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ASSEMBLY BILL NO. 345—ASSEMBLYWOMAN NEAL

MARCH 16, 2015

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JOINT SPONSOR: SENATOR FORD

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Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to certain government contracts. (BDR 27-398)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

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

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AN ACT relating to government contracts; authorizing the State and local governments to accept certain alternate forms of security; providing circumstances under which an individual surety may provide such security; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Under existing law, a person bidding on a contract with the State or a local  
2 government for the performance of a service to the State or local government or for  
3 a public work, a person entering into any such contract or a person protesting the  
4 award of any such contract may be required to post a bond as security for the bid or  
5 protest, for performance of the contract or for payment to third parties under the  
6 contract. (NRS 332.068, 332.105, 333.355, 333.360, 333.370, 338.142, 339.025,  
7 408.337, 408.357, 408.367) If a bond is provided, it must be issued by an insurer,  
8 commonly known as a “corporate surety,” who is authorized under existing law  
9 regulating insurers to issue the bond. (NRS 100.065)

10 This bill provides for such a person to provide alternate forms of security.  
11 **Sections 6, 7, 15, 16, 18, 19, 24, 34, 41, 43 and 45** of this bill authorize a person to,  
12 instead of a bond executed by a corporate surety, submit a bond executed by an  
13 individual surety or, with the approval of the entity awarding the contract, cash, a  
14 cash equivalent, a money order, a certified or cashier’s check, a security interest in  
15 an asset, an irrevocable letter of credit or any other form of security approved by  
16 the entity awarding the contract. **Section 33** of this bill defines the term “individual  
17 surety” as a natural person who is not an insurer authorized to transact surety  
18 insurance but who pledges his or her personal property or assets to guarantee the  
19 performance of a contract or payment pursuant to a contract.



20 Under **sections 2, 11 and 30** of this bill, an individual surety may execute a  
21 bond only if: (1) the individual surety transacts business only through an insurance  
22 company licensed in this State; (2) the person on whose behalf the bond is executed  
23 submits to the entity awarding the contract an affidavit attesting to compliance with  
24 specified provisions of law; and (3) the individual surety pledges one or more of  
25 specified forms of assets, in an amount equal to or greater than the amount of the  
26 required security, and submits to the entity awarding the contract a specified form  
27 for each asset. Under **sections 3, 12 and 31** of this bill, an asset pledged as security  
28 by an individual surety may not be pledged for any other security or contract unless  
29 it is released by the entity awarding the contract. **Sections 4, 13 and 32** of this bill  
30 limit an individual surety to providing security only as provided in this bill.

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

1 **Section 1.** Chapter 332 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2, 3 and 4 of this act.

3 **Sec. 2.** *A bond or other security required pursuant to NRS*  
4 *332.068 or 332.105 may be executed by an individual surety only*  
5 *if:*

6 *1. The individual surety transacts business only through an*  
7 *insurance company that is licensed by the Division of Insurance of*  
8 *the Department of Business and Industry and approved to do*  
9 *business in this State.*

10 *2. The person on whose behalf the bond or security is*  
11 *executed provides with the bid, on a form approved by the*  
12 *governing body or its authorized representative, an affidavit from*  
13 *the individual surety attesting to compliance with the provisions of*  
14 *this chapter.*

15 *3. The individual surety submits to the governing body or its*  
16 *authorized representative a Uniform Commercial Code 1 (UCC1)*  
17 *form for each asset pledged pursuant to subsection 4.*

18 *4. Subject to the provisions of section 3 of this act, the*  
19 *individual surety pledges one or more of the following assets in an*  
20 *amount equal to or greater than the amount of the required*  
21 *security:*

22 *(a) Cash or a certificate of deposit;*

23 *(b) A cash equivalent held with a financial institution that is*  
24 *federally insured or insured by a private insurer approved*  
25 *pursuant to NRS 678.755;*

26 *(c) Assets for which the individual surety can demonstrate a*  
27 *security interest, including, without limitation, an irrevocable trust*  
28 *receipt that is issued by a financial institution that is federally*  
29 *insured or insured by a private insurer approved pursuant to NRS*  
30 *678.755, or by an independent trustee in the name of the*



1 *governing body, and that includes a payout clause in the event that*  
2 *any default by the individual surety cannot otherwise be remedied;*

3 *(d) United States Government securities at market value;*

4 *(e) Stocks and bonds that are:*

5 *(1) Traded on a national securities exchange registered*  
6 *with the Securities and Exchange Commission;*

7 *(2) Accompanied by certificates issued in the name of the*  
8 *individual surety; and*

9 *(3) Pledged at an amount not more than 90 percent of the*  
10 *lowest price of the stocks and bonds during the 12-month period*  
11 *immediately preceding the execution of the security by the*  
12 *individual surety;*

13 *(f) Real property located in this State that:*

14 *(1) Is owned by the bidder or contractor or the individual*  
15 *surety in fee simple or is owned by cotenants who have entered*  
16 *into a binding agreement to pledge the real property pursuant to*  
17 *this section; and*

18 *(2) Is pledged by the granting of a mortgage or deed of trust*  
19 *on the real property located in this State, provided that:*

20 *(I) The face amount of the mortgage or deed of trust*  
21 *does not exceed 75 percent of the value of the interest in the real*  
22 *property of the bidder or contractor or individual surety providing*  
23 *the mortgage or deed of trust; and*

24 *(II) The mortgage or deed of trust must be recorded by*  
25 *the governing body or its authorized representative in the office of*  
26 *the county recorder of the county in which the real property is*  
27 *located; or*

28 *(g) An irrevocable letter of credit that:*

29 *(1) Is issued or confirmed by a financial institution that is*  
30 *federally insured or insured by a private insurer approved*  
31 *pursuant to NRS 678.755 in the name of the local government;*  
32 *and*

33 *(2) Includes a payout clause in the event that any default by*  
34 *the individual surety cannot otherwise be remedied.*

35 **Sec. 3.** *An asset pledged pursuant to subsection 4 of section 2*  
36 *of this act:*

37 *1. Except as otherwise provided in subsection 2, may be*  
38 *pledged as security only for the purposes of section 2 of this act;*  
39 *and*

40 *2. May not be pledged for any other bond or security inside or*  
41 *outside this State unless and until it is released by the governing*  
42 *body.*

43 **Sec. 4.** *The provisions of this section and sections 2 and 3 of*  
44 *this act authorize an individual surety to execute bonds and*



1 *otherwise provide security only pursuant to NRS 332.068 and*  
2 *332.105 and sections 2 and 3 of this act.*

3 **Sec. 5.** NRS 332.025 is hereby amended to read as follows:

4 332.025 As used in this chapter, unless the context otherwise  
5 requires:

6 1. "Authorized representative" means a person designated by  
7 the governing body to be responsible for the development, award  
8 and proper administration of all purchases and contracts for a local  
9 government or a department, division, agency, board or unit of a  
10 local government made pursuant to this chapter.

11 2. "Chief administrative officer" means the person directly  
12 responsible to the governing body for the administration of that  
13 particular entity.

14 3. "Evaluator" means an authorized representative, officer,  
15 employee, representative, agent, consultant or member of a  
16 governing body who has participated in:

17 (a) The evaluation of bids;

18 (b) Negotiations concerning purchasing by a local government;  
19 or

20 (c) The review or approval of the award, modification or  
21 extension of a contract.

22 4. "Governing body" means the board, council, commission or  
23 other body in which the general legislative and fiscal powers of the  
24 local government are vested.

25 5. *"Individual surety" has the meaning ascribed to it in*  
26 *NRS 339.015.*

27 6. "Proprietary information" means:

28 (a) Any trade secret or confidential business information that is  
29 contained in a bid submitted to a governing body or its authorized  
30 representative on a particular contract; or

31 (b) Any other trade secret or confidential business information  
32 submitted to a governing body or its authorized representative by a  
33 bidder and designated as proprietary by the governing body or its  
34 authorized representative.

35 ↪ As used in this subsection, "confidential business information"  
36 means any information relating to the amount or source of any  
37 income, profits, losses or expenditures of a person, including data  
38 relating to cost, price, or the customers of a bidder which is  
39 submitted in support of a bid. The term does not include the amount  
40 of a bid submitted to a governing body or its authorized  
41 representative.

42 ~~6.~~ 7. "Trade secret" has the meaning ascribed to it in  
43 NRS 600A.030.



**Sec. 6.** NRS 332.068 is hereby amended to read as follows:

332.068 1. A person who submits a bid on a contract that is required to be advertised pursuant to paragraph (a) of subsection 1 of NRS 332.039 may, after the bids are opened and within the period specified by the governing body or its authorized representative, file with the governing body or its authorized representative a notice of protest regarding the awarding of the contract.

2. A notice of protest must include a written statement setting forth with specificity the reasons the person filing the notice believes the applicable provisions of law were violated.

3. A person filing a notice of protest may be required by the governing body or its authorized representative, at the time the notice of protest is filed, to ~~post a~~ *provide security. A person required to provide security may provide any of the following:*

(a) A bond ~~with~~ *executed by* a good and solvent surety authorized to do business in this State ~~for submit other security, in a form~~;

(b) *Subject to the provisions of sections 2, 3 and 4 of this act, a bond or other security executed by an individual surety; or*

(c) *Any other form of security that is approved by the governing body or its authorized representative, ~~to the~~ and in an amount equal to the amount of the required security, including, without limitation, any one or a combination of the following paid or issued by the person:*

(1) *Cash;*

(2) *A cash equivalent held with a financial institution that is federally insured or insured by a private insurer approved pursuant to NRS 678.755;*

(3) *A money order;*

(4) *A certified check or cashier's or similar bank officer's check;*

(5) *A security interest approved by the governing body or its authorized representative; or*

(6) *An irrevocable letter of credit, issued or confirmed by a financial institution that is federally insured or insured by a private insurer approved pursuant to NRS 678.755 approved by the governing body or its authorized representative.*

4. *The governing body or its authorized representative shall determine the value of any security furnished pursuant to this section.*

5. *The governing body or its authorized representative ~~who~~ shall hold the ~~bond or other~~ security until a determination is made on the protest. ~~A bond posted or other~~ *The security submitted with a notice of protest must be in an amount equal to the lesser of:**



1 (a) Twenty-five percent of the total value of the bid submitted  
2 by the person filing the notice of protest; or

3 (b) Two hundred fifty thousand dollars.

4 ~~[4.]~~ 6. A notice of protest filed in accordance with the  
5 provisions of this section operates as a stay of action in relation to  
6 the awarding of any contract until a determination is made by the  
7 governing body or its authorized representative on the protest.

8 ~~[5.]~~ 7. A person who submits an unsuccessful bid may not  
9 seek any type of judicial intervention until the governing body or its  
10 authorized representative has made a determination on the protest  
11 and awarded the contract.

12 ~~[6.]~~ 8. A governing body or its authorized representative is not  
13 liable for any costs, expenses, attorney's fees, loss of income or  
14 other damages sustained by a person who submits a bid, whether or  
15 not the person files a notice of protest pursuant to this section.

16 ~~[7.]~~ 9. If the protest is upheld, the ~~[bond posted or other]~~  
17 security submitted with the notice of protest must be returned to the  
18 person who ~~[posted the bond or]~~ submitted the security. If the  
19 protest is rejected, a claim may be made against the ~~[bond or other]~~  
20 security by the governing body or its authorized representative in an  
21 amount equal to the expenses incurred by the governing body or its  
22 authorized representative because of the unsuccessful protest. Any  
23 money remaining after the claim has been satisfied must be returned  
24 to the person who ~~[posted the bond or]~~ submitted the security.

25 **Sec. 7.** NRS 332.105 is hereby amended to read as follows:

26 332.105 1. ~~[A]~~ *Security for a bid* , ~~[bond,]~~ performance ,  
27 ~~[bond,]~~ payment ~~[bond]~~ or any combination thereof, ~~[with sufficient~~  
28 ~~surety,]~~ in such amount as may be determined necessary by the  
29 governing body or its authorized representative, may be required of  
30 each bidder or contractor on a particular contract.

31 2. Any such ~~[bonds]~~ *security* may be to insure proper  
32 performance of the contract and save, indemnify and keep harmless  
33 the local government against all loss, damages, claims, liabilities,  
34 judgments, costs and expenses which may accrue against the local  
35 government in consequence of the awarding of the contract.

36 3. If a local government requires such ~~[a bond,]~~ *security*, it  
37 shall not also require a detailed financial statement from each bidder  
38 on the contract.

39 4. *A person required to provide security may provide any of*  
40 *the following:*

41 (a) *A bond executed by a good and solvent surety authorized to*  
42 *do business in this State;*

43 (b) *Subject to the provisions of sections 2, 3 and 4 of this act, a*  
44 *bond or other security executed by an individual surety; or*



1 (c) Any other form of security that is approved by the  
2 governing body or its authorized representative, and in an amount  
3 equal to the amount of the required security, including, without  
4 limitation, any one or a combination of the following paid or  
5 issued by the person:

6 (1) Cash;

7 (2) A cash equivalent held with a financial institution that  
8 is federally insured or insured by a private insurer approved  
9 pursuant to NRS 678.755;

10 (3) A money order;

11 (4) A certified check or cashier's or similar bank officer's  
12 check;

13 (5) A security interest approved by the governing body or its  
14 authorized representative; or

15 (6) An irrevocable letter of credit, issued or confirmed by a  
16 financial institution that is federally insured or insured by a  
17 private insurer approved pursuant to NRS 678.755 approved by  
18 the governing body or its authorized representative.

19 5. The governing body or its authorized representative may  
20 accept performance security required pursuant to this section that  
21 includes the granting of a mortgage or deed of trust on real  
22 property located in this State if:

23 (a) The face amount of the mortgage or deed of trust does not  
24 exceed 75 percent of the value of the interest in the real property  
25 of the bidder or contractor providing the mortgage or deed of trust  
26 as performance security; and

27 (b) The mortgage or deed of trust is recorded by the governing  
28 body or its authorized representative in the office of the county  
29 recorder of the county in which the real property is located.

30 6. The governing body or its authorized representative shall  
31 determine the value of any security furnished pursuant to this  
32 section.

33 **Sec. 8.** NRS 332.352 is hereby amended to read as follows:

34 332.352 1. Except as otherwise provided in NRS 332.353, a  
35 local government shall use the following criteria for determining  
36 whether a person satisfies the requirements to be a qualified service  
37 company pursuant to NRS 332.360:

38 (a) The financial ability of the applicant to perform the work  
39 required by the local government;

40 (b) Whether the applicant possesses a business license issued  
41 pursuant to chapter 76 of NRS;

42 (c) Whether the applicant possesses a valid contractor's license  
43 issued pursuant to chapter 624 of NRS of a class corresponding to  
44 the work required by the local government and, if engineering work





1 is required, whether the applicant possesses a valid license as a  
2 professional engineer issued pursuant to chapter 625 of NRS;

3 (d) Whether the applicant has the ability to obtain the necessary  
4 ~~bonding~~ security for the work required by the local government;

5 (e) Whether the applicant has successfully completed an  
6 appropriate number of projects as determined by the local  
7 government, but not to exceed five projects, during the 5 years  
8 immediately preceding the date of application of similar size, scope  
9 or type as the work required by the local government;

10 (f) Whether the principal personnel employed by the applicant  
11 have the necessary professional qualifications and experience for the  
12 work required by the local government;

13 (g) Whether the applicant has breached any contracts with a  
14 public agency or person in this State or any other state during the 5  
15 years immediately preceding the date of application;

16 (h) Whether the applicant has been disqualified from being  
17 awarded a contract by any governing body in the State of Nevada;

18 (i) Whether the applicant has been convicted of a violation of  
19 discrimination in employment during the 2 years immediately  
20 preceding the date of application;

21 (j) Whether the applicant has the ability to obtain and maintain  
22 insurance coverage for public liability and property damage within  
23 limits sufficient to protect the applicant and all the subcontractors of  
24 the applicant from claims for personal injury, accidental death and  
25 damage to property that may arise in connection with the work  
26 required by the local government;

27 (k) Whether the applicant has established a safety program that  
28 complies with the requirements of chapter 618 of NRS;

29 (l) Whether the applicant has been disciplined or fined by the  
30 State Contractors' Board or another state or federal agency for  
31 conduct that relates to the ability of the applicant to perform the  
32 work required by the local government;

33 (m) Whether, during the 5 years immediately preceding the date  
34 of application, the applicant has filed as a debtor under the  
35 provisions of the United States Bankruptcy Code;

36 (n) Whether the application is truthful and complete; and

37 (o) Whether, during the 5 years immediately preceding the date  
38 of the application, the applicant has, as a result of causes within the  
39 control of the applicant or a subcontractor or supplier of the  
40 applicant, failed to perform any contract:

41 (1) In the manner specified by the contract and any change  
42 orders initiated or approved by the person or governmental entity  
43 that awarded the contract or its authorized representative;





1 (2) Within the time specified by the contract unless extended  
2 by the person or governmental entity that awarded the contract or its  
3 authorized representative; or

4 (3) For the amount of money specified in the contract or as  
5 modified by any change orders initiated or approved by the person  
6 or governmental entity that awarded the contract or its authorized  
7 representative.

8 ↪ Evidence of the failures described in this subsection may include,  
9 without limitation, the assessment of liquidated damages against the  
10 applicant, the forfeiture of any ~~fbonds~~ security posted by the  
11 applicant, an arbitration award granted against the applicant or a  
12 decision by a court of law against the applicant.

13 2. Except as otherwise provided in NRS 332.353, in addition to  
14 the criteria described in subsection 1, the local government may use  
15 any other relevant criteria that are necessary to determine whether a  
16 person satisfies the requirements to be a qualified service company  
17 pursuant to NRS 332.360.

18 **Sec. 9.** NRS 332.390 is hereby amended to read as follows:

19 332.390 1. If a performance contract entered into pursuant to  
20 NRS 332.300 to 332.440, inclusive, requires the employment of  
21 skilled mechanics, skilled workers, semiskilled mechanics,  
22 semiskilled workers or unskilled labor to perform the performance  
23 contract, the performance contract must include a provision relating  
24 to the prevailing wage as required pursuant to NRS 338.020 to  
25 338.090, inclusive.

26 2. Before a qualified service company enters into a  
27 performance contract pursuant to NRS 332.300 to 332.440,  
28 inclusive, that exceeds \$100,000, the qualified service company  
29 must furnish to the contracting body any ~~fbonds~~ security required  
30 pursuant to NRS 339.025. The provisions of chapter 339 of NRS  
31 apply to any performance contract described in this subsection.

32 **Sec. 10.** Chapter 333 of NRS is hereby amended by adding  
33 thereto the provisions set forth as sections 11, 12 and 13 of this act.

34 **Sec. 11.** *A bond or other security required by or pursuant to*  
35 *NRS 333.355, 333.360 or 333.370 may be executed by an*  
36 *individual surety only if:*

37 1. *The individual surety transacts business only through an*  
38 *insurance company that is licensed by the Division of Insurance of*  
39 *the Department of Business and Industry and approved to do*  
40 *business in this State.*

41 2. *The person on whose behalf the bond or security is*  
42 *executed provides with the bid, on a form approved by the*  
43 *Administrator, an affidavit from the individual surety attesting to*  
44 *compliance with the provisions of this chapter.*



1       3. *The individual surety submits to the Administrator a*  
2 *Uniform Commercial Code 1 (UCCI) form for each asset pledged*  
3 *pursuant to subsection 4.*

4       4. *Subject to the provisions of section 12 of this act, the*  
5 *individual surety pledges one or more of the following assets in an*  
6 *amount equal to or greater than the amount of the required*  
7 *security:*

8       (a) *Cash or a certificate of deposit;*

9       (b) *A cash equivalent held with a financial institution that is*  
10 *federally insured or insured by a private insurer approved*  
11 *pursuant to NRS 678.755;*

12       (c) *Assets for which the individual surety can demonstrate a*  
13 *security interest, including, without limitation, an irrevocable trust*  
14 *receipt that is issued by a financial institution that is federally*  
15 *insured or insured by a private insurer approved pursuant to NRS*  
16 *678.755, or by an independent trustee in the name of the State of*  
17 *Nevada, and that includes a payout clause in the event that any*  
18 *default by the individual surety cannot otherwise be remedied;*

19       (d) *United States Government securities at market value;*

20       (e) *Stocks and bonds that are:*

21       (1) *Traded on a national securities exchange registered*  
22 *with the Securities and Exchange Commission;*

23       (2) *Accompanied by certificates issued in the name of the*  
24 *individual surety; and*

25       (3) *Pledged at an amount not more than 90 percent of the*  
26 *lowest price of the stocks and bonds during the 12-month period*  
27 *immediately preceding the execution of the security by the*  
28 *individual surety;*

29       (f) *Real property located in this State that:*

30       (1) *Is owned by the bidder or contractor or the individual*  
31 *surety in fee simple or is owned by cotenants who have entered*  
32 *into a binding agreement to pledge the real property pursuant to*  
33 *this section; and*

34       (2) *Is pledged by the granting of a mortgage or deed of trust*  
35 *on the real property located in this State, provided that:*

36       (I) *The face amount of the mortgage or deed of trust*  
37 *does not exceed 75 percent of the value of the interest in the real*  
38 *property of the bidder or contractor or individual surety providing*  
39 *the mortgage or deed of trust; and*

40       (II) *The mortgage or deed of trust must be recorded by*  
41 *the contracting body in the office of the county recorder of the*  
42 *county in which the real property is located; or*

43       (g) *An irrevocable letter of credit that:*



1 (1) *Is issued or confirmed by a financial institution that is*  
2 *federally insured or insured by a private insurer approved*  
3 *pursuant to NRS 678.755 in the name of the State of Nevada; and*

4 (2) *Includes a payout clause in the event that any default by*  
5 *the individual surety cannot otherwise be remedied.*

6 **Sec. 12.** *An asset pledged pursuant to subsection 4 of section*  
7 *11 of this act:*

8 1. *Except as otherwise provided in subsection 2, may be*  
9 *pledged as security only for the purposes of section 11 of this act;*  
10 *and*

11 2. *May not be pledged for any other bond or security inside or*  
12 *outside this State unless and until it is released by the*  
13 *Administrator.*

14 **Sec. 13.** *The provisions of this section and sections 11 and 12*  
15 *of this act authorize an individual surety to execute bonds and*  
16 *otherwise provide security only pursuant to NRS 333.355, 333.360*  
17 *and 333.370 and sections 11 and 12 of this act.*

18 **Sec. 14.** NRS 333.020 is hereby amended to read as follows:

19 333.020 As used in this chapter, unless the context otherwise  
20 requires:

21 1. "Administrator" means the Administrator of the Purchasing  
22 Division.

23 2. "Best value" means the greatest possible economy consistent  
24 with grades or qualities of supplies, materials, equipment and  
25 services that are adapted to the purposes to be served.

26 3. "Director" means the Director of the Department of  
27 Administration.

28 4. *"Individual surety" has the meaning ascribed to it in*  
29 *NRS 339.015.*

30 5. "Invitation to bid" means a written statement which sets  
31 forth the requirements and specifications of a contract to be awarded  
32 by competitive selection.

33 ~~5.~~ 6. "Proprietary information" means:

34 (a) Any trade secret or confidential business information that is  
35 contained in a bid or proposal submitted on a particular contract; or

36 (b) Any other trade secret or confidential business information  
37 submitted in a bid or proposal and designated as proprietary by the  
38 Administrator.

39 ↪ As used in this subsection, "confidential business information"  
40 means any information relating to the amount or source of any  
41 income, profits, losses or expenditures of a person, including data  
42 relating to cost or price submitted in support of a bid or proposal.  
43 The term does not include the amount of a bid or proposal.

44 ~~6.~~ 7. "Purchasing Division" means the Purchasing Division  
45 of the Department of Administration.



1 ~~[7.]~~ 8. "Purchasing officer" means a person who is authorized  
2 by the Administrator or a using agency to participate in:

- 3 (a) The evaluation of bids or proposals for a contract;  
4 (b) Any negotiations concerning a contract; or  
5 (c) The development, review or approval of a contract.

6 ~~[8.]~~ 9. "Request for proposals" means a written statement  
7 which sets forth the requirements and specifications of a contract to  
8 be awarded by competitive selection.

9 ~~[9.]~~ 10. "Trade secret" has the meaning ascribed to it in  
10 NRS 600A.030.

11 ~~[10.]~~ 11. "Using agencies" means all officers, departments,  
12 institutions, boards, commissions and other agencies in the  
13 Executive Department of the State Government which derive their  
14 support from public money in whole or in part, whether the money  
15 is provided by the State of Nevada, received from the Federal  
16 Government or any branch, bureau or agency thereof, or derived  
17 from private or other sources. The term does not include the Nevada  
18 Rural Housing Authority, the Housing Division of the Department  
19 of Business and Industry, local governments as defined in NRS  
20 354.474, conservation districts, irrigation districts and the Nevada  
21 System of Higher Education.

22 ~~[11.]~~ 12. "Volunteer fire department" means a volunteer fire  
23 department which pays premiums for industrial insurance pursuant  
24 to the provisions of chapters 616A to 616D, inclusive, or chapter  
25 617 of NRS.

26 **Sec. 15.** NRS 333.355 is hereby amended to read as follows:

27 333.355 1. The Administrator may request that ~~[a certified~~  
28 ~~check, cashier's check or bond.]~~ *security*, in an amount not to  
29 exceed 5 percent of the total value of the bid or proposal,  
30 accompany a bid or proposal, if the request applies to each person  
31 who submits a bid or proposal. *A person required to provide*  
32 *security may provide any of the following:*

33 (a) *A bond executed by a corporate surety authorized to do*  
34 *business in this State;*

35 (b) *Subject to the provisions of sections 11, 12 and 13 of this*  
36 *act, a bond or other security executed by an individual surety; or*

37 (c) *Any other form of security that is approved by the*  
38 *Administrator, and in an amount equal to the amount of the*  
39 *required security, including, without limitation, any one or a*  
40 *combination of the following paid or issued by the person:*

41 (1) *Cash;*

42 (2) *A cash equivalent held with a financial institution that*  
43 *is federally insured or insured by a private insurer approved*  
44 *pursuant to NRS 678.755;*

45 (3) *A money order;*



1 (4) *A certified check or cashier's or similar bank officer's*  
2 *check;*

3 (5) *A security interest approved by the Administrator; or*

4 (6) *An irrevocable letter of credit, issued or confirmed by a*  
5 *financial institution that is federally insured or insured by a*  
6 *private insurer approved pursuant to NRS 678.755 approved by*  
7 *the Administrator.*

8 2. *The Administrator shall determine the value of any*  
9 *security furnished pursuant to this section.*

10 3. No division or department of the State is liable for any  
11 expense incurred by or loss of income sustained by any person  
12 because of a request made pursuant to subsection 1.

13 **Sec. 16.** NRS 333.360 is hereby amended to read as follows:

14 333.360 1. ~~[A bond furnished by a surety company~~  
15 ~~authorized to do business in this state]~~ *Security* may be required by  
16 the Administrator for the proper performance of the contract, ~~[-The~~  
17 ~~Administrator may request a certified check, cashier's check or~~  
18 ~~bond.]~~ in an amount not to exceed the total amount of the contract,  
19 before entering into a contract with a person who submits a  
20 successful bid or proposal. *Except as otherwise provided in*  
21 *subsection 2, a person required to provide security may provide*  
22 *any of the following:*

23 (a) *A bond executed by a corporate surety authorized to do*  
24 *business in this State;*

25 (b) *Subject to the provisions of sections 11, 12 and 13 of this*  
26 *act, a bond or other security executed by an individual surety; or*

27 (c) *Any other form of security that is approved by the*  
28 *Administrator, and in an amount equal to the amount of the*  
29 *required security, including, without limitation, any one or a*  
30 *combination of the following paid or issued by the person:*

31 (1) *Cash;*

32 (2) *A cash equivalent held with a financial institution that*  
33 *is federally insured or insured by a private insurer approved*  
34 *pursuant to NRS 678.755;*

35 (3) *A money order;*

36 (4) *A certified check or cashier's or similar bank officer's*  
37 *check;*

38 (5) *A security interest approved by the Administrator; or*

39 (6) *An irrevocable letter of credit, issued or confirmed by a*  
40 *financial institution that is federally insured or insured by a*  
41 *private insurer approved pursuant to NRS 678.755 approved by*  
42 *the Administrator.*

43 2. *The Administrator may accept a performance security*  
44 *required pursuant to this section that includes the granting of a*  
45 *mortgage or deed of trust on real property located in this State if:*



1 (a) *The face amount of the mortgage or deed of trust does not*  
2 *exceed 75 percent of the value of the interest in the real property*  
3 *of the bidder or contractor providing the mortgage or deed of trust*  
4 *as performance security; and*

5 (b) *The mortgage or deed of trust is recorded by the*  
6 *contracting body in the office of the county recorder of the county*  
7 *in which the real property is located.*

8 3. *The Administrator shall determine the value of any*  
9 *security furnished pursuant to this section.*

10 4. No division or department of the State is liable for any  
11 expense incurred by or loss of income sustained by any person  
12 because of a request made pursuant to subsection 1.

13 **Sec. 17.** NRS 333.365 is hereby amended to read as follows:

14 333.365 1. A person who has entered into a contract with the  
15 Purchasing Division or another agency of this state and who does  
16 not perform according to the terms of the contract is liable for, in  
17 addition to any other applicable damages for breach of contract, a  
18 penalty of not more than 5 percent of the total value of the bid or  
19 contract. The penalty must be recovered in a civil action upon the  
20 complaint of the Administrator in any court of competent  
21 jurisdiction. In addition to recovering the penalty and any other  
22 applicable damages, the Administrator may refuse to accept a bid  
23 from the person or refuse to award a contract to the person, or both,  
24 for not more than 2 years.

25 2. If the Administrator does not bring an action to recover the  
26 penalty prescribed by subsection 1, he or she may:

27 (a) Refuse to accept a bid from the person, refuse to award a  
28 contract to the person, or both, for not more than 2 years; and

29 (b) Impose an administrative penalty, in an amount not to  
30 exceed 5 percent of the total value of the bid or contract. Such a  
31 penalty may be recovered only after notice is given to the person by  
32 mail.

33 3. A penalty imposed pursuant to subsection 1 or 2 may be  
34 deducted from any payment due the person or, if ~~{a bond}~~ **security**  
35 has been ~~{issued or a check received,}~~ **submitted**, a claim may be  
36 made against the ~~{bond or check.}~~ **security**. If no payment is due and  
37 no ~~{bond}~~ **security** was ~~{issued or check received,}~~ **submitted**, the  
38 Administrator may issue a claim for payment of the penalty. The  
39 claim must be paid within 30 days.

40 **Sec. 18.** NRS 333.370 is hereby amended to read as follows:

41 333.370 1. A person who makes an unsuccessful bid or  
42 proposal may file a notice of appeal with the Purchasing Division  
43 and with the Hearings Division of the Department of Administration  
44 within 10 days after:

45 (a) The date of award as entered on the bid record; and



1 (b) The notice of award has been posted in at least three public  
2 buildings, including the location of the using agency.

3 ➔ The notice of appeal must include a written statement of the  
4 issues to be addressed on appeal.

5 2. A person filing a notice of appeal must ~~[post a bond with]~~  
6 *provide as security any of the following:*

7 (a) *A bond executed by a* good and solvent surety authorized to  
8 do business in this state ~~[or submit other security, in a form~~  
9 ~~approved by the Administrator by regulation, to the]~~ ;

10 (b) *Subject to the provisions of sections 11, 12 and 13 of this*  
11 *act, a bond executed by an individual surety; or*

12 (c) *Any other form of security that is approved by the*  
13 *Administrator and in an amount equal to the amount of the*  
14 *required security, including, without limitation, any one or a*  
15 *combination of the following paid or issued by the person:*

16 (1) *Cash;*

17 (2) *A cash equivalent held with a financial institution that*  
18 *is federally insured or insured by a private insurer approved*  
19 *pursuant to NRS 678.755;*

20 (3) *A money order;*

21 (4) *A certified check or cashier's or similar bank officer's*  
22 *check;*

23 (5) *A security interest approved by the Administrator; or*

24 (6) *An irrevocable letter of credit, issued or confirmed by a*  
25 *financial institution that is federally insured or insured by a*  
26 *private insurer approved pursuant to NRS 678.755 approved by*  
27 *the Administrator.*

28 3. *The Administrator shall determine the value of any*  
29 *security furnished pursuant to this section.*

30 4. *The Purchasing Division* ~~[, who]~~ *shall hold the* ~~[bond or~~  
31 ~~other]~~ *security until a determination is made on the appeal. Except*  
32 *as otherwise provided in subsection* ~~[3, a bond posted or other]~~ *5,*  
33 *the security submitted with a notice of appeal must be in an amount*  
34 *equal to 25 percent of the total value of the successful bid submitted.*

35 ~~[3.]~~ 5. *If the total value of the successful bid cannot be*  
36 *determined because the total requirements for the contract are*  
37 *estimated as of the date of award,* ~~[a bond posted or other]~~ *the*  
38 *security submitted with a notice of appeal must be in an amount*  
39 *equal to 25 percent of the estimated total value of the contract. Upon*  
40 *request, the Administrator shall provide:*

41 (a) *The estimated total value of the contract; or*

42 (b) *The method for determining the estimated total value of the*  
43 *contract,*

44 ➔ *based on records of past experience and estimates of anticipated*  
45 *requirements furnished by the using agency.*





1 ~~[4.]~~ 6. Within 20 days after receipt of the notice of appeal, a  
2 hearing officer of the Hearings Division of the Department of  
3 Administration shall hold a contested hearing on the appeal in  
4 substantial compliance with the provisions of NRS 233B.121 to  
5 233B.1235, inclusive, 233B.125 and 233B.126. The successful  
6 bidder must be given notice of the hearing in the same manner as the  
7 person who filed the notice of appeal. The successful bidder may  
8 participate in the hearing.

9 ~~[5.]~~ 7. The hearing officer may cancel the award for lack of  
10 compliance with the provisions of this chapter. A cancellation of the  
11 award requires readvertising for bids and a new award in accordance  
12 with the provisions of this chapter.

13 ~~[6.]~~ 8. A notice of appeal filed in accordance with the  
14 provisions of this section operates as a stay of action in relation to  
15 any contract until a determination is made by the hearing officer on  
16 the appeal.

17 ~~[7.]~~ 9. A person who makes an unsuccessful bid or proposal  
18 may not seek any type of judicial intervention until the hearing  
19 officer has made a determination on the appeal.

20 ~~[8.]~~ 10. The Administrator may make as many open market  
21 purchases of the commodities or services as are urgently needed to  
22 meet the requirements of the Purchasing Division or the using  
23 agency until a determination is made on the appeal. With the  
24 approval of the Administrator, the using agency may make such  
25 purchases for the agency.

26 ~~[9.]~~ 11. Neither the State of Nevada, nor any agency,  
27 contractor, department, division, employee or officer of the State is  
28 liable for any costs, expenses, attorney's fees, loss of income or  
29 other damages sustained by a person who makes an unsuccessful bid  
30 or proposal, whether or not the person files a notice of appeal  
31 pursuant to this section.

32 ~~[10.]~~ 12. If the appeal is upheld and the award is cancelled, the  
33 ~~{bond posted or other}~~ security submitted with the notice of appeal  
34 must be returned to the person who ~~{posted the bond or}~~ submitted  
35 the security. If the appeal is rejected and the award is upheld, a  
36 claim may be made against the ~~{bond or other}~~ security by the  
37 Purchasing Division and the using agency to the Hearings  
38 Division of the Department of Administration in an amount equal to  
39 the expenses incurred and other monetary losses suffered by the  
40 Purchasing Division and the using agency because of the  
41 unsuccessful appeal. The hearing officer shall hold a hearing  
42 on the claim in the same manner as prescribed in subsection ~~[4.]~~ 6.  
43 Any money not awarded by the hearing officer must be returned to  
44 the person who ~~{posted the bond or}~~ submitted the security.



1       **Sec. 19.** NRS 100.065 is hereby amended to read as follows:  
2       100.065 1. In lieu of any cash payment or surety bond

3 required as protection for the State of Nevada, the person required to  
4 provide the cash payment or surety bond may deposit with the State  
5 Treasurer, unless a different custodian is named by specific statute:

6       (a) Bonds of the United States or of the State of Nevada of an  
7 actual market value of not less than the amount of the required cash  
8 payment or surety bond;

9       (b) A letter of credit from a bank, savings bank, credit union or  
10 savings and loan association situated in Nevada, which meets the  
11 requirements set for that purpose by the State Treasurer; or

12       (c) A savings certificate, certificate of deposit or investment  
13 certificate of a bank, savings bank, credit union or savings and loan  
14 association situated in Nevada, which must indicate an account of an  
15 amount not less than the amount of the required cash payment or  
16 surety bond and, except as otherwise provided by specific statute,  
17 that the amount is not available for withdrawal except by direct  
18 order of the State Treasurer.

19       2. Whenever a savings certificate, certificate of deposit or  
20 investment certificate is deposited as provided in this section,  
21 interest earned on the certificate accrues to the account of the  
22 depositor.

23       3. If a surety bond is provided as protection for the State of  
24 Nevada, *except as otherwise provided in sections 2, 11 and 30 of*  
25 *this act and NRS 332.068, 332.105, 333.355, 333.360, 333.370,*  
26 *338.142, 339.025, 408.337, 408.357, 408.367,* the bond must be  
27 issued by an insurer who is authorized or otherwise allowed under  
28 title 57 of NRS to issue such a bond pursuant to title 57 of NRS.

29       **Sec. 20.** NRS 287.0415 is hereby amended to read as follows:

30       287.0415 1. A majority of the members of the Board  
31 constitutes a quorum for the transaction of business.

32       2. The Governor shall designate one of the members of the  
33 Board to serve as the Chair.

34       3. The Board shall meet at least once every calendar quarter  
35 and at other times upon the call of the Chair.

36       4. The Board may meet in closed session:

37       (a) To discuss matters relating to personnel;

38       (b) With investment counsel to plan future investments or  
39 establish investment objectives and policies;

40       (c) With legal counsel to receive advice upon claims or suits by  
41 or against the Program;

42       (d) To prepare a request for a proposal or other solicitation for  
43 bids to be released by the Board for competitive bidding; or

44       (e) As otherwise provided pursuant to chapter 241 of NRS.



1 5. Except as otherwise provided in this subsection, if the Board  
2 causes a meeting to be transcribed by a court reporter who is  
3 certified pursuant to chapter 656 of NRS, the Board shall post a  
4 transcript of the meeting on its Internet website not later than 30  
5 days after the meeting. The Board shall post a transcript of a closed  
6 session of the Board on its Internet website when the Board  
7 determines that the matters discussed no longer require  
8 confidentiality and, if applicable, the person whose character,  
9 conduct, competence or health was discussed in the closed session  
10 has consented to the posting.

11 6. The Board may appoint such advisory committees as it  
12 deems necessary to assist the Board in carrying out its duties  
13 pursuant to NRS 287.0402 to 287.049, inclusive.

14 7. As used in this section, "request for a proposal" has the  
15 meaning ascribed to it in ~~subsection 8 of~~ NRS 333.020.

16 **Sec. 21.** NRS 309.340 is hereby amended to read as follows:

17 309.340 1. After adopting a plan for such works as are  
18 proposed, or in conjunction with the issuance of general obligation  
19 bonds (but either before or after such issuance), the board of  
20 directors shall cause notice to be given by the secretary by  
21 publication thereof for not less than 2 weeks in a newspaper  
22 published in the county in which the district was organized, and in  
23 such other publications or newspapers as it may deem advisable,  
24 calling for bids for the construction of such works or any portion  
25 thereof. If less than the whole work is advertised, then the portions  
26 so advertised must be particularly described in such notice. The  
27 notice must set forth that the plans and specifications can be seen at  
28 the office of the board, that the board will receive sealed proposals  
29 for the construction of the proposed works, and that a contract  
30 therefor will be let to the lowest responsible bidder, subject to the  
31 right of the board to reject any and all bids, stating the time and  
32 place for opening the bids.

33 2. At the time and place appointed the bids must be opened in  
34 public and as soon as convenient thereafter the board shall accept a  
35 bid or bids and contract for the construction of the works, either in  
36 portions or as a whole, or it may reject any and all bids and  
37 readvertise for proposals.

38 3. In case of necessity, the board of directors, by unanimous  
39 vote of those present at any regular or special meeting, may contract  
40 for the construction or repair of any part of the system of works, and  
41 may in the ordinary course of business purchase any necessary  
42 machinery or materials in such amount in one transaction as will not  
43 exceed an amount equal to 5 cents for each acre of land in the  
44 district.



1 4. If a contract is not subject to the provisions of chapter 408 of  
2 NRS and provides for work exceeding \$35,000, any person to whom  
3 such a contract may be awarded shall furnish to the district a  
4 performance ~~bond~~ security and a payment ~~bond~~ security as  
5 provided in NRS 339.025. The work must be done under the  
6 direction and to the satisfaction of the engineer employed by the  
7 district and approved by the board.

8 **Sec. 22.** NRS 338.1377 is hereby amended to read as follows:

9 338.1377 Except as otherwise provided in NRS 338.1382, if a  
10 governing body that sponsors or finances a public work elects to  
11 award contracts for public works pursuant to the provisions of NRS  
12 338.1377 to 338.139, inclusive, the governing body shall adopt the  
13 following criteria for determining whether a person who has applied  
14 pursuant to NRS 338.1379 is qualified to bid on contracts for public  
15 works of the local government:

16 1. Whether the applicant possesses a valid contractor's license  
17 of a class corresponding to the work to be required by the local  
18 government;

19 2. Whether the applicant has the ability to obtain the necessary  
20 ~~bonding~~ security for the work to be required by the local  
21 government;

22 3. Whether the applicant has successfully completed an  
23 appropriate number of projects as determined by the local  
24 government, but not to exceed five projects, during the 5 years  
25 immediately preceding the date of application of similar size, scope  
26 or type as the work to be required by the local government;

27 4. Whether the principal personnel employed by the applicant  
28 have the necessary professional qualifications and experience for the  
29 work to be required by the local government;

30 5. Whether the applicant has breached any contracts with a  
31 public agency or person in this State or any other state during the 5  
32 years immediately preceding the date of application;

33 6. Whether the applicant has been disqualified from being  
34 awarded a contract pursuant to NRS 338.017 or 338.13895;

35 7. Whether the applicant has been convicted of a violation for  
36 discrimination in employment during the 2 years immediately  
37 preceding the date of application;

38 8. Whether the applicant has the ability to obtain and maintain  
39 insurance coverage for public liability and property damage within  
40 limits sufficient to protect the applicant and all the subcontractors of  
41 the applicant from claims for personal injury, accidental death and  
42 damage to property that may arise in connection with the work to be  
43 required by the local government;

44 9. Whether the applicant has established a safety program that  
45 complies with the requirements of chapter 618 of NRS;



1 10. Whether the applicant has been disciplined or fined by the  
2 State Contractors' Board or another state or federal agency for  
3 conduct that relates to the ability of the applicant to perform the  
4 work to be required by the local government;

5 11. Whether, during the 5 years immediately preceding the date  
6 of application, the applicant has filed as a debtor under the  
7 provisions of the United States Bankruptcy Code;

8 12. Whether the application of the applicant is truthful and  
9 complete; and

10 13. Whether, during the 5 years immediately preceding the date  
11 of application, the applicant has, as a result of causes within the  
12 control of the applicant or a subcontractor or supplier of the  
13 applicant, failed to perform any contract:

14 (a) In the manner specified by the contract and any change  
15 orders initiated or approved by the person or governmental entity  
16 that awarded the contract or its authorized representative;

17 (b) Within the time specified by the contract unless extended by  
18 the person or governmental entity that awarded the contract or its  
19 authorized representative; or

20 (c) For the amount of money specified in the contract or as  
21 modified by any change orders initiated or approved by the person  
22 or governmental entity that awarded the contract or its authorized  
23 representative.

24 ➤ Evidence of the failures described in this subsection may include,  
25 without limitation, the assessment of liquidated damages against the  
26 applicant, the forfeiture of any ~~bonds~~ security posted by the  
27 applicant, an arbitration award granted against the applicant or a  
28 decision by a court of law against the applicant.

29 **Sec. 23.** NRS 338.141 is hereby amended to read as follows:

30 338.141 1. Except as otherwise provided in NRS 338.1727,  
31 each bid submitted to a public body for any public work to which  
32 paragraph (a) of subsection 1 of NRS 338.1385, paragraph (a) of  
33 subsection 1 of NRS 338.143 or NRS 408.327 applies, must  
34 include:

35 (a) If the public body provides a list of the labor or portions of  
36 the public work which are estimated by the public body to exceed 3  
37 percent of the estimated cost of the public work, the name of each  
38 first tier subcontractor who will provide such labor or portion of the  
39 work on the public work which is estimated to exceed 3 percent of  
40 the estimated cost of the public work; or

41 (b) If the public body does not provide a list of the labor or  
42 portions of the public work which are estimated by the public body  
43 to exceed 3 percent of the estimated cost of the public work, the  
44 name of each first tier subcontractor who will provide labor or a  
45 portion of the work on the public work to the prime contractor for



1 which the first tier subcontractor will be paid an amount exceeding 5  
2 percent of the prime contractor's total bid. If the bid is submitted  
3 pursuant to this paragraph, within 2 hours after the completion of  
4 the opening of the bids, the contractors who submitted the three  
5 lowest bids must submit a list containing:

6 (1) The name of each first tier subcontractor who will  
7 provide labor or a portion of the work on the public work to the  
8 prime contractor for which the first tier subcontractor will be paid an  
9 amount exceeding \$250,000.

10 (2) If any one of the contractors who submitted one of the  
11 three lowest bids will employ a first tier subcontractor who will  
12 provide labor or a portion of the work on the public work to the  
13 prime contractor for which the first tier subcontractor will not be  
14 paid an amount exceeding \$250,000, the name of each first tier  
15 subcontractor who will provide labor or a portion of the work on the  
16 public work to the prime contractor for which the first tier  
17 subcontractor will be paid 1 percent of the prime contractor's total  
18 bid or \$50,000, whichever is greater.

19 (3) For each first tier subcontractor whose name is listed  
20 pursuant to subparagraph (1) or (2), the number of the license issued  
21 to the first tier subcontractor pursuant to chapter 624 of NRS.

22 2. The lists required by subsection 1 must include a description  
23 of the labor or portion of the work which each first tier  
24 subcontractor named in the list will provide to the prime contractor.

25 3. A prime contractor shall include his or her name on a list  
26 required by paragraph (a) or (b) of subsection 1. If the prime  
27 contractor will perform any work which is more than 1 percent of  
28 the prime contractor's total bid and which is not being performed by  
29 a subcontractor listed pursuant to paragraph (a) or (b) of subsection  
30 1, the prime contractor shall also include on the list:

31 (a) A description of the labor or portion of the work that the  
32 prime contractor will perform; or

33 (b) A statement that the prime contractor will perform all work  
34 other than that being performed by a subcontractor listed pursuant to  
35 paragraph (a) or (b) of subsection 1.

36 4. Except as otherwise provided in this subsection, if a  
37 contractor:

38 (a) Fails to submit the list within the required time; or

39 (b) Submits a list that includes the name of a subcontractor who,  
40 at the time of the submission of the list, is on disqualified status with  
41 the Division pursuant to NRS 338.1376,

42 ➡ the contractor's bid shall be deemed not responsive. A  
43 contractor's bid shall not be deemed not responsive on the grounds  
44 that the contractor submitted a list that includes the name of a  
45 subcontractor who, at the time of the submission of the list, is on



1 disqualified status with the Division pursuant to NRS 338.1376 if  
2 the contractor, before the award of the contract, provides an  
3 acceptable replacement subcontractor in the manner set forth in  
4 subsection 1 or 2 of NRS 338.13895.

5 5. A prime contractor shall not substitute a subcontractor for  
6 any subcontractor who is named in the bid, unless:

7 (a) The public body or its authorized representative objects to  
8 the subcontractor, requests in writing a change in the subcontractor  
9 and pays any increase in costs resulting from the change.

10 (b) The substitution is approved by the public body or its  
11 authorized representative. The substitution must be approved if the  
12 public body or its authorized representative determines that:

13 (1) The named subcontractor, after having a reasonable  
14 opportunity, fails or refuses to execute a written contract with the  
15 contractor which was offered to the named subcontractor with the  
16 same general terms that all other subcontractors on the project were  
17 offered;

18 (2) The named subcontractor files for bankruptcy or becomes  
19 insolvent;

20 (3) The named subcontractor fails or refuses to perform his  
21 or her subcontract within a reasonable time or is unable to furnish  
22 ~~the~~ performance ~~bond~~ security and payment ~~bond~~ security  
23 pursuant to NRS 339.025; or

24 (4) The named subcontractor is not properly licensed to  
25 provide that labor or portion of the work.

26 (c) If the public body awarding the contract is a governing body,  
27 the public body or its authorized representative, in awarding the  
28 contract pursuant to NRS 338.1375 to 338.139, inclusive:

29 (1) Applies such criteria set forth in NRS 338.1377 as are  
30 appropriate for subcontractors and determines that the subcontractor  
31 does not meet that criteria; and

32 (2) Requests in writing a substitution of the subcontractor.

33 6. If a prime contractor substitutes a subcontractor for any  
34 subcontractor who is named in the bid without complying with the  
35 provisions of subsection 5, the prime contractor shall forfeit, as a  
36 penalty to the public body that awarded the contract, an amount  
37 equal to 1 percent of the total amount of the contract.

38 7. If a prime contractor, after the submission of the bid,  
39 substitutes a subcontractor to perform the work indicated pursuant to  
40 subsection 3 that the prime contractor would perform, the prime  
41 contractor shall forfeit as a penalty to the public body that awarded  
42 the contract, the lesser of, and excluding any amount of the contract  
43 that is attributable to change orders:

44 (a) An amount equal to 2.5 percent of the total amount of the  
45 contract; or





1 (b) An amount equal to 35 percent of the estimate by the  
2 engineer of the cost of the work the prime contractor indicated  
3 pursuant to subsection 3 that he or she would perform on the public  
4 work.

5 8. As used in this section:

6 (a) "First tier subcontractor" means a subcontractor who  
7 contracts directly with a prime contractor to provide labor, materials  
8 or services for a construction project.

9 (b) "General terms" means the terms and conditions of a  
10 contract that set the basic requirements for a public work and apply  
11 without regard to the particular trade or specialty of a subcontractor,  
12 but does not include any provision that controls or relates to the  
13 specific portion of the public work that will be completed by a  
14 subcontractor, including, without limitation, the materials to be used  
15 by the subcontractor or other details of the work to be performed by  
16 the subcontractor.

17 **Sec. 24.** NRS 338.142 is hereby amended to read as follows:

18 338.142 1. A person who bids on a contract may file a notice  
19 of protest regarding the awarding of the contract with the authorized  
20 representative designated by the public body within 5 business days  
21 after the date the recommendation to award a contract is issued by  
22 the public body or its authorized representative.

23 2. The notice of protest must include a written statement  
24 setting forth with specificity the reasons the person filing the notice  
25 believes the applicable provisions of law were violated.

26 3. A person filing a notice of protest may be required by the  
27 public body or its authorized representative, at the time the notice of  
28 protest is filed, to ~~post a~~ *provide security. A person required to*  
29 *provide security may provide any of the following:*

30 (a) A bond ~~with a~~ *executed by a* good and solvent surety  
31 authorized to do business in this state ~~for submit other security, in a~~  
32 ~~form~~;

33 (b) *Subject to the provisions of sections 30, 31 and 32 of this*  
34 *act, a bond or other security executed by an individual security; or*

35 (c) *Any other security that is* approved by the public body ~~to~~  
36 ~~the~~ *or its authorized representative, and in an amount equal to the*  
37 *amount of the required security, including, without limitation, any*  
38 *one or a combination of the following paid or issued by the*  
39 *person:*

40 (1) *Cash;*

41 (2) *A cash equivalent held with a financial institution that*  
42 *is federally insured or insured by a private insurer approved*  
43 *pursuant to NRS 678.755;*

44 (3) *A money order;*



1 (4) *A certified check or cashier's or similar bank officer's*  
2 *check;*

3 (5) *A security interest approved by the public body or its*  
4 *authorized representative; or*

5 (6) *An irrevocable letter of credit, issued or confirmed by a*  
6 *financial institution that is federally insured or insured by a*  
7 *private insurer approved pursuant to NRS 678.755 approved by*  
8 *the public body or its authorized representative.*

9 4. *The public body or its authorized representative shall*  
10 *determine the value of any security furnished pursuant to this*  
11 *section.*

12 5. *The public body ~~[who]~~ or its authorized representative shall*  
13 *hold the ~~[bond or other]~~ security provided pursuant to subsection 3*  
14 *until a determination is made on the protest. ~~[A bond posted or~~*  
15 *~~other]~~ The security submitted with a notice of protest must be in an*  
16 *amount equal to the lesser of:*

17 (a) *Twenty-five percent of the total value of the bid submitted*  
18 *by the person filing the notice of protest; or*

19 (b) *Two hundred fifty thousand dollars.*

20 ~~[4.]~~ 6. *A notice of protest filed in accordance with the*  
21 *provisions of this section operates as a stay of action in relation to*  
22 *the awarding of any contract until a determination is made by the*  
23 *public body on the protest.*

24 ~~[5.]~~ 7. *A person who makes an unsuccessful bid may not seek*  
25 *any type of judicial intervention until the public body has made a*  
26 *determination on the protest and awarded the contract.*

27 ~~[6.]~~ 8. *Neither a public body nor any authorized representative*  
28 *of the public body is liable for any costs, expenses, attorney's fees,*  
29 *loss of income or other damages sustained by a person who makes a*  
30 *bid, whether or not the person files a notice of protest pursuant to*  
31 *this section.*

32 ~~[7.]~~ 9. *If the protest is upheld, the ~~[bond posted or other]~~*  
33 *security submitted with the notice of protest must be returned to the*  
34 *person who ~~[posted the bond or]~~ submitted the security. If the*  
35 *protest is rejected, a claim may be made against the ~~[bond or other]~~*  
36 *security by the public body in an amount equal to the expenses*  
37 *incurred by the public body because of the unsuccessful protest.*  
38 *Any money remaining after the claim has been satisfied must be*  
39 *returned to the person who ~~[posted the bond or]~~ submitted the*  
40 *security.*

41 10. *As used in this section, "individual surety" has the*  
42 *meaning ascribed to it in NRS 339.015.*

43 **Sec. 25.** NRS 338.1692 is hereby amended to read as follows:

44 338.1692 1. A public body or its authorized representative  
45 shall advertise for proposals for a construction manager at risk in a



1 newspaper qualified pursuant to chapter 238 of NRS that is  
2 published in the county where the public work will be performed. If  
3 no qualified newspaper is published in the county where the public  
4 work will be performed, the required advertisement must be  
5 published in some qualified newspaper that is printed in the State of  
6 Nevada and has a general circulation in the county.

7 2. A request for proposals published pursuant to subsection 1  
8 must include, without limitation:

9 (a) A description of the public work;

10 (b) An estimate of the cost of construction;

11 (c) A description of the work that the public body expects a  
12 construction manager at risk to perform;

13 (d) The dates on which it is anticipated that the separate phases  
14 of the preconstruction and construction of the public work will  
15 begin and end;

16 (e) The date by which proposals must be submitted to the public  
17 body;

18 (f) If the project is a public work of the State, a statement setting  
19 forth that the construction manager at risk must be qualified to bid  
20 on a public work of the State pursuant to NRS 338.1379 before  
21 submitting a proposal;

22 (g) The name, title, address and telephone number of a person  
23 employed by the public body that an applicant may contact for  
24 further information regarding the public work;

25 (h) A list of the selection criteria and relative weight of the  
26 selection criteria that will be used to rank proposals pursuant to  
27 subsection 2 of NRS 338.1693;

28 (i) A list of the selection criteria and relative weight of the  
29 selection criteria that will be used to rank applicants pursuant to  
30 subsection 7 of NRS 338.1693; and

31 (j) A notice that the proposed form of the contract to assist in the  
32 preconstruction of the public work or to construct the public work,  
33 including, without limitation, the terms and general conditions of the  
34 contract, is available from the public body.

35 3. A proposal must include, without limitation:

36 (a) An explanation of the experience that the applicant has with  
37 projects of similar size and scope in both the public and private  
38 sectors by any delivery method, whether or not that method was the  
39 use of a construction manager at risk, and including, without  
40 limitation, design-build, design-assist, negotiated work or value-  
41 engineered work, and an explanation of the experience that the  
42 applicant has in such projects in Nevada;

43 (b) The contact information for references who have knowledge  
44 of the background, character and technical competence of the  
45 applicant;



1 (c) Evidence of the ability of the applicant to obtain the  
2 necessary ~~[bonding]~~ **security** for the work to be required by the  
3 public body;

4 (d) Evidence that the applicant has obtained or has the ability to  
5 obtain such insurance as may be required by law;

6 (e) A statement of whether the applicant has been:

7 (1) Found liable for breach of contract with respect to a  
8 previous project, other than a breach for legitimate cause, during the  
9 5 years immediately preceding the date of the advertisement for  
10 proposals; and

11 (2) Disqualified from being awarded a contract pursuant to  
12 NRS 338.017, 338.13895, 338.1475 or 408.333;

13 (f) The professional qualifications and experience of the  
14 applicant, including, without limitation, the resume of any employee  
15 of the applicant who will be managing the preconstruction and  
16 construction of the public work;

17 (g) The safety programs established and the safety records  
18 accumulated by the applicant;

19 (h) Evidence that the applicant is licensed as a contractor  
20 pursuant to chapter 624 of NRS;

21 (i) The proposed plan of the applicant to manage the  
22 preconstruction and construction of the public work which sets forth  
23 in detail the ability of the applicant to provide preconstruction  
24 services and to construct the public work and which includes, if the  
25 public work involves predominantly horizontal construction, a  
26 statement that the applicant will perform construction work equal in  
27 value to at least 25 percent of the estimated cost of construction; and

28 (j) If the project is for the design of a public work of the State,  
29 evidence that the applicant is qualified to bid on a public work of the  
30 State pursuant to NRS 338.1379.

31 4. The public body or its authorized representative shall make  
32 available to the public the name of each applicant who submits a  
33 proposal pursuant to this section.

34 **Sec. 26.** NRS 338.16991 is hereby amended to read as  
35 follows:

36 338.16991 1. To be eligible to provide labor, materials or  
37 equipment on a public work, the contract for which a public body  
38 has entered into with a construction manager at risk pursuant to  
39 NRS 338.1696, a subcontractor must be:

40 (a) Licensed pursuant to chapter 624 of NRS; and

41 (b) Qualified pursuant to the provisions of this section to submit  
42 a proposal for the provision of labor, materials or equipment on a  
43 public work.

44 2. Subject to the provisions of subsections 3, 4 and 5, the  
45 construction manager at risk shall determine whether an applicant is



1 qualified to submit a proposal for the provision of labor, materials or  
2 equipment on the public work for the purposes of paragraph (b) of  
3 subsection 1.

4 3. Not earlier than 30 days after a construction manager at risk  
5 has been selected pursuant to NRS 338.1693 and not later than 10  
6 working days before the date by which an application must be  
7 submitted, the construction manager at risk shall advertise for  
8 applications from subcontractors in a newspaper qualified pursuant  
9 to chapter 238 of NRS that is published in the county where the  
10 public work will be performed. If no qualified newspaper is  
11 published in the county where the public work will be performed,  
12 the advertisement must be published in some qualified newspaper  
13 that is printed in the State of Nevada and has a general circulation in  
14 the county. The construction manager at risk may accept an  
15 application from a subcontractor before advertising for applications  
16 pursuant to this subsection.

17 4. The criteria to be used by the construction manager at risk  
18 when determining whether an applicant is qualified to submit a  
19 proposal for the provision of labor, materials or equipment must  
20 include, and must be limited to:

21 (a) The monetary limit placed on the license of the applicant by  
22 the State Contractors' Board pursuant to NRS 624.220;

23 (b) The financial ability of the applicant to provide the labor,  
24 materials or equipment required on the public work;

25 (c) Whether the applicant has the ability to obtain the necessary  
26 ~~bonding~~ security for the work required by the public body;

27 (d) The safety programs established and the safety records  
28 accumulated by the applicant;

29 (e) Whether the applicant has breached any contracts with a  
30 public body or person in this State or any other state during the 5  
31 years immediately preceding the application;

32 (f) Whether the applicant has been disciplined or fined by the  
33 State Contractors' Board or another state or federal agency for  
34 conduct that relates to the ability of the applicant to perform the  
35 public work;

36 (g) The performance history of the applicant concerning other  
37 recent, similar public or private contracts, if any, completed by the  
38 applicant in Nevada;

39 (h) The principal personnel of the applicant;

40 (i) Whether the applicant has been disqualified from the award  
41 of any contract pursuant to NRS 338.017 or 338.13895; and

42 (j) The truthfulness and completeness of the application.

43 5. The public body or its authorized representative shall ensure  
44 that each determination made pursuant to subsection 2 is made  
45 subject to the provisions of subsection 4.



1 6. The construction manager at risk shall notify each applicant  
2 and the public body in writing of a determination made pursuant to  
3 subsection 2.

4 7. A determination made pursuant to subsection 2 that an  
5 applicant is not qualified may be appealed pursuant to NRS  
6 338.1381 to the public body with whom the construction manager at  
7 risk has entered into a contract for the construction of the public  
8 work.

9 **Sec. 27.** NRS 338.16995 is hereby amended to read as  
10 follows:

11 338.16995 1. If a public body enters into a contract with a  
12 construction manager at risk for the construction of a public work  
13 pursuant to NRS 338.1696, the construction manager at risk may  
14 enter into a subcontract for the provision of labor, materials and  
15 equipment necessary for the construction of the public work only as  
16 provided in this section.

17 2. The provisions of this section apply only to a subcontract for  
18 which the estimated value is at least 1 percent of the total cost of the  
19 public work or \$50,000, whichever is greater.

20 3. After the design and schedule for the construction of the  
21 public work is sufficiently detailed and complete to allow a  
22 subcontractor to submit a meaningful and responsive proposal, and  
23 not later than 21 days before the date by which a proposal for the  
24 provision of labor, materials or equipment by a subcontractor must  
25 be submitted, the construction manager at risk shall notify in writing  
26 each subcontractor who was determined pursuant to NRS 338.16991  
27 to be qualified to submit such a proposal of a request for such  
28 proposals. A copy of the notice required pursuant to this subsection  
29 must be provided to the public body.

30 4. The notice required pursuant to subsection 3 must include,  
31 without limitation:

32 (a) A description of the design for the public work and a  
33 statement indicating where a copy of the documents relating to that  
34 design may be obtained;

35 (b) A description of the type and scope of labor, equipment and  
36 materials for which subcontractor proposals are being sought;

37 (c) The dates on which it is anticipated that construction of the  
38 public work will begin and end;

39 (d) If a preproposal meeting regarding the scope of the work to  
40 be performed by the subcontractor is to be held, the date, time and  
41 place at which the preproposal meeting will be held;

42 (e) The date and time by which proposals must be received, and  
43 to whom they must be submitted;

44 (f) The date, time and place at which proposals will be opened  
45 for evaluation;



1 (g) A description of the ~~[bonding]~~ *security* and insurance  
2 requirements for subcontractors;

3 (h) Any other information reasonably necessary for a  
4 subcontractor to submit a responsive proposal; and

5 (i) A statement in substantially the following form:

6  
7 Notice: For a proposal for a subcontract on the public work to  
8 be considered:

9 1. The subcontractor must be licensed pursuant to  
10 chapter 624 of NRS;

11 2. The proposal must be timely received;

12 3. If a preproposal meeting regarding the scope of the  
13 work to be performed by the subcontractor is held, the  
14 subcontractor must attend the preproposal meeting; and

15 4. The subcontractor may not modify the proposal after  
16 the date and time the proposal is received.

17  
18 5. A subcontractor may not modify a proposal after the date  
19 and time the proposal is received.

20 6. To be considered responsive, a proposal must:

21 (a) Be timely received by the construction manager at risk; and

22 (b) Substantially and materially conform to the details and  
23 requirements included in the proposal instructions and for the  
24 finalized bid package for the public work, including, without  
25 limitation, details and requirements affecting price and performance.

26 7. The opening of the proposals must be attended by an  
27 authorized representative of the public body. The public body may  
28 require the architect or engineer responsible for the design of the  
29 public work to attend the opening of the proposals. The opening of  
30 the proposals is not otherwise open to the public.

31 8. At the time the proposals are opened, the construction  
32 manager at risk shall compile and provide to the public body or its  
33 authorized representative a list that includes, without limitation, the  
34 name and contact information of each subcontractor who submits a  
35 timely proposal.

36 9. Not more than 10 working days after opening the proposals  
37 and before the construction manager at risk submits a guaranteed  
38 maximum price, a fixed price or a fixed price plus reimbursement  
39 pursuant to NRS 338.1696, the construction manager at risk shall:

40 (a) Evaluate the proposals and determine which proposals are  
41 responsive.

42 (b) Select the subcontractor who submits the proposal that the  
43 construction manager at risk determines is the best proposal. Subject  
44 to the provisions of subparagraphs (1), (2) and (3), if only one  
45 subcontractor submits a proposal, the construction manager at risk





1 may select that subcontractor. The subcontractor must be selected  
2 from among those:

3 (1) Who attended the preproposal meeting regarding the  
4 scope of the work to be performed by the subcontractor, if such a  
5 preproposal meeting was held;

6 (2) Who submitted a responsive proposal; and

7 (3) Whose names are included on the list compiled and  
8 provided to the public body or its authorized representative pursuant  
9 to subsection 8.

10 (c) Inform the public body or its authorized representative which  
11 subcontractor has been selected.

12 10. The public body or its authorized representative shall  
13 ensure that the evaluation of proposals and selection of  
14 subcontractors are done pursuant to the provisions of this section  
15 and regulations adopted by the State Public Works Board.

16 11. A subcontractor selected pursuant to subsection 9 need not  
17 be selected by the construction manager at risk solely on the basis of  
18 lowest price.

19 12. Except as otherwise provided in subsections 13 and 15, the  
20 construction manager at risk shall enter into a subcontract with a  
21 subcontractor selected pursuant to subsection 9 to provide the labor,  
22 materials or equipment described in the request for proposals.

23 13. A construction manager at risk shall not substitute a  
24 subcontractor for any subcontractor selected pursuant to subsection  
25 9 unless:

26 (a) The public body or its authorized representative objects to  
27 the subcontractor, requests in writing a change in the subcontractor  
28 and pays any increase in costs resulting from the change; or

29 (b) The substitution is approved by the public body after the  
30 selected subcontractor:

31 (1) Files for bankruptcy or becomes insolvent;

32 (2) After having a reasonable opportunity, fails or refuses to  
33 execute a written contract with the construction manager at risk  
34 which was offered to the selected subcontractor with the same  
35 general terms that all other subcontractors on the project were  
36 offered;

37 (3) Fails or refuses to perform the subcontract within a  
38 reasonable time;

39 (4) Is unable to furnish ~~the~~ performance ~~bond~~ security and  
40 payment ~~bond~~ security pursuant to NRS 339.025, if required for  
41 the public work; or

42 (5) Is not properly licensed to provide that labor or portion of  
43 the work.

44 14. If a construction manager at risk substitutes a subcontractor  
45 for any subcontractor selected pursuant to subsection 9 without



1 complying with the provisions of subsection 13, the construction  
2 manager at risk shall forfeit, as a penalty to the public body, an  
3 amount equal to 1 percent of the total amount of the contract.

4 15. If a construction manager at risk does not select a  
5 subcontractor pursuant to subsection 9 to perform a portion of work  
6 on a public work, the construction manager at risk shall notify the  
7 public body that the construction manager at risk intends to perform  
8 that portion of work. If, after providing such notification, the  
9 construction manager at risk substitutes a subcontractor to perform  
10 the work, the construction manager at risk shall forfeit, as a penalty  
11 to the public body, the lesser of, and excluding any amount of the  
12 contract that is attributable to change orders:

13 (a) An amount equal to 2.5 percent of the total amount of the  
14 contract; or

15 (b) An amount equal to 35 percent of the estimate by the  
16 engineer of the cost of the work the construction manager at risk  
17 selected himself or herself to perform on the public work.

18 16. The construction manager at risk shall make available to  
19 the public the name of each subcontractor who submits a proposal.

20 17. If a public work is being constructed in phases, and a  
21 construction manager at risk selects a subcontractor pursuant to  
22 subsection 9 for the provision of labor, materials or equipment for  
23 any phase of that construction, the construction manager at risk may  
24 select that subcontractor for the provision of labor, materials or  
25 equipment for any other phase of the construction without following  
26 the requirements of subsections 3 to 11, inclusive.

27 18. As used in this section, "general terms" has the meaning  
28 ascribed to it in NRS 338.141.

29 **Sec. 28.** NRS 338.1721 is hereby amended to read as follows:

30 338.1721 To qualify to participate in a project for the design  
31 and construction of a public work, a design-build team must:

32 1. Have the ability to obtain ~~[a]~~ performance ~~[bond]~~ *security*  
33 and payment ~~[bond]~~ *security* as required pursuant to NRS 339.025;

34 2. Have the ability to obtain insurance covering general  
35 liability and liability for errors and omissions;

36 3. Not have been found liable for breach of contract with  
37 respect to a previous project, other than a breach for legitimate  
38 cause, during the 5 years immediately preceding the date of the  
39 advertisement for preliminary proposals;

40 4. Not have been disqualified from being awarded a contract  
41 pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333;

42 5. Ensure that the members of the design-build team possess  
43 the licenses and certificates required to carry out the functions of  
44 their respective professions within this State; and



1 6. If the project is for the design and construction of a public  
2 work of the State, ensure that the prime contractor is qualified to bid  
3 on a public work of the State pursuant to NRS 338.1379.

4 **Sec. 29.** Chapter 339 of NRS is hereby amended by adding  
5 thereto the provisions set forth as sections 30, 31 and 32 of this act.

6 **Sec. 30.** *A bond or security required by or pursuant to NRS  
7 338.142, 339.025, 408.337, 408.357 or 408.367 may be executed by  
8 an individual surety only if:*

9 *1. The individual surety transacts business only through an  
10 insurance company that is licensed by the Division of Insurance of  
11 the Department of Business and Industry and approved to do  
12 business in this State.*

13 *2. The person on whose behalf the bond or security is  
14 executed provides with the bid, on a form approved by the State  
15 Public Works Board, an affidavit from the individual surety  
16 attesting to compliance with the provisions of this chapter or  
17 chapter 338 or 408 of NRS, as applicable.*

18 *3. The individual surety submits to the contracting body a  
19 Uniform Commercial Code 1 (UCCI) form for each asset pledged  
20 pursuant to subsection 4.*

21 *4. Subject to the provisions of section 31 of this act, the  
22 individual surety pledges one or more of the following assets in an  
23 amount equal to or greater than the amount of the required  
24 security:*

25 *(a) Cash or a certificate of deposit;*

26 *(b) A cash equivalent held with a financial institution that is  
27 federally insured or insured by a private insurer approved  
28 pursuant to NRS 678.755;*

29 *(c) Assets for which the individual surety can demonstrate a  
30 security interest, including, without limitation, an irrevocable trust  
31 receipt that is issued by a financial institution that is federally  
32 insured or insured by a private insurer approved pursuant to NRS  
33 678.755, or by an independent trustee in the name of the  
34 contracting body, and that includes a payout clause in the event  
35 that any default by the individual surety cannot otherwise be  
36 remedied;*

37 *(d) United States Government securities at market value;*

38 *(e) Stocks and bonds that are:*

39 *(1) Traded on a national securities exchange registered  
40 with the Securities and Exchange Commission;*

41 *(2) Accompanied by certificates issued in the name of the  
42 individual surety; and*

43 *(3) Pledged at an amount not more than 90 percent of the  
44 lowest price of the stocks and bonds during the 12-month period*



1 *immediately preceding the execution of the security by the*  
2 *individual surety;*

3 *(f) Real property located in this State that:*

4 *(1) Is owned by the bidder or contractor, as applicable, or*  
5 *the individual surety in fee simple or is owned by cotenants who*  
6 *have entered into a binding agreement to pledge the real property*  
7 *pursuant to this section; and*

8 *(2) Is pledged by the granting of a mortgage or deed of trust*  
9 *on the real property located in this State, provided that:*

10 *(I) The face amount of the mortgage or deed of trust*  
11 *does not exceed 75 percent of the value of the interest in the real*  
12 *property of the bidder or contractor, as applicable, or individual*  
13 *surety providing the mortgage or deed of trust; and*

14 *(II) The mortgage or deed of trust must be recorded by*  
15 *the contracting body in the office of the county recorder of the*  
16 *county in which the real property is located; or*

17 *(g) An irrevocable letter of credit that:*

18 *(1) Is issued or confirmed by a financial institution that is*  
19 *federally insured or insured by a private insurer approved*  
20 *pursuant to NRS 678.755 in the name of the contracting body; and*

21 *(2) Includes a payout clause in the event that any default by*  
22 *the individual surety cannot otherwise be remedied.*

23 **Sec. 31.** *An asset pledged pursuant to subsection 4 of section*  
24 *30 of this act:*

25 *1. Except as otherwise provided in subsection 2, may be*  
26 *pledged as a security only for the purposes of section 30 of this*  
27 *act; and*

28 *2. May not be pledged for any other security or contract*  
29 *inside or outside this State unless and until it is released by the*  
30 *contracting body.*

31 **Sec. 32.** *The provisions of this section and sections 30 and 31*  
32 *of this act authorize an individual surety to execute bonds and*  
33 *otherwise provide security only pursuant to NRS 338.142, 339.025,*  
34 *408.337, 408.357 and 408.367 and sections 30 and 31 of this act.*

35 **Sec. 33.** NRS 339.015 is hereby amended to read as follows:

36 339.015 As used in this chapter:

37 1. "Claimant" includes a natural person, firm, partnership,  
38 association or corporation.

39 2. "Contracting body" means the State, county, city, town,  
40 school district, or any public agency of the State or its political  
41 subdivisions which has authority to contract for the construction,  
42 alteration or repair of any public building or other public work or  
43 public improvement.

44 3. "Individual surety" means a natural person who is not an  
45 insurer, as that term is defined in NRS 679A.100, and who pledges



1 *his or her personal property or assets to guarantee the*  
2 *performance of a contract or payment pursuant to a contract.*

3 **Sec. 34.** NRS 339.025 is hereby amended to read as follows:

4 339.025 1. Before any contract, except one subject to the  
5 provisions of chapter 408 of NRS, exceeding \$100,000 for any  
6 project for the new construction, repair or reconstruction of any  
7 public building or other public work or public improvement  
8 of any contracting body is awarded to any contractor, the contractor  
9 shall furnish to the contracting body the following ~~{bonds}~~  
10 *securities* which become binding upon the award of the contract to  
11 the contractor:

12 (a) ~~{A performance bond}~~ *Performance security* in an amount to  
13 be fixed by the contracting body, but not less than 50 percent of the  
14 contract amount, conditioned upon the faithful performance of the  
15 contract in accordance with the plans, specifications and conditions  
16 of the contract. The ~~{bond}~~ *security* must be solely for the protection  
17 of the contracting body which awarded the contract.

18 (b) ~~{A payment bond}~~ *Payment security* in an amount to be  
19 fixed by the contracting body, but not less than 50 percent of the  
20 contract amount. The ~~{bond}~~ *security* must be solely for the  
21 protection of claimants supplying labor or materials to the contractor  
22 to whom the contract was awarded, or to any of his or her  
23 subcontractors, in the prosecution of the work provided for in such  
24 contract.

25 2. If a general contractor has been awarded a contract, except  
26 one subject to the provisions of chapter 408 of NRS, by the State  
27 Public Works Division of the Department of Administration for any  
28 project for new construction, repair or reconstruction of any public  
29 building or other public work or public improvement, each of the  
30 subcontractors of the general contractor who will perform work on  
31 the contract that exceeds \$50,000 or 1 percent of the proposed  
32 project, whichever amount is greater, shall furnish ~~{a bond}~~ *security*  
33 to the Division in an amount to be fixed by the Division.

34 3. ~~{Each of the bonds}~~ *Except as otherwise provided in*  
35 *subsection 4, security* required pursuant to this section must be  
36 ~~{executed}~~ :

37 (a) *A bond executed* by one or more surety companies  
38 authorized to do business in the State of Nevada ~~{}~~ ;

39 (b) *Subject to the provisions of sections 30, 31 and 32 of this*  
40 *act, a bond or other security executed by an individual surety; or*

41 (c) *Any other form of security that is approved by the*  
42 *contracting body and in an amount equal to the amount of the*  
43 *required security, including, without limitation, any one or a*  
44 *combination of the following paid or issued by the contractor:*

45 (1) *Cash;*



1 (2) A cash equivalent held with a financial institution that  
2 is federally insured or insured by a private insurer approved  
3 pursuant to NRS 678.755;

4 (3) A money order;

5 (4) A certified check or cashier's or similar bank officer's  
6 check;

7 (5) A security interest approved by the contracting body; or

8 (6) An irrevocable letter of credit, issued or confirmed by a  
9 financial institution that is federally insured or insured by a  
10 private insurer approved pursuant to NRS 678.755 approved by  
11 the contracting body.

12 4. A contracting body may accept performance security  
13 required pursuant to this section that includes the granting of a  
14 mortgage or deed of trust on real property located in this State if:

15 (a) The face amount of the mortgage or deed of trust does not  
16 exceed 75 percent of the value of the interest in the real property  
17 of the bidder or contractor providing the mortgage or deed of trust  
18 as performance security; and

19 (b) The mortgage or deed of trust is recorded by the  
20 contracting body in the office of the county recorder of the county  
21 in which the real property is located.

22 5. The contracting body shall determine the value of any  
23 security offered pursuant to this section.

24 6. If the contracting body is the State of Nevada or any officer,  
25 employee, board, bureau, commission, department, agency or  
26 institution thereof, the  ~~bonds~~ security must be payable to *or*  
27 *deposited with, as applicable*, the State of Nevada. If the contracting  
28 body is other than one of those enumerated in this subsection, the  
29  ~~bonds~~ security must be payable to *or deposited with, as*  
30 *applicable*, the other contracting body.

31 ~~4.~~ 7. Each ~~of the bonds~~ security must be filed *or deposited*  
32 in the office of the contracting body which awarded the contract for  
33 which the  ~~bonds were~~ security is given.

34 ~~5.~~ 8. This section does not prohibit a contracting body from  
35 requiring bonds  ~~or~~ *or other security*.

36 **Sec. 35.** NRS 339.035 is hereby amended to read as follows:

37 339.035 1. Subject to the provisions of subsection 2, any  
38 claimant who has performed labor or furnished material in the  
39 prosecution of the work provided for in any contract for which  ~~a~~  
40 payment  ~~bond~~ security has been given pursuant to the provisions  
41 of subsection 1 of NRS 339.025, and who has not been paid in full  
42 before the expiration of 90 days after the date on which the claimant  
43 performed the last of such labor or furnished the last of such  
44 materials for which the claimant claims payment, may bring an  
45 action on such payment  ~~bond~~ security in his or her own name to



1 recover any amount due the claimant for such labor or material, and  
2 may prosecute such action to final judgment and have execution on  
3 the judgment.

4 2. Any claimant who has a direct contractual relationship with  
5 any subcontractor of the contractor who gave such payment ~~{bond,}~~  
6 *security*, but no contractual relationship, express or implied, with  
7 such contractor, may bring an action on the payment ~~{bond}~~ *security*  
8 only:

9 (a) If the claimant has, within 30 days after furnishing the first  
10 of such materials or performing the first of such labor, served on the  
11 contractor a written notice which shall inform the latter of the nature  
12 of the materials being furnished or to be furnished, or the labor  
13 performed or to be performed, and identifying the person  
14 contracting for such labor or materials and the site for the  
15 performance of such labor or materials; and

16 (b) After giving written notice to such contractor within 90 days  
17 from the date on which the claimant performed the last of the labor  
18 or furnished the last of the materials for which the claimant claims  
19 payment. Each written notice shall state with substantial accuracy  
20 the amount claimed and the name of the person for whom the work  
21 was performed or the material supplied, and shall be served by  
22 being sent by registered or certified mail, postage prepaid, in an  
23 envelope addressed to such contractor at any place in which the  
24 contractor maintains an office or conducts business, or at the  
25 residence of the contractor.

26 **Sec. 36.** NRS 339.045 is hereby amended to read as follows:

27 339.045 1. The contracting body shall furnish a certified  
28 copy of any payment ~~{bond}~~ *security* and the contract for which  
29 such ~~{bond}~~ *security* was given to any person who makes an  
30 application for such copy and who submits an affidavit stating that  
31 the person:

32 (a) Has supplied labor or material for the completion of the  
33 work provided for in the contract, and that the person has not been  
34 fully paid for such labor or material;

35 (b) Is the defendant in an action brought on ~~{a}~~ *any* payment  
36 ~~{bond;}~~ *security*; or

37 (c) Is surety in ~~{a}~~ *any* payment ~~{bond}~~ *security* on which an  
38 action has been brought.

39 2. Every such applicant shall pay for each certified copy a fee  
40 fixed by the contracting body to cover the actual cost of the  
41 preparation of such copy.

42 3. A certified copy of any payment ~~{bond}~~ *security* and of the  
43 contract for which such ~~{bond}~~ *security* was given shall constitute  
44 prima facie evidence of the contents, execution and delivery of the  
45 original of such ~~{bond}~~ *security* and contract.





1     **Sec. 37.** NRS 339.055 is hereby amended to read as follows:  
2     339.055 1. Every action on ~~for~~ *any* payment ~~bond~~ *security*  
3 as provided in NRS 339.035 shall be brought in the appropriate  
4 court of the political subdivision where the contract for which the  
5 ~~bond~~ *security* was given was to be performed.

6     2. No such action may be commenced after the expiration of 1  
7 year from the date on which the claimant performed the last of the  
8 labor or furnished the last of the materials for the payment of which  
9 such action is brought.

10    **Sec. 38.** NRS 339.065 is hereby amended to read as follows:

11    339.065 1. It is unlawful for any representative of a  
12 contracting body, in issuing an invitation for bids, to require that any  
13 ~~bond~~ *security* specified in NRS 339.025 be furnished by a  
14 particular surety company *or individual surety* or through a  
15 particular agent or broker.

16    2. Any person who violates the provisions of this section is  
17 guilty of a misdemeanor.

18    **Sec. 39.** Chapter 408 of NRS is hereby amended by adding  
19 thereto a new section to read as follows:

20    *“Individual surety” has the meaning ascribed to it in*  
21 *NRS 339.015.*

22    **Sec. 40.** NRS 408.020 is hereby amended to read as follows:

23    408.020 As used in this chapter the words and terms defined in  
24 NRS 408.033 to 408.095, inclusive, *and section 39 of this act,*  
25 unless the context otherwise requires, have the meanings ascribed to  
26 them in those sections.

27    **Sec. 41.** NRS 408.337 is hereby amended to read as follows:

28    408.337 Except as otherwise provided in NRS 408.3875 to  
29 408.3887, inclusive:

30    1. All bids must be accompanied by ~~an undertaking executed~~  
31 ~~by a corporate surety authorized to do business in the State, or by~~  
32 ~~cash or a certified check~~ *security* in an amount equal to at least 5  
33 percent of the amount bid. Such ~~undertaking, cash or check~~  
34 *security* furnished to accompany a bid submitted on-line pursuant to  
35 NRS 408.343 must be furnished in accordance with the procedures  
36 set forth by the Director. *A person required to provide security may*  
37 *provide any of the following:*

38    *(a) A bond executed by a corporate surety authorized to do*  
39 *business in this State;*

40    *(b) Subject to the provisions of sections 30, 31 and 32 of this*  
41 *act, a bond or other security executed by an individual surety; or*

42    *(c) If approved by the Department and in an amount equal to*  
43 *the amount of the required security:*

44    *(1) Cash;*



1           (2) *A cash equivalent held with a financial institution that*  
2 *is federally insured or insured by a private insurer approved*  
3 *pursuant to NRS 678.755;*

4           (3) *A money order;*

5           (4) *A certified check or cashier's or similar bank officer's*  
6 *check;*

7           (5) *A security interest approved by the Department; or*

8           (6) *An irrevocable letter of credit, issued or confirmed by a*  
9 *financial institution that is federally insured or insured by a*  
10 *private insurer approved pursuant to NRS 678.755 approved by*  
11 *the Department.*

12        2. *The Department shall determine the value of any security*  
13 *furnished pursuant to this section.*

14        3. If the successful bidder fails to execute the contract in  
15 accordance with his or her bid and give any ~~fbond~~ security required  
16 by law and the contract and ~~fbond~~ security are not postmarked or  
17 delivered to the Department within 20 days after award of the  
18 contract, the undertaking, cash or certified check is forfeited and the  
19 proceeds must be paid into the State Highway Fund.

20        ~~3.~~ 4. The failure of the successful bidder to furnish any  
21 ~~fbond~~ security required of the bidder by law within the time fixed  
22 for his or her execution of the contract constitutes a failure to  
23 execute the contract.

24        ~~4.~~ 5. If the Director deems it is for the best interests of the  
25 State, the Director may, on refusal or failure of the successful bidder  
26 to execute the contract, award it to the second lowest responsible  
27 bidder. If the second lowest responsible bidder fails or refuses to  
28 execute the contract, the Director may likewise award it to the third  
29 lowest responsible bidder. On the failure or refusal to execute the  
30 contract of the second or third lowest bidder to whom a contract is  
31 so awarded, their bidder's security is likewise forfeited to the State.

32        ~~5.~~ 6. The bidder's security of the second and third lowest  
33 responsible bidders may be withheld by the Department until the  
34 contract has been finally executed and the ~~fbond~~ security given as  
35 required under the provisions of the contract, at which time the  
36 security must be returned. The bidder's security submitted by all  
37 other unsuccessful bidders must be returned to them within 10 days  
38 after the contract is awarded.

39        **Sec. 42.** NRS 408.354 is hereby amended to read as follows:

40        408.354 If the Director awards to a railroad company a contract  
41 for a project for the construction, reconstruction, improvement or  
42 maintenance of a highway and the project is located on property that  
43 is owned by or under the control of the railroad company, the  
44 contract may provide that the railroad company is not required to  
45 file, furnish or obtain ~~af~~ payment ~~fbond~~ security, performance



1 ~~{bond}~~ *security* or any other ~~{bond}~~ *security* that would otherwise be  
2 required pursuant to the provisions of this chapter.

3 **Sec. 43.** NRS 408.357 is hereby amended to read as follows:

4 408.357 1. Except as otherwise provided in NRS 408.354,  
5 every contract must provide for the filing and furnishing of ~~{one or~~  
6 ~~more bonds}~~ *security* by the successful bidder, ~~{with corporate~~  
7 ~~sureties approved by the Department and authorized to do business~~  
8 ~~in the State,}~~ in a sum equal to the full or total amount of the  
9 contract awarded. The ~~{bond or bonds}~~ *security* must be  
10 performance ~~{bonds}~~ *security* or labor and material ~~{bonds,}~~  
11 *security*, or both.

12 2. *Except as otherwise provided in subsection 3, security*  
13 *required pursuant to this section must be:*

14 (a) *A bond executed by a corporate surety approved by the*  
15 *Department and authorized to do business in the State;*

16 (b) *Subject to the provisions of sections 30, 31 and 32 of this*  
17 *act, a bond or other security executed by an individual surety; or*

18 (c) *Any other form of security that is approved by the*  
19 *Department and in an amount equal to the amount of the required*  
20 *security, including, without limitation, any one or a combination*  
21 *of the following paid or issued by the bidder:*

22 (1) *Cash;*

23 (2) *A cash equivalent held with a financial institution that*  
24 *is federally insured or insured by a private insurer approved*  
25 *pursuant to NRS 678.755;*

26 (3) *A money order;*

27 (4) *A certified check or cashier's or similar bank officer's*  
28 *check;*

29 (5) *A security interest approved by the Department; or*

30 (6) *An irrevocable letter of credit, issued or confirmed by a*  
31 *financial institution that is federally insured or insured by a*  
32 *private insurer approved pursuant to NRS 678.755 approved by*  
33 *the Department.*

34 3. *The Department may accept performance security required*  
35 *pursuant to this section that includes the granting of a mortgage*  
36 *or deed of trust on real property located in this State if:*

37 (a) *The face amount of the mortgage or deed of trust does not*  
38 *exceed 75 percent of the value of the interest in the real property*  
39 *of the bidder or contractor providing the mortgage or deed of trust*  
40 *as performance security; and*

41 (b) *The mortgage or deed of trust is recorded by the*  
42 *Department in the office of the county recorder of the county in*  
43 *which the real property is located.*

44 4. *The Department shall determine the value of any security*  
45 *offered pursuant to this section.*



1       **5.** The performance ~~{bonds}~~ **security** must:

2       (a) Guarantee the faithful performance of the contract in  
3 accordance with the plans, specifications and terms of the contract.

4       (b) Be maintained for 1 year after the date of completion of the  
5 contract.

6       ~~{3.}~~ **6.** The labor and material ~~{bonds}~~ **security** must:

7       (a) Secure payment of state and local taxes relating to the  
8 contract, premiums under the Nevada Industrial Insurance Act,  
9 contributions under the Unemployment Compensation Law, and  
10 payment of claims for labor, materials, provisions, implements,  
11 machinery, means of transportation or supplies furnished upon or  
12 used for the performance of the contract; and

13       (b) Provide that if the contractor or his or her subcontractors, or  
14 assigns, fail to pay for such taxes, premiums, contributions, labor  
15 and materials required of, and used or consumed by, the contractor  
16 or his or her subcontractors ~~{ }~~:

17       *(1) If the security required by this section was a bond*  
18 *executed by a surety or individual surety pursuant to paragraph*  
19 *(a) or (b) of subsection 2, the surety or individual surety shall make*  
20 *the required payment in an amount not exceeding the total sum*  
21 *specified in the ~~{bond}~~ terms of the security together with interest at*  
22 *a rate of 8 percent per annum ~~{ }~~; and*

23       *(2) If the security required by this section was security*  
24 *described in paragraph (c) or (d) of subsection 2, the contractor or*  
25 *his or her subcontractors, or assigns, as applicable, shall make the*  
26 *required payment in an amount not exceeding the total sum*  
27 *specified in the terms of the security together with an interest at a*  
28 *rate of 8 percent per annum.*

29       ↪ All such ~~{bonds}~~ **security** must be otherwise conditioned as  
30 required by law or the Department.

31       ~~{4.}~~ **7.** No person bidding for work or submitting proposals  
32 under the provisions of this chapter may be accepted as surety *or*  
33 *individual surety* on any bond.

34       ~~{5.}~~ **8.** Whenever the Department has cause to believe that ~~{the~~  
35 ~~sureties or any of them have}~~ *any security furnished pursuant to*  
36 *this section has* become insufficient, it may demand in writing of  
37 the contractor such further ~~{bonds or additional sureties,}~~ **security**, in  
38 a total sum not exceeding that originally required, as are necessary,  
39 considering the extent of the work remaining to be done. Thereafter  
40 no payment may be made upon the contract to the contractor or any  
41 assignee of the contractor until the further ~~{bonds or additional~~  
42 ~~sureties have}~~ **security has** been furnished.

43       ~~{6.}~~ **9.** The Department in every contract may require the  
44 furnishing of proof by the successful bidder of public liability and  
45 insurance coverage for damage to property.



1       **Sec. 44.** NRS 408.363 is hereby amended to read as follows:

2       408.363 1. Any person who has furnished labor, materials,  
3 provisions, implements, machinery, means of transportation or  
4 supplies used or consumed by such contractor or the contractor's  
5 subcontractors in or about the performance of the work contracted to  
6 be done, and whose claim therefor has not been paid by such  
7 contractor or subcontractors, and who desires to be protected under  
8 the ~~[bond]~~ *security furnished pursuant to NRS 408.357*, shall file  
9 with the Department a claim in triplicate within 30 days from the  
10 date of final acceptance of the contract as provided in NRS 408.387,  
11 and such claim shall be executed and verified before a notary public  
12 and contain a statement that the same has not been paid. One copy  
13 shall be filed in the office of the Department and the remaining  
14 copies shall be forwarded to the contractor and surety.

15       2. Any such person so filing a claim may at any time within 6  
16 months thereafter commence an action against the ~~[surety or sureties~~  
17 ~~on the bond]~~ *security* for the recovery of the amount of the claim  
18 and the filing of such claim shall not constitute a claim against the  
19 Department. Failure to commence such action ~~[upon]~~ *against*  
20 the ~~[bond and the sureties]~~ *security* within 6 months after date of the  
21 Department's final acceptance will bar any right of action against  
22 such ~~[surety or sureties.]~~ *security*.

23       **Sec. 45.** NRS 408.367 is hereby amended to read as follows:

24       408.367 1. With the approval of the Board, the Director may  
25 receive informal bids and award contracts for highway construction,  
26 reconstruction, improvements, and maintenance on projects  
27 estimated to cost not in excess of \$250,000.

28       2. Before furnishing any person proposing to bid on any  
29 solicited work with the plans and specifications for such work, the  
30 Director shall require from the person a statement, verified under  
31 oath, in the form of answers to questions contained in a standard  
32 form of questionnaire, which must include information describing:

33       (a) The geographical regions of this State in which the person is  
34 willing to perform the public work;

35       (b) The type of license and classification, if any, held by the  
36 person; and

37       (c) The business license held by the person and its expiration  
38 date.

39       3. Before awarding a contract pursuant to subsection 1, the  
40 Director must:

41       (a) If the estimated cost of the project is \$50,000 or less, solicit a  
42 bid from at least one properly licensed contractor; and

43       (b) If the estimated cost of the project is more than \$50,000 but  
44 not more than \$250,000, solicit bids from at least three properly  
45 licensed contractors.



1 4. Any bids received in response to a solicitation for bids made  
2 pursuant to subsection 3 may be rejected if the Director determines  
3 that:

4 (a) The quality of the services, materials, equipment or  
5 labor offered does not conform to the approved plan or  
6 specifications;

7 (b) The bidder is not responsive or responsible; or

8 (c) The public interest would be served by such a rejection.

9 5. At least once each quarter, the Director shall prepare a report  
10 detailing, for each project for which a contract for its completion is  
11 awarded pursuant to paragraph (b) of subsection 3, if any:

12 (a) The name of the contractor to whom the contract was  
13 awarded;

14 (b) The amount of the contract awarded;

15 (c) A brief description of the project; and

16 (d) The names of all contractors from whom bids were solicited.

17 6. A report prepared pursuant to subsection 5 is a public record  
18 and must be maintained on file at the principal offices of the  
19 Department.

20 7. Except as otherwise provided in *subsection 8 and* NRS  
21 408.354, ~~[contracts]~~ *a contract* awarded pursuant to the provisions  
22 of this section must be accompanied by ~~[bonds and]~~ :

23 (a) *A bond* conditioned and executed in the name of the State of  
24 Nevada ~~[, and]~~ ;

25 (b) *Subject to the provisions of sections 30, 31 and 32*  
26 *of this act, a bond conditioned and executed by an individual*  
27 *surety; or*

28 (c) *Any other form of security that is approved by the*  
29 *Department, and in an amount equal to the amount of the*  
30 *required security, including, without limitation, any one or a*  
31 *combination of the following paid or issued by the bidder:*

32 (1) *Cash;*

33 (2) *A cash equivalent held with a financial institution that*  
34 *is federally insured or insured by a private insurer approved*  
35 *pursuant to NRS 678.755;*

36 (3) *A money order;*

37 (4) *A certified check or cashier's or similar bank officer's*  
38 *check;*

39 (5) *A security interest approved by the Department; or*

40 (6) *An irrevocable letter of credit, issued or confirmed by a*  
41 *financial institution that is federally insured or insured by a*  
42 *private insurer approved pursuant to NRS 678.755 approved by*  
43 *the Department.*



1 **8. The Department may accept performance security required**  
2 **pursuant to this section that includes the granting of a mortgage**  
3 **or deed of trust on real property located in this State if:**

4 (a) **The face amount of the mortgage or deed of trust does not**  
5 **exceed 75 percent of the value of the interest in the real property**  
6 **of the bidder or contractor providing the mortgage or deed of trust**  
7 **as performance security; and**

8 (b) **The mortgage or deed of trust is recorded by the**  
9 **Department in the office of the county recorder of the county in**  
10 **which the real property is located.**

11 **9. The Department shall determine the value of any security**  
12 **offered pursuant to this section.**

13 **10. Any contract entered into for security required by this**  
14 **section** must be signed by the Director under the seal of the  
15 Department, and by the contracting party or parties. The form and  
16 legality of those contracts must be approved by the Attorney  
17 General or Chief Counsel of the Department.

18 **Sec. 46.** NRS 408.383 is hereby amended to read as follows:

19 408.383 1. Except as otherwise provided in subsections 2, 11  
20 and 12, the Director may pay at the end of each calendar month, or  
21 as soon thereafter as practicable, to any contractor satisfactorily  
22 performing any highway improvement or construction as the work  
23 progresses in full for the work as completed but not more than 95  
24 percent of the entire contract price. The progress estimates must be  
25 based upon materials in place, or on the job site, or at a location  
26 approved by the Director, and invoiced, and labor expended thereon.  
27 The remaining 5 percent, but not more than \$50,000, must be  
28 retained until the entire contract is completed satisfactorily and  
29 accepted by the Director.

30 2. If the work in progress is being performed on a satisfactory  
31 basis, the Director may reduce the percentage retained if the  
32 Director finds that sufficient reasons exist for additional payment  
33 and has obtained written approval from every surety furnishing  
34 bonds **and every person furnishing other security** for the work.  
35 Any remaining money must be retained until the entire contract is  
36 completed satisfactorily and accepted by the Director.

37 3. If it becomes necessary for the Department to take over the  
38 completion of any highway contract or contracts, all of the amounts  
39 owing the contractor, including the withheld percentage, must first  
40 be applied toward the cost of completion of the contract or  
41 contracts. Any balance remaining in the retained percentage after  
42 completion by the Department is payable to the contractor or the  
43 contractor's creditors.

44 4. Such retained percentage as may be due any contractor is  
45 due and payable at the expiration of the 30-day period as provided





1 in NRS 408.363 for filing of creditors' claims, and this retained  
2 percentage is due and payable to the contractor at that time without  
3 regard to creditors' claims filed with the Department.

4 5. The contractor under any contract made or awarded by the  
5 Department, including any contract for the construction,  
6 improvement, maintenance or repair of any road or highway or the  
7 appurtenances thereto, may, from time to time, withdraw the whole  
8 or any portion of the sums otherwise due to the contractor under the  
9 contract which are retained by the Department, pursuant to the terms  
10 of the contract, if the contractor deposits with the Director:

11 (a) United States treasury bonds, United States treasury notes,  
12 United States treasury certificates of indebtedness or United States  
13 treasury bills;

14 (b) Bonds or notes of the State of Nevada; or

15 (c) General obligation bonds of any political subdivision of the  
16 State of Nevada.

17 ↪ Certificates of deposit must be of a market value not exceeding  
18 par, at the time of deposit, but at least equal in value to the amount  
19 so withdrawn from payments retained under the contract.

20 6. The Director has the power to enter into a contract or  
21 agreement with any national bank, state bank, credit union, trust  
22 company or safe deposit company located in the State of Nevada,  
23 designated by the contractor after notice to the owner and surety, to  
24 provide for the custodial care and servicing of any obligations  
25 deposited with the Director pursuant to this section. Such services  
26 include the safekeeping of the obligations and the rendering of all  
27 services required to effectuate the purposes of this section.

28 7. The Director or any national bank, state bank, credit union,  
29 trust company or safe deposit company located in the State of  
30 Nevada, designated by the contractor to serve as custodian for the  
31 obligations pursuant to subsection 6, shall collect all interest or  
32 income when due on the obligations so deposited and shall pay  
33 them, when and as collected, to the contractor who deposited the  
34 obligation. If the deposit is in the form of coupon bonds,  
35 the Director shall deliver each coupon as it matures to the  
36 contractor.

37 8. Any amount deducted by the State of Nevada, or pursuant to  
38 the terms of a contract, from the retained payments otherwise due to  
39 the contractor thereunder, must be deducted first from that portion  
40 of the retained payments for which no obligation has been  
41 substituted, then from the proceeds of any deposited obligation. In  
42 the latter case, the contractor is entitled to receive the interest,  
43 coupons or income only from those obligations which remain on  
44 deposit after that amount has been deducted.





1 9. A contractor shall disburse money paid to the contractor  
2 pursuant to this section, including any interest that the contractor  
3 receives, to his or her subcontractors and suppliers within 15 days  
4 after receipt of the money in the proportion that the value of the  
5 work performed by each subcontractor or the materials furnished by  
6 each supplier bears to the total amount of the contract between the  
7 principal contractor and the Department.

8 10. Money payable to a subcontractor or supplier accrues  
9 interest at a rate equal to the lowest daily prime rate at the three  
10 largest banks in the United States on the date the subcontract or  
11 order for supplies was executed plus 2 percent, from 15 days after  
12 the money was received by the principal contractor until the date of  
13 payment.

14 11. If a contractor withholds more than 10 percent of a  
15 payment required by subsection 9, the subcontractor or supplier may  
16 inform the Director in writing of the amount due. The Director shall  
17 attempt to resolve the dispute between the contractor and the  
18 subcontractor or supplier within 20 working days after the date that  
19 the Director receives notice of the amount due. If the dispute is not  
20 resolved within 20 working days after the date that the Director  
21 receives notice of the amount due, the contractor shall deposit the  
22 disputed amount in an escrow account that bears interest. The  
23 contractor, subcontractor or supplier may pursue any legal or  
24 equitable remedy to resolve the dispute over the amount due. The  
25 Director may not be made a party to any legal or equitable action  
26 brought by the contractor, subcontractor or supplier.

27 12. If the Director awards to a railroad company a contract for  
28 a project for the construction, reconstruction, improvement or  
29 maintenance of a highway and the project is located on property that  
30 is owned by or under the control of the railroad company, the  
31 Director may agree in the contract not to retain any portion of the  
32 contract price.

33 **Sec. 47.** NRS 408.3884 is hereby amended to read as follows:

34 408.3884 To qualify to participate in the design and  
35 construction of a project for the Department, a design-build team  
36 must:

- 37 1. Except as otherwise provided in NRS 408.354, obtain ~~fa~~  
38 performance ~~bond~~ **security** and payment ~~bond~~ **security** as the  
39 Department may require;
- 40 2. Obtain insurance covering general liability and liability for  
41 errors and omissions;
- 42 3. Not have been found liable for breach of contract with  
43 respect to a previous project, other than a breach for legitimate  
44 cause;



- 1       4. Not have been disqualified from being awarded a contract
- 2       pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333; and
- 3       5. Ensure that the members of the design-build team possess
- 4       the licenses and certificates required to carry out the functions of
- 5       their respective professions within this state.

③

