

Amendment No. 335

Assembly Amendment to Assembly Bill No. 391	(BDR 28-1031)
Proposed by: Assembly Committee on Government Affairs	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

AMD/HAC



Date: 4/16/2023

A.B. No. 391—Revises provisions governing public works. (BDR 28-1031)



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 ~~for, under certain circumstances,~~ a local government to **require a contractor on a public work** to give a preference ~~in bidding on certain public works to a contractor who agrees to certain conditions relating to~~ **for** local hiring; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law ~~authorizes a preference of 5 percent for a bid or proposal which is submitted on certain public works for contractors who ensure that, among other requirements, at least 50 percent of the workers employed on the public work for the duration of the project have a valid driver’s license or identification card from the Department of Motor Vehicles of the State of Nevada. (NRS 338.0117) Section 1 of this bill authorizes~~ **sets forth a process for** a local government to award a ~~preference of 5 percent to certain contractors who bid on a~~ contract for ~~for: (1) a public work for which the estimated cost exceeds \$250,000; (2) a public work, involving a construction manager at risk; and (3) a public work involving a design-build team. To receive the preference,~~ **(NRS 338.1385) This bill authorizes a local government to require** a contractor ~~must sign an affidavit ensuring that at least 50 percent of the workers employed on the~~ **on a public work** ~~for the duration of the project~~ **to give a preference for hiring labor on the public work to local residents who** reside : **(1) within the jurisdiction of the local government** ~~for~~ ; **(2) within a certain specified distance of the jurisdiction of the local government** ~~as provided by the local government. Sections 3, 4 and 5 of this bill make conforming changes to incorporate the preference into provisions of existing law relating to a contract with a local government for: (1) a public work for which the estimated cost exceeds \$250,000; (2) a public work involving a construction manager at risk; and (3) a public work involving a design-build team. (NRS 338.147, 338.1693, 338.1727)~~ — Section 2 of this bill makes a conforming change to create an exception to the requirements under existing law for obtaining a 5 percent bidder’s preference on certain public works; ~~for~~ ; **or (3) within a certain geographic area within the jurisdiction of the local government. This authority doesn’t apply if any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work. This bill also clarifies that this authority shall not be construed to authorize a contractor on a public work to pay any worker on the public work less than the applicable prevailing wage.**

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

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

1. Except as otherwise provided in ~~[NRS 338.0117, to qualify to receive a preference in bidding pursuant to subsection 2 of NRS 338.147, subsection 3 of NRS 338.1693 or subsection 3 of NRS 338.1727, a contractor or an applicant must submit to the]~~ subsection 2, a local government sponsoring or financing a public work ~~[a signed affidavit which certifies that, for the duration of the project, collectively, and not on any specific day,]~~ may require that a contractor on the public work give preference for hiring labor on the public work to local residents who possess a valid driver's license or identification card issued by the Department of Motor Vehicles or other proof of current address which indicates that the person resides:

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

~~— (1) Within the jurisdiction of the local government; for~~

~~— (2) (b) Within a certain specified distance of the jurisdiction of the local government, as provided by the local government sponsoring or financing the public work; and~~

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

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

~~— (a) Include a provision in the contract that substantially incorporates the requirements of subsection 1 and~~

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

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

~~4. If a local government receives a written objection pursuant to subsection 3, the local government shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to that subsection. If the local government determines that the objection is not accompanied by the required proof or substantiating evidence, the local government shall dismiss the objection. If the local government determines that the objection is accompanied by the required proof or substantiating evidence or if the public body determines on its own initiative that proof or substantiating evidence of a failure to comply with a requirement of subsection 1 exists, the local government shall determine whether the contractor, applicant or design-build team has failed to comply with~~

1 ~~a requirement of subsection 1 and the local government or its authorized~~
2 ~~representative may proceed to award the contract accordingly or, if the contract~~
3 ~~has already been awarded, seek the remedy authorized in subsection 5.~~

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

14 ~~6. If a contractor or applicant submits the affidavit described in subsection~~
15 ~~1, receives a preference in bidding described in subsection 1 and is awarded the~~
16 ~~contract as a result of that preference, the contract between the contractor or~~
17 ~~applicant and the local government, each contract between the contractor or~~
18 ~~applicant and a subcontractor and each contract between a subcontractor and a~~
19 ~~lower tier subcontractor must provide that:~~

20 ~~(a) If a party to the contract causes the contractor or applicant to fail to~~
21 ~~comply with a requirement of subsection 1, the party is liable to the local~~
22 ~~government for a penalty in the amount of 1 percent of the cost of the largest~~
23 ~~contract to which he or she is a party;~~

24 ~~(b) The right to recover the amount determined pursuant to paragraph (a) by~~
25 ~~the local government pursuant to subsection 5 may be enforced by the local~~
26 ~~government directly against the party that caused the failure to comply with a~~
27 ~~requirement of subsection 1; and~~

28 ~~(c) No other party to the contract is liable to the local government for a~~
29 ~~penalty.~~

30 ~~7. A local government that awards a contract for a public work to a~~
31 ~~contractor or applicant who submits the affidavit described in subsection 1 and~~
32 ~~who receives a preference in bidding described in subsection 1 shall, on or before~~
33 ~~July 31 of each year, submit a written report to the Director of the Legislative~~
34 ~~Counsel Bureau for transmittal to the Legislative Commission. The report must~~
35 ~~include information on each contract for a public work awarded to a contractor~~
36 ~~or applicant who submits the affidavit described in subsection 1 and who receives~~
37 ~~a preference in bidding described in subsection 1, including, without limitation,~~
38 ~~the name of the contractor or applicant who was awarded the contract, the cost of~~
39 ~~the contract, a brief description of the public work and a description of the degree~~
40 ~~to which the contractor or applicant and each subcontractor complied with the~~
41 ~~requirements of subsection 1.~~

42 ~~8. As used in this section, "lower tier subcontractor" means a subcontractor~~
43 ~~who contracts with another subcontractor to provide labor, materials or services~~
44 ~~to the other subcontractor for a construction project.]; or~~

45 ~~(c) Within a certain geographic area within the jurisdiction of the local~~
46 ~~government.~~

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

51 ~~3. Nothing in this section shall be construed to authorize a contractor on a~~
52 ~~public work to pay any worker on the public work less than the applicable~~
53 ~~prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive.~~

1 **Sec. 2.** ~~[NRS 338.0117 is hereby amended to read as follows:~~

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

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

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

15 ~~(1) Registered and partially apportioned to Nevada pursuant to the~~
16 ~~International Registration Plan, as adopted by the Department of Motor Vehicles~~
17 ~~pursuant to NRS 706.826; or~~

18 ~~(2) Registered in this State;~~

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

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

28 ~~2. Any contract for a public work that is awarded to a contractor, applicant or~~
29 ~~design-build team who submits the affidavit described in subsection 1 as a result of~~
30 ~~the contractor, applicant or design-build team receiving a preference in bidding~~
31 ~~described in subsection 1 must:~~

32 ~~(a) Include a provision in the contract that substantially incorporates the~~
33 ~~requirements of paragraphs (a) to (d), inclusive, of subsection 1; and~~

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

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

47 ~~4. If a public body receives a written objection pursuant to subsection 3, the~~
48 ~~public body shall determine whether the objection is accompanied by the proof or~~
49 ~~substantiating evidence required pursuant to that subsection. If the public body~~
50 ~~determines that the objection is not accompanied by the required proof or~~
51 ~~substantiating evidence, the public body shall dismiss the objection. If the public~~
52 ~~body determines that the objection is accompanied by the required proof or~~
53 ~~substantiating evidence or if the public body determines on its own initiative that~~

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

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

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

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

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

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

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

~~8. As used in this section:~~

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

~~(b) "Vehicle used primarily for the public work" does not include any vehicle that is present at the site of the public work only occasionally and for a purpose incidental to the public work including, without limitation, the delivery of~~

1 materials. Notwithstanding the provisions of this paragraph, the term includes any
 2 vehicle which is:

3 ~~_____ (1) Owned or operated by the contractor or any subcontractor who is~~
 4 ~~engaged on the public work; and~~

5 ~~_____ (2) Present at the site of the public work.]~~ **(Deleted by amendment.)**

6 **Sec. 3.** ~~[NRS 338.147 is hereby amended to read as follows:~~

7 ~~_____ 338.147 1. Except as otherwise provided in subsection 10 and NRS~~
 8 ~~338.143, 338.1442 and 338.1446, a local government or its authorized~~
 9 ~~representative shall award a contract for a public work for which the estimated cost~~
 10 ~~exceeds \$250,000 to the contractor who submits the best bid.~~

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

13 ~~_____ (a) Submitted by a contractor who:~~

14 ~~_____ (1) Has been found to be a responsible and responsive contractor by the~~
 15 ~~local government or its authorized representative;~~

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

19 ~~_____ (3) Within 2 hours after the completion of the opening of the bids by the~~
 20 ~~local government or its authorized representative, submits a signed affidavit that~~
 21 ~~meets the requirements of subsection 1 of NRS 338.0117 [;] or **subsection 1 of**~~
 22 ~~**section 1 of this act, as applicable, and**~~

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

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

28 ~~_____ (2) Does not submit, within 2 hours after the completion of the opening of~~
 29 ~~the bids by the public body or its authorized representative, a signed affidavit~~
 30 ~~certifying that he or she will comply with the requirements of paragraphs (a) to (d),~~
 31 ~~inclusive, of subsection 1 of NRS 338.0117 or **subsection 1 of section 1 of this act,**~~
 32 ~~**as applicable, for the duration of the contract,**~~

33 ~~_____ shall be deemed to be the best bid for the purposes of this section.~~

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

39 ~~_____ (a) Paid directly, on his or her own behalf;~~

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

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

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

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

4 ~~— (1) License as a general contractor pursuant to the provisions of chapter~~
5 ~~624 of NRS; and~~

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

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

13 ~~— (a) Paid directly, on his or her own behalf:~~

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

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

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

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

30 ~~— (1) License as a specialty contractor pursuant to the provisions of chapter~~
31 ~~624 of NRS; and~~

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

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

37 ~~— (a) Sales and use taxes and governmental services taxes paid in this State by an~~
38 ~~affiliate or parent company of the contractor, if the affiliate or parent company is~~
39 ~~also a general contractor or specialty contractor, as applicable; and~~

40 ~~— (b) Sales and use taxes paid in this State by a joint venture in which the~~
41 ~~contractor is a participant, in proportion to the amount of interest the contractor has~~
42 ~~in the joint venture.~~

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

51 ~~— 7. A contractor who fails to submit an affidavit to the Board pursuant to~~
52 ~~subsection 6 ceases to be eligible to receive a preference in bidding on public works.~~

1 unless the contractor reapplies for and receives a certificate of eligibility pursuant to
2 subsection 3 or 4, as applicable.

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

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

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

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

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

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

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

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

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

37 ~~— (b) Be filed with the local government not later than 3 business days after the~~
38 ~~opening of the bids by the local government or its authorized representative.~~

39 ~~— 14. If a local government receives a written objection pursuant to subsection~~
40 ~~13, the local government shall determine whether the objection is accompanied by~~
41 ~~the proof or substantiating evidence required pursuant to paragraph (a) of that~~
42 ~~subsection. If the local government determines that the objection is not~~
43 ~~accompanied by the required proof or substantiating evidence, the local government~~
44 ~~shall dismiss the objection and the local government or its authorized representative~~
45 ~~may proceed immediately to award the contract. If the local government determines~~
46 ~~that the objection is accompanied by the required proof or substantiating evidence,~~
47 ~~the local government shall determine whether the contractor qualifies for the~~
48 ~~certificate pursuant to the provisions of this section and the local government or its~~
49 ~~authorized representative may proceed to award the contract accordingly.] (Deleted~~
50 ~~by amendment.)~~

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

52 ~~— 338.1693 1. The public body or its authorized representative shall appoint a~~
53 ~~panel consisting of at least three but not more than seven members, a majority of~~

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

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

5 ~~(a) Verifying that each applicant satisfies the requirements of NRS 338.1691,~~
6 ~~and~~

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

10 ~~3. When ranking the proposals, the panel appointed pursuant to subsection 1~~
11 ~~shall assign a relative weight of 5 percent to the applicant's possession of a~~
12 ~~certificate of eligibility to receive a preference in bidding on public works if the~~
13 ~~applicant submits a signed affidavit that meets the requirements of subsection 1 of~~
14 ~~NRS 338.0117 [.] or subsection 1 of section 1 of this act, as applicable. If any~~
15 ~~federal statute or regulation precludes the granting of federal assistance or reduces~~
16 ~~the amount of that assistance for a particular public work because of the provisions~~
17 ~~of this subsection, those provisions of this subsection do not apply insofar as their~~
18 ~~application would preclude or reduce federal assistance for that work.~~

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

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

28 ~~6. During the interview process, the panel conducting the interview may~~
29 ~~require the applicants to submit a preliminary proposed amount of compensation for~~
30 ~~managing the preconstruction and construction of the public work, including,~~
31 ~~without limitation, the cost of general overhead and profit, but in no event shall the~~
32 ~~proposed amount of compensation be less than 5 percent or more than 20 percent of~~
33 ~~the scoring for the selection of the most qualified applicant. All presentations made~~
34 ~~at any interview conducted pursuant to this subsection or subsection 5 may be made~~
35 ~~only by key personnel employed by the applicant, as determined by the applicant,~~
36 ~~and the employees of the applicant who will be directly responsible for managing~~
37 ~~the preconstruction and construction of the public work.~~

38 ~~7. After conducting such interviews, the panel that conducted the interviews~~
39 ~~shall rank the applicants by using a ranking process that is separate from the~~
40 ~~process used to rank the applicants pursuant to subsection 2 and is based only on~~
41 ~~information submitted during the interview process. The score to be given for the~~
42 ~~proposed amount of compensation, if any, must be calculated by dividing the~~
43 ~~lowest of all the proposed amounts of compensation by the applicant's proposed~~
44 ~~amount of compensation multiplied by the total possible points available to each~~
45 ~~applicant. When ranking the applicants, the panel that conducted the interviews~~
46 ~~shall assign a relative weight of 5 percent to the applicant's possession of a~~
47 ~~certificate of eligibility to receive a preference in bidding on public works if the~~
48 ~~applicant submits a signed affidavit that meets the requirements of subsection 1 of~~
49 ~~NRS 338.0117 [.] or subsection 1 of section 1 of this act, as applicable. If any~~
50 ~~federal statute or regulation precludes the granting of federal assistance or reduces~~
51 ~~the amount of that assistance for a particular public work because of the provisions~~
52 ~~of this subsection, those provisions of this subsection do not apply insofar as their~~
53 ~~application would preclude or reduce federal assistance for that work.~~

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

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

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

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

~~(1) The final rankings of the applicants;~~

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

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

~~(b) Provide, upon request, an explanation to any unsuccessful applicant of the reasons why the applicant was unsuccessful.] (Deleted by amendment.)~~

Sec. 5. ~~[NRS 338.1727 is hereby amended to read as follows:~~

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

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

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

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

~~3. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design build team pursuant to subsection 1, the public body shall assign, without limitation, a relative weight of 5 percent to the possession of both a certificate of eligibility to receive a preference in bidding on public works by all contractors on the design build team if the contractors submit signed affidavits that meet the requirements of subsection 1 of NRS 338.0117 [.] or subsection 1 of section 1 of this act, as applicable, and a certificate of eligibility to receive a preference when competing for public works by all design professionals on the design build team, and a relative weight of at least 30 percent to the proposed cost of design and construction of the public work. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection relating to a preference in bidding on public works, or a preference when~~

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

4 ~~— 4. A final proposal submitted by a design-build team pursuant to this section~~
5 ~~must be prepared thoroughly and be responsive to the criteria that the public body~~
6 ~~will use to select a design-build team to design and construct the public work~~
7 ~~described in subsection 1. A design-build team that submits a final proposal which~~
8 ~~is not responsive shall not be awarded the contract and shall not be eligible for the~~
9 ~~partial reimbursement of costs provided for in subsection 7.~~

10 ~~— 5. A final proposal is exempt from the requirements of NRS 338.141.~~

11 ~~— 6. After receiving and evaluating the final proposals for the public work, the~~
12 ~~public body or its authorized representative shall enter into negotiations with the~~
13 ~~most qualified applicant, as determined pursuant to the criteria set forth pursuant to~~
14 ~~subsections 1 and 3, and award the design-build contract to the design-build team~~
15 ~~whose proposal is selected. If the public body or its authorized representative is~~
16 ~~unable to negotiate with the most qualified applicant a contract that is determined~~
17 ~~by the parties to be fair and reasonable, the public body may terminate negotiations~~
18 ~~with that applicant. The public body or its authorized representative may then~~
19 ~~undertake negotiations with the next most qualified applicant in sequence until an~~
20 ~~agreement is reached and, if the negotiation is undertaken by an authorized~~
21 ~~representative of the public body, approved by the public body or until a~~
22 ~~determination is made by the public body to reject all applicants.~~

23 ~~— 7. If a public body selects a final proposal and awards a design-build contract~~
24 ~~pursuant to subsection 6, the public body shall:~~

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

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

34 ~~— 8. A contract awarded pursuant to this section:~~

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

36 ~~(b) Must specify:~~

37 ~~(1) An amount that is the maximum amount that the public body will pay~~
38 ~~for the performance of all the work required by the contract, excluding any amount~~
39 ~~related to costs that may be incurred as a result of unexpected conditions or~~
40 ~~occurrences as authorized by the contract;~~

41 ~~(2) An amount that is the maximum amount that the public body will pay~~
42 ~~for the performance of the professional services required by the contract; and~~

43 ~~(3) A date by which performance of the work required by the contract must~~
44 ~~be completed.~~

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

48 ~~(d) Except as otherwise provided in paragraph (c), must not require the design~~
49 ~~professional to defend, indemnify or hold harmless the public body or the~~
50 ~~employees, officers or agents of that public body from any liability, damage, loss,~~
51 ~~claim, action or proceeding caused by the negligence, errors, omissions,~~
52 ~~recklessness or intentional misconduct of the employees, officers and agents of the~~
53 ~~public body.~~

~~1 (c) May require the design-build team to defend, indemnify and hold harmless
2 the public body, and the employees, officers and agents of the public body from any
3 liabilities, damages, losses, claims, actions or proceedings, including, without
4 limitation, reasonable attorneys' fees, that are caused by the negligence, errors,
5 omissions, recklessness or intentional misconduct of the design-build team or the
6 employees or agents of the design-build team in the performance of the contract.~~

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

~~10 9. Upon award of the design-build contract, the public body shall make
11 available to the public copies of all preliminary and final proposals received.]
12 (Deleted by amendment.)~~

13 **Sec. 6.** 1. The amendatory provisions of this act apply to a public work for
14 which bids are first advertised by a local government ~~[pursuant to NRS 338.147,
15 338.1692 or 338.1727]~~ after the effective date of this act.

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

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

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