
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; 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 to a design-build team; 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 *or administration* of contracts for public works
6 pursuant to this chapter.
7 2. “Contract” means a written contract entered into between a
8 contractor and a public body for the provision of labor, materials,
9 equipment or supplies for a public work.



- 1 3. "Contractor" means:
- 2 (a) A person who is licensed pursuant to the provisions of
- 3 chapter 624 of NRS or performs such work that he is not required to
- 4 be licensed pursuant to chapter 624 of NRS.
- 5 (b) A design-build team.
- 6 4. "Day labor" means all cases where public bodies, their
- 7 officers, agents or employees, hire, supervise and pay the wages
- 8 thereof directly to a workman or workmen employed by them on
- 9 public works by the day and not under a contract in writing.
- 10 5. "Design-build contract" means a contract between a public
- 11 body and a design-build team in which the design-build team agrees
- 12 to design and construct a public work.
- 13 6. "Design-build team" means an entity that consists of:
- 14 (a) At least one person who is licensed as a general engineering
- 15 contractor or a general building contractor pursuant to chapter 624
- 16 of NRS; and
- 17 (b) For a public work that consists of:
- 18 (1) A building and its site, at least one person who holds a
- 19 certificate of registration to practice architecture pursuant to chapter
- 20 623 of NRS.
- 21 (2) Anything other than a building and its site, at least one
- 22 person who holds a certificate of registration to practice architecture
- 23 pursuant to chapter 623 of NRS or landscape architecture pursuant
- 24 to chapter 623A of NRS or who is licensed as a professional
- 25 engineer pursuant to chapter 625 of NRS.
- 26 7. "Design professional" means:
- 27 (a) A person who is licensed as a professional engineer pursuant
- 28 to chapter 625 of NRS;
- 29 (b) A person who is licensed as a professional land surveyor
- 30 pursuant to chapter 625 of NRS;
- 31 (c) A person who holds a certificate of registration to engage in
- 32 the practice of architecture, interior design or residential design
- 33 pursuant to chapter 623 of NRS;
- 34 (d) A person who holds a certificate of registration to engage in
- 35 the practice of landscape architecture pursuant to chapter 623A of
- 36 NRS; or
- 37 (e) A business entity that engages in the practice of professional
- 38 engineering, land surveying, architecture or landscape architecture.
- 39 8. "Eligible bidder" means a person who is:
- 40 (a) Found to be a responsible and responsive contractor by a
- 41 local government or its authorized representative which requests
- 42 bids for a public work in accordance with paragraph (b) of
- 43 subsection 1 of NRS 338.1373; or
- 44 (b) Determined by a public body or its authorized representative
- 45 which awarded a contract for a public work pursuant to NRS



1 338.1375 to 338.139, inclusive, to be qualified to bid on that
2 contract pursuant to NRS 338.1379 or 338.1382.

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

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

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

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

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

23 12. "Offense" means failing to:

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

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

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

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

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

31 (a) Contracts to construct an entire project;

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

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

35 (d) Contracts for the services of any subcontractor or
36 independent contractor or is responsible for payment to any
37 contracted subcontractors or independent contractors.

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

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

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



1 (a) A project financed in whole or in part from public money
2 for:

- 3 (1) Public buildings;
- 4 (2) Jails and prisons;
- 5 (3) Public roads;
- 6 (4) Public highways;
- 7 (5) Public streets and alleys;
- 8 (6) Public utilities;
- 9 (7) Publicly owned water mains and sewers;
- 10 (8) Public parks and playgrounds;
- 11 (9) Public convention facilities which are financed at least in
12 part with public money; and
- 13 (10) All other publicly owned works and property.

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

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

20 17. "Stand-alone underground utility project" means an
21 underground utility project that is not integrated into a larger
22 project, including, without limitation:

23 (a) An underground sewer line or an underground pipeline for
24 the conveyance of water, including facilities appurtenant thereto;
25 and

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

28 ➔ that is not located at the site of a public work for the design and
29 construction of which a public body is authorized to contract with a
30 design-build team pursuant to subsection 2 of NRS 338.1711.

31 18. "Subcontract" means a written contract entered into
32 between:

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

34 (b) A subcontractor and another subcontractor or supplier,
35 ➔ for the provision of labor, materials, equipment or supplies for a
36 construction project.

37 19. "Subcontractor" means a person who:

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

41 (b) Contracts with a contractor, another subcontractor or a
42 supplier to provide labor, materials or services for a construction
43 project.

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



1 21. "Wages" means:
2 (a) The basic hourly rate of pay; and
3 (b) The amount of pension, health and welfare, vacation and
4 holiday pay, the cost of apprenticeship training or other similar
5 programs or other bona fide fringe benefits which are a benefit to
6 the workman.

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

13 **Secs. 2 and 3.** (Deleted by amendment.)

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

15 338.1377 Except as otherwise provided in NRS 338.1382, if a
16 governing body that sponsors or finances a public work elects to
17 award contracts for public works pursuant to the provisions of NRS
18 338.1377 to 338.139, inclusive, the governing body shall adopt the
19 following criteria for determining whether a person who has applied
20 pursuant to NRS 338.1379 is qualified to bid on contracts for public
21 works of the local government:

22 1. Whether the applicant possesses a valid contractor's license
23 of a class corresponding to the work to be required by the local
24 government;

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

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

32 4. Whether the principal personnel employed by the applicant
33 have the necessary professional qualifications and experience for the
34 work to be required by the local government;

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

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

40 7. Whether the applicant has been convicted of a violation for
41 discrimination in employment during the 2 years immediately
42 preceding the date of application;

43 8. Whether the applicant has the ability to obtain and maintain
44 insurance coverage for public liability and property damage within
45 limits sufficient to protect the applicant and all the subcontractors of



1 the applicant from claims for personal injury, accidental death and
2 damage to property that may arise in connection with the work to be
3 required by the local government;

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

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

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

13 12. Whether the application of the applicant is truthful and
14 complete; and

15 13. Whether, during the 5 years immediately preceding the date
16 of application, the applicant has, as a result of causes within the
17 control of the applicant or a subcontractor or supplier of the
18 applicant, failed to perform any contract:

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

22 (b) Within the time specified by the contract unless extended by
23 the person or governmental entity that awarded the contract or its
24 authorized representative; or

25 (c) For the amount of money specified in the contract or as
26 modified by any change orders initiated or approved by the person
27 or governmental entity that awarded the contract or its authorized
28 representative.

29 ➤ Evidence of the failures described in this subsection may include,
30 without limitation, the assessment of liquidated damages against the
31 applicant, the forfeiture of any bonds posted by the applicant, an
32 arbitration award granted against the applicant or a decision by a
33 court of law against the applicant.

34 **Sec. 4.5.** NRS 338.1378 is hereby amended to read as follows:
35 338.1378 1. Before a ~~[governing body]~~ **local government**
36 accepts applications pursuant to NRS 338.1379, the ~~[governing~~
37 ~~body]~~ **local government** must, in accordance with subsection 2,
38 advertise in a newspaper that is:

39 (a) Qualified pursuant to the provisions of chapter 238 of NRS;
40 and

41 (b) Published in a county in which the contracts for the potential
42 public works will be performed or, if no qualified newspaper is
43 published in that county, published in a qualified newspaper that is
44 published in the State of Nevada and which has a general circulation



1 in the county in which the contracts for the potential public works
2 will be performed.

3 2. An advertisement required pursuant to subsection 1:

4 (a) Must be published at least once not less than 21 days before
5 applications are to be submitted to the ~~[governing body;]~~ *local*
6 *government;* and

7 (b) Must include:

8 (1) A description of the potential public works for which
9 applications to qualify as a bidder are being accepted;

10 (2) The time and place at which applications are to be
11 submitted to the ~~[governing body;]~~ *local government;*

12 (3) The place at which applications may be obtained; and

13 (4) Any other information that the ~~[governing body]~~ *local*
14 *government* deems necessary.

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

16 338.1379 1. Except as otherwise provided in NRS 338.1382,
17 a contractor who wishes to qualify as a bidder on a contract for a
18 public work must submit an application to the State Public Works
19 Board or the ~~[governing body.]~~ *local government.*

20 2. Upon receipt of an application pursuant to subsection 1, the
21 State Public Works Board or the ~~[governing body]~~ *local*
22 *government* shall:

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

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

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

33 4. The State Public Works Board or the ~~[governing body]~~ *local*
34 *government* may determine an applicant is qualified to bid:

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

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

37 ~~—(c) On more than one project over a period of 24 months.]~~ *time*
38 *to be determined by the State Public Works Board or the local*
39 *government.*

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

43 6. The ~~[governing body]~~ *local government* shall not use any
44 criteria other than the criteria described in NRS 338.1377 in
45 determining whether to approve or deny an application.



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

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

7 338.1381 1. If, within 10 days after receipt of the notice
8 denying an application pursuant to NRS 338.1379 or disqualifying a
9 subcontractor pursuant to NRS 338.1376, the applicant or
10 subcontractor, as applicable, files a written request for a hearing
11 with the State Public Works Board or the ~~governing body~~ *local*
12 *government*, the Board or governing body shall set the matter for a
13 hearing within 20 days after receipt of the request. The hearing must
14 be held not later than 45 days after the receipt of the request for a
15 hearing unless the parties, by written stipulation, agree to extend the
16 time.

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

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

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

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

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

44 6. The Board or governing body shall issue a decision on the
45 matter ~~within 5 days after~~ *during* the hearing . ~~and notify the~~



1 ~~applicant, in writing, of its decision within 15 days after it is issued.]~~
2 The decision of the Board or governing body is a final decision for
3 purposes of judicial review.

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

5 338.1385 1. Except as otherwise provided in subsection ~~[8]~~ **9**
6 and NRS 338.1906 and 338.1907, this State, or a governing body or
7 its authorized representative that awards a contract for a public work
8 in accordance with paragraph (a) of subsection 1 of NRS 338.1373
9 shall not:

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

18 (b) Commence a public work for which the estimated cost is
19 \$100,000 or less unless it complies with the provisions of NRS
20 338.1386, 338.13862 and 338.13864.

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

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

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

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

36 5. Except as otherwise provided in subsection 6 and NRS
37 338.1389, a public body shall award a contract to the lowest
38 responsive and responsible bidder.

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

42 (a) The bidder is not a qualified bidder pursuant to NRS
43 338.1379 or 338.1382;

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



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

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

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

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

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

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

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

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

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

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

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

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

35 ~~8.~~ 9. This section does not apply to:

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

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

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

41 (d) The Las Vegas Valley Water District created pursuant to
42 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
43 District created pursuant to chapter 477, Statutes of Nevada 1983 or
44 the Virgin Valley Water District created pursuant to chapter 100,
45 Statutes of Nevada 1993; or



1 (e) The design and construction of a public work for which a
2 public body contracts with a design-build team pursuant to NRS
3 338.1711 to 338.1727, inclusive.

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

5 338.1385 1. Except as otherwise provided in subsection ~~[8,]~~
6 **9**, this State, or a governing body or its authorized representative
7 that awards a contract for a public work in accordance with
8 paragraph (a) of subsection 1 of NRS 338.1373 shall not:

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

17 (b) Commence a public work for which the estimated cost is
18 \$100,000 or less unless it complies with the provisions of NRS
19 338.1386, 338.13862 and 338.13864.

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

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

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

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

35 5. Except as otherwise provided in subsection 6 and NRS
36 338.1389, a public body shall award a contract to the lowest
37 responsive and responsible bidder.

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

41 (a) The bidder is not a qualified bidder pursuant to NRS
42 338.1379 or 338.1382;

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

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



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

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

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

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

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

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

18 (a) A list of all persons, including supervisors, whom the public
19 body intends to assign to the public work, together with their
20 classifications and an estimate of the direct and indirect costs of
21 their labor;

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

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

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

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

33 ~~8-1~~ 9. This section does not apply to:

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

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

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

39 (d) The Las Vegas Valley Water District created pursuant to
40 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
41 District created pursuant to chapter 477, Statutes of Nevada 1983 or
42 the Virgin Valley Water District created pursuant to chapter 100,
43 Statutes of Nevada 1993; or



1 (e) The design and construction of a public work for which a
2 public body contracts with a design-build team pursuant to NRS
3 338.1711 to 338.1727, inclusive.

4 **Secs. 9-11.** (Deleted by amendment.)

5 **Sec. 12.** NRS 338.13895 is hereby amended to read as
6 follows:

7 338.13895 1. ~~[A public body or its authorized representative~~
8 ~~awarding a contract for a public work]~~ *The State Public Works*
9 *Board* shall not award ~~[the]~~ *a* contract to a person who, at the time
10 of the bid, is not properly licensed under the provisions of chapter
11 624 of NRS or if the contract would exceed the limit of his license.
12 A subcontractor who is:

13 (a) Named in the bid for the contract as a subcontractor who will
14 provide a portion of the work on the public work pursuant to NRS
15 338.141; and

16 (b) Not properly licensed for that portion of the work, or who, at
17 the time of the bid, is on disqualified status with the State Public
18 Works Board pursuant to NRS 338.1376,
19 ↪ shall be deemed unacceptable. If the subcontractor is deemed
20 unacceptable pursuant to this subsection, the contractor shall
21 provide an acceptable subcontractor.

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

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

30 (b) *Not properly licensed for that portion of work,*
31 *↪ shall be deemed unacceptable. If the subcontractor is deemed*
32 *unacceptable pursuant to this subsection, the contractor shall*
33 *provide an acceptable subcontractor with no increase in the*
34 *amount of the contract.*

35 3. If, after awarding the contract, but before commencement of
36 the work, the public body or its authorized representative discovers
37 that the person to whom the contract was awarded is not licensed, or
38 that the contract would exceed his license, the public body or its
39 authorized representative shall rescind the award of the contract and
40 may accept the next lowest bid for that public work from a
41 responsive bidder who was determined by the public body or its
42 authorized representative to be a qualified bidder pursuant to NRS
43 338.1379 or 338.1382 without requiring that new bids be submitted.



1 **Sec. 12.5.** NRS 338.139 is hereby amended to read as follows:

2 338.139 1. A ~~[public body]~~ *governing body* or its authorized
3 representative may award a contract for a public work pursuant to
4 NRS 338.1375 to 338.13895, inclusive, to a specialty contractor if:

5 (a) The majority of the work to be performed on the public work
6 to which the contract pertains consists of specialty contracting for
7 which the specialty contractor is licensed; ~~[and]~~

8 (b) The public work to which the contract pertains is not part of
9 a larger public work ~~[]~~; *and*

10 (c) *All work to be performed on the public work to which the*
11 *contract pertains that is outside the scope of the license of the*
12 *specialty contractor is performed by a subcontractor that is*
13 *licensed to perform such work.*

14 2. If ~~[a public body or its authorized representative]~~ *the State*
15 *Public Works Board* awards a contract to a specialty contractor
16 pursuant to NRS 338.1375 to 338.13895, inclusive, all work to be
17 performed on the public work to which the contract pertains that is
18 outside the scope of the license of the specialty contractor must be
19 performed by a subcontractor who:

20 (a) Is licensed to perform such work; and

21 (b) At the time of the performance of the work, is not on
22 disqualified status with the State Public Works Board pursuant to
23 NRS 338.1376.

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

25 338.140 1. A public body shall not draft or cause to be
26 drafted specifications for bids, in connection with a public work:

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

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

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

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

44 (1) A determination of the price of additional work
45 performed pursuant to a change order;



1 (2) An evaluation of claims for costs incurred for the
2 performance of additional work;

3 (3) Preparation for arbitration or litigation; ~~or~~

4 (4) *A determination of the validity of the protest of a bid;*

5 (5) *A determination of the validity of an increase or*
6 *decrease in the price of a contract in accordance with a provision*
7 *in the contract which authorizes such an increase or decrease to*
8 *correspond to changing market conditions; or*

9 (6) Any combination thereof.

10 ➔ A document furnished to a public body pursuant to this paragraph
11 is confidential and must be returned to the bidder.

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

16 3. Specifications must provide a period of time of at least 7
17 days after award of the contract for submission of data
18 substantiating a request for a substitution of “an equal” item.

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

20 338.141 1. Except as otherwise provided in NRS 338.1727,
21 each bid submitted to a public body for any public work to which
22 paragraph (a) of subsection 1 of NRS 338.1385 or paragraph (a) of
23 subsection 1 of NRS 338.143 applies, must include:

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

30 (b) If the public body does not provide a list of the labor or
31 portions of the public work which are estimated by the public body
32 to exceed 3 percent of the estimated cost of the public work, the
33 name of each *first tier* subcontractor who will provide labor or a
34 portion of the work on the public work to the prime contractor for
35 which the *first tier* subcontractor will be paid an amount exceeding
36 5 percent of the prime contractor’s total bid. If the bid is submitted
37 pursuant to this paragraph, within 2 hours after the completion of
38 the opening of the bids, the contractors who submitted the three
39 lowest bids must submit a list containing the name of each *first tier*
40 subcontractor who will provide labor or a portion of the work on the
41 public work to the prime contractor for which the *first tier*
42 subcontractor will be paid an amount exceeding 1 percent of the
43 prime contractor’s total bid or \$50,000, whichever is greater, and the
44 number of the license issued to the *first tier* subcontractor pursuant
45 to chapter 624 of NRS.



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

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

7 4. Except as otherwise provided in this subsection, if a
8 contractor:

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

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

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

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

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

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

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

34 (2) The named subcontractor files for bankruptcy or becomes
35 insolvent;

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

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

41 (c) If the public body awarding the contract is a governing body,
42 the public body or its authorized representative, in awarding the
43 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 unless it advertises in a newspaper qualified
33 pursuant to chapter 238 of NRS that is published in the county
34 where the public work will be performed for bids for the public
35 work. If no qualified newspaper is published in the county where the
36 public work will be performed, the required advertisement must be
37 published in some qualified newspaper that is printed in the State of
38 Nevada and has a general circulation in the county.

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

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

44 2. At least once each quarter, the authorized representative of a
45 local government shall report to the ~~local government~~ governing



1 *body* any contract that ~~the~~ *the authorized representative* awarded
2 pursuant to subsection 1 in the immediately preceding quarter.

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

8 4. Except as otherwise provided in subsection 5 and NRS
9 338.147, the local government or its authorized representative shall
10 award a contract to the lowest responsive and responsible bidder.

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

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

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

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

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

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

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

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

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

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

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

42 (c) An estimate of the cost of administrative support for the
43 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 unless it advertises in a newspaper qualified
28 pursuant to chapter 238 of NRS that is published in the county
29 where the public work will be performed for bids for the public
30 work. If no qualified newspaper is published within the county
31 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 or less unless it complies with the provisions of NRS
37 338.1442, 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.



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

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

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

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

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

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

Secs. 17-19. (Deleted by amendment.)

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

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

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

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

4. This section does not prohibit the use of alternate dispute resolution methods before arbitration.

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

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

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

~~—(a) The public work is:~~

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



- 1 ~~—— (2) Any other type of public work, except a stand alone~~
2 ~~underground utility project, the estimated cost of which exceeds~~
3 ~~\$20,000,000; 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 ~~—— 3. Except as otherwise provided in subsection 4, each state~~
17 ~~agency and each department, division, board, unit or agency of a~~
18 ~~local government may contract with a design build team for the~~
19 ~~design and construction of a public work if the public body that is~~
20 ~~responsible for financing the public work determines that:~~
21 ~~—— (a) The estimated cost of the public work is:~~
22 ~~—— (1) At least \$250,000 but less than \$20,000,000 if the public~~
23 ~~work is] work:~~
24 ~~(a) Is the construction of a park and appurtenances thereto, the~~
25 ~~rehabilitation or remodeling of a public building, or the construction~~
26 ~~of an addition to a public building;~~
27 ~~[(2) At least \$500,000 but less than \$20,000,000 if the public~~
28 ~~work is the construction of a new public building;~~
29 ~~—— (3) At least \$5,000,000 but less than \$100,000,000 if the~~
30 ~~public work is the construction, alteration or repair of a plant or~~
31 ~~facility for the treatment and pumping of water or the treatment and~~
32 ~~disposal of wastewater or sewage; or~~
33 ~~—— (4) At least \$5,000,000 but less than \$20,000,000 if the~~
34 ~~public work is the construction, alteration or repair of any other~~
35 ~~fixed works as described in subsection 2 of NRS 624.215; and~~
36 ~~—— (b) Contracting with a design build team will enable the public~~
37 ~~body to:~~
38 ~~—— (1) Design and construct the public work at a cost that is~~
39 ~~significantly lower than the cost that the public body would incur to~~
40 ~~design and construct the public work using a different method;~~
41 ~~—— (2) Design and construct the public work in a shorter time~~
42 ~~than would be required to design and construct the public work~~
43 ~~using a different method, if exigent circumstances require that the~~
44 ~~public work be designed and constructed within a short time; or~~



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

4 ~~— 4. Each state agency and each department, division, board, unit~~
5 ~~or agency of a local government may contract with a design-build~~
6 ~~team once during each fiscal year for the design and construction of~~
7 ~~a public work subject to the provisions of subparagraph (4) of~~
8 ~~paragraph (a) of subsection 3.~~

9 ~~— 5. Notwithstanding the provisions of subsections 1 to 4,~~
10 ~~inclusive, a public body may contract with:~~

11 ~~— (a) A nonprofit organization for the design and construction of a~~
12 ~~project to restore, enhance or develop wetlands.~~

13 ~~— (b) A prime contractor or design-build team with respect to a~~
14 ~~public work if the public body determines that the public work is:~~

15 ~~— (1) Not part of a larger public work; and~~

16 ~~— (2) Limited in scope to:~~

17 ~~— (I) Removal of asbestos;~~

18 ~~— (II) Replacement of equipment or systems for heating,~~
19 ~~ventilation and air conditioning;~~

20 ~~— (III) Replacement of a roof;~~

21 ~~— (IV) Landscaping; or~~

22 ~~— (V) Restoration, enhancement or development of~~
23 ~~wetlands.~~

24 ~~— 6. A public body that is required to contract with a prime~~
25 ~~contractor pursuant to subsection 1 or elects to contract with a prime~~
26 ~~contractor pursuant to subsection 5 shall select the prime contractor~~
27 ~~in accordance with the procedures for bidding that are set forth in:~~

28 ~~— (a) The provisions of NRS 338.1375 to 338.139, inclusive; or~~

29 ~~— (b) NRS 338.143 to 338.148, inclusive, if the public body is a~~
30 ~~local government that elects to award a contract for a public work in~~
31 ~~accordance with paragraph (b) of subsection 1 of NRS 338.1373.~~

32 ~~— 7. As used in this section, “state agency” includes an agency,~~
33 ~~bureau, board, commission, department, division or any other unit of~~
34 ~~the Legislative Department, Judicial Department or Executive~~
35 ~~Department of State Government or the University and Community~~
36 ~~College System of Nevada.] or~~

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

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

39 338.1715 A public body that contracts with a design-build
40 team pursuant to NRS 338.1711 ~~[and 338.1713]~~ shall select the
41 design-build team in accordance with the provisions of NRS
42 338.1721 to 338.1727, inclusive.

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

44 338.1721 To qualify to participate in a project for the design
45 and construction of a public work, a design-build team must:



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

3 2. ~~Obtain~~ *Have the ability to obtain* insurance covering
4 general liability and liability for errors and omissions;

5 3. Not have been found liable for breach of contract with
6 respect to a previous project, other than a breach for legitimate
7 cause ~~is~~, *during the 5 years immediately preceding the date of the*
8 *advertisement for preliminary proposals;*

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

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

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

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

18 338.1723 1. A public body shall advertise for preliminary
19 proposals for the design and construction of a public work by a
20 design-build team in a newspaper qualified pursuant to chapter 238
21 of NRS that is published in the county where the public work will
22 be performed. If no qualified newspaper is published in the county
23 where the public work will be performed, the required
24 advertisement must be published in some qualified newspaper that is
25 printed in the State of Nevada and has a general circulation in the
26 county.

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

29 (a) A description of the public work to be designed and
30 constructed;

31 (b) ~~Separate estimates~~ *An estimate* of the ~~costs of designing~~
32 ~~and constructing~~ *cost to design and construct* the public work;

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

36 (d) The date by which preliminary proposals must be submitted
37 to the public body ~~[, which must not be less than 30 days after the~~
38 ~~date that the request for preliminary proposals is first published in a~~
39 ~~newspaper pursuant to subsection 1;~~

40 ~~—(e) A statement setting forth the place and time in which a~~
41 ~~design build team desiring to submit a proposal for the public work~~
42 ~~may obtain the information necessary to submit a proposal,~~
43 ~~including, without limitation, the information set forth in subsection~~
44 ~~3; and~~

45 ~~—(f);~~



1 (e) If the proposal is for a public work of the State, a statement
2 setting forth that the prime contractor must be qualified to bid on a
3 public work of the State pursuant to NRS 338.1379 before
4 submitting a preliminary proposal [

5 ~~3. A public body shall maintain at the time and place set forth
6 in the request for preliminary proposals the following information
7 for inspection by a design-build team desiring to submit a proposal
8 for the public work:~~

9 ~~(a) The];~~

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

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

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

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

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

24 ~~(d)];~~

25 (i) Notice that a design-build team desiring to submit a proposal
26 for the public work must include with its proposal the information
27 used by the public body to determine finalists among the design-
28 build teams submitting proposals pursuant to subsection 2 of NRS
29 338.1725 and a description of that information;

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

35 ~~(f)] and~~

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

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

42 338.1725 1. The public body shall select at least ~~three~~ *two*
43 but not more than ~~five~~ *four* finalists from among the design-build
44 teams that submitted preliminary proposals. If the public body does
45 not receive at least ~~three~~ *two* preliminary proposals from design-



1 build teams that the public body determines to be qualified pursuant
2 to this section and NRS 338.1721, the public body may not contract
3 with a design-build team for the design and construction of the
4 public work.

5 2. The public body shall select finalists pursuant to subsection
6 1 by:

7 (a) Verifying that each design-build team which submitted a
8 preliminary proposal satisfies the requirements of NRS 338.1721;
9 and

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

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

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

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

20 (4) The proposed plan of the design-build team to manage
21 the design and construction of the public work that sets forth in
22 detail the ability of the design-build team to design and construct the
23 public work. ~~}; and~~

24 ~~— (5) The degree to which the preliminary proposal is~~
25 ~~responsive to the requirements of the public body for the submittal~~
26 ~~of a preliminary proposal.]~~

27 *3. After the selection of finalists pursuant to this section, the*
28 *public body shall make available to the public the results of the*
29 *evaluations of preliminary proposals conducted pursuant to*
30 *paragraph (b) of subsection 2 and the rankings of the design-build*
31 *teams who submitted preliminary proposals.*

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

33 338.1727 1. After selecting the finalists pursuant to NRS
34 338.1725, the public body shall provide to each finalist a request for
35 final proposals for the public work. The request for final proposals
36 must:

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

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

42 2. If one or more of the finalists selected pursuant to NRS
43 338.1725 is disqualified or withdraws, the public body may select a
44 design-build team from the remaining *finalist or* finalists. ~~{if at~~
45 ~~least two finalists remain.}]~~



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

14 4. A final proposal submitted by a design-build team pursuant
15 to this section must be prepared thoroughly and be responsive to the
16 criteria that the public body will use to select a design-build team to
17 design and construct the public work described in subsection 1. *A*
18 *design-build team that submits a final proposal which is not*
19 *responsive shall not be awarded the contract and shall not be*
20 *eligible for the partial reimbursement of costs provided for in*
21 *subsection 7.*

22 5. A final proposal is exempt from the requirements of
23 NRS 338.141.

24 ~~[5-]~~ 6. After receiving *and evaluating* the final proposals for
25 the public work, the public body, at a regularly scheduled meeting,
26 shall:

27 (a) Select the ~~[most cost-effective and responsive]~~ final
28 proposal, using the criteria set forth pursuant to subsections 1 and 3
29 ~~[5-]~~, *and award the design-build contract to the design-build team*
30 *whose proposal is selected;* or

31 (b) Reject all the final proposals.

32 ~~[6-]~~ 7. If a public body selects a final proposal *and awards a*
33 *design-build contract* pursuant to paragraph (a) of subsection ~~[5-]~~ 6,
34 the public body shall ~~[, at a regularly scheduled meeting:~~

35 ~~—(a) Review and ratify the selection.~~

36 ~~—(b) Award the design-build contract to the design-build team~~
37 ~~whose proposal is selected.~~

38 ~~—(c) :~~

39 (a) Partially reimburse the unsuccessful finalists if partial
40 reimbursement was provided for in the request for preliminary
41 proposals pursuant to paragraph ~~[(f)]~~ (j) of subsection ~~[3]~~ 2 of NRS
42 338.1723. The amount of reimbursement must not exceed, for each
43 unsuccessful finalist, 3 percent of the total amount to be paid to the
44 design-build team as set forth in the design-build contract.



1 ~~[(d)]~~ (b) Make available to the public ~~[a summary setting forth~~
2 ~~the factors used by the public body to select the successful design-~~
3 ~~build team]~~ *the results of the evaluation of final proposals that was*
4 *conducted* and the ranking of the design-build teams who submitted
5 final proposals. The public body shall not release to a third party, or
6 otherwise make public, financial or proprietary information
7 submitted by a design-build team.

8 ~~[7-]~~ 8. A contract awarded pursuant to this section:

9 (a) Must comply with the provisions of NRS 338.020 to
10 338.090, inclusive.

11 (b) Must specify:

12 (1) An amount that is the maximum amount that the public
13 body will pay for the performance of all the work required by the
14 contract, excluding any amount related to costs that may be incurred
15 as a result of unexpected conditions or occurrences as authorized by
16 the contract;

17 (2) An amount that is the maximum amount that the public
18 body will pay for the performance of the professional services
19 required by the contract; and

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

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

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

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

41 ~~[8.—A]~~

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



1 ~~—(a) Assume~~ *assume* overall responsibility for ensuring that the
2 design and construction of the public work is completed in a
3 satisfactory manner. ~~}; and~~

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

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

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

10 338.400 As used in NRS 338.400 to 338.645, inclusive, unless
11 the context otherwise requires, the words and terms defined in NRS
12 ~~[338.405 to 338.450.]~~ *338.415 to 338.435*, inclusive, have the
13 meanings ascribed to them in those sections.

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

15 338.525 1. A public body may, but is not required to,
16 withhold from a progress payment or retainage payment an amount
17 sufficient to pay the expenses the public body reasonably expects to
18 incur as a result of the failure of the contractor to comply with the
19 contract or applicable building code, law or regulation.

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

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

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

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

33 3. If the public body receives a written notice of the correction
34 of the condition that is the reason for the withholding, signed by an
35 authorized agent of the contractor, the public body shall, *after*
36 *confirming that the condition has been corrected*, pay the amount
37 withheld by the public body within 30 days after the public body
38 receives the next progress bill or retainage bill.

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

40 339.025 1. Before any contract, except one subject to the
41 provisions of chapter 408 of NRS, exceeding ~~[\$35,000]~~ *\$100,000*
42 for any project for the new construction, repair or reconstruction of
43 any public building or other public work or public improvement of
44 any contracting body is awarded to any contractor, he shall furnish



1 to the contracting body the following bonds which become binding
2 upon the award of the contract to the contractor:

3 (a) A performance bond in an amount to be fixed by the
4 contracting body, but not less than 50 percent of the contract
5 amount, conditioned upon the faithful performance of the contract in
6 accordance with the plans, specifications and conditions of the
7 contract. The bond must be solely for the protection of the
8 contracting body which awarded the contract.

9 (b) A payment bond in an amount to be fixed by the contracting
10 body, but not less than 50 percent of the contract amount. The bond
11 must be solely for the protection of claimants supplying labor or
12 materials to the contractor to whom the contract was awarded, or to
13 any of his subcontractors, in the prosecution of the work provided
14 for in such contract.

15 2. If a general contractor has been awarded a contract, except
16 one subject to the provisions of chapter 408 of NRS, by the State
17 Public Works Board for any project for new construction, repair or
18 reconstruction of any public building or other public work or public
19 improvement, each of his subcontractors who will perform work on
20 the contract that exceeds \$50,000 or 1 percent of the proposed
21 project, whichever amount is greater, shall furnish a bond to the
22 Board in an amount to be fixed by the Board.

23 3. Each of the bonds required pursuant to this section must be
24 executed by one or more surety companies authorized to do business
25 in the State of Nevada. If the contracting body is the State of
26 Nevada or any officer, employee, board, bureau, commission,
27 department, agency or institution thereof, the bonds must be payable
28 to the State of Nevada. If the contracting body is other than one of
29 those enumerated in this subsection, the bonds must be payable to
30 the other contracting body.

31 4. Each of the bonds must be filed in the office of the
32 contracting body which awarded the contract for which the bonds
33 were given.

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

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

38 **Sec. 31.** 1. This section and sections 1 to 7, inclusive, 9 to
39 15, inclusive, and 17 to 30, inclusive, of this act become effective on
40 October 1, 2005.

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

43 3. Sections 8 and 16 of this act become effective on May 1,
44 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.

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