

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.

~

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; providing that those subcontractors are presumed to be qualified except under certain circumstances; authorizing the Board to disqualify subcontractors under certain circumstances; providing for a process to appeal such a disqualification; revising the criteria that the 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:



\* S B 4 9 1 R 1 \*

1       **Section 1.** Chapter 338 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3       1. *Each subcontractor whose name is required to be included*  
4 *in a bid pursuant to NRS 338.141 must, to be eligible to provide*  
5 *labor or a portion of the work or improvement to a contractor to*  
6 *whom the State Public Works Board awards a contract pursuant*  
7 *to this chapter, be qualified in accordance with criteria established*  
8 *by regulation by the State Public Works Board. The criteria*  
9 *established by the State Public Works Board pursuant to this*  
10 *subsection must be made applicable to a subcontractor but must*  
11 *otherwise be substantively identical to the criteria set forth in*  
12 *paragraph (b) of subsection 3 of NRS 338.1375.*

13       2. *A subcontractor shall be presumed to be qualified pursuant*  
14 *to subsection 1 unless the State Public Works Board has received*  
15 *verifiable information indicating that the subcontractor:*

16       (a) *Has been disciplined or fined by the State Contractors'*  
17 *Board for a violation of chapter 624 of NRS; or*

18       (b) *Does not meet the criteria established by regulation*  
19 *pursuant to this section.*

20       3. *Upon receipt of verifiable information of a type described*  
21 *in subsection 2, the State Public Works Board shall conduct an*  
22 *investigation to determine whether the subcontractor meets the*  
23 *criteria established by regulation pursuant to this section. Except*  
24 *as otherwise provided in subsection 4, if the State Public Works*  
25 *Board determines that the subcontractor does not meet such*  
26 *criteria, the State Public Works Board may disqualify the*  
27 *subcontractor, for a period set by the State Public Works Board,*  
28 *from participating in public works projects which are sponsored*  
29 *by the State Public Works Board. The State Public Works Board*  
30 *shall provide written notice to the subcontractor of any such*  
31 *disqualification.*

32       4. *A subcontractor may appeal a disqualification pursuant to*  
33 *subsection 3 in the manner set forth in NRS 338.1381.*

34       **Sec. 2.** NRS 338.1373 is hereby amended to read as follows:

35       338.1373 1. A local government shall award a contract for  
36 the construction, alteration or repair of a public work pursuant to the  
37 provisions of:

38       (a) NRS 338.1377 to 338.139, inclusive; or

39       (b) NRS 338.143 to 338.148, inclusive.

40       2. The provisions of NRS 338.1375 to 338.1383, inclusive, *and*  
41 *section 1 of this act* and 338.139 do not apply with respect to  
42 contracts for the construction, reconstruction, improvement and  
43 maintenance of highways that are awarded by the Department of  
44 Transportation pursuant to NRS 408.313 to 408.433, inclusive.



1       **Sec. 3.** NRS 338.1375 is hereby amended to read as follows:  
2       338.1375 1. The State Public Works Board shall not accept a  
3 bid on a contract for a public work unless the person who submits  
4 the bid has qualified pursuant to NRS 338.1379 to bid on that  
5 contract.

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

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

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

18       (b) May include only:

19           (1) The financial ability of the applicant to perform a  
20 contract;

21           (2) The principal personnel of the applicant;

22           (3) Whether the applicant has breached any contracts with a  
23 public agency or person in this state or any other state;

24           (4) Whether the applicant has been disqualified from being  
25 awarded a contract pursuant to NRS 338.017 or 338.1387; ~~and~~

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

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

30       **Sec. 4.** NRS 338.1381 is hereby amended to read as follows:

31       338.1381 1. If, within 10 days after receipt of the notice  
32 denying ~~this application,~~ *an application pursuant to NRS*  
33 *338.1379 or disqualifying a subcontractor pursuant to section 1 of*  
34 *this act,* the applicant *or subcontractor, as applicable,* files a  
35 written request for a hearing with the State Public Works Board or  
36 the governing body of the local government, the Board or governing  
37 body shall set the matter for a hearing within ~~10~~ 20 days after  
38 receipt of the request. The hearing must be held not later than ~~20~~  
39 45 days after the receipt of the request for a hearing ~~;~~ *unless the*  
40 *parties, by written stipulation, agree to extend the time.*

41       2. The hearing must be held at a time and place prescribed by  
42 the Board or governing body. At least 10 days before the date set for  
43 the hearing, the Board or governing body shall serve the applicant  
44 *or subcontractor* with written notice of the hearing. The notice may  
45 be served by personal delivery to the applicant *or subcontractor* or



1 by certified mail to the last known business or residential address of  
2 the applicant ~~[-]~~ or subcontractor.

3 3. *The applicant or subcontractor has the burden at the*  
4 *hearing of proving by substantial evidence that the applicant is*  
5 *entitled to be qualified to bid on a contract for a public work, or*  
6 *that the subcontractor is qualified to be a subcontractor on a*  
7 *contract for a contract for a public work.*

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

10 (a) *Administer oaths;*

11 (b) *Take testimony;*

12 (c) *Issue subpoenas to compel the attendance of witnesses to*  
13 *testify before the Board or governing body;*

14 (d) *Require the production of related books, papers and*  
15 *documents; and*

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

17 5. *If a witness refuses to attend or testify or produce books,*  
18 *papers or documents as required by the subpoena issued pursuant*  
19 *to subsection 4, the Board or governing body may petition the*  
20 *district court to order the witness to appear or testify or produce*  
21 *the requested books, papers or documents.*

22 6. The Board or governing body shall issue a decision on the  
23 matter within 5 days after the hearing and notify the applicant, in  
24 writing, of its decision within ~~[-]~~ 15 days after it is issued. The  
25 decision of the Board or governing body is a final decision for  
26 purposes of judicial review.

27 **Sec. 5.** NRS 338.141 is hereby amended to read as follows:

28 338.141 1. Except as otherwise provided in subsection 2 ~~[-]~~  
29 *and NRS 338.1727*, each bid submitted to any officer, department,  
30 board or commission for the construction of any public work or  
31 improvement must include:

32 (a) The name of each subcontractor who will provide labor or a  
33 portion of the work or improvement to the contractor for which he  
34 will be paid an amount exceeding 5 percent of the prime  
35 contractor's total bid. Within 2 hours after the completion of the  
36 opening of the bids, the contractors who submitted the three lowest  
37 bids must submit a list containing the name of each subcontractor  
38 who will provide labor or a portion of the work or improvement to  
39 the contractor for which he will be paid an amount exceeding 1  
40 percent of the prime contractor's total bid or \$50,000, whichever is  
41 greater, and the number of the license issued to the subcontractor  
42 pursuant to chapter 624 of NRS. If a contractor fails to submit such  
43 a list within the required time ~~[-, his]~~ *or if the list includes the name*  
44 *of a subcontractor who has been disqualified by the State Public*



1 *Works Board pursuant to section 1 of this act, the contractor's* bid  
2 shall be deemed not responsive.

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

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

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

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

13 (b) The substitution is approved by the awarding authority or an  
14 authorized representative of the awarding authority. The substitution  
15 must be approved if the awarding authority or authorized  
16 representative of the awarding authority determines that:

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

22 (2) The named subcontractor files for bankruptcy or becomes  
23 insolvent; or

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

27 4. As used in this section, "general terms" means the terms and  
28 conditions of a contract that set the basic requirements for a project  
29 and apply without regard to the particular trade or specialty of a  
30 subcontractor, but does not include any provision that controls or  
31 relates to the specific portion of the project that will be completed  
32 by a subcontractor, including, without limitation, the materials to be  
33 used by the subcontractor or other details of the work to be  
34 performed by the subcontractor.

35 **Sec. 6.** NRS 338.1721 is hereby amended to read as follows:

36 338.1721 To qualify to participate in a project for the design  
37 and construction of a public work, a design-build team must:

38 1. Obtain a performance bond and payment bond as required  
39 pursuant to NRS 339.025;

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, 338.1387, 338.145 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 ~~and~~; *and*

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

9 **Sec. 7.** NRS 338.1723 is hereby amended to read as follows:

10 338.1723 1. A public body shall advertise for preliminary  
11 proposals for the design and construction of a public work by a  
12 design-build team in a newspaper of general circulation in this state.

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

15 (a) A description of the public work to be designed and  
16 constructed;

17 (b) Separate estimates of the costs of designing and constructing  
18 the public work;

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

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

26 (e) A statement setting forth the place and time in which a  
27 design-build team desiring to submit a proposal for the public work  
28 may obtain the information necessary to submit a proposal,  
29 including, without limitation, the information set forth in subsection  
30 3 ~~and~~; *and*

31 *(f) A statement setting forth that the prime contractor must be*  
32 *qualified to bid on a public work pursuant to NRS 338.1379 or be*  
33 *exempt from meeting such qualifications pursuant to NRS*  
34 *338.1383 before submitting a preliminary proposal.*

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

39 (a) The extent to which designs must be completed for both  
40 preliminary and final proposals and any other requirements for the  
41 design and construction of the public work that the public body  
42 determines to be necessary;

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



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

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

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

9 (d) Notice that a design-build team desiring to submit a proposal  
10 for the public work must include with its proposal the information  
11 used by the public body to determine finalists among the design-  
12 build teams submitting proposals pursuant to subsection 2 of NRS  
13 338.1725 and a description of that information;

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

18 (f) A statement as to whether a design-build team that is selected  
19 as a finalist pursuant to NRS 338.1725 but is not awarded the  
20 design-build contract pursuant to NRS 338.1727 will be partially  
21 reimbursed for the cost of preparing a final proposal and, if so, an  
22 estimate of the amount of the partial reimbursement.

23 **Sec. 8.** NRS 338.1727 is hereby amended to read as follows:

24 338.1727 1. After selecting the finalists pursuant to NRS  
25 338.1725, the public body shall provide to each finalist a request for  
26 final proposals for the public work. The request for final proposals  
27 must:

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

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

33 2. *If one or more of the finalists selected pursuant to NRS*  
34 *338.1725 is disqualified or withdraws, the public body may select a*  
35 *design-build team from the remaining finalists if at least two*  
36 *finalists remain.*

37 3. Except as otherwise provided in this subsection, in assigning  
38 the relative weight to each factor for selecting a design-build team  
39 pursuant to subsection 1, the public body shall assign, without  
40 limitation, a relative weight of 5 percent to the possession of a  
41 certificate of eligibility to receive a preference in bidding on public  
42 works and a relative weight of at least 30 percent to the proposed  
43 cost of design and construction of the public work. If any federal  
44 statute or regulation precludes the granting of federal assistance or  
45 reduces the amount of that assistance for a particular public work





1 because of the provisions of this subsection relating to preference in  
2 bidding on public works, those provisions of this subsection do not  
3 apply insofar as their application would preclude or reduce federal  
4 assistance for that public work.

5 ~~[3.]~~ 4. A final proposal submitted by a design-build team  
6 pursuant to this section must be prepared thoroughly ~~[4.]~~ and be  
7 responsive to the criteria that the public body will use to select a  
8 design-build team to design and construct the public work described  
9 in subsection 1 . ~~[and comply with the provisions]~~ ***A final proposal***  
10 ***is exempt from the requirements*** of NRS 338.141.

11 ~~[4.]~~ 5. After receiving the final proposals for the public work,  
12 the public body shall:

13 (a) Select the most cost-effective and responsive final proposal,  
14 using the criteria set forth pursuant to subsections 1 and ~~[2.]~~ 3; or

15 (b) Reject all the final proposals.

16 ~~[5.]~~ 6. If a public body selects a final proposal pursuant to  
17 paragraph (a) of subsection ~~[4.]~~ 5, the public body shall, at its next  
18 regularly scheduled meeting:

19 (a) Review and ratify the selection.

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

22 (c) Partially reimburse the unsuccessful finalists if partial  
23 reimbursement was provided for in the request for preliminary  
24 proposals pursuant to paragraph (f) of subsection 3 of NRS  
25 338.1723. The amount of reimbursement must not exceed, for each  
26 unsuccessful finalist, 3 percent of the total amount to be paid to the  
27 design-build team as set forth in the design-build contract.

28 (d) Make available to the public a summary setting forth the  
29 factors used by the public body to select the successful design-build  
30 team and the ranking of the design-build teams who submitted final  
31 proposals. The public body shall not release to a third party, or  
32 otherwise make public, financial or proprietary information  
33 submitted by a design-build team.

34 ~~[6.]~~ 7. A contract awarded pursuant to this section:

35 (a) Must specify:

36 (1) An amount that is the maximum amount that the public  
37 body will pay for the performance of all the work required by the  
38 contract, excluding any amount related to costs that may be incurred  
39 as a result of unexpected conditions or occurrences as authorized by  
40 the contract;

41 (2) An amount that is the maximum amount that the public  
42 body will pay for the performance of the professional services  
43 required by the contract; and

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





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

5 (c) Except as otherwise provided in paragraph (d), must not  
6 require the design professional to defend, indemnify or hold  
7 harmless the public body or the employees, officers or agents of that  
8 public body from any liability, damage, loss, claim, action or  
9 proceeding caused by the negligence, errors, omissions, recklessness  
10 or intentional misconduct of the employees, officers and agents of  
11 the public body.

12 (d) May require the design-build team to defend, indemnify and  
13 hold harmless the public body, and the employees, officers and  
14 agents of the public body from any liabilities, damages, losses,  
15 claims, actions or proceedings, including, without limitation,  
16 reasonable attorneys' fees, that are caused by the negligence, errors,  
17 omissions, recklessness or intentional misconduct of the design-  
18 build team or the employees or agents of the design-build team in  
19 the performance of the contract.

20 ~~[7-]~~ 8. Any provision of a contract that is in violation of  
21 paragraph (c) of subsection ~~[6]~~ 7 is declared to be contrary to the  
22 public policy of this state and is void.

23 ~~[8-]~~ 9. A design-build team to whom a contract is awarded  
24 pursuant to this section shall:

25 (a) Assume overall responsibility for ensuring that the design  
26 and construction of the public work is completed in a satisfactory  
27 manner; and

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

30 **Sec. 9.** This act becomes effective upon passage and approval.

