

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

FEBRUARY 25, 2013

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.

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) limiting the
15 requirement for design professionals to design-build teams; and (2) eliminating the
16 requirement that a percentage of suppliers of the materials used for the public work
17 be located in this State. **Section 1** clarifies that the driver’s licenses and
18 identification cards used to satisfy the statutory requirements must be issued by the
19 Department of Motor Vehicles of the State of Nevada. **Section 1** requires a
20 contractor to meet those requirements only if the contractor was awarded the
21 contract for a public work as a result of the preference in bidding. **Sections 1, 5 and**
22 **7** of this bill restrict who can file a written objection alleging a violation of those
23 requirements to only persons who submitted a bid on the public work or entities.



24 Existing law prohibits a contractor from being qualified to bid on certain state
25 and local public works if the contractor has failed to comply with certain
26 requirements within the preceding year for a contract for a public work that cost
27 more than \$25,000,000 and prohibits a contractor who has failed to comply with
28 certain requirements for a contract for a public work which exceeds \$5,000,000
29 from receiving a preference in bidding for public works for 5 years. (NRS
30 338.1379, 338.1382, 338.1389, 338.1415, 338.147, 408.333) **Sections 3-8** of this
31 bill instead condition those prohibitions on a material breach of a contract for a
32 public work which exceeds \$25,000,000 or \$5,000,000, as applicable.

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

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~~, *collectively,*
10 *and not on any specific day:*

11 (a) At least 50 percent of ~~that~~ *the* workers employed on the
12 public work, including, without limitation, any employees of the
13 contractor, applicant or design-build team and of any subcontractor
14 engaged on the public work, will hold a valid driver's license or
15 identification card issued by the Department of Motor Vehicles ~~it~~
16 *of the State of Nevada;*

17 (b) All vehicles used primarily for the public work will be:
18 (1) Registered and partially apportioned to Nevada pursuant
19 to the International Registration Plan, as adopted by the Department
20 of Motor Vehicles pursuant to NRS 706.826; or

21 (2) Registered in this State;

22 (c) ~~It~~ *If applying to receive a preference in bidding pursuant*
23 *to subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886,*
24 *at least 50 percent of the design professionals working on the public*
25 *work, including, without limitation, ~~any~~ employees of the*
26 *~~contractor, applicant or~~ design-build team and of any*
27 *subcontractor ~~or consultant~~ engaged ~~on~~ *in the design of* the public*
28 *work, will have a valid driver's license or identification card issued*
29 *by the Department of Motor Vehicles ~~it~~ *of the State of Nevada;**
30 *and*



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

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

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

14 (a) Include a provision in the contract that substantially
15 incorporates the requirements of paragraphs (a) to ~~(e);~~ *(d)*,
16 inclusive, of subsection 1; and

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

21 3. A person ~~for entity~~ *who submitted a bid on the public*
22 *work or an entity* who believes that a contractor, applicant or
23 design-build team has obtained a preference in bidding as described
24 in subsection 1 but has failed to comply with a requirement of
25 paragraphs (a) to ~~(e);~~ *(d)*, inclusive, of subsection 1 may file ,
26 *before the substantial completion of the public work*, a written
27 objection with the public body for which the contractor, applicant or
28 design-build team is performing the public work. A written
29 objection authorized pursuant to this subsection must set forth proof
30 or substantiating evidence to support the belief of the person or
31 entity that the contractor, applicant or design-build team has failed
32 to comply with a requirement of paragraphs (a) to ~~(e);~~ *(d)*,
33 inclusive, of subsection 1.

34 4. If a public body receives a written objection pursuant to
35 subsection 3, the public body shall determine whether the objection
36 is accompanied by the proof or substantiating evidence required
37 pursuant to that subsection. If the public body determines that the
38 objection is not accompanied by the required proof or substantiating
39 evidence, the public body shall dismiss the objection. If the public
40 body determines that the objection is accompanied by the required
41 proof or substantiating evidence or if the public body determines on
42 its own initiative that proof or substantiating evidence of a failure to
43 comply with a requirement of paragraphs (a) to ~~(e);~~ *(d)*, inclusive,
44 of subsection 1 exists, the public body shall determine whether the
45 contractor, applicant or design-build team has failed to comply with



1 a requirement of paragraphs (a) to ~~[(e),]~~ (d), inclusive, of
2 subsection 1 and the public body or its authorized representative
3 may proceed to award the contract accordingly or, if the contract has
4 already been awarded, seek the remedy authorized in subsection 5.

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

20 6. If a contractor, applicant or design-build team submits the
21 affidavit described in subsection 1, receives a preference in bidding
22 described in subsection 1 and is awarded the contract ~~to~~ *as a result*
23 *of that preference*, the contract between the contractor, applicant or
24 design-build team and the public body, each contract between the
25 contractor, applicant or design-build team and a subcontractor ~~or~~
26 ~~supplier~~ and each contract between a subcontractor and a *lower tier*
27 subcontractor ~~or supplier~~ must provide that:

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

35 (b) The right to recover the amount determined pursuant to
36 paragraph (a) by the public body pursuant to subsection 5 may be
37 enforced by the public body directly against the party that ~~causes~~
38 ~~the material breach,~~ *caused the failure to comply with a*
39 *requirement of paragraphs (a) to (d), inclusive, of subsection 1;*
40 and

41 (c) No other party to the contract is liable to the public body for
42 ~~liquidated damages,~~ a *penalty.*

43 7. A public body that awards a contract for a public work to a
44 contractor, applicant or design-build team who submits the affidavit
45 described in subsection 1 and who receives a preference in bidding



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

14 **8. As used in this section:**

15 (a) *“Lower tier subcontractor” means a subcontractor who*
16 *contracts with another subcontractor to provide labor, materials or*
17 *services to the other subcontractor for a construction project.*

18 (b) *“Vehicle used primarily for the public work” does not*
19 *include any vehicle that is present at the site of the public work*
20 *only occasionally and for a purpose incidental to the public work*
21 *including, without limitation, the delivery of materials.*
22 *Notwithstanding the provisions of the paragraph, the term*
23 *includes any vehicle which is:*

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

26 (2) *Present at the site of the public work.*

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

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

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

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

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

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

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

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



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

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

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

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

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

23 **Sec. 4.** NRS 338.1382 is hereby amended to read as follows:
24 338.1382 In lieu of adopting criteria pursuant to NRS 338.1377
25 and determining the qualification of bidders pursuant to NRS
26 338.1379, a governing body may deem a person to be qualified to
27 bid on:

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

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

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

40 2. A contract for a public work of the local government if:
41 (a) The person has been determined by the Department of
42 Transportation pursuant to NRS 408.333 to be qualified to bid on
43 the contract for the public work;



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

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

7 **Sec. 5.** NRS 338.1389 is hereby amended to read as follows:

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

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

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

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

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

22 (3) ~~At the time the contractor submits his or her bid,~~ *Within*
23 *2 hours after the completion of the opening of the bids by the*
24 *public body or its authorized representative*, submits a signed
25 affidavit that meets the requirements of subsection 1 of NRS
26 338.0117; 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,~~ *provide*, at the time he or she submits
30 the bid, a valid certificate of eligibility to receive a preference in
31 bidding on public works issued to him or her by the State
32 Contractors' Board pursuant to subsection 3 or 4; or

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

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

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



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

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

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

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

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

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

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

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

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

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

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

45 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 that
14 were paid in this State by an affiliate or parent company of the
15 contractor, if the affiliate or parent company is also a general
16 contractor or specialty contractor, as applicable; and

17 (b) Sales and use taxes that were paid in this State by a joint
18 venture in which the contractor is a participant, in proportion to the
19 amount of 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 *materially* breached a contract for a public work for which the cost
6 exceeds \$5,000,000 , ~~by failing to comply with a requirement of~~
7 ~~paragraphs (a) to (e), inclusive, of subsection 1 of NRS 338.0117,~~
8 the contractor is not eligible to receive a preference in bidding on
9 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 the best bid~~ *receive a preference in bidding* only if both or
18 all of the joint venturers separately meet the requirements of
19 subsection 2.

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

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

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

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

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



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

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

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

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

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

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

21 (a) Submitted by a contractor who:

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

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

28 (3) ~~At the time the contractor submits his or her bid,~~ *Within*
29 *2 hours after the completion of the opening of the bids by the local*
30 *government or its authorized representative,* submits a signed
31 affidavit that meets the requirements of subsection 1 of NRS
32 338.0117; and

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

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

39 (2) Does not submit, ~~at the time he or she submits the bid,~~
40 *within 2 hours after the completion of the opening of the bids by*
41 *the public body or its authorized representative,* a signed affidavit
42 certifying that he or she will comply with the requirements of
43 paragraphs (a) to ~~(e),~~ *(d),* inclusive, of subsection 1 of NRS
44 338.0117 for the duration of the contract,

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



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

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

8 (1) The sales and use taxes imposed pursuant to chapters
9 372, 374 and 377 of NRS on materials used for construction in this
10 State, including, without limitation, construction that is undertaken
11 or carried out on land within the boundaries of this State that is
12 managed by the Federal Government or is on an Indian reservation
13 or Indian colony, of not less than \$5,000 for each consecutive
14 12-month period for 60 months immediately preceding the
15 submission of the affidavit from the certified public accountant;

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

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

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

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

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

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

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

38 (1) The sales and use taxes pursuant to chapters 372, 374 and
39 377 of NRS on materials used for construction in this State,
40 including, without limitation, construction that is undertaken or
41 carried out on land within the boundaries of this State that is
42 managed by the Federal Government or is on an Indian reservation
43 or Indian colony, of not less than \$5,000 for each consecutive
44 12-month period for 60 months immediately preceding the
45 submission of the affidavit from the certified public accountant;



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

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

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

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

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

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

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

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

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

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

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



1 contractor's license for which the contractor submitted the
2 application.

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

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

11 (b) Is found by the Board to have, within the preceding 5 years,
12 *materially* breached a contract for a public work for which the cost
13 exceeds \$5,000,000 , ~~{by failing to comply with a requirement of~~
14 ~~paragraphs (a) to (e), inclusive, of subsection 1 of NRS 338.0117,}~~
15 the contractor is not eligible to receive a preference in bidding on
16 public works.

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

22 11. If a bid is submitted by two or more contractors as a joint
23 venture or by one of them as a joint venturer, the bid may ~~be~~
24 ~~deemed a best bid~~ *receive a preference in bidding* only if both or
25 all of the joint venturers separately meet the requirements of
26 subsection 2.

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

30 13. A person ~~for entity~~ *who submitted a bid on the public*
31 *work or an entity* who believes that ~~ta~~ *the contractor who was*
32 *awarded the contract for the public work* wrongfully holds a
33 certificate of eligibility to receive a preference in bidding on public
34 works may challenge the validity of the certificate by filing a written
35 objection with the local government to which the contractor has
36 submitted a bid on a contract for the construction of a public work.
37 A written objection authorized pursuant to this subsection must:

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

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



1 14. If a local government receives a written objection pursuant
2 to subsection 13, the local government shall determine whether the
3 objection is accompanied by the proof or substantiating evidence
4 required pursuant to paragraph (a) of that subsection. If the local
5 government determines that the objection is not accompanied by the
6 required proof or substantiating evidence, the local government shall
7 dismiss the objection and the local government or its authorized
8 representative may proceed immediately to award the contract. If
9 the local government determines that the objection is accompanied
10 by the required proof or substantiating evidence, the local
11 government shall determine whether the contractor qualifies for the
12 certificate pursuant to the provisions of this section and the local
13 government or its authorized representative may proceed to award
14 the contract accordingly.

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

16 408.333 Except as otherwise provided in NRS 408.3875 to
17 408.3887, inclusive:

18 1. Before furnishing any person proposing to bid on any
19 advertised work with the plans and specifications for such work, the
20 Director shall require from the person a statement, verified under
21 oath, in the form of answers to questions contained in a standard
22 form of questionnaire and financial statement, which must include a
23 complete statement of the person's financial ability and experience
24 in performing public work of a similar nature.

25 2. Such statements must be filed with the Director in ample
26 time to permit the Department to verify the information contained
27 therein in advance of furnishing proposal forms, plans and
28 specifications to any person proposing to bid on the advertised
29 public work, in accordance with the regulations of the Department.

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



1 4. Any person who is disqualified by the Director, in
2 accordance with the provisions of this section, may request, in
3 writing, a hearing before the Director and present again the person's
4 check, cash or undertaking and such further evidence with respect to
5 the person's financial responsibility, organization, plant and
6 equipment, or experience, as might tend to justify, in his or her
7 opinion, issuance to him or her of the plans and specifications for
8 the work.

9 5. Such a person may appeal the decision of the Director to the
10 Board no later than 5 days before the opening of the bids on the
11 project. If the appeal is sustained by the Board, the person must be
12 granted the rights and privileges of all other bidders.

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

15 2. Any contract awarded for a public work to which the
16 amendatory provisions of this act apply pursuant to subsection 1
17 and:

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

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

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

24 ↪ is void.

25 3. As used in this section, "contract" and "public work" have
26 the meanings ascribed to them in NRS 338.010.

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

