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MOCK-UP

PROPOSED AMENDMENT TO
ASSEMBLY BILL NO. 519

PREPARED FOR NEVADA DEPARTMENT OF TRANSPORTATION
APRIL 9, 2003

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

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

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

- 1 ~~Section 1. Chapter 408 of NRS is hereby amended by adding~~
2 ~~thereto a new section to read as follows:~~
3 ~~1. If the Department determines that no final proposal received~~
4 ~~pursuant to NRS 408.3886 is cost effective and responsive and the~~
5 ~~Department further determines that requesting revised final proposals~~
6 ~~pursuant to this section will likely result in the submission of a~~
7 ~~satisfactory proposal, the Department shall prepare and provide to each~~
8 ~~finalist a request for revised final proposals for the project.~~
9 ~~2. In conjunction with preparing a request for revised final~~
10 ~~proposals pursuant to this section, the Department may:~~
11 ~~(a) Alter the scope of the project; and~~
12 ~~(b) Revise the estimates of the costs of designing and constructing the~~
13 ~~project.~~
14 ~~3. A request for revised final proposals prepared pursuant to this~~
15 ~~section must:~~
16 ~~(a) Set forth the date by which revised final proposals must be~~
17 ~~submitted to the Department;~~

In the revised bill, § 1
would be deleted in its
entirety.

- 1 ~~(b) If the Department has altered the scope of the project, set forth an~~
2 ~~updated description of the project;~~
3 ~~(c) If the Department has revised the estimates of the costs of~~
4 ~~designing and constructing the project, set forth updated estimates for~~
5 ~~those costs; and~~
6 ~~(d) Set forth the factors that the Department will use to select a~~
7 ~~design build team to design and construct the project, including the~~
8 ~~relative weight to be assigned to each factor. The factors and relative~~
9 ~~weights required to be set forth pursuant to this paragraph need not be~~
10 ~~the same as those which were set forth in the request for final proposals~~
11 ~~pursuant to NRS 408.3886.~~
12 ~~4. Except as otherwise provided in this subsection, in assigning the~~
13 ~~relative weight to each factor for selecting a design build team pursuant~~
14 ~~to subsection 3, the Department shall assign, without limitation, a~~
15 ~~relative weight of 5 percent to the possession of a certificate of eligibility~~
16 ~~to receive a preference in bidding on public works and a relative weight~~
17 ~~of at least 30 percent for the proposed cost of design and construction of~~
18 ~~the project. If any federal statute or regulation precludes the granting of~~
19 ~~federal assistance or reduces the amount of that assistance for a~~
20 ~~particular project because of the provisions of this subsection relating to~~
21 ~~preference in bidding on public works, those provisions of this~~
22 ~~subsection do not apply insofar as their application would preclude or~~
23 ~~reduce federal assistance for that project.~~
24 ~~5. A revised final proposal submitted by a design build team~~
25 ~~pursuant to this section must be prepared thoroughly, be responsive to~~
26 ~~the criteria that the Department will use to select a design build team to~~
27 ~~design and construct the project described in subsection 3 and comply~~
28 ~~with the provisions of NRS 338.141.~~
29 ~~6. After receiving the revised final proposals for the project, the~~
30 ~~Department shall:~~
31 ~~(a) Select the most cost effective and responsive revised final~~
32 ~~proposal, using the criteria set forth pursuant to subsections 3 and 4; or~~
33 ~~(b) Reject all the revised final proposals.~~
34 ~~7. If the Department selects a revised final proposal pursuant to~~
35 ~~paragraph (a) of subsection 6, the Department shall hold a public~~
36 ~~meeting to:~~
37 ~~(a) Review and ratify the selection;~~
38 ~~(b) Award the design build contract to the design build team whose~~
39 ~~proposal is selected;~~
40 ~~(c) Partially reimburse the unsuccessful finalists who submitted~~
41 ~~revised final proposals if partial reimbursement was provided for in the~~
42 ~~request for preliminary proposals pursuant to paragraph (f) of~~
43 ~~subsection 3 of NRS 408.3883. The amount of reimbursement must not~~
44 ~~exceed, for each unsuccessful finalist who submitted a revised final~~

1 ~~proposal, 3 percent of the total amount to be paid to the design-build~~
2 ~~team as set forth in the design-build contract.~~

3 ~~(d) Make available to the public a summary setting forth the factors~~
4 ~~used by the Department to select the successful design-build team and~~
5 ~~the ranking of the design-build teams who submitted revised final~~
6 ~~proposals. The Department shall not release to a third party, or otherwise~~
7 ~~make public, financial or proprietary information submitted by a design-~~
8 ~~build team.~~

9 ~~8. A contract awarded pursuant to this section must specify:~~

10 ~~(a) An amount that is the maximum amount that the Department will~~
11 ~~pay for the performance of all the work required by the contract,~~
12 ~~excluding any amount related to costs that may be incurred as a result of~~
13 ~~unexpected conditions or occurrences as authorized by the contract;~~

14 ~~(b) An amount that is the maximum amount that the Department will~~
15 ~~pay for the performance of the professional services required by the~~
16 ~~contract; and~~

17 ~~(c) A date by which performance of the work required by the contract~~
18 ~~must be completed.~~

19 ~~9. A design-build team to whom a contract is awarded pursuant to~~
20 ~~this section shall:~~

21 ~~(a) Assume overall responsibility for ensuring that the design and~~
22 ~~construction of the project is completed in a satisfactory manner; and~~

23 ~~(b) Use the workforce of the prime contractor on the design-build~~
24 ~~team to construct at least 15 percent of the project.~~

25 Section 1. NRS 408.111 is hereby amended to read as follows:

26 408.111 1. The Department consists of a Director, ~~a~~ two Deputy
27 ~~Director, Directors,~~ a Chief Engineer and the following divisions:

- 28 (a) Administrative Division.
- 29 (b) Operations Division.
- 30 (c) Engineering Division.
- 31 (d) Planning Division.

32 2. The head of a Division is an assistant director. Assistant directors
33 are in the classified service of the State.

34 Sec. 2. NRS 408.116 is hereby amended to read as follows:

35 408.116 1. All legal notices, writs, service and process issued or
36 ordered by a court of competent jurisdiction wherein the Department is
37 named as a defendant must be personally served upon both the Director
38 and the Chairman of the Board or, in the absence of the Director and the
39 Chairman of the Board, the process must be served personally upon both
40 the Secretary of State and ~~the~~ a Deputy Director.

41 2. All legal actions brought and defended by the Department must be
42 in the name of the State of Nevada on relation of its Department.

43 3. This section is not a consent on the part of the Department to be
44 sued.

45 Sec. 3. NRS 408.175 is hereby amended to read as follows:

1 408.175 1. The Director shall:

2 (a) Appoint one Deputy Director who in the absence, inability or
3 failure of the Director has full authority to perform any duty required or
4 permitted by law to be performed by the Director.

5 (b) Appoint one Deputy Director for southern Nevada whose
6 principle office will be located in the Las Vegas urban area.

7 (c) Employ such engineers, engineering and technical assistants, clerks
8 and other personnel as in his judgment may be necessary to the proper
9 conduct of the Department and to carry out the provisions of this chapter.

10 2. Except as otherwise provided in NRS 284.143, the Deputy
11 ~~Director~~ Directors shall devote ~~his~~ their entire time and attention to the
12 business of his office and shall not pursue any other business or occupation
13 or hold any other office or profit.

14 3. The director may delegate whatever authority as may be
15 necessary for the Deputy Director appointed pursuant to subsection 1(b)
16 of this section to carry out his duties.

17 **Sec. 4.** NRS 408.178 is hereby amended to read as follows:

18 408.178 1. The Deputy ~~Director~~ Directors:

19 (a) ~~is~~ are in the unclassified service of the State.

20 (b) Must hold a master's degree in public or business administration,
21 hold the degree of bachelor of science in civil, structural, mechanical or
22 industrial engineering, or be a licensed professional engineer.

23 (c) Must have at least 2 years of administrative experience as the
24 assistant director, the chief engineer or the head of an Engineering or
25 Planning Division of the Department, or have equivalent experience.

26 2. The Chief Engineer:

27 (a) Is in the classified service of the State.

28 (b) Must be a licensed professional engineer.

29 (c) Except as otherwise provided in subsection 3, must have at least
30 3 years of experience as the final engineering authority for a state's agency
31 which has duties similar to those of the Department.

32 3. If the Director or the Deputy Director appointed pursuant to
33 subsection 1(a) of section 408.175, is a licensed professional engineer, he
34 may also act as the Department's Chief Engineer.

35 **Sec. 5.** NRS 408.180 is hereby amended to read as follows:

36 408.180 The Director and Deputy ~~Director~~ Directors shall each take
37 the official oath.

38 **Sec. 6.** NRS 408.185 is hereby amended to read as follows:

39 408.185 1. The Director and Deputy ~~Director~~ Directors may use a
40 facsimile signature produced through a mechanical device in place of their
41 handwritten signatures whenever the necessity may arise.

42 2. Such a device must be of such a nature that the facsimile signature
43 plate may be inserted and removed from the mechanical device only by use
44 of two locking keys.

1 3. Such facsimile signatures must be made and used only under the
2 personal direction and supervision of the Director and Deputy Director,
3 respectively.

4 4. All of the facsimile signature plates and locking keys must at all
5 times be kept in a vault, securely locked when not in use, to the end that
6 any misuse, fraudulent use or other improper use is prevented.

7 5. Notwithstanding the provisions of this section, the Director or
8 Deputy Director and the State Treasurer may combine their facsimile
9 signatures as provided in NRS 226.080.

10 Sec. 7. NRS 408.215 is hereby amended to read as follows:

11 408.215 1. The Director has charge of all the records of the
12 Department, keeping records of all proceedings pertaining to the
13 Department and keeping on file information, plans, specifications,
14 estimates, statistics and records prepared by the Department, except those
15 financial statements described in NRS 408.333 and the financial or
16 proprietary information described in paragraph (d) of subsection 5 6 of
17 NRS 408.3886] and paragraph (d) of subsection 7 of section 1 of this
18 act, which must not become matters of public record.

19 2. The Director may photograph, microphotograph or film or dispose
20 of the records of the Department referred to in subsection 1 as provided in
21 NRS 239.051, 239.080 and 239.085.

22 3. The Director shall maintain an index or record of deeds or other
23 references of title or interests in and to all lands or interests in land owned
24 or acquired by the Department.

25 4. The Director shall adopt such regulations as may be necessary to
26 carry out and enforce the provisions of this chapter.

27 ~~Sec. 3. NRS 408.3875 is hereby amended to read as follows:~~
28 ~~408.3875 As used in NRS 408.3875 to 408.3887, inclusive, and~~
29 ~~section 1 of this act, unless the context otherwise requires, the words~~
30 ~~and terms defined in NRS 408.3876 to 408.3879, inclusive, have the~~
31 ~~meanings ascribed to them in those sections.~~

32 ~~Sec. 4. NRS 408.3882 is hereby amended to read as follows:~~
33 ~~408.3882 If the Department desires to contract with a design-~~
34 ~~build team pursuant to NRS 408.388 and 408.3881, the Department~~
35 ~~must select the design-build team in accordance with NRS 408.3883 to~~
36 ~~408.3886, inclusive [], and section 1 of this act.~~

37 Sec. 8. NRS 408.3883 is hereby amended to read as follows:

38 408.3883 1. The Department shall advertise for preliminary
39 proposals for the design and construction of a project by a design-build
40 team in a newspaper of general circulation in this state.

41 2. A request for preliminary proposals published pursuant to
42 subsection 1 must include, without limitation:

- 43 (a) A description of the proposed project;
- 44 (b) Separate estimates of the costs of designing and constructing the
45 project;

This section is amended to change "5" to "6" because the existing subsection 5 of NRS 408.3886 is moved down to subsection 6 by the addition of the new subsection 5.

The existing section 3 would also be deleted in its entirety.

The existing section 4 would also be deleted in its entirety.

1 (c) The dates on which it is anticipated that the separate phases of the
2 design and construction of the project will begin and end;

3 (d) The date by which preliminary proposals must be submitted to the
4 Department, which must not be less than 30 days after the date that the
5 request for preliminary proposals is first published in a newspaper pursuant
6 to subsection 1; and

7 (e) A statement setting forth the place and time in which a design-build
8 team desiring to submit a proposal for the project may obtain the
9 information necessary to submit a proposal, including, without limitation,
10 the information set forth in subsection 3.

11 3. The Department shall maintain at the time and place set forth in the
12 request for preliminary proposals the following information for inspection
13 by a design-build team desiring to submit a proposal for the project:

14 (a) The extent to which designs must be completed for both
15 preliminary and] preliminary ; final ~~and, if applicable, revised final~~
16 proposals and any other requirements for the design and construction of
17 the project that the Department determines to be necessary;

18 (b) A list of the requirements set forth in NRS 408.3884;

19 (c) A list of the factors that the Department will use to evaluate design-
20 build teams who submit a proposal for the project, including, without
21 limitation:

22 (1) The relative weight to be assigned to each factor pursuant to
23 NRS 408.3886; and

24 (2) A disclosure of whether the factors that are not related to cost
25 are, when considered as a group, more or less important in the process of
26 evaluation than the factor of cost;

27 (d) Notice that a design-build team desiring to submit a proposal for
28 the project must include with its proposal the information used by the
29 Department to determine finalists among the design-build teams
30 submitting proposals pursuant to subsection 2 of NRS 408.3885 and a
31 description of that information;

32 (e) A statement that a design-build team whose prime contractor holds
33 a certificate of eligibility to receive a preference in bidding on public
34 works issued pursuant to NRS 338.1389 or 338.147 should submit a copy
35 of the certificate of eligibility with its proposal; and

36 (f) A statement as to whether a bidding design-build team that is
37 selected as a finalist pursuant to NRS 408.3885 but is not awarded the
38 design-build contract pursuant to NRS 408.3886 ~~or section 1 of this act~~
39 will be partially reimbursed for the cost of preparing a final proposal ~~or~~
40 ~~revised final proposal~~ best and final offer, or both, and, if so, an estimate
41 of the amount of the partial reimbursement.

42 **Sec. 9.** NRS 408.3886 is hereby amended to read as follows:

43 408.3886 1. After selecting the finalists pursuant to NRS 408.3885,
44 the Department shall provide to each finalist a request for final proposals
45 for the project. The request for final proposals must:

The change in paragraph (f) is intended to allow partial reimbursement of the costs of preparing a best and final offer.

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

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

6 2. Except as otherwise provided in this subsection, in assigning the
7 relative weight to each factor for selecting a design-build team pursuant to
8 subsection 1, the Department shall assign, without limitation, a relative
9 weight of 5 percent to the possession of a certificate of eligibility to
10 receive a preference in bidding on public works and a relative weight of at
11 least 30 percent for the proposed cost of design and construction of the
12 project. If any federal statute or regulation precludes the granting of federal
13 assistance or reduces the amount of that assistance for a particular project
14 because of the provisions of this subsection relating to preference in
15 bidding on public works, those provisions of this subsection do not apply
16 insofar as their application would preclude or reduce federal assistance for
17 that project.

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

23 4. After receiving the final proposals for the project, the Department
24 shall:

25 (a) Select the most cost-effective and responsive final proposal, using
26 the criteria set forth pursuant to subsections 1 and 2; ~~{or}~~

27 (b) Reject all the final proposals ~~{}~~; or

28 (c) ~~Request revised final proposals pursuant to section 1 of this act~~
29 ~~best and final offers from all finalists in accordance with subsection 5.~~

30 5. If the Department determines that no final proposal received is
31 cost-effective or responsive and the Department further determines that
32 requesting best and final offers pursuant to this subsection will likely
33 result in the submission of a satisfactory offer, the Department may
34 prepare and provide to each finalist a request for best and final offers for
35 the project. In conjunction with preparing a request for best and final
36 offers pursuant to this subsection, the Department may alter the scope of
37 the project, revise the estimates of the costs of designing and
38 constructing the project, and revise the selection factors and relative
39 weights described in paragraph (a) of subsection 1. A request for best and
40 final offers prepared pursuant to this subsection must set forth the date
41 by which best and final offers must be submitted to the Department.
42 After receiving the best and final offers, the Department shall:

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

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

1 6. If the Department selects a final proposal pursuant to paragraph (a)
2 of subsection 4 ~~or selects a best and final offer pursuant to paragraph~~
3 ~~(a) of subsection 5~~, the Department shall hold a public meeting to:

4 (a) Review and ratify the selection.

5 ~~(b) Award the design-build contract to the design-build team~~
6 ~~whose proposal is selected.~~

7 ~~(c)~~ Partially reimburse the unsuccessful finalists if partial
8 reimbursement was provided for in the request for preliminary proposals
9 pursuant to paragraph (f) of subsection 3 of NRS 408.3883. The amount of
10 reimbursement must not exceed, for each unsuccessful finalist, ~~three~~ 3
11 percent of the total amount to be paid to the design-build team as set forth
12 in the design-build contract.

13 ~~(d)~~ (c) Make available to the public a summary setting forth the factors
14 used by the Department to select the successful design-build team and the
15 ranking of the design-build teams who submitted final proposals ~~and, if~~
16 ~~applicable, best and final offers~~. The Department shall not release to a
17 third party, or otherwise make public, financial or proprietary information
18 submitted by a design-build team.

19 6. A contract awarded pursuant to this section must specify:

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

24 (b) An amount that is the maximum amount that the Department will
25 pay for the performance of the professional services required by the
26 contract; and

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

29 7. A design-build team to whom a contract is awarded pursuant to this
30 section shall:

31 (a) Assume overall responsibility for ensuring that the design and
32 construction of the project is completed in a satisfactory manner; and

33 (b) Use the workforce of the prime contractor on the design-build team
34 to construct at least 15 percent of the project.

H