

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; providing penalties; 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 or proposal which qualifies for the preference will be deemed to be 5 percent lower than the bid or proposal actually submitted. **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.



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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) **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 prohibits a contractor from being qualified to bid on certain state and local public works if the contractor has, within the preceding year, materially breached a contract for a public work that cost more than \$25,000,000 and prohibits a contractor who has materially breached a contract for a public work which exceeds \$5,000,000 from receiving a preference in bidding for public works for 5 years. (NRS 338.1379, 338.1382, 338.1389, 338.1415, 338.147, 408.333) Existing law also imposes a penalty of 1 percent of the cost of the contract upon a contractor, applicant or design-build team who is awarded a contract as a result of a bidding preference and subsequently fails to comply with the requirements to receive that preference. (NRS 338.0117) **Section 11** of this bill makes a willful failure to comply with the requirements to receive a bidding preference a misdemeanor and creates a separate violation for each worker, vehicle or design professional by which the contractor, applicant or design-build team falls below the requirements. **Section 7** creates a similar misdemeanor for a business that receives a preference on a state purchasing contract as a Nevada-based business and willfully fails to comply with the requirements for such a preference.

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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:*



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

4     (b) *Registered in this State; and*

5     3. *The business will maintain and make available for*  
6     *inspection within this State its records concerning payroll relating*  
7     *to the state purchasing contract.*

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

10    Sec. 5. 1. *For the purposes of awarding a formal contract*  
11    *solicited pursuant to subsection 2 of NRS 333.300, if a business*  
12    *qualifies as a Nevada-based business and submits a bid or*  
13    *proposal and is a responsive and responsible bidder, the bid or*  
14    *proposal shall be deemed to be 5 percent lower than the bid*  
15    *or proposal actually submitted.*

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

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

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

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

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

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

40    Sec. 7. *In addition to any other remedy or penalty provided*  
41    *by law, any person who willfully makes a material*  
42    *misrepresentation or otherwise commits a fraudulent act in*  
43    *applying for a preference described in section 5 of this act or who*  
44    *willfully fails to comply with the requirements of that section is*  
45    *guilty of a misdemeanor and shall be punished by a fine of not*



1 *more than \$10,000. For the purposes of this section, a separate*  
2 *violation occurs for each:*

3 *1. Worker who would need to hold a valid driver's license or*  
4 *identification card issued by the Department of Motor Vehicles of*  
5 *the State of Nevada in order for at least 50 percent of the workers*  
6 *employed by the business for the state purchasing contract to hold*  
7 *such a license or card; and*

8 *2. Vehicle used primarily for the state purchasing contract*  
9 *which is not registered and partially apportioned to Nevada*  
10 *pursuant to the International Registration Plan, as adopted by the*  
11 *Department of Motor Vehicles pursuant to NRS 706.826, or*  
12 *registered in this State.*

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

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

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

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

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

25 333.310 1. An advertisement must contain a general  
26 description of the classes of commodities or services for which a bid  
27 or proposal is wanted and must state:

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

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

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

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

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

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

44 (d) Notice of the ~~the preference~~ *preferences* set forth in NRS  
45 333.3366 ~~H~~ *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. 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



1 statement which sets forth the specific reasons that the contract or  
2 order was not awarded to him or her.

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

- 5 (a) The history of maintenance or repair of the articles;
- 6 (b) The cost of routine maintenance and repair of the articles;
- 7 (c) Any warranties provided in connection with the articles;
- 8 (d) The cost of replacement parts for the articles; and
- 9 (e) The value of the articles as used articles when given in trade  
10 on a subsequent purchase.

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

12 338.0117 1. To qualify to receive a preference in bidding  
13 pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS  
14 338.147, subsection 3 of NRS 338.1693, subsection 3 of NRS  
15 338.1727 or subsection 2 of NRS 408.3886, a contractor, an  
16 applicant or a design-build team, respectively, must submit to the  
17 public body sponsoring or financing a public work a signed affidavit  
18 which certifies that, for the duration of the project, collectively, and  
19 not on any specific day:

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

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

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

30 (2) Registered in this State;

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

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

43 2. Any contract for a public work that is awarded to a  
44 contractor, applicant or design-build team who submits the affidavit  
45 described in subsection 1 as a result of the contractor, applicant or



1 design-build team receiving a preference in bidding described in  
2 subsection 1 must:

3 (a) Include a provision in the contract that substantially  
4 incorporates the requirements of paragraphs (a) to (d), inclusive, of  
5 subsection 1; and

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

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

21 4. If a public body receives a written objection pursuant to  
22 subsection 3, the public body shall determine whether the objection  
23 is accompanied by the proof or substantiating evidence required  
24 pursuant to that subsection. If the public body determines that the  
25 objection is not accompanied by the required proof or substantiating  
26 evidence, the public body shall dismiss the objection. If the public  
27 body determines that the objection is accompanied by the required  
28 proof or substantiating evidence or if the public body determines on  
29 its own initiative that proof or substantiating evidence of a failure to  
30 comply with a requirement of paragraphs (a) to (d), inclusive, of  
31 subsection 1 exists, the public body shall determine whether the  
32 contractor, applicant or design-build team has failed to comply with  
33 a requirement of paragraphs (a) to (d), inclusive, of subsection 1 and  
34 the public body or its authorized representative may proceed to  
35 award the contract accordingly or, if the contract has already been  
36 awarded, seek the remedy authorized in subsection 5.

37 5. ~~IAI~~ *In addition to any other remedy or penalty provided by*  
38 *law, a* public body may recover, by civil action against the party  
39 responsible for a failure to comply with a requirement of paragraphs  
40 (a) to (d), inclusive, of subsection 1, a penalty as described in  
41 subsection 6 for a failure to comply with a requirement of  
42 paragraphs (a) to (d), inclusive, of subsection 1. If a public body  
43 recovers a penalty pursuant to this subsection, the public body shall  
44 report to the State Contractors' Board the date of the failure to  
45 comply, the name of each entity which failed to comply and the cost



1 of the contract to which the entity that failed to comply was a party.  
2 The Board shall maintain this information for not less than 6 years.  
3 Upon request, the Board shall provide this information to any public  
4 body or its authorized representative.

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

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

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

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

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

41 8. *In addition to any other remedy or penalty provided by law,*  
42 *any person who willfully fails to comply with the requirements of*  
43 *paragraphs (a), (b) and (c) of subsection 1 is guilty of a*  
44 *misdemeanor and shall be punished by a fine of not more than*





1 *\$10,000. For the purpose of this subsection, a separate violation*  
2 *occurs for:*

3 *(a) Each worker who would need to hold a valid driver's*  
4 *license or identification card issued by the Department of Motor*  
5 *Vehicles of the State of Nevada in order for at least 50 percent of*  
6 *the workers employed on the public work to hold such a license or*  
7 *card;*

8 *(b) Each vehicle used primarily for the public work which is*  
9 *not registered and partially apportioned to Nevada pursuant to the*  
10 *International Registration Plan, as adopted by the Department of*  
11 *Motor Vehicles pursuant to NRS 706.826, or registered in this*  
12 *State; and*

13 *(c) If receiving a preference in bidding pursuant to subsection*  
14 *3 of NRS 338.1727 or subsection 2 of NRS 408.3886, each design*  
15 *professional who would need to hold a valid driver's license or*  
16 *identification card issued by the Department of Motor Vehicles of*  
17 *the State of Nevada in order for at least 50 percent of the design*  
18 *professionals working on the public work to hold such a license or*  
19 *card.*

20 **9.** As used in this section:

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

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

30 (1) Owned or operated by the contractor or any subcontractor  
31 who is 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  
35 and NRS 338.1385, 338.1386 and 338.13864, a public body or its  
36 authorized representative shall award a contract for a public work  
37 for which the estimated cost exceeds \$250,000 to the contractor who  
38 submits the best bid.

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

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

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

44 (2) At the time the contractor submits his or her bid, provides  
45 a valid certificate of eligibility to receive a preference in bidding on



1 public works issued to the contractor by the State Contractors'  
2 Board pursuant to subsection 3 or 4; and

3 (3) Within 2 hours after the completion of the opening of the  
4 bids by the public body or its authorized representative, submits a  
5 signed affidavit that meets the requirements of subsection 1 of NRS  
6 338.0117; and

7 (b) Not more than ~~15~~ 10 percent higher than the bid submitted  
8 by the lowest responsive and responsible bidder who:

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

29 **Sec. 13.** NRS 338.147 is hereby amended to read as follows:

30 338.147 1. Except as otherwise provided in subsection 10  
31 and NRS 338.143, 338.1442 and 338.1446, a local government or  
32 its authorized representative shall award a contract for a public work  
33 for which the estimated cost exceeds \$250,000 to the contractor who  
34 submits the best bid.

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

37 (a) Submitted by a contractor who:

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

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

44 (3) Within 2 hours after the completion of the opening of the  
45 bids by the local government or its authorized representative,



1 submits a signed affidavit that meets the requirements of subsection  
2 1 of NRS 338.0117; and

3 (b) Not more than ~~15~~ 10 percent higher than the bid submitted  
4 by the lowest responsive and responsible bidder who:

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

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

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

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

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

22 (1) The sales and use taxes imposed pursuant to chapters  
23 372, 374 and 377 of NRS on materials used for construction in this  
24 State, including, without limitation, construction that is undertaken  
25 or carried out on land within the boundaries of this State that is  
26 managed by the Federal Government or is on an Indian reservation  
27 or Indian colony, of not less than \$5,000 for each consecutive 12-  
28 month period for 60 months immediately preceding the submission  
29 of the affidavit from the certified public accountant;

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

41       6. A contractor who has received a certificate of eligibility to  
42 receive a preference in bidding on public works from the State  
43 Contractors' Board pursuant to subsection 3 or 4 shall, at the time  
44 for the renewal of his or her contractor's license pursuant to NRS  
45 624.283, submit to the Board an affidavit from a certified public



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1 accountant setting forth that the contractor has, during the  
2 immediately preceding 12 months, paid the taxes required pursuant  
3 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as  
4 applicable, to maintain eligibility to hold such a certificate.

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

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

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

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

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

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

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

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

41 13. A person who submitted a bid on the public work or an  
42 entity who believes that the contractor who was awarded the  
43 contract for the public work wrongfully holds a certificate of  
44 eligibility to receive a preference in bidding on public works may  
45 challenge the validity of the certificate by filing a written objection





1 with the local government to which the contractor has submitted a  
2 bid on a contract for the construction of a public work. A written  
3 objection authorized pursuant to this subsection must:

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

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

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

25 **Sec. 14.** NRS 338.1693 is hereby amended to read as follows:

26 338.1693 1. The public body or its authorized representative  
27 shall appoint a panel consisting of at least three but not more than  
28 seven members, a majority of whom must have experience in the  
29 construction industry, to rank the proposals submitted to the public  
30 body by evaluating the proposals as required pursuant to subsections  
31 2 and 3.

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

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

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

40 3. When ranking the proposals, the panel appointed pursuant to  
41 subsection 1 shall assign a relative weight of ~~15~~ 10 percent to the  
42 applicant's possession of a certificate of eligibility to receive a  
43 preference in bidding on public works if the applicant submits a  
44 signed affidavit that meets the requirements of subsection 1 of NRS  
45 338.0117. If any federal statute or regulation precludes the granting



1 of federal assistance or reduces the amount of that assistance for a  
2 particular public work because of the provisions of this subsection,  
3 those provisions of this subsection do not apply insofar as their  
4 application would preclude or reduce federal assistance for that  
5 work.

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

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

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

28 7. After conducting such interviews, the panel that conducted  
29 the interviews shall rank the applicants by using a ranking process  
30 that is separate from the process used to rank the applicants pursuant  
31 to subsection 2 and is based only on information submitted during  
32 the interview process. The score to be given for the proposed  
33 amount of compensation, if any, must be calculated by dividing  
34 the lowest of all the proposed amounts of compensation by the  
35 applicant's proposed amount of compensation multiplied by the  
36 total possible points available to each applicant. When ranking  
37 the applicants, the panel that conducted the interviews shall assign a  
38 relative weight of 5 percent to the applicant's possession of a  
39 certificate of eligibility to receive a preference in bidding on public  
40 works if the applicant submits a signed affidavit that meets the  
41 requirements of subsection 1 of NRS 338.0117. If any federal  
42 statute or regulation precludes the granting of federal assistance or  
43 reduces the amount of that assistance for a particular public work  
44 because of the provisions of this subsection, those provisions of this



1 subsection do not apply insofar as their application would preclude  
2 or reduce federal assistance for that work.

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

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

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

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

30 (1) The final rankings of the applicants;

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

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

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

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

39 338.1727 1. After selecting the finalists pursuant to NRS  
40 338.1725, the public body shall provide to each finalist a request for  
41 final proposals for the public work. The request for final proposals  
42 must:

43 (a) Set forth the factors that the public body will use to select a  
44 design-build team to design and construct the public work, including  
45 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 percent to the possession of both a certificate of eligibility to receive a preference in bidding on public works by all contractors on the design-build team if the contractors submit signed affidavits that meet the requirements of subsection 1 of NRS 338.0117, and a certificate of eligibility to receive a preference when competing for public works by all design professionals on the design-build team, and a relative weight of at least 30 percent to the proposed cost of design and construction of the public work. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection relating to a preference in bidding on public works, or a preference when competing for public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that public work.

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

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

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



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

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

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

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

16 8. A contract awarded pursuant to this section:

17 (a) Must comply with the provisions of NRS 338.020 to  
18 338.090, inclusive.

19 (b) Must specify:

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

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

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

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

34 (d) Except as otherwise provided in paragraph (e), must not  
35 require the design professional to defend, indemnify or hold  
36 harmless the public body or the employees, officers or agents of that  
37 public body from any liability, damage, loss, claim, action or  
38 proceeding caused by the negligence, errors, omissions, recklessness  
39 or intentional misconduct of the employees, officers and agents of  
40 the public body.

41 (e) May require the design-build team to defend, indemnify and  
42 hold harmless the public body, and the employees, officers and  
43 agents of the public body from any liabilities, damages, losses,  
44 claims, actions or proceedings, including, without limitation,  
45 reasonable attorneys' fees, that are caused by the negligence, errors,



1 omissions, recklessness or intentional misconduct of the design-  
2 build team or the employees or agents of the design-build team in  
3 the performance of the contract.

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

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

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

12 408.3886 1. After selecting the finalists pursuant to NRS  
13 408.3885, the Department shall provide to each finalist a request for  
14 final proposals for the project. The request for final proposals must:

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

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

20 2. Except as otherwise provided in this subsection, in assigning  
21 the relative weight to each factor for selecting a design-build team  
22 pursuant to subsection 1, the Department shall assign, without  
23 limitation, a relative weight of ~~15~~ 10 percent to the design-build  
24 team's possession of both a certificate of eligibility to receive a  
25 preference in bidding on public works by the prime contractor on  
26 the design-build team, if the design-build team submits a signed  
27 affidavit that meets the requirements of subsection 1 of NRS  
28 338.0117, and a certificate of eligibility to receive a preference  
29 when competing for public works by all persons who hold a  
30 certificate of registration to practice architecture or a license as a  
31 professional engineer on the design-build team, and a relative  
32 weight of at least 30 percent for the proposed cost of design and  
33 construction of the project. If any federal statute or regulation  
34 precludes the granting of federal assistance or reduces the amount of  
35 that assistance for a particular project because of the provisions of  
36 this subsection relating to a preference in bidding on public works or  
37 a preference when competing for public works, those provisions of  
38 this subsection do not apply insofar as their application would  
39 preclude or reduce federal assistance for that project.

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



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

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

5 (b) Reject all the final proposals; or

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

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

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

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

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

30 (a) Review and ratify the selection.

31 (b) Partially reimburse the unsuccessful finalists if partial  
32 reimbursement was provided for in the request for preliminary  
33 proposals pursuant to paragraph (f) of subsection 3 of NRS  
34 408.3883. The amount of reimbursement must not exceed, for each  
35 unsuccessful finalist, 3 percent of the total amount to be paid to the  
36 design-build team as set forth in the design-build contract.

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

43 7. A contract awarded pursuant to this section:

44 (a) Must comply with the provisions of NRS 338.020 to  
45 338.090, inclusive; and



1 (b) Must specify:

2 (1) An amount that is the maximum amount that the  
3 Department will pay for the performance of all the work required by  
4 the contract, excluding any amount related to costs that may be  
5 incurred as a result of unexpected conditions or occurrences as  
6 authorized by the contract;

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

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

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

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

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

19 **Sec. 17.** This act becomes effective on July 1, 2017.

