
SENATE BILL NO. 467—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 29, 2005

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to laws governing public works projects. (BDR 28-816)

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; increasing the minimum estimated cost for public works which must be advertised for bidding; requiring only first tier subcontractors to be listed in the bid by the prime contractor in certain circumstances; providing an exception to the competitive bidding process in certain circumstances; requiring an arbitration clause in certain public works contracts; revising the requirements for a request for preliminary proposals for the design and construction of certain public works; decreasing the required number of proposals required before awarding a contract; requiring certain proposals and related information to be made available to the public; 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 338.010 is hereby amended to read as follows:
2 338.010 As used in this chapter:
3 1. “Authorized representative” means a person designated by a
4 governing body to be responsible for the development ~~and~~ ,
5 *solicitation*, award *and administration* of contracts for public works
6 pursuant to this chapter.



- 1 2. “Contract” means a written contract entered into between a
2 contractor and a public body for the provision of labor, materials,
3 equipment or supplies for a public work.
- 4 3. “Contractor” means:
5 (a) A person who is licensed pursuant to the provisions of
6 chapter 624 of NRS or performs such work that he is not required to
7 be licensed pursuant to chapter 624 of NRS.
8 (b) A design-build team.
- 9 4. “Day labor” means all cases where public bodies, their
10 officers, agents or employees, hire, supervise and pay the wages
11 thereof directly to a workman or workmen employed by them on
12 public works by the day and not under a contract in writing.
- 13 5. “Design-build contract” means a contract between a public
14 body and a design-build team in which the design-build team agrees
15 to design and construct a public work.
- 16 6. “Design-build team” means an entity that consists of:
17 (a) At least one person who is licensed as a general engineering
18 contractor or a general building contractor pursuant to chapter 624
19 of NRS; and
20 (b) For a public work that consists of:
21 (1) A building and its site, at least one person who holds a
22 certificate of registration to practice architecture pursuant to chapter
23 623 of NRS.
24 (2) Anything other than a building and its site, at least one
25 person who holds a certificate of registration to practice architecture
26 pursuant to chapter 623 of NRS or landscape architecture pursuant
27 to chapter 623A of NRS or who is licensed as a professional
28 engineer pursuant to chapter 625 of NRS.
- 29 7. “Design professional” means:
30 (a) A person who is licensed as a professional engineer pursuant
31 to chapter 625 of NRS;
32 (b) A person who is licensed as a professional land surveyor
33 pursuant to chapter 625 of NRS;
34 (c) A person who holds a certificate of registration to engage in
35 the practice of architecture, interior design or residential design
36 pursuant to chapter 623 of NRS;
37 (d) A person who holds a certificate of registration to engage in
38 the practice of landscape architecture pursuant to chapter 623A of
39 NRS; or
40 (e) A business entity that engages in the practice of professional
41 engineering, land surveying, architecture or landscape architecture.
- 42 8. “Eligible bidder” means a person who is:
43 (a) Found to be a responsible and responsive contractor by a
44 local government or its authorized representative which requests



1 bids for a public work in accordance with paragraph (b) of
2 subsection 1 of NRS 338.1373; or

3 (b) Determined by a public body or its authorized representative
4 which awarded a contract for a public work pursuant to NRS
5 338.1375 to 338.139, inclusive, to be qualified to bid on that
6 contract pursuant to NRS 338.1379 or 338.1382.

7 9. "General contractor" means a person who is licensed to
8 conduct business in one, or both, of the following branches of the
9 contracting business:

10 (a) General engineering contracting, as described in subsection 2
11 of NRS 624.215.

12 (b) General building contracting, as described in subsection 3 of
13 NRS 624.215.

14 10. "Governing body" means the board, council, commission
15 or other body in which the general legislative and fiscal powers of a
16 local government are vested.

17 11. "Local government" means every political subdivision or
18 other entity which has the right to levy or receive money from ad
19 valorem or other taxes or any mandatory assessments, and includes,
20 without limitation, counties, cities, towns, boards, school districts
21 and other districts organized pursuant to chapters 244A, 309, 318,
22 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
23 inclusive, and any agency or department of a county or city which
24 prepares a budget separate from that of the parent political
25 subdivision. The term includes a person who has been designated by
26 a local government to serve as its authorized representative.

27 12. "Offense" means failing to:

28 (a) Pay the prevailing wage required pursuant to this chapter;

29 (b) Pay the contributions for unemployment compensation
30 required pursuant to chapter 612 of NRS;

31 (c) Provide and secure compensation for employees required
32 pursuant to chapters 616A to 617, inclusive, of NRS; or

33 (d) Comply with subsection 4 or 5 of NRS 338.070.

34 13. "Prime contractor" means a contractor who:

35 (a) Contracts to construct an entire project;

36 (b) Coordinates all work performed on the entire project;

37 (c) Uses his own workforce to perform all or a part of the public
38 work; and

39 (d) Contracts for the services of any subcontractor or
40 independent contractor or is responsible for payment to any
41 contracted subcontractors or independent contractors.

42 ➤ The term includes, without limitation, a general contractor or a
43 specialty contractor who is authorized to bid on a project pursuant to
44 NRS 338.139 or 338.148.



1 14. "Public body" means the State, county, city, town, school
2 district or any public agency of this State or its political subdivisions
3 sponsoring or financing a public work.

4 15. "Public work" means any project for the new construction,
5 repair or reconstruction of:

6 (a) A project financed in whole or in part from public money
7 for:

8 (1) Public buildings;

9 (2) Jails and prisons;

10 (3) Public roads;

11 (4) Public highways;

12 (5) Public streets and alleys;

13 (6) Public utilities;

14 (7) Publicly owned water mains and sewers;

15 (8) Public parks and playgrounds;

16 (9) Public convention facilities which are financed at least in
17 part with public money; and

18 (10) All other publicly owned works and property.

19 (b) A building for the University and Community College
20 System of Nevada of which 25 percent or more of the costs of the
21 building as a whole are paid from money appropriated by this State
22 or from federal money.

23 16. "Specialty contractor" means a person who is licensed to
24 conduct business as described in subsection 4 of NRS 624.215.

25 17. "Stand-alone underground utility project" means an
26 underground utility project that is not integrated into a larger
27 project, including, without limitation:

28 (a) An underground sewer line or an underground pipeline for
29 the conveyance of water, including facilities appurtenant thereto;
30 and

31 (b) A project for the construction or installation of a storm drain,
32 including facilities appurtenant thereto,

33 ↳ that is not located at the site of a public work for the design and
34 construction of which a public body is authorized to contract with a
35 design-build team pursuant to subsection 2 of NRS 338.1711.

36 18. "Subcontract" means a written contract entered into
37 between:

38 (a) A contractor and a subcontractor or supplier; or

39 (b) A subcontractor and another subcontractor or supplier,
40 ↳ for the provision of labor, materials, equipment or supplies for a
41 construction project.

42 19. "Subcontractor" means a person who:

43 (a) Is licensed pursuant to the provisions of chapter 624 of NRS
44 or performs such work that he is not required to be licensed pursuant
45 to chapter 624 of NRS; and



1 (b) Contracts with a contractor, another subcontractor or a
2 supplier to provide labor, materials or services for a construction
3 project.

4 20. "Supplier" means a person who provides materials,
5 equipment or supplies for a construction project.

6 21. "Wages" means:

7 (a) The basic hourly rate of pay; and

8 (b) The amount of pension, health and welfare, vacation and
9 holiday pay, the cost of apprenticeship training or other similar
10 programs or other bona fide fringe benefits which are a benefit to
11 the workman.

12 22. "Workman" means a skilled mechanic, skilled workman,
13 semiskilled mechanic, semiskilled workman or unskilled workman
14 in the service of a contractor or subcontractor under any
15 appointment or contract of hire or apprenticeship, express or
16 implied, oral or written, whether lawfully or unlawfully employed.
17 The term does not include a design professional.

18 **Sec. 2.** NRS 338.035 is hereby amended to read as follows:

19 338.035 The obligation of a contractor ~~[engaged on a public~~
20 ~~work]~~ or subcontractor engaged on a public work to pay wages in
21 accordance with the determination of the Labor Commissioner may
22 be ~~[discharged by the making of payments in cash, or]~~ *satisfied* by
23 making contributions, *in addition to a basic hourly rate of pay,* to a
24 third person pursuant to a fund, plan or program in the name of the
25 workman.

26 **Sec. 3.** NRS 338.080 is hereby amended to read as follows:

27 338.080 None of the provisions of NRS 338.020 to 338.090,
28 inclusive, apply to:

29 1. Any work, construction, alteration, repair or other
30 employment performed, undertaken or carried out, by or for any
31 railroad company or any person operating the same, whether such
32 work, construction, alteration or repair is incident to or in
33 conjunction with a contract to which a public body is a party, or
34 otherwise.

35 2. Apprentices recorded under the provisions of chapter 610 of
36 NRS.

37 3. Any contract for a public work ~~[whose cost is]~~ *which costs*
38 less than ~~[\$100,000.]~~ *\$250,000.* A unit of the project must not be
39 separated from the total project, even if that unit is to be completed
40 at a later time, in order to lower the cost of the project below
41 ~~[\$100,000.]~~ *\$250,000.*

42 **Sec. 4.** NRS 338.1377 is hereby amended to read as follows:

43 338.1377 Except as otherwise provided in NRS 338.1382, if a
44 governing body that sponsors or finances a public work elects to
45 award contracts for public works pursuant to the provisions of NRS



1 338.1377 to 338.139, inclusive, the governing body shall adopt the
2 following criteria for determining whether a person who has applied
3 pursuant to NRS 338.1379 is qualified to bid on contracts for public
4 works of the local government:

5 1. Whether the applicant possesses a valid contractor's license
6 of a class corresponding to the work to be required by the local
7 government;

8 2. Whether the applicant has the ability to obtain the necessary
9 bonding for the work to be required by the local government;

10 3. Whether the applicant has successfully completed ~~one or~~
11 ~~more~~ *an appropriate number of projects as determined by the*
12 *local government, but not to exceed 5 projects*, during the 5 years
13 immediately preceding the date of application of similar size, scope
14 or type as the work to be required by the local government;

15 4. Whether the principal personnel employed by the applicant
16 have the necessary professional qualifications and experience for the
17 work to be required by the local government;

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

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

23 7. Whether the applicant has been convicted of a violation for
24 discrimination in employment during the 2 years immediately
25 preceding the date of application;

26 8. Whether the applicant has the ability to obtain and maintain
27 insurance coverage for public liability and property damage within
28 limits sufficient to protect the applicant and all the subcontractors of
29 the applicant from claims for personal injury, accidental death and
30 damage to property that may arise in connection with the work to be
31 required by the local government;

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

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

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

41 12. Whether the application of the applicant is truthful and
42 complete; and

43 13. Whether, during the 5 years immediately preceding the date
44 of application, the applicant has, as a result of causes within the



1 control of the applicant or a subcontractor or supplier of the
2 applicant, failed to perform any contract:

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

6 (b) Within the time specified by the contract unless extended by
7 the person or governmental entity that awarded the contract or its
8 authorized representative; or

9 (c) For the amount of money specified in the contract or as
10 modified by any change orders initiated or approved by the person
11 or governmental entity that awarded the contract or its authorized
12 representative.

13 ➤ Evidence of the failures described in this subsection may include,
14 without limitation, the assessment of liquidated damages against the
15 applicant, the forfeiture of any bonds posted by the applicant, an
16 arbitration award granted against the applicant or a decision by a
17 court of law against the applicant.

18 **Sec. 5.** NRS 338.1379 is hereby amended to read as follows:

19 338.1379 1. Except as otherwise provided in NRS 338.1382,
20 a contractor who wishes to qualify as a bidder on a contract for a
21 public work must submit an application to the State Public Works
22 Board or the governing body.

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

25 (a) Investigate the applicant to determine whether he is qualified
26 to bid on a contract; and

27 (b) After conducting the investigation, determine whether the
28 applicant is qualified to bid on a contract. The determination must
29 be made within 45 days after receipt of the application.

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

35 4. The State Public Works Board or the governing body may
36 determine an applicant is qualified to bid:

37 (a) On a specific project; *or*

38 (b) On more than one project over a period of ~~12 months; or~~

39 ~~—(c) On more than one project over a period of 24 months.]~~ *time*
40 *to be determined by the State Public Works Board or the*
41 *governing body.*

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



1 6. The governing body shall not use any criteria other than the
2 criteria described in NRS 338.1377 in determining whether to
3 approve or deny an application.

4 7. Financial information and other data pertaining to the net
5 worth of an applicant which is gathered by or provided to the State
6 Public Works Board or a governing body to determine the financial
7 ability of an applicant to perform a contract is confidential and not
8 open to public inspection.

9 **Sec. 6.** NRS 338.1381 is hereby amended to read as follows:

10 338.1381 1. If, within 10 days after receipt of the notice
11 denying an application pursuant to NRS 338.1379 or disqualifying a
12 subcontractor pursuant to NRS 338.1376, the applicant or
13 subcontractor, as applicable, files a written request for a hearing
14 with the State Public Works Board or the governing body, the Board
15 or governing body shall set the matter for a hearing within 20 days
16 after receipt of the request. The hearing must be held not later than
17 45 days after the receipt of the request for a hearing unless the
18 parties, by written stipulation, agree to extend the time.

19 2. The hearing must be held at a time and place prescribed by
20 the Board or governing body. At least 10 days before the date set for
21 the hearing, the Board or governing body shall serve the applicant or
22 subcontractor with written notice of the hearing. The notice may be
23 served by personal delivery to the applicant or subcontractor or by
24 certified mail to the last known business or residential address of the
25 applicant or subcontractor.

26 3. The applicant or subcontractor has the burden at the hearing
27 of proving by substantial evidence that the applicant is entitled to be
28 qualified to bid on a contract for a public work, or that the
29 subcontractor is qualified to be a subcontractor on a contract for a
30 public work.

31 4. In conducting a hearing pursuant to this section, the Board
32 or governing body may:

- 33 (a) Administer oaths;
34 (b) Take testimony;
35 (c) Issue subpoenas to compel the attendance of witnesses to
36 testify before the Board or governing body;
37 (d) Require the production of related books, papers and
38 documents; and
39 (e) Issue commissions to take testimony.

40 5. If a witness refuses to attend or testify or produce books,
41 papers or documents as required by the subpoena issued pursuant to
42 subsection 4, the Board or governing body may petition the district
43 court to order the witness to appear or testify or produce the
44 requested books, papers or documents.



1 6. The Board or governing body shall issue a decision on the
2 matter ~~[within 5 days after]~~ **during** the hearing . ~~[and notify the~~
3 ~~applicant, in writing, of its decision within 15 days after it is issued.]~~
4 The decision of the Board or governing body is a final decision for
5 purposes of judicial review.

6 **Sec. 7.** NRS 338.1385 is hereby amended to read as follows:

7 338.1385 1. Except as otherwise provided in subsection ~~[8]~~ **9**
8 and NRS 338.1906 and 338.1907, this State, or a governing body or
9 its authorized representative that awards a contract for a public work
10 in accordance with paragraph (a) of subsection 1 of NRS 338.1373
11 shall not:

12 (a) Commence a public work for which the estimated cost
13 exceeds ~~[\$100,000]~~ **\$250,000** unless it advertises in a newspaper
14 qualified pursuant to chapter 238 of NRS that is published in the
15 county where the public work will be performed for bids for the
16 public work. If no qualified newspaper is published in the county
17 where the public work will be performed, the required
18 advertisement must be published in some qualified newspaper that is
19 printed in the State of Nevada and has a general circulation in the
20 county.

21 (b) Commence a public work for which the estimated cost is
22 ~~[\$100,000]~~ **\$250,000** or less unless it complies with the provisions
23 of NRS 338.1386, 338.13862 and 338.13864.

24 (c) Divide a public work into separate portions to avoid the
25 requirements of paragraph (a) or (b).

26 2. At least once each quarter, the authorized representative of a
27 ~~[public body]~~ **local government** shall report to the ~~[public]~~
28 **governing** body any contract that ~~[he]~~ **the authorized representative**
29 awarded pursuant to subsection 1 in the immediately preceding
30 quarter.

31 3. Each advertisement for bids must include a provision that
32 sets forth the requirement that a contractor must be qualified
33 pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

34 4. Approved plans and specifications for the bids must be on
35 file at a place and time stated in the advertisement for the inspection
36 of all persons desiring to bid thereon and for other interested
37 persons. Contracts for the public work must be awarded on the basis
38 of bids received.

39 5. Except as otherwise provided in subsection 6 and NRS
40 338.1389, a public body shall award a contract to the lowest
41 responsive and responsible bidder.

42 6. Any bids received in response to an advertisement for bids
43 may be rejected if the public body or its authorized representative
44 responsible for awarding the contract determines that:



1 (a) The bidder is not a qualified bidder pursuant to NRS
2 338.1379 or 338.1382;

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

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

6 (d) The public interest would be served by such a rejection.

7 7. *A public body may let a contract without competitive
8 bidding if no responsive and responsible bids were received in
9 response to an advertisement for bids and:*

10 (a) *The public body publishes a notice stating that no bids
11 were received and that the contract may be let without further
12 bidding;*

13 (b) *The public body considers any bid submitted in response to
14 the notice published pursuant to paragraph (a); and*

15 (c) *The public body lets the contract not less than 7 days after
16 publishing a notice pursuant to paragraph (a).*

17 8. Before a public body may commence the performance of a
18 public work itself pursuant to the provisions of this section, based
19 upon a determination that the public interest would be served by
20 rejecting any bids received in response to an advertisement for bids,
21 the public body shall prepare and make available for public
22 inspection a written statement containing:

23 (a) A list of all persons, including supervisors, whom the public
24 body intends to assign to the public work, together with their
25 classifications and an estimate of the direct and indirect costs of
26 their labor;

27 (b) A list of all equipment that the public body intends to use on
28 the public work, together with an estimate of the number of hours
29 each item of equipment will be used and the hourly cost to use each
30 item of equipment;

31 (c) An estimate of the cost of administrative support for the
32 persons assigned to the public work;

33 (d) An estimate of the total cost of the public work, including
34 the fair market value of or, if known, the actual cost of all materials,
35 supplies, labor and equipment to be used for the public work; and

36 (e) An estimate of the amount of money the public body expects
37 to save by rejecting the bids and performing the public work itself.

38 ~~8-~~ 9. This section does not apply to:

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

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

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

44 (d) The Las Vegas Valley Water District created pursuant to
45 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water



1 District created pursuant to chapter 477, Statutes of Nevada 1983 or
2 the Virgin Valley Water District created pursuant to chapter 100,
3 Statutes of Nevada 1993; or

4 (e) The design and construction of a public work for which a
5 public body contracts with a design-build team pursuant to NRS
6 338.1711 to 338.1727, inclusive.

7 **Sec. 8.** NRS 338.1385 is hereby amended to read as follows:

8 338.1385 1. Except as otherwise provided in subsection ~~[8,]~~
9 **9**, this State, or a governing body or its authorized representative
10 that awards a contract for a public work in accordance with
11 paragraph (a) of subsection 1 of NRS 338.1373 shall not:

12 (a) Commence a public work for which the estimated cost
13 exceeds ~~[\$100,000]~~ **\$250,000** unless it advertises in a newspaper
14 qualified pursuant to chapter 238 of NRS that is published in the
15 county where the public work will be performed for bids for the
16 public work. If no qualified newspaper is published in the county
17 where the public work will be performed, the required
18 advertisement must be published in some qualified newspaper that is
19 printed in the State of Nevada and having a general circulation
20 within the county.

21 (b) Commence a public work for which the estimated cost is
22 ~~[\$100,000]~~ **\$250,000** or less unless it complies with the provisions
23 of NRS 338.1386, 338.13862 and 338.13864.

24 (c) Divide a public work into separate portions to avoid the
25 requirements of paragraph (a) or (b).

26 2. At least once each quarter, the authorized representative of a
27 ~~[public body]~~ **local government** shall report to the ~~[public]~~
28 **governing** body any contract that ~~[he]~~ **the authorized representative**
29 awarded pursuant to subsection 1 in the immediately preceding
30 quarter.

31 3. Each advertisement for bids must include a provision that
32 sets forth the requirement that a contractor must be qualified
33 pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

34 4. Approved plans and specifications for the bids must be on
35 file at a place and time stated in the advertisement for the inspection
36 of all persons desiring to bid thereon and for other interested
37 persons. Contracts for the public work must be awarded on the basis
38 of bids received.

39 5. Except as otherwise provided in subsection 6 and NRS
40 338.1389, a public body shall award a contract to the lowest
41 responsive and responsible bidder.

42 6. Any bids received in response to an advertisement for bids
43 may be rejected if the public body or its authorized representative
44 responsible for awarding the contract determines that:



1 (a) The bidder is not a qualified bidder pursuant to NRS
2 338.1379 or 338.1382;

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

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

6 (d) The public interest would be served by such a rejection.

7 **7. A public body may let a contract without competitive**
8 **bidding if no responsive and responsible bids were received in**
9 **response to an advertisement for bids and:**

10 (a) **The public body publishes a notice stating that no bids**
11 **were received and that the contract may be let without further**
12 **bidding;**

13 (b) **The public body considers any bid submitted in response to**
14 **the notice published pursuant to paragraph (a); and**

15 (c) **The public body lets the contract not less than 7 days after**
16 **publishing a notice pursuant to paragraph (a).**

17 **8.** Before a public body may commence the performance of a
18 public work itself pursuant to the provisions of this section, based
19 upon a determination that the public interest would be served by
20 rejecting any bids received in response to an advertisement for bids,
21 the public body shall prepare and make available for public
22 inspection a written statement containing:

23 (a) A list of all persons, including supervisors, whom the public
24 body intends to assign to the public work, together with their
25 classifications and an estimate of the direct and indirect costs of
26 their labor;

27 (b) A list of all equipment that the public body intends to use on
28 the public work, together with an estimate of the number of hours
29 each item of equipment will be used and the hourly cost to use each
30 item of equipment;

31 (c) An estimate of the cost of administrative support for the
32 persons assigned to the public work;

33 (d) An estimate of the total cost of the public work, including,
34 the fair market value of or, if known, the actual cost of all materials,
35 supplies, labor and equipment to be used for the public work; and

36 (e) An estimate of the amount of money the public body expects
37 to save by rejecting the bids and performing the public work itself.

38 ~~8-~~ **9.** This section does not apply to:

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

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

43 (c) Normal maintenance of the property of a school district; ~~or~~

44 (d) The Las Vegas Valley Water District created pursuant to
45 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water



1 District created pursuant to chapter 477, Statutes of Nevada 1983 or
2 the Virgin Valley Water District created pursuant to chapter 100,
3 Statutes of Nevada 1993; or

4 (e) The design and construction of a public work for which a
5 public body contracts with a design-build team pursuant to NRS
6 338.1711 to 338.1727, inclusive.

7 **Sec. 9.** NRS 338.1386 is hereby amended to read as follows:

8 338.1386 If the estimated cost of a public work is ~~[\$100,000]~~
9 **\$250,000** or less, this State or a local government shall:

10 1. Award a contract for the completion of the public work to a
11 properly licensed contractor in accordance with NRS 338.13862; or

12 2. Perform the public work itself in accordance with
13 NRS 338.13864.

14 **Sec. 10.** NRS 338.13862 is hereby amended to read as
15 follows:

16 338.13862 1. Before this State or a local government awards
17 a contract for the completion of a public work in accordance with
18 subsection 1 of NRS 338.1386, the State or the local government
19 must:

20 (a) If the estimated cost of the public work is more than \$25,000
21 but not more than ~~[\$100,000,]~~ **\$250,000**, solicit bids from at least
22 three properly licensed contractors; and

23 (b) If the estimated cost of the public work is \$25,000 or less,
24 solicit a bid from at least one properly licensed contractor.

25 2. Any bids received in response to a solicitation for bids made
26 pursuant to this section may be rejected if the State or the local
27 government determines that:

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

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

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

32 3. At least once each quarter, the State and each local
33 government shall prepare a report detailing, for each public work
34 over \$25,000 for which a contract for its completion is awarded
35 pursuant to paragraph (a) of subsection 1, if any:

36 (a) The name of the contractor to whom the contract was
37 awarded;

38 (b) The amount of the contract awarded;

39 (c) A brief description of the public work; and

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

41 4. A report prepared pursuant to subsection 3 is a public record
42 and must be maintained on file at the administrative offices of the
43 applicable public body.



1 5. The provisions of this section do not relieve this State from
2 the duty to award the contract for the public work to a bidder who
3 is:

4 (a) Qualified pursuant to the applicable provisions of NRS
5 338.1375 to 338.1382, inclusive; and

6 (b) The lowest responsive and responsible bidder, if bids are
7 required to be solicited from more than one properly licensed
8 contractor pursuant to subsection 1.

9 **Sec. 11.** NRS 338.13864 is hereby amended to read as
10 follows:

11 338.13864 1. If the State or a local government proposes to
12 perform a public work itself in accordance with subsection 2 of NRS
13 338.1386, the public officer responsible for the management of the
14 public works of the State or the local government, as applicable,
15 must, if the estimated cost of the public work is more than \$25,000
16 but not more than ~~[\$100,000]~~ **\$250,000** and before work on the
17 public work is commenced, prepare a signed attestation regarding
18 the decision of the State or the local government to perform the
19 public work itself.

20 2. An attestation prepared pursuant to subsection 1:

21 (a) Must set forth:

22 (1) The estimated cost of the public work;

23 (2) A general statement as to why the State or the local
24 government has decided to perform the public work itself; and

25 (3) A general statement that the public work will adhere to
26 the same quality and standards as would be required of a properly
27 licensed contractor if the public work had been awarded to a
28 properly licensed contractor; and

29 (b) Is a public record and must be maintained on file at the
30 administrative offices of the applicable public body.

31 **Sec. 12.** NRS 338.13895 is hereby amended to read as
32 follows:

33 338.13895 1. ~~[A public body or its authorized representative~~
34 ~~awarding a contract for a public work]~~ **The State Public Works**
35 **Board** shall not award ~~[the]~~ **a** contract to a person who, at the time
36 of the bid, is not properly licensed under the provisions of chapter
37 624 of NRS or if the contract would exceed the limit of his license.
38 A subcontractor who is:

39 (a) Named in the bid for the contract as a subcontractor who will
40 provide a portion of the work on the public work pursuant to NRS
41 338.141; and

42 (b) Not properly licensed for that portion of the work, or who, at
43 the time of the bid, is on disqualified status with the State Public
44 Works Board pursuant to NRS 338.1376,



1 ↪ shall be deemed unacceptable. If the subcontractor is deemed
2 unacceptable pursuant to this subsection, the contractor shall
3 provide an acceptable subcontractor.

4 2. *A local government awarding a contract for a public work*
5 *shall not award the contract to a person who, at the time of the*
6 *bid, is not properly licensed under the provisions of chapter 624 of*
7 *NRS or if the contract would exceed the limit of his license. A*
8 *subcontractor who is:*

9 (a) *Named in the bid for the contract as a subcontractor who*
10 *will provide a portion of the work on the public work pursuant to*
11 *NRS 338.141; and*

12 (b) *Not properly licensed for that portion of work,*
13 ↪ *shall be deemed unacceptable. If the subcontractor is deemed*
14 *unacceptable pursuant to this subsection, the contractor shall*
15 *provide an acceptable subcontractor with no increase in the*
16 *amount of the contract.*

17 3. If, after awarding the contract, but before commencement of
18 the work, the public body or its authorized representative discovers
19 that the person to whom the contract was awarded is not licensed, or
20 that the contract would exceed his license, the public body or its
21 authorized representative shall rescind the award of the contract and
22 may accept the next lowest bid for that public work from a
23 responsive bidder who was determined by the public body or its
24 authorized representative to be a qualified bidder pursuant to NRS
25 338.1379 or 338.1382 without requiring that new bids be submitted.

26 **Sec. 13.** NRS 338.140 is hereby amended to read as follows:

27 338.140 1. A public body shall not draft or cause to be
28 drafted specifications for bids, in connection with a public work:

29 (a) In such a manner as to limit the bidding, directly or
30 indirectly, to any one specific concern.

31 (b) Except in those instances where the product is designated to
32 match others in use on a particular public improvement either
33 completed or in the course of completion, calling for a designated
34 material, product, thing or service by specific brand or trade name
35 unless the specification lists at least two brands or trade names of
36 comparable quality or utility and is followed by the words "or
37 equal" so that bidders may furnish any equal material, product, thing
38 or service.

39 (c) In such a manner as to hold the bidder to whom such
40 contract is awarded responsible for extra costs incurred as a result of
41 errors or omissions by the public body in the contract documents.

42 (d) In such a manner as to require a bidder to furnish to the
43 public body, whether before or after the bid is submitted, documents
44 generated in the preparation or determination of prices included in
45 the bid, except when requested by the public body for:



- 1 (1) A determination of the price of additional work
- 2 performed pursuant to a change order;
- 3 (2) An evaluation of claims for costs incurred for the
- 4 performance of additional work;
- 5 (3) Preparation for arbitration or litigation; ~~or~~
- 6 (4) *A determination of the validity of the protest of a bid;*
- 7 (5) *A determination of the validity of an increase or*
- 8 *decrease in the price of a contract in accordance with a provision*
- 9 *in the contract which authorizes such an increase or decrease to*
- 10 *correspond to changing market conditions; or*
- 11 (6) Any combination thereof.

12 ➤ A document furnished to a public body pursuant to this paragraph
13 is confidential and must be returned to the bidder.

14 2. In those cases involving a unique or novel product
15 application required to be used in the public interest, or where only
16 one brand or trade name is known to the public body, it may list
17 only one.

18 3. Specifications must provide a period of time of at least 7
19 days after award of the contract for submission of data
20 substantiating a request for a substitution of "an equal" item.

21 **Sec. 14.** NRS 338.141 is hereby amended to read as follows:

22 338.141 1. Except as otherwise provided in NRS 338.1727,
23 each bid submitted to a public body for any public work to which
24 paragraph (a) of subsection 1 of NRS 338.1385 or paragraph (a) of
25 subsection 1 of NRS 338.143 applies, must include:

26 (a) If the public body provides a list of the labor or portions of
27 the public work which are estimated by the public body to exceed 3
28 percent of the estimated cost of the public work, the name of each
29 *first tier* subcontractor who will provide such labor or portion of the
30 work on the public work which is estimated to exceed 3 percent of
31 the estimated cost of the public work; or

32 (b) If the public body does not provide a list of the labor or
33 portions of the public work which are estimated by the public body
34 to exceed 3 percent of the estimated cost of the public work, the
35 name of each *first tier* subcontractor who will provide labor or a
36 portion of the work on the public work to the prime contractor for
37 which the *first tier* subcontractor will be paid an amount exceeding
38 5 percent of the prime contractor's total bid. If the bid is submitted
39 pursuant to this paragraph, within 2 hours after the completion of
40 the opening of the bids, the contractors who submitted the three
41 lowest bids must submit a list containing the name of each *first tier*
42 subcontractor who will provide labor or a portion of the work on the
43 public work to the prime contractor for which the *first tier*
44 subcontractor will be paid an amount exceeding 1 percent of the
45 prime contractor's total bid or \$50,000, whichever is greater, and the



1 number of the license issued to the *first tier* subcontractor pursuant
2 to chapter 624 of NRS.

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

6 3. A prime contractor shall include his name on a list required
7 by paragraph (a) of subsection 1 if he will perform any of the work
8 required to be listed pursuant to paragraph (a) of subsection 1.

9 4. Except as otherwise provided in this subsection, if a
10 contractor:

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

12 (b) Submits a list that includes the name of a subcontractor who,
13 at the time of the submission of the list, is on disqualified status with
14 the State Public Works Board pursuant to NRS 338.1376,

15 ➔ the contractor's bid shall be deemed not responsive. A
16 contractor's bid shall not be deemed not responsive on the grounds
17 that the contractor submitted a list that includes the name of a
18 subcontractor who, at the time of the submission of the list, is on
19 disqualified status with the State Public Works Board pursuant to
20 NRS 338.1376 if the contractor, before the award of the contract,
21 provides an acceptable replacement subcontractor in the manner set
22 forth in subsection 1 *or 2* of NRS 338.13895.

23 5. A contractor whose bid is accepted shall not substitute a
24 subcontractor for any subcontractor who is named in the bid, unless:

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

28 (b) The substitution is approved by the public body or its
29 authorized representative. The substitution must be approved if the
30 public body or its authorized representative determines that:

31 (1) The named subcontractor, after having a reasonable
32 opportunity, fails or refuses to execute a written contract with the
33 contractor which was offered to the named subcontractor with the
34 same general terms that all other subcontractors on the project were
35 offered;

36 (2) The named subcontractor files for bankruptcy or becomes
37 insolvent;

38 (3) The named subcontractor fails or refuses to perform his
39 subcontract within a reasonable time or is unable to furnish a
40 performance bond and payment bond pursuant to NRS 339.025; or

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

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



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

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

5 6. If a contractor indicates pursuant to subsection 1 that he will
6 perform a portion of work on the public work and thereafter requests
7 to substitute a subcontractor to perform such work, the contractor
8 shall provide to the public body a written explanation in the form
9 required by the public body which contains the reasons that:

10 (a) A subcontractor was not originally contemplated to be used
11 on that portion of the public work; and

12 (b) The substitution is in the best interest of the public body.

13 7. As used in this section ~~["general"]~~ :

14 (a) *"First tier subcontractor" means a subcontractor who*
15 *contracts directly with a prime contractor to provide labor,*
16 *materials or services for a construction project.*

17 (b) *"General terms" means the terms and conditions of a*
18 *contract that set the basic requirements for a public work and apply*
19 *without regard to the particular trade or specialty of a subcontractor,*
20 *but does not include any provision that controls or relates to the*
21 *specific portion of the public work that will be completed by a*
22 *subcontractor, including, without limitation, the materials to be used*
23 *by the subcontractor or other details of the work to be performed by*
24 *the subcontractor.*

25 **Sec. 15.** NRS 338.143 is hereby amended to read as follows:

26 338.143 1. Except as otherwise provided in subsection ~~[7] 8~~
27 and NRS 338.1907, a local government or its authorized
28 representative that awards a contract for a public work in
29 accordance with paragraph (b) of subsection 1 of NRS 338.1373
30 shall not:

31 (a) Commence a public work for which the estimated cost
32 exceeds ~~[\$100,000] \$250,000~~ unless it advertises in a newspaper
33 qualified pursuant to chapter 238 of NRS that is published in the
34 county where the public work will be performed for bids for the
35 public work. If no qualified newspaper is published in the county
36 where the public work will be performed, the required
37 advertisement must be published in some qualified newspaper that is
38 printed in the State of Nevada and has a general circulation in the
39 county.

40 (b) Commence a public work for which the estimated cost is
41 ~~[\$100,000] \$250,000~~ or less unless it complies with the provisions
42 of NRS 338.1442, 338.1444 and 338.1446.

43 (c) Divide a project work into separate portions to avoid the
44 requirements of paragraph (a) or (b).



1 2. At least once each quarter, the authorized representative of a
2 local government shall report to the ~~local government~~ *governing*
3 *body* any contract that ~~the~~ *the authorized representative* awarded
4 pursuant to subsection 1 in the immediately preceding quarter.

5 3. Approved plans and specifications for the bids must be on
6 file at a place and time stated in the advertisement for the inspection
7 of all persons desiring to bid thereon and for other interested
8 persons. Contracts for the public work must be awarded on the basis
9 of bids received.

10 4. Except as otherwise provided in subsection 5 and NRS
11 338.147, the local government or its authorized representative shall
12 award a contract to the lowest responsive and responsible bidder.

13 5. Any bids received in response to an advertisement for bids
14 may be rejected if the local government or its authorized
15 representative responsible for awarding the contract determines that:

16 (a) The bidder is not responsive or responsible;

17 (b) The quality of the services, materials, equipment or labor
18 offered does not conform to the approved plans or specifications; or

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

20 6. *A local government may let a contract without competitive*
21 *bidding if no responsive and responsible bids were received in*
22 *response to an advertisement for bids and:*

23 (a) *The local government publishes a notice stating that no*
24 *bids were received and that the contract may be let without further*
25 *bidding;*

26 (b) *The local government considers any bid submitted in*
27 *response to the notice published pursuant to paragraph (a); and*

28 (c) *The local government lets the contract not less than 7 days*
29 *after publishing a notice pursuant to paragraph (a).*

30 7. Before a local government may commence the performance
31 of a public work itself pursuant to the provisions of this section,
32 based upon a determination that the public interest would be served
33 by rejecting any bids received in response to an advertisement for
34 bids, the local government shall prepare and make available for
35 public inspection a written statement containing:

36 (a) A list of all persons, including supervisors, whom the local
37 government intends to assign to the public work, together with their
38 classifications and an estimate of the direct and indirect costs of
39 their labor;

40 (b) A list of all equipment that the local government intends to
41 use on the public work, together with an estimate of the number of
42 hours each item of equipment will be used and the hourly cost to use
43 each item of equipment;

44 (c) An estimate of the cost of administrative support for the
45 persons assigned to the public work;



1 (d) An estimate of the total cost of the public work, including
2 the fair market value of or, if known, the actual cost of all materials,
3 supplies, labor and equipment to be used for the public work; and

4 (e) An estimate of the amount of money the local government
5 expects to save by rejecting the bids and performing the public work
6 itself.

7 ~~[7-]~~ 8. This section does not apply to:

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

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

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

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

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

21 **Sec. 16.** NRS 338.143 is hereby amended to read as follows:

22 338.143 1. Except as otherwise provided in subsection ~~[7-]~~ 8,
23 a local government or its authorized representative that awards a
24 contract for a public work in accordance with paragraph (b) of
25 subsection 1 of NRS 338.1373 shall not:

26 (a) Commence a public work for which the estimated cost
27 exceeds ~~[\$100,000]~~ \$250,000 unless it advertises in a newspaper
28 qualified pursuant to chapter 238 of NRS that is published in the
29 county where the public work will be performed for bids for
30 the public work. If no qualified newspaper is published within the
31 county where the public work will be performed, the required
32 advertisement must be published in some qualified newspaper that is
33 printed in the State of Nevada and has a general circulation within
34 the county.

35 (b) Commence a public work for which the estimated cost is
36 ~~[\$100,000]~~ \$250,000 or less unless it complies with the provisions
37 of NRS 338.1442, 338.1444 or 338.1446.

38 (c) Divide a public work into separate portions to avoid the
39 requirements of paragraph (a) or (b).

40 2. At least once each quarter, the authorized representative of a
41 local government shall report to the ~~[local government]~~ governing
42 body any contract that ~~[he]~~ the authorized representative awarded
43 pursuant to subsection 1 in the immediately preceding quarter.

44 3. Approved plans and specifications for the bids must be on
45 file at a place and time stated in the advertisement for the inspection



1 of all persons desiring to bid thereon and for other interested
2 persons. Contracts for the public work must be awarded on the basis
3 of bids received.

4 4. Except as otherwise provided in subsection 5 and NRS
5 338.147, the local government or its authorized representative shall
6 award a contract to the lowest responsive and responsible bidder.

7 5. Any bids received in response to an advertisement for bids
8 may be rejected if the local government or its authorized
9 representative responsible for awarding the contract determines that:

10 (a) The bidder is not responsive or responsible;

11 (b) The quality of the services, materials, equipment or labor
12 offered does not conform to the approved plans or specifications; or

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

14 6. *A local government may let a contract without competitive*
15 *bidding if no responsive and responsible bids were received in*
16 *response to an advertisement for bids and:*

17 (a) *The local government publishes a notice stating that no*
18 *bids were received and that the contract may be let without further*
19 *bidding;*

20 (b) *The local government considers any bid submitted in*
21 *response to the notice published pursuant to paragraph (a); and*

22 (c) *The local government lets the contract not less than 7 days*
23 *after publishing a notice pursuant to paragraph (a).*

24 7. Before a local government may commence the performance
25 of a public work itself pursuant to the provisions of this section,
26 based upon a determination that the public interest would be served
27 by rejecting any bids received in response to an advertisement for
28 bids, the local government shall prepare and make available for
29 public inspection a written statement containing:

30 (a) A list of all persons, including supervisors, whom the local
31 government intends to assign to the public work, together with their
32 classifications and an estimate of the direct and indirect costs of
33 their labor;

34 (b) A list of all equipment that the local government intends to
35 use on the public work, together with an estimate of the number of
36 hours each item of equipment will be used and the hourly cost to use
37 each item of equipment;

38 (c) An estimate of the cost of administrative support for the
39 persons assigned to the public work;

40 (d) An estimate of the total cost of the public work, including
41 the fair market value of or, if known, the actual cost of all materials,
42 supplies, labor and equipment to be used for the public work; and

43 (e) An estimate of the amount of money the local government
44 expects to save by rejecting the bids and performing the public work
45 itself.



1 ~~7.~~ 8. This section does not apply to:

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

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

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

7 (d) The Las Vegas Valley Water District created pursuant to
8 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
9 District created pursuant to chapter 477, Statutes of Nevada 1983 or
10 the Virgin Valley Water District created pursuant to chapter 100,
11 Statutes of Nevada 1993; or

12 (e) The design and construction of a public work for which a
13 public body contracts with a design-build team pursuant to NRS
14 338.1711 to 338.1727, inclusive.

15 **Sec. 17.** NRS 338.1442 is hereby amended to read as follows:

16 338.1442 If the estimated cost of a public work is ~~[\$100,000]~~
17 **\$250,000** or less, a local government shall:

18 1. Award a contract for the completion of the public work to a
19 properly licensed contractor in accordance with NRS 338.1444; or

20 2. Perform the public work itself in accordance with
21 NRS 338.1446.

22 **Sec. 18.** NRS 338.1444 is hereby amended to read as follows:

23 338.1444 1. Before a local government awards a contract for
24 the completion of a public work in accordance with subsection 1 of
25 NRS 338.1442, the local government must:

26 (a) If the estimated cost of the public work is more than \$25,000
27 but not more than ~~[\$100,000.]~~ **\$250,000**, solicit bids from at least
28 three properly licensed contractors; and

29 (b) If the estimated cost of the public work is \$25,000 or less,
30 solicit a bid from at least one properly licensed contractor.

31 2. Any bids received in response to a solicitation for bids made
32 pursuant to this section may be rejected if the local government
33 determines that:

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

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

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

38 3. At least once each quarter, a local government shall prepare
39 a report detailing, for each public work over \$25,000 for which a
40 contract for its completion is awarded pursuant to paragraph (a) of
41 subsection 1, if any:

42 (a) The name of the contractor to whom the contract was
43 awarded;

44 (b) The amount of the contract awarded;

45 (c) A brief description of the public work; and



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

2 4. A report prepared pursuant to subsection 3 is a public record
3 and must be maintained on file at the administrative offices of the
4 applicable public body.

5 5. The provisions of this section do not relieve a local
6 government from the duty to award the contract for the public work
7 to a bidder who is the lowest responsive and responsible bidder if
8 bids are required to be solicited from more than one properly
9 licensed contractor pursuant to subsection 1.

10 **Sec. 19.** NRS 338.1446 is hereby amended to read as follows:

11 338.1446 1. If a local government proposes to perform a
12 public work itself in accordance with subsection 2 of NRS
13 338.1442, the public officer responsible for the management of the
14 public works of the local government must, if the estimated cost of
15 the public work is more than \$25,000 but not more than ~~[\$100,000]~~
16 **\$250,000** and before work on the public work is commenced,
17 prepare a signed attestation regarding the decision of the local
18 government to perform the public work itself.

19 2. An attestation prepared pursuant to subsection 1:

20 (a) Must set forth:

21 (1) The estimated cost of the public work;

22 (2) A general statement as to why the local government has
23 decided to perform the public work itself; and

24 (3) A general statement that the public work will adhere to
25 the same quality and standards as would be required of a properly
26 licensed contractor if the public work had been awarded to a
27 properly licensed contractor; and

28 (b) Is a public record and must be maintained on file at the
29 administrative offices of the local government.

30 **Sec. 20.** NRS 338.150 is hereby amended to read as follows:

31 338.150 1. Except as otherwise provided in subsection 3, any
32 public body charged with the drafting of specifications for a public
33 work shall include in the specifications a clause ~~[permitting]~~
34 **requiring** arbitration of a dispute arising between the public body
35 and the contractor engaged on a public work if the dispute cannot
36 otherwise be settled.

37 2. Any dispute requiring arbitration must be handled in
38 accordance with the construction industry's rules for arbitration as
39 administered by the American Arbitration Association or the
40 Nevada Arbitration Association.

41 3. The provisions of subsection 1 do not require the
42 Department of Transportation to include such a clause in any
43 contract entered into by the Department.

44 ***4. This section does not prohibit the use of alternate dispute***
45 ***resolution methods in addition to arbitration.***



1 **Sec. 21.** NRS 338.1711 is hereby amended to read as follows:

2 338.1711 1. Except as otherwise provided in this section and
3 NRS 338.161 to 338.168, inclusive, a public body shall contract
4 with a prime contractor for the construction of a public work for
5 which the estimated cost exceeds ~~[\$100,000.]~~ **\$250,000.**

6 2. A public body may contract with a design-build team for the
7 design and construction of a public work that is a discrete project if
8 the public ~~body determines that:~~

9 —(a) ~~The public work is:~~

10 —(1) ~~A plant or facility for the treatment and pumping of water
11 or the treatment and disposal of wastewater or sewage, the estimated
12 cost of which exceeds \$100,000,000; or~~

13 —(2) ~~Any other type of public work, except a stand alone
14 underground utility project, the estimated cost of which exceeds
15 \$20,000,000; and~~

16 —(b) ~~Contracting with a design-build team will enable the public
17 body to:~~

18 —(1) ~~Design and construct the public work at a cost that is
19 significantly lower than the cost that the public body would incur to
20 design and construct the public work using a different method;~~

21 —(2) ~~Design and construct the public work in a shorter time
22 than would be required to design and construct the public work
23 using a different method, if exigent circumstances require that the
24 public work be designed and constructed within a short time; or~~

25 —(3) ~~Ensure that the design and construction of the public
26 work is properly coordinated, if the public work is unique, highly
27 technical and complex in nature.~~

28 —3. ~~Except as otherwise provided in subsection 4, each state
29 agency and each department, division, board, unit or agency of a
30 local government may contract with a design-build team for the
31 design and construction of a public work if the public body that is
32 responsible for financing the public work determines that:~~

33 —(a) ~~The estimated cost of the public work is:~~

34 —(1) ~~At least \$250,000 but less than \$20,000,000 if the public
35 work is] work:~~

36 (a) *Is* the construction of a park and appurtenances thereto, the
37 rehabilitation or remodeling of a public building, or the construction
38 of an addition to a public building;

39 ~~[(2) At least \$500,000 but less than \$20,000,000 if the public
40 work is the construction of a new public building;~~

41 —(3) ~~At least \$5,000,000 but less than \$100,000,000 if the
42 public work is the construction, alteration or repair of a plant or
43 facility for the treatment and pumping of water or the treatment and
44 disposal of wastewater or sewage; or~~



1 ~~—— (4) At least \$5,000,000 but less than \$20,000,000 if the~~
2 ~~public work is the construction, alteration or repair of any other~~
3 ~~fixed works as described in subsection 2 of NRS 624.215; and~~
4 ~~—— (b) Contracting with a design-build team will enable the public~~
5 ~~body to:~~
6 ~~—— (1) Design and construct the public work at a cost that is~~
7 ~~significantly lower than the cost that the public body would incur to~~
8 ~~design and construct the public work using a different method;~~
9 ~~—— (2) Design and construct the public work in a shorter time~~
10 ~~than would be required to design and construct the public work~~
11 ~~using a different method, if exigent circumstances require that the~~
12 ~~public work be designed and constructed within a short time; or~~
13 ~~—— (3) Ensure that the design and construction of the public~~
14 ~~work is properly coordinated, if the public work is unique, highly~~
15 ~~technical and complex in nature.~~
16 ~~—— 4. Each state agency and each department, division, board, unit~~
17 ~~or agency of a local government may contract with a design-build~~
18 ~~team once during each fiscal year for the design and construction of~~
19 ~~a public work subject to the provisions of subparagraph (4) of~~
20 ~~paragraph (a) of subsection 3.~~
21 ~~—— 5. Notwithstanding the provisions of subsections 1 to 4,~~
22 ~~inclusive, a public body may contract with:~~
23 ~~—— (a) A nonprofit organization for the design and construction of a~~
24 ~~project to restore, enhance or develop wetlands.~~
25 ~~—— (b) A prime contractor or design-build team with respect to a~~
26 ~~public work if the public body determines that the public work is:~~
27 ~~—— (1) Not part of a larger public work; and~~
28 ~~—— (2) Limited in scope to:~~
29 ~~—— (I) Removal of asbestos;~~
30 ~~—— (II) Replacement of equipment or systems for heating,~~
31 ~~ventilation and air conditioning;~~
32 ~~—— (III) Replacement of a roof;~~
33 ~~—— (IV) Landscaping; or~~
34 ~~—— (V) Restoration, enhancement or development of~~
35 ~~wetlands.~~
36 ~~—— 6. A public body that is required to contract with a prime~~
37 ~~contractor pursuant to subsection 1 or elects to contract with a prime~~
38 ~~contractor pursuant to subsection 5 shall select the prime contractor~~
39 ~~in accordance with the procedures for bidding that are set forth in:~~
40 ~~—— (a) The provisions of NRS 338.1375 to 338.139, inclusive; or~~
41 ~~—— (b) NRS 338.143 to 338.148, inclusive, if the public body is a~~
42 ~~local government that elects to award a contract for a public work in~~
43 ~~accordance with paragraph (b) of subsection 1 of NRS 338.1373.~~
44 ~~—— 7. As used in this section, “state agency” includes an agency,~~
45 ~~bureau, board, commission, department, division or any other unit of~~



1 ~~the Legislative Department, Judicial Department or Executive~~
2 ~~Department of State Government or the University and Community~~
3 ~~College System of Nevada.] or~~

4 *(b) Has an estimated cost which exceeds \$5,000,000.*

5 **Sec. 22.** NRS 338.1715 is hereby amended to read as follows:

6 338.1715 A public body that contracts with a design-build
7 team pursuant to NRS 338.1711 ~~[and 338.1713]~~ shall select the
8 design-build team in accordance with the provisions of NRS
9 338.1721 to 338.1727, inclusive.

10 **Sec. 23.** NRS 338.1721 is hereby amended to read as follows:

11 338.1721 To qualify to participate in a project for the design
12 and construction of a public work, a design-build team must:

13 1. ~~[Obtain]~~ *Have the ability to obtain* a performance bond and
14 payment bond as required pursuant to NRS 339.025;

15 2. ~~[Obtain]~~ *Have the ability to obtain* insurance covering
16 general liability and liability for errors and omissions;

17 3. Not have been found liable for breach of contract with
18 respect to a previous project, other than a breach for legitimate
19 cause ~~[;]~~, *during the 5 years immediately preceding the date of the*
20 *advertisement for preliminary proposals;*

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

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

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

29 **Sec. 24.** NRS 338.1723 is hereby amended to read as follows:

30 338.1723 1. A public body shall advertise for preliminary
31 proposals for the design and construction of a public work by a
32 design-build team in a newspaper qualified pursuant to chapter 238
33 of NRS that is published in the county where the public work will
34 be performed. If no qualified newspaper is published in the county
35 where the public work will be performed, the required
36 advertisement must be published in some qualified newspaper that is
37 printed in the State of Nevada and has a general circulation in the
38 county.

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

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

43 (b) ~~[Separate estimates]~~ *An estimate* of the ~~[costs of designing~~
44 ~~and constructing]~~ *cost to design and construct* 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;~~

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; and~~

13 ~~—(f)];~~

14 (e) If the proposal is for a public work of the State, a statement
15 setting forth that the prime contractor must be qualified to bid on a
16 public work of the State pursuant to NRS 338.1379 before
17 submitting a preliminary proposal ~~;~~

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

22 ~~—(a) The];~~

23 (f) A *description of the* extent to which designs must be
24 completed for both preliminary and final proposals and any other
25 requirements for the design and construction of the public work that
26 the public body determines to be necessary;

27 ~~[(b)]~~ (g) A list of the requirements set forth in NRS 338.1721;

28 ~~[(e)]~~ (h) A list of the factors *and relative weight assigned to*
29 *each factor* that the public body will use to evaluate design-build
30 teams who submit a proposal for the public work ~~[, including,~~
31 ~~without limitation:~~

32 ~~—(1) The relative weight to be assigned to each factor pursuant~~
33 ~~to NRS 338.1727; and~~

34 ~~—(2) A disclosure of whether the factors that are not related to~~
35 ~~cost are, when considered as a group, more or less important in the~~
36 ~~process of evaluation than the factor of cost;~~

37 ~~—(d)];~~

38 (i) Notice that a design-build team desiring to submit a proposal
39 for the public work must include with its proposal the information
40 used by the public body to determine finalists among the design-
41 build teams submitting proposals pursuant to subsection 2 of NRS
42 338.1725 and a description of that information;

43 ~~[(e) A statement that a design-build team whose prime~~
44 ~~contractor holds a certificate of eligibility to receive a preference in~~
45 ~~bidding on public works issued pursuant to NRS 338.1389 or~~



1 ~~338.147 should submit a copy of the certificate of eligibility with its~~
2 ~~proposal; and~~

3 ~~—(f) and~~

4 *(j)* A statement as to whether a design-build team that is selected
5 as a finalist pursuant to NRS 338.1725 but is not awarded the
6 design-build contract pursuant to NRS 338.1727 will be partially
7 reimbursed for the cost of preparing a final proposal and, if so, an
8 estimate of the amount of the partial reimbursement.

9 **Sec. 25.** NRS 338.1725 is hereby amended to read as follows:

10 338.1725 1. The public body shall select at least ~~three~~ *two*
11 but not more than ~~five~~ *four* finalists from among the design-build
12 teams that submitted preliminary proposals. If the public body does
13 not receive at least ~~three~~ *two* preliminary proposals from design-
14 build teams that the public body determines to be qualified pursuant
15 to this section and NRS 338.1721, the public body may not contract
16 with a design-build team for the design and construction of the
17 public work.

18 2. The public body shall select finalists pursuant to subsection
19 1 by:

20 (a) Verifying that each design-build team which submitted a
21 preliminary proposal satisfies the requirements of NRS 338.1721;
22 and

23 (b) Conducting an evaluation of the qualifications of each
24 design-build team that submitted a preliminary proposal, including,
25 without limitation, an evaluation of:

26 (1) The professional qualifications and experience of the
27 members of the design-build team;

28 (2) The performance history of the members of the design-
29 build team concerning other recent, similar projects completed by
30 those members, if any;

31 (3) The safety programs established and the safety records
32 accumulated by the members of the design-build team; *and*

33 (4) The proposed plan of the design-build team to manage
34 the design and construction of the public work that sets forth in
35 detail the ability of the design-build team to design and construct the
36 public work. ~~;~~ *and*

37 ~~—(5) The degree to which the preliminary proposal is~~
38 ~~responsive to the requirements of the public body for the submittal~~
39 ~~of a preliminary proposal.]~~

40 *3. After the selection of finalists pursuant to this section, the*
41 *public body shall make available to the public the results of the*
42 *evaluations of preliminary proposals conducted pursuant to*
43 *paragraph (b) of subsection 2 and the rankings of the design-build*
44 *teams who submitted preliminary proposals.*



1 **Sec. 26.** NRS 338.1727 is hereby amended to read as follows:

2 338.1727 1. After selecting the finalists pursuant to NRS
3 338.1725, the public body shall provide to each finalist a request for
4 final proposals for the public work. The request for final proposals
5 must:

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

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

11 2. If one or more of the finalists selected pursuant to NRS
12 338.1725 is disqualified or withdraws, the public body may select a
13 design-build team from the remaining *finalist or* finalists . ~~{if at~~
14 ~~least two finalists remain.}~~

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

28 4. A final proposal submitted by a design-build team pursuant
29 to this section must be prepared thoroughly and be responsive to the
30 criteria that the public body will use to select a design-build team to
31 design and construct the public work described in subsection 1. *A*
32 *design-build team that submits a final proposal which is not*
33 *responsive shall not be awarded the contract and shall not be*
34 *eligible for the partial reimbursement of costs provided for in*
35 *subsection 7.*

36 5. A final proposal is exempt from the requirements of
37 NRS 338.141.

38 ~~{5-}~~ 6. After receiving *and evaluating* the final proposals for
39 the public work, the public body, at a regularly scheduled meeting,
40 shall:

41 (a) Select the ~~{most cost effective and responsive}~~ final
42 proposal, using the criteria set forth pursuant to subsections 1 and 3
43 ~~{-}~~, *and award the design-build contract to the design-build team*
44 *whose proposal is selected;* or

45 (b) Reject all the final proposals.



1 ~~{6-}~~ 7. If a public body selects a final proposal *and awards a*
2 *design-build contract* pursuant to paragraph (a) of subsection ~~{5-}~~ 6,
3 the public body shall ~~[, at a regularly scheduled meeting:~~

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) :~~

8 (a) Partially reimburse the unsuccessful finalists if partial
9 reimbursement was provided for in the request for preliminary
10 proposals pursuant to paragraph ~~{(f)}~~ (j) of subsection ~~{3}~~ 2 of NRS
11 338.1723. The amount of reimbursement must not exceed, for each
12 unsuccessful finalist, 3 percent of the total amount to be paid to the
13 design-build team as set forth in the design-build contract.

14 ~~{(d)}~~ (b) Make available to the public ~~[a summary setting forth~~
15 ~~the factors used by the public body to select the successful design-~~
16 ~~build team] the results of the evaluation of final proposals that was~~
17 *conducted* and the ranking of the design-build teams who submitted
18 final proposals. The public body shall not release to a third party, or
19 otherwise make public, financial or proprietary information
20 submitted by a design-build team.

21 ~~{7-}~~ 8. A contract awarded pursuant to this section:

22 (a) Must comply with the provisions of NRS 338.020 to
23 338.090, inclusive.

24 (b) Must specify:

25 (1) An amount that is the maximum amount that the public
26 body will pay for the performance of all the work required by the
27 contract, excluding any amount related to costs that may be incurred
28 as a result of unexpected conditions or occurrences as authorized by
29 the contract;

30 (2) An amount that is the maximum amount that the public
31 body will pay for the performance of the professional services
32 required by the contract; and

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

35 (c) May set forth the terms by which the design-build team
36 agrees to name the public body, at the cost of the public body, as an
37 additional insured in an insurance policy held by the design-build
38 team.

39 (d) Except as otherwise provided in paragraph (e), must not
40 require the design professional to defend, indemnify or hold
41 harmless the public body or the employees, officers or agents of that
42 public body from any liability, damage, loss, claim, action or
43 proceeding caused by the negligence, errors, omissions, recklessness
44 or intentional misconduct of the employees, officers and agents of
45 the public body.



1 (e) May require the design-build team to defend, indemnify and
2 hold harmless the public body, and the employees, officers and
3 agents of the public body from any liabilities, damages, losses,
4 claims, actions or proceedings, including, without limitation,
5 reasonable attorneys' fees, that are caused by the negligence, errors,
6 omissions, recklessness or intentional misconduct of the design-
7 build team or the employees or agents of the design-build team in
8 the performance of the contract.

9 ~~[8.—A]~~

10 (f) *Must require that the* design-build team to whom a contract
11 is awarded ~~[pursuant to this section shall:~~

12 ~~—(a) Assume] assume~~ overall responsibility for ensuring that the
13 design and construction of the public work is completed in a
14 satisfactory manner. ~~]; and~~

15 ~~—(b) Use the workforce of the prime contractor on the design-~~
16 ~~build team to construct at least 15 percent of the public work.]~~

17 *9. Upon award of the design-build contract, the public body*
18 *shall make available to the public copies of all preliminary and*
19 *final proposals received.*

20 **Sec. 27.** NRS 338.400 is hereby amended to read as follows:

21 338.400 As used in NRS 338.400 to 338.645, inclusive, unless
22 the context otherwise requires, the words and terms defined in NRS
23 ~~[338.405 to 338.450,]~~ *338.415 to 338.435*, inclusive, have the
24 meanings ascribed to them in those sections.

25 **Sec. 28.** NRS 338.525 is hereby amended to read as follows:

26 338.525 1. A public body may, but is not required to,
27 withhold from a progress payment or retainage payment an amount
28 sufficient to pay the expenses the public body reasonably expects to
29 incur as a result of the failure of the contractor to comply with the
30 contract or applicable building code, law or regulation.

31 2. A public body shall, within 20 days after it receives a
32 progress bill or retainage bill from a contractor, give a written notice
33 to the contractor of any amount that will be withheld pursuant to this
34 section. The written notice must set forth:

35 (a) The amount of the progress payment or retainage payment
36 that will be withheld from the contractor; and

37 (b) A detailed explanation of the reason the public body will
38 withhold that amount, including, without limitation, a specific
39 reference to the provision or section of the contract, or any
40 documents related thereto, or the applicable building code, law or
41 regulation with which the contractor has failed to comply.

42 ➤ The written notice must be signed by an authorized agent of the
43 public body.

44 3. If the public body receives a written notice of the correction
45 of the condition that is the reason for the withholding, signed by an



1 authorized agent of the contractor, the public body shall , *after*
2 *confirming that the condition has been corrected*, pay the amount
3 withheld by the public body within 30 days after the public body
4 receives the next progress bill or retainage bill.

5 **Sec. 29.** NRS 339.025 is hereby amended to read as follows:

6 339.025 1. Before any contract, except one subject to the
7 provisions of chapter 408 of NRS, exceeding ~~[\$35,000]~~ *\$100,000*
8 for any project for the new construction, repair or reconstruction of
9 any public building or other public work or public improvement of
10 any contracting body is awarded to any contractor, he shall furnish
11 to the contracting body the following bonds which become binding
12 upon the award of the contract to the contractor:

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

19 (b) A payment bond in an amount to be fixed by the contracting
20 body, but not less than 50 percent of the contract amount. The bond
21 must be solely for the protection of claimants supplying labor or
22 materials to the contractor to whom the contract was awarded, or to
23 any of his subcontractors, in the prosecution of the work provided
24 for in such 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 Board for any project for new construction, repair or
28 reconstruction of any public building or other public work or public
29 improvement, each of his subcontractors who will perform work on
30 the contract that exceeds \$50,000 or 1 percent of the proposed
31 project, whichever amount is greater, shall furnish a bond to the
32 Board in an amount to be fixed by the Board.

33 3. Each of the bonds required pursuant to this section must be
34 executed by one or more surety companies authorized to do business
35 in the State of Nevada. If the contracting body is the State of
36 Nevada or any officer, employee, board, bureau, commission,
37 department, agency or institution thereof, the bonds must be payable
38 to the State of Nevada. If the contracting body is other than one of
39 those enumerated in this subsection, the bonds must be payable to
40 the other contracting body.

41 4. Each of the bonds must be filed in the office of the
42 contracting body which awarded the contract for which the bonds
43 were given.

44 5. ~~[Nothing in this section prohibits]~~ *This section does not*
45 *prohibit* a contracting body from requiring bonds.



1 **Sec. 30.** NRS 338.1713, 338.405, 338.410, 338.440, 338.445
2 and 338.450 are hereby repealed.

3 **Sec. 31.** 1. This section and sections 1 to 7, inclusive, 9 to
4 15, inclusive, and 17 to 30, inclusive, of this act become effective on
5 October 1, 2005.

6 2. Sections 7 and 15 of this act expire by limitation on April
7 30, 2013.

8 3. Sections 8 and 16 of this act become effective on May 1,
9 2013.

LEADLINES OF REPEALED SECTIONS

**338.1713 Contract with design-build team: Public hearing;
notice.**

338.405 “Contract” defined.

338.410 “Contractor” defined.

338.440 “Subcontract” defined.

338.445 “Subcontractor” defined.

338.450 “Supplier” defined.



