

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~~ **public** 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.
10 3. “Contractor” means:



1 (a) A person who is licensed pursuant to the provisions of
2 chapter 624 of NRS or performs such work that he is not required to
3 be licensed pursuant to chapter 624 of NRS.

4 (b) A design-build team.

5 4. "Day labor" means all cases where public bodies, their
6 officers, agents or employees, hire, supervise and pay the wages
7 thereof directly to a workman or workmen employed by them on
8 public works by the day and not under a contract in writing.

9 5. "Design-build contract" means a contract between a public
10 body and a design-build team in which the design-build team agrees
11 to design and construct a public work.

12 6. "Design-build team" means an entity that consists of:

13 (a) At least one person who is licensed as a general engineering
14 contractor or a general building contractor pursuant to chapter 624
15 of NRS; and

16 (b) For a public work that consists of:

17 (1) A building and its site, at least one person who holds a
18 certificate of registration to practice architecture pursuant to chapter
19 623 of NRS.

20 (2) Anything other than a building and its site, at least one
21 person who holds a certificate of registration to practice architecture
22 pursuant to chapter 623 of NRS or landscape architecture pursuant
23 to chapter 623A of NRS or who is licensed as a professional
24 engineer pursuant to chapter 625 of NRS.

25 7. "Design professional" means:

26 (a) A person who is licensed as a professional engineer pursuant
27 to chapter 625 of NRS;

28 (b) A person who is licensed as a professional land surveyor
29 pursuant to chapter 625 of NRS;

30 (c) A person who holds a certificate of registration to engage in
31 the practice of architecture, interior design or residential design
32 pursuant to chapter 623 of NRS;

33 (d) A person who holds a certificate of registration to engage in
34 the practice of landscape architecture pursuant to chapter 623A of
35 NRS; or

36 (e) A business entity that engages in the practice of professional
37 engineering, land surveying, architecture or landscape architecture.

38 8. "Eligible bidder" means a person who is:

39 (a) Found to be a responsible and responsive contractor by a
40 local government or its authorized representative which requests
41 bids for a public work in accordance with paragraph (b) of
42 subsection 1 of NRS 338.1373; or

43 (b) Determined by a public body or its authorized representative
44 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 *the governing body of* a local government to serve as its authorized
23 representative.

24 12. "Offense" means failing to:

- 25 (a) Pay the prevailing wage required pursuant to this chapter;
26 (b) Pay the contributions for unemployment compensation
27 required pursuant to chapter 612 of NRS;
28 (c) Provide and secure compensation for employees required
29 pursuant to chapters 616A to 617, inclusive, of NRS; or
30 (d) Comply with subsection 4 or 5 of NRS 338.070.

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

- 32 (a) Contracts to construct an entire project;
33 (b) Coordinates all work performed on the entire project;
34 (c) Uses his own workforce to perform all or a part of the public
35 work; and
36 (d) Contracts for the services of any subcontractor or
37 independent contractor or is responsible for payment to any
38 contracted subcontractors or independent contractors.

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

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



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

3 (a) A project financed in whole or in part from public money
4 for:

5 (1) Public buildings;

6 (2) Jails and prisons;

7 (3) Public roads;

8 (4) Public highways;

9 (5) Public streets and alleys;

10 (6) Public utilities;

11 (7) Publicly owned water mains and sewers;

12 (8) Public parks and playgrounds;

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

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

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

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

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

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

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

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

33 18. "Subcontract" means a written contract entered into
34 between:

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

36 (b) A subcontractor and another subcontractor or supplier,

37 ➡ for the provision of labor, materials, equipment or supplies for a
38 construction project.

39 19. "Subcontractor" means a person who:

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

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



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

3 21. "Wages" means:

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

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

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

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

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

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

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

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

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

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

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

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

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



1 8. Whether the applicant has the ability to obtain and maintain
2 insurance coverage for public liability and property damage within
3 limits sufficient to protect the applicant and all the subcontractors of
4 the applicant from claims for personal injury, accidental death and
5 damage to property that may arise in connection with the work to be
6 required by the local government;

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

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

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

16 12. Whether the application of the applicant is truthful and
17 complete; and

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

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

25 (b) Within the time specified by the contract unless extended by
26 the person or governmental entity that awarded the contract or its
27 authorized representative; or

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

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

37 **Sec. 4.5.** NRS 338.1378 is hereby amended to read as follows:

38 338.1378 1. Before a ~~[governing body]~~ **local government**
39 accepts applications pursuant to NRS 338.1379, the ~~[governing~~
40 ~~body]~~ **local government** must, in accordance with subsection 2,
41 advertise in a newspaper that is:

42 (a) Qualified pursuant to the provisions of chapter 238 of NRS;
43 and

44 (b) Published in a county in which the contracts for the potential
45 public works will be performed or, if no qualified newspaper is



1 published in that county, published in a qualified newspaper that is
2 published in the State of Nevada and which has a general circulation
3 in the county in which the contracts for the potential public works
4 will be performed.

5 2. An advertisement required pursuant to subsection 1:

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

9 (b) Must include:

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

12 (2) The time and place at which applications are to be
13 submitted to the ~~governing body;~~ *local government;*

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

15 (4) Any other information that the ~~governing body~~ *local*
16 *government* deems necessary.

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

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

22 2. Upon receipt of an application pursuant to subsection 1, the
23 State Public Works Board or the ~~governing body~~ *local*
24 *government* 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~~ *local*
31 *government* shall notify each applicant in writing of its
32 determination. If an application is denied, the notice must set forth
33 the reasons for the denial and inform the applicant of his right to a
34 hearing pursuant to NRS 338.1381.

35 4. The State Public Works Board or the ~~governing body~~ *local*
36 *government* may 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 local*
41 *government.*

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~~ *local government* shall not use any
2 criteria other than the criteria described in NRS 338.1377 in
3 determining whether to 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~~ *local government* to
7 determine the financial ability of an applicant to perform a contract
8 is confidential and not 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~~ *local*
15 *government*, the Board or governing body shall set the matter for a
16 hearing within 20 days after receipt of the request. The hearing must
17 be held not later than 45 days after the receipt of the request for a
18 hearing unless the parties, by written stipulation, agree to extend the
19 time.

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

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

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

35 (a) Administer oaths;

36 (b) Take testimony;

37 (c) Issue subpoenas to compel the attendance of witnesses to
38 testify before the Board or governing body;

39 (d) Require the production of related books, papers and
40 documents; and

41 (e) Issue commissions to take testimony.

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



1 court to order the witness to appear or testify or produce the
2 requested books, papers or documents.

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

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

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

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

22 (b) Commence a public work for which the estimated cost is
23 \$100,000 or less unless it complies with the provisions of NRS
24 338.1386, 338.13862 and 338.13864.

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

27 2. At least once each quarter, the authorized representative of a
28 public body shall report to the public body any contract that ~~[he]~~ *the*
29 *authorized representative* awarded pursuant to subsection 1 in the
30 immediately preceding 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 *or its authorized representative* shall
41 award a contract to the lowest 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 bids were received in response to an advertisement*
9 *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);*

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

17 (d) *The contract is awarded to the bidder who has submitted*
18 *the lowest responsive and responsible bid.*

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

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

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

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

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

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

40 ~~8.~~ 9. This section does not apply to:

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

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

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



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

6 (e) The design and construction of a public work for which a
7 public body contracts with a design-build team pursuant to NRS
8 338.1711 to 338.1727, inclusive.

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

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

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

22 (b) Commence a public work for which the estimated cost is
23 \$100,000 or less unless it complies with the provisions of NRS
24 338.1386, 338.13862 and 338.13864.

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

27 2. At least once each quarter, the authorized representative of a
28 public body shall report to the public body any contract that ~~the~~ *the*
29 *authorized representative* awarded pursuant to subsection 1 in the
30 immediately preceding 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 *or its authorized representative* shall
41 award a contract to the lowest 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 bids were received in response to an advertisement*
9 *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);*

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

17 (d) *The contract is awarded to the lowest responsive and*
18 *responsible bidder.*

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

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

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

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

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

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

40 ~~[8.]~~ 9. This section does not apply to:

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

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

45 (c) Normal maintenance of the property of a school district; ~~[or]~~



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

6 (e) The design and construction of a public work for which a
7 public body contracts with a design-build team pursuant to NRS
8 338.1711 to 338.1727, inclusive.

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

10 **Sec. 12.** NRS 338.13895 is hereby amended to read as
11 follows:

12 338.13895 1. ~~[A public body or its authorized representative~~
13 ~~awarding a contract for a public work]~~ *The State Public Works*
14 *Board* shall not award ~~[the]~~ a contract to a person who, at the time
15 of the bid, is not properly licensed under the provisions of chapter
16 624 of NRS or if the contract would exceed the limit of his license.
17 A subcontractor who is:

18 (a) Named in the bid for the contract as a subcontractor who will
19 provide a portion of the work on the public work pursuant to NRS
20 338.141; and

21 (b) Not properly licensed for that portion of the work, or who, at
22 the time of the bid, is on disqualified status with the State Public
23 Works Board pursuant to NRS 338.1376,
24 ➔ shall be deemed unacceptable. If the subcontractor is deemed
25 unacceptable pursuant to this subsection, the contractor shall
26 provide an acceptable subcontractor.

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

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

35 (b) *Not properly licensed for that portion of work,*
36 *➔ shall be deemed unacceptable. If the subcontractor is deemed*
37 *unacceptable pursuant to this subsection, the contractor shall*
38 *provide an acceptable subcontractor with no increase in the*
39 *amount of the contract.*

40 3. If, after awarding the contract, but before commencement of
41 the work, the public body or its authorized representative discovers
42 that the person to whom the contract was awarded is not licensed, or
43 that the contract would exceed his license, the public body or its
44 authorized representative shall rescind the award of the contract and
45 may accept the next lowest bid for that public work from a



1 responsive bidder who was determined by the public body or its
2 authorized representative to be a qualified bidder pursuant to NRS
3 338.1379 or 338.1382 without requiring that new bids be submitted.

4 **Sec. 12.5.** (Deleted by amendment.)

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

6 338.140 1. A public body shall not draft or cause to be
7 drafted specifications for bids, in connection with a public work:

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

10 (b) Except in those instances where the product is designated to
11 match others in use on a particular public improvement either
12 completed or in the course of completion, calling for a designated
13 material, product, thing or service by specific brand or trade name
14 unless the specification lists at least two brands or trade names of
15 comparable quality or utility and is followed by the words "or
16 equal" so that bidders may furnish any equal material, product, thing
17 or service.

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

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

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

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

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

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

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

35 (6) Any combination thereof.

36 ↪ A document furnished to a public body pursuant to this paragraph
37 is confidential and must be returned to the bidder.

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

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



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

2 338.141 1. Except as otherwise provided in NRS 338.1727,
3 each bid submitted to a public body for any public work to which
4 paragraph (a) of subsection 1 of NRS 338.1385 or paragraph (a) of
5 subsection 1 of NRS 338.143 applies, must include:

6 (a) If the public body provides a list of the labor or portions of
7 the public work which are estimated by the public body to exceed 3
8 percent of the estimated cost of the public work, the name of each
9 *first tier* subcontractor who will provide such labor or portion of the
10 work on the public work which is estimated to exceed 3 percent of
11 the estimated cost of the public work; or

12 (b) If the public body does not provide a list of the labor or
13 portions of the public work which are estimated by the public body
14 to exceed 3 percent of the estimated cost of the public work, the
15 name of each *first tier* subcontractor who will provide labor or a
16 portion of the work on the public work to the prime contractor for
17 which the *first tier* subcontractor will be paid an amount exceeding
18 5 percent of the prime contractor's total bid. If the bid is submitted
19 pursuant to this paragraph, within 2 hours after the completion of
20 the opening of the bids, the contractors who submitted the three
21 lowest bids must submit a list containing the name of each *first tier*
22 subcontractor who will provide labor or a portion of the work on the
23 public work to the prime contractor for which the *first tier*
24 subcontractor will be paid an amount exceeding 1 percent of the
25 prime contractor's total bid or \$50,000, whichever is greater, and the
26 number of the license issued to the *first tier* subcontractor pursuant
27 to chapter 624 of NRS.

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

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

34 4. Except as otherwise provided in this subsection, if a
35 contractor:

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

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

40 ➔ the contractor's bid shall be deemed not responsive. A
41 contractor's bid shall not be deemed not responsive on the grounds
42 that the contractor submitted a list that includes the name of a
43 subcontractor who, at the time of the submission of the list, is on
44 disqualified status with the State Public Works Board pursuant to
45 NRS 338.1376 if the contractor, before the award of the contract,



1 provides an acceptable replacement subcontractor in the manner set
2 forth in subsection 1 *or* 2 of NRS 338.13895.

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

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

8 (b) The substitution is approved by the public body or its
9 authorized representative. The substitution must be approved if the
10 public body or its authorized representative determines that:

11 (1) The named subcontractor, after having a reasonable
12 opportunity, fails or refuses to execute a written contract with the
13 contractor which was offered to the named subcontractor with the
14 same general terms that all other subcontractors on the project were
15 offered;

16 (2) The named subcontractor files for bankruptcy or becomes
17 insolvent;

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

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

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

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

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

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

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

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

38 7. As used in this section ~~[, “general”]~~ :

39 (a) *“First tier subcontractor” means a subcontractor who*
40 *contracts directly with a prime contractor to provide labor,*
41 *materials or services for a construction project.*

42 (b) *“General terms” means the terms and conditions of a*
43 *contract that set the basic requirements for a public work and apply*
44 *without regard to the particular trade or specialty of a subcontractor,*
45 *but does not include any provision that controls or relates to the*



1 specific portion of the public work that will be completed by a
2 subcontractor, including, without limitation, the materials to be used
3 by the subcontractor or other details of the work to be performed by
4 the subcontractor.

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

6 338.143 1. Except as otherwise provided in subsection ~~7~~ 8
7 and NRS 338.1907, a local government or its authorized
8 representative that awards a contract for a public work in
9 accordance with paragraph (b) of subsection 1 of NRS 338.1373
10 shall not:

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

19 (b) Commence a public work for which the estimated cost is
20 \$100,000 or less unless it complies with the provisions of NRS
21 338.1442, 338.1444 and 338.1446.

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

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

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

33 4. Except as otherwise provided in subsection 5 and NRS
34 338.147, the local government or its authorized representative shall
35 award a contract to the lowest responsive and responsible bidder.

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

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

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

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

43 6. *A local government may let a contract without competitive*
44 *bidding if no bids were received in response to an advertisement*
45 *for bids and:*



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

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

6 (c) *The local government lets the contract not less than 7 days*
7 *after publishing a notice pursuant to paragraph (a); and*

8 (d) *The contract is awarded to the lowest responsive and*
9 *responsible bidder.*

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

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

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

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

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

29 (e) An estimate of the amount of money the local government
30 expects to save by rejecting the bids and performing the public work
31 itself.

32 ~~7-~~ 8. This section does not apply to:

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

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

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

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

43 (e) The design and construction of a public work for which a
44 public body contracts with a design-build team pursuant to NRS
45 338.1711 to 338.1727, inclusive.



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

2 338.143 1. Except as otherwise provided in subsection ~~7~~ 8,
3 a local government or its authorized representative that awards a
4 contract for a public work in accordance with paragraph (b) of
5 subsection 1 of NRS 338.1373 shall not:

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

15 (b) Commence a public work for which the estimated cost is
16 \$100,000 or less unless it complies with the provisions of NRS
17 338.1442, 338.1444 or 338.1446.

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

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

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

29 4. Except as otherwise provided in subsection 5 and NRS
30 338.147, the local government or its authorized representative shall
31 award a contract to the lowest responsive and responsible bidder.

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

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

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

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

39 6. *A local government may let a contract without competitive*
40 *bidding if no bids were received in response to an advertisement*
41 *for bids and:*

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



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

3 ***(c) The local government lets the contract not less than 7 days***
4 ***after publishing a notice pursuant to paragraph (a); and***

5 ***(d) The contract is awarded to the lowest responsive and***
6 ***responsible bidder.***

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

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

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

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

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

26 (e) An estimate of the amount of money the local government
27 expects to save by rejecting the bids and performing the public work
28 itself.

29 ~~7-~~ **8.** This section does not apply to:

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

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

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

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

40 (e) The design and construction of a public work for which a
41 public body contracts with a design-build team pursuant to NRS
42 338.1711 to 338.1727, inclusive.

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



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

2 338.150 1. Except as otherwise provided in subsection 3, any
3 public body charged with the drafting of specifications for a public
4 work shall include in the specifications a clause ~~[permitting]~~
5 *requiring* arbitration of a dispute arising between the public body
6 and the contractor engaged on a public work if the dispute cannot
7 otherwise be settled.

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

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

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

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

18 338.1711 1. Except as otherwise provided in this section and
19 NRS 338.161 to 338.168, inclusive, a public body shall contract
20 with a prime contractor for the construction of a public work for
21 which the estimated cost exceeds \$100,000.

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

25 ~~—(a) The public work is:~~

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

29 ~~—(2) Any other type of public work, except a stand-alone~~
30 ~~underground utility project, the estimated cost of which exceeds~~
31 ~~\$20,000,000; and~~

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

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

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

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

44 ~~—3. Except as otherwise provided in subsection 4, each state~~
45 ~~agency and each department, division, board, unit or agency of a~~



1 ~~local government may contract with a design build team for the~~
2 ~~design and construction of a public work if the public body that is~~
3 ~~responsible for financing the public work determines that:~~

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

5 ~~— (1) At least \$250,000 but less than \$20,000,000 if the public~~
6 ~~work is] *has approved the use of a design-build team for the*~~
7 ~~*design and construction of the public work and the public work:*~~

8 ~~(a) *Is* the construction of a park and appurtenances thereto, the~~
9 ~~rehabilitation or remodeling of a public building, or the construction~~
10 ~~of an addition to a public building;~~

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

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

17 ~~— (4) At least \$5,000,000 but less than \$20,000,000 if the~~
18 ~~public work is the construction, alteration or repair of any other~~
19 ~~fixed works as described in subsection 2 of NRS 624.215; and~~

20 ~~— (b) Contracting with a design build team will enable the public~~
21 ~~body to:~~

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

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

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

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

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

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

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

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

44 ~~— (2) Limited in scope to:~~

45 ~~— (I) Removal of asbestos;~~



- ~~1 (II) Replacement of equipment or systems for heating,~~
- ~~2 ventilation and air conditioning;~~
- ~~3 (III) Replacement of a roof;~~
- ~~4 (IV) Landscaping; or~~
- ~~5 (V) Restoration, enhancement or development of~~
- ~~6 wetlands.~~

~~7 6. A public body that is required to contract with a prime~~
~~8 contractor pursuant to subsection 1 or elects to contract with a prime~~
~~9 contractor pursuant to subsection 5 shall select the prime contractor~~
~~10 in accordance with the procedures for bidding that are set forth in:~~

- ~~11 (a) The provisions of NRS 338.1375 to 338.139, inclusive; or~~
- ~~12 (b) NRS 338.143 to 338.148, inclusive, if the public body is a~~
- ~~13 local government that elects to award a contract for a public work in~~
- ~~14 accordance with paragraph (b) of subsection 1 of NRS 338.1373.~~

~~15 7. As used in this section, "state agency" includes an agency,~~
~~16 bureau, board, commission, department, division or any other unit of~~
~~17 the Legislative Department, Judicial Department or Executive~~
~~18 Department of State Government or the University and Community~~
~~19 College System of Nevada.] or~~

(b) Has an estimated cost which exceeds \$10,000,000.

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

338.1715 A public body that contracts with a design-build
22 team pursuant to NRS 338.1711 ~~[and 338.1713]~~ shall select the
23 design-build team in accordance with the provisions of NRS
24 338.1721 to 338.1727, inclusive.

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

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

- 29 1. ~~[Obtain]~~ *Have the ability to obtain* a performance bond and
30 payment bond as required pursuant to NRS 339.025;
- 31 2. ~~[Obtain]~~ *Have the ability to obtain* insurance covering
32 general liability and liability for errors and omissions;
- 33 3. Not have been found liable for breach of contract with
34 respect to a previous project, other than a breach for legitimate
35 cause ~~[;]~~, *during the 5 years immediately preceding the date of the*
36 *advertisement for preliminary proposals;*
- 37 4. Not have been disqualified from being awarded a contract
38 pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333;
- 39 5. Ensure that the members of the design-build team possess
40 the licenses and certificates required to carry out the functions of
41 their respective professions within this State; and
- 42 6. If the project is for the design and construction of a public
43 work of the State, ensure that the prime contractor is qualified to bid
44 on a public work of the State pursuant to NRS 338.1379.



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

2 338.1723 1. A public body shall advertise for preliminary
3 proposals for the design and construction of a public work by a
4 design-build team in a newspaper qualified pursuant to chapter 238
5 of NRS that is published in the county where the public work will
6 be performed. If no qualified newspaper is published in the county
7 where the public work will be performed, the required
8 advertisement must be published in some qualified newspaper that is
9 printed in the State of Nevada and has a general circulation in the
10 county.

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

13 (a) A description of the public work to be designed and
14 constructed;

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

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

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

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

29 ~~—(f) ;~~

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

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

38 ~~—(a) The ;~~

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

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

44 ~~(c)~~ (h) A list of the factors *and relative weight assigned to*
45 *each factor* that the public body will use to evaluate design-build



1 teams who submit a proposal for the public work ~~[, including,~~
2 ~~without limitation:~~

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

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

8 ~~—— (d) ;~~

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

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

19 ~~—— (f)] and~~

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

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

26 338.1725 1. The public body shall select at least ~~[three]~~ *two*
27 but not more than ~~[five]~~ *four* finalists from among the design-build
28 teams that submitted preliminary proposals. If the public body does
29 not receive at least ~~[three]~~ *two* preliminary proposals from design-
30 build teams that the public body determines to be qualified pursuant
31 to this section and NRS 338.1721, the public body may not contract
32 with a design-build team for the design and construction of the
33 public work.

34 2. The public body shall select finalists pursuant to subsection
35 1 by:

36 (a) Verifying that each design-build team which submitted a
37 preliminary proposal satisfies the requirements of NRS 338.1721;
38 and

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

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



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

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

6 (4) The proposed plan of the design-build team to manage
7 the design and construction of the public work that sets forth in
8 detail the ability of the design-build team to design and construct the
9 public work. ~~and~~

10 ~~(5) The degree to which the preliminary proposal is~~
11 ~~responsive to the requirements of the public body for the submittal~~
12 ~~of a preliminary proposal.]~~

13 *3. After the selection of finalists pursuant to this section, the*
14 *public body shall make available to the public the results of the*
15 *evaluations of preliminary proposals conducted pursuant to*
16 *paragraph (b) of subsection 2 and the rankings of the design-build*
17 *teams who submitted preliminary proposals.*

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

19 338.1727 1. After selecting the finalists pursuant to NRS
20 338.1725, the public body shall provide to each finalist a request for
21 final proposals for the public work. The request for final proposals
22 must:

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

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

28 2. If one or more of the finalists selected pursuant to NRS
29 338.1725 is disqualified or withdraws, the public body may select a
30 design-build team from the remaining *finalist or* finalists. ~~if at~~
31 ~~least two finalists remain.]~~

32 3. Except as otherwise provided in this subsection, in assigning
33 the relative weight to each factor for selecting a design-build team
34 pursuant to subsection 1, the public body shall assign, without
35 limitation, a relative weight of 5 percent to the possession of a
36 certificate of eligibility to receive a preference in bidding on public
37 works and a relative weight of at least 30 percent to the proposed
38 cost of design and construction of the public work. If any federal
39 statute or regulation precludes the granting of federal assistance or
40 reduces the amount of that assistance for a particular public work
41 because of the provisions of this subsection relating to preference in
42 bidding on public works, those provisions of this subsection do not
43 apply insofar as their application would preclude or reduce federal
44 assistance for that public work.



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

9 5. A final proposal is exempt from the requirements of
10 NRS 338.141.

11 ~~[5-]~~ 6. After receiving *and evaluating* the final proposals for
12 the public work, the public body, at a regularly scheduled meeting,
13 shall:

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

18 (b) Reject all the final proposals.

19 ~~[6-]~~ 7. If a public body selects a final proposal *and awards a*
20 *design-build contract* pursuant to paragraph (a) of subsection ~~[5-]~~ 6,
21 the public body shall ~~[, at a regularly scheduled meeting:~~

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

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

25 ~~—(c)] :~~

26 (a) Partially reimburse the unsuccessful finalists if partial
27 reimbursement was provided for in the request for preliminary
28 proposals pursuant to paragraph ~~[(f)]~~ (j) of subsection ~~[3]~~ 2 of NRS
29 338.1723. The amount of reimbursement must not exceed, for each
30 unsuccessful finalist, 3 percent of the total amount to be paid to the
31 design-build team as set forth in the design-build contract.

32 ~~[(d)]~~ (b) Make available to the public ~~[a summary setting forth~~
33 ~~the factors used by the public body to select the successful design-~~
34 ~~build team] the results of the evaluation of final proposals that was~~
35 *conducted* and the ranking of the design-build teams who submitted
36 final proposals. The public body shall not release to a third party, or
37 otherwise make public, financial or proprietary information
38 submitted by a design-build team.

39 ~~[7-]~~ 8. A contract awarded pursuant to this section:

40 (a) Must comply with the provisions of NRS 338.020 to
41 338.090, inclusive.

42 (b) Must specify:

43 (1) An amount that is the maximum amount that the public
44 body will pay for the performance of all the work required by the
45 contract, excluding any amount related to costs that may be incurred



1 as a result of unexpected conditions or occurrences as authorized by
2 the contract;

3 (2) An amount that is the maximum amount that the public
4 body will pay for the performance of the professional services
5 required by the contract; and

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

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

12 (d) Except as otherwise provided in paragraph (e), must not
13 require the design professional to defend, indemnify or hold
14 harmless the public body or the employees, officers or agents of that
15 public body from any liability, damage, loss, claim, action or
16 proceeding caused by the negligence, errors, omissions, recklessness
17 or intentional misconduct of the employees, officers and agents of
18 the public body.

19 (e) May require the design-build team to defend, indemnify and
20 hold harmless the public body, and the employees, officers and
21 agents of the public body from any liabilities, damages, losses,
22 claims, actions or proceedings, including, without limitation,
23 reasonable attorneys' fees, that are caused by the negligence, errors,
24 omissions, recklessness or intentional misconduct of the design-
25 build team or the employees or agents of the design-build team in
26 the performance of the contract.

27 ~~[8.—A]~~

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

30 ~~—(a) Assume]~~ *assume* overall responsibility for ensuring that the
31 design and construction of the public work is completed in a
32 satisfactory manner. ~~]; and~~

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

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

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

39 338.400 As used in NRS 338.400 to 338.645, inclusive, unless
40 the context otherwise requires, the words and terms defined in NRS
41 ~~[338.405 to 338.450.]~~ *338.415 to 338.435*, inclusive, have the
42 meanings ascribed to them in those sections.

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

44 338.525 1. A public body may, but is not required to,
45 withhold from a progress payment or retainage payment an amount



1 sufficient to pay the expenses the public body reasonably expects to
2 incur as a result of the failure of the contractor to comply with the
3 contract or applicable building code, law or regulation.

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

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

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

15 ➔ The written notice must be signed by an authorized agent of the
16 public body.

17 3. If the public body receives a written notice of the correction
18 of the condition that is the reason for the withholding, signed by an
19 authorized agent of the contractor, the public body shall , *after*
20 *confirming that the condition has been corrected*, pay the amount
21 withheld by the public body within 30 days after the public body
22 receives the next progress bill or retainage bill.

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

24 339.025 1. Before any contract, except one subject to the
25 provisions of chapter 408 of NRS, exceeding ~~[\$35,000]~~ *\$100,000*
26 for any project for the new construction, repair or reconstruction of
27 any public building or other public work or public improvement of
28 any contracting body is awarded to any contractor, he shall furnish
29 to the contracting body the following bonds which become binding
30 upon the award of the contract to the contractor:

31 (a) A performance bond in an amount to be fixed by the
32 contracting body, but not less than 50 percent of the contract
33 amount, conditioned upon the faithful performance of the contract in
34 accordance with the plans, specifications and conditions of the
35 contract. The bond must be solely for the protection of the
36 contracting body which awarded the contract.

37 (b) A payment bond in an amount to be fixed by the contracting
38 body, but not less than 50 percent of the contract amount. The bond
39 must be solely for the protection of claimants supplying labor or
40 materials to the contractor to whom the contract was awarded, or to
41 any of his subcontractors, in the prosecution of the work provided
42 for in such contract.

43 2. If a general contractor has been awarded a contract, except
44 one subject to the provisions of chapter 408 of NRS, by the State
45 Public Works Board for any project for new construction, repair or



1 reconstruction of any public building or other public work or public
2 improvement, each of his subcontractors who will perform work on
3 the contract that exceeds \$50,000 or 1 percent of the proposed
4 project, whichever amount is greater, shall furnish a bond to the
5 Board in an amount to be fixed by the Board.

6 3. Each of the bonds required pursuant to this section must be
7 executed by one or more surety companies authorized to do business
8 in the State of Nevada. If the contracting body is the State of
9 Nevada or any officer, employee, board, bureau, commission,
10 department, agency or institution thereof, the bonds must be payable
11 to the State of Nevada. If the contracting body is other than one of
12 those enumerated in this subsection, the bonds must be payable to
13 the other contracting body.

14 4. Each of the bonds must be filed in the office of the
15 contracting body which awarded the contract for which the bonds
16 were given.

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

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

21 **Sec. 31.** 1. This section and sections 1 to 7, inclusive, 9 to
22 15, inclusive, and 17 to 30, inclusive, of this act become effective on
23 October 1, 2005.

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

26 3. Sections 8 and 16 of this act become effective on May 1,
27 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.



