

ASSEMBLY BILL NO. 433—ASSEMBLYMAN BROOKS

MARCH 27, 2017

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works. (BDR 28-1013)

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:

1 Existing law requires, with limited exceptions, a public body or its authorized
2 representative to award a contract for a public work for which the estimated cost
3 exceeds \$100,000 to the lowest responsive and responsible bidder or, if the
4 estimated amount of the contract exceeds \$250,000, to the contractor who submits
5 the best bid if such a bid is not more than 5 percent higher than the bid submitted
6 by the lowest responsive and responsible bidder. (NRS 338.1385, 338.1389,
7 338.143, 338.147)
8 This bill authorizes a public body or its authorized representative to award a
9 contract for a public work for which the estimated cost exceeds \$100,000 to the
10 responsive and responsible bidder offering the best value bid if, after notice and a
11 public hearing, the public body or its authorized representative determines that the
12 public work presents unique and complex construction challenges. This bill also
13 sets forth the criteria for a public body or its authorized representative to consider
14 when determining the responsive and responsible bidder offering the best value bid.

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 ~~19.1~~
4 **10**, this State, or a governing body or its authorized representative



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1 that awards a contract for a public work in accordance with
2 paragraph (a) of subsection 1 of NRS 338.1373 shall not:

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

11 (b) Commence a public work for which the estimated cost is
12 \$100,000 or less unless it complies with the provisions of NRS
13 338.1386, 338.13862 and 338.13864 and, with respect to the State,
14 NRS 338.1384 to 338.13847, inclusive.

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

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

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

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

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

33 6. *The public body or its authorized representative may award*
34 *a contract to the responsive and responsible bidder offering the*
35 *best value bid if, after notice and a public hearing, the public body*
36 *or its authorized representative determines that the public work*
37 *presents unique and complex construction challenges. In selecting*
38 *the responsive and responsible bidder offering the best value bid, a*
39 *public body shall consider the following criteria:*

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

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

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



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

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

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

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

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

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

13 *(j) Any other criteria that the public body determines is*
14 *relevant.*

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

18 (a) The bidder is not a qualified bidder pursuant to NRS
19 338.1379 or 338.1382;

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

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

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

24 ~~7.7~~ 8. A public body may let a contract without competitive
25 bidding if no bids were received in response to an advertisement for
26 bids and:

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

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

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

33 (d) The contract is awarded to the lowest responsive and
34 responsible bidder ~~†~~

35 ~~—8.†~~ *or the responsive and responsible bidder offering the best*
36 *value bid, as applicable.*

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

43 (a) A list of all persons, including supervisors, whom the public
44 body intends to assign to the public work, together with their



1 classifications and an estimate of the direct and indirect costs of
2 their labor;

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

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

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

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

14 ~~9-1~~ **10.** This section does not apply to:

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

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

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

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

25 (e) The design and construction of a public work for which a
26 public body contracts with a design-build team pursuant to NRS
27 338.1711 to 338.1727, inclusive; or

28 (f) A constructability review of a public work, which review a
29 local government or its authorized representative is required to
30 perform pursuant to NRS 338.1435.

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

32 338.1389 1. Except as otherwise provided in subsection 10
33 and NRS 338.1385, 338.1386 and 338.13864, a public body or its
34 authorized representative shall award a contract for a public work
35 for which the estimated cost exceeds \$250,000 to the contractor who
36 submits the best bid.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

43 6. A contractor who has received a certificate of eligibility to
44 receive a preference in bidding on public works from the State
45 Contractors' Board pursuant to subsection 3 or 4 shall, at the time



1 for the renewal of his or her contractor's license pursuant to NRS
2 624.283, submit to the Board an affidavit from a certified public
3 accountant setting forth that the contractor has, during the
4 immediately preceding 12 months, paid the taxes required pursuant
5 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
6 applicable, to maintain eligibility to hold such a certificate.

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

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

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

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

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

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

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

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

43 13. A person who submitted a bid on the public work or an
44 entity who believes that the contractor who was awarded the
45 contract for the public work wrongfully holds a certificate of



1 eligibility to receive a preference in bidding on public works may
2 challenge the validity of the certificate by filing a written objection
3 with the public body to which the contractor has submitted a bid on
4 a contract for the construction of a public work. A written objection
5 authorized pursuant to this subsection must:

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

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

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

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

27 338.143 1. Except as otherwise provided in subsection ~~8.1~~ 9,
28 a local government or its authorized representative that awards a
29 contract for a public work in accordance with paragraph (b) of
30 subsection 1 of NRS 338.1373 shall not:

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

40 (b) Commence a public work for which the estimated cost is
41 \$100,000 or less unless it complies with the provisions of NRS
42 338.1442, 338.1444 or 338.1446.

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



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

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

10 4. Except as otherwise provided in ~~subsection~~ **subsections 5**
11 **and 6** and NRS 338.147, the local government or its authorized
12 representative shall award a contract to the lowest responsive and
13 responsible bidder.

14 5. *The local government or its authorized representative may*
15 *award a contract to the responsive and responsible bidder offering*
16 *the best value bid if, after notice and a public hearing, the local*
17 *government or its authorized representative determines that the*
18 *public work presents unique and complex construction challenges.*
19 *In selecting the responsive and responsible bidder offering the best*
20 *value bid, a local government shall consider the following criteria:*

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

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

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

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

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

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

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

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

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

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

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

43 (a) The bidder is not responsive or responsible;

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



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

2 ~~16.1~~ 7. A local government may let a contract without
3 competitive bidding if no bids were received in response to an
4 advertisement for bids and:

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

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

10 (c) The local government lets the contract not less than 7 days
11 after publishing a notice pursuant to paragraph (a); and

12 (d) The contract is awarded to the lowest responsive and
13 responsible bidder †

14 ~~7.1~~ *or the responsive and responsible bidder offering the best*
15 *value bid, as applicable.*

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

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

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

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

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

35 (e) An estimate of the amount of money the local government
36 expects to save by rejecting the bids and performing the public work
37 itself.

38 ~~18.1~~ 9. This section does not apply to:

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

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

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

44 (d) The Las Vegas Valley Water District created pursuant to
45 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water



1 District created pursuant to chapter 477, Statutes of Nevada 1983 or
2 the Virgin Valley Water District created pursuant to chapter 100,
3 Statutes of Nevada 1993;

4 (e) The design and construction of a public work for which a
5 public body contracts with a design-build team pursuant to NRS
6 338.1711 to 338.1727, inclusive; or

7 (f) A constructability review of a public work, which review a
8 local government or its authorized representative is required to
9 perform pursuant to NRS 338.1435.

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

11 338.147 1. Except as otherwise provided in subsection 10
12 and NRS 338.143, 338.1442 and 338.1446, a local government or
13 its authorized representative shall award a contract for a public work
14 for which the estimated cost exceeds \$250,000 to the contractor who
15 submits the best bid.

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

18 (a) Submitted by a contractor who:

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

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

25 (3) Within 2 hours after the completion of the opening of the
26 bids by the local government or its authorized representative,
27 submits a signed affidavit that meets the requirements of subsection
28 1 of NRS 338.0117; and

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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1 the submission of the affidavit from the certified public accountant;
2 or

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

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

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

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

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

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

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

22 6. A contractor who has received a certificate of eligibility to
23 receive a preference in bidding on public works from the State
24 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
25 for the renewal of his or her contractor's license pursuant to NRS
26 624.283, submit to the Board an affidavit from a certified public
27 accountant setting forth that the contractor has, during the
28 immediately preceding 12 months, paid the taxes required pursuant
29 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
30 applicable, to maintain eligibility to hold such a certificate.

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

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

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



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

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

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

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

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

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

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

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

37 14. If a local government receives a written objection pursuant
38 to subsection 13, the local government shall determine whether the
39 objection is accompanied by the proof or substantiating evidence
40 required pursuant to paragraph (a) of that subsection. If the local
41 government determines that the objection is not accompanied by the
42 required proof or substantiating evidence, the local government shall
43 dismiss the objection and the local government or its authorized
44 representative may proceed immediately to award the contract. If
45 the local government determines that the objection is accompanied



1 by the required proof or substantiating evidence, the local
2 government shall determine whether the contractor qualifies for the
3 certificate pursuant to the provisions of this section and the local
4 government or its authorized representative may proceed to award
5 the contract accordingly.

6 **Sec. 5.** This act becomes effective on July 1, 2017.

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