

Amendment No. 1002

Senate Amendment to Senate Bill No. 317 First Reprint	(BDR 27-936)
Proposed by: Senate Committee on Finance	
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.

JFD/EGO



Date: 5/31/2017

S.B. No. 317—Revises provisions relating to preferences in bidding for certain contracts for businesses based in this State. (BDR 27-936)



SENATE BILL NO. 317—SENATORS CANNIZZARO, FORD, SEGERBLOM, PARKS, MANENDO; ATKINSON, CANCELA, DENIS, FARLEY, RATTI, SPEARMAN AND WOODHOUSE

MARCH 20, 2017

JOINT SPONSOR: ASSEMBLYMAN BROOKS

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to preferences in bidding for certain contracts for businesses based in this State. (BDR ~~(27-936)~~ 28-936)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 ~~(procurement; establishing provisions relating to preferences in bidding for certain contracts with Nevada based businesses for state purchasing;)~~ 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 grants a preference of 5 percent for a bid or proposal for a state purchasing contract which is submitted by a local business owned and operated by a veteran with a service connected disability. (NRS 333.2361-333.2369) Sections 2-8 of this bill create a preference of 5 percent for a bid or proposal for a state purchasing contract which is submitted by a Nevada based business. To qualify for this preference, section 3 requires such a business to certify that: (1) at least 50 percent of all workers employed for the state purchasing contract will hold a valid Nevada driver's license or identification card; (2) all vehicles used primarily for the state purchasing contract will be either registered in this State or partially apportioned to this State; and (3) certain records will be maintained and made available for inspection within this State. Section 5 establishes that a bid which qualifies for the preference will be deemed to cost 5 percent less than the actual cost of the bid and a proposal which qualifies for the preference will be deemed to have a score 5 percent higher than the actual score of the proposal. Section 6 imposes certain penalties and restrictions upon a business that makes a material misrepresentation or commits a fraudulent act in applying for a preference or fails to comply with the requirements for a preference.)~~

Existing law requires that a contractor ~~(a~~ 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; and (4) certain records will be maintained and made available for inspection within this State. (NRS 338.0117) **Section 11** of this bill requires a contractor ~~applicant~~ or design-build team which is awarded a contract for a public work as a result of such a preference to submit an affidavit confirming compliance with these requirements ~~quarterly and~~ upon substantial completion of the public work. **Sections 12-16** ~~12-17~~ of this bill ~~revise~~ increase the bidding preference that a contractor ~~applicant~~ ~~to serve as a construction manager at risk~~ or design-build team who meets these requirements receives commencing July 1, 2018, for certain public works contracts from 5 percent to ~~10~~ 7 percent ~~until July 1, 2021~~.

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

Section 1. ~~Chapter 333 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act. (Deleted by amendment.)~~

Sec. 2. ~~As used in sections 2 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections. (Deleted by amendment.)~~

Sec. 3. ~~"Nevada-based business" means a business which certifies that, for the duration of a state purchasing contract, collectively, and not on any specific day:~~

~~1. At least 50 percent of the workers employed by the business for the state purchasing contract will hold a valid driver's license or identification card issued by the Department of Motor Vehicles of the State of Nevada;~~

~~2. All vehicles used primarily for the state purchasing contract will be:~~
~~(a) 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~~

~~(b) Registered in this State; and~~

~~3. The business will maintain and make available for inspection within this State its records concerning payroll relating to the state purchasing contract. (Deleted by amendment.)~~

Sec. 4. ~~"State purchasing contract" means a contract awarded pursuant to the provisions of this chapter. (Deleted by amendment.)~~

Sec. 5. ~~1. For the purposes of awarding a formal contract solicited pursuant to subsection 2 of NRS 333.300, if a business qualifies as a Nevada-based business and submits a bid or proposal and is a responsive and responsible bidder, the cost of the bid shall be deemed to be 5 percent lower than the cost of the bid actually submitted, and the score assigned to the proposal pursuant to NRS 333.335 shall be deemed to be 5 percent higher than the score actually awarded.~~

~~2. The preference described in subsection 1 may not be combined with any other preference. (Deleted by amendment.)~~

Sec. 6. ~~1. In addition to any other remedy or penalty provided by law, if the Purchasing Division determines that a business has made a material misrepresentation or otherwise committed a fraudulent act in applying for a preference described in section 5 of this act or has failed to comply with the requirements of that section, the business:~~

~~(a) Shall pay to the Purchasing Division, if awarded a state purchasing contract, a penalty in the amount of 1 percent of the cost of the state purchasing contract;~~

~~(b) Shall not bid on a state purchasing contract or a contract awarded by any local government for 1 year after the date upon which the Purchasing Division makes such a determination; and~~

~~(c) Shall not apply for or receive a preference described in section 5 of this act for 5 years after the date upon which the Purchasing Division makes such a determination.~~

~~2. If the Purchasing Division determines, as described in subsection 1, that a business has made a material misrepresentation or otherwise committed a fraudulent act in applying for a preference described in section 5 of this act or has failed to comply with the requirements of that section, the business may apply to the Administrator to review the decision pursuant to chapter 233B of NRS.~~

~~(Deleted by amendment.)~~

Sec. 7. (Deleted by amendment.)

Sec. 8. ~~[The Purchasing Division may adopt such regulations as it determines to be necessary or advisable to carry out the provisions of sections 2 to 8, inclusive, of this act. The regulations may include, without limitation, provisions setting forth:~~

~~1. The method by which a business may apply to receive a preference described in section 5 of this act;~~

~~2. The documentation or other proof that a business must submit to demonstrate that it qualifies for a preference described in section 5 of this act; and~~

~~3. Such other matters as the Purchasing Division deems relevant.] (Deleted by amendment.)~~

Sec. 9. [NRS 333.310 is hereby amended to read as follows:

~~333.310 1. An advertisement must contain a general description of the classes of commodities or services for which a bid or proposal is wanted and must state:~~

~~(a) The name and location of the department, agency, local government, district or institution for which the purchase is to be made;~~

~~(b) Where and how specifications and quotation forms may be obtained;~~

~~(c) If the advertisement is for bids, whether the Administrator is authorized by the using agency to be supplied to consider a bid for an article that is an alternative to the article listed in the original request for bids if:~~

~~(1) The specifications of the alternative article meet or exceed the specifications of the article listed in the original request for bids;~~

~~(2) The purchase of the alternative article results in a lower price; and~~

~~(3) The Administrator deems the purchase of the alternative article to be in the best interests of the State of Nevada.~~

~~(d) Notice of the [preference] preferences set forth in NRS 333.3366 [.] and section 5 of this act.~~

~~(e) The date and time not later than which responses must be received by the Purchasing Division.~~

~~(f) The date and time when responses will be opened.~~

~~→ The Administrator or a designated agent of the Administrator shall approve the copy for the advertisement.~~

~~2. Each advertisement must be published:~~

~~(a) In at least one newspaper of general circulation in the State. The selection of the newspaper to carry the advertisement must be made in the manner provided~~

1 by this chapter for other purchases, on the basis of the lowest price to be secured in
2 relation to the paid circulation; and

3 ~~— (b) On the Internet website of the Purchasing Division.] (Deleted by~~
4 ~~amendment.)~~

5 **Sec. 9.5.** ~~[NRS 333.3366 is hereby amended to read as follows:~~

6 ~~333.3366 1. For the purpose of awarding a formal contract solicited~~
7 ~~pursuant to subsection 2 of NRS 333.200, if:~~

8 ~~(a) A local business owned and operated by a veteran with a service connected~~
9 ~~disability submits a bid or proposal for a contract for which the estimated cost is~~
10 ~~more than \$50,000 but not more than \$250,000 and is a responsive and responsible~~
11 ~~bidder, the cost of the bid [or proposal] shall be deemed to be 5 percent lower than~~
12 ~~the cost of the bid [or proposal] actually submitted [.], and the score assigned to~~
13 ~~the proposal pursuant to NRS 333.335 shall be deemed to be 5 percent higher~~
14 ~~than the score actually awarded.~~

15 ~~(b) A local business owned and operated by a veteran with a service connected~~
16 ~~disability which is determined to be 50 percent or more by the United States~~
17 ~~Department of Veterans Affairs submits a bid or proposal for a contract for which~~
18 ~~the estimated cost is more than \$250,000 but less than \$500,000 and is a responsive~~
19 ~~and responsible bidder, the cost of the bid [or proposal] shall be deemed to be 5~~
20 ~~percent lower than the cost of the bid [or proposal] actually submitted [.], and the~~
21 ~~score assigned to the proposal pursuant to NRS 333.335 shall be deemed to be 5~~
22 ~~percent higher than the score actually awarded.~~

23 ~~2. The preferences described in subsection 1 may not be combined with any~~
24 ~~other preference.] (Deleted by amendment.)~~

25 **Sec. 10.** ~~[NRS 333.340 is hereby amended to read as follows:~~

26 ~~333.340 1. Every contract or order for goods must be awarded to the lowest~~
27 ~~responsible bidder. To determine the lowest responsible bidder, the Administrator:~~

28 ~~(a) Shall consider, if applicable:~~

29 ~~(1) The granting of the preference described in NRS 333.3366.~~

30 ~~(2) The granting of the preference described in section 5 of this act.~~

31 ~~(3) The required standards adopted pursuant to NRS 333.4611.~~

32 ~~(b) May consider:~~

33 ~~(1) The location of the using agency to be supplied.~~

34 ~~(2) The qualities of the articles to be supplied.~~

35 ~~(3) The total cost of ownership of the articles to be supplied.~~

36 ~~(4) Except as otherwise provided in subparagraph (5), the conformity of~~
37 ~~the articles to be supplied with the specifications.~~

38 ~~(5) If the articles are an alternative to the articles listed in the original~~
39 ~~request for bids, whether the advertisement for bids included a statement that bids~~
40 ~~for an alternative article will be considered if:~~

41 ~~(I) The specifications of the alternative article meet or exceed the~~
42 ~~specifications of the article listed in the original request for bids;~~

43 ~~(II) The purchase of the alternative article results in a lower price; and~~

44 ~~(III) The Administrator deems the purchase of the alternative article to~~
45 ~~be in the best interests of the State of Nevada.~~

46 ~~(6) The purposes for which the articles to be supplied are required.~~

47 ~~(7) The dates of delivery of the articles to be supplied.~~

48 ~~2. If a contract or an order is not awarded to the lowest bidder, the~~
49 ~~Administrator shall provide the lowest bidder with a written statement which sets~~
50 ~~forth the specific reasons that the contract or order was not awarded to him or her.~~

51 ~~3. As used in this section, "total cost of ownership" includes, but is not~~
52 ~~limited to:~~

53 ~~(a) The history of maintenance or repair of the articles;~~

~~(b) The cost of routine maintenance and repair of the articles;~~
~~(c) Any warranties provided in connection with the articles;~~
~~(d) The cost of replacement parts for the articles; and~~
~~(e) The value of the articles as used articles when given in trade on a subsequent purchase.~~ (Deleted by amendment.)

Sec. 11. 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, collectively, and not on any specific day:

(a) At least 50 percent of 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) 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, employees of the 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) 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 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 (d), inclusive, of subsection 1; and

(b) Provide that a failure to comply with any requirement of paragraphs (a) to (d), inclusive, of subsection 1 entitles the public body to a penalty only as provided in subsections 5 and 6.

3. A person who submitted a bid on the public work or an entity who believes that a contractor, applicant or design-build team has obtained a preference in bidding as described in subsection 1 but has failed to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1 may file, before the substantial completion of the public work, a written objection with the public body for which the contractor, applicant or design-build team is performing the public work. A written objection authorized pursuant to this subsection must set forth proof or substantiating evidence to support the belief of the person or entity that the contractor, applicant or design-build team has failed to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1.

4. If a public body receives a written objection pursuant to subsection 3, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to 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. If the public body determines that the objection is accompanied by the required proof or substantiating evidence or if the public body determines on its own initiative that proof or substantiating evidence of a failure to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1 exists, the public body shall determine whether the contractor, applicant or design-build team has failed to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1 and the public body or its authorized representative may proceed to award the contract accordingly or, if the contract has already been awarded, seek the remedy authorized in subsection 5.

5. ~~1A1~~ *In addition to any other remedy or penalty provided by law, a* public body may recover, by civil action against the party responsible for a failure to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1, a penalty as described in subsection 6 for a failure to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1. If a public body recovers a penalty pursuant to this subsection, the public body shall report to the State Contractors' Board the date of the failure to comply, the name of each entity which failed to comply and the cost of the contract to which the entity that failed to comply was a party. The Board shall maintain this information for not less than 6 years. Upon request, the Board shall provide this information to any public body or its authorized representative.

6. If a contractor, applicant or design-build team submits the affidavit described in subsection 1, receives a preference in bidding described in subsection 1 and is awarded the contract as a result of that preference, the contract between the contractor, applicant or design-build team and the public body, each contract between the contractor, applicant or design-build team and a subcontractor and each contract between a subcontractor and a lower tier subcontractor must provide that:

(a) If a party to the contract causes the contractor, applicant or design-build team to fail to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1, the party is liable to the public body for a penalty in the amount of 1 percent of the cost of the largest contract to which he or she is a party;

(b) The right to recover the amount determined pursuant to paragraph (a) by the public body pursuant to subsection 5 may be enforced by the public body directly against the party that caused the failure to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1; and

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

7. *A contractor, applicant or design-build team that submits the affidavit described in subsection 1, receives a preference in bidding described in subsection 1 and is awarded a contract as a result of that preference shall submit to the public body that awarded the contract, upon substantial completion of the public work, an affidavit from a certified public accountant setting forth that the contractor, applicant or design-build team has complied with the requirements of paragraphs (a) to (d), inclusive, of subsection 1.*

~~(a) On each January 1, April 1, July 1 and October 1 while engaged on the public work, for the preceding calendar quarter; and~~

~~(b) Upon completion of the public work, for the duration of the public work.~~

8. 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 (d), inclusive, of subsection 1.

~~8-9~~ 9. 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 this 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. 12. 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 ~~15-104~~ 7 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,~~ **annually** 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 ~~or~~ **or willfully and intentionally fails to submit an affidavit as required by subsection 7 of NRS 338.0117,** 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 the failure to submit the affidavit;~~ 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. 12.5. 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, 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 ~~4~~ 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

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

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

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

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

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

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

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

(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 annually 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 or willfully and intentionally fails to submit an affidavit as required by subsection 7 of NRS 338.0117, 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 the failure to submit the affidavit; 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. 13. 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 ~~15-14~~ 7 percent higher than the bid submitted by the lowest responsible 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

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

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

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

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

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

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

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

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

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

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

20 (1) License as a specialty contractor pursuant to the provisions of chapter
21 624 of NRS; and

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

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

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

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

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

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

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

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

52 (a) Submits false information to the Board regarding the required payment of
53 taxes ~~or~~ *or willfully and intentionally fails to submit an affidavit as required by*

subsection 7 of NRS 338.0117, 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~~ *or the failure to submit the affidavit*; 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 local government 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 local government not later than 3 business days after the opening of the bids by the local government or its authorized representative.

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

Sec. 13.5. 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 ~~47~~ 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

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

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

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

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

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

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

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

(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 annually 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 or willfully and intentionally fails to submit an affidavit as required by subsection 7 of NRS 338.0117, 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 the failure to submit the affidavit; 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 local government 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 local government not later than 3 business days after the opening of the bids by the local government or its authorized representative.

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

Sec. 14. ~~[NRS 338.1693 is hereby amended to read as follows:~~

~~338.1693 1. The public body or its authorized representative shall appoint a panel consisting of at least three but not more than seven members, a majority of 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 [5] 10 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 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:~~

~~(a) Make available to all applicants and the public the following information, as determined by the panel appointed pursuant to subsection 1 and the panel that conducted the interviews, as applicable:~~

~~(1) The final rankings of the applicants;~~

~~(2) The score assigned to each proposal received by the public body; and~~

~~(3) For each proposal received by the public body, the score assigned to each factor that the public body specified in the request for proposals; and~~

~~(b) Provide, upon request, an explanation to any unsuccessful applicant of the reasons why the applicant was unsuccessful.~~ (Deleted by amendment.)

Sec. 15. 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 ~~15-10%~~ 7 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

1 representative of the public body, approved by the public body or until a
2 determination is made by the public body to reject all applicants.

3 7. If a public body selects a final proposal and awards a design-build contract
4 pursuant to subsection 6, the public body shall:

5 (a) Partially reimburse the unsuccessful finalists if partial reimbursement was
6 provided for in the request for preliminary proposals pursuant to paragraph (j) of
7 subsection 2 of NRS 338.1723. The amount of reimbursement must not exceed, for
8 each unsuccessful finalist, 3 percent of the total amount to be paid to the design-
9 build team as set forth in the design-build contract.

10 (b) Make available to the public the results of the evaluation of final proposals
11 that was conducted and the ranking of the design-build teams who submitted final
12 proposals. The public body shall not release to a third party, or otherwise make
13 public, financial or proprietary information submitted by a design-build team.

14 8. A contract awarded pursuant to this section:

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

16 (b) Must specify:

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

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

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

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

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

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

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

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

45 **Sec. 16.** NRS 408.3886 is hereby amended to read as follows:

46 408.3886 1. After selecting the finalists pursuant to NRS 408.3885, the
47 Department shall provide to each finalist a request for final proposals for the
48 project. The request for final proposals must:

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

52 (b) Set forth the date by which final proposals must be submitted to the
53 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 ~~15-14%~~ 2 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. 16.5. 1. The amendatory provisions of sections 11, 12, 13, 15 and 16 of this act do not apply to a public work for which bids were advertised or solicited or which was awarded before July 1, 2018.

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

Sec. 17. 1. This section and sections 1 to 12, inclusive, 13 and 14 to 16.5, inclusive, of this act ~~becomes~~ become effective:

~~1-1~~ (a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

~~1-2~~ (b) On July 1, 2018, for all other purposes.

2. Sections 15 and 16 of this act expire by limitation on June 30, 2021.

3. Sections 12.5 and 13.5 of this act become effective on July 1, 2021.