

ASSEMBLY BILL NO. 280—ASSEMBLYMEN FRIERSON, CARRILLO, MONROE-MORENO, SPRINKLE, NEAL; ARAUJO, BENITEZ-THOMPSON, BILBRAY-AXELROD, CARLTON, COHEN, DALY, FUMO, JAUREGUI, JOINER, MCCURDY II, MILLER, OHRENSCHALL, SPIEGEL, THOMPSON, WATKINS AND YEAGER

MARCH 13, 2017

JOINT SPONSORS: SENATORS FORD AND CANNIZZARO

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to preferences in bidding for certain contracts for businesses based in this State. (BDR 27-1060)

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

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

AN ACT relating to procurement; establishing provisions relating to preferences in bidding for certain contracts with Nevada-based businesses for state purchasing; revising provisions relating to preferences in bidding for contracts for certain public works projects; providing penalties; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law grants a preference of 5 percent for a bid or proposal for a state  
2 purchasing contract which is submitted by a local business owned and operated by  
3 a veteran with a service-connected disability. (NRS 333.3361-333.3369) **Sections**  
4 **2-8** of this bill create a preference of 5 percent for a bid or proposal for a state  
5 purchasing contract which is submitted by a Nevada-based business. To qualify for  
6 this preference, **section 3** requires such a business to certify that: (1) at least 50  
7 percent of all workers employed for the state purchasing contract will hold a valid  
8 Nevada driver’s license or identification card; (2) all vehicles used primarily for the  
9 state purchasing contract will be either registered in this State or partially  
10 apportioned to this State; and (3) certain records will be maintained and made  
11 available for inspection within this State. **Section 5** establishes that a bid or  
12 proposal which qualifies for the preference will be deemed to be 5 percent lower



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13 than the bid or proposal actually submitted. **Section 6** imposes certain penalties and  
14 restrictions upon a business that makes a material misrepresentation or commits a  
15 fraudulent act in applying for a preference or fails to comply with the requirements  
16 for a preference.

17 Existing law requires that a contractor, applicant to serve as a construction  
18 manager at risk or design-build team that wishes to receive a preference in bidding  
19 for a contract for a public work submit an affidavit to the public body sponsoring or  
20 financing the public work certifying that: (1) at least 50 percent of all workers  
21 employed on the public work will hold a valid Nevada driver's license or  
22 identification card; (2) all vehicles used primarily for the public work will be either  
23 registered in this State or partially apportioned to this State; (3) at least 50 percent  
24 of all design professionals working on the public work will hold a valid Nevada  
25 driver's license or identification card; and (4) certain records will be maintained  
26 and made available for inspection within this State. (NRS 338.0117) **Sections**  
27 **12-16** of this bill revise the bidding preference that a contractor, applicant to serve  
28 as a construction manager at risk or design-build team who meets these  
29 requirements receives for certain public works contracts from 5 percent to 10  
30 percent.

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

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

1 **Section 1.** Chapter 333 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 8, inclusive, of this  
3 act.

4 **Sec. 2.** *As used in sections 2 to 8, inclusive, of this act, unless*  
5 *the context otherwise requires, the words and terms defined in*  
6 *sections 3 and 4 of this act have the meanings ascribed to them in*  
7 *those sections.*

8 **Sec. 3.** *“Nevada-based business” means a business which*  
9 *certifies that, for the duration of a state purchasing contract,*  
10 *collectively, and not on any specific day:*

11 1. *At least 50 percent of the workers employed by the business*  
12 *for the state purchasing contract will hold a valid driver's license*



1 *or identification card issued by the Department of Motor Vehicles*  
2 *of the State of Nevada;*

3 2. *All vehicles used primarily for the state purchasing*  
4 *contract will be:*

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

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

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

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

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

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

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

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

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

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

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

44 **Sec. 7.** *In addition to any other remedy or penalty provided*  
45 *by law, any person who willfully makes a material*



1 *misrepresentation or otherwise commits a fraudulent act in*  
2 *applying for a preference described in section 5 of this act or who*  
3 *willfully fails to comply with the requirements of that section is*  
4 *guilty of a misdemeanor and shall be punished by a fine of not*  
5 *more than \$10,000. For the purposes of this section, a separate*  
6 *violation occurs for each:*

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

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

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

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

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

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

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

29 333.310 1. An advertisement must contain a general  
30 description of the classes of commodities or services for which a bid  
31 or proposal is wanted and must state:

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

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

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

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

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



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

3 (d) Notice of the ~~preference~~ *preferences* set forth in NRS  
4 333.3366 ~~is~~ *and section 5 of this act.*

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

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

8 ➔ The Administrator or a designated agent of the Administrator  
9 shall approve the copy for the advertisement.

10 2. Each advertisement must be published:

11 (a) In at least one newspaper of general circulation in the State.  
12 The selection of the newspaper to carry the advertisement must be  
13 made in the manner provided by this chapter for other purchases, on  
14 the basis of the lowest price to be secured in relation to the paid  
15 circulation; and

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

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

18 333.340 1. Every contract or order for goods must be  
19 awarded to the lowest responsible bidder. To determine the lowest  
20 responsible bidder, the Administrator:

21 (a) Shall consider, if applicable:

22 (1) The granting of the preference described in  
23 NRS 333.3366.

24 (2) *The granting of the preference described in section 5 of*  
25 *this act.*

26 (3) The required standards adopted pursuant to  
27 NRS 333.4611.

28 (b) May consider:

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

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

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

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

34 (5) If the articles are an alternative to the articles listed in the  
35 original request for bids, whether the advertisement for bids  
36 included a statement that bids for an alternative article will be  
37 considered if:

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

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

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



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

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

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

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

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

11 (b) The cost of routine maintenance and repair of the articles;

12 (c) Any warranties provided in connection with the articles;

13 (d) The cost of replacement parts for the articles; and

14 (e) The value of the articles as used articles when given in trade  
15 on a subsequent purchase.

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

17 338.0117 1. To qualify to receive a preference in bidding  
18 pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS  
19 338.147, subsection 3 of NRS 338.1693, subsection 3 of NRS  
20 338.1727 or subsection 2 of NRS 408.3886, a contractor, an  
21 applicant or a design-build team, respectively, must submit to the  
22 public body sponsoring or financing a public work a signed affidavit  
23 which certifies that, for the duration of the project, collectively, and  
24 not on any specific day:

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

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

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

35 (2) Registered in this State;

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

44 (d) The contractor, applicant or design-build team and any  
45 subcontractor engaged on the public work will maintain and make



1 available for inspection within this State his or her records  
2 concerning payroll relating to the public work.

3 2. Any contract for a public work that is awarded to a  
4 contractor, applicant or design-build team who submits the affidavit  
5 described in subsection 1 as a result of the contractor, applicant or  
6 design-build team receiving a preference in bidding described in  
7 subsection 1 must:

8 (a) Include a provision in the contract that substantially  
9 incorporates the requirements of paragraphs (a) to (d), inclusive, of  
10 subsection 1; and

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

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

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

42 5. ~~1A~~ *In addition to any other remedy or penalty provided by*  
43 *law, a* public body may recover, by civil action against the party  
44 responsible for a failure to comply with a requirement of paragraphs  
45 (a) to (d), inclusive, of subsection 1, a penalty as described in



1 subsection 6 for a failure to comply with a requirement of  
2 paragraphs (a) to (d), inclusive, of subsection 1. If a public body  
3 recovers a penalty pursuant to this subsection, the public body shall  
4 report to the State Contractors' Board the date of the failure to  
5 comply, the name of each entity which failed to comply and the cost  
6 of the contract to which the entity that failed to comply was a party.  
7 The Board shall maintain this information for not less than 6 years.  
8 Upon request, the Board shall provide this information to any public  
9 body or its authorized representative.

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

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

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

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

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





1 8. *In addition to any other remedy or penalty provided by law,*  
2 *any person who willfully fails to comply with the requirements of*  
3 *paragraphs (a), (b) and (c) of subsection 1 is guilty of a*  
4 *misdemeanor and shall be punished by a fine of not more than*  
5 *\$10,000. For the purpose of this subsection, a separate violation*  
6 *occurs for:*

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

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

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

24 9. As used in this section:

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

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

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

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

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

38 338.1389 1. Except as otherwise provided in subsection 10  
39 and NRS 338.1385, 338.1386 and 338.13864, a public body or its  
40 authorized representative shall award a contract for a public work  
41 for which the estimated cost exceeds \$250,000 to the contractor who  
42 submits the best bid.

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

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



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

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

7 (3) Within 2 hours after the completion of the opening of the  
8 bids by the public body or its authorized representative, submits a  
9 signed affidavit that meets the requirements of subsection 1 of NRS  
10 338.0117; and

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

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

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

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

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

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

30 (1) The sales and use taxes imposed pursuant to chapters  
31 372, 374 and 377 of NRS on materials used for construction in this  
32 State, including, without limitation, construction that is undertaken  
33 or carried out on land within the boundaries of this State that is  
34 managed by the Federal Government or is on an Indian reservation  
35 or Indian colony, of not less than \$5,000 for each consecutive  
36 12-month period for 60 months immediately preceding the  
37 submission of the affidavit from the certified public accountant;

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

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



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

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

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

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

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

15 (1) The sales and use taxes pursuant to chapters 372, 374 and  
16 377 of NRS on materials used for construction in this State,  
17 including, without limitation, construction that is undertaken or  
18 carried out on land within the boundaries of this State that is  
19 managed by the Federal Government or is on an Indian reservation  
20 or Indian colony, of not less than \$5,000 for each consecutive  
21 12-month period for 60 months immediately preceding the  
22 submission of the affidavit from the certified public accountant;

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

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

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

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

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

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

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



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

4 6. A contractor who has received a certificate of eligibility to  
5 receive a preference in bidding on public works from the State  
6 Contractors' Board pursuant to subsection 3 or 4 shall, at the time  
7 for the renewal of his or her contractor's license pursuant to NRS  
8 624.283, submit to the Board an affidavit from a certified public  
9 accountant setting forth that the contractor has, during the  
10 immediately preceding 12 months, paid the taxes required pursuant  
11 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as  
12 applicable, to maintain eligibility to hold such a certificate.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

40 (a) Submitted by a contractor who:

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



1 6. A contractor who has received a certificate of eligibility to  
2 receive a preference in bidding on public works from the State  
3 Contractors' Board pursuant to subsection 3 or 4 shall, at the time  
4 for the renewal of his or her contractor's license pursuant to NRS  
5 624.283, submit to the Board an affidavit from a certified public  
6 accountant setting forth that the contractor has, during the  
7 immediately preceding 12 months, paid the taxes required pursuant  
8 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as  
9 applicable, to maintain eligibility to hold such a certificate.

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

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

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

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

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

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

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

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





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

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

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

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

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

31 338.1693 1. The public body or its authorized representative  
32 shall appoint a panel consisting of at least three but not more than  
33 seven members, a majority of whom must have experience in the  
34 construction industry, to rank the proposals submitted to the public  
35 body by evaluating the proposals as required pursuant to subsections  
36 2 and 3.

37 2. The panel appointed pursuant to subsection 1 shall rank the  
38 proposals by:

39 (a) Verifying that each applicant satisfies the requirements of  
40 NRS 338.1691; and

41 (b) Evaluating and assigning a score to each of the proposals  
42 received by the public body based on the factors and relative weight  
43 assigned to each factor that the public body specified in the request  
44 for proposals.



1 3. When ranking the proposals, the panel appointed pursuant to  
2 subsection 1 shall assign a relative weight of ~~15~~ 10 percent to the  
3 applicant's possession of a certificate of eligibility to receive a  
4 preference in bidding on public works if the applicant submits a  
5 signed affidavit that meets the requirements of subsection 1 of NRS  
6 338.0117. If any federal statute or regulation precludes the granting  
7 of federal assistance or reduces the amount of that assistance for a  
8 particular public work because of the provisions of this subsection,  
9 those provisions of this subsection do not apply insofar as their  
10 application would preclude or reduce federal assistance for that  
11 work.

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

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

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

34 7. After conducting such interviews, the panel that conducted  
35 the interviews shall rank the applicants by using a ranking process  
36 that is separate from the process used to rank the applicants pursuant  
37 to subsection 2 and is based only on information submitted during  
38 the interview process. The score to be given for the proposed  
39 amount of compensation, if any, must be calculated by dividing  
40 the lowest of all the proposed amounts of compensation by the  
41 applicant's proposed amount of compensation multiplied by the  
42 total possible points available to each applicant. When ranking  
43 the applicants, the panel that conducted the interviews shall assign a  
44 relative weight of 5 percent to the applicant's possession of a  
45 certificate of eligibility to receive a preference in bidding on public



1 works if the applicant submits a signed affidavit that meets the  
2 requirements of subsection 1 of NRS 338.0117. If any federal  
3 statute or regulation precludes the granting of federal assistance or  
4 reduces the amount of that assistance for a particular public work  
5 because of the provisions of this subsection, those provisions of this  
6 subsection do not apply insofar as their application would preclude  
7 or reduce federal assistance for that work.

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

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

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

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

35 (1) The final rankings of the applicants;

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

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

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

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

44 338.1727 1. After selecting the finalists pursuant to NRS  
45 338.1725, the public body shall provide to each finalist a request for



1 final proposals for the public work. The request for final proposals  
2 must:

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

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

8 2. If one or more of the finalists selected pursuant to NRS  
9 338.1725 is disqualified or withdraws, the public body may select a  
10 design-build team from the remaining finalist or finalists.

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

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

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

38 6. After receiving and evaluating the final proposals for the  
39 public work, the public body or its authorized representative shall  
40 enter into negotiations with the most qualified applicant, as  
41 determined pursuant to the criteria set forth pursuant to subsections  
42 1 and 3, and award the design-build contract to the design-build  
43 team whose proposal is selected. If the public body or its authorized  
44 representative is unable to negotiate with the most qualified  
45 applicant a contract that is determined by the parties to be fair and



1 reasonable, the public body may terminate negotiations with that  
2 applicant. The public body or its authorized representative may then  
3 undertake negotiations with the next most qualified applicant in  
4 sequence until an agreement is reached and, if the negotiation is  
5 undertaken by an authorized representative of the public body,  
6 approved by the public body or until a determination is made by the  
7 public body to reject all applicants.

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

10 (a) Partially reimburse the unsuccessful finalists if partial  
11 reimbursement was provided for in the request for preliminary  
12 proposals pursuant to paragraph (j) of subsection 2 of NRS  
13 338.1723. The amount of reimbursement must not exceed, for each  
14 unsuccessful finalist, 3 percent of the total amount to be paid to the  
15 design-build team as set forth in the design-build contract.

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

21 8. A contract awarded pursuant to this section:

22 (a) Must comply with the provisions of NRS 338.020 to  
23 338.090, inclusive.

24 (b) Must specify:

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

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

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

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

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



1 (e) May require the design-build team to defend, indemnify and  
2 hold harmless the public body, and the employees, officers and  
3 agents of the public body from any liabilities, damages, losses,  
4 claims, actions or proceedings, including, without limitation,  
5 reasonable attorneys' fees, that are caused by the negligence, errors,  
6 omissions, recklessness or intentional misconduct of the design-  
7 build team or the employees or agents of the design-build team in  
8 the performance of the contract.

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

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

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

17 408.3886 1. After selecting the finalists pursuant to NRS  
18 408.3885, the Department shall provide to each finalist a request for  
19 final proposals for the project. The request for final proposals must:

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

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

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



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

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

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

10 (b) Reject all the final proposals; or

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

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

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

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

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

35 (a) Review and ratify the selection.

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

42 (c) Make available to the public a summary setting forth the  
43 factors used by the Department to select the successful design-build  
44 team and the ranking of the design-build teams who submitted final  
45 proposals and, if applicable, best and final offers. The Department



1 shall not release to a third party, or otherwise make public, financial  
2 or proprietary information submitted by a design-build team.

3 7. A contract awarded pursuant to this section:

4 (a) Must comply with the provisions of NRS 338.020 to  
5 338.090, inclusive; and

6 (b) Must specify:

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

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

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

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

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

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

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

