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PROPOSED AMENDMENT TO ASSEMBLY BILL NO. 540

Section 1. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The State Public Works Board or the governing body of a local government may:

(a) Qualify applicants to be subcontractors on a contract for a public work based on the criteria set forth in NRS 338.1375; or

(b) Deem subcontractors to meet the criteria set forth in NRS 338.1375 unless the Board or public body receives verifiable information indicating that a subcontractor does not meet that criteria. Upon receipt of such information, the Board or governing body shall conduct an investigation to determine whether the subcontractor fails to meet the criteria. If the Board or governing body determines that the subcontractor fails to meet the criteria, the Board or governing body may disqualify the subcontractor for a period not to exceed 2 years.

2. A person may request a hearing to be conducted in the manner provided in NRS 338.1381 to appeal:

(a) A denial of his application for qualification pursuant to paragraph (a) of subsection 1 as a subcontractor; or

(b) His disqualification pursuant to paragraph (b) of subsection 1.

Sec. 2. NRS 338.010 is hereby amended to read as follows:

338.010 As used in this chapter:

1. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a workman or workmen employed by them on public works by the day and not under a contract in writing.

2. "Design-build contract" means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.

3. "Design-build team" means an entity that consists of:

(a) At least one person who is licensed as a general engineering contractor or a general building contractor pursuant to chapter 624 of NRS; and

(b) For a public work that consists of:

(1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.

(2) Anything other than a building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS or is licensed as a professional engineer pursuant to chapter 625 of NRS.

4. "Design professional" means:

(a) A person who is licensed as a professional engineer pursuant to chapter 625 of NRS;

(b) A person who is licensed as a professional land surveyor pursuant to chapter 625 of NRS;

(c) A person who holds a certificate of registration to engage in the practice of architecture pursuant to chapter 623 of NRS;

(d) A person who holds a certificate of registration to engage in the practice of landscape architecture pursuant to chapter 623A of NRS; or

(e) A business entity that engages in the practice of professional engineering, land surveying, architecture or landscape architecture.

5. "Eligible bidder" means a person who is {:

~~—(a) Found to be a responsible and responsive contractor by a local government which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or~~

~~—(b) Determined} **determined** by a public body {which awarded a contract for a public work pursuant to NRS 338.1375 to 338.139, inclusive,} to be qualified to bid on {that} a contract **for a public work** pursuant to NRS 338.1379 or {was exempt from meeting such qualifications pursuant to NRS 338.1383.} **338.1383, as applicable.**~~

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

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

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

7. "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision.

8. "Offense" means failing to:

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

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

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

(d) Comply with subsection 4 or 5 of NRS 338.070.

9. "Prime contractor" means a person who:

(a) Contracts to construct an entire project;

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

(c) Uses his own workforce to perform all or a part of the construction, repair or reconstruction of the project; and

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

The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to NRS 338.139. ~~{or 338.148.}~~

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

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

(a) A project financed in whole or in part from public money for:

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- (1) Public buildings;
- (2) Jails and prisons;
- (3) Public roads;
- (4) Public highways;
- (5) Public streets and alleys;
- (6) Public utilities which are financed in whole or in part by public money;
- (7) Publicly owned water mains and sewers;
- (8) Public parks and playgrounds;
- (9) Public convention facilities which are financed at least in part with public funds; and
- (10) All other publicly owned works and property whose cost as a whole exceeds \$20,000.

Each separate unit that is a part of a project is included in the cost of the project to determine whether a project meets that threshold.

(b) A building for the University and Community College System of Nevada of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this state or from federal money.

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

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

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

(b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto, that is not located at the site of a public work for the design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 338.1711.

14. "Wages" means:

(a) The basic hourly rate of pay; and

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

15. "Workman" means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman. The term does not include a design professional.

Sec. 3. NRS 338.1373 is hereby amended to read as follows:

338.1373 ~~1. A local government shall award a contract for the construction, alteration or repair of a public work pursuant to the provisions of:~~

~~(a) NRS 338.1377 to 338.139, inclusive; or~~

~~(b) NRS 338.143 to 338.148, inclusive.~~

~~2. The provisions of NRS 338.1375 to 338.1383, inclusive, and 338.139 do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of~~

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highways that are awarded by the Department of Transportation pursuant to NRS 408.313 to 408.433, inclusive.

Sec. 4. NRS 338.1375 is hereby amended to read as follows:

~~338.1375 {1.—The State Public Works Board shall not accept a bid on a contract for a public work unless the person who submits the bid has qualified pursuant to NRS 338.1379 to bid on that contract.~~

~~—2.—The State Public Works Board shall by regulation adopt criteria for the qualification of bidders on contracts for public works of this state. The criteria adopted by the State Public Works Board pursuant to this section must be used by the State Public Works Board to determine the qualification of bidders on contracts for public works of this state.~~

~~—3.—The criteria adopted by the State Public Works Board pursuant to this section:~~

~~—(a) Must be adopted in such a form that the determination of whether an applicant is qualified to bid on a contract for a public work does not require or allow the exercise of discretion by any one person.~~

~~—(b) May include only:~~

~~—(1) The financial ability of the applicant to perform a contract;~~

~~—(2) Except as otherwise provided in NRS 338.1383, to qualify to bid on a contract for one or more public works of the State or of a local government, an applicant must meet the following criteria:~~

~~1. The applicant possesses a valid contractor's license of the appropriate classification or subclassification corresponding to the work to be performed on the contract;~~

~~2. The applicant has the ability to obtain the necessary bonding required for the work to be performed on the contract;~~

~~3. The applicant has successfully completed one or more projects during the 5 years immediately preceding the date of application of similar size, scope or type as the work to be performed on the contract;~~

~~4. The principal personnel of the applicant {;~~

~~—(3) Whether the} have the professional qualifications and experience needed for the work to be performed on the contract;~~

~~5. The applicant has breached any contracts with a public agency or person in this state or any other state {;~~

~~—(4) Whether the} during the 5 years immediately preceding the date of application;~~

~~6. The applicant has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.1387; {and~~

~~—(5) The performance history of the applicant concerning other recent, similar contracts, if any, completed by the applicant.}~~

~~7. The applicant has been convicted of a violation for discrimination in employment during the 2 years immediately preceding the date of application;~~

~~8. The applicant has the ability to obtain and maintain insurance coverage for public liability and property damage within limits sufficient to protect the applicant and all the~~

subcontractors of the applicant from claims for personal injury, accidental death and damage to property that may arise in connection with the work to be performed on the contract;

9. The applicant has established a safety program that complies with the requirements of chapter 618 of NRS;

10. Any complaints against the applicant have been filed with and substantiated by the State Contractors' Board or another state or federal agency that relate to the ability of the applicant to perform the work on the contract; and

11. The applicant filed as a debtor under the United States Bankruptcy Code during the 5 years immediately preceding the date of the application;

12. The application of the applicant is truthful and complete; and

13. The applicant has failed to perform any contract during the 5 years immediately preceding the application as a result of causes within the control of the applicant, his subcontractors or suppliers:

(a) In the manner specified by the contract and any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative;

(b) Within the time specified by the contract unless extended by the person or governmental entity that awarded the contract or its authorized representative; or

(c) For the amount of money specified in the contract or as modified by any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative.

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Evidence of such a failure includes, without limitation, the assessment of liquidated damages against the applicant, forfeiture of a bond by the applicant, an arbitration decision against the applicant and a decision by a court against the applicant.

Sec. 5. NRS 338.1379 is hereby amended to read as follows:

338.1379 1. Except as otherwise provided in NRS 338.1383 ~~{a}~~ :

1. The State Public Works Board and the governing body of a local government that sponsors or finances a public work shall not accept a bid on a contract for a public work unless the person who submits the bid has qualified to bid on the contract pursuant to this section.

2. A person who wishes to qualify as a bidder on a contract for a public work must submit an application to the State Public Works Board or the governing body.

~~{2}~~ *3. Upon receipt of an application submitted pursuant to subsection ~~{1}~~ 2, the State Public Works Board or the governing body shall:*

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

~~—(b) After conducting the investigation, determine whether~~ *(b) the applicant ~~is qualified to bid on a contract.~~ meets the criteria set forth in NRS 338.1375.*

(b) Within 5 days after receipt of such an application, provide notice of the receipt of the application to:

(1) Construction trade associations in this state;

(2) Labor unions representing trades in the building industry in this state; and

(3) Any other interested person who has requested such notice.

4. *In conducting an investigation pursuant to subsection 3, the State Public Works Board or the governing body may consider any verifiable information about the applicant relating to whether the applicant meets the criteria set forth in NRS 338.1375 that is discovered by or provided to the Board or governing body.*

5. *The State Public Works Board or the governing body shall make a determination ~~{must be made}~~ of whether an applicant meets the criteria set forth in NRS 338.1375 within 30 days after receipt of ~~{the}~~ his application.*

~~{3-}~~ 6. *The State Public Works Board or the governing body shall notify each applicant in writing of its determination. If an application is denied, the notice must set forth the reasons for the denial and inform the applicant of his right to a hearing pursuant to NRS 338.1381.*

~~{4-}~~ 7. *The State Public Works Board or the governing body ~~{of a local government}~~ may determine an applicant is qualified to bid:*

- (a) On a specific project;
- (b) On more than one project over a period of 12 months; or
- (c) On more than one project over a period of 24 months.

~~{5-}~~ 8. *The State Public Works Board **and the governing body** shall not use any criteria other than criteria ~~{adopted by regulation pursuant to}~~ set forth in NRS 338.1375 in determining whether to approve or deny an application.*

~~{6-}~~ *The governing body of a local government shall not use any criteria other than the criteria described in NRS 338.1377 in determining whether to approve or deny an application.*

~~{7-}~~ 9. *Financial information and other data pertaining to the net worth of an applicant which is gathered by or provided to the State Public Works Board or a governing body to determine ~~{the financial ability of}~~ whether an applicant is qualified to perform a contract is confidential and not open to public inspection.*

Sec. 6. NRS 338.1383 is hereby amended to read as follows:

338.1383 If a local government does not ~~{adopt}~~ *elect to implement the* criteria for the qualification of bidders on a public work ~~{pursuant to NRS 338.1377,}~~ *set forth in NRS 338.1375*, the governing body may only accept a bid on a contract for a public work from a person who holds:

1. An unlimited contractor's license issued by the State Contractors' Board in the branch of general engineering contracting or general building contracting, or in both branches, and:

- (a) At the time he submits his bid, he provides a bid bond equal to 10 percent of the amount of the bid; and
- (b) At the time the contract is awarded, he provides a performance bond, a labor and material bond and a guaranty bond, each equal to 100 percent of the amount of the contract; or

2. A contractor's license issued by the State Contractors' Board that is designated in any classification if he:

- (a) Has, in the 5 years immediately preceding the submission of the bid, been found to be a responsible contractor in the classification in which his contractor's license is designated;
- (b) Provides a bid bond, a performance bond, a guaranty bond, and a labor and material bond in such amounts as the governing body may require; and

(c) Employs a person determined by the State Contractors' Board to be qualified to supervise each classification of construction upon which the person submitting the bid is bidding.

Sec. 7. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection 7 and NRS 338.1906 and 338.1907, this state, or a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents the State or the local government, shall not:

(a) Commence such a project for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper of general circulation in this state for bids for the project; or

(b) Divide such a project into separate portions to avoid the requirements of paragraph (a).

2. Except as otherwise provided in subsection 7, a public body that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than \$25,000 but less than \$100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The public body shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the public body to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.

3. Each advertisement for bids must include a provision that sets forth:

(a) The requirement that a contractor must be qualified ~~[pursuant to NRS 338.1379]~~ to bid on the contract ~~[or must be exempt from meeting such qualifications]~~ pursuant to NRS 338.1379 or 338.1383 ~~[;]~~, *as applicable*; and

(b) The period during which an application to qualify as a bidder on the contract must be submitted.

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

5. Any bids received in response to an advertisement for bids may be rejected if the person responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 ~~[, unless the bidder is exempt from meeting such qualifications pursuant to NRS 338.1383;]~~ or 338.1383, *as applicable*;

(b) The bidder is not responsive;

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

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

6. Before the State or a local government may commence a project subject to the provisions of this section, based upon a determination that the public interest would be served by rejecting

any bids received in response to an advertisement for bids, it shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the State or the local government intends to assign to the project, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the State or the local government intends to use on the project, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the project;

(d) An estimate of the total cost of the project; and

(e) An estimate of the amount of money the State or the local government expects to save by rejecting the bids and performing the project itself.

7. This section does not apply to:

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

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

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

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

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727.

Sec. 8. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection 8, this state, or a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents the State or the local government, shall not:

(a) Commence such a project for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper of general circulation in this state for bids for the project; or

(b) Divide such a project into separate portions to avoid the requirements of paragraph (a).

2. Except as otherwise provided in subsection 8, a public body that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than \$25,000 but less than \$100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The public body shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A properly licensed contractor must submit a written request annually to the public body to remain on the list. Offers for bids which are made pursuant to this subsection must be sent by certified mail.

3. Each advertisement for bids must include a provision that sets forth:

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(a) The requirement that a contractor must be qualified ~~{pursuant to NRS 338.1379}~~ to bid on the contract ~~{or must be exempt from meeting such qualifications}~~ pursuant to NRS 338.1379 or 338.1383 ~~{}~~, *as applicable*; and

(b) The period during which an application to qualify as a bidder on the contract must be submitted.

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

5. Any bids received in response to an advertisement for bids may be rejected if the person responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 ~~{, unless the bidder is exempt from meeting such qualifications pursuant to NRS 338.1383;}~~ or 338.1383, *as applicable*;

(b) The bidder is not responsive;

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

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

6. Before the State or a local government may commence a project subject to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, it shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the State or the local government intends to assign to the project, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the State or the local government intends to use on the project, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the project;

(d) An estimate of the total cost of the project; and

(e) An estimate of the amount of money the State or the local government expects to save by rejecting the bids and performing the project itself.

7. In preparing the estimated cost of a project pursuant to subsection 6, the State or a local government must include the fair market value of, or, if known, the actual cost of, all materials, supplies, labor and equipment to be used for the project.

8. This section does not apply to:

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

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

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

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

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

Sec. 9. NRS 338.1387 is hereby amended to read as follows:

338.1387 1. A public body awarding a contract for a public work shall not award the contract to a person who, at the time of the bid, is not properly licensed under the provisions of chapter 624 of NRS or if the contract would exceed the limit of his license. A subcontractor named by the contractor who is not properly licensed for that portion of the work shall be deemed unacceptable. If the subcontractor is deemed unacceptable, the contractor shall provide an acceptable subcontractor before the award of the contract.

2. If, after awarding the contract, the public body discovers that the person to whom the contract was awarded is not licensed, or that the contract would exceed his license, the public body shall reject the bid and may accept the next lowest bid for that public work from a responsive bidder who was determined by the public body to be a qualified bidder pursuant to NRS 338.1379 or ~~{was exempt from meeting such qualifications pursuant to NRS 338.1373 or}~~ 338.1383, *as applicable*, without requiring that new bids be submitted.

Sec. 10. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in NRS 338.1385 and 338.1711 to 338.1727, inclusive, a public body shall award a contract for a public work to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, for the purposes of this section, a contractor who:

(a) Has been determined by the public body to be a qualified bidder pursuant to NRS 338.1379 or ~~{is exempt from meeting such requirements pursuant to NRS 338.1373 or 338.1383;}~~ 338.1383, *as applicable*; and

(b) At the time he submits his bid, provides to the public body a copy of a certificate of eligibility to receive a preference in bidding on public works issued to him by the State Contractors' Board pursuant to subsection 3 or 4,

shall be deemed to have submitted a better bid than a competing contractor who has not provided a copy of such a valid certificate of eligibility if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.

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

(a) Paid directly, on his own behalf:

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

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

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

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

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

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

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

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

(a) Paid directly, on his own behalf:

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

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

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

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

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

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

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

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

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

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

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

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

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

9. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works submits false information to the Board regarding the required payment of taxes, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information.

10. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work. The provisions of subsection 2 do not apply to any contract for a public work which is expected to cost less than \$250,000.

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the provisions of subsection 2 apply only if both or all of the joint venturers separately meet the requirements of that subsection.

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

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

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

(b) Be filed with the public body at or after the time at which the contractor submitted the bid or proposal to the public body and before the time at which the public body awards the contract for which the bid or proposal was submitted.

14. If a public body receives a written objection pursuant to subsection 13, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the

objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and may proceed immediately to award the contract. If the public body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and may proceed to award the contract accordingly.

Sec. 11. NRS 341.166 is hereby amended to read as follows:

341.166 1. The Board may, with the approval of the Interim Finance Committee when the Legislature is not in regular or special session, or with the approval of the Legislature by concurrent resolution when the Legislature is in regular or special session, enter into a contract for services with a contractor licensed pursuant to chapter 624 of NRS to assist the Board:

(a) In the development of designs, plans, specifications and estimates of costs for a proposed construction project.

(b) In the review of designs, plans, specifications and estimates of costs for a proposed construction project to ensure that the designs, plans, specifications and estimates of costs are complete and that the project is feasible to construct.

2. The Board is not required to advertise for bids for a contract for services pursuant to subsection 1, but may solicit bids from not fewer than three licensed contractors and may award the contract to the lowest responsible and responsive bidder.

3. The Board shall adopt regulations establishing procedures for:

(a) The determination of the qualifications of contractors to bid for the contracts for services described in subsection 1.

(b) The bidding and awarding of such contracts.

4. If a proposed construction project for which a contractor is awarded a contract for services by the Board pursuant to subsection 1 is advertised pursuant to NRS 341.148, that contractor may submit a bid for the contract for the proposed construction project if he is qualified pursuant to NRS ~~{338.1377.}~~ 338.1379.

Sec. 12. NRS 338.1715 is hereby amended to read as follows:

338.1715 1. A public body that is required to contract with a prime contractor pursuant to subsection 1 of NRS 338.1711 or elects to contract with a prime contractor pursuant to subsection 4 of NRS 338.1711 shall select the prime contractor in accordance with the procedures for bidding that are set forth in ~~{~~

~~—(a) The} the provisions of NRS 338.1375 and 338.1379 to 338.139, inclusive. {; or~~

~~—(b) NRS 338.143 to 338.148, inclusive, if the public body is a local government that elects to award a contract for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373.}~~

2. A public body that contracts with a design-build team pursuant to NRS 338.1711 and 338.1713 shall select the design-build team in accordance with NRS 338.1721 to 338.1727, inclusive.

Sec. 13. NRS 338.1721 is hereby amended to read as follows:

338.1721 To qualify to participate in a project for the design and construction of a public work, a design-build team must:

1. Obtain a performance bond and payment bond as required pursuant to NRS 339.025;
2. Obtain insurance covering general liability and liability for errors and omissions;
3. Not have been found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause;
4. Not have been disqualified from being awarded a contract pursuant to NRS 338.017, 338.1387 ~~+~~ ~~338.145~~ or 408.333; and
5. Ensure that the members of the design-build team possess the licenses and certificates required to carry out the functions of their respective professions within this state.

Sec. 14. NRS 338.1907 is hereby amended to read as follows:

338.1907 1. The governing body of a local government may designate one or more energy retrofit coordinators for the buildings occupied by the local government.

2. If such a coordinator is designated, upon request by or consultation with an officer or employee of the local government who is responsible for the budget of a department, board, commission or other entity of the local government, the coordinator may request the approval of the governing body to advertise a request for proposals to retrofit a building, or any portion thereof, that is occupied by the department, board, commission or other entity, to make the use of energy in the building, or portion thereof, more efficient.

3. Upon approval of the governing body, the coordinator shall prepare a request for proposals for the retrofitting of one or more buildings, or any portion thereof, which includes:

- (a) The name and location of the coordinator;
- (b) A brief description of the requirements for the initial audit of the use of energy and the retrofitting;
- (c) Where and how specifications of the requirements for the initial audit of the use of energy and the retrofitting may be obtained;
- (d) The date and time not later than which proposals must be received by the coordinator; and
- (e) The date and time when responses will be opened.

4. The request for proposals must be published in at least one newspaper of general circulation in the county in which the local government is located.

5. After receiving the proposals but before making a decision on the proposals, the coordinator shall consider:

- (a) The best interests of the local government;
- (b) The experience and financial stability of the persons submitting the proposals;
- (c) Whether the proposals conform with the terms of the request for proposals;
- (d) The prices of the proposals; and
- (e) Any other factor disclosed in the request for proposals.

6. The coordinator shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted to the coordinator.

7. After reviewing the proposals, if the coordinator determines that sufficient energy could be saved to justify retrofitting the building or buildings, or portion thereof, the coordinator shall select the best proposal and request the approval of the governing body to award the contract.

The request for approval must include the proposed method of financing the audit and retrofit, which may include an installment contract, a shared savings contract or any other contract for a reasonable financing arrangement. Such a contract may commit the local government to make payments beyond the fiscal year in which the contract is executed or beyond the terms of office of the governing body, or both.

8. Before approving a retrofit pursuant to this section, the governing body shall evaluate any projects that would utilize shared savings as a method of payment or any method of financing that would commit the local government to make payments beyond the fiscal year in which the contract is executed or beyond the terms of office of the governing body to ensure that:

- (a) The amount of energy to be saved will likely justify the cost of the retrofit; and
- (b) The local government is likely to continue to occupy the building for the entire period required to recoup the cost of the retrofit in energy savings.

9. Upon approval of the governing body, the coordinator shall execute the contract and notify each officer or employee who is responsible for the budget of a department, board, commission or other entity which occupies a portion of a building that will be retrofitted of the amount of money it will be required to pay annually for its portion of the retrofit.

10. NRS 338.1385 ~~and 338.143 do~~ does not apply to a project for which a request for proposals is advertised and the contract is awarded pursuant to the provisions of this section.

Sec. 15. NRS 408.3883 is hereby amended to read as follows:

408.3883 1. The Department shall advertise for preliminary proposals for the design and construction of a project by a design-build team in a newspaper of general circulation in this state.

2. A request for preliminary proposals published pursuant to subsection 1 must include, without limitation:

- (a) A description of the proposed project;
- (b) Separate estimates of the costs of designing and constructing the project;
- (c) The dates on which it is anticipated that the separate phases of the design and construction of the project will begin and end;
- (d) The date by which preliminary proposals must be submitted to the Department, which must not be less than 30 days after the date that the request for preliminary proposals is first published in a newspaper pursuant to subsection 1; and
- (e) A statement setting forth the place and time in which a design-build team desiring to submit a proposal for the project may obtain the information necessary to submit a proposal, including, without limitation, the information set forth in subsection 3.

3. The Department shall maintain at the time and place set forth in the request for preliminary proposals the following information for inspection by a design-build team desiring to submit a proposal for the project:

- (a) The extent to which designs must be completed for both preliminary and final proposals and any other requirements for the design and construction of the project that the Department determines to be necessary;
- (b) A list of the requirements set forth in NRS 408.3884;

(c) A list of the factors that the Department will use to evaluate design-build teams who submit a proposal for the project, including, without limitation:

(1) The relative weight to be assigned to each factor pursuant to NRS 408.3886; and

(2) A disclosure of whether the factors that are not related to cost are, when considered as a group, more or less important in the process of evaluation than the factor of cost;

(d) Notice that a design-build team desiring to submit a proposal for the project must include with its proposal the information used by the Department to determine finalists among the design-build teams submitting proposals pursuant to subsection 2 of NRS 408.3885 and a description of that information;

(e) A statement that a design-build team whose prime contractor holds a certificate of eligibility to receive a preference in bidding on public works issued pursuant to NRS 338.1389 ~~for 338.147~~ should submit a copy of the certificate of eligibility with its proposal; and

(f) A statement as to whether a bidding design-build team that is selected as a finalist pursuant to NRS 408.3885 but is not awarded the design-build contract pursuant to NRS 408.3886 will be partially reimbursed for the cost of preparing a final proposal and, if so, an estimate of the amount of the partial reimbursement.

Sec. 16. NRS 408.3884 is hereby amended to read as follows:

408.3884 To qualify to participate in the design and construction of a project for the Department, a design-build team must:

1. Except as otherwise provided in NRS 408.354, obtain a performance bond and payment bond as the Department may require;

2. Obtain insurance covering general liability and liability for errors and omissions;

3. Not have been found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause;

4. Not have been disqualified from being awarded a contract pursuant to NRS 338.017, 338.1387 ~~338.145~~ or 408.333; and

5. Ensure that the members of the design-build team possess the licenses and certificates required to carry out the functions of their respective professions within this state.

Sec. 17. NRS 338.1377, 338.143, 338.145, 338.147 and 338.148 are hereby repealed.

Sec. 18. 1. This section and sections 1 to 7, inclusive, and 9 to 12, inclusive, of this act become effective on July 1, 2003.

2. Section 7 of this act expires by limitation on April 30, 2013.

3. Section 8 of this act becomes effective on May 1, 2013.