

ASSEMBLY BILL NO. 391—COMMITTEE
ON GOVERNMENT AFFAIRS

MARCH 23, 2023

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works.
(BDR 28-1031)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

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

AN ACT relating to public works; authorizing, under certain circumstances, a local government to give a preference in bidding on certain public works to a contractor who agrees to certain conditions relating to local hiring; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes a preference of 5 percent for a bid or proposal which is
2 submitted on certain public works for contractors who ensure that, among other
3 requirements, at least 50 percent of the workers employed on the public work for
4 the duration of the project have a valid driver’s license or identification card from
5 the Department of Motor Vehicles of the State of Nevada. (NRS 338.0117) **Section**
6 **1** of this bill authorizes a local government to award a preference of 5 percent to
7 certain contractors who bid on a contract for: (1) a public work for which the
8 estimated cost exceeds \$250,000; (2) a public work involving a construction
9 manager at risk; and (3) a public work involving a design-build team. To receive
10 the preference, a contractor must sign an affidavit ensuring that at least 50 percent
11 of the workers employed on the public work for the duration of the project reside
12 within the jurisdiction of the local government or within a certain specified distance
13 of the jurisdiction of the local government, as provided by the local government.
14 **Sections 3, 4 and 5** of this bill make conforming changes to incorporate the
15 preference into provisions of existing law relating to a contract with a local
16 government for: (1) a public work for which the estimated cost exceeds \$250,000;
17 (2) a public work involving a construction manager at risk; and (3) a public work
18 involving a design-build team. (NRS 338.147, 338.1693, 338.1727)
19 **Section 2** of this bill makes a conforming change to create an exception to the
20 requirements under existing law for obtaining a 5 percent bidder’s preference on
21 certain public works.



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

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

3 1. *Except as otherwise provided in NRS 338.0117, to qualify*
4 *to receive a preference in bidding pursuant to subsection 2 of NRS*
5 *338.147, subsection 3 of NRS 338.1693 or subsection 3 of NRS*
6 *338.1727, a contractor or an applicant must submit to the local*
7 *government sponsoring or financing a public work a signed*
8 *affidavit which certifies that, for the duration of the project,*
9 *collectively, and not on any specific day:*

10 (a) *At least 50 percent of the workers employed on the public*
11 *work, including, without limitation, any employees of the*
12 *contractor or applicant and of any subcontractor engaged on the*
13 *public work, resides:*

14 (1) *Within the jurisdiction of the local government; or*

15 (2) *Within a certain specified distance of the jurisdiction of*
16 *the local government, as provided by the local government*
17 *sponsoring or financing the public work; and*

18 (b) *The contractor or applicant and any subcontractor*
19 *engaged on the public work will maintain and make available for*
20 *inspection within this State his or her records concerning payroll*
21 *relating to the public work.*

22 2. *Any contract for a public work that is awarded to a*
23 *contractor or applicant who submits the affidavit described in*
24 *subsection 1 as a result of the contractor or applicant receiving a*
25 *preference in bidding described in subsection 1 must:*

26 (a) *Include a provision in the contract that substantially*
27 *incorporates the requirements of subsection 1; and*

28 (b) *Provide that a failure to comply with any requirement of*
29 *subsection 1 entitles the public body to a penalty only as provided*
30 *in subsections 5 and 6.*

31 3. *A person who submitted a bid on the public work or an*
32 *entity who believes that a contractor or applicant has obtained a*
33 *preference in bidding as described in subsection 1 but has failed to*
34 *comply with a requirement of subsection 1 may file, before the*
35 *substantial completion of the public work, a written objection with*
36 *the local government for which the contractor or applicant is*
37 *performing the public work. A written objection authorized*
38 *pursuant to this subsection must set forth proof or substantiating*
39 *evidence to support the belief of the person or entity that the*
40 *contractor or applicant has failed to comply with a requirement of*
41 *subsection 1.*



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

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

30 6. *If a contractor or applicant submits the affidavit described*
31 *in subsection 1, receives a preference in bidding described in*
32 *subsection 1 and is awarded the contract as a result of that*
33 *preference, the contract between the contractor or applicant and*
34 *the local government, each contract between the contractor or*
35 *applicant and a subcontractor and each contract between a*
36 *subcontractor and a lower tier subcontractor must provide that:*

37 (a) *If a party to the contract causes the contractor or applicant*
38 *to fail to comply with a requirement of subsection 1, the party is*
39 *liable to the local government for a penalty in the amount of 1*
40 *percent of the cost of the largest contract to which he or she is a*
41 *party;*

42 (b) *The right to recover the amount determined pursuant to*
43 *paragraph (a) by the local government pursuant to subsection 5*
44 *may be enforced by the local government directly against the party*



1 *that caused the failure to comply with a requirement of subsection*
2 *1; and*

3 *(c) No other party to the contract is liable to the local*
4 *government for a penalty.*

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

20 *8. As used in this section, "lower tier subcontractor" means a*
21 *subcontractor who contracts with another subcontractor to*
22 *provide labor, materials or services to the other subcontractor for*
23 *a construction project.*

24 **Sec. 2.** NRS 338.0117 is hereby amended to read as follows:

25 338.0117 1. ~~FF~~ *Except as otherwise provided in section 1*
26 *of this act, to* qualify to receive a preference in bidding pursuant
27 to subsection 2 of NRS 338.1389, subsection 2 of NRS 338.147,
28 subsection 3 of NRS 338.1693, subsection 3 of NRS 338.1727 or
29 subsection 2 of NRS 408.3886, a contractor, an applicant or a
30 design-build team, respectively, must submit to the public body
31 sponsoring or financing a public work a signed affidavit which
32 certifies that, for the duration of the project, collectively, and not on
33 any specific day:

34 (a) At least 50 percent of the workers employed on the public
35 work, including, without limitation, any employees of the
36 contractor, applicant or design-build team and of any subcontractor
37 engaged on the public work, will hold a valid driver's license or
38 identification card issued by the Department of Motor Vehicles of
39 the State of Nevada;

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

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

44 (2) Registered in this State;



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

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

13 2. Any contract for a public work that is awarded to a
14 contractor, applicant or design-build team who submits the affidavit
15 described in subsection 1 as a result of the contractor, applicant or
16 design-build team receiving a preference in bidding described in
17 subsection 1 must:

18 (a) Include a provision in the contract that substantially
19 incorporates the requirements of paragraphs (a) to (d), inclusive, of
20 subsection 1; and

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

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

36 4. If a public body receives a written objection pursuant to
37 subsection 3, the public body shall determine whether the objection
38 is accompanied by the proof or substantiating evidence required
39 pursuant to that subsection. If the public body determines that the
40 objection is not accompanied by the required proof or substantiating
41 evidence, the public body shall dismiss the objection. If the public
42 body determines that the objection is accompanied by the required
43 proof or substantiating evidence or if the public body determines on
44 its own initiative that proof or substantiating evidence of a failure to
45 comply with a requirement of paragraphs (a) to (d), inclusive, of



1 subsection 1 exists, the public body shall determine whether the
2 contractor, applicant or design-build team has failed to comply with
3 a requirement of paragraphs (a) to (d), inclusive, of subsection 1 and
4 the public body or its authorized representative may proceed to
5 award the contract accordingly or, if the contract has already been
6 awarded, seek the remedy authorized in subsection 5.

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

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

28 (a) If a party to the contract causes the contractor, applicant or
29 design-build team to fail to comply with a requirement of
30 paragraphs (a) to (d), inclusive, of subsection 1, the party is liable to
31 the public body for a penalty in the amount of 1 percent of the cost
32 of the largest contract to which he or she is a party;

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

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

40 7. A public body that awards a contract for a public work to a
41 contractor, applicant or design-build team who submits the affidavit
42 described in subsection 1 and who receives a preference in bidding
43 described in subsection 1 shall, on or before July 31 of each year,
44 submit a written report to the Director of the Legislative Counsel
45 Bureau for transmittal to the Legislative Commission. The report



1 must include information on each contract for a public work
2 awarded to a contractor, applicant or design-build team who submits
3 the affidavit described in subsection 1 and who receives a
4 preference in bidding described in subsection 1, including, without
5 limitation, the name of the contractor, applicant or design-build
6 team who was awarded the contract, the cost of the contract, a brief
7 description of the public work and a description of the degree to
8 which the contractor, applicant or design-build team and each
9 subcontractor complied with the requirements of paragraphs (a) to
10 (d), inclusive, of subsection 1.

11 8. As used in this section:

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

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

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

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

24 **Sec. 3.** NRS 338.147 is hereby amended to read as follows:


25 338.147 1. Except as otherwise provided in subsection 10
26 and NRS 338.143, 338.1442 and 338.1446, a local government or
27 its authorized representative shall award a contract for a public work
28 for which the estimated cost exceeds \$250,000 to the contractor who
29 submits the best bid.

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

32 (a) Submitted by a contractor who:

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

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

39 (3) Within 2 hours after the completion of the opening of the
40 bids by the local government or its authorized representative,
41 submits a signed affidavit that meets the requirements of subsection
42 1 of NRS 338.0117  *or subsection 1 of section 1 of this act, as*
43 *applicable;* and

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



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

5 (2) Does not submit, within 2 hours after the completion of
6 the opening of the bids by the public body or its authorized
7 representative, a signed affidavit certifying that he or she will
8 comply with the requirements of paragraphs (a) to (d), inclusive, of
9 subsection 1 of NRS 338.0117 *or subsection 1 of section 1 of this*
10 *act, as applicable*, for the duration of the contract,

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

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

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

19 (1) The sales and use taxes imposed pursuant to chapters
20 372, 374 and 377 of NRS on materials used for construction in this
21 State, including, without limitation, construction that is undertaken
22 or carried out on land within the boundaries of this State that is
23 managed by the Federal Government or is on an Indian reservation
24 or Indian colony, of not less than \$5,000 for each consecutive
25 12-month period for 60 months immediately preceding the
26 submission of the affidavit from the certified public accountant;

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

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

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

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

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

42 4. The State Contractors' Board shall issue a certificate of
43 eligibility to receive a preference in bidding on public works to a
44 specialty contractor who is licensed pursuant to the provisions of
45 chapter 624 of NRS and submits to the Board an affidavit from a



1 certified public accountant setting forth that the specialty contractor
2 has, while licensed as a specialty contractor in this State:

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

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

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

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

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

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

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

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

30 (a) Sales and use taxes and governmental services taxes paid in
31 this State by an affiliate or parent company of the contractor, if the
32 affiliate or parent company is also a general contractor or specialty
33 contractor, as applicable; and

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

37 6. A contractor who has received a certificate of eligibility to
38 receive a preference in bidding on public works from the State
39 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
40 for the renewal of his or her contractor's license pursuant to NRS
41 624.283, submit to the Board an affidavit from a certified public
42 accountant setting forth that the contractor has, during the
43 immediately preceding 12 months, paid the taxes required pursuant
44 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
45 applicable, to maintain eligibility to hold such a certificate.



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

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

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

16 (a) Submits false information to the Board regarding the
17 required payment of taxes, the contractor is not eligible to receive a
18 preference in bidding on public works for a period of 5 years after
19 the date on which the Board becomes aware of the submission of the
20 false information; or

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

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

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

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

37 13. A person who submitted a bid on the public work or an
38 entity who believes that the contractor who was awarded the
39 contract for the public work wrongfully holds a certificate of
40 eligibility to receive a preference in bidding on public works may
41 challenge the validity of the certificate by filing a written objection
42 with the local government to which the contractor has submitted a
43 bid on a contract for the construction of a public work. A written
44 objection authorized pursuant to this subsection must:



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

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

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


22 **Sec. 4.** NRS 338.1693 is hereby amended to read as follows:

23 338.1693 1. The public body or its authorized representative
24 shall appoint a panel consisting of at least three but not more than
25 seven members, a majority of whom must have experience in the
26 construction industry, to rank the proposals submitted to the public
27 body by evaluating the proposals as required pursuant to subsections
28 2 and 3.

29 2. The panel appointed pursuant to subsection 1 shall rank the
30 proposals by:

31 (a) Verifying that each applicant satisfies the requirements of
32 NRS 338.1691; and

33 (b) Evaluating and assigning a score to each of the proposals
34 received by the public body based on the factors and relative weight
35 assigned to each factor that the public body specified in the request
36 for proposals.

37 3. When ranking the proposals, the panel appointed pursuant to
38 subsection 1 shall assign a relative weight of 5 percent to the
39 applicant's possession of a certificate of eligibility to receive a
40 preference in bidding on public works if the applicant submits a
41 signed affidavit that meets the requirements of subsection 1 of NRS
42 338.0117  *or subsection 1 of section 1 of this act, as applicable.*
43 If any federal statute or regulation precludes the granting of federal
44 assistance or reduces the amount of that assistance for a particular
45 public work because of the provisions of this subsection, those



1 provisions of this subsection do not apply insofar as their
2 application would preclude or reduce federal assistance for that
3 work.

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

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

15 6. During the interview process, the panel conducting the
16 interview may require the applicants to submit a preliminary
17 proposed amount of compensation for managing the preconstruction
18 and construction of the public work, including, without limitation,
19 the cost of general overhead and profit, but in no event shall the
20 proposed amount of compensation be less than 5 percent or more
21 than 20 percent of the scoring for the selection of the most qualified
22 applicant. All presentations made at any interview conducted
23 pursuant to this subsection or subsection 5 may be made only by key
24 personnel employed by the applicant, as determined by the
25 applicant, and the employees of the applicant who will be directly
26 responsible for managing the preconstruction and construction of
27 the public work.

28 7. After conducting such interviews, the panel that conducted
29 the interviews shall rank the applicants by using a ranking process
30 that is separate from the process used to rank the applicants pursuant
31 to subsection 2 and is based only on information submitted during
32 the interview process. The score to be given for the proposed
33 amount of compensation, if any, must be calculated by dividing
34 the lowest of all the proposed amounts of compensation by the
35 applicant's proposed amount of compensation multiplied by the
36 total possible points available to each applicant. When ranking
37 the applicants, the panel that conducted the interviews shall assign a
38 relative weight of 5 percent to the applicant's possession of a
39 certificate of eligibility to receive a preference in bidding on public
40 works if the applicant submits a signed affidavit that meets the
41 requirements of subsection 1 of NRS 338.0117 ***or subsection 1***
42 ***of section 1 of this act, as applicable.*** If any federal statute or
43 regulation precludes the granting of federal assistance or reduces the
44 amount of that assistance for a particular public work because of the
45 provisions of this subsection, those provisions of this subsection do



1 not apply insofar as their application would preclude or reduce
2 federal assistance for that work.

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

5 9. Upon receipt of the final rankings of the applicants from the
6 panel that conducted the interviews, the public body or its
7 authorized representative shall enter into negotiations with the most
8 qualified applicant determined pursuant to the provisions of this
9 section for a contract for preconstruction services, unless the public
10 body required the submission of a proposed amount of
11 compensation, in which case the proposed amount of compensation
12 submitted by the applicant must be the amount offered for the
13 contract. If the public body or its authorized representative is unable
14 to negotiate a contract with the most qualified applicant for an
15 amount of compensation that the public body or its authorized
16 representative and the most qualified applicant determine to be fair
17 and reasonable, the public body or its authorized representative shall
18 terminate negotiations with that applicant. The public body or its
19 authorized representative may then undertake negotiations with the
20 next most qualified applicant in sequence until an agreement is
21 reached and, if the negotiation is undertaken by an authorized
22 representative of the public body, approved by the public body or
23 until a determination is made by the public body to reject all
24 applicants.

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

26 (a) Make available to all applicants and the public the following
27 information, as determined by the panel appointed pursuant to
28 subsection 1 and the panel that conducted the interviews, as
29 applicable:

30 (1) The final rankings of the applicants;

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

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

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

38 **Sec. 5.** NRS 338.1727 is hereby amended to read as follows:

39 338.1727 1. After selecting the finalists pursuant to NRS
40 338.1725, the public body shall provide to each finalist a request for
41 final proposals for the public work. The request for final proposals
42 must:

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



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

3 2. If one or more of the finalists selected pursuant to NRS
4 338.1725 is disqualified or withdraws, the public body may select a
5 design-build team from the remaining finalist or finalists.

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

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

32 5. A final proposal is exempt from the requirements of
33 NRS 338.141.

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



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

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

6 (a) Partially reimburse the unsuccessful finalists if partial
7 reimbursement was provided for in the request for preliminary
8 proposals pursuant to paragraph (j) of subsection 2 of NRS
9 338.1723. The amount of reimbursement must not exceed, for each
10 unsuccessful finalist, 3 percent of the total amount to be paid to the
11 design-build team as set forth in the design-build contract.

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

17 8. A contract awarded pursuant to this section:

18 (a) Must comply with the provisions of NRS 338.020 to
19 338.090, inclusive.

20 (b) Must specify:

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

26 (2) An amount that is the maximum amount that the public
27 body will pay for the performance of the professional services
28 required by the contract; and

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

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

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

42 (e) May require the design-build team to defend, indemnify and
43 hold harmless the public body, and the employees, officers and
44 agents of the public body from any liabilities, damages, losses,
45 claims, actions or proceedings, including, without limitation,



1 reasonable attorneys' fees, that are caused by the negligence, errors,
2 omissions, recklessness or intentional misconduct of the design-
3 build team or the employees or agents of the design-build team in
4 the performance of the contract.

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

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

12 **Sec. 6.** 1. The amendatory provisions of this act apply to a
13 public work for which bids are first advertised by a local
14 government pursuant to NRS 338.147, 338.1693 or 338.1727 after
15 the effective date of this act.

16 2. As used in this section, "local government" and "public
17 work" have the meanings ascribed to them in NRS 338.010.

18 **Sec. 7.** The provisions of subsection 1 of NRS 218D.380 do
19 not apply to any provision of this act which adds or revises a
20 requirement to submit a report to the Legislature.

21 **Sec. 8.** This act becomes effective upon passage and approval.

