

Amendment No. 1005

Senate Amendment to Senate Bill No. 317 First Reprint	(BDR 27-936)
<b>Proposed by:</b> Senator Cannizzaro	
<b>Amendment Box:</b> Consistent with Amendment No. 1002.	
<b>Amends:</b> Summary: No 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)

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

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

AN ACT relating to procurement; establishing provisions relating to preferences in bidding for certain contracts with Nevada-based businesses for state purchasing; revising provisions relating to preferences in bidding for contracts for certain public works projects; revising provisions relating to construction projects of the Nevada System of Higher Education; 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 333.3361-333.3369) **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, 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 completion of the public work. **Sections 12-16** of this bill revise the bidding preference that a contractor, applicant to serve as a construction manager at risk or design-build team who meets these requirements receives for certain public works contracts from 5 percent to 10 percent.

Existing law pertaining to public works applies to any project which is financed in whole or in part from public money for the new construction, repair or reconstruction of publicly owned works and properties. (NRS 338.010) Section 10.5 of this bill provides that a building for the Nevada System of Higher Education is a public work only if 25 percent or more of the costs of the building as a whole are paid from money appropriated by the State or from federal money.

Section 10.3 of this bill requires the Nevada System of Higher Education to disclose to the State Public Works Division the name of each contractor or design professional selected to provide design and construction work on a building financed using less than 25 percent public money within 30 days after entering into a contract for such work.

Existing law restricts a public body, including the State, its local governments, school districts and any public agency thereof which sponsors or finances a public work, from entering into a contract for a public work in which any construction materials or goods to be used on the public work are purchased or supplied by the public body, a contractor who is a constituent part of the public body or a contractor who is not a constituent part of the public body acting on behalf of the public body. (NRS 338.1423) Section 12.5 of this bill provides that these restrictions also apply to any contract for construction work of the Nevada System of Higher Education, even if the construction work does not qualify as a public work.

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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.

**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.*

**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.*

**Sec. 4.** *“State purchasing contract” means a contract awarded pursuant to the provisions of this chapter.*

**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-*

1 *based business and submits a bid or proposal and is a responsive and responsible*  
2 *bidder, the cost of the bid shall be deemed to be 5 percent lower than the cost of*  
3 *the bid actually submitted, and the score assigned to the proposal pursuant to*  
4 *NRS 333.335 shall be deemed to be 5 percent higher than the score actually*  
5 *awarded.*

6 *2. The preference described in subsection 1 may not be combined with any*  
7 *other preference.*

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

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

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

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

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

27 **Sec. 7.** (Deleted by amendment.)

28 **Sec. 8.** *The Purchasing Division may adopt such regulations as it*  
29 *determines to be necessary or advisable to carry out the provisions of sections 2 to*  
30 *8, inclusive, of this act. The regulations may include, without limitation,*  
31 *provisions setting forth:*

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

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

37 *3. Such other matters as the Purchasing Division deems relevant.*

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

39 333.310 1. An advertisement must contain a general description of the  
40 classes of commodities or services for which a bid or proposal is wanted and must  
41 state:

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

44 (b) Where and how specifications and quotation forms may be obtained.

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

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

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

51 (3) The Administrator deems the purchase of the alternative article to be in  
52 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 by this chapter for other purchases, on the basis of the lowest price to be secured in relation to the paid circulation; and

(b) On the Internet website of the Purchasing Division.

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

333.3366 1. For the purpose of awarding a formal contract solicited pursuant to subsection 2 of NRS 333.300, if:

(a) A local business owned and operated by a veteran with a service-connected disability submits a bid or proposal for a contract for which the estimated cost is more than \$50,000 but not more than \$250,000 and is a responsive and responsible bidder, the *cost of the bid* ~~for proposal~~ shall be deemed to be 5 percent lower than the *cost of the bid* ~~for proposal~~ actually submitted ~~and~~, *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.*

(b) A local business owned and operated by a veteran with a service-connected disability which is determined to be 50 percent or more by the United States Department of Veterans Affairs submits a bid or proposal for a contract for which the estimated cost is more than \$250,000 but less than \$500,000 and is a responsive and responsible bidder, the *cost of the bid* ~~for proposal~~ shall be deemed to be 5 percent lower than the *cost of the bid* ~~for proposal~~ actually submitted ~~and~~, *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 preferences described in subsection 1 may not be combined with any other preference.

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

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

(a) Shall consider, if applicable:

- (1) The granting of the preference described in NRS 333.3366.
- (2) *The granting of the preference described in section 5 of this act.*
- (3) The required standards adopted pursuant to NRS 333.4611.

(b) May consider:

- (1) The location of the using agency to be supplied.
- (2) The qualities of the articles to be supplied.
- (3) The total cost of ownership of the articles to be supplied.
- (4) Except as otherwise provided in subparagraph (5), the conformity of the articles to be supplied with the specifications.
- (5) If the articles are an alternative to the articles listed in the original request for bids, whether the advertisement for bids included a statement that bids for an alternative article will be considered if:

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

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

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

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

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

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

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

(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.

**Sec. 10.3. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:**

**For any building of the Nevada System of Higher Education for which less than 25 percent of the costs of the building as a whole are paid from money appropriated by this State or from federal money, the Nevada System of Higher Education shall disclose to the State Public Works Division the name of each contractor and design professional selected to perform the design and construction work on the building within 30 days after entering into a contract for such work.**

**Sec. 10.5. NRS 338.010 is hereby amended to read as follows:**

338.010 As used in this chapter:

1. "Authorized representative" means a person designated by a public body to be responsible for the development, solicitation, award or administration of contracts for public works pursuant to this chapter.

2. "Contract" means a written contract entered into between a contractor and a public body for the provision of labor, materials, equipment or supplies for a public work.

3. "Contractor" means:

(a) A person who is licensed pursuant to the provisions of chapter 624 of NRS.

(b) A design-build team.

4. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a worker or workers employed by them on public works by the day and not under a contract in writing.

5. "Design-build contract" means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.

6. "Design-build team" means an entity that consists of:

(a) At least one person who is licensed as a general engineering contractor or a general building contractor pursuant to chapter 624 of NRS; and

(b) For a public work that consists of:

(1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.

(2) Anything other than a building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS or landscape architecture pursuant to chapter 623A of NRS or who is licensed as a professional engineer pursuant to chapter 625 of NRS.

7. "Design professional" means:

1 (a) A person who is licensed as a professional engineer pursuant to chapter 625  
2 of NRS;

3 (b) A person who is licensed as a professional land surveyor pursuant to  
4 chapter 625 of NRS;

5 (c) A person who holds a certificate of registration to engage in the practice of  
6 architecture, interior design or residential design pursuant to chapter 623 of NRS;

7 (d) A person who holds a certificate of registration to engage in the practice of  
8 landscape architecture pursuant to chapter 623A of NRS; or

9 (e) A business entity that engages in the practice of professional engineering,  
10 land surveying, architecture or landscape architecture.

11 8. "Division" means the State Public Works Division of the Department of  
12 Administration.

13 9. "Eligible bidder" means a person who is:

14 (a) Found to be a responsible and responsive contractor by a local government  
15 or its authorized representative which requests bids for a public work in accordance  
16 with paragraph (b) of subsection 1 of NRS 338.1373; or

17 (b) Determined by a public body or its authorized representative which  
18 awarded a contract for a public work pursuant to NRS 338.1375 to 338.139,  
19 inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or  
20 338.1382.

21 10. "General contractor" means a person who is licensed to conduct business  
22 in one, or both, of the following branches of the contracting business:

23 (a) General engineering contracting, as described in subsection 2 of NRS  
24 624.215.

25 (b) General building contracting, as described in subsection 3 of NRS 624.215.

26 11. "Governing body" means the board, council, commission or other body in  
27 which the general legislative and fiscal powers of a local government are vested.

28 12. "Local government" means every political subdivision or other entity  
29 which has the right to levy or receive money from ad valorem or other taxes or any  
30 mandatory assessments, and includes, without limitation, counties, cities, towns,  
31 boards, school districts and other districts organized pursuant to chapters 244A,  
32 309, 318, 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,  
33 inclusive, and any agency or department of a county or city which prepares a  
34 budget separate from that of the parent political subdivision. The term includes a  
35 person who has been designated by the governing body of a local government to  
36 serve as its authorized representative.

37 13. "Offense" means failing to:

38 (a) Pay the prevailing wage required pursuant to this chapter;

39 (b) Pay the contributions for unemployment compensation required pursuant to  
40 chapter 612 of NRS;

41 (c) Provide and secure compensation for employees required pursuant to  
42 chapters 616A to 617, inclusive, of NRS; or

43 (d) Comply with subsection 5 or 6 of NRS 338.070.

44 14. "Prime contractor" means a contractor who:

45 (a) Contracts to construct an entire project;

46 (b) Coordinates all work performed on the entire project;

47 (c) Uses his or her own workforce to perform all or a part of the public work;  
48 and

49 (d) Contracts for the services of any subcontractor or independent contractor or  
50 is responsible for payment to any contracted subcontractors or independent  
51 contractors.



1     ↪ The term includes, without limitation, a general contractor or a specialty  
2 contractor who is authorized to bid on a project pursuant to NRS 338.139 or  
3 338.148.

4     15. "Public body" means the State, county, city, town, school district or any  
5 public agency of this State or its political subdivisions sponsoring or financing a  
6 public work.

7     16. "Public work" means any project for the new construction, repair or  
8 reconstruction of :

9     (a) Except as otherwise provided in paragraph (b), a project financed in  
10 whole or in part from public money for:

11     ~~(a)~~ (1) Public buildings;

12     ~~(b)~~ (2) Jails and prisons;

13     ~~(c)~~ (3) Public roads;

14     ~~(d)~~ (4) Public highways;

15     ~~(e)~~ (5) Public streets and alleys;

16     ~~(f)~~ (6) Public utilities;

17     ~~(g)~~ (7) Publicly owned water mains and sewers;

18     ~~(h)~~ (8) Public parks and playgrounds;

19     ~~(i)~~ (9) Public convention facilities which are financed at least in part with  
20 public money; and

21     ~~(j)~~ (10) All other publicly owned works and property.

22     (b) A building for the Nevada System of Higher Education of which 25  
23 percent or more of the costs of the building as a whole are paid from money  
24 appropriated by this State or from federal money.

25     17. "Specialty contractor" means a person who is licensed to conduct business  
26 as described in subsection 4 of NRS 624.215.

27     18. "Stand-alone underground utility project" means an underground utility  
28 project that is not integrated into a larger project, including, without limitation:

29     (a) An underground sewer line or an underground pipeline for the conveyance  
30 of water, including facilities appurtenant thereto; and

31     (b) A project for the construction or installation of a storm drain, including  
32 facilities appurtenant thereto,

33     ↪ that is not located at the site of a public work for the design and construction of  
34 which a public body is authorized to contract with a design-build team pursuant to  
35 subsection 2 of NRS 338.1711.

36     19. "Subcontract" means a written contract entered into between:

37     (a) A contractor and a subcontractor or supplier; or

38     (b) A subcontractor and another subcontractor or supplier,

39     ↪ for the provision of labor, materials, equipment or supplies for a construction  
40 project.

41     20. "Subcontractor" means a person who:

42     (a) Is licensed pursuant to the provisions of chapter 624 of NRS or performs  
43 such work that the person is not required to be licensed pursuant to chapter 624 of  
44 NRS; and

45     (b) Contracts with a contractor, another subcontractor or a supplier to provide  
46 labor, materials or services for a construction project.

47     21. "Supplier" means a person who provides materials, equipment or supplies  
48 for a construction project.

49     22. "Wages" means:

50     (a) The basic hourly rate of pay; and

51     (b) The amount of pension, health and welfare, vacation and holiday pay, the  
52 cost of apprenticeship training or other similar programs or other bona fide fringe  
53 benefits which are a benefit to the worker.

23. "Worker" means a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker in the service of a contractor or subcontractor under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. The term does not include a design professional.

**Sec. 10.7. NRS 338.0115 is hereby amended to read as follows:**

1. Except as otherwise provided in subsection 2, the provisions of this chapter and chapters 332 and 339 of NRS do not apply to a contract under which a private developer, for the benefit of a private development, constructs a water or sewer line extension and any related appurtenances:

(a) Which qualify as a public work pursuant to NRS 338.010; and

(b) For which the developer will receive a monetary contribution or refund from a public body as reimbursement for a portion of the costs of the project.

2. If, pursuant to the provisions of such a contract, the developer is not responsible for paying all of the initial construction costs of the project, the provisions of NRS 338.0117, 338.013 to 338.090, inclusive, and 338.1373 to 338.148, inclusive, and section 10.3 of this act apply to the contract.

**Sec. 11. NRS 338.0117 is hereby amended to read as follows:**

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. ~~1A~~ *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*

1 *to the public body that awarded the contract an affidavit from a certified public*  
2 *accountant setting forth that the contractor, applicant or design-build team has*  
3 *complied with the requirements of paragraphs (a) to (d), inclusive, of subsection*  
4 *1:*

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

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

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

21 ~~†8-†~~ **9.** As used in this section:

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

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

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

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

33 **Sec. 12.** NRS 338.1389 is hereby amended to read as follows:

34 **338.1389** 1. Except as otherwise provided in subsection 10 and NRS  
35 338.1385, 338.1386 and 338.13864, a public body or its authorized representative  
36 shall award a contract for a public work for which the estimated cost exceeds  
37 \$250,000 to the contractor who submits the best bid.

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

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


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

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

46 (3) Within 2 hours after the completion of the opening of the bids by the  
47 public body or its authorized representative, submits a signed affidavit that meets  
48 the requirements of subsection 1 of NRS 338.0117; and

49 (b) Not more than ~~†5†~~ **10** percent higher than the bid submitted by the lowest  
50 responsive and responsible bidder who:

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

1 (2) Does not submit, within 2 hours after the completion of the opening of  
2 the bids by the public body or its authorized representative, a signed affidavit  
3 certifying that he or she will comply with the requirements of paragraphs (a) to (d),  
4 inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,  
5  shall be deemed to be the best bid for the purposes of this section.

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

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

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

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

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

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

28 (1) License as a general contractor pursuant to the provisions of chapter  
29 624 of NRS; and

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

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

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

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

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

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

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

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

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

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

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

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

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall ~~at the time for the renewal of his or her contractor's license pursuant to NRS 624.283, 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 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 338.1423 is hereby amended to read as follows:**

338.1423 1. Except as otherwise provided in this section, a public body shall not enter into an express or implied contract for a public work which provides that any construction materials or goods to be used on the public work will be purchased or otherwise supplied by:

(a) The public body or a contractor who is a constituent part of the public body; or

(b) A contractor who is not a constituent part of the public body but is acting on behalf of the public body.

2. A public body may enter into an express or implied contract for a public work which provides that any construction materials or goods to be used in the public work will be purchased or supplied by the public body, a contractor who is a constituent part of the public body or a contractor who is not a constituent part of the public body but is acting on behalf of the public body if:

(a) The contract requires the payment of any state or local taxes that would otherwise have been due for the purchase and use of the construction materials or goods if the construction materials or goods had been purchased and used by a contractor who was not a constituent part of the public body and who was not otherwise exempt from the taxes pursuant to state or local law; and

(b) The public body sends an itemized list of the construction materials or goods to be purchased or otherwise provided by the public body or a contractor who is a constituent part of the public body, to the Department of Taxation. The itemized list must include the amount paid for each item.

3. An express or implied contract entered into in violation of subsection 1 is void.

4. A person who enters into an express or implied contract that violates the provisions of subsection 1 is guilty of a gross misdemeanor.

5. The right to enforce the provisions of this section vests exclusively in the Attorney General, who shall institute and prosecute the appropriate proceedings to enforce the provisions of this section.

6. If an express or implied contract for a public work is entered into in violation of subsection 1, the Attorney General shall forward to the Department of Taxation a list of construction materials or goods purchased in violation of this



section by the public body or the contractor who is a constituent part of the public body. The Department shall calculate the applicable state and local taxes on the purchase and use of the construction materials or goods which would have been due but for the tax exemption of the public body or the contractor who is a constituent part of the public body, and shall deduct from the money otherwise payable from the proceeds of any tax distribution to the public body twice the amount of the applicable taxes.

7. The provisions of this section do not apply to an express or implied contract for a public work for which the construction materials or goods purchased by the public body are:

(a) Devices, equipment or hardware purchased in compliance with chapter 332 or 333 of NRS which are needed on a recurring basis and used to protect the health, safety or welfare of the public, including, without limitation, official traffic control devices; or

(b) Specialized components purchased in compliance with chapter 332 or 333 of NRS which are specific to a particular project and are not commonly used in public works projects.

➤ If a public body enters into such a contract, the public body must provide annually to the Department of Taxation an itemized list of the construction materials or goods purchased pursuant to the contract and the amount paid for each item.

8. If a public body is going to perform the public work itself in accordance with NRS 338.13864, the public body is not required to:

(a) Pay any state or local taxes for the purchase and use of construction materials or goods.

(b) Send to the Department of Taxation an itemized list of construction materials or goods to be purchased by the public body for the public work.

9. *The provisions of this section apply to any contract for construction work of the Nevada System of Higher Education even if the construction work does not qualify as a public work, as defined in NRS 338.010.*

10. As used in this section, "construction materials or goods" means all materials, equipment or supplies which are intended to be used in a public work.

**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~~ 10 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



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

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

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

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

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

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

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

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

28 (1) License as a general contractor pursuant to the provisions of chapter  
29 624 of NRS; and

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

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

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

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

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

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

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

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

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

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

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

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

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall ~~at the time for the renewal of his or her contractor's license pursuant to NRS 624.283,~~ **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 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 ~~15~~ 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

1 event shall the proposed amount of compensation exceed 20 percent of the scoring  
2 for the selection of the most qualified applicant. All presentations made at any  
3 interview conducted pursuant to this subsection or subsection 5 may be made only  
4 by key personnel employed by the applicant, as determined by the applicant, and  
5 the employees of the applicant who will be directly responsible for managing the  
6 preconstruction and construction of the public work.

7 7. After conducting such interviews, the panel that conducted the interviews  
8 shall rank the applicants by using a ranking process that is separate from the  
9 process used to rank the applicants pursuant to subsection 2 and is based only on  
10 information submitted during the interview process. The score to be given for the  
11 proposed amount of compensation, if any, must be calculated by dividing the  
12 lowest of all the proposed amounts of compensation by the applicant's proposed  
13 amount of compensation multiplied by the total possible points available to each  
14 applicant. When ranking the applicants, the panel that conducted the interviews  
15 shall assign a relative weight of 5 percent to the applicant's possession of a  
16 certificate of eligibility to receive a preference in bidding on public works if the  
17 applicant submits a signed affidavit that meets the requirements of subsection 1 of  
18 NRS 338.0117. If any federal statute or regulation precludes the granting of federal  
19 assistance or reduces the amount of that assistance for a particular public work  
20 because of the provisions of this subsection, those provisions of this subsection do  
21 not apply insofar as their application would preclude or reduce federal assistance  
22 for that work.

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

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

41 10. The public body or its authorized representative shall:

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

- 45 (1) The final rankings of the applicants;  
46 (2) The score assigned to each proposal received by the public body; and  
47 (3) For each proposal received by the public body, the score assigned to  
48 each factor that the public body specified in the request for proposals; and

49 (b) Provide, upon request, an explanation to any unsuccessful applicant of the  
50 reasons why the applicant was unsuccessful.

1       **Sec. 15.** NRS 338.1727 is hereby amended to read as follows:

2       338.1727 1. After selecting the finalists pursuant to NRS 338.1725, the  
3 public body shall provide to each finalist a request for final proposals for the public  
4 work. The request for final proposals must:

5       (a) Set forth the factors that the public body will use to select a design-build  
6 team to design and construct the public work, including the relative weight to be  
7 assigned to each factor; and

8       (b) Set forth the date by which final proposals must be submitted to the public  
9 body.

10       2. If one or more of the finalists selected pursuant to NRS 338.1725 is  
11 disqualified or withdraws, the public body may select a design-build team from the  
12 remaining finalist or finalists.

13       3. Except as otherwise provided in this subsection, in assigning the relative  
14 weight to each factor for selecting a design-build team pursuant to subsection 1, the  
15 public body shall assign, without limitation, a relative weight of ~~15~~ 10 percent to  
16 the possession of both a certificate of eligibility to receive a preference in bidding  
17 on public works by all contractors on the design-build team if the contractors  
18 submit signed affidavits that meet the requirements of subsection 1 of NRS  
19 338.0117, and a certificate of eligibility to receive a preference when competing for  
20 public works by all design professionals on the design-build team, and a relative  
21 weight of at least 30 percent to the proposed cost of design and construction of the  
22 public work. If any federal statute or regulation precludes the granting of federal  
23 assistance or reduces the amount of that assistance for a particular public work  
24 because of the provisions of this subsection relating to a preference in bidding on  
25 public works, or a preference when competing for public works, those provisions of  
26 this subsection do not apply insofar as their application would preclude or reduce  
27 federal assistance for that public work.

28       4. A final proposal submitted by a design-build team pursuant to this section  
29 must be prepared thoroughly and be responsive to the criteria that the public body  
30 will use to select a design-build team to design and construct the public work  
31 described in subsection 1. A design-build team that submits a final proposal which  
32 is not responsive shall not be awarded the contract and shall not be eligible for the  
33 partial reimbursement of costs provided for in subsection 7.

34       5. A final proposal is exempt from the requirements of NRS 338.141.

35       6. After receiving and evaluating the final proposals for the public work, the  
36 public body or its authorized representative shall enter into negotiations with the  
37 most qualified applicant, as determined pursuant to the criteria set forth pursuant to  
38 subsections 1 and 3, and award the design-build contract to the design-build team  
39 whose proposal is selected. If the public body or its authorized representative is  
40 unable to negotiate with the most qualified applicant a contract that is determined  
41 by the parties to be fair and reasonable, the public body may terminate negotiations  
42 with that applicant. The public body or its authorized representative may then  
43 undertake negotiations with the next most qualified applicant in sequence until an  
44 agreement is reached and, if the negotiation is undertaken by an authorized  
45 representative of the public body, approved by the public body or until a  
46 determination is made by the public body to reject all applicants.

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

49       (a) Partially reimburse the unsuccessful finalists if partial reimbursement was  
50 provided for in the request for preliminary proposals pursuant to paragraph (j) of  
51 subsection 2 of NRS 338.1723. The amount of reimbursement must not exceed, for  
52 each unsuccessful finalist, 3 percent of the total amount to be paid to the design-  
53 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. 16.** 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~~ 10 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

1 engineer on the design-build team, and a relative weight of at least 30 percent for  
2 the proposed cost of design and construction of the project. If any federal statute or  
3 regulation precludes the granting of federal assistance or reduces the amount of that  
4 assistance for a particular project because of the provisions of this subsection  
5 relating to a preference in bidding on public works or a preference when competing  
6 for public works, those provisions of this subsection do not apply insofar as their  
7 application would preclude or reduce federal assistance for that project.

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

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

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

15 (b) Reject all the final proposals; or

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

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

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

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

33 6. If the Department selects a final proposal pursuant to paragraph (a) of  
34 subsection 4 or selects a best and final offer pursuant to paragraph (a) of subsection  
35 5, the Department shall hold a public meeting to:

36 (a) Review and ratify the selection.

37 (b) Partially reimburse the unsuccessful finalists if partial reimbursement was  
38 provided for in the request for preliminary proposals pursuant to paragraph (f) of  
39 subsection 3 of NRS 408.3883. The amount of reimbursement must not exceed, for  
40 each unsuccessful finalist, 3 percent of the total amount to be paid to the design-  
41 build team as set forth in the design-build contract.

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

47 7. A contract awarded pursuant to this section:

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

50 (b) Must specify:

51 (1) An amount that is the maximum amount that the Department will pay  
52 for the performance of all the work required by the contract, excluding any amount

1 related to costs that may be incurred as a result of unexpected conditions or  
2 occurrences as authorized by the contract;

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

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

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

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

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

13 **Sec. 17.** This act becomes effective:

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

17 2. On July 1, 2018, for all other purposes.