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ASSEMBLY BILL NO. 172—ASSEMBLYMEN HORNE, KIRKPATRICK,  
BOBZIEN, BENITEZ-THOMPSON, HICKEY; AND  
BUSTAMANTE ADAMS

FEBRUARY 25, 2013

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Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing bidder preferences on certain public works. (BDR 28-110)

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.

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AN ACT relating to public works; revising provisions relating to preferences in bidding for contracts for certain public works projects; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law requires that a contractor, applicant to serve as a construction  
2 manager at risk or design-build team that wishes to receive a preference in bidding  
3 for a contract for a public work submit an affidavit to the public body sponsoring or  
4 financing the public work certifying that: (1) at least 50 percent of all workers  
5 employed on the public work will hold a valid Nevada driver’s license or  
6 identification card; (2) all vehicles used primarily for the public work will be either  
7 registered in this State or partially apportioned to this State; (3) at least 50 percent  
8 of all design professionals working on the public work will hold a valid Nevada  
9 driver’s license or identification card; (4) at least 25 percent of the suppliers of the  
10 materials used for the public work will be located in this State unless the public  
11 body requires the acquisition of materials or equipment that cannot be obtained  
12 from a supplier located in this State; and (5) certain records will be maintained and  
13 made available for inspection within this State. (NRS 338.0117) **Section 1** of this  
14 bill revises the requirements for such a preference in bidding by: (1) increasing  
15 from 50 percent to 100 percent the percentage of workers employed on the public  
16 work that are required to hold a valid Nevada driver’s license or identification card;  
17 (2) requiring that each worker and 50 percent of the design professionals working  
18 on the public work register in this State all vehicles owned by the worker or design  
19 professional for personal use and operated upon any highway in this State; and (3)  
20 eliminating the requirement that a percentage of suppliers of the materials used for  
21 the public work be located in this State. **Section 1** clarifies that the driver’s licenses  
22 and identification cards used to satisfy the statutory requirements must be issued by  
23 the Department of Motor Vehicles of the State of Nevada. **Section 1** requires a



24 contractor to meet those requirements only if the contractor was awarded the  
25 contract for a public work as a result of the preference in bidding. **Section 1**  
26 restricts who can file a written objection alleging a violation of those requirements  
27 to only persons who submitted a bid on the public work.

28 Existing law prohibits a contractor from being qualified to bid on certain state  
29 and local public works if the contractor has failed to comply with certain  
30 requirements within the preceding year for a contract for a public work that cost  
31 more than \$25,000,000. (NRS 338.1379) **Section 3** of this bill eliminates that  
32 provision.

33 Existing law prohibits a contractor who has failed to comply with certain  
34 requirements for a contract for a public work which exceeds \$5,000,000 from  
35 receiving a preference in bidding for public works for 5 years. (NRS 338.1389)  
36 **Section 5** of this bill eliminates that prohibition.

37 **Section 9** of this bill provides that the revised requirements for a preference in  
38 bidding on a contract for a public work apply to any public work that is first  
39 advertised for bid after July 1, 2013. **Section 9** also declares that any contract for  
40 such a public work that fails to comply with this bill is void.

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

1 **Section 1.** NRS 338.0117 is hereby amended to read as  
2 follows:

3 338.0117 1. To qualify to receive a preference in bidding  
4 pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS  
5 338.147, subsection 3 of NRS 338.1693, subsection 3 of NRS  
6 338.1727 or subsection 2 of NRS 408.3886, a contractor, an  
7 applicant or a design-build team, respectively, must submit to the  
8 public body sponsoring or financing a public work a signed affidavit  
9 which certifies that, for the duration of the project ~~it~~, *on average*  
10 *and not on any specific day:*

11 (a) ~~At least 50 percent of all workers~~ *Each worker* employed  
12 on the public work, including, without limitation, any employees of  
13 the contractor, applicant or design-build team and of any  
14 subcontractor engaged on the public work, will ~~hold~~:

15 (1) *Hold* a valid driver's license or identification card issued  
16 by the Department of Motor Vehicles ~~it~~ *of the State of Nevada;*  
17 *and*

18 (2) *Register in this State all vehicles owned by the worker*  
19 *for personal use and operated upon any highway in this State;*

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

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

24 (2) Registered in this State;

25 (c) At least 50 percent of the design professionals working on  
26 the public work, including, without limitation, any employees of the



1 contractor, applicant or design-build team and of any subcontractor  
2 *or consultant* engaged ~~to~~ *in the design of* the public work, will  
3 ~~have~~ :

4 (1) *Have* a valid driver's license or identification card issued  
5 by the Department of Motor Vehicles ~~of~~ *of the State of Nevada;*  
6 *and*

7 (2) *Register in this State all vehicles owned by the design*  
8 *professional for personal use and operated upon any highway in*  
9 *this State; and*

10 (d) ~~At least 25 percent of the suppliers of the materials used for~~  
11 ~~the public work will be located in this State unless the public body~~  
12 ~~requires the acquisition of materials or equipment that cannot be~~  
13 ~~obtained from a supplier located in this State; and~~

14 ~~—(e)~~ The contractor, applicant or design-build team and any  
15 subcontractor engaged on the public work will maintain and make  
16 available for inspection within this State his or her records  
17 concerning payroll relating to the public work.

18 2. Any contract for a public work *that is* awarded to a  
19 contractor, applicant or design-build team who submits the affidavit  
20 described in subsection 1 ~~and who receives~~ *as a result of the*  
21 *contractor, applicant or design-build team receiving* a preference  
22 in bidding described in subsection 1 must:

23 (a) Include a provision in the contract that substantially  
24 incorporates the requirements of paragraphs (a) to ~~(e);~~ (d),  
25 inclusive, of subsection 1; and

26 (b) Provide that a failure to comply with any requirement of  
27 paragraphs (a) to ~~(e);~~ (d), inclusive, of subsection 1 ~~is a material~~  
28 ~~breach of the contract and~~ entitles the public body to ~~liquidated~~  
29 ~~damages~~ *a penalty* only as provided in subsections 5 and 6.

30 3. A person ~~for entity~~ *who submitted a bid on the public work*  
31 *and* who believes that a contractor, applicant or design-build team  
32 has obtained a preference in bidding as described in subsection 1 but  
33 has failed to comply with a requirement of paragraphs (a) to ~~(e);~~  
34 (d), inclusive, of subsection 1 may file *, before the completion of*  
35 *the public work*, a written objection with the public body for which  
36 the contractor, applicant or design-build team is performing the  
37 public work. A written objection authorized pursuant to this  
38 subsection must set forth proof or substantiating evidence to support  
39 the belief of the person ~~for entity~~ that the contractor, applicant or  
40 design-build team has failed to comply with a requirement of  
41 paragraphs (a) to ~~(e);~~ (d), inclusive, of subsection 1.

42 4. If a public body receives a written objection pursuant to  
43 subsection 3, the public body shall determine whether the objection  
44 is accompanied by the proof or substantiating evidence required  
45 pursuant to that subsection. If the public body determines that the



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

13 5. A public body may recover, by civil action against the party  
14 responsible for a failure to comply with a requirement of paragraphs  
15 (a) to ~~[(e)]~~ (d), inclusive, of subsection 1, ~~liquidated damages~~ a  
16 *penalty* as described in subsection 6 for ~~for a breach of a contract for a~~  
17 ~~public work caused by~~ a failure to comply with a requirement of  
18 paragraphs (a) to ~~[(e)]~~ (d), inclusive, of subsection 1. If a public  
19 body recovers ~~liquidated damages~~ a *penalty* pursuant to this  
20 subsection, ~~for a breach of a contract for a public work,~~ the public  
21 body shall report to the State Contractors' Board the date of the  
22 ~~breach,~~ *failure to comply*, the name of each entity which  
23 ~~breached the contract~~ *failed to comply* and the cost of the contract  
24 ~~to which the entity that failed to comply was a party.~~ The Board  
25 shall maintain this information for not less than 6 years. Upon  
26 request, the Board shall provide this information to any public body  
27 or its authorized representative.

28 6. If a contractor, applicant or design-build team submits the  
29 affidavit described in subsection 1, receives a preference in bidding  
30 described in subsection 1 and is awarded the contract ~~to~~ *as a result*  
31 *of that preference*, the contract between the contractor, applicant or  
32 design-build team and the public body, each contract between the  
33 contractor, applicant or design-build team and a subcontractor ~~for~~  
34 ~~supplier~~ and each contract between a subcontractor and a *lower tier*  
35 subcontractor ~~for supplier~~ must provide that:

36 (a) If a party to the contract causes ~~for a material breach of the~~  
37 ~~contract between~~ the contractor, applicant or design-build team  
38 ~~and the public body as a result of a failure~~ *to fail* to comply with a  
39 requirement of paragraphs (a) to ~~[(e)]~~ (d), inclusive, of  
40 subsection 1, the party is liable to the public body for ~~liquidated~~  
41 ~~damages~~ a *penalty* in the amount of 1 percent of the cost of the  
42 largest contract to which he or she is a party;

43 (b) The right to recover the amount determined pursuant to  
44 paragraph (a) by the public body pursuant to subsection 5 may be  
45 enforced by the public body directly against the party that ~~causes~~



1 ~~the material breach;~~ caused the failure to comply with a  
2 requirement of paragraphs (a) to (d), inclusive, of subsection 1;  
3 and

4 (c) No other party to the contract is liable to the public body for  
5 ~~liquidated damages;~~ a penalty.

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

22 8. As used in this section:

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

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

32 (1) Owned or operated by the contractor or any  
33 subcontractor, or any employee thereof, who is engaged on the  
34 public work; and

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

36 **Sec. 2.** NRS 338.070 is hereby amended to read as follows:

37 338.070 1. Any public body awarding a contract shall:

38 (a) Investigate possible violations of the provisions of NRS  
39 338.010 to 338.090, inclusive, committed in the course of the  
40 execution of the contract, and determine whether a violation has  
41 been committed and inform the Labor Commissioner of any such  
42 violations; and

43 (b) When making payments to the contractor engaged on the  
44 public work of money becoming due under the contract, withhold



1 and retain all sums forfeited pursuant to the provisions of NRS  
2 338.010 to 338.090, inclusive.

3 2. No sum may be withheld, retained or forfeited, except from  
4 the final payment, without a full investigation being made by the  
5 awarding public body.

6 3. Except as otherwise provided in subsection 6, it is lawful for  
7 any contractor engaged on a public work to withhold from any  
8 subcontractor engaged on the public work sufficient sums to cover  
9 any penalties withheld from the contractor by the awarding public  
10 body on account of the failure of the subcontractor to comply with  
11 the terms of NRS 338.010 to 338.090, inclusive. If payment has  
12 already been made to the subcontractor, the contractor may recover  
13 from the subcontractor the amount of the penalty or forfeiture in a  
14 suit at law.

15 4. A contractor ~~engaged on~~ *awarded the contract for* a public  
16 work and each subcontractor engaged *by that contractor* on the  
17 public work shall keep or cause to be kept:

18 (a) An accurate record showing, for each worker employed by  
19 the contractor or subcontractor in connection with the public work:

20 (1) The name of the worker;

21 (2) The occupation of the worker;

22 (3) If the worker has a driver's license or identification card,  
23 an indication of the state or other jurisdiction that issued the license  
24 or card; and

25 (4) The actual per diem, wages and benefits paid to the  
26 worker; and

27 (b) An additional accurate record showing, for each worker  
28 employed by the contractor or subcontractor in connection with the  
29 public work who has a driver's license or identification card:

30 (1) The name of the worker;

31 (2) The driver's license number or identification card number  
32 of the worker; and

33 (3) The state or other jurisdiction that issued the license or  
34 card.

35 *↳ The provisions of this subsection do not apply to any contractor*  
36 *that was not awarded the contract for a public work.*

37 5. The records maintained pursuant to subsection 4 must be  
38 open at all reasonable hours to the inspection of the public body  
39 awarding the contract. The contractor engaged on the public work or  
40 subcontractor engaged on the public work shall ensure that a copy of  
41 each record for each calendar month is received by the public body  
42 awarding the contract no later than 15 days after the end of the  
43 month. The copy of the record maintained pursuant to paragraph (a)  
44 of subsection 4 must be open to public inspection as provided in  
45 NRS 239.010. The copy of the record maintained pursuant to



1 paragraph (b) of subsection 4 is confidential and not open to public  
2 inspection. The records in the possession of the public body  
3 awarding the contract may be discarded by the public body 2 years  
4 after final payment is made by the public body for the public work.

5 6. A contractor engaged on a public work shall not withhold  
6 from a subcontractor engaged on the public work the sums  
7 necessary to cover any penalties provided pursuant to subsection 3  
8 of NRS 338.060 that may be withheld from the contractor by the  
9 public body awarding the contract because the public body did not  
10 receive a copy of the record maintained by the subcontractor  
11 pursuant to subsection 4 for a calendar month by the time specified  
12 in subsection 5 if:

13 (a) The subcontractor provided to the contractor, for submission  
14 to the public body by the contractor, a copy of the record not later  
15 than the later of:

16 (1) Ten days after the end of the month; or

17 (2) A date agreed upon by the contractor and subcontractor;

18 and

19 (b) The contractor failed to submit the copy of the record to the  
20 public body by the time specified in subsection 5.

21 ➔ Nothing in this subsection prohibits a subcontractor from  
22 submitting a copy of a record for a calendar month directly to the  
23 public body by the time specified in subsection 5.

24 7. Any contractor or subcontractor, or agent or representative  
25 thereof, performing work for a public work who neglects to comply  
26 with the provisions of this section is guilty of a misdemeanor.

27 **Sec. 3.** NRS 338.1379 is hereby amended to read as follows:

28 338.1379 1. Except as otherwise provided in NRS 338.1382,  
29 a contractor who wishes to qualify as a bidder on a contract for a  
30 public work must submit an application to the Division or the local  
31 government.

32 2. Upon receipt of an application pursuant to subsection 1, the  
33 Division or the local government shall:

34 (a) Investigate the applicant to determine whether the applicant  
35 is qualified to bid on a contract; and

36 (b) After conducting the investigation, determine whether the  
37 applicant is qualified to bid on a contract. The determination must  
38 be made within 45 days after receipt of the application.

39 3. The Division or the local government shall notify each  
40 applicant in writing of its determination. If an application is denied,  
41 the notice must set forth the reasons for the denial and inform the  
42 applicant of the right to a hearing pursuant to NRS 338.1381.

43 4. The Division or the local government may determine an  
44 applicant is qualified to bid:

45 (a) On a specific project; or





1 (b) On more than one project over a period of time to be  
2 determined by the Division or the local government.

3 5. ~~{Except as otherwise provided in subsection 8, the}~~ *The*  
4 Division shall not use any criteria other than criteria adopted by  
5 regulation pursuant to NRS 338.1375 in determining whether to  
6 approve or deny an application.

7 6. ~~{Except as otherwise provided in subsection 8, the}~~ *The*  
8 local government shall not use any criteria other than the criteria  
9 described in NRS 338.1377 in determining whether to approve or  
10 deny an application.

11 7. Except as otherwise provided in NRS 239.0115, financial  
12 information and other data pertaining to the net worth of an  
13 applicant which is gathered by or provided to the Division or a local  
14 government to determine the financial ability of an applicant to  
15 perform a contract is confidential and not open to public inspection.

16 ~~{8. The Division or the local government shall deny an  
17 application and revoke any existing qualification to bid if it finds  
18 that the applicant has, within the preceding year, breached a contract  
19 for a public work for which the cost exceeds \$25,000,000 by failing  
20 to comply with a requirement of paragraphs (a) to (e), inclusive, of  
21 subsection 1 of NRS 338.0117.}~~

22 **Sec. 4.** NRS 338.1382 is hereby amended to read as follows:

23 338.1382 In lieu of adopting criteria pursuant to NRS 338.1377  
24 and determining the qualification of bidders pursuant to NRS  
25 338.1379, a governing body may deem a person to be qualified to  
26 bid on:

27 1. Contracts for public works of the local government if the  
28 person has not, within the preceding year, ~~{breached}~~ *with regard to*  
29 a contract for a public work for which the cost exceeds \$25,000,000  
30 ~~{by failing}~~ , *failed* to comply with a requirement of paragraphs (a)  
31 to ~~{(e)}~~ *(d)*, inclusive, of subsection 1 of NRS 338.0117, and has  
32 been determined by:

33 (a) The Division pursuant to NRS 338.1379 to be qualified to  
34 bid on contracts for public works of the State pursuant to criteria  
35 adopted pursuant to NRS 338.1375; or

36 (b) Another governing body pursuant to NRS 338.1379 to be  
37 qualified to bid on contracts for public works of that local  
38 government pursuant to the criteria set forth in NRS 338.1377.

39 2. A contract for a public work of the local government if:

40 (a) The person has been determined by the Department of  
41 Transportation pursuant to NRS 408.333 to be qualified to bid on  
42 the contract for the public work;

43 (b) The public work will be owned, operated or maintained by  
44 the Department of Transportation after the public work is  
45 constructed by the local government; and





1 (c) The Department of Transportation requested that bidders on  
2 the contract for the public work be qualified to bid on the contract  
3 pursuant to NRS 408.333.

4 **Sec. 5.** 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, ~~has~~  
16 *provides* a valid certificate of eligibility to receive a preference in  
17 bidding on public works issued to the contractor by the State  
18 Contractors' Board pursuant to subsection 3 or 4; and

19 (3) ~~{At the time the contractor submits his or her bid,}~~ *Within*  
20 *2 hours after the completion of the opening of the bids by the*  
21 *public body or its authorized representative,* submits a signed  
22 affidavit that meets the requirements of subsection 1 of NRS  
23 338.0117; and

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

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

30 ~~— (2) Does not submit, at the time he or she submits the bid, a~~  
31 ~~signed affidavit certifying that he or she will comply with the~~  
32 ~~requirements of paragraphs (a) to (e), inclusive, of subsection 1 of~~  
33 ~~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  
3 12-month period for 60 months immediately preceding the  
4 submission 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  
33 12-month period for 60 months immediately preceding the  
34 submission 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, submit to the Board an affidavit from a certified public  
20 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~~ **submits** false information to the Board regarding  
40 the required payment of taxes, the contractor is not eligible to  
41 receive a preference in bidding on public works for a period of 5  
42 years after the date on which the Board becomes aware of the  
43 submission of the false information. ~~+~~ ~~or~~

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



1 ~~§5,000,000 by failing to comply with a requirement of paragraphs~~  
2 ~~(a) to (e), inclusive, of subsection 1 of NRS 338.0117, the contractor~~  
3 ~~is not eligible to receive a preference in bidding on public works.~~

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

9 11. If a bid is submitted by two or more contractors as a joint  
10 venture or by one of them as a joint venturer, the bid may be  
11 deemed the best bid only if both or all of the joint venturers  
12 separately meet the requirements of subsection 2.

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

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

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

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

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



1       **Sec. 6.** NRS 338.1415 is hereby amended to read as follows:

2       338.1415 A local government or its authorized representative  
3 shall not accept a bid on a contract for a public work if the  
4 contractor who submits the bid has, within the preceding year,  
5 ~~breached~~ **with regard to** a contract for a public work for which the  
6 cost exceeds \$25,000,000 ~~by failing~~ , **failed** to comply with a  
7 requirement of paragraphs (a) to ~~(e)~~ **(d)**, inclusive, of subsection 1  
8 of NRS 338.0117.

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

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

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

17       (a) Submitted by a contractor who:

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

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

24           (3) At the time the contractor submits his or her bid, submits  
25 a signed affidavit that meets the requirements of subsection 1 of  
26 NRS 338.0117; and

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

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

33           (2) Does not submit, at the time he or she submits the bid, a  
34 signed affidavit certifying that he or she will comply with the  
35 requirements of paragraphs (a) to ~~(e)~~ **(d)**, inclusive, of  
36 subsection 1 of NRS 338.0117 for the duration of the contract,

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

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

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



1 (1) The sales and use taxes imposed pursuant to chapters  
2 372, 374 and 377 of NRS on materials used for construction in this  
3 State, including, without limitation, construction that is undertaken  
4 or carried out on land within the boundaries of this State that is  
5 managed by the Federal Government or is on an Indian reservation  
6 or Indian colony, of not less than \$5,000 for each consecutive  
7 12-month period for 60 months immediately preceding the  
8 submission of the affidavit from the certified public accountant;

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

44 (a) Submits false information to the Board regarding the  
45 required payment of taxes, the contractor is not eligible to receive a





1 preference in bidding on public works for a period of 5 years after  
2 the date on which the Board becomes aware of the submission of the  
3 false information; or

4 (b) Is found by the Board to have, within the preceding 5 years,  
5 ~~breached~~ with regard to a contract for a public work for which the  
6 cost exceeds \$5,000,000 ~~by failing~~, failed to comply with a  
7 requirement of paragraphs (a) to ~~(e)~~, (d), inclusive, of subsection 1  
8 of NRS 338.0117, 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 be  
17 deemed a best bid only if both or all of the joint venturers separately  
18 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 or entity who believes that a contractor  
23 wrongfully holds a certificate of eligibility to receive a preference in  
24 bidding on public works may challenge the validity of the certificate  
25 by filing a written objection with the local government to which the  
26 contractor has submitted a bid on a contract for the construction of a  
27 public work. A written objection authorized pursuant to this  
28 subsection must:

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

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

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



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

5 **Sec. 8.** NRS 408.333 is hereby amended to read as follows:

6 408.333 Except as otherwise provided in NRS 408.3875 to  
7 408.3887, inclusive:

8 1. Before furnishing any person proposing to bid on any  
9 advertised work with the plans and specifications for such work, the  
10 Director shall require from the person a statement, verified under  
11 oath, in the form of answers to questions contained in a standard  
12 form of questionnaire and financial statement, which must include a  
13 complete statement of the person's financial ability and experience  
14 in performing public work of a similar nature.

15 2. Such statements must be filed with the Director in ample  
16 time to permit the Department to verify the information contained  
17 therein in advance of furnishing proposal forms, plans and  
18 specifications to any person proposing to bid on the advertised  
19 public work, in accordance with the regulations of the Department.

20 3. Whenever the Director is not satisfied with the sufficiency  
21 of the answers contained in the questionnaire and financial  
22 statement, the Director may refuse to furnish the person with plans  
23 and specifications and the official proposal forms on the advertised  
24 project. If the Director determines that the person has, within the  
25 preceding year, ~~breached~~ *with regard to* a contract for a public  
26 work for which the cost exceeds \$25,000,000 ~~by failing~~, *failed* to  
27 comply with a requirement of paragraphs (a) to ~~(e)~~ *(d)*, inclusive,  
28 of subsection 1 of NRS 338.0117, the Director shall refuse to  
29 furnish the person with plans and specifications and the official  
30 proposal forms on the advertised project. Any bid of any person to  
31 whom plans and specifications and the official proposal forms have  
32 not been issued in accordance with this section must be disregarded,  
33 and the certified check, cash or undertaking of such a bidder  
34 returned forthwith.

35 4. Any person who is disqualified by the Director, in  
36 accordance with the provisions of this section, may request, in  
37 writing, a hearing before the Director and present again the person's  
38 check, cash or undertaking and such further evidence with respect to  
39 the person's financial responsibility, organization, plant and  
40 equipment, or experience, as might tend to justify, in his or her  
41 opinion, issuance to him or her of the plans and specifications for  
42 the work.

43 5. Such a person may appeal the decision of the Director to the  
44 Board no later than 5 days before the opening of the bids on the



1 project. If the appeal is sustained by the Board, the person must be  
2 granted the rights and privileges of all other bidders.

3 **Sec. 9.** 1. The amendatory provisions of this act apply to all  
4 public works for which bids are first advertised after July 1, 2013.

5 2. Any contract awarded for a public work to which the  
6 amendatory provisions of this act apply pursuant to subsection 1  
7 and:

8 (a) Which was not advertised in compliance with the  
9 amendatory provisions of this act;

10 (b) For which bids were not accepted in compliance with the  
11 amendatory provisions of this act; or

12 (c) For which the contract was not awarded in compliance with  
13 the amendatory provisions of this act,

14 ↪ is void.

15 3. As used in this section, “contract” and “public work” have  
16 the meanings ascribed to them in NRS 338.010.

17 **Sec. 10.** This act becomes effective on July 1, 2013.

