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NEVADA PUBLIC PURCHASING STUDY COMMISSION
(NRS 332.215)
Consisting of
Northern Nevada Consortium for Cooperative Purchasing
And
Public Purchasing Professionals Association

Bill Number AB 393

Executive Summary

March 24, 2003

Revises provisions governing payments on public works. (BDR 28-996)

Purpose: providing that the contract price for a public work may be increased or decreased during the term of the contract as a result of change orders; prohibiting a public body from making a deduction from the contract price or withholding payment from contractors in excess of retainage in certain circumstances; revising the provisions prescribing the amount that may be withheld from the progress payments made to contractors on public works.

Justification against the bill: this bill is inappropriate, ambiguous and considered bad law and bad procurement for the following reasons:

1. Section 1, paragraph 1 concerning change orders merely restates what is a fundamental principle in contract law and therefore is redundant.
2. Section 1, paragraph 2 is ambiguous and redundant. NRS 338.515 and NRS 338.525 are the only authorities for withholding money as already stated in statute. If money is being improperly being withheld, there are mandatory legal remedies already provided for in NRS 338.150, NRS 338.630, NRS 338.640, NRS 338.645. Therefore, new legislation is not needed.
3. Section 3, paragraph 1 reduces the amount of retention authorized to be withheld by the public entity from 10% to 5% or \$50,000, whichever is less. This means that on any public works project the government entity loses significant control and influence over the performance of the contractor that now exists in current law; especially on larger, more expensive and complex projects. This is an insufficient amount to provide incentive to the contractor to perform the work satisfactorily and on time, especially the completion of punch list items; a much too common problem.
4. NDOT's apparent success with a smaller \$50,000 retention level is not comparable because:
 - a. According to them they have one or more project managers on each project and that makes it easier for them to discover defects as they occur. Most local governments do not have that "luxury."
 - b. They are mostly involved with "horizontal" construction or roads as opposed to "vertical" local government projects such as complex buildings and other structures of all kinds.
5. Since retention is interest-bearing for the contractor, the contractor suffers no loss other than opportunity costs of investments riskier than the prime plus two rate, while his money is be-

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ing held.

6. This bill violates an agreement made by all parties during the 1999 legislative session that the "Prompt Pay Bill", now codified in NRS 338.400 through NRS 338.645 was acceptable to all participants and no one would come back to change the law.

Conclusion: This bill is ambiguous, conflicts with current statutes and is unnecessary.

Recommendation: This bill not be passed into law.

Respectfully yours,

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