
SENATE BILL NO. 491—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE PUBLIC WORKS BOARD)

MARCH 24, 2003

Referred to Committee on Government Affairs

SUMMARY—Makes various changes regarding bidding on contracts for public works of this state. (BDR 28-487)

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

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

AN ACT relating to public works; requiring certain subcontractors to become qualified to be subcontractors on contracts for public works; revising the criteria that the State Public Works Board is required to adopt for the qualification of bidders on contracts for public works; authorizing the Board and the governing body of a local government to issue subpoenas relating to hearings on denials of applications for qualification to bid on or be subcontractors on contracts for public works; specifying the burden of proof in such hearings; revising the provisions governing the awarding of design-build contracts; and providing other matters properly relating thereto.

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

1 **Section 1.** NRS 338.1375 is hereby amended to read as
2 follows:

3 338.1375 1. The State Public Works Board shall not accept a
4 bid on a contract for a public work unless the person who submits
5 the bid ~~has~~ *and each subcontractor who will provide labor or a*
6 *portion of the work or improvement to the contractor for which*



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1 *the subcontractor will be paid an amount exceeding 5 percent of*
2 *the prime contractor's total bid are* qualified pursuant to NRS
3 338.1379 to bid on *or be a subcontractor on* that contract.

4 2. The State Public Works Board shall by regulation adopt
5 criteria for the qualification of bidders *and subcontractors* on
6 contracts for public works of this state. The criteria adopted by the
7 State Public Works Board pursuant to this section must be used by
8 the State Public Works Board to determine the qualification of
9 bidders *and subcontractors* on contracts for public works of this
10 state.

11 3. The criteria adopted by the State Public Works Board
12 pursuant to this section:

13 (a) Must be adopted in such a form that the determination of
14 whether an applicant is qualified to bid on *or be a subcontractor on*
15 a contract for a public work does not require or allow the exercise of
16 discretion by any one person.

17 (b) May include ~~only;~~, *but is not limited to:*

18 (1) The financial ability of the applicant to perform a
19 contract ~~or~~ *or subcontract, as applicable;*

20 (2) The principal personnel of the applicant;

21 (3) Whether the applicant has breached any contracts *or*
22 *subcontracts, as applicable*, with a public agency or person in this
23 state or any other state;

24 (4) ~~Whether~~ *If the applicant is a prime contractor,*
25 *whether* the applicant has been disqualified from being awarded a
26 contract pursuant to NRS 338.017 or 338.1387; ~~and~~

27 (5) The performance history of the applicant concerning *any*
28 other recent, similar contracts ~~if any;~~ *or subcontracts, as*
29 *applicable*, completed by the applicant ~~;~~ *;* ~~and~~

30 (6) *The truthfulness and completeness of the application.*

31 **Sec. 2.** NRS 338.1379 is hereby amended to read as follows:

32 338.1379 1. Except as otherwise provided in NRS 338.1383,
33 a person who wishes to qualify as ~~a~~ :

34 (a) A bidder on a contract for a public work must submit an
35 application to the State Public Works Board or the governing body.

36 (b) *A subcontractor on a contract for a public work of this*
37 *state must submit an application to the State Public Works Board.*

38 2. Upon receipt of an application pursuant to subsection 1, the
39 State Public Works Board or the governing body shall:

40 (a) Investigate the applicant to determine whether he is qualified
41 to bid on *or be a subcontractor, as applicable, on* a contract; and

42 (b) After conducting the investigation, determine whether the
43 applicant is qualified to bid on *or be a subcontractor, as applicable,*
44 *on such* a contract. The determination must be made within ~~30~~ 45
45 days after receipt of the application.



1 3. The State Public Works Board or the governing body shall
2 notify each applicant in writing of its determination. If an
3 application is denied, the notice must set forth the reasons for the
4 denial and inform the applicant of his right to a hearing pursuant to
5 NRS 338.1381.

6 4. The State Public Works Board or the governing body of a
7 local government may determine an applicant is qualified to bid ~~or~~
8 *or be a subcontractor, as applicable:*

- 9 (a) On a specific project;
10 (b) On more than one project over a period of 12 months; or
11 (c) On more than one project over a period of 24 months.

12 5. The State Public Works Board shall not use any criteria
13 other than criteria adopted by regulation pursuant to NRS 338.1375
14 in determining whether to approve or deny an application.

15 6. The governing body of a local government shall not use any
16 criteria other than the criteria described in NRS 338.1377 in
17 determining whether to approve or deny an application.

18 7. Financial information and other data pertaining to the net
19 worth of an applicant which is gathered by or provided to the State
20 Public Works Board or a governing body to determine the financial
21 ability of an applicant to perform a contract *or be a subcontractor*
22 *on a contract, as applicable*, is confidential and not open to public
23 inspection.

24 **Sec. 3.** NRS 338.1381 is hereby amended to read as follows:

25 338.1381 1. If, within 10 days after receipt of the notice
26 denying his application, the applicant files a written request for a
27 hearing with the State Public Works Board or the governing body of
28 the local government, the Board or governing body shall set the
29 matter for a hearing within ~~10~~ 20 days after receipt of the request.
30 The hearing must be held not later than ~~20~~ 45 days after the receipt
31 of the request for a hearing ~~or~~ *unless the parties, by written*
32 *stipulation, agree to extend the time.*

33 2. The hearing must be held at a time and place prescribed by
34 the Board or governing body. At least 10 days before the date set for
35 the hearing, the Board or governing body shall serve the applicant
36 with written notice of the hearing. The notice may be served by
37 personal delivery to the applicant or by certified mail to the last
38 known business or residential address of the applicant.

39 3. *The applicant has the burden at the hearing of proving by*
40 *substantial evidence that the applicant is entitled to be qualified to*
41 *bid on or be a subcontractor on, as applicable, a contract for a*
42 *public work.*

43 4. *In conducting a hearing pursuant to this subsection, the*
44 *Board or the governing body of a local government may:*

- 45 (a) *Administer oaths;*



- 1 ***(b) Take testimony;***
- 2 ***(c) Issue subpoenas to compel the attendance of witnesses to***
- 3 ***testify before the Board or governing body;***
- 4 ***(d) Require the production of related books, papers and***
- 5 ***documents; and***

6 ***(e) Issue commissions to take testimony.***

7 ***5. If a witness refuses to attend or testify or produce books,***

8 ***papers or documents as required by the subpoena issued pursuant***

9 ***to subsection 4, the Board or governing body may petition the***

10 ***district court to order the witness to appear or testify or produce***

11 ***the requested books, papers or documents.***

12 **6.** The Board or governing body shall issue a decision on the

13 matter within 5 days after the hearing and notify the applicant, in

14 writing, of its decision within ~~5~~ **15** days after it is issued. The

15 decision of the Board or governing body is a final decision for

16 purposes of judicial review.

17 **Sec. 4.** NRS 338.1385 is hereby amended to read as follows:

18 338.1385 1. Except as otherwise provided in subsection 7

19 and NRS 338.1906 and 338.1907, this state, or a local government

20 that awards a contract for the construction, alteration or repair of a

21 public work in accordance with paragraph (a) of subsection 1 of

22 NRS 338.1373, or a public officer, public employee or other person

23 responsible for awarding a contract for the construction, alteration

24 or repair of a public work who represents the State or the local

25 government, shall not:

26 (a) Commence such a project for which the estimated cost

27 exceeds \$100,000 unless it advertises in a newspaper of general

28 circulation in this state for bids for the project; or

29 (b) Divide such a project into separate portions to avoid the

30 requirements of paragraph (a).

31 2. Except as otherwise provided in subsection 7, a public body

32 that maintains a list of properly licensed contractors who are

33 interested in receiving offers to bid on public works projects for

34 which the estimated cost is more than \$25,000 but less than

35 \$100,000 shall solicit bids from not more than three of the

36 contractors on the list for a contract of that value for the

37 construction, alteration or repair of a public work. The public body

38 shall select contractors from the list in such a manner as to afford

39 each contractor an equal opportunity to bid on a public works

40 project. A properly licensed contractor must submit a written

41 request annually to the public body to remain on the list. Offers for

42 bids which are made pursuant to this subsection must be sent by

43 certified mail.

44 3. Each advertisement for bids must include a provision that

45 sets forth:



1 (a) The requirement that ~~(a)~~ :
2 (1) A contractor must be qualified pursuant to NRS 338.1379
3 to bid on the contract or must be exempt from meeting such
4 qualifications pursuant to NRS 338.1383; and

5 (2) *If the contract is for a public work of this state, each
6 subcontractor who will provide labor or a portion of the work or
7 improvement to the contractor for which the subcontractor will be
8 paid an amount exceeding 5 percent of the prime contractor's total
9 bid must be qualified pursuant to NRS 338.1379 to be a
10 subcontractor on the contract; and*

11 (b) The period during which an application to qualify as a bidder
12 *or a subcontractor* on the contract must be submitted.

13 4. Approved plans and specifications for the bids must be on
14 file at a place and time stated in the advertisement for the inspection
15 of all persons desiring to bid thereon and for other interested
16 persons. Contracts for the project must be awarded on the basis of
17 bids received.

18 5. Any bids received in response to an advertisement for bids
19 may be rejected if the person responsible for awarding the contract
20 determines that:

21 (a) The bidder is not a qualified bidder pursuant to NRS
22 338.1379, unless the bidder is exempt from meeting such
23 qualifications pursuant to NRS 338.1383;

24 (b) *If the contract is for a public work of this state, a
25 subcontractor who will provide labor or a portion of the work or
26 improvement to the contractor for which the subcontractor will be
27 paid an amount exceeding 5 percent of the prime contractor's total
28 bid is not a qualified subcontractor pursuant to NRS 338.1379;*

29 (c) The bidder is not responsive;

30 ~~(e)~~ (d) The quality of the services, materials, equipment or
31 labor offered does not conform to the approved plan or
32 specifications; or

33 ~~(d)~~ (e) The public interest would be served by such a rejection.

34 6. Before the State or a local government may commence a
35 project subject to the provisions of this section, based upon a
36 determination that the public interest would be served by rejecting
37 any bids received in response to an advertisement for bids, it shall
38 prepare and make available for public inspection a written statement
39 containing:

40 (a) A list of all persons, including supervisors, whom the State
41 or the local government intends to assign to the project, together
42 with their classifications and an estimate of the direct and indirect
43 costs of their labor;

44 (b) A list of all equipment that the State or the local government
45 intends to use on the project, together with an estimate of the



1 number of hours each item of equipment will be used and the hourly
2 cost to use each item of equipment;

3 (c) An estimate of the cost of administrative support for the
4 persons assigned to the project;

5 (d) An estimate of the total cost of the project; and

6 (e) An estimate of the amount of money the State or the local
7 government expects to save by rejecting the bids and performing the
8 project itself.

9 7. This section does not apply to:

10 (a) Any utility subject to the provisions of chapter 318 or 710 of
11 NRS;

12 (b) Any work of construction, reconstruction, improvement and
13 maintenance of highways subject to NRS 408.323 or 408.327;

14 (c) Normal maintenance of the property of a school district;

15 (d) The Las Vegas Valley Water District created pursuant to
16 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
17 District created pursuant to chapter 477, Statutes of Nevada 1983 or
18 the Virgin Valley Water District created pursuant to chapter 100,
19 Statutes of Nevada 1993; or

20 (e) The design and construction of a public work for which a
21 public body contracts with a design-build team pursuant to NRS
22 338.1711 to 338.1727.

23 **Sec. 5.** NRS 338.1385 is hereby amended to read as follows:

24 338.1385 1. Except as otherwise provided in subsection 8,
25 this state, or a local government that awards a contract for the
26 construction, alteration or repair of a public work in accordance with
27 paragraph (a) of subsection 1 of NRS 338.1373, or a public officer,
28 public employee or other person responsible for awarding a contract
29 for the construction, alteration or repair of a public work who
30 represents the State or the local government, shall not:

31 (a) Commence such a project for which the estimated cost
32 exceeds \$100,000 unless it advertises in a newspaper of general
33 circulation in this state for bids for the project; or

34 (b) Divide such a project into separate portions to avoid the
35 requirements of paragraph (a).

36 2. Except as otherwise provided in subsection 8, a public body
37 that maintains a list of properly licensed contractors who are
38 interested in receiving offers to bid on public works projects for
39 which the estimated cost is more than \$25,000 but less than
40 \$100,000 shall solicit bids from not more than three of the
41 contractors on the list for a contract of that value for the
42 construction, alteration or repair of a public work. The public body
43 shall select contractors from the list in such a manner as to afford
44 each contractor an equal opportunity to bid on a public works
45 project. A properly licensed contractor must submit a written



1 request annually to the public body to remain on the list. Offers for
2 bids which are made pursuant to this subsection must be sent by
3 certified mail.

4 3. Each advertisement for bids must include a provision that
5 sets forth:

6 (a) The requirement that ~~(a)~~
7 *(1) A contractor must be qualified pursuant to NRS 338.1379*
8 *to bid on the contract or must be exempt from meeting such*
9 *qualifications pursuant to NRS 338.1383; and*

10 *(2) If the contract is for a public work of this state, each*
11 *subcontractor who will provide labor or a portion of the work or*
12 *improvement to the contractor for which the subcontractor will be*
13 *paid an amount exceeding 5 percent of the prime contractor's total*
14 *bid must be qualified pursuant to NRS 338.1379 to be a*
15 *subcontractor on the contract; and*

16 (b) The period during which an application to qualify as a bidder
17 *or subcontractor* on the contract must be submitted.

18 4. Approved plans and specifications for the bids must be on
19 file at a place and time stated in the advertisement for the inspection
20 of all persons desiring to bid thereon and for other interested
21 persons. Contracts for the project must be awarded on the basis of
22 bids received.

23 5. Any bids received in response to an advertisement for bids
24 may be rejected if the person responsible for awarding the contract
25 determines that:

26 (a) The bidder is not a qualified bidder pursuant to NRS
27 338.1379, unless the bidder is exempt from meeting such
28 qualifications pursuant to NRS 338.1383;

29 (b) *If the contract is for a public work of this state, a*
30 *subcontractor who will provide labor or a portion of the work or*
31 *improvement to the contractor for which the subcontractor will be*
32 *paid an amount exceeding 5 percent of the prime contractor's total*
33 *bid is not a qualified subcontractor pursuant to NRS 338.1379;*

34 (c) The bidder is not responsive;

35 ~~(e)~~ (d) The quality of the services, materials, equipment or
36 labor offered does not conform to the approved plan or
37 specifications; or

38 ~~(d)~~ (e) The public interest would be served by such a rejection.

39 6. Before the State or a local government may commence a
40 project subject to the provisions of this section, based upon a
41 determination that the public interest would be served by rejecting
42 any bids received in response to an advertisement for bids, it shall
43 prepare and make available for public inspection a written statement
44 containing:



- 1 (a) A list of all persons, including supervisors, whom the State
- 2 or the local government intends to assign to the project, together
- 3 with their classifications and an estimate of the direct and indirect
- 4 costs of their labor;
- 5 (b) A list of all equipment that the State or the local government
- 6 intends to use on the project, together with an estimate of the
- 7 number of hours each item of equipment will be used and the hourly
- 8 cost to use each item of equipment;
- 9 (c) An estimate of the cost of administrative support for the
- 10 persons assigned to the project;
- 11 (d) An estimate of the total cost of the project; and
- 12 (e) An estimate of the amount of money the State or the local
- 13 government expects to save by rejecting the bids and performing the
- 14 project itself.
- 15 7. In preparing the estimated cost of a project pursuant to
- 16 subsection 6, the State or a local government must include the fair
- 17 market value of, or, if known, the actual cost of, all materials,
- 18 supplies, labor and equipment to be used for the project.
- 19 8. This section does not apply to:
- 20 (a) Any utility subject to the provisions of chapter 318 or 710 of
- 21 NRS;
- 22 (b) Any work of construction, reconstruction, improvement and
- 23 maintenance of highways subject to NRS 408.323 or 408.327;
- 24 (c) Normal maintenance of the property of a school district; or
- 25 (d) The Las Vegas Valley Water District created pursuant to
- 26 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
- 27 District created pursuant to chapter 477, Statutes of Nevada 1983 or
- 28 the Virgin Valley Water District created pursuant to chapter 100,
- 29 Statutes of Nevada 1993; or
- 30 (e) The design and construction of a public work for which a
- 31 public body contracts with a design-build team pursuant to NRS
- 32 338.1711 to 338.1727, inclusive.
- 33 **Sec. 6.** NRS 338.1387 is hereby amended to read as follows:
- 34 338.1387 1. A public body awarding a contract for a public
- 35 work shall not award the contract to a person who, at the time of the
- 36 bid, is not properly licensed under the provisions of chapter 624 of
- 37 NRS or if the contract would exceed the limit of his license. A
- 38 subcontractor named by the contractor who *will provide labor or a*
- 39 *portion of the work or improvement to the contractor for which*
- 40 *the subcontractor will be paid an amount not exceeding 5 percent*
- 41 *of the prime contractor's total bid and who* is not properly licensed
- 42 for that portion of the work shall be deemed unacceptable. If ~~the~~
- 43 *such a* subcontractor is deemed unacceptable, the contractor shall
- 44 provide an acceptable subcontractor before the award of the
- 45 contract.



1 2. If, after awarding the contract, the public body discovers
2 that the person to whom the contract was awarded is not licensed, or
3 that the contract would exceed his license, the public body shall
4 reject the bid and may accept the next lowest bid for that public
5 work from a responsive bidder who was determined by the public
6 body to be a qualified bidder pursuant to NRS 338.1379 or was
7 exempt from meeting such qualifications pursuant to NRS 338.1373
8 or 338.1383 without requiring that new bids be submitted.

9 **Sec. 7.** NRS 338.141 is hereby amended to read as follows:

10 338.141 1. Except as otherwise provided in subsection 2 ~~and~~
11 *and NRS 338.1727*, each bid submitted to any officer, department,
12 board or commission for the construction of any public work or
13 improvement must include:

14 (a) The name of each subcontractor who *is qualified pursuant*
15 *to NRS 338.1379 to be a subcontractor on a contract for a public*
16 *work and who* will provide labor or a portion of the work or
17 improvement to the contractor for which he will be paid an amount
18 exceeding 5 percent of the prime contractor's total bid. Within 2
19 hours after the completion of the opening of the bids, the contractors
20 who submitted the three lowest bids must submit a list containing
21 the name of each subcontractor who will provide labor or a portion
22 of the work or improvement to the contractor for which he will be
23 paid an amount exceeding 1 percent of the prime contractor's total
24 bid or \$50,000, whichever is greater, and the number of the license
25 issued to the subcontractor pursuant to chapter 624 of NRS. If a
26 contractor fails to submit such a list within the required time, his bid
27 shall be deemed not responsive.

28 (b) A description of the portion of the work or improvement
29 which each subcontractor named in the bid will complete.

30 2. The contractor shall list in his bid pursuant to subsection 1
31 the name of a subcontractor for each portion of the project that will
32 be completed by a subcontractor.

33 3. A contractor whose bid is accepted shall not substitute any
34 person for a subcontractor who is named in the bid, unless:

35 (a) The awarding authority objects to the subcontractor, requests
36 in writing a change in the subcontractor and pays any increase in
37 costs resulting from the change; or

38 (b) The substitution is approved by the awarding authority or an
39 authorized representative of the awarding authority. The substitution
40 must be approved if the awarding authority or authorized
41 representative of the awarding authority determines that:

42 (1) The named subcontractor, after having a reasonable
43 opportunity, fails or refuses to execute a written contract with the
44 contractor which was offered to the subcontractor with the same



1 general terms that all other subcontractors on the project were
2 offered;

3 (2) The named subcontractor files for bankruptcy or becomes
4 insolvent; or

5 (3) The named subcontractor fails or refuses to perform his
6 subcontract within a reasonable time or is unable to furnish a
7 performance bond and payment bond pursuant to NRS 339.025.

8 4. As used in this section, "general terms" means the terms and
9 conditions of a contract that set the basic requirements for a project
10 and apply without regard to the particular trade or specialty of a
11 subcontractor, but does not include any provision that controls or
12 relates to the specific portion of the project that will be completed
13 by a subcontractor, including, without limitation, the materials to be
14 used by the subcontractor or other details of the work to be
15 performed by the subcontractor.

16 **Sec. 8.** NRS 338.1721 is hereby amended to read as follows:

17 338.1721 To qualify to participate in a project for the design
18 and construction of a public work, a design-build team must:

19 1. Obtain a performance bond and payment bond as required
20 pursuant to NRS 339.025;

21 2. Obtain insurance covering general liability and liability for
22 errors and omissions;

23 3. Not have been found liable for breach of contract with
24 respect to a previous project, other than a breach for legitimate
25 cause;

26 4. Not have been disqualified from being awarded a contract
27 pursuant to NRS 338.017, 338.1387, 338.145 or 408.333; ~~and~~

28 5. Ensure that the members of the design-build team possess
29 the licenses and certificates required to carry out the functions of
30 their respective professions within this state ~~H~~; and

31 **6. *Ensure that the prime contractor is qualified to bid on a***
32 ***public work pursuant to NRS 338.1379 or is exempt from meeting***
33 ***such qualifications pursuant to NRS 338.1383.***

34 **Sec. 9.** NRS 338.1723 is hereby amended to read as follows:

35 338.1723 1. A public body shall advertise for preliminary
36 proposals for the design and construction of a public work by a
37 design-build team in a newspaper of general circulation in this state.

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

40 (a) A description of the public work to be designed and
41 constructed;

42 (b) Separate estimates of the costs of designing and constructing
43 the public work;



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

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

8 (e) A statement setting forth the place and time in which a
9 design-build team desiring to submit a proposal for the public work
10 may obtain the information necessary to submit a proposal,
11 including, without limitation, the information set forth in subsection
12 3 ~~H~~; and

13 *(f) A statement setting forth that the prime contractor must be*
14 *qualified to bid on a public work pursuant to NRS 338.1379 or be*
15 *exempt from meeting such qualifications pursuant to NRS*
16 *338.1383 before submitting a preliminary proposal.*

17 3. A public body shall maintain at the time and place set forth
18 in the request for preliminary proposals the following information
19 for inspection by a design-build team desiring to submit a proposal
20 for the public work:

21 (a) The extent to which designs must be completed for both
22 preliminary and final proposals and any other requirements for the
23 design and construction of the public work that the public body
24 determines to be necessary;

25 (b) A list of the requirements set forth in NRS 338.1721;

26 (c) A list of the factors that the public body will use to evaluate
27 design-build teams who submit a proposal for the public work,
28 including, without limitation:

29 (1) The relative weight to be assigned to each factor pursuant
30 to NRS 338.1727; and

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

34 (d) Notice that a design-build team desiring to submit a proposal
35 for the public work must include with its proposal the information
36 used by the public body to determine finalists among the design-
37 build teams submitting proposals pursuant to subsection 2 of NRS
38 338.1725 and a description of that information;

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

43 (f) A statement as to whether a design-build team that is selected
44 as a finalist pursuant to NRS 338.1725 but is not awarded the
45 design-build contract pursuant to NRS 338.1727 will be partially



1 reimbursed for the cost of preparing a final proposal and, if so, an
2 estimate of the amount of the partial reimbursement.

3 **Sec. 10.** NRS 338.1727 is hereby amended to read as follows:

4 338.1727 1. After selecting the finalists pursuant to NRS
5 338.1725, the public body shall provide to each finalist a request for
6 final proposals for the public work. The request for final proposals
7 must:

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

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

13 2. *If one or more of the finalists selected pursuant to NRS*
14 *338.1725 is disqualified or withdraws, the public body may select a*
15 *design-build team from the remaining finalists if at least two*
16 *finalists remain.*

17 3. Except as otherwise provided in this subsection, in assigning
18 the relative weight to each factor for selecting a design-build team
19 pursuant to subsection 1, the public body shall assign, without
20 limitation, a relative weight of 5 percent to the possession of a
21 certificate of eligibility to receive a preference in bidding on public
22 works and a relative weight of at least 30 percent to the proposed
23 cost of design and construction of the public work. If any federal
24 statute or regulation precludes the granting of federal assistance or
25 reduces the amount of that assistance for a particular public work
26 because of the provisions of this subsection relating to preference in
27 bidding on public works, those provisions of this subsection do not
28 apply insofar as their application would preclude or reduce federal
29 assistance for that public work.

30 ~~3.~~ 4. A final proposal submitted by a design-build team
31 pursuant to this section must be prepared thoroughly ~~and~~ and be
32 responsive to the criteria that the public body will use to select a
33 design-build team to design and construct the public work described
34 in subsection 1 . ~~and comply with the provisions~~ *A final proposal*
35 *is exempt from the requirements* of NRS 338.141.

36 ~~4.~~ 5. After receiving the final proposals for the public work,
37 the public body shall:

38 (a) Select the most cost-effective and responsive final proposal,
39 using the criteria set forth pursuant to subsections 1 and ~~2;~~ 3; or

40 (b) Reject all the final proposals.

41 ~~5.~~ 6. If a public body selects a final proposal pursuant to
42 paragraph (a) of subsection ~~4;~~ 5, the public body shall, at its next
43 regularly scheduled meeting:

44 (a) Review and ratify the selection.



1 (b) Award the design-build contract to the design-build team
2 whose proposal is selected.

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

9 (d) Make available to the public a summary setting forth the
10 factors used by the public body to select the successful design-build
11 team and the ranking of the design-build teams who submitted final
12 proposals. The public body shall not release to a third party, or
13 otherwise make public, financial or proprietary information
14 submitted by a design-build team.

15 ~~6.~~ 7. A contract awarded pursuant to this section:

16 (a) Must specify:

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

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

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

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

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

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



1 ~~[7.]~~ 8. Any provision of a contract that is in violation of
2 paragraph (c) of subsection ~~[6]~~ 7 is declared to be contrary to the
3 public policy of this state and is void.

4 ~~[8.]~~ 9. A design-build team to whom a contract is awarded
5 pursuant to this section shall:

6 (a) Assume overall responsibility for ensuring that the design
7 and construction of the public work is completed in a satisfactory
8 manner; and

9 (b) Use the workforce of the prime contractor on the design-
10 build team to construct at least 15 percent of the public work.

11 **Sec. 11.** 1. This section and sections 1 to 4, inclusive, and 6
12 to 10, inclusive, of this act become effective upon passage and
13 approval.

14 2. Section 4 of this act expires by limitation on April 30, 2013.

15 3. Section 5 of this act becomes effective on May 1, 2013.

