
41 subcontractor ~~for supplier~~ must provide that:

42 (a) If a party to the contract causes ~~a material breach of the contract between~~
43 the contractor, applicant or design-build team ~~and the public body as a result of a~~
44 ~~failure~~ *to fail* to comply with a requirement of paragraphs (a) to ~~[(e)]~~ (d),
45 inclusive, of subsection 1, the party is liable to the public body for ~~liquidated~~
46 ~~damages~~ *a penalty* in the amount of 1 percent of the cost of the largest contract to
47 which he or she is a party;

48 (b) The right to recover the amount determined pursuant to paragraph (a) by
49 the public body pursuant to subsection 5 may be enforced by the public body
50 directly against the party that ~~causes the material breach,~~ *caused the failure to*
51 *comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1;*
52 and

(c) No other party to the contract is liable to the public body for ~~liquidated damages, a penalty.~~

7. A public body that awards a contract for a public work to a contractor, applicant or design-build team who submits the affidavit described in subsection 1 and who receives a preference in bidding described in subsection 1 shall, on or before July 31 of each year, submit a written report to the Director of the Legislative Counsel Bureau for transmittal to the Legislative Commission. The report must include information on each contract for a public work awarded to a contractor, applicant or design-build team who submits the affidavit described in subsection 1 and who receives a preference in bidding described in subsection 1, including, without limitation, the name of the contractor, applicant or design-build team who was awarded the contract, the cost of the contract, a brief description of the public work and a description of the degree to which the contractor, applicant or design-build team and each subcontractor complied with the requirements of paragraphs (a) to ~~(e)~~ (d), inclusive, of subsection 1.

8. *As used in this section:*

(a) *“Lower tier subcontractor” means a subcontractor who contracts with another subcontractor to provide labor, materials or services to the other subcontractor for a construction project.*

(b) *“Vehicle used primarily for the public work” does not include any vehicle that is present at the site of the public work only occasionally and for a purpose incidental to the public work including, without limitation, the delivery of materials. Notwithstanding the provisions of the paragraph, the term includes any vehicle which is:*

(1) Owned or operated by the contractor or any subcontractor who is engaged on the public work; and

(2) Present at the site of the public work.

Sec. 2. (Deleted by amendment.)

Sec. 3. NRS 338.1379 is hereby amended to read as follows:

338.1379 1. Except as otherwise provided in NRS 338.1382, a contractor who wishes to qualify as a bidder on a contract for a public work must submit an application to the Division or the local government.

2. Upon receipt of an application pursuant to subsection 1, the Division or the local government shall:

(a) Investigate the applicant to determine whether the applicant is qualified to bid on a contract; and

(b) After conducting the investigation, determine whether the applicant is qualified to bid on a contract. The determination must be made within 45 days after receipt of the application.

3. The Division or the local government shall notify each applicant in writing of its determination. If an application is denied, the notice must set forth the reasons for the denial and inform the applicant of the right to a hearing pursuant to NRS 338.1381.

4. The Division or the local government may determine an applicant is qualified to bid:

(a) On a specific project; or

(b) On more than one project over a period of time to be determined by the Division or the local government.

5. Except as otherwise provided in subsection 8, the Division shall not use any criteria other than criteria adopted by regulation pursuant to NRS 338.1375 in determining whether to approve or deny an application.

6. Except as otherwise provided in subsection 8, the local government shall not use any criteria other than the criteria described in NRS 338.1377 in determining whether to approve or deny an application.

7. Except as otherwise provided in NRS 239.0115, financial information and other data pertaining to the net worth of an applicant which is gathered by or provided to the Division or a local government to determine the financial ability of an applicant to perform a contract is confidential and not open to public inspection.

8. The Division or the local government shall deny an application and revoke any existing qualification to bid if it finds that the applicant has, within the preceding year, **materially** breached a contract for a public work for which the cost exceeds \$25,000,000. ~~by failing to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1 of NRS 338.0117.~~

Sec. 4. NRS 338.1382 is hereby amended to read as follows:

338.1382 In lieu of adopting criteria pursuant to NRS 338.1377 and determining the qualification of bidders pursuant to NRS 338.1379, a governing body may deem a person to be qualified to bid on:

1. Contracts for public works of the local government if the person has not, within the preceding year, **materially** breached a contract for a public work for which the cost exceeds \$25,000,000, ~~by failing to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1 of NRS 338.0117.~~ and has been determined by:

(a) The Division pursuant to NRS 338.1379 to be qualified to bid on contracts for public works of the State pursuant to criteria adopted pursuant to NRS 338.1375; or

(b) Another governing body pursuant to NRS 338.1379 to be qualified to bid on contracts for public works of that local government pursuant to the criteria set forth in NRS 338.1377.

2. A contract for a public work of the local government if:

(a) The person has been determined by the Department of Transportation pursuant to NRS 408.333 to be qualified to bid on the contract for the public work;

(b) The public work will be owned, operated or maintained by the Department of Transportation after the public work is constructed by the local government; and

(c) The Department of Transportation requested that bidders on the contract for the public work be qualified to bid on the contract pursuant to NRS 408.333.

Sec. 5. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in subsection 10 and NRS 338.1385, 338.1386 and 338.13864, a public body or its authorized representative shall award a contract for a public work for which the estimated cost exceeds \$250,000 to the contractor who submits the best bid.

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

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

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

(2) At the time the contractor submits his or her bid, ~~has~~ **provides** 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

(3) ~~At the time the contractor submits his or her bid.~~ **Within 2 hours after the completion of the opening of the bids by the public body or its authorized representative,** submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117; and

(b) Not more than 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who:

1 (1) Does not ~~have,~~ *provide*, at the time he or she submits the bid, a valid
2 certificate of eligibility to receive a preference in bidding on public works issued to
3 him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

4 (2) Does not submit, ~~at the time he or she submits the bid,~~ *within 2 hours*
5 *after the completion of the opening of the bids by the public body or its*
6 *authorized representative*, a signed affidavit certifying that he or she will comply
7 with the requirements of paragraphs (a) to ~~(e)-~~ *(d)*, inclusive, of subsection 1 of
8 NRS 338.0117 for the duration of the contract,

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

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

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

16 (1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377
17 of NRS on materials used for construction in this State, including, without
18 limitation, construction that is undertaken or carried out on land within the
19 boundaries of this State that is managed by the Federal Government or is on an
20 Indian reservation or Indian colony, of not less than \$5,000 for each consecutive
21 12-month period for 60 months immediately preceding the submission of the
22 affidavit from the certified public accountant;

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

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

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

32 (1) License as a general contractor pursuant to the provisions of chapter
33 624 of NRS; and

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

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

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

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

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

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

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

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

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

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

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

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

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall, at the time for the 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:

(a) Submits false information to the Board regarding the required payment of taxes, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information; or

(b) Is found by the Board to have, within the preceding 5 years, ~~materially breached a contract for a public work for which the cost exceeds \$5,000,000, by failing to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1 of NRS 338.0117;~~ the contractor is not eligible to receive a preference in bidding on public works.

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

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the bid may ~~be deemed the best bid~~ receive a

1 *preference in bidding* only if both or all of the joint venturers separately meet the
2 requirements of subsection 2.

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

6 13. A person ~~for an entity~~ *who submitted a bid on the public work* ~~and~~ *or an*
7 *entity* who believes that ~~that~~ *the* contractor *who was awarded the contract for the*
8 *public work* wrongfully holds a certificate of eligibility to receive a preference in
9 bidding on public works may challenge the validity of the certificate by filing a
10 written objection with the public body to which the contractor has submitted a bid
11 on a contract for the construction of a public work. A written objection authorized
12 pursuant to this subsection must:

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

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

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

29 **Sec. 6.** NRS 338.1415 is hereby amended to read as follows:

30 338.1415 A local government or its authorized representative shall not accept
31 a bid on a contract for a public work if the contractor who submits the bid has,
32 within the preceding year, *materially* breached a contract for a public work for
33 which the cost exceeds \$25,000,000 . ~~By failing to comply with a requirement of~~
34 ~~paragraphs (a) to (c), inclusive, of subsection 1 of NRS 338.0117.~~

35 **Sec. 7.** NRS 338.147 is hereby amended to read as follows:

36 338.147 1. Except as otherwise provided in subsection 10 and NRS
37 338.143, 338.1442 and 338.1446, a local government or its authorized
38 representative shall award a contract for a public work for which the estimated cost
39 exceeds \$250,000 to the contractor who submits the best bid.

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

42 (a) Submitted by a contractor who:

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

45 (2) At the time the contractor submits his or her bid, ~~has~~ *provides* a valid
46 certificate of eligibility to receive a preference in bidding on public works issued to
47 the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and

48 (3) ~~At the time the contractor submits his or her bid,~~ *Within 2 hours after*
49 *the completion of the opening of the bids by the local government or its*
50 *authorized representative,* submits a signed affidavit that meets the requirements of
51 subsection 1 of NRS 338.0117; and

52 (b) Not more than 5 percent higher than the bid submitted by the lowest
53 responsive and responsible bidder who:

1 (1) Does not ~~have,~~ *provide*, at the time he or she submits the bid, a valid
2 certificate of eligibility to receive a preference in bidding on public works issued to
3 him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

4 (2) Does not submit, ~~at the time he or she submits the bid,~~ *within 2 hours*
5 *after the completion of the opening of the bids by the public body or its*
6 *authorized representative*, a signed affidavit certifying that he or she will comply
7 with the requirements of paragraphs (a) to ~~(c)-~~ *(d)*, inclusive, of subsection 1 of
8 NRS 338.0117 for the duration of the contract,

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

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

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

16 (1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377
17 of NRS on materials used for construction in this State, including, without
18 limitation, construction that is undertaken or carried out on land within the
19 boundaries of this State that is managed by the Federal Government or is on an
20 Indian reservation or Indian colony, of not less than \$5,000 for each consecutive
21 12-month period for 60 months immediately preceding the submission of the
22 affidavit from the certified public accountant;

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

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

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

32 (1) License as a general contractor pursuant to the provisions of chapter
33 624 of NRS; and

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

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

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

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

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

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

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

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

(2) Certificate 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:

(a) Submits false information to the Board regarding the required payment of taxes, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information; or

(b) Is found by the Board to have, within the preceding 5 years, *materially* breached a contract for a public work for which the cost exceeds \$5,000,000, ~~by failing to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1 of NRS 338.0117;~~ the contractor is not eligible to receive a preference in bidding on public works.

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

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the bid may ~~be deemed a best bid~~ *receive a*

1 *preference in bidding* only if both or all of the joint venturers separately meet the
2 requirements of subsection 2.

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

6 13. A person ~~for an entity~~ *who submitted a bid on the public work* ~~and~~ *or an*
7 *entity* who believes that ~~that~~ *the* contractor *who was awarded the contract for the*
8 *public work* wrongfully holds a certificate of eligibility to receive a preference in
9 bidding on public works may challenge the validity of the certificate by filing a
10 written objection with the local government to which the contractor has submitted a
11 bid on a contract for the construction of a public work. A written objection
12 authorized pursuant to this subsection must:

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

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

18 14. If a local government receives a written objection pursuant to subsection
19 13, the local government shall determine whether the objection is accompanied by
20 the proof or substantiating evidence required pursuant to paragraph (a) of that
21 subsection. If the local government determines that the objection is not
22 accompanied by the required proof or substantiating evidence, the local government
23 shall dismiss the objection and the local government or its authorized representative
24 may proceed immediately to award the contract. If the local government determines
25 that the objection is accompanied by the required proof or substantiating evidence,
26 the local government shall determine whether the contractor qualifies for the
27 certificate pursuant to the provisions of this section and the local government or its
28 authorized representative may proceed to award the contract accordingly.

29 **Sec. 8.** NRS 408.333 is hereby amended to read as follows:

30 408.333 Except as otherwise provided in NRS 408.3875 to 408.3887,
31 inclusive:

32 1. Before furnishing any person proposing to bid on any advertised work with
33 the plans and specifications for such work, the Director shall require from the
34 person a statement, verified under oath, in the form of answers to questions
35 contained in a standard form of questionnaire and financial statement, which must
36 include a complete statement of the person's financial ability and experience in
37 performing public work of a similar nature.

38 2. Such statements must be filed with the Director in ample time to permit the
39 Department to verify the information contained therein in advance of furnishing
40 proposal forms, plans and specifications to any person proposing to bid on the
41 advertised public work, in accordance with the regulations of the Department.

42 3. Whenever the Director is not satisfied with the sufficiency of the answers
43 contained in the questionnaire and financial statement, the Director may refuse to
44 furnish the person with plans and specifications and the official proposal forms on
45 the advertised project. If the Director determines that the person has, within the
46 preceding year, *materially* breached a contract for a public work for which the cost
47 exceeds \$25,000,000, ~~by failing to comply with a requirement of paragraphs (a) to~~
48 ~~(e), inclusive, of subsection 1 of NRS 338.0117,~~ the Director shall refuse to furnish
49 the person with plans and specifications and the official proposal forms on the
50 advertised project. Any bid of any person to whom plans and specifications and the
51 official proposal forms have not been issued in accordance with this section must
52 be disregarded, and the certified check, cash or undertaking of such a bidder
53 returned forthwith.

1 4. Any person who is disqualified by the Director, in accordance with the
2 provisions of this section, may request, in writing, a hearing before the Director and
3 present again the person's check, cash or undertaking and such further evidence
4 with respect to the person's financial responsibility, organization, plant and
5 equipment, or experience, as might tend to justify, in his or her opinion, issuance to
6 him or her of the plans and specifications for the work.

7 5. Such a person may appeal the decision of the Director to the Board no later
8 than 5 days before the opening of the bids on the project. If the appeal is sustained
9 by the Board, the person must be granted the rights and privileges of all other
10 bidders.

11 **Sec. 9.** 1. The amendatory provisions of this act apply to all public works
12 for which bids are first advertised after July 1, 2013.

13 2. Any contract awarded for a public work to which the amendatory
14 provisions of this act apply pursuant to subsection 1 and:

15 (a) Which was not advertised in compliance with the amendatory provisions of
16 this act;

17 (b) For which bids were not accepted in compliance with the amendatory
18 provisions of this act; or

19 (c) For which the contract was not awarded in compliance with the amendatory
20 provisions of this act,

21 is void.

22 3. As used in this section, "contract" and "public work" have the meanings
23 ascribed to them in NRS 338.010.

24 **Sec. 10.** This act becomes effective on July 1, 2013.