

SENATE BILL NO. 494—SENATORS D. HARRIS,
SPEARMAN; AND CANNIZZARO

MARCH 29, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to emerging small businesses. (BDR 27-585)

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 procurement; creating preferences in bidding for certain government contracts with local emerging small businesses; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law establishes a certification for a business that qualifies as a local emerging small business. (NRS 231.1405-231.14055) Under existing law, a local government purchasing contract is awarded to the contractor who submits the best bid. (NRS 332.065) **Sections 2-6** of this bill create a preference of 5 percent for a bid for a local government purchasing contract which is submitted by a local emerging small business. **Section 5** of this bill requires a bid submitted by a local emerging small business to be deemed to be 5 percent lower than the bid actually submitted. **Section 5** also prohibits granting the preference for the award of any contract which uses federal money, unless such a preference is authorized by federal law, or for any contract which has been procured on a multistate basis.

Existing law grants a preference of 5 percent for a bid or proposal for a state purchasing contract for certain businesses. (NRS 333.3351-333.3369) **Sections 8-13** of this bill create a preference of 5 percent for a bid or proposal for a state purchasing contract which is submitted by a local emerging small business. **Section 11** of this bill establishes that: (1) a bid submitted by a local emerging small business will be deemed to be 5 percent lower than the bid actually submitted; and (2) a proposal submitted by a local emerging small business will be deemed to have a score which is 5 percent higher than the score actually awarded. **Section 11** also prohibits granting the preference for the award of any contract which uses federal money, unless such a preference is authorized by federal law, or for any contract which has been procured on a multistate basis. **Section 12** of this bill imposes certain penalties and restrictions upon a business that makes a material misrepresentation or commits a fraudulent act in applying for the preference or fails to comply with the requirements for the preference.



Existing law grants a preference of 5 percent for a bid for a contract for a public work of this State for certain local businesses owned and operated by a veteran with a service-connected disability. (NRS 338.13844) **Sections 17-20** of this bill establish a preference in bidding on public works for a local emerging small business. **Section 18** of this bill requires a bid submitted by a local emerging small business to be deemed to be 5 percent lower than the bid actually submitted. **Section 19** of this bill imposes certain penalties and restrictions upon a business that makes a material misrepresentation or commits a fraudulent act in applying for the preference.

Existing law authorizes contractors to use certain preferences in bidding on contracts with an estimated cost exceeding \$250,000. (NRS 338.1389, 338.147) **Sections 22 and 23** of this bill authorize contractors to use a preference as a local emerging small business in bidding on those contracts. Existing law also gives a weight of 5 percent to certain preferences in a contractor's bid for certain contracts. (NRS 338.1693, 338.1725, 338.1727) **Sections 24-26** of this bill give a weight of 5 percent to a contractor's preference as a local emerging small business.

Existing law authorizes a design-build team to use certain preferences to bid on a contract related to the construction, reconstruction or improvement of a highway. (NRS 408.388, 408.3885, 408.3886) **Sections 27 and 28** of this bill authorize a design-build team to use a preference as a local emerging small business in bidding on such a contract.

Sections 14, 15 and 21 of this bill make conforming changes.

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

Section 1. Chapter 332 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *As used in sections 2 to 6, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Local emerging small business” has the meaning ascribed to it in NRS 231.1402.*

Sec. 4. *“Local government purchasing contract” means a contract awarded pursuant to the provisions of this chapter.*

Sec. 5. 1. *If a local emerging small business submits a bid on a local government purchasing contract, the bid shall be deemed to be 5 percent lower than the bid actually submitted.*

2. *The preference described in subsection 1 may not be:*

(a) Combined with any other preference.

(b) Granted for the award of any contract which uses federal money unless such a preference is authorized by federal law.

(c) Granted for the award of any contract procured on a multistate basis.

Sec. 6. *To the extent applicable, a governing body or its authorized representative shall comply with regulations adopted by*



1 *the Purchasing Division of the Department of Administration*
2 *pursuant to section 13 of this act. A governing body or its*
3 *authorized representative may enact any ordinance to govern*
4 *matters that are not accounted for in the regulations adopted by*
5 *the Purchasing Division.*

6 **Sec. 7.** Chapter 333 of NRS is hereby amended by adding
7 thereto the provisions set forth as sections 8 to 13, inclusive, of this
8 act.

9 **Sec. 8.** *As used in sections 8 to 13, inclusive, of this act,*
10 *unless the context otherwise requires, the words and terms defined*
11 *in sections 9 and 10 of this act have the meanings ascribed to them*
12 *in those sections.*

13 **Sec. 9.** *“Local emerging small business” has the meaning*
14 *ascribed to it in NRS 231.1402.*

15 **Sec. 10.** *“State purchasing contract” means a contract*
16 *awarded pursuant to the provisions of this chapter.*

17 **Sec. 11.** 1. *If a local emerging small business submits a:*
18 *(a) Bid to furnish commodities that was solicited pursuant to*
19 *NRS 333.300, the bid shall be deemed to be 5 percent lower than*
20 *the bid actually submitted; or*

21 *(b) Proposal to contract for services, the score assigned to the*
22 *proposal pursuant to NRS 333.335 shall be deemed to be 5 percent*
23 *higher than the score actually awarded.*

24 2. *The preference described in subsection 1 may not be:*

25 *(a) Combined with any other preference.*

26 *(b) Granted for the award of any contract which uses federal*
27 *money unless such a preference is authorized by federal law.*

28 *(c) Granted for the award of any contract procured on a*
29 *multistate basis.*

30 **Sec. 12.** 1. *In addition to any other remedy or penalty*
31 *provided by law, if the Purchasing Division determines that a*
32 *business has made a material misrepresentation or otherwise*
33 *committed a fraudulent act in applying for a preference described*
34 *in section 11 of this act or has failed to comply with the*
35 *requirements of that section, the business:*

36 *(a) Shall pay to the Purchasing Division, if awarded a state*
37 *purchasing contract, a penalty in the amount of 1 percent of the*
38 *cost of the state purchasing contract;*

39 *(b) Shall not bid on a state purchasing contract or a contract*
40 *awarded by any local government for 1 year after the date upon*
41 *which the Purchasing Division makes such a determination; and*

42 *(c) Shall not apply for or receive a preference described in*
43 *section 11 of this act for 5 years after the date upon which the*
44 *Purchasing Division makes such a determination.*



1 **2. If the Purchasing Division determines, as described in**
2 **subsection 1, that a business has made a material**
3 **misrepresentation or otherwise committed a fraudulent act in**
4 **applying for a preference described in section 11 of this act or has**
5 **failed to comply with the requirements of that section, the business**
6 **may apply to the Administrator to review the decision pursuant to**
7 **chapter 233B of NRS.**

8 **Sec. 13. The Purchasing Division may adopt such**
9 **regulations as it determines to be necessary or advisable to carry**
10 **out the provisions of sections 8 to 13, inclusive, of this act. The**
11 **regulations may include, without limitation, provisions setting**
12 **forth:**

13 **1. The method by which a business may apply to receive a**
14 **preference described in section 11 of this act;**

15 **2. The documentation or other proof that a business must**
16 **submit to demonstrate that it qualifies for a preference described**
17 **in section 11 of this act; and**

18 **3. Such other matters as the Purchasing Division deems**
19 **relevant.**

20 **Sec. 14. NRS 333.310 is hereby amended to read as follows:**

21 333.310 1. An advertisement must contain a general
22 description of the classes of commodities or services for which a bid
23 or proposal is wanted and must state:

24 (a) The name and location of the department, agency, local
25 government, district or institution for which the purchase is to be
26 made.

27 (b) Where and how specifications and quotation forms may be
28 obtained.

29 (c) If the advertisement is for bids, whether the Administrator is
30 authorized by the using agency to be supplied to consider a bid for
31 an article that is an alternative to the article listed in the original
32 request for bids if:

33 (1) The specifications of the alternative article meet or
34 exceed the specifications of the article listed in the original request
35 for bids;

36 (2) The purchase of the alternative article results in a lower
37 price; and

38 (3) The Administrator deems the purchase of the alternative
39 article to be in the best interests of the State of Nevada.

40 (d) Notice of the preferences set forth in NRS 333.3354 and
41 333.3366 ~~§~~ **and section 11 of this act.**

42 (e) Notice of the written certification required pursuant to
43 NRS 333.338.

44 (f) The date and time not later than which responses must be
45 received by the Purchasing Division.



1 (g) The date and time when responses will be opened.
2 ↪ The Administrator or a designated agent of the Administrator
3 shall approve the copy for the advertisement.

4 2. Each advertisement must be published:

5 (a) In at least one newspaper of general circulation in the State.
6 The selection of the newspaper to carry the advertisement must be
7 made in the manner provided by this chapter for other purchases, on
8 the basis of the lowest price to be secured in relation to the paid
9 circulation; and

10 (b) On the Internet website of the Purchasing Division.

11 **Sec. 15.** NRS 333.340 is hereby amended to read as follows:

12 333.340 1. Every contract or order for goods must be
13 awarded to the lowest responsible bidder. To determine the lowest
14 responsible bidder, the Administrator:

15 (a) Shall consider, if applicable:

16 (1) The granting of the preference described in
17 NRS 333.3366.

18 (2) The required standards adopted pursuant to
19 NRS 333.4611.

20 (3) The certification described in NRS 333.182.

21 (4) The granting of the preference described in
22 NRS 333.3354.

23 *(5) The granting of the preference described in section 11*
24 *of this act.*

25 (b) May consider:

26 (1) The location of the using agency to be supplied.

27 (2) The qualities of the articles to be supplied.

28 (3) The total cost of ownership of the articles to be supplied.

29 (4) Except as otherwise provided in subparagraph (5), the
30 conformity of the articles to be supplied with the specifications.

31 (5) If the articles are an alternative to the articles listed in the
32 original request for bids, whether the advertisement for bids
33 included a statement that bids for an alternative article will be
34 considered if:

35 (I) The specifications of the alternative article meet or
36 exceed the specifications of the article listed in the original request
37 for bids;

38 (II) The purchase of the alternative article results in a
39 lower price; and

40 (III) The Administrator deems the purchase of the
41 alternative article to be in the best interests of the State of Nevada.

42 (6) The purposes for which the articles to be supplied are
43 required.

44 (7) The dates of delivery of the articles to be supplied.



1 2. If a contract or an order is not awarded to the lowest bidder,
2 the Administrator shall provide the lowest bidder with a written
3 statement which sets forth the specific reasons that the contract or
4 order was not awarded to him or her.

5 3. As used in this section, "total cost of ownership" includes,
6 but is not limited to:

- 7 (a) The history of maintenance or repair of the articles;
8 (b) The cost of routine maintenance and repair of the articles;
9 (c) Any warranties provided in connection with the articles;
10 (d) The cost of replacement parts for the articles; and
11 (e) The value of the articles as used articles when given in trade
12 on a subsequent purchase.

13 **Sec. 16.** Chapter 338 of NRS is hereby amended by adding
14 thereto the provisions set forth as sections 17 to 20, inclusive, of this
15 act.

16 **Sec. 17.** *As used in sections 17 to 20, inclusive, of this act,*
17 *"local emerging small business" has the meaning ascribed to it in*
18 *NRS 231.1402.*

19 **Sec. 18. 1.** *For the purpose of awarding a contract for a*
20 *public work of this State, if a local emerging small business*
21 *submits a bid, the bid shall be deemed to be 5 percent lower than*
22 *the bid actually submitted.*

23 *2. The preference described in subsection 1 may not be*
24 *combined with any other preference.*

25 **Sec. 19. 1.** *If the Division determines that a business has*
26 *made a material misrepresentation or otherwise committed a*
27 *fraudulent act in applying for a preference described in section 18*
28 *of this act, the business is thereafter permanently prohibited from:*

29 *(a) Applying for or receiving a preference described in section*
30 *18 of this act; and*

31 *(b) Bidding on a contract for a public work of this State.*

32 *2. If the Division determines, as described in subsection 1,*
33 *that a business has made a material misrepresentation or*
34 *otherwise committed a fraudulent act in applying for a preference*
35 *described in section 18 of this act, the business may apply to the*
36 *Administrator to review the decision pursuant to chapter 233B of*
37 *NRS.*

38 *3. As used in this section, "Administrator" has the meaning*
39 *ascribed to it in NRS 341.011.*

40 **Sec. 20.** *The State Public Works Board may adopt such*
41 *regulations as it determines to be necessary or advisable to carry*
42 *out the provisions of sections 17 to 20, inclusive, of this act. The*
43 *regulations may include, without limitation, provisions setting*
44 *forth:*



1 *1. The method by which a business may apply to receive a*
2 *preference described in section 18 of this act;*

3 *2. Documentation or other proof that a business must submit*
4 *to demonstrate that it qualifies for a preference described in*
5 *section 18 of this act; and*

6 *3. Such other matters as the Division deems relevant.*

7 *↳ In carrying out the provisions of this section, the State Public*
8 *Works Board and the Division shall, to the extent practicable,*
9 *cooperate and coordinate with the Purchasing Division of the*
10 *Department of Administration so that any regulations adopted*
11 *pursuant to this section and section 13 of this act are reasonably*
12 *consistent.*

13 **Sec. 21.** NRS 338.1373 is hereby amended to read as follows:

14 338.1373 1. A local government or its authorized
15 representative shall award a contract for a public work pursuant to
16 the provisions of NRS 338.1415 and:

17 (a) NRS 338.1377 to 338.139, inclusive ~~§~~, *and sections 17 to*
18 *20, inclusive, of this act;*

19 (b) NRS 338.143 to 338.148, inclusive;

20 (c) NRS 338.1685 to 338.16995, inclusive; or

21 (d) NRS 338.1711 to 338.173, inclusive.

22 2. Except as otherwise provided in this subsection, subsection
23 3 and chapter 408 of NRS, the provisions of this chapter apply with
24 respect to contracts for the construction, reconstruction,
25 improvement and maintenance of highways that are awarded by the
26 Department of Transportation pursuant to NRS 408.201 and
27 408.313 to 408.433, inclusive. The provisions of NRS 338.1375 to
28 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139,
29 338.142 and 338.1711 to 338.1727, inclusive, do not apply with
30 respect to contracts for the construction, reconstruction,
31 improvement and maintenance of highways that are awarded by the
32 Department of Transportation pursuant to NRS 408.201 and
33 408.313 to 408.433, inclusive.

34 3. To the extent that a provision of this chapter precludes the
35 granting of federal assistance or reduces the amount of such
36 assistance with respect to a contract for the construction,
37 reconstruction, improvement or maintenance of highways that is
38 awarded by the Department of Transportation pursuant to NRS
39 408.201 and 408.313 to 408.433, inclusive, that provision of this
40 chapter does not apply to the Department of Transportation or the
41 contract.

42 **Sec. 22.** NRS 338.1389 is hereby amended to read as follows:

43 338.1389 1. Except as otherwise provided in subsection 10
44 and NRS 338.1385, 338.1386 and 338.13864, a public body or its
45 authorized representative shall award a contract for a public work



1 for which the estimated cost exceeds \$250,000 to the contractor who
2 submits the best bid.

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

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

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

8 (2) At the time the contractor submits his or her bid, provides
9 a valid certificate of eligibility to receive a preference in bidding on
10 public works issued to the contractor by the State Contractors'
11 Board pursuant to subsection 3 or 4 ~~§~~ *or is eligible to receive a*
12 *preference in bidding on public works pursuant to section 18 of*
13 *this act;* and

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

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

20 (1) Does not provide, at the time he or she submits the bid, a
21 valid certificate of eligibility to receive a preference in bidding on
22 public works issued to him or her by the State Contractors' Board
23 pursuant to subsection 3 or 4 ~~§~~ *or is eligible to receive a*
24 *preference in bidding on public works pursuant to section 18 of*
25 *this act;* or

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

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

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

39 (1) The sales and use taxes imposed pursuant to chapters
40 372, 374 and 377 of NRS on materials used for construction in this
41 State, including, without limitation, construction that is undertaken
42 or carried out on land within the boundaries of this State that is
43 managed by the Federal Government or is on an Indian reservation
44 or Indian colony, of not less than \$5,000 for each consecutive 12-



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

41 **Sec. 23.** NRS 338.147 is hereby amended to read as follows:

42 338.147 1. Except as otherwise provided in subsection 10
43 and NRS 338.143, 338.1442 and 338.1446, a local government or
44 its authorized representative shall award a contract for a public work



1 for which the estimated cost exceeds \$250,000 to the contractor who
2 submits the best bid.

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

5 (a) Submitted by a contractor who:

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

8 (2) At the time the contractor submits his or her bid, provides
9 a valid certificate of eligibility to receive a preference in bidding on
10 public works issued to the contractor by the State Contractors'
11 Board pursuant to subsection 3 or 4 ~~§~~ *or is eligible to receive a*
12 *preference in bidding on public works pursuant to section 18 of*
13 *this act;* and

14 (3) Within 2 hours after the completion of the opening of the
15 bids by the local government or its authorized representative,
16 submits a signed affidavit that meets the requirements of subsection
17 1 of NRS 338.0117; and

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

20 (1) Does not provide, at the time he or she submits the bid, a
21 valid certificate of eligibility to receive a preference in bidding on
22 public works issued to him or her by the State Contractors' Board
23 pursuant to subsection 3 or 4 ~~§~~ *or is eligible to receive a*
24 *preference in bidding on public works pursuant to section 18 of*
25 *this act;* or

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

42 **Sec. 24.** NRS 338.1693 is hereby amended to read as follows:

43 338.1693 1. The public body or its authorized representative
44 shall appoint a panel consisting of at least three but not more than
45 seven members, a majority of whom must have experience in the



1 construction industry, to rank the proposals submitted to the public
2 body by evaluating the proposals as required pursuant to subsections
3 2 and 3.

4 2. The panel appointed pursuant to subsection 1 shall rank the
5 proposals by:

6 (a) Verifying that each applicant satisfies the requirements of
7 NRS 338.1691; and

8 (b) Evaluating and assigning a score to each of the proposals
9 received by the public body based on the factors and relative weight
10 assigned to each factor that the public body specified in the request
11 for proposals.

12 3. When ranking the proposals, the panel appointed pursuant to
13 subsection 1 shall assign a relative weight of 5 percent to *either* the
14 applicant's possession of a certificate of eligibility to receive a
15 preference in bidding on public works if the applicant submits a
16 signed affidavit that meets the requirements of subsection 1 of NRS
17 338.0117 ~~or~~ *or the applicant's possession of a certificate as a local*
18 *emerging small business.* If any federal statute or regulation
19 precludes the granting of federal assistance or reduces the amount of
20 that assistance for a particular public work because of the provisions
21 of this subsection, those provisions of this subsection do not apply
22 insofar as their application would preclude or reduce federal
23 assistance for that work. *The relative weight assigned to an*
24 *applicant pursuant to this subsection must not exceed a total of 5*
25 *percent.*

26 4. After the panel appointed pursuant to subsection 1 ranks the
27 proposals, the public body or its authorized representative shall,
28 except as otherwise provided in subsection 8, select at least the two
29 but not more than the five applicants whose proposals received the
30 highest scores for interviews.

31 5. The public body or its authorized representative may appoint
32 a separate panel to interview and rank the applicants selected
33 pursuant to subsection 4. If a separate panel is appointed pursuant to
34 this subsection, the panel must consist of at least three but not more
35 than seven members, a majority of whom must have experience in
36 the construction industry.

37 6. During the interview process, the panel conducting the
38 interview may require the applicants to submit a preliminary
39 proposed amount of compensation for managing the preconstruction
40 and construction of the public work, including, without limitation,
41 the cost of general overhead and profit, but in no event shall the
42 proposed amount of compensation be less than 5 percent or more
43 than 20 percent of the scoring for the selection of the most qualified
44 applicant. All presentations made at any interview conducted
45 pursuant to this subsection or subsection 5 may be made only by key



1 personnel employed by the applicant, as determined by the
2 applicant, and the employees of the applicant who will be directly
3 responsible for managing the preconstruction and construction of
4 the public work.

5 7. After conducting such interviews, the panel that conducted
6 the interviews shall rank the applicants by using a ranking process
7 that is separate from the process used to rank the applicants pursuant
8 to subsection 2 and is based only on information submitted during
9 the interview process. The score to be given for the proposed
10 amount of compensation, if any, must be calculated by dividing the
11 lowest of all the proposed amounts of compensation by the
12 applicant's proposed amount of compensation multiplied by
13 the total possible points available to each applicant. When ranking
14 the applicants, the panel that conducted the interviews shall assign a
15 relative weight of 5 percent to the applicant's possession of a
16 certificate of eligibility to receive a preference in bidding on public
17 works if the applicant submits a signed affidavit that meets the
18 requirements of subsection 1 of NRS 338.0117 **or the applicant's**
19 ***possession of a certificate as a local emerging small business.*** If
20 any federal statute or regulation precludes the granting of federal
21 assistance or reduces the amount of that assistance for a particular
22 public work because of the provisions of this subsection, those
23 provisions of this subsection do not apply insofar as their
24 application would preclude or reduce federal assistance for that
25 work. ***The relative weight assigned to an applicant pursuant to this***
26 ***subsection must not exceed a total of 5 percent.***

27 8. If the public body did not receive at least two proposals, the
28 public body may not contract with a construction manager at risk.

29 9. Upon receipt of the final rankings of the applicants from the
30 panel that conducted the interviews, the public body or its
31 authorized representative shall enter into negotiations with the most
32 qualified applicant determined pursuant to the provisions of this
33 section for a contract for preconstruction services, unless the public
34 body required the submission of a proposed amount of
35 compensation, in which case the proposed amount of compensation
36 submitted by the applicant must be the amount offered for the
37 contract. If the public body or its authorized representative is unable
38 to negotiate a contract with the most qualified applicant for an
39 amount of compensation that the public body or its authorized
40 representative and the most qualified applicant determine to be fair
41 and reasonable, the public body or its authorized representative shall
42 terminate negotiations with that applicant. The public body or its
43 authorized representative may then undertake negotiations with the
44 next most qualified applicant in sequence until an agreement is
45 reached and, if the negotiation is undertaken by an authorized



1 representative of the public body, approved by the public body or
2 until a determination is made by the public body to reject all
3 applicants.

4 10. The public body or its authorized representative shall:

5 (a) Make available to all applicants and the public the following
6 information, as determined by the panel appointed pursuant to
7 subsection 1 and the panel that conducted the interviews, as
8 applicable:

9 (1) The final rankings of the applicants;

10 (2) The score assigned to each proposal received by the
11 public body; and

12 (3) For each proposal received by the public body, the score
13 assigned to each factor that the public body specified in the request
14 for proposals; and

15 (b) Provide, upon request, an explanation to any unsuccessful
16 applicant of the reasons why the applicant was unsuccessful.

17 *11. As used in this section, "local emerging small business"*
18 *has the meaning ascribed to it in NRS 231.1402.*

19 **Sec. 25.** NRS 338.1725 is hereby amended to read as follows:

20 338.1725 1. The public body shall select at least two but not
21 more than four finalists from among the design-build teams that
22 submitted preliminary proposals. If the public body does not receive
23 at least two preliminary proposals from design-build teams that the
24 public body determines to be qualified pursuant to this section and
25 NRS 338.1721, the public body may not contract with a design-
26 build team for the design and construction of the public work.

27 2. The public body shall select finalists pursuant to subsection
28 1 by:

29 (a) Verifying that each design-build team which submitted a
30 preliminary proposal satisfies the requirements of NRS 338.1721;

31 (b) Conducting an evaluation of the qualifications of each
32 design-build team that submitted a preliminary proposal, including,
33 without limitation, an evaluation of:

34 (1) The professional qualifications and experience of the
35 members of the design-build team;

36 (2) The performance history of the members of the design-
37 build team concerning other recent, similar projects completed by
38 those members, if any;

39 (3) The safety programs established and the safety records
40 accumulated by the members of the design-build team; and

41 (4) The proposed plan of the design-build team to manage
42 the design and construction of the public work that sets forth in
43 detail the ability of the design-build team to design and construct the
44 public work; and



1 (c) Except as otherwise provided in this paragraph, assigning,
2 without limitation, a relative weight of 5 percent to *either* the
3 possession of both a certificate of eligibility to receive a preference
4 in bidding on public works by all contractors on the design-build
5 team and a certificate of eligibility to receive a preference when
6 competing for public works by all design professionals on the
7 design-build team ~~{ }~~ *or the possession of a certificate as a local*
8 *emerging small business*. If any federal statute or regulation
9 precludes the granting of federal assistance or reduces the amount of
10 that assistance for a particular public work because of the provisions
11 of this paragraph relating to a preference in bidding on public works
12 or a preference when competing for public works, those provisions
13 of this paragraph do not apply insofar as their application would
14 preclude or reduce federal assistance for that public work. *The*
15 *relative weight assigned pursuant to this paragraph must not*
16 *exceed a total of 5 percent.*

17 3. After the selection of finalists pursuant to this section, the
18 public body shall make available to the public the results of the
19 evaluations of preliminary proposals conducted pursuant to
20 paragraph (b) of subsection 2 and identify which of the finalists, if
21 any, received an assignment of 5 percent pursuant to paragraph (c)
22 of subsection 2.

23 *4. As used in this section, "local emerging small business"*
24 *has the meaning ascribed to it in NRS 231.1402.*

25 **Sec. 26.** NRS 338.1727 is hereby amended to read as follows:

26 338.1727 1. After selecting the finalists pursuant to NRS
27 338.1725, the public body shall provide to each finalist a request for
28 final proposals for the public work. The request for final proposals
29 must:

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

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

35 2. If one or more of the finalists selected pursuant to NRS
36 338.1725 is disqualified or withdraws, the public body may select a
37 design-build team from the remaining finalist or finalists.

38 3. Except as otherwise provided in this subsection, in assigning
39 the relative weight to each factor for selecting a design-build team
40 pursuant to subsection 1, the public body shall assign, without
41 limitation, a relative weight of 5 percent to *either* the possession of
42 both a certificate of eligibility to receive a preference in bidding on
43 public works by all contractors on the design-build team if the
44 contractors submit signed affidavits that meet the requirements of
45 subsection 1 of NRS 338.0117, and a certificate of eligibility to



1 receive a preference when competing for public works by all design
2 professionals on the design-build team ~~§~~ *or the possession of a*
3 *certificate as a local emerging small business*, and a relative weight
4 of at least 30 percent to the proposed cost of design and construction
5 of the public work. If any federal statute or regulation precludes the
6 granting of federal assistance or reduces the amount of that
7 assistance for a particular public work because of the provisions of
8 this subsection relating to a preference in bidding on public works,
9 or a preference when competing for public works, those provisions
10 of this subsection do not apply insofar as their application would
11 preclude or reduce federal assistance for that public work. *The*
12 *relative weight assigned for the submission of affidavits and a*
13 *certificate of eligibility to receive a preference or the possession of*
14 *a certificate as a local emerging small business shall not exceed a*
15 *total of 5 percent.*

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

23 5. A final proposal is exempt from the requirements of
24 NRS 338.141.

25 6. After receiving and evaluating the final proposals for the
26 public work, the public body or its authorized representative shall
27 enter into negotiations with the most qualified applicant, as
28 determined pursuant to the criteria set forth pursuant to subsections
29 1 and 3, and award the design-build contract to the design-build
30 team whose proposal is selected. If the public body or its authorized
31 representative is unable to negotiate with the most qualified
32 applicant a contract that is determined by the parties to be fair and
33 reasonable, the public body may terminate negotiations with that
34 applicant. The public body or its authorized representative may then
35 undertake negotiations with the next most qualified applicant in
36 sequence until an agreement is reached and, if the negotiation is
37 undertaken by an authorized representative of the public body,
38 approved by the public body or until a determination is made by the
39 public body to reject all applicants.

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

42 (a) Partially reimburse the unsuccessful finalists if partial
43 reimbursement was provided for in the request for preliminary
44 proposals pursuant to paragraph (j) of subsection 2 of NRS
45 338.1723. The amount of reimbursement must not exceed, for each



1 unsuccessful finalist, 3 percent of the total amount to be paid to the
2 design-build team as set forth in the design-build contract.

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

8 8. A contract awarded pursuant to this section:

9 (a) Must comply with the provisions of NRS 338.020 to
10 338.090, inclusive.

11 (b) Must specify:

12 (1) An amount that is the maximum amount that the public
13 body will pay for the performance of all the work required by the
14 contract, excluding any amount related to costs that may be incurred
15 as a result of unexpected conditions or occurrences as authorized by
16 the contract;

17 (2) An amount that is the maximum amount that the public
18 body will pay for the performance of the professional services
19 required by the contract; and

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

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

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

33 (e) May require the design-build team to defend, indemnify and
34 hold harmless the public body, and the employees, officers and
35 agents of the public body from any liabilities, damages, losses,
36 claims, actions or proceedings, including, without limitation,
37 reasonable attorneys' fees, that are caused by the negligence, errors,
38 omissions, recklessness or intentional misconduct of the design-
39 build team or the employees or agents of the design-build team in
40 the performance of the contract.

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



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

4 *10. As used in this section, "local emerging small business"*
5 *has the meaning ascribed to it in NRS 231.1402.*

6 **Sec. 27.** NRS 408.3885 is hereby amended to read as follows:

7 408.3885 1. The Department shall select at least three but not
8 more than five finalists from among the design-build teams that
9 submitted preliminary proposals. If the Department does not receive
10 at least three preliminary proposals from design-build teams that the
11 Department determines to be qualified pursuant to this section and
12 NRS 408.3884, the Department may not contract with a design-
13 build team for the design and construction of the project.

14 2. The Department shall select finalists pursuant to subsection
15 1 by:

16 (a) Verifying that each design-build team which submitted a
17 preliminary proposal satisfies the requirements of NRS 408.3884;

18 (b) Conducting an evaluation of the qualifications of each
19 design-build team that submitted a preliminary proposal, including,
20 without limitation, an evaluation of:

21 (1) The professional qualifications and experience of the
22 members of the design-build team;

23 (2) The performance history of the members of the design-
24 build team concerning other recent, similar projects completed by
25 those members, if any;

26 (3) The safety programs established and the safety records
27 accumulated by the members of the design-build team;

28 (4) The proposed plan of the design-build team to manage
29 the design and construction of the project that sets forth in detail the
30 ability of the design-build team to design and construct the project;
31 and

32 (5) The degree to which the preliminary proposal is
33 responsive to the requirements of the Department for the submittal
34 of a preliminary proposal; and

35 (c) Except as otherwise provided in this paragraph, assigning,
36 without limitation, a relative weight of 5 percent to *either*
37 the possession of both a certificate of eligibility to receive a preference
38 in bidding on public works by the prime contractor on the design-
39 build team and a certificate of eligibility to receive a preference
40 when competing for public works by all persons who hold a
41 certificate of registration to practice architecture or a license as a
42 professional engineer on the design-build team ~~and~~ *or the design-
43 build team's possession of a certificate as a local emerging small
44 business.* If any federal statute or regulation precludes the granting
45 of federal assistance or reduces the amount of that assistance for a



1 particular public work because of the provisions of this paragraph
2 relating to a preference in bidding on public works or a preference
3 when competing for public works, those provisions of this
4 paragraph do not apply insofar as their application would preclude
5 or reduce federal assistance for that public work. *The relative*
6 *weight assigned to a design-build team pursuant to this paragraph*
7 *must not exceed a total of 5 percent.*

8 3. After the selection of finalists pursuant to this section, the
9 Department shall make available to the public the results of the
10 evaluations of preliminary proposals conducted pursuant to
11 paragraph (b) of subsection 2 and identify which of the finalists, if
12 any, received an assignment of 5 percent pursuant to paragraph (c)
13 of subsection 2.

14 4. *As used in this section, "local emerging small business"*
15 *has the meaning ascribed to it in NRS 231.1402.*

16 **Sec. 28.** NRS 408.3886 is hereby amended to read as follows:

17 408.3886 1. After selecting the finalists pursuant to NRS
18 408.3885, the Department shall provide to each finalist a request for
19 final proposals for the project. The request for final proposals must:

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

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

25 2. Except as otherwise provided in this subsection, in assigning
26 the relative weight to each factor for selecting a design-build team
27 pursuant to subsection 1, the Department shall assign, without
28 limitation, a relative weight of 5 percent to *either* the design-build
29 team's possession of both a certificate of eligibility to receive a
30 preference in bidding on public works by the prime contractor on
31 the design-build team, if the design-build team submits a signed
32 affidavit that meets the requirements of subsection 1 of NRS
33 338.0117, and a certificate of eligibility to receive a preference
34 when competing for public works by all persons who hold a
35 certificate of registration to practice architecture or a license as a
36 professional engineer on the design-build team ~~or~~ *or the design-*
37 *build team's possession of a certificate as a local emerging small*
38 *business*, and a relative weight of at least 30 percent for the
39 proposed cost of design and construction of the project. If any
40 federal statute or regulation precludes the granting of federal
41 assistance or reduces the amount of that assistance for a particular
42 project because of the provisions of this subsection relating to a
43 preference in bidding on public works or a preference when
44 competing for public works, those provisions of this subsection do
45 not apply insofar as their application would preclude or reduce



1 federal assistance for that project. *The relative weight assigned to a*
2 *design-build team pursuant to this subsection must not exceed a*
3 *total of 5 percent.*

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

9 4. After receiving the final proposals for the project, the
10 Department shall:

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

13 (b) Reject all the final proposals; or

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

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

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

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

34 6. If the Department selects a final proposal pursuant to
35 paragraph (a) of subsection 4 or selects a best and final offer
36 pursuant to paragraph (a) of subsection 5, the Department shall hold
37 a public meeting to:

38 (a) Review and ratify the selection.

39 (b) Partially reimburse the unsuccessful finalists if partial
40 reimbursement was provided for in the request for preliminary
41 proposals pursuant to paragraph (f) of subsection 3 of NRS
42 408.3883. The amount of reimbursement must not exceed, for each
43 unsuccessful finalist, 3 percent of the total amount to be paid to the
44 design-build team as set forth in the design-build contract.



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

7 7. A contract awarded pursuant to this section:

8 (a) Must comply with the provisions of NRS 338.020 to
9 338.090, inclusive; and

10 (b) Must specify:

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

16 (2) An amount that is the maximum amount that the
17 Department will pay for the performance of the professional
18 services required by the contract; and

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

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

23 (a) Assume overall responsibility for ensuring that the design
24 and construction of the project is completed in a satisfactory
25 manner; and

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

28 *9. As used in this section, "local emerging small business"*
29 *has the meaning ascribed to it in NRS 231.1402.*

30 **Sec. 29.** This act becomes effective on July 1, 2019.

