

ASSEMBLY BILL NO. 172—ASSEMBLYMEN O’NEILL,
OSCARSON; KIRNER AND STEWART

FEBRUARY 17, 2015

JOINT SPONSORS: SENATORS GOICOECHEA;
AND SETTELMAYER

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works.
(BDR 28-565)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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

AN ACT relating to public works; raising the estimated thresholds at or above which prevailing wage requirements apply to certain public work construction projects; increasing the amount of a preference in bidding on certain public works given to contractors and certain other persons who meet certain eligibility requirements; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Under existing law, any contract for a public work whose cost is \$100,000 or
2 more is subject to the prevailing wage requirements. (NRS 338.080) The prevailing
3 wage requirements also apply if a redevelopment agency provides financial
4 incentives to the developer with a value of more than \$100,000. (NRS 279.500)
5 **Sections 3 and 4** of this bill raise the threshold for the applicability of prevailing
6 wage requirements from \$100,000 to \$500,000, require this amount to be adjusted
7 every 5 years for inflation, and also make a technical correction in **section 4**
8 clarifying that if the relevant work will cost exactly \$500,000, the work is subject to
9 the prevailing wage requirements.
- 10 Under existing law, a contractor, applicant to serve as a construction manager
11 at risk or design-build team may qualify to receive a 5 percent preference in
12 bidding on certain contracts for public works if certain conditions, including the
13 employment of a specified percentage of Nevada employees, are met. (NRS
14 338.1389, 338.147, 338.1693, 338.1725, 338.1727, 408.3886) **Sections 3.3, 3.5,**



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15 3.6, 3.7, 3.8 and 4.5 increase the amount of that preference in bidding to 7.5
16 percent.

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

1 **Section 1.** (Deleted by amendment.)

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

3 **Sec. 3.** NRS 338.080 is hereby amended to read as follows:

4 338.080 **1.** None of the provisions of NRS 338.020 to
5 338.090, inclusive, apply to:

6 ~~1.1~~ **(a)** Any work, construction, alteration, repair or other
7 employment performed, undertaken or carried out, by or for any
8 railroad company or any person operating the same, whether such
9 work, construction, alteration or repair is incident to or in
10 conjunction with a contract to which a public body is a party, or
11 otherwise.

12 ~~1.2~~ **(b)** Apprentices recorded under the provisions of chapter
13 610 of NRS.

14 ~~1.3~~ **(c)** Any contract for a public work whose cost is less than
15 ~~100,000~~ **\$500,000**. A unit of the project must not be separated
16 from the total project, even if that unit is to be completed at a later
17 time, in order to lower the cost of the project below ~~100,000~~
18 **\$500,000**.

19 **2.** *The Labor Commissioner shall, on or before January 1,*
20 *2020, and every 5 years thereafter, adjust the amount set forth in*
21 *paragraph (c) of subsection 1 to reflect inflation, as measured by*
22 *the average percentage of increase or decrease in the Consumer*
23 *Price Index for All Urban Consumers of the United States*
24 *Department of Labor, Bureau of Labor Statistics, for the*
25 *preceding 5 years. The Labor Commissioner shall determine the*
26 *amount of the increase or decrease required by this subsection and*
27 *establish the adjusted amounts to take effect on January 1 of that*
28 *year.*

29 **Sec. 3.3.** NRS 338.1389 is hereby amended to read as follows:

30 338.1389 **1.** Except as otherwise provided in subsection 10
31 and NRS 338.1385, 338.1386 and 338.13864, a public body or its
32 authorized representative shall award a contract for a public work
33 for which the estimated cost exceeds \$250,000 to the contractor who
34 submits the best bid.

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

37 **(a)** Submitted by a responsive and responsible contractor who:

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



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

5 (3) Within 2 hours after the completion of the opening of the
6 bids by the public body or its authorized representative, submits a
7 signed affidavit that meets the requirements of subsection 1 of NRS
8 338.0117; and

9 (b) Not more than ~~15~~ 7.5 percent higher than the bid submitted
10 by the lowest responsive and responsible bidder who:

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

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

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

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

28 (1) The sales and use taxes imposed pursuant to chapters
29 372, 374 and 377 of NRS on materials used for construction in this
30 State, including, without limitation, construction that is undertaken
31 or carried out on land within the boundaries of this State that is
32 managed by the Federal Government or is on an Indian reservation
33 or Indian colony, of not less than \$5,000 for each consecutive
34 12-month period for 60 months immediately preceding the
35 submission of the affidavit from the certified public accountant;

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

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



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

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

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

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

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

15 (1) The sales and use taxes pursuant to chapters 372, 374 and
16 377 of NRS on materials used for construction in this State,
17 including, without limitation, construction that is undertaken or
18 carried out on land within the boundaries of this State that is
19 managed by the Federal Government or is on an Indian reservation
20 or Indian colony, of not less than \$5,000 for each consecutive
21 12-month period for 60 months immediately preceding the
22 submission of the affidavit from the certified public accountant;

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

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

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

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

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

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

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



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

4 6. A contractor who has received a certificate of eligibility to
5 receive a preference in bidding on public works from the State
6 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
7 for the renewal of his or her contractor's license pursuant to NRS
8 624.283, submit to the Board an affidavit from a certified public
9 accountant setting forth that the contractor has, during the
10 immediately preceding 12 months, paid the taxes required pursuant
11 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
12 applicable, to maintain eligibility to hold such a certificate.

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

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

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

28 (a) Submits false information to the Board regarding the
29 required payment of taxes, the contractor is not eligible to receive a
30 preference in bidding on public works for a period of 5 years after
31 the date on which the Board becomes aware of the submission of the
32 false information; or

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

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

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



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

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

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

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

19 14. If a public body receives a written objection pursuant to
20 subsection 13, the public body shall determine whether the objection
21 is accompanied by the proof or substantiating evidence required
22 pursuant to paragraph (a) of that subsection. If the public body
23 determines that the objection is not accompanied by the required
24 proof or substantiating evidence, the public body shall dismiss the
25 objection and the public body or its authorized representative may
26 proceed immediately to award the contract. If the public body
27 determines that the objection is accompanied by the required proof
28 or substantiating evidence, the public body shall determine whether
29 the contractor qualifies for the certificate pursuant to the provisions
30 of this section and the public body or its authorized representative
31 may proceed to award the contract accordingly.

32 **Sec. 3.5.** NRS 338.147 is hereby amended to read as follows:

33 338.147 1. Except as otherwise provided in subsection 10
34 and NRS 338.143, 338.1442 and 338.1446, a local government or
35 its authorized representative shall award a contract for a public work
36 for which the estimated cost exceeds \$250,000 to the contractor who
37 submits the best bid.

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

40 (a) Submitted by a contractor who:

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

43 (2) At the time the contractor submits his or her bid, provides
44 a valid certificate of eligibility to receive a preference in bidding on



1 public works issued to the contractor by the State Contractors'
2 Board pursuant to subsection 3 or 4; and

3 (3) Within 2 hours after the completion of the opening of the
4 bids by the local government or its authorized representative,
5 submits a signed affidavit that meets the requirements of subsection
6 1 of NRS 338.0117; and

7 (b) Not more than ~~15~~ 7.5 percent higher than the bid submitted
8 by the lowest responsive and responsible bidder who:

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

13 (2) Does not submit, within 2 hours after the completion of
14 the opening of the bids by the public body or its authorized
15 representative, a signed affidavit certifying that he or she will
16 comply with the requirements of paragraphs (a) to (d), inclusive, of
17 subsection 1 of NRS 338.0117 for the duration of the contract,

18 ➤ shall be deemed to be the best bid for the purposes of this section.

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

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

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

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

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

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



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

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

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

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

12 (1) The sales and use taxes pursuant to chapters 372, 374 and
13 377 of NRS on materials used for construction in this State,
14 including, without limitation, construction that is undertaken or
15 carried out on land within the boundaries of this State that is
16 managed by the Federal Government or is on an Indian reservation
17 or Indian colony, of not less than \$5,000 for each consecutive
18 12-month period for 60 months immediately preceding the
19 submission of the affidavit from the certified public accountant;

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

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

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

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

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

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

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

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



1 6. A contractor who has received a certificate of eligibility to
2 receive a preference in bidding on public works from the State
3 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
4 for the renewal of his or her contractor's license pursuant to NRS
5 624.283, submit to the Board an affidavit from a certified public
6 accountant setting forth that the contractor has, during the
7 immediately preceding 12 months, paid the taxes required pursuant
8 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
9 applicable, to maintain eligibility to hold such a certificate.

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

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

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

25 (a) Submits false information to the Board regarding the
26 required payment of taxes, the contractor is not eligible to receive a
27 preference in bidding on public works for a period of 5 years after
28 the date on which the Board becomes aware of the submission of the
29 false information; or

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

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

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

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



1 13. A person who submitted a bid on the public work or an
2 entity who believes that the contractor who was awarded the
3 contract for the public work wrongfully holds a certificate of
4 eligibility to receive a preference in bidding on public works may
5 challenge the validity of the certificate by filing a written objection
6 with the local government to which the contractor has submitted a
7 bid on a contract for the construction of a public work. A written
8 objection authorized pursuant to this subsection must:

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

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

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

30 **Sec. 3.6.** NRS 338.1693 is hereby amended to read as follows:

31 338.1693 1. The public body or its authorized representative
32 shall appoint a panel consisting of at least three but not more than
33 seven members, a majority of whom must have experience in the
34 construction industry, to rank the proposals submitted to the public
35 body by evaluating the proposals as required pursuant to subsections
36 2 and 3.

37 2. The panel appointed pursuant to subsection 1 shall rank the
38 proposals by:

39 (a) Verifying that each applicant satisfies the requirements of
40 NRS 338.1691; and

41 (b) Evaluating and assigning a score to each of the proposals
42 received by the public body based on the factors and relative weight
43 assigned to each factor that the public body specified in the request
44 for proposals.



1 3. When ranking the proposals, the panel appointed pursuant to
2 subsection 1 shall assign a relative weight of ~~15~~ 7.5 percent to the
3 applicant's possession of a certificate of eligibility to receive a
4 preference in bidding on public works if the applicant submits a
5 signed affidavit that meets the requirements of subsection 1 of NRS
6 338.0117. If any federal statute or regulation precludes the granting
7 of federal assistance or reduces the amount of that assistance for a
8 particular public work because of the provisions of this subsection,
9 those provisions of this subsection do not apply insofar as their
10 application would preclude or reduce federal assistance for that
11 work.

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

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

23 6. During the interview process, the panel conducting the
24 interview may require the applicants to submit a preliminary
25 proposed amount of compensation for managing the preconstruction
26 and construction of the public work, but in no event shall the
27 proposed amount of compensation exceed 20 percent of the scoring
28 for the selection of the most qualified applicant. All presentations
29 made at any interview conducted pursuant to this subsection or
30 subsection 5 may be made only by key personnel employed by
31 the applicant, as determined by the applicant, and the employees of
32 the applicant who will be directly responsible for managing the
33 preconstruction and construction of the public work.

34 7. After conducting such interviews, the panel that conducted
35 the interviews shall rank the applicants by using a ranking process
36 that is separate from the process used to rank the applicants pursuant
37 to subsection 2 and is based only on information submitted during
38 the interview process. The score to be given for the proposed
39 amount of compensation, if any, must be calculated by dividing
40 the lowest of all the proposed amounts of compensation by the
41 applicant's proposed amount of compensation multiplied by the
42 total possible points available to each applicant. When ranking
43 the applicants, the panel that conducted the interviews shall assign a
44 relative weight of ~~15~~ 7.5 percent to the applicant's possession of a
45 certificate of eligibility to receive a preference in bidding on public



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1 works if the applicant submits a signed affidavit that meets the
2 requirements of subsection 1 of NRS 338.0117. If any federal
3 statute or regulation precludes the granting of federal assistance or
4 reduces the amount of that assistance for a particular public work
5 because of the provisions of this subsection, those provisions of this
6 subsection do not apply insofar as their application would preclude
7 or reduce federal assistance for that work.

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

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

30 10. The public body or its authorized representative shall make
31 available to all applicants and the public the final rankings of the
32 applicants, as determined by the panel that conducted the interviews,
33 and shall provide, upon request, an explanation to any unsuccessful
34 applicant of the reasons why the applicant was unsuccessful.

35 **Sec. 3.7.** NRS 338.1725 is hereby amended to read as follows:

36 338.1725 1. The public body shall select at least two but not
37 more than four finalists from among the design-build teams that
38 submitted preliminary proposals. If the public body does not receive
39 at least two preliminary proposals from design-build teams that the
40 public body determines to be qualified pursuant to this section and
41 NRS 338.1721, the public body may not contract with a design-
42 build team for the design and construction of the public work.

43 2. The public body shall select finalists pursuant to subsection
44 1 by:



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

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

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

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

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

13 (4) The proposed plan of the design-build team to manage
14 the design and construction of the public work that sets forth in
15 detail the ability of the design-build team to design and construct the
16 public work; and

17 (c) Except as otherwise provided in this paragraph, assigning,
18 without limitation, a relative weight of ~~15~~ 7.5 percent to the
19 possession of both a certificate of eligibility to receive a preference
20 in bidding on public works by all contractors on the design-build
21 team and a certificate of eligibility to receive a preference when
22 competing for public works by all design professionals on the
23 design-build team. If any federal statute or regulation precludes the
24 granting of federal assistance or reduces the amount of that
25 assistance for a particular public work because of the provisions of
26 this paragraph relating to a preference in bidding on public works or
27 a preference when competing for public works, those provisions of
28 this paragraph do not apply insofar as their application would
29 preclude or reduce federal assistance for that public work.

30 3. After the selection of finalists pursuant to this section, the
31 public body shall make available to the public the results of the
32 evaluations of preliminary proposals conducted pursuant to
33 paragraph (b) of subsection 2 and identify which of the finalists, if
34 any, received an assignment of ~~15~~ 7.5 percent pursuant to paragraph
35 (c) of subsection 2.

36 **Sec. 3.8.** NRS 338.1727 is hereby amended to read as follows:

37 338.1727 1. After selecting the finalists pursuant to NRS
38 338.1725, the public body shall provide to each finalist a request for
39 final proposals for the public work. The request for final proposals
40 must:

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

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



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

4 3. Except as otherwise provided in this subsection, in assigning
5 the relative weight to each factor for selecting a design-build team
6 pursuant to subsection 1, the public body shall assign, without
7 limitation, a relative weight of ~~15~~ 7.5 percent to the possession of
8 both a certificate of eligibility to receive a preference in bidding on
9 public works by all contractors on the design-build team if the
10 contractors submit signed affidavits that meet the requirements of
11 subsection 1 of NRS 338.0117, and a certificate of eligibility to
12 receive a preference when competing for public works by all design
13 professionals on the design-build team, and a relative weight of at
14 least 30 percent to the proposed cost of design and construction of
15 the public work. If any federal statute or regulation precludes the
16 granting of federal assistance or reduces the amount of that
17 assistance for a particular public work because of the provisions of
18 this subsection relating to a preference in bidding on public works,
19 or a preference when competing for public works, those provisions
20 of this subsection do not apply insofar as their application would
21 preclude or reduce federal assistance for that public work.

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

29 5. A final proposal is exempt from the requirements of
30 NRS 338.141.

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



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

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

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

14 8. A contract awarded pursuant to this section:

15 (a) Must comply with the provisions of NRS 338.020 to
16 338.090, inclusive.

17 (b) Must specify:

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

23 (2) An amount that is the maximum amount that the public
24 body will pay for the performance of the professional services
25 required by the contract; and

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

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

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

39 (e) May require the design-build team to defend, indemnify and
40 hold harmless the public body, and the employees, officers and
41 agents of the public body from any liabilities, damages, losses,
42 claims, actions or proceedings, including, without limitation,
43 reasonable attorneys' fees, that are caused by the negligence,
44 errors, omissions, recklessness or intentional misconduct of the



1 design-build team or the employees or agents of the design-build
2 team in the performance of the contract.

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

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

10 **Sec. 4.** NRS 279.500 is hereby amended to read as follows:

11 279.500 1. The provisions of NRS 338.010 to 338.090,
12 inclusive, apply to any contract for new construction, repair or
13 reconstruction which is awarded on or after October 1, 1991, by an
14 agency for work to be done in a project.

15 2. If an agency:

16 (a) Provides property for development at less than the fair
17 market value of the property;

18 (b) Provides a loan to a small business pursuant to NRS 279.700
19 to 279.740, inclusive; or

20 (c) Provides financial incentives to a developer with a value of
21 ~~more than \$100,000,~~ ***\$500,000 or more,***

22 ***↪ regardless of whether the project is publicly or privately owned,***
23 ***the agency must provide in the loan agreement with the small***
24 ***business or the agreement with the developer, as applicable, that the***
25 ***development project is subject to the provisions of NRS 338.010 to***
26 ***338.090, inclusive, to the same extent as if the agency had awarded***
27 ***the contract for the project. This subsection applies only to the***
28 ***project covered by the loan agreement between the agency and***
29 ***the small business or the agreement between the agency and the***
30 ***developer, as applicable. This subsection does not apply to future***
31 ***development of the property unless an additional loan, or additional***
32 ***financial incentives with a value of ~~more than \$100,000,~~ *\$500,000****
33 ***or more,*** are provided to the small business or developer, as
34 applicable.

35 ***3. The Labor Commissioner shall, on or before January 1,***
36 ***2020, and every 5 years thereafter, adjust the amount set forth in***
37 ***paragraph (c) of subsection 2 to reflect inflation, as measured by***
38 ***the average percentage of increase or decrease in the Consumer***
39 ***Price Index for All Urban Consumers of the United States***
40 ***Department of Labor, Bureau of Labor Statistics, for the***
41 ***preceding 5 years. The Labor Commissioner shall determine the***
42 ***amount of the increase or decrease required by this subsection and***
43 ***establish the adjusted amounts to take effect on January 1 of that***
44 ***year.***



1 **Sec. 4.5.** NRS 408.3886 is hereby amended to read as follows:

2 408.3886 1. After selecting the finalists pursuant to NRS
3 408.3885, the Department shall provide to each finalist a request for
4 final proposals for the project. The request for final proposals must:

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

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

10 2. Except as otherwise provided in this subsection, in assigning
11 the relative weight to each factor for selecting a design-build team
12 pursuant to subsection 1, the Department shall assign, without
13 limitation, a relative weight of ~~15~~ 7.5 percent to the design-build
14 team's possession of both a certificate of eligibility to receive a
15 preference in bidding on public works by the prime contractor on
16 the design-build team, if the design-build team submits a signed
17 affidavit that meets the requirements of subsection 1 of NRS
18 338.0117, and a certificate of eligibility to receive a preference
19 when competing for public works by all persons who hold a
20 certificate of registration to practice architecture or a license as a
21 professional engineer on the design-build team, and a relative
22 weight of at least 30 percent for the proposed cost of design and
23 construction of the project. If any federal statute or regulation
24 precludes the granting of federal assistance or reduces the amount
25 of that assistance for a particular project because of the provisions of
26 this subsection relating to a preference in bidding on public works or
27 a preference when competing for public works, those provisions of
28 this subsection do not apply insofar as their application would
29 preclude or reduce federal assistance for that project.

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

35 4. After receiving the final proposals for the project, the
36 Department shall:

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

39 (b) Reject all the final proposals; or

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

42 5. If the Department determines that no final proposal received
43 is cost-effective or responsive and the Department further
44 determines that requesting best and final offers pursuant to this
45 subsection will likely result in the submission of a satisfactory offer,



1 the Department may prepare and provide to each finalist a request
2 for best and final offers for the project. In conjunction with
3 preparing a request for best and final offers pursuant to this
4 subsection, the Department may alter the scope of the project, revise
5 the estimates of the costs of designing and constructing the project,
6 and revise the selection factors and relative weights described in
7 paragraph (a) of subsection 1. A request for best and final offers
8 prepared pursuant to this subsection must set forth the date by which
9 best and final offers must be submitted to the Department. After
10 receiving the best and final offers, the Department shall:

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

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

15 6. If the Department selects a final proposal pursuant to
16 paragraph (a) of subsection 4 or selects a best and final offer
17 pursuant to paragraph (a) of subsection 5, the Department shall hold
18 a public meeting to:

19 (a) Review and ratify the selection.

20 (b) Partially reimburse the unsuccessful finalists if partial
21 reimbursement was provided for in the request for preliminary
22 proposals pursuant to paragraph (f) of subsection 3 of NRS
23 408.3883. The amount of reimbursement must not exceed, for each
24 unsuccessful finalist, 3 percent of the total amount to be paid to the
25 design-build team as set forth in the design-build contract.

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

32 7. A contract awarded pursuant to this section:

33 (a) Must comply with the provisions of NRS 338.020 to
34 338.090, inclusive; and

35 (b) Must specify:

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

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

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



- 1 8. A design-build team to whom a contract is awarded pursuant
2 to this section shall:
- 3 (a) Assume overall responsibility for ensuring that the design
4 and construction of the project is completed in a satisfactory
5 manner; and
- 6 (b) Use the workforce of the prime contractor on the design-
7 build team to construct at least 15 percent of the project.
- 8 **Sec. 5.** 1. The amendatory provisions of this act do not apply
9 to a public work or other project of construction, repair or
10 reconstruction that is awarded before July 1, 2015.
- 11 2. As used in this section, "public work" has the meaning
12 ascribed to it in NRS 338.010.
- 13 **Sec. 6.** (Deleted by amendment.)
- 14 **Sec. 7.** This act becomes effective on July 1, 2015.



