

ASSEMBLY BILL NO. 171—ASSEMBLYMEN DURAN, TORRES,
ANDERSON, GONZÁLEZ; BILBRAY-AXELROD, BROWN-
MAY, CARTER, COHEN, CONSIDINE AND THOMAS

FEBRUARY 15, 2023

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works.
(BDR 28-179)

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 public works; revising the procedures governing the award of certain contracts for a public work; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires, with limited exceptions, a public body or its authorized representative to award a contract for a public work for which the estimated cost exceeds \$100,000 to the lowest responsive and responsible bidder or, if the estimated amount of the contract exceeds \$250,000, to the contractor who submits the best bid if such a bid is not more than 5 percent higher than the bid submitted by the lowest responsive and responsible bidder. (NRS 338.1385, 338.1389, 338.143, 338.147)

This bill authorizes a public body or its authorized representative to award a contract for a public work for which the estimated cost exceeds \$100,000 to the responsive and responsible bidder offering the best value bid if, after notice and a public hearing, the public body or its authorized representative determines that the public work presents unique and complex construction challenges. This bill also sets forth the criteria for a public body or its authorized representative to consider in selecting the responsive and responsible bidder offering the best value bid, which are: (1) the estimated cost to complete the project; (2) the qualifications, experience and technical expertise of the contractor, subcontractors and key personnel thereof; (3) the quality of the services, materials, equipment or labor offered in the bid; (4) the reputation of the contractor and subcontractors for safety, quality and timeliness of completion of projects; (5) the history of customer satisfaction on previous projects completed by the contractor; (6) the history of the contractor in initiating change orders or modifications to projects; (7) the history of the contractor in completing projects within the budget or with minimal increases to the budget; (8) any past experience that the public body has had with the contractor or



24 subcontractors; (9) the uniqueness and complexity of the construction challenges;
25 and (10) any other criteria that the public body determines is relevant.

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

1 **Section 1.** NRS 338.1385 is hereby amended to read as
2 follows:

3 338.1385 1. Except as otherwise provided in subsection ~~9~~
4 **10**, this State, or a governing body or its authorized representative
5 that awards a contract for a public work in accordance with
6 paragraph (a) of subsection 1 of NRS 338.1373 shall not:

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

15 (b) Commence a public work for which the estimated cost is
16 \$100,000 or less unless it complies with the provisions of NRS
17 338.1386, 338.13862 and 338.13864 and, with respect to the State,
18 NRS 338.1384 to 338.13847, inclusive.

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

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

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

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

33 5. Except as otherwise provided in ~~subsection~~ **subsections** 6
34 **and 7** and NRS 338.1389, a public body or its authorized
35 representative shall award a contract to the lowest responsive and
36 responsible bidder.

37 6. *A public body or its authorized representative may award a*
38 *contract to the responsive and responsible bidder offering the best*
39 *value bid if, after notice and a public hearing, the public body or*



1 *its authorized representative determines that the public work*
2 *presents unique and complex construction challenges. In selecting*
3 *the responsive and responsible bidder offering the best value bid, a*
4 *public body shall consider the following criteria:*

5 (a) *The estimated cost to complete the project;*

6 (b) *The qualifications, experience and technical expertise of*
7 *the contractor, subcontractors and key personnel thereof;*

8 (c) *The quality of the services, materials, equipment or labor*
9 *offered in the bid;*

10 (d) *The reputation of the contractor and subcontractors for*
11 *safety, quality and timeliness of completion of projects;*

12 (e) *The history of customer satisfaction on previous projects*
13 *completed by the contractor;*

14 (f) *The history of the contractor in initiating change orders or*
15 *modifications to projects;*

16 (g) *The history of the contractor in completing projects within*
17 *the budget or with minimal increases to the budget;*

18 (h) *Any past experience that the public body has had with the*
19 *contractor or subcontractors;*

20 (i) *The uniqueness and complexity of the construction*
21 *challenges; and*

22 (j) *Any other criteria that the public body determines is*
23 *relevant.*

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

27 (a) The bidder is not a qualified bidder pursuant to NRS
28 338.1379 or 338.1382;

29 (b) The bidder is not responsive or responsible;

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

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

33 ~~7.1~~ 8. A public body may let a contract without competitive
34 bidding if no bids were received in response to an advertisement for
35 bids and:

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

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

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

42 (d) The contract is awarded to the lowest responsive and
43 responsible bidder ~~[-~~

44 ~~—8.1~~ *or the responsive and responsible bidder offering the best*
45 *value bid, as applicable.*



9. 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.

~~9.1~~ 10. 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; or

(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 338.16995, inclusive.

Sec. 2. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in subsection 10 and NRS 338.1385, 338.1386 and 338.13864, a public body or its authorized representative shall award a contract for a public work



1 for which the estimated cost exceeds \$250,000 to the contractor who
2 submits the best bid.

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

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

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

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

12 (3) Within 2 hours after the completion of the opening of the
13 bids by the public body or its authorized representative, submits a
14 signed affidavit that meets the requirements of subsection 1 of NRS
15 338.0117; and

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

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

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

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

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

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

35 (1) The sales and use taxes imposed pursuant to chapters
36 372, 374 and 377 of NRS on materials used for construction in this
37 State, including, without limitation, construction that is undertaken
38 or carried out on land within the boundaries of this State that is
39 managed by the Federal Government or is on an Indian reservation
40 or Indian colony, of not less than \$5,000 for each consecutive 12-
41 month period for 60 months immediately preceding the submission
42 of the affidavit from the certified public accountant;

43 (2) The governmental services tax imposed pursuant to
44 chapter 371 of NRS on the vehicles used in the operation of his or
45 her business in this State of not less than \$5,000 for each



consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

Sec. 3. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection ~~8~~ 9, a local government or its authorized representative that awards a contract for a public work in accordance with paragraph (b) 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 within the county



1 where the public work will be performed, the required
2 advertisement must be published in some qualified newspaper that is
3 printed in the State of Nevada and has a general circulation within
4 the county.

5 (b) Commence a public work for which the estimated cost is
6 \$100,000 or less unless it complies with the provisions of NRS
7 338.1442, 338.1444 or 338.1446.

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

10 2. At least once each quarter, the authorized representative of a
11 local government shall report to the governing body any contract
12 that the authorized representative awarded pursuant to subsection 1
13 in the immediately preceding quarter.

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

19 4. Except as otherwise provided in ~~[subsection]~~ **subsections 5**
20 **and 6** and NRS 338.147, the local government or its authorized
21 representative shall award a contract to the lowest responsive and
22 responsible bidder.

23 5. *A local government or its authorized representative may*
24 *award a contract to the responsive and responsible bidder offering*
25 *the best value bid if, after notice and a public hearing, the local*
26 *government or its authorized representative determines that the*
27 *public work presents unique and complex construction challenges.*
28 *In selecting the responsive and responsible bidder offering the best*
29 *value bid, a local government shall consider the following criteria:*

30 (a) *The estimated cost to complete the project;*

31 (b) *The qualifications, experience and technical expertise of*
32 *the contractor, subcontractors and key personnel thereof;*

33 (c) *The quality of the services, materials, equipment or labor*
34 *offered in the bid;*

35 (d) *The reputation of the contractor and subcontractors for*
36 *safety, quality and timeliness of completion of projects;*

37 (e) *The history of customer satisfaction on previous projects*
38 *completed by the contractor;*

39 (f) *The history of the contractor in initiating change orders or*
40 *modifications to projects;*

41 (g) *The history of the contractor in completing projects within*
42 *the budget or with minimal increases to the budget;*

43 (h) *Any past experience that the local government has had*
44 *with the contractor or subcontractors;*



(i) *The uniqueness and complexity of the construction challenges; and*

(j) *Any other criteria that the local government determines is relevant.*

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

(a) The bidder is not responsive or responsible;

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

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

~~6.7~~ 7. A local government may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

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

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

(c) The local government 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 ~~[-~~.

~~7.7~~ *or the responsive and responsible bidder offering the best value bid, as applicable.*

8. Before a local government 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 local government shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the local government 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 local government 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 local government expects to save by rejecting the bids and performing the public work itself.

~~8.1~~ **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; or

(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 338.16995, inclusive.

Sec. 4. NRS 338.147 is hereby amended to read as follows:

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

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

(a) Submitted by a contractor who:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this State:

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

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

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

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

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

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

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

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

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

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

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall, 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 reappplies for and receives a certificate of eligibility pursuant to subsection 3 or 4, as applicable.

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

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

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

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

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

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

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

13. A person who submitted a bid on the public work or an entity who believes that the contractor who was awarded the contract for the public work wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the 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. 5. This act becomes effective on July 1, 2023.

