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## Nevada Construction Law and Public Contracts Update:

### AB 144: Significant Changes to Public Works

### Preferential Bidding Requirements

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Under the existing law, a contract for public works is awarded to the contractor who submits the best bid. A contractor may then qualify for a 5 point preferential credit in bidding on a public work if a contractor submits proof to the Nevada Contractors' Board has paid certain taxes to the State for the past 5 years.

Recently, on April 27, 2011, Governor Brian Sandoval signed into law [Assembly Bill \(AB\) No. 144](#), which created significant changes in NRS Chapter 338 and NRS 408.3886 relating to preferential bidding on state and local public works projects.

#### **New Requirements for Preferential Bidding:**

AB 144 now requires that in order to receive the preferential 5 percent-bidder credit for public works, a contractor, an applicant, or a design-build team ***must*** submit, to the public body sponsoring or financing a public work, a signed affidavit attesting that it will meet the 5 new requirements for the duration of the project, namely:

- 1) At least 50 percent of the workers on the public work have a Nevada driver's license or identification card;
- 2) All of the non-apportioned vehicles primarily used on the public work are registered in Nevada;
- 3) At least 50 percent of the design professionals who work on the public work have a Nevada driver's license or identification card;
- 4) At least 25 percent of the suppliers of the materials used in the public work are located in Nevada; ***and***
- 5) Certain payroll records related to the public work are maintained and available within this State

#### **Penalties for Violation**

Section 2 of the bill requires that any contract for public work awarded to a contractor, an applicant, or a design-build team who receives a preference in bidding, must incorporate the 5 requirements in the contract. The contract must also state that failure to comply with any of the

above 5 requirements is a material breach entitling the public body to 10 percent of the cost of contract as liquidated damages.

Section 2 also requires that each contractor, applicant, or design-build team who receives a preference in bidding and a subcontractor to include a provision that apportions the liability for damages for material breach between the contractor and subcontractor in proportion to each party's liability.

Section 9 and 10 of the bill provide that a contractor who breaches any of the 5 requirements for a public work the cost of which exceeds \$5,000,000.00 loses his or her certification for a preference in bidding for 5 years.

Section 3, 6-8, and 14 of the bill provide that a contractor who breaches any of the 5 requirements for a public work the cost of which exceeds \$25,000,000.00, loses his or her ability to bid on *any contracts for public works* for 1 year.

Section 17 of the bill declares that any contracts for such a public work that fails to comply with AB 144 is void.

Finally, Section 5 of the bill revises the records that a contractor or subcontractor engaged in public work must keep relating to their workers.

AB 144 seeks to address the high unemployment rate in Nevada and to funnel Nevada public works to Nevada contractors. Whether AB 144 will accomplish its goals or ultimately hinder Nevada contractors by creating more bureaucratic hurdles, remains to be seen. AB144 is effective as of April 27, 2011.

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