

SENATE BILL NO. 317—SENATORS CANNIZZARO, FORD, SEGERBLOM, PARKS, MANENDO; ATKINSON, CANCELA, DENIS, FARLEY, RATTI, SPEARMAN AND WOODHOUSE

MARCH 20, 2017

JOINT SPONSOR: ASSEMBLYMAN BROOKS

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to preferences in bidding for certain contracts for businesses based in this State. (BDR 28-936)

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

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

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

Legislative Counsel’s Digest:

1 Existing law requires that a contractor or design-build team that wishes to
 2 receive a preference in bidding for a contract for a public work submit an affidavit
 3 to the public body sponsoring or financing the public work certifying that: (1) at
 4 least 50 percent of all workers employed on the public work will hold a valid
 5 Nevada driver’s license or identification card; (2) all vehicles used primarily for the
 6 public work will be either registered in this State or partially apportioned to this
 7 State; (3) at least 50 percent of all design professionals working on the public work
 8 will hold a valid Nevada driver’s license or identification card; and (4) certain
 9 records will be maintained and made available for inspection within this State.
 10 (NRS 338.0117) **Section 11** of this bill requires a contractor or design-build team
 11 which is awarded a contract for a public work as a result of such a preference to
 12 submit an affidavit confirming compliance with these requirements upon
 13 substantial completion of the public work. **Sections 12-17** of this bill increase the
 14 bidding preference that a contractor or design-build team who meets these
 15 requirements receives commencing July 1, 2018, for certain public works contracts
 16 from 5 percent to 7 percent until July 1, 2021.



* S B 3 1 7 R 2 *

17 Existing law pertaining to public works applies to any project which is financed
18 in whole or in part from public money for the new construction, repair or
19 reconstruction of publicly owned works and properties. (NRS 338.010) **Section**
20 **10.5** of this bill provides that a building for the Nevada System of Higher Education
21 is a public work only if 25 percent or more of the costs of the building as a whole
22 are paid from money appropriated by the State or from federal money.

23 **Section 10.3** of this bill requires the Nevada System of Higher Education to
24 disclose to the State Public Works Division the name of each contractor or design
25 professional selected to provide design and construction work on a building
26 financed using less than 25 percent public money within 30 days after entering into
27 a contract for such work.

28 Existing law restricts a public body, including the State, its local governments,
29 school districts and any public agency thereof which sponsors or finances a public
30 work, from entering into a contract for a public work in which any construction
31 materials or goods to be used on the public work are purchased or supplied by the
32 public body, a contractor who is a constituent part of the public body or a
33 contractor who is not a constituent part of the public body acting on behalf of the
34 public body. (NRS 338.1423) **Section 12.5** of this bill provides that these
35 restrictions also apply to any contract for construction work of the Nevada System
36 of Higher Education, even if the construction work does not qualify as a public
37 work.

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

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 2.** (Deleted by amendment.)

3 **Sec. 3.** (Deleted by amendment.)

4 **Sec. 4.** (Deleted by amendment.)

5 **Sec. 5.** (Deleted by amendment.)

6 **Sec. 6.** (Deleted by amendment.)

7 **Sec. 7.** (Deleted by amendment.)

8 **Sec. 8.** (Deleted by amendment.)

9 **Sec. 9.** (Deleted by amendment.)

10 **Sec. 9.5.** (Deleted by amendment.)

11 **Sec. 10.** (Deleted by amendment.)

12 **Sec. 10.3.** Chapter 338 of NRS is hereby amended by adding
13 thereto a new section to read as follows:

14 *For any building of the Nevada System of Higher Education*
15 *for which less than 25 percent of the costs of the building as a*
16 *whole are paid from money appropriated by this State or from*
17 *federal money, the Nevada System of Higher Education shall*
18 *disclose to the State Public Works Division the name of each*
19 *contractor and design professional selected to perform the design*
20 *and construction work on the building within 30 days after*
21 *entering into a contract for such work.*

22 **Sec. 10.5.** NRS 338.010 is hereby amended to read as follows:
23 338.010 As used in this chapter:



- 1 1. "Authorized representative" means a person designated by a
2 public body to be responsible for the development, solicitation,
3 award or administration of contracts for public works pursuant to
4 this chapter.
- 5 2. "Contract" means a written contract entered into between a
6 contractor and a public body for the provision of labor, materials,
7 equipment or supplies for a public work.
- 8 3. "Contractor" means:
- 9 (a) A person who is licensed pursuant to the provisions of
10 chapter 624 of NRS.
- 11 (b) A design-build team.
- 12 4. "Day labor" means all cases where public bodies, their
13 officers, agents or employees, hire, supervise and pay the wages
14 thereof directly to a worker or workers employed by them on public
15 works by the day and not under a contract in writing.
- 16 5. "Design-build contract" means a contract between a public
17 body and a design-build team in which the design-build team agrees
18 to design and construct a public work.
- 19 6. "Design-build team" means an entity that consists of:
- 20 (a) At least one person who is licensed as a general engineering
21 contractor or a general building contractor pursuant to chapter 624
22 of NRS; and
- 23 (b) For a public work that consists of:
- 24 (1) A building and its site, at least one person who holds a
25 certificate of registration to practice architecture pursuant to chapter
26 623 of NRS.
- 27 (2) Anything other than a building and its site, at least one
28 person who holds a certificate of registration to practice architecture
29 pursuant to chapter 623 of NRS or landscape architecture pursuant
30 to chapter 623A of NRS or who is licensed as a professional
31 engineer pursuant to chapter 625 of NRS.
- 32 7. "Design professional" means:
- 33 (a) A person who is licensed as a professional engineer pursuant
34 to chapter 625 of NRS;
- 35 (b) A person who is licensed as a professional land surveyor
36 pursuant to chapter 625 of NRS;
- 37 (c) A person who holds a certificate of registration to engage in
38 the practice of architecture, interior design or residential design
39 pursuant to chapter 623 of NRS;
- 40 (d) A person who holds a certificate of registration to engage in
41 the practice of landscape architecture pursuant to chapter 623A of
42 NRS; or
- 43 (e) A business entity that engages in the practice of professional
44 engineering, land surveying, architecture or landscape architecture.



1 8. "Division" means the State Public Works Division of the
2 Department of Administration.

3 9. "Eligible bidder" means a person who is:

4 (a) Found to be a responsible and responsive contractor by a
5 local government or its authorized representative which requests
6 bids for a public work in accordance with paragraph (b) of
7 subsection 1 of NRS 338.1373; or

8 (b) Determined by a public body or its authorized representative
9 which awarded a contract for a public work pursuant to NRS
10 338.1375 to 338.139, inclusive, to be qualified to bid on that
11 contract pursuant to NRS 338.1379 or 338.1382.

12 10. "General contractor" means a person who is licensed to
13 conduct business in one, or both, of the following branches of the
14 contracting business:

15 (a) General engineering contracting, as described in subsection 2
16 of NRS 624.215.

17 (b) General building contracting, as described in subsection 3 of
18 NRS 624.215.

19 11. "Governing body" means the board, council, commission
20 or other body in which the general legislative and fiscal powers of a
21 local government are vested.

22 12. "Local government" means every political subdivision or
23 other entity which has the right to levy or receive money from ad
24 valorem or other taxes or any mandatory assessments, and includes,
25 without limitation, counties, cities, towns, boards, school districts
26 and other districts organized pursuant to chapters 244A, 309, 318,
27 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
28 inclusive, and any agency or department of a county or city which
29 prepares a budget separate from that of the parent political
30 subdivision. The term includes a person who has been designated by
31 the governing body of a local government to serve as its authorized
32 representative.

33 13. "Offense" means failing to:

34 (a) Pay the prevailing wage required pursuant to this chapter;

35 (b) Pay the contributions for unemployment compensation
36 required pursuant to chapter 612 of NRS;

37 (c) Provide and secure compensation for employees required
38 pursuant to chapters 616A to 617, inclusive, of NRS; or

39 (d) Comply with subsection 5 or 6 of NRS 338.070.

40 14. "Prime contractor" means a contractor who:

41 (a) Contracts to construct an entire project;

42 (b) Coordinates all work performed on the entire project;

43 (c) Uses his or her own workforce to perform all or a part of the
44 public work; and



1 (d) Contracts for the services of any subcontractor or
2 independent contractor or is responsible for payment to any
3 contracted subcontractors or independent contractors.

4 ➤ The term includes, without limitation, a general contractor or a
5 specialty contractor who is authorized to bid on a project pursuant to
6 NRS 338.139 or 338.148.

7 15. "Public body" means the State, county, city, town, school
8 district or any public agency of this State or its political subdivisions
9 sponsoring or financing a public work.

10 16. "Public work" means any project for the new construction,
11 repair or reconstruction of :

12 (a) *Except as otherwise provided in paragraph (b)*, a project
13 financed in whole or in part from public money for:

14 ~~(a)~~ (1) Public buildings;

15 ~~(b)~~ (2) Jails and prisons;

16 ~~(c)~~ (3) Public roads;

17 ~~(d)~~ (4) Public highways;

18 ~~(e)~~ (5) Public streets and alleys;

19 ~~(f)~~ (6) Public utilities;

20 ~~(g)~~ (7) Publicly owned water mains and sewers;

21 ~~(h)~~ (8) Public parks and playgrounds;

22 ~~(i)~~ (9) Public convention facilities which are financed at least
23 in part with public money; and

24 ~~(j)~~ (10) All other publicly owned works and property.

25 (b) *A building for the Nevada System of Higher Education of*
26 *which 25 percent or more of the costs of the building as a whole*
27 *are paid from money appropriated by this State or from federal*
28 *money.*

29 17. "Specialty contractor" means a person who is licensed to
30 conduct business as described in subsection 4 of NRS 624.215.

31 18. "Stand-alone underground utility project" means an
32 underground utility project that is not integrated into a larger
33 project, including, without limitation:

34 (a) An underground sewer line or an underground pipeline for
35 the conveyance of water, including facilities appurtenant thereto;
36 and

37 (b) A project for the construction or installation of a storm drain,
38 including facilities appurtenant thereto,

39 ➤ that is not located at the site of a public work for the design and
40 construction of which a public body is authorized to contract with a
41 design-build team pursuant to subsection 2 of NRS 338.1711.

42 19. "Subcontract" means a written contract entered into
43 between:

44 (a) A contractor and a subcontractor or supplier; or

45 (b) A subcontractor and another subcontractor or supplier,



1 ↳ for the provision of labor, materials, equipment or supplies for a
2 construction project.

3 20. "Subcontractor" means a person who:

4 (a) Is licensed pursuant to the provisions of chapter 624 of NRS
5 or performs such work that the person is not required to be licensed
6 pursuant to chapter 624 of NRS; and

7 (b) Contracts with a contractor, another subcontractor or a
8 supplier to provide labor, materials or services for a construction
9 project.

10 21. "Supplier" means a person who provides materials,
11 equipment or supplies for a construction project.

12 22. "Wages" means:

13 (a) The basic hourly rate of pay; and

14 (b) The amount of pension, health and welfare, vacation and
15 holiday pay, the cost of apprenticeship training or other similar
16 programs or other bona fide fringe benefits which are a benefit to
17 the worker.

18 23. "Worker" means a skilled mechanic, skilled worker,
19 semiskilled mechanic, semiskilled worker or unskilled worker in the
20 service of a contractor or subcontractor under any appointment or
21 contract of hire or apprenticeship, express or implied, oral or
22 written, whether lawfully or unlawfully employed. The term does
23 not include a design professional.

24 **Sec. 10.7.** NRS 338.0115 is hereby amended to read as
25 follows:

26 338.0115 1. Except as otherwise provided in subsection 2,
27 the provisions of this chapter and chapters 332 and 339 of NRS do
28 not apply to a contract under which a private developer, for the
29 benefit of a private development, constructs a water or sewer line
30 extension and any related appurtenances:

31 (a) Which qualify as a public work pursuant to NRS 338.010;
32 and

33 (b) For which the developer will receive a monetary contribution
34 or refund from a public body as reimbursement for a portion of the
35 costs of the project.

36 2. If, pursuant to the provisions of such a contract, the
37 developer is not responsible for paying all of the initial construction
38 costs of the project, the provisions of NRS 338.0117, 338.013 to
39 338.090, inclusive, and 338.1373 to 338.148, inclusive, *and section*
40 *10.3 of this act* apply to the contract.

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

42 338.0117 1. To qualify to receive a preference in bidding
43 pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS
44 338.147, subsection 3 of NRS 338.1693, subsection 3 of NRS
45 338.1727 or subsection 2 of NRS 408.3886, a contractor, an



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

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

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

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

15 (2) Registered in this State;

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

35 ~~18.1~~ 9. As used in this section:

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

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



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

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

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

5 338.1389 1. Except as otherwise provided in subsection 10
6 and NRS 338.1385, 338.1386 and 338.13864, a public body or its
7 authorized representative shall award a contract for a public work
8 for which the estimated cost exceeds \$250,000 to the contractor who
9 submits the best bid.

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

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

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

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

19 (3) Within 2 hours after the completion of the opening of the
20 bids by the public body or its authorized representative, submits a
21 signed affidavit that meets the requirements of subsection 1 of NRS
22 338.0117; and

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

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

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

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

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

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

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



1 managed by the Federal Government or is on an Indian reservation
2 or Indian colony, of not less than \$5,000 for each consecutive 12-
3 month period for 60 months immediately preceding the submission
4 of the affidavit from the certified public accountant;

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

15 6. A contractor who has received a certificate of eligibility to
16 receive a preference in bidding on public works from the State
17 Contractors' Board pursuant to subsection 3 or 4 shall ~~at the time~~
18 ~~for the renewal of his or her contractor's license pursuant to NRS~~
19 ~~624.283~~ **annually** submit to the Board an affidavit from a certified
20 public accountant setting forth that the contractor has, during the
21 immediately preceding 12 months, paid the taxes required pursuant
22 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
23 applicable, to maintain eligibility to hold such a certificate.

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

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

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

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



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

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

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

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

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

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

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

32 14. If a public body receives a written objection pursuant to
33 subsection 13, the public body shall determine whether the objection
34 is accompanied by the proof or substantiating evidence required
35 pursuant to paragraph (a) of that subsection. If the public body
36 determines that the objection is not accompanied by the required
37 proof or substantiating evidence, the public body shall dismiss the
38 objection and the public body or its authorized representative may
39 proceed immediately to award the contract. If the public body
40 determines that the objection is accompanied by the required proof
41 or substantiating evidence, the public body shall determine whether
42 the contractor qualifies for the certificate pursuant to the provisions
43 of this section and the public body or its authorized representative
44 may proceed to award the contract accordingly.



1 **Sec. 12.5.** NRS 338.1389 is hereby amended to read as
2 follows:

3 338.1389 1. Except as otherwise provided in subsection 10
4 and NRS 338.1385, 338.1386 and 338.13864, a public body or its
5 authorized representative shall award a contract for a public work
6 for which the estimated cost exceeds \$250,000 to the contractor who
7 submits the best bid.

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

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

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

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

17 (3) Within 2 hours after the completion of the opening of the
18 bids by the public body or its authorized representative, submits a
19 signed affidavit that meets the requirements of subsection 1 of NRS
20 338.0117; and

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

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

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

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

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

40 (1) The sales and use taxes imposed pursuant to chapters
41 372, 374 and 377 of NRS on materials used for construction in this
42 State, including, without limitation, construction that is undertaken
43 or carried out on land within the boundaries of this State that is
44 managed by the Federal Government or is on an Indian reservation
45 or Indian colony, of not less than \$5,000 for each consecutive



1 12-month period for 60 months immediately preceding the
2 submission of the affidavit from the certified public accountant;

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

13 6. A contractor who has received a certificate of eligibility to
14 receive a preference in bidding on public works from the State
15 Contractors' Board pursuant to subsection 3 or 4 shall annually
16 submit to the Board an affidavit from a certified public accountant
17 setting forth that the contractor has, during the immediately
18 preceding 12 months, paid the taxes required pursuant to paragraph
19 (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to
20 maintain eligibility to hold such a certificate.

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

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

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

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

43 (b) Is found by the Board to have, within the preceding 5 years,
44 materially breached a contract for a public work for which the cost



1 exceeds \$5,000,000, the contractor is not eligible to receive a
2 preference in bidding on public works.

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

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

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

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

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

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

30 14. If a public body receives a written objection pursuant to
31 subsection 13, the public body shall determine whether the objection
32 is accompanied by the proof or substantiating evidence required
33 pursuant to paragraph (a) of that subsection. If the public body
34 determines that the objection is not accompanied by the required
35 proof or substantiating evidence, the public body shall dismiss the
36 objection and the public body or its authorized representative may
37 proceed immediately to award the contract. If the public body
38 determines that the objection is accompanied by the required proof
39 or substantiating evidence, the public body shall determine whether
40 the contractor qualifies for the certificate pursuant to the provisions
41 of this section and the public body or its authorized representative
42 may proceed to award the contract accordingly.



1 **Sec. 12.7.** NRS 338.1423 is hereby amended to read as
2 follows:

3 338.1423 1. Except as otherwise provided in this section, a
4 public body shall not enter into an express or implied contract for a
5 public work which provides that any construction materials or goods
6 to be used on the public work will be purchased or otherwise
7 supplied by:

8 (a) The public body or a contractor who is a constituent part of
9 the public body; or

10 (b) A contractor who is not a constituent part of the public body
11 but is acting on behalf of the public body.

12 2. A public body may enter into an express or implied contract
13 for a public work which provides that any construction materials or
14 goods to be used in the public work will be purchased or supplied
15 by the public body, a contractor who is a constituent part of the
16 public body or a contractor who is not a constituent part of the
17 public body but is acting on behalf of the public body if:

18 (a) The contract requires the payment of any state or local taxes
19 that would otherwise have been due for the purchase and use of the
20 construction materials or goods if the construction materials or
21 goods had been purchased and used by a contractor who was not a
22 constituent part of the public body and who was not otherwise
23 exempt from the taxes pursuant to state or local law; and

24 (b) The public body sends an itemized list of the construction
25 materials or goods to be purchased or otherwise provided by the
26 public body or a contractor who is a constituent part of the public
27 body, to the Department of Taxation. The itemized list must include
28 the amount paid for each item.

29 3. An express or implied contract entered into in violation of
30 subsection 1 is void.

31 4. A person who enters into an express or implied contract that
32 violates the provisions of subsection 1 is guilty of a gross
33 misdemeanor.

34 5. The right to enforce the provisions of this section vests
35 exclusively in the Attorney General, who shall institute and
36 prosecute the appropriate proceedings to enforce the provisions of
37 this section.

38 6. If an express or implied contract for a public work is entered
39 into in violation of subsection 1, the Attorney General shall forward
40 to the Department of Taxation a list of construction materials or
41 goods purchased in violation of this section by the public body or
42 the contractor who is a constituent part of the public body. The
43 Department shall calculate the applicable state and local taxes on the
44 purchase and use of the construction materials or goods which
45 would have been due but for the tax exemption of the public body or



1 the contractor who is a constituent part of the public body, and shall
2 deduct from the money otherwise payable from the proceeds of any
3 tax distribution to the public body twice the amount of the
4 applicable taxes.

5 7. The provisions of this section do not apply to an express or
6 implied contract for a public work for which the construction
7 materials or goods purchased by the public body are:

8 (a) Devices, equipment or hardware purchased in compliance
9 with chapter 332 or 333 of NRS which are needed on a recurring
10 basis and used to protect the health, safety or welfare of the public,
11 including, without limitation, official traffic control devices; or

12 (b) Specialized components purchased in compliance with
13 chapter 332 or 333 of NRS which are specific to a particular project
14 and are not commonly used in public works projects.

15 ➤ If a public body enters into such a contract, the public body must
16 provide annually to the Department of Taxation an itemized list of
17 the construction materials or goods purchased pursuant to the
18 contract and the amount paid for each item.

19 8. If a public body is going to perform the public work itself in
20 accordance with NRS 338.13864, the public body is not required to:

21 (a) Pay any state or local taxes for the purchase and use of
22 construction materials or goods.

23 (b) Send to the Department of Taxation an itemized list of
24 construction materials or goods to be purchased by the public body
25 for the public work.

26 9. *The provisions of this section apply to any contract for*
27 *construction work of the Nevada System of Higher Education*
28 *even if the construction work does not qualify as a public work, as*
29 *defined in NRS 338.010.*

30 10. As used in this section, "construction materials or goods"
31 means all materials, equipment or supplies which are intended to be
32 used in a public work.

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

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

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

41 (a) Submitted by a contractor who:

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

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



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

3 (3) Within 2 hours after the completion of the opening of the
4 bids by the 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~~ 7 percent higher than the bid submitted by
8 the lowest responsive and responsible bidder who:

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

38 (a) Sales and use taxes and governmental services taxes 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,~~ **annually** submit to the Board an affidavit from a certified
6 public 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 ~~or~~ **or willfully and intentionally fails to**
27 **submit an affidavit as required by subsection 7 of NRS 338.0117,**
28 the contractor is not eligible to receive a preference in bidding on
29 public works for a period of 5 years after the date on which the
30 Board becomes aware of the submission of the false information ~~or~~
31 **or the failure to submit the affidavit;** or

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

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

41 11. If a bid is submitted by two or more contractors as a joint
42 venture or by one of them as a joint venturer, the bid may receive a
43 preference in bidding only if both or all of the joint venturers
44 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 local government to which the contractor has submitted a
10 bid on a contract for the construction of a public work. A written
11 objection 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 local government not later than 3 business
17 days after the opening of the bids by the local government or its
18 authorized representative.

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

33 **Sec. 13.5.** NRS 338.147 is hereby amended to read as follows:

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

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

41 (a) Submitted by a contractor who:

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

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



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

3 (3) Within 2 hours after the completion of the opening of the
4 bids by the 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 ~~7~~ 5 percent higher than the bid submitted by
8 the lowest responsive and responsible bidder who:

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

38 (a) Sales and use taxes and governmental services taxes 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 annually
4 submit to the Board an affidavit from a certified public accountant
5 setting forth that the contractor has, during the immediately
6 preceding 12 months, paid the taxes required pursuant to paragraph
7 (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to
8 maintain eligibility to hold such a certificate.

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

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

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

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

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

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

40 11. If a bid is submitted by two or more contractors as a joint
41 venture or by one of them as a joint venturer, the bid may receive a
42 preference in bidding only if both or all of the joint venturers
43 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 local government to which the contractor has submitted a
10 bid on a contract for the construction of a public work. A written
11 objection 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 local government not later than 3 business
17 days after the opening of the bids by the local government or its
18 authorized representative.

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

33 **Sec. 14.** (Deleted by amendment.)

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

35 338.1727 1. After selecting the finalists pursuant to NRS
36 338.1725, the public body shall provide to each finalist a request for
37 final proposals for the public work. The request for final proposals
38 must:

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

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



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

4 3. Except as otherwise provided in this subsection, in assigning
5 the relative weight to each factor for selecting a design-build team
6 pursuant to subsection 1, the public body shall assign, without
7 limitation, a relative weight of ~~15~~ 7 percent to the possession of
8 both a certificate of eligibility to receive a preference in bidding on
9 public works by all contractors on the design-build team if the
10 contractors submit signed affidavits that meet the requirements of
11 subsection 1 of NRS 338.0117, and a certificate of eligibility to
12 receive a preference when competing for public works by all design
13 professionals on the design-build team, and a relative weight of at
14 least 30 percent to the proposed cost of design and construction of
15 the public work. If any federal statute or regulation precludes the
16 granting of federal assistance or reduces the amount of that
17 assistance for a particular public work because of the provisions of
18 this subsection relating to a preference in bidding on public works,
19 or a preference when competing for public works, those provisions
20 of this subsection do not apply insofar as their application would
21 preclude or reduce federal assistance for that public work.

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

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

31 6. After receiving and evaluating the final proposals for the
32 public work, the public body or its authorized representative shall
33 enter into negotiations with the most qualified applicant, as
34 determined pursuant to the criteria set forth pursuant to subsections
35 1 and 3, and award the design-build contract to the design-build
36 team whose proposal is selected. If the public body or its authorized
37 representative is unable to negotiate with the most qualified
38 applicant a contract that is determined by the parties to be fair and
39 reasonable, the public body may terminate negotiations with that
40 applicant. The public body or its authorized representative may then
41 undertake negotiations with the next most qualified applicant in
42 sequence until an agreement is reached and, if the negotiation is
43 undertaken by an authorized representative of the public body,
44 approved by the public body or until a determination is made by the
45 public body to reject all applicants.



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

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

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

14 8. A contract awarded pursuant to this section:

15 (a) Must comply with the provisions of NRS 338.020 to
16 338.090, inclusive.

17 (b) Must specify:

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

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

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

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

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

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



1 design-build team or the employees or agents of the design-build
2 team in the performance of the contract.

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

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

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

11 408.3886 1. After selecting the finalists pursuant to NRS
12 408.3885, the Department shall provide to each finalist a request for
13 final proposals for the project. The request for final proposals must:

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

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

19 2. Except as otherwise provided in this subsection, in assigning
20 the relative weight to each factor for selecting a design-build team
21 pursuant to subsection 1, the Department shall assign, without
22 limitation, a relative weight of ~~15~~ 7 percent to the design-build
23 team's possession of both a certificate of eligibility to receive a
24 preference in bidding on public works by the prime contractor on
25 the design-build team, if the design-build team submits a signed
26 affidavit that meets the requirements of subsection 1 of NRS
27 338.0117, and a certificate of eligibility to receive a preference
28 when competing for public works by all persons who hold a
29 certificate of registration to practice architecture or a license as a
30 professional engineer on the design-build team, and a relative
31 weight of at least 30 percent for the proposed cost of design and
32 construction of the project. If any federal statute or regulation
33 precludes the granting of federal assistance or reduces the amount of
34 that assistance for a particular project because of the provisions of
35 this subsection relating to a preference in bidding on public works or
36 a preference when competing for public works, those provisions of
37 this subsection do not apply insofar as their application would
38 preclude or reduce federal assistance for that project.

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

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



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

3 (b) Reject all the final proposals; or

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

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

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

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

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

28 (a) Review and ratify the selection.

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

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

41 7. A contract awarded pursuant to this section:

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

44 (b) Must specify:



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

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

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

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

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

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

18 **Sec. 16.5.** 1. The amendatory provisions of sections 11, 12,
19 13, 15 and 16 of this act do not apply to a public work for which
20 bids were advertised or solicited or which was awarded before
21 July 1, 2018.

22 2. As used in this section, "public work" has the meaning
23 ascribed to it in NRS 338.010.

24 **Sec. 17.** 1. This section and sections 1 to 12, inclusive, 13
25 and 14 to 16.5, inclusive, of this act become effective:

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

29 (b) On July 1, 2018, for all other purposes.

30 2. Sections 15 and 16 of this act expire by limitation on
31 June 30, 2021.

32 3. Sections 12.5 and 13.5 of this act become effective on
33 July 1, 2021.

