

Amendment No. 426

Assembly Amendment to Assembly Bill No. 172 (BDR 28-565)

Proposed by: Assembly Committee on Government Affairs

Amends: Summary: Yes Title: Yes 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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

RAE/MSM



Date: 4/16/2015

A.B. No. 172—Requires contractors and subcontractors on a public work to use the federal E-Verify system to verify eligibility for employment for workers on the public work and revises prevailing wage requirements for public works. (BDR 28-565)



ASSEMBLY BILL NO. 172—ASSEMBLYMEN O’NEILL,
OSCARSON; KIRNER AND STEWART

FEBRUARY 17, 2015

JOINT SPONSORS: SENATORS GOICOECHEA;
AND SETTELMEYER

Referred to Committee on Government Affairs

SUMMARY—~~Requires contractors and subcontractors on a public work to use the federal E-Verify system to verify eligibility for employment for workers on the public work and revises prevailing wage requirements for~~ **Revises provisions relating to** public works.
(BDR 28-565)

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

~

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

AN ACT relating to public works; ~~requiring contractors and subcontractors on a public work to use the federal E-Verify system to verify eligibility for employment for workers on the public work;~~ raising the estimated thresholds at or above which prevailing wage requirements apply to certain public work construction projects; ~~specifying that certain provisions governing the payment of prevailing wage do not apply to a school district, a charter school or the Nevada System of Higher Education; repealing provisions governing the payment of such wages by the Nevada System of Higher Education;~~ **increasing the amount of a preference in bidding on certain public works given to contractors and certain other persons who meet certain eligibility requirements;** and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

~~Under existing law, a contractor or subcontractor on a public work must comply with certain requirements, such as making employment decisions without discrimination based on race, color, creed, national origin, sex, sexual orientation, gender identity or expression, or age. (NRS 238.125) Section 1 of this bill requires a contractor or subcontractor on a public work to use the federal E-Verify system to verify the employment eligibility of all workers on the public work.~~

Under existing law, any contract for a public work whose cost is \$100,000 or more is subject to the prevailing wage requirements. (NRS 338.080) The prevailing wage requirements also apply if a redevelopment agency provides financial incentives to the developer with a value of more than \$100,000. (NRS 279.500) ~~Existing law also provides~~

specifically that contracts for construction work of the Nevada System of Education for which the estimated cost exceeds \$100,000 require the payment of prevailing wage even if the construction work does not qualify as a public work. (NRS 338.075) Sections 3 and 4 of this bill raise the threshold for the applicability of prevailing wage requirements from \$100,000 to ~~[\$5,000,000.]~~ \$350,000, require this amount to be adjusted every 5 years for inflation, and also make a technical correction in section 4 clarifying that if the relevant work will cost exactly ~~[\$5,000,000.]~~ \$350,000, the work is subject to the prevailing wage requirements. ~~[Section 2 also excludes from the prevailing wage requirement: (1) any contract for a public work to which a school district, a charter school or the Nevada System of Higher Education is a party; and (2) a public work of, or constructed by, a school district, a charter school or the Nevada System of Higher Education. Section 6 of this bill eliminates the requirement that the Nevada System of Higher Education pay prevailing wage on certain construction work that does not qualify as a public work.]~~

Under existing law, a contractor, applicant to serve as a construction manager at risk or design-build team may qualify to receive a 5 percent preference in bidding on certain contracts for public works if certain conditions, including the employment of a specified percentage of Nevada employees, are met. (NRS 338.1389, 338.147, 338.1693, 338.1725, 338.1727, 408.3886) Sections 3.3, 3.5, 3.6, 3.7, 3.8 and 4.5 increase the amount of that preference in bidding to 7.5 percent.

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. Each contractor and subcontractor on a public work shall register and participate in the E-Verify system to verify the employment eligibility of all workers on the public work.~~

~~2. As used in this section, "E-Verify system" means an electronic program through which employers verify the employment eligibility of their employees administered through the United States Department of Homeland Security and established pursuant to 8 U.S.C. § 1324a.] (Deleted by amendment.)~~

Sec. 2. ~~[NRS 338.015 is hereby amended to read as follows:~~

~~338.015 1. The Labor Commissioner shall enforce the provisions of NRS 338.010 to 338.130, inclusive [.] and section 1 of this act.~~

~~2. In addition to any other remedy or penalty provided in this chapter, if any person, including, without limitation, a public body, violates any provision of NRS 338.010 to 338.130, inclusive, and section 1 of this act or any regulation adopted pursuant thereto, the Labor Commissioner may, after providing the person with notice and an opportunity for a hearing, impose against the person an administrative penalty of not more than \$5,000 for each such violation.~~

~~3. The Labor Commissioner may, by regulation, establish a sliding scale based on the severity of the violation to determine the amount of the administrative penalty to be imposed against the person pursuant to this section.~~

~~4. The Labor Commissioner shall report the violation to the Attorney General, and the Attorney General may prosecute the person in accordance with law.] (Deleted by amendment.)~~

Sec. 3. NRS 338.080 is hereby amended to read as follows:

338.080 1. None of the provisions of NRS 338.020 to 338.090, inclusive, apply to:

~~++~~ (u) Any work, construction, alteration, repair or other employment performed, undertaken or carried out, by or for any railroad company or any person

operating the same, whether such work, construction, alteration or repair is incident to or in conjunction with a contract to which a public body is a party, or otherwise.

~~(2) (b)~~ Apprentices recorded under the provisions of chapter 610 of NRS.

~~(3) (c)~~ Any contract for a public work whose cost is less than ~~100,000~~ ~~5,000,000~~ 350,000. A unit of the project must not be separated from the total project, even if that unit is to be completed at a later time, in order to lower the cost of the project below ~~100,000~~ ~~5,000,000~~.

~~4. Any contract for a public work to which a school district, a charter school or the Nevada System of Higher Education is a party.~~

~~5. A public work of, or constructed by, a school district, a charter school or the Nevada System of Higher Education.~~ 350,000.

2. The Labor Commissioner shall, on or before January 1, 2020, and every 5 years thereafter, adjust the amount set forth in paragraph (c) of subsection 1 to reflect inflation, as measured by the average percentage of increase or decrease in the Consumer Price Index for All Urban Consumers of the United States Department of Labor, Bureau of Labor Statistics, for the preceding 5 years. The Labor Commissioner shall determine the amount of the increase or decrease required by this subsection and establish the adjusted amounts to take effect on January 1 of that year.

Sec. 3.3. 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, 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) 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 ~~15~~ 7.5 percent higher than the bid submitted by the lowest responsive and responsible bidder who:

(1) Does not provide, 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; or

(2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will comply with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,

➤ 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

1 limitation, construction that is undertaken or carried out on land within the
2 boundaries of this State that is managed by the Federal Government or is on an
3 Indian reservation or Indian colony, of not less than \$5,000 for each consecutive
4 12-month period for 60 months immediately preceding the submission of the
5 affidavit from the certified public accountant;

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

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

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

15 (1) License as a general contractor pursuant to the provisions of chapter
16 624 of NRS; and

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

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

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

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

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

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

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

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

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

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

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

51 (b) Sales and use taxes that were paid in this State by a joint venture in which
52 the contractor is a participant, in proportion to the amount of interest the contractor
53 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, 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 receive a preference in bidding only if both or all of the joint venturers separately meet the requirements of subsection 2.

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

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

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

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

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. 3.5. 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, 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;

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

(b) Not more than ~~4.5~~ 7.5 percent higher than the bid submitted by the lowest responsive and responsible bidder who:

(1) Does not provide, 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; or

(2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will comply with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,

➤ 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

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

4 (1) License as a general contractor pursuant to the provisions of chapter
5 624 of NRS; and

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

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

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

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

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

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

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

30 (1) License as a specialty contractor pursuant to the provisions of chapter
31 624 of NRS; and

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

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

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

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

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

51 7. A contractor who fails to submit an affidavit to the Board pursuant to
52 subsection 6 ceases to be eligible to receive a preference in bidding on public works

1 unless the contractor reapplies for and receives a certificate of eligibility pursuant to
2 subsection 3 or 4, as applicable.

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

8 9. If a contractor who applies to the State Contractors' Board for a certificate
9 of eligibility to receive a preference in bidding on public works:

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

14 (b) Is found by the Board to have, within the preceding 5 years, materially
15 breached a contract for a public work for which the cost exceeds \$5,000,000, the
16 contractor is not eligible to receive a preference in bidding on public works.

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

21 11. If a bid is submitted by two or more contractors as a joint venture or by
22 one of them as a joint venturer, the bid may receive a preference in bidding only if
23 both or all of the joint venturers separately meet the requirements of subsection 2.

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

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

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

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

39 14. If a local government receives a written objection pursuant to subsection
40 13, the local government shall determine whether the objection is accompanied by
41 the proof or substantiating evidence required pursuant to paragraph (a) of that
42 subsection. If the local government determines that the objection is not
43 accompanied by the required proof or substantiating evidence, the local government
44 shall dismiss the objection and the local government or its authorized representative
45 may proceed immediately to award the contract. If the local government determines
46 that the objection is accompanied by the required proof or substantiating evidence,
47 the local government shall determine whether the contractor qualifies for the
48 certificate pursuant to the provisions of this section and the local government or its
49 authorized representative may proceed to award the contract accordingly.

50 **Sec. 3.6. NRS 338.1693 is hereby amended to read as follows:**

51 338.1693 1. The public body or its authorized representative shall appoint a
52 panel consisting of at least three but not more than seven members, a majority of
53 whom must have experience in the construction industry, to rank the proposals

submitted to the public body by evaluating the proposals as required pursuant to subsections 2 and 3.

2. The panel appointed pursuant to subsection 1 shall rank the proposals by:

(a) Verifying that each applicant satisfies the requirements of NRS 338.1691; and

(b) Evaluating and assigning a score to each of the proposals received by the public body based on the factors and relative weight assigned to each factor that the public body specified in the request for proposals.

3. When ranking the proposals, the panel appointed pursuant to subsection 1 shall assign a relative weight of ~~15~~ 7.5 percent to the applicant's possession of a certificate of eligibility to receive a preference in bidding on public works if the applicant submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117. 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, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that work.

4. After the panel appointed pursuant to subsection 1 ranks the proposals, the public body or its authorized representative shall, except as otherwise provided in subsection 8, select at least the two but not more than the five applicants whose proposals received the highest scores for interviews.

5. The public body or its authorized representative may appoint a separate panel to interview and rank the applicants selected pursuant to subsection 4. If a separate panel is appointed pursuant to this subsection, the panel must consist of at least three but not more than seven members, a majority of whom must have experience in the construction industry.

6. During the interview process, the panel conducting the interview may require the applicants to submit a preliminary proposed amount of compensation for managing the preconstruction and construction of the public work, but in no event shall the proposed amount of compensation exceed 20 percent of the scoring for the selection of the most qualified applicant. All presentations made at any interview conducted pursuant to this subsection or subsection 5 may be made only by key personnel employed by the applicant, as determined by the applicant, and the employees of the applicant who will be directly responsible for managing the preconstruction and construction of the public work.

7. After conducting such interviews, the panel that conducted the interviews shall rank the applicants by using a ranking process that is separate from the process used to rank the applicants pursuant to subsection 2 and is based only on information submitted during the interview process. The score to be given for the proposed amount of compensation, if any, must be calculated by dividing the lowest of all the proposed amounts of compensation by the applicant's proposed amount of compensation multiplied by the total possible points available to each applicant. When ranking the applicants, the panel that conducted the interviews shall assign a relative weight of ~~15~~ 7.5 percent to the applicant's possession of a certificate of eligibility to receive a preference in bidding on public works if the applicant submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117. 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, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that work.

8. If the public body did not receive at least two proposals, the public body may not contract with a construction manager at risk.

9. Upon receipt of the final rankings of the applicants from the panel that conducted the interviews, the public body or its authorized representative shall enter into negotiations with the most qualified applicant determined pursuant to the provisions of this section for a contract for preconstruction services, unless the public body required the submission of a proposed amount of compensation, in which case the proposed amount of compensation submitted by the applicant must be the amount offered for the contract. If the public body or its authorized representative is unable to negotiate a contract with the most qualified applicant for an amount of compensation that the public body or its authorized representative and the most qualified applicant determine to be fair and reasonable, the public body or its authorized representative shall terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.

10. The public body or its authorized representative shall make available to all applicants and the public the final rankings of the applicants, as determined by the panel that conducted the interviews, and shall provide, upon request, an explanation to any unsuccessful applicant of the reasons why the applicant was unsuccessful.

Sec. 3.7. NRS 338.1725 is hereby amended to read as follows:

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

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;

(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; and

(c) Except as otherwise provided in this paragraph, assigning, without limitation, a relative weight of ~~15~~ 7.5 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 identify which of the finalists, if any, received an assignment of ~~14~~ 7.5 percent pursuant to paragraph (c) of subsection 2.

Sec. 3.8. 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 ~~14~~ 7.5 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 if the contractors submit signed affidavits that meet the requirements of subsection 1 of NRS 338.0117, 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 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 or its authorized representative shall enter into negotiations with the most qualified applicant, as determined pursuant to 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. If the public body or its authorized representative is unable to negotiate with the most qualified applicant a contract that is determined by the parties to be fair and reasonable, the public body may terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.

7. If a public body selects a final proposal and awards a design-build contract pursuant to 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.

(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. 4. NRS 279.500 is hereby amended to read as follows:

279.500 1. The provisions of NRS 338.010 to 338.090, inclusive, apply to any contract for new construction, repair or reconstruction which is awarded on or after October 1, 1991, by an agency for work to be done in a project.

2. If an agency:

(a) Provides property for development at less than the fair market value of the property;

(b) Provides a loan to a small business pursuant to NRS 279.700 to 279.740, inclusive; or

(c) Provides financial incentives to a developer with a value of ~~more than \$100,000, \$5,000,000~~ \$350,000 or more,

regardless of whether the project is publicly or privately owned, the agency must provide in the loan agreement with the small business or the agreement with the developer, as applicable, that the development project is subject to the provisions of NRS 338.010 to 338.090, inclusive, to the same extent as if the agency had awarded the contract for the project. This subsection applies only to the project covered by the loan agreement between the agency and the small business or the agreement between the agency and the developer, as applicable. This subsection does not apply to future development of the property unless an additional loan, or additional financial incentives with a value of ~~more than \$100,000, \$5,000,000, \$350,000 or more,~~ are provided to the small business or developer, as applicable.

3. The Labor Commissioner shall, on or before January 1, 2020, and every 5 years thereafter, adjust the amount set forth in paragraph (c) of subsection 2 to reflect inflation, as measured by the average percentage of increase or decrease in the Consumer Price Index for All Urban Consumers of the United States Department of Labor, Bureau of Labor Statistics, for the preceding 5 years. The Labor Commissioner shall determine the amount of the increase or decrease required by this subsection and establish the adjusted amounts to take effect on January 1 of that year.

Sec. 4.5. NRS 408.3886 is hereby amended to read as follows:

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

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

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

2. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the Department shall assign, without limitation, a relative weight of ~~15~~ 7.5 percent to the design-build team's 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, if the design-build team submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117, 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 assistance or reduces the amount of that assistance for a particular project because of the provisions of this subsection relating to a preference in bidding on public works 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 project.

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

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

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

(b) Reject all the final proposals; or

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

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

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

(b) Reject all the best and final offers.

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

(a) Review and ratify the selection.

(b) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (f) of subsection 3 of NRS 408.3883. 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.

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

7. A contract awarded pursuant to this section:

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

(b) Must specify:

(1) An amount that is the maximum amount that the Department 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 Department 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.

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

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

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

Sec. 5. 1. The amendatory provisions of ~~Sections 3 and 4 of~~ this act do not apply to a public work or other project of construction, repair or reconstruction that is awarded before July 1, 2015.

2. As used in this section, "public work" has the meaning ascribed to it in NRS 338.010.

Sec. 6. ~~NRS 338.075 is hereby repealed.~~ (Deleted by amendment.)

1 **Sec. 7.** ~~1.~~ This ~~section and sections 3 to 6, inclusive, of this~~ act
2 ~~become~~ **becomes** effective on July 1, 2015.
3 ~~2. Sections 1 and 2 of this act become effective on October 1, 2015.~~

~~TEXT OF REPEALED SECTION~~

~~338.075 Applicability to certain contracts for construction work of Nevada System of Higher Education. The provisions of NRS 338.020 to 338.090, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$100,000 even if the construction work does not qualify as a public work, as defined in subsection 17 of NRS 338.010.~~