

SENATE BILL NO. 196—SENATORS CANNIZZARO, PARKS,
SPEARMAN, BROOKS; ATKINSON AND WOODHOUSE

FEBRUARY 18, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to preferences in bidding for certain contracts for businesses based in this State. (BDR 28-66)

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

~

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

AN ACT relating to public works; revising provisions relating to certain projects of the Nevada System of Higher Education; revising provisions relating to preferences in bidding for contracts for certain public works projects; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill requires the Nevada System of Higher Education to disclose to the State Public Works Division of the Department of Administration the name of each contractor or design professional selected to perform design and construction work on any project of the Nevada System of Higher Education for which: (1) 75 percent or more of the costs of the project as a whole are paid from money or any other contribution that is received from a gift, grant, bequest, devise or other donation by a private source; and (2) the estimated cost of the project is \$50,000,000 or more. **Section 4** of this bill exempts such projects of the Nevada System of Higher Education from the requirement for a public body to advertise for bids and comply with certain provisions required for commencing certain public works. **Sections 5 and 6** of this bill exempt such projects of the Nevada System of Higher Education from the requirement that a public body award a contract for a public work for which the estimated cost exceeds \$250,000 to the contractor who submits the best bid.

Existing law requires that a contractor 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 3** of this bill requires a contractor 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 upon substantial completion of the public work. **Sections 5-10** of this bill increase the bidding preference that a contractor or design-build team who meets these requirements receives commencing July 1, 2020, for certain public works contracts from 5 percent to 7 percent until July 1, 2023. **Section 2** of this bill makes a conforming change.

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

Section 1. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

The Nevada System of Higher Education shall, within 30 days after entering into a contract for such work, disclose to the State Public Works Division the name of each contractor and design professional selected to perform the design and construction work on any project of the Nevada System of Higher Education for which:

1. Seventy-five percent or more of the costs of the project as a whole are paid from money or any other contribution from a gift, grant, bequest, devise or other donation by a private source; and

2. The estimated cost of the project is \$50,000,000 or more.

Sec. 2. NRS 338.0115 is hereby amended to read as follows:

338.0115 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 1 of this act* apply to the contract.

Sec. 3. NRS 338.0117 is hereby amended to read as follows:

338.0117 1. To qualify to receive a preference in bidding pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS 338.147, subsection 3 of NRS 338.1693, subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, a contractor, an



1 applicant or a design-build team, respectively, must submit to the
2 public body sponsoring or financing a public work a signed affidavit
3 which certifies that, for the duration of the project, collectively, and
4 not on any specific day:

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

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

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

15 (2) Registered in this State;

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

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

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

33 (a) Include a provision in the contract that substantially
34 incorporates the requirements of paragraphs (a) to (d), inclusive, of
35 subsection 1; and

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

39 3. A person who submitted a bid on the public work or an
40 entity who believes that a contractor, applicant or design-build team
41 has obtained a preference in bidding as described in subsection 1 but
42 has failed to comply with a requirement of paragraphs (a) to (d),
43 inclusive, of subsection 1 may file, before the substantial completion
44 of the public work, a written objection with the public body for
45 which the contractor, applicant or design-build team is performing



1 the public work. A written objection authorized pursuant to this
2 subsection must set forth proof or substantiating evidence to support
3 the belief of the person or entity that the contractor, applicant or
4 design-build team has failed to comply with a requirement of
5 paragraphs (a) to (d), inclusive, of subsection 1.

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

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

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

43 (a) If a party to the contract causes the contractor, applicant or
44 design-build team to fail to comply with a requirement of
45 paragraphs (a) to (d), inclusive, of subsection 1, the party is liable to



the public body for a penalty in the amount of 1 percent of the cost of the largest contract to which he or she is a party;

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

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

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

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

~~§ 9.~~ 9. As used in this section:

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

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



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

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

Sec. 4. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection 9, this State, or a governing body or its authorized representative that awards a contract for a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and having a general circulation within the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864 and, with respect to the State, NRS 338.1384 to 338.13847, inclusive.

(c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Each advertisement for bids must include a provision that sets forth the requirement that a contractor must be qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

4. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public body or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

6. Any bids received in response to an advertisement for bids may be rejected if the public body or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(b) The bidder is not responsive or responsible;

(c) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or



(d) The public interest would be served by such a rejection.

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

8. Before a public body may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the public body shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the public body intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the public body intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including, the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;



(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; ~~for~~

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.1685 to 338.1695, inclusive ~~for~~; or

(h) A project for the Nevada System of Higher Education if:

(1) Seventy-five percent or more of the costs of the project as a whole are paid from money or any other contribution from a gift, grant, bequest, devise or other donation by a private source; and

(2) The estimated cost of the project is \$50,000,000 or more.

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

338.1389 1. Except as otherwise provided in ~~subsection~~ *subsections 10 and 15* and NRS 338.1385, 338.1386 and 338.13864, a public body or its authorized representative shall award a contract for a public work for which the estimated cost exceeds \$250,000 to the contractor who submits the best bid.

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

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

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

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

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

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

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

(2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will



1 comply with the requirements of paragraphs (a) to (d), inclusive, of
2 subsection 1 of NRS 338.0117 for the duration of the contract,

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

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

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

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

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

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

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

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

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

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

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

41 (1) The sales and use taxes pursuant to chapters 372, 374 and
42 377 of NRS on materials used for construction in this State,
43 including, without limitation, construction that is undertaken or
44 carried out on land within the boundaries of this State that is
45 managed by the Federal Government or is on an Indian reservation



1 or Indian colony, of not less than \$5,000 for each consecutive 12-
2 month period for 60 months immediately preceding the submission
3 of the affidavit from the certified public accountant;

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

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

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

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

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

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

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

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

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

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

43 8. If a contractor holds more than one contractor's license, the
44 contractor must submit a separate application for each license
45 pursuant to which the contractor wishes to qualify for a preference



1 in bidding. Upon issuance, the certificate of eligibility to receive a
2 preference in bidding on public works becomes part of the
3 contractor's license for which the contractor submitted the
4 application.

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

8 (a) Submits false information to the Board regarding the
9 required payment of taxes ~~H~~ *or willfully and intentionally fails to*
10 *submit an affidavit as required by subsection 7 of NRS 338.0117,*
11 the contractor is not eligible to receive a preference in bidding on
12 public works for a period of 5 years after the date on which the
13 Board becomes aware of the submission of the false information ~~H~~
14 *or the failure to submit the affidavit;* or

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

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

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

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

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

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

43 (b) Be filed with the public body not later than 3 business days
44 after the opening of the bids by the public body or its authorized
45 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.

15. The provisions of this section do not apply to a project for the Nevada System of Higher Education if:

(a) Seventy-five percent or more of the costs of the project as a whole are paid from money or any other contribution from a gift, grant, bequest, devise or other donation by a private source; and

(b) The estimated cost of the project is \$50,000,000 or more.

Sec. 6. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in subsections 10 and 15 and NRS 338.1385, 338.1386 and 338.13864, a public body or its authorized representative shall award a contract for a public work for which the estimated cost exceeds \$250,000 to the contractor who submits the best bid.

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

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

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

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

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

(b) Not more than ~~7~~ 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who:

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



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

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

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

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

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

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

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

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

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

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

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

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

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State,



1 including, without limitation, construction that is undertaken or
2 carried out on land within the boundaries of this State that is
3 managed by the Federal Government or is on an Indian reservation
4 or Indian colony, of not less than \$5,000 for each consecutive 12-
5 month period for 60 months immediately preceding the submission
6 of the affidavit from the certified public accountant;

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

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

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

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

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

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

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

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

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

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



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

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

(a) Submits false information to the Board regarding the required payment of taxes or willfully and intentionally fails to submit an affidavit as required by subsection 7 of NRS 338.0117, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information or the failure to submit the affidavit; or

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

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

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

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

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

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



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

4 14. If a public body receives a written objection pursuant to
5 subsection 13, the public body shall determine whether the objection
6 is accompanied by the proof or substantiating evidence required
7 pursuant to paragraph (a) of that subsection. If the public body
8 determines that the objection is not accompanied by the required
9 proof or substantiating evidence, the public body shall dismiss the
10 objection and the public body or its authorized representative may
11 proceed immediately to award the contract. If the public body
12 determines that the objection is accompanied by the required proof
13 or substantiating evidence, the public body shall determine whether
14 the contractor qualifies for the certificate pursuant to the provisions
15 of this section and the public body or its authorized representative
16 may proceed to award the contract accordingly.

17 15. The provisions of this section do not apply to a project for
18 the Nevada System of Higher Education if:

19 (a) Seventy-five percent or more of the costs of the project as a
20 whole are paid from money or any other contribution from a gift,
21 grant, bequest, devise or other donation by a private source; and

22 (b) The estimated cost of the project is \$50,000,000 or more.

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

24 338.147 1. Except as otherwise provided in subsection 10
25 and NRS 338.143, 338.1442 and 338.1446, a local government or
26 its authorized representative shall award a contract for a public work
27 for which the estimated cost exceeds \$250,000 to the contractor who
28 submits the best bid.

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

31 (a) Submitted by a contractor who:

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

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

38 (3) Within 2 hours after the completion of the opening of the
39 bids by the local government or its authorized representative,
40 submits a signed affidavit that meets the requirements of subsection
41 1 of NRS 338.0117; and

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

44 (1) Does not provide, at the time he or she submits the bid, a
45 valid certificate of eligibility to receive a preference in bidding on



public works issued to him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall ~~[- 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



1 receives a certificate of eligibility pursuant to subsection 3 or 4, as
2 applicable.

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

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

13 (a) Submits false information to the Board regarding the
14 required payment of taxes ~~H~~ *or willfully and intentionally fails to*
15 *submit an affidavit as required by subsection 7 of NRS 338.0117,*
16 the contractor is not eligible to receive a preference in bidding on
17 public works for a period of 5 years after the date on which the
18 Board becomes aware of the submission of the false information ~~H~~
19 *or the failure to submit the affidavit;* or

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

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

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

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

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

44 (a) Set forth proof or substantiating evidence to support the
45 belief of the person or entity that the contractor wrongfully holds a



1 certificate of eligibility to receive a preference in bidding on public
2 works; and

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

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

20 **Sec. 8.** NRS 338.147 is hereby amended to read as follows:

21 338.147 1. Except as otherwise provided in subsection 10
22 and NRS 338.143, 338.1442 and 338.1446, a local government or
23 its authorized representative shall award a contract for a public work
24 for which the estimated cost exceeds \$250,000 to the contractor who
25 submits the best bid.

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

28 (a) Submitted by a contractor who:

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

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

35 (3) Within 2 hours after the completion of the opening of the
36 bids by the local government or its authorized representative,
37 submits a signed affidavit that meets the requirements of subsection
38 1 of NRS 338.0117; and

39 (b) Not more than ~~4~~ 5 percent higher than the bid submitted by
40 the lowest responsive and responsible bidder who:

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



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

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

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

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

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

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

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

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

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

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

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

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

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State,



1 including, without limitation, construction that is undertaken or
2 carried out on land within the boundaries of this State that is
3 managed by the Federal Government or is on an Indian reservation
4 or Indian colony, of not less than \$5,000 for each consecutive 12-
5 month period for 60 months immediately preceding the submission
6 of the affidavit from the certified public accountant;

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

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

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

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

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

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

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

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

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

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



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

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

(a) Submits false information to the Board regarding the required payment of taxes or willfully and intentionally fails to submit an affidavit as required by subsection 7 of NRS 338.0117, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information or the failure to submit the affidavit; or

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

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

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

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

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

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



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

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

Sec. 9. NRS 338.1727 is hereby amended to read as follows:

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

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

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

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

3. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the public body shall assign, without limitation, a relative weight of ~~15~~ 7 percent to the possession of both a certificate of eligibility to receive a preference in bidding on public works by all contractors on the design-build team if the contractors submit signed affidavits that meet the requirements of subsection 1 of NRS 338.0117, and a certificate of eligibility to receive a preference when competing for public works by all design professionals on the design-build team, and a relative weight of at least 30 percent to the proposed cost of design and construction of the public work. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection relating to a preference in bidding on public works,



1 or a preference when competing for public works, those provisions
2 of this subsection do not apply insofar as their application would
3 preclude or reduce federal assistance for that public work.

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

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

13 6. After receiving and evaluating the final proposals for the
14 public work, the public body or its authorized representative shall
15 enter into negotiations with the most qualified applicant, as
16 determined pursuant to the criteria set forth pursuant to subsections
17 1 and 3, and award the design-build contract to the design-build
18 team whose proposal is selected. If the public body or its authorized
19 representative is unable to negotiate with the most qualified
20 applicant a contract that is determined by the parties to be fair and
21 reasonable, the public body may terminate negotiations with that
22 applicant. The public body or its authorized representative may then
23 undertake negotiations with the next most qualified applicant in
24 sequence until an agreement is reached and, if the negotiation is
25 undertaken by an authorized representative of the public body,
26 approved by the public body or until a determination is made by the
27 public body to reject all applicants.

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

30 (a) Partially reimburse the unsuccessful finalists if partial
31 reimbursement was provided for in the request for preliminary
32 proposals pursuant to paragraph (j) of subsection 2 of NRS
33 338.1723. The amount of reimbursement must not exceed, for each
34 unsuccessful finalist, 3 percent of the total amount to be paid to the
35 design-build team as set forth in the design-build contract.

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

41 8. A contract awarded pursuant to this section:

42 (a) Must comply with the provisions of NRS 338.020 to
43 338.090, inclusive.

44 (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. 10. NRS 408.3886 is hereby amended to read as follows:

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

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

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



2. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the Department shall assign, without limitation, a relative weight of ~~15~~ 7 percent to the design-build team's possession of both a certificate of eligibility to receive a preference in bidding on public works by the prime contractor on the design-build team, if the design-build team submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117, and a certificate of eligibility to receive a preference when competing for public works by all persons who hold a certificate of registration to practice architecture or a license as a professional engineer on the design-build team, and a relative weight of at least 30 percent for the proposed cost of design and construction of the project. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular project because of the provisions of this subsection relating to a preference in bidding on public works or a preference when competing for public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that project.

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

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

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

(b) Reject all the final proposals; or

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

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



best and final offers must be submitted to the Department. After receiving the best and final offers, the Department shall:

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

(b) Reject all the best and final offers.

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

(a) Review and ratify the selection.

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

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

7. A contract awarded pursuant to this section:

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

(b) Must specify:

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

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

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

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

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

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



1 **Sec. 11.** 1. The amendatory provisions of sections 3, 5, 7, 9
2 and 10 of this act do not apply to a public work for which bids were
3 advertised or solicited or which was awarded before July 1, 2020.

4 2. As used in this section, “public work” has the meaning
5 ascribed to it in NRS 338.010.

6 **Sec. 12.** 1. This section and sections 1 to 5, inclusive, 7, 9,
7 10 and 11 of this act become effective:

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

11 (b) On July 1, 2020, for all other purposes.

12 2. Sections 9 and 10 of this act expire by limitation on
13 June 30, 2023.

14 3. Sections 6 and 8 of this act become effective on
15 July 1, 2023.

