

SENATE BILL NO. 437—SENATORS PORTER AND SCHNEIDER

MARCH 15, 1999

Referred to Committee on Government Affairs

SUMMARY—Authorizes public body and department of transportation to use design-build method of contracting in certain circumstances. (BDR 28-52)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: 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; authorizing a public body to contract with a design-build team or specialty contractor for the completion of a public work in certain circumstances; authorizing the department of transportation to contract with a design-build team with respect to a project for the construction, reconstruction or improvement of highways in certain circumstances; setting forth the method in which proposals for a design-build contract must be solicited; setting forth the method in which a design-build team must be selected; authorizing a public body or the department of transportation to employ an architect or engineer to oversee the completion of a public work or project; directing the legislative commission to conduct an interim study; 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.** Chapter 338 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 9, inclusive, of this act.
3 **Sec. 2. 1. *Except as otherwise provided in this section, a public***
4 ***body shall contract with a prime contractor for the completion of a public***
5 ***work for which the estimated cost exceeds \$100,000.***
6 **2. *A public body may contract with a design-build team for the***
7 ***design and completion of a public work that is a discrete project if the***
8 ***public body determines that:***
9 ***(a) The public work is:***
10 ***(1) A plant or facility for the treatment and pumping of water or the***
11 ***treatment and disposal of wastewater or sewage, the estimated cost of***
12 ***which exceeds \$100,000; or***

1 (2) Any other type of public work, except a stand-alone
2 underground utility project, the estimated cost of which exceeds
3 \$30,000,000; and

4 (b) Contracting with a design-build team will enable the public body
5 to:

6 (1) Complete the public work at a cost that is significantly lower
7 than the cost that the public body would incur to complete the public
8 work using a different method;

9 (2) Complete the public work in a shorter time than would be
10 required to complete the public work using a different method, if exigent
11 circumstances require that the public work be completed within a short
12 time; or

13 (3) Ensure that the design and completion of the public work is
14 properly coordinated, if the public work is unique, highly technical and
15 complex in nature.

16 3. Notwithstanding the provisions of subsections 1 and 2, a public
17 body may contract with a prime contractor, specialty contractor or
18 design-build team with respect to a public work if the public body
19 determines that the public work is:

20 (a) Not part of a larger public work; and

21 (b) Limited in scope to:

22 (1) Removal of asbestos;

23 (2) Replacement of equipment or systems for heating, ventilation
24 and air-conditioning;

25 (3) Replacement of a roof;

26 (4) Landscaping; or

27 (5) Any combination of subparagraphs (1) to (4), inclusive.

28 4. A public body shall not enter into more than a total of two
29 contracts with design-build teams for the completion of public works in
30 any fiscal year.

31 **Sec. 3. 1.** A public body shall not contract with a design-build team
32 with respect to a public work unless the governing body of the public
33 body makes the determinations, at a public hearing, that are required
34 pursuant to subsection 2 or 3 of section 2 of this act, as applicable.

35 2. A public body that is required to hold a public hearing pursuant to
36 this section shall publish notice of the hearing at least once each week
37 for 3 consecutive weeks in:

38 (a) A newspaper of general circulation published in the county in
39 which the public work is proposed to be completed or, if there is no such
40 newspaper, in a newspaper of general circulation in the county published
41 in this state; and

42 (b) A newspaper of general circulation in this state.

1 **Sec. 4. 1.** *A public body that is required to contract with a prime*
2 *contractor pursuant to subsection 1 of section 2 of this act or elects to*
3 *contract with a specialty contractor pursuant to subsection 3 of section 2*
4 *of this act shall select the prime contractor or specialty contractor, as*
5 *appropriate, in accordance with the procedures for bidding that are set*
6 *forth in NRS 338.140 to 338.147, inclusive.*

7 2. *A public body that contracts with a design-build team pursuant to*
8 *sections 2 and 3 of this act shall select the design-build team in*
9 *accordance with sections 5 to 8, inclusive, of this act.*

10 **Sec. 5. 1.** *A public body shall advertise for preliminary proposals*
11 *for the design and completion of a public work by a design-build team at*
12 *least twice each week for 3 consecutive weeks in:*

13 (a) *A newspaper of general circulation published in the county in*
14 *which the public work is proposed to be completed or, if there is no such*
15 *newspaper, in a newspaper of general circulation in the county published*
16 *in this state; and*

17 (b) *A newspaper of general circulation in this state.*

18 2. *A request for preliminary proposals published pursuant to*
19 *subsection 1 must include, without limitation:*

20 (a) *A description of the public work to be designed and completed;*

21 (b) *Separate estimates of the costs of designing and completing the*
22 *public work;*

23 (c) *The dates on which it is anticipated that the separate phases of the*
24 *design and completion of the public work will begin and end;*

25 (d) *A statement setting forth the place and time in which a design-*
26 *build team desiring to bid on the public work may obtain specifications*
27 *for bids and other information necessary to bid on the public work;*

28 (e) *A list of the requirements set forth in section 6 of this act;*

29 (f) *A list of the factors that the public body will use to evaluate design-*
30 *build teams who bid on the public work, including, without limitation:*

31 (1) *The relative weight to be assigned to each factor; and*

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

35 (g) *A statement setting forth that a design-build team whose prime*
36 *contractor holds a certificate of eligibility to receive a preference in*
37 *bidding on public works issued pursuant to NRS 338.147 shall be deemed*
38 *to have submitted a better proposal than a competing design-build team*
39 *whose prime contractor does not hold such a certificate of eligibility if*
40 *the amount of the bid of the design-build team is not more than 5 percent*
41 *higher than the amount bid by the competing design-build team;*

42 (h) *Notice that a design-build team desiring to bid on the public work*
43 *must include with its bid the information used by the public body to*

1 *determine finalists among the design-build teams that bid pursuant to*
2 *subsection 2 of section 7 of this act and a description of that information;*

3 *(i) A statement as to whether a design-build team that submits a bid*
4 *and is selected as a finalist pursuant to section 7 of this act but is not*
5 *awarded the design-build contract pursuant to section 8 of this act will be*
6 *partially reimbursed for the cost of preparing a final proposal and, if so,*
7 *an estimate of the amount of the partial reimbursement; and*

8 *(j) The date by which preliminary proposals must be submitted to the*
9 *public body, which must not be less than 30 days or more than 60 days*
10 *after the date on which the request for preliminary proposals is first*
11 *published in a newspaper pursuant to subsection 1.*

12 **Sec. 6.** *To qualify to participate in a project for the design and*
13 *completion of a public work, a design-build team must:*

14 *1. Obtain a performance bond and payment bond as required*
15 *pursuant to NRS 339.025;*

16 *2. Obtain insurance covering general liability and liability for errors*
17 *and omissions;*

18 *3. Not have been found liable for breach of contract with respect to a*
19 *previous project, other than a breach for legitimate cause;*

20 *4. Not have been disqualified from being awarded a contract*
21 *pursuant to NRS 338.017, 338.145 or 408.333; and*

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

25 **Sec. 7.** *1. Except as otherwise provided in this subsection, within*
26 *30 days after the date by which preliminary proposals must be submitted*
27 *to the public body, the public body shall select at least three but not more*
28 *than five finalists that the public body determines to be qualified*
29 *pursuant to this section and section 6 of this act from among the design-*
30 *build teams that submitted preliminary proposals. If the public body*
31 *receives only two preliminary proposals from design-build teams that the*
32 *public body determines to be qualified pursuant to this section and*
33 *section 6 of this act, the public body shall select both of those design-*
34 *build teams as finalists. If the public body does not receive at least two*
35 *preliminary proposals from design-build teams that the public body*
36 *determines to be qualified pursuant to this section and section 6 of this*
37 *act, the public body may not contract with a design-build team for the*
38 *design and completion of the public work.*

39 *2. The public body shall select finalists pursuant to subsection 1 by:*

40 *(a) Verifying that each design-build team which submitted a*
41 *preliminary proposal satisfies the requirements of section 6 of this act;*
42 *and*

1 **(b) Conducting an evaluation of the qualifications of each design-**
2 **build team that submitted a preliminary proposal, including, without**
3 **limitation, an evaluation of:**

4 **(1) The professional qualifications and experience of the members**
5 **of the design-build team;**

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

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

11 **(4) The proposed plan of the design-build team to manage the**
12 **design and completion of the public work that sets forth in detail the**
13 **ability of the design-build team to design and complete the public work.**

14 **Sec. 8. 1. After selecting the finalists pursuant to section 7 of this**
15 **act, the public body shall provide to each finalist a request for final**
16 **proposals for the public work. The request for final proposals must:**

17 **(a) Set forth the factors that the public body will use to select a design-**
18 **build team to design and complete the public work, including the relative**
19 **weight to be assigned to each factor;**

20 **(b) Set forth the date by which final proposals must be submitted to**
21 **the public body; and**

22 **(c) Include a statement setting forth that a design-build team whose**
23 **prime contractor holds a certificate of eligibility to receive a preference**
24 **in bidding on public works issued pursuant to NRS 338.147 shall be**
25 **deemed to have submitted a better final proposal than a competing**
26 **design-build team whose prime contractor does not hold such a**
27 **certificate of eligibility if the amount of the bid of the design-build team**
28 **is not more than 5 percent higher than the amount bid by the competing**
29 **design-build team.**

30 **2. A final proposal submitted by a design-build team pursuant to this**
31 **section must be prepared thoroughly and be responsive to the criteria**
32 **that the public body will use to select a design-build team to design and**
33 **complete the public work described in subsection 1.**

34 **3. Within 30 days after receiving the final proposals for the public**
35 **work, the public body shall:**

36 **(a) Select the most cost-effective and responsive final proposal, using**
37 **the criteria set forth pursuant to subsection 1; or**

38 **(b) Reject all the final proposals.**

39 **4. If a public body selects a final proposal pursuant to paragraph (a)**
40 **of subsection 3, the public body shall, at its next regularly scheduled**
41 **meeting:**

42 **(a) Review and ratify the selection.**

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

3 **(c) Partially reimburse the unsuccessful finalists if partial**
4 **reimbursement was provided for in the request for preliminary proposals**
5 **pursuant to paragraph (i) of subsection 2 of section 5 of this act. The**
6 **amount of reimbursement must not exceed, for each unsuccessful**
7 **finalist, three percent of the total amount to be paid to the design-build**
8 **team as set forth in the design-build contract.**

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

15 **5. A design-build team to whom a contract is awarded pursuant to**
16 **this section shall:**

17 **(a) Assume overall responsibility for ensuring that the design and**
18 **completion of the public work is completed in a satisfactory manner; and**

19 **(b) Use the work force of the prime contractor on the design-build**
20 **team to complete at least 15 percent of the construction of the public**
21 **work.**

22 **Sec. 9. A public body may employ a registered architect or licensed**
23 **professional engineer as a consultant to assist the public body in**
24 **overseeing the completion of a public work. An architect or engineer so**
25 **employed shall not:**

26 **1. Design or complete the public work; or**

27 **2. Assume overall responsibility for ensuring that the design or**
28 **completion of the public work is completed in a satisfactory manner.**

29 **Sec. 10. NRS 338.010 is hereby amended to read as follows:**

30 **338.010 As used in this chapter:**

31 **1. "Day labor" means all cases where public bodies, their officers,**
32 **agents or employees, hire, supervise and pay the wages thereof directly to a**
33 **workman or workmen employed by them on public works by the day and**
34 **not under a contract in writing.**

35 **2. "Design-build contract" means a contract between a public body**
36 **and a design-build team in which the design-build team agrees to design**
37 **and complete a public work.**

38 **3. "Design-build team" means an entity that consists of:**

39 **(a) At least one person who is licensed as a general engineering**
40 **contractor or a general building contractor pursuant to NRS 624.230 to**
41 **624.320, inclusive;**

and

1 *(b) At least one person who holds a certificate of registration to*
2 *practice architecture pursuant to chapter 623 of NRS or is licensed as a*
3 *professional engineer pursuant to chapter 625 of NRS.*

4 *4. "Design professional" means a person with a professional license*
5 *or certificate issued pursuant to chapter 623, 623A or 625 of NRS.*

6 *5. "Eligible bidder" means a person who ~~was~~ is found to be a*
7 *responsible **and responsive** contractor **or design-build team** by a public*
8 *body which ~~awarded a contract~~ **requests bids** for a public work.*

9 ~~3.~~ *6. "Offense" means failing to:*

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

11 (b) Pay the contributions for unemployment compensation required
12 pursuant to chapter 612 of NRS; or

13 (c) Provide and secure compensation for employees required pursuant to
14 chapters 616A to 617, inclusive, of NRS.

15 ~~4.~~ *7. "Prime contractor" means a person who:*

16 (a) *Contracts to complete an entire project;*

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

18 (c) *Uses his own work force to perform all or a part of the*
19 *construction, repair or reconstruction of the project; and*

20 (d) *Contracts for the services of any subcontractor or independent*
21 *contractor or is responsible for payment to any contracted subcontractors*
22 *or independent contractors.*

23 *8. "Public body" means the state, county, city, town, school district or*
24 *any public agency of this state or its political subdivisions sponsoring or*
25 *financing a public work.*

26 ~~5.~~ *9. "Public work" means any project for the new construction,*
27 *repair or reconstruction of:*

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

29 (1) Public buildings;

30 (2) Jails and prisons;

31 (3) Public roads;

32 (4) Public highways;

33 (5) Public streets and alleys;

34 (6) Public utilities which are financed in whole or in part by public
35 money;

36 (7) Publicly owned water mains and sewers;

37 (8) Public parks and playgrounds;

38 (9) Public convention facilities which are financed at least in part with
39 public funds; and

40 (10) All other publicly owned works and property whose cost as a
41 whole exceeds \$20,000. Each separate unit which is a part of a project is
42 included in the cost of the project for the purpose of determining whether a
43 project meets this threshold.

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

~~16.1~~ 10. *“Specialty contractor” means a contractor whose operations as such are the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.*

11. *“Stand-alone underground utility project” means an underground utility project that is not integrated into a larger project, including, without limitation:*

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

(b) *A project for the construction or installation of a storm drain, including facilities appurtenant thereto, that is not located at the site of a public work for the completion of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of section 2 of this act.*

12. “Wages” means:

(a) The basic hourly rate of pay; and

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

~~17.1~~ 13. “Workman” means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman. *The term does not include a design professional.*

Sec. 11. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 6 and NRS 338.1906 and 338.1907, an agency or political subdivision of the state, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work, shall not:

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

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

2. Except as otherwise provided in subsection 6, a public body that maintains a list of properly licensed contractors who are interested in receiving offers to bid on public works projects for which the estimated cost is more than \$25,000 but less than \$100,000 shall solicit bids from not more than three of the contractors on the list for a contract of that value for the construction, alteration or repair of a public work. The public body shall select contractors from the list in such a manner as to afford each contractor an equal opportunity to bid on a public works project. A

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

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

8 4. Any or all bids received in response to an advertisement for bids
9 may be rejected if the person responsible for awarding the contract
10 determines that:

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

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

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

15 5. Before an agency or political subdivision of the state may commence
16 a project subject to the provisions of this section, based upon a
17 determination that the public interest would be served by rejecting any bids
18 received in response to an advertisement for bids, it shall prepare and make
19 available for public inspection a written statement containing:

20 (a) A list of all persons, including supervisors, who the agency or
21 political subdivision intends to assign to the project, together with their
22 classifications and an estimate of the direct and indirect costs of their labor;

23 (b) A list of all equipment that the agency or political subdivision
24 intends to use on the project, together with an estimate of the number of
25 hours each item of equipment will be used and the hourly cost to use each
26 item of equipment;

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

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

30 (e) An estimate of the amount of money the agency or political
31 subdivision expects to save by rejecting the bids and performing the project
32 itself.

33 6. This section does not apply to:

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

38 (d) The Las Vegas Valley water district created pursuant to chapter 167,
39 Statutes of Nevada 1947 ~~H~~; or

40 (e) *The design and completion of a public work for which a public*
41 *body contracts with a design-build team pursuant to sections 2 to 9,*
42 *inclusive, of this act.*

2. Except as otherwise provided in subsection ~~[4]~~ 8 or limited by
subsubsection ~~[5,]~~ 9, for the purposes of this section, a contractor who:

(b) At the time he submits his bid, provides to the public body ~~[proof of the payment of:]~~ *a copy of a certificate of eligibility to receive a*

17 **3. The state contractors' board shall issue a certificate of eligibility to**
18 **receive a preference in bidding on public works to a general contractor**
19 **who is licensed pursuant to the provisions of chapter 624 of NRS and**
20 **submits to the board an affidavit from a certified public accountant**
21 **setting forth that the general contractor has:**

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of his ~~bid;~~ **application;**

(3) Any combination of such sales and use taxes and motor vehicle privilege tax ~~shall be deemed to have submitted a better bid than a~~

~~36 — 3. — A contractor who has previously provided the public body awarding
37 a contract with the proof of payment required pursuant to subsection 2 may
38 update such proof on or before April 1, July 1, September 1 and December
39 1 rather than with each bid.~~

41 (b) Acquired, by inheritance, gift or transfer through a stock option
42 plan for employees, all the assets and liabilities of a viable, operating
43 construction firm that possesses

a:

1 (1) License as a general contractor pursuant to the provisions of
2 chapter 624 of NRS; and

3 (2) Certificate of eligibility to receive a preference in bidding on
4 public works.

5 4. For the purposes of complying with the requirements set forth in
6 paragraph (a) of subsection 3, a general contractor shall be deemed to
7 have paid:

8 (a) Sales and use taxes and motor vehicle privilege taxes paid in this
9 state by an affiliate or parent company of the contractor, if the affiliate
10 or parent company is also a general contractor; and

11 (b) Sales and use taxes paid in this state by a joint venture in which
12 the contractor is a participant, in proportion to the amount of interest the
13 contractor has in the joint venture.

14 5. A contractor who has received a certificate of eligibility to receive
15 a preference in bidding on public works from the state contractors' board
16 pursuant to subsection 3 shall, at the time for the annual renewal of his
17 contractors' license pursuant to NRS 624.283, submit to the board an
18 affidavit from a certified public accountant setting forth that the
19 contractor has, during the immediately preceding 12 months, paid the
20 taxes required pursuant to paragraph (a) of subsection 3 to maintain his
21 eligibility to hold such a certificate.

22 6. A contractor who fails to submit an affidavit to the board pursuant
23 to subsection 5 ceases to be eligible to receive a preference in bidding on
24 public works unless he reapplies for and receives a certificate of
25 eligibility pursuant to subsection 3.

26 7. If a contractor who applies to the state contractors' board for a
27 certificate of eligibility to receive a preference in bidding on public works
28 submits false information to the board regarding the required payment of
29 taxes, the contractor is not eligible to receive a preference in bidding on
30 public works for a period of 5 years after the date on which the board
31 becomes aware of the submission of the false information.

32 8. If any federal statute or regulation precludes the granting of federal
33 assistance or reduces the amount of that assistance for a particular public
34 work because of the provisions of subsection 2, those provisions do not
35 apply insofar as their application would preclude or reduce federal
36 assistance for that work. The provisions of subsection 2 do not apply to any
37 contract for a public work which is expected to cost less than \$250,000.

38 ~~{5-}~~ 9. Except as otherwise provided in ~~{subsection 6,}~~ paragraph (g)
39 of subsection 2 of section 5 of this act and paragraph (g) of subsection 2
40 of section 23 of this act, if a bid is submitted by two or more contractors as
41 a joint venture or by one of them as a joint venturer, the provisions of
42 subsection 2 apply only if both or all of the joint venturers separately meet
43 the requirements of that subsection.

~~1 [6.— Except as otherwise provided in subsection 8, if a bid is submitted~~
~~2 by a joint venture and one or more of the joint venturers has responsibility~~
~~3 for the performance of the contract as described in subsection 7, the~~
~~4 provisions of subsection 2 apply only to those joint venturers who have~~
~~5 such responsibility.~~

~~6 —7.— For the purposes of subsection 6, a joint venturer has responsibility~~
~~7 for the performance of a contract if he has at least one of the following~~
~~8 duties or obligations delegated to him in writing in the contract creating the~~
~~9 joint venture:~~

~~10 —(a) Supplying the labor necessary to perform the contract and paying the~~
~~11 labor and any related taxes and benefits;~~

~~12 —(b) Supplying the equipment necessary to perform the contract and~~
~~13 paying any charges related to the equipment;~~

~~14 —(c) Contracting with and making payments to any subcontractors; or~~

~~15 —(d) Performing the recordkeeping for the joint venture and making any~~
~~16 payments to persons who provide goods or services related to the~~
~~17 performance of the contract.~~

~~18 —8.— The provisions of subsection 6 do not apply to a joint venture which~~
~~19 is formed for the sole purpose of circumventing any of the requirements of~~
~~20 this section.]~~

21 10. The state contractors' board shall adopt regulations and may
22 assess reasonable fees relating to the certification of contractors for a
23 preference in bidding on public works.

24 11. A person or entity who believes that a contractor wrongfully
25 holds a certificate of eligibility to receive a preference in bidding on
26 public works may challenge the validity of the certificate by filing a
27 written objection with the public body to which the contractor has
28 submitted a bid or proposal on a contract for the completion of a public
29 work. A written objection authorized pursuant to this subsection must be
30 filed with the public body at or after the time at which the contractor
31 submitted the bid or proposal to the public body and before the time at
32 which the public body awards the contract for which the bid or proposal
33 was submitted. A public body that receives a written objection pursuant to
34 this subsection shall determine if the contractor qualifies for the
35 certificate pursuant to the provisions of this section and award the
36 contract accordingly.

Sec. 13. NRS 338.155 is hereby amended to read as follows:

338.155 ~~11.~~ If a public body enters into a contract with a design
professional ***who is not a member of a design-build team*** for the provision
of services in connection with a public work, the contract:

~~1(a)~~ **1.** Must set forth:

~~1(1)~~ **(a)** The specific period within which the public body must pay
the design professional.

1 ~~{(2)}~~ (b) The specific period and manner in which the public body
2 may dispute a payment or portion thereof that the design professional
3 alleges is due.

4 ~~{(3)}~~ (c) The terms of any penalty that will be imposed upon the
5 public body if the public body fails to pay the design professional within
6 the specific period set forth in the contract pursuant to ~~{subparagraph (1)}~~.
7 ~~—(4)}~~ paragraph (a).

8 (d) That the prevailing party in an action to enforce the contract is
9 entitled to reasonable attorney’s fees and costs.

10 ~~{(b)}~~ 2. May set forth the terms of any discount that the public body
11 will receive if the public body pays the design professional within the
12 specific period set forth in the contract pursuant to ~~{subparagraph (1) of}~~
13 paragraph (a) ~~1-~~

14 ~~—2. As used in this section, “design professional” means a person with a~~
15 ~~professional license or certificate issued pursuant to chapter 623, 623A or~~
16 ~~625 of NRS.] of subsection 1.~~

17 Sec. 14. Chapter 408 of NRS is hereby amended by adding thereto the
18 provisions set forth as sections 15 to 27, inclusive, of this act.

19 Sec. 15. *As used in sections 15 to 27, inclusive, of this act, unless the*
20 *context otherwise requires, the words and terms defined in sections 16 to*
21 *19, inclusive, of this act have the meanings ascribed to them in those*
22 *sections.*

23 Sec. 16. *“Design-build contract” means a contract between the*
24 *department and a design-build team in which the design-build team*
25 *agrees to design and complete a project.*

26 Sec. 17. *“Design-build team” means an entity that consists of:*

27 1. *At least one person who is licensed as a general engineering*
28 *contractor or a general building contractor pursuant to NRS 624.230 to*
29 *624.320, inclusive; and*

30 2. *At least one person who holds a certificate of registration to*
31 *practice architecture pursuant to chapter 623 of NRS or is licensed as a*
32 *professional engineer pursuant to chapter 625 of NRS.*

33 Sec. 18. *“Prime contractor” means a person who:*

34 1. *Contracts to complete an entire project;*
35 2. *Coordinates all work performed on the entire project;*
36 3. *Uses his own work force to perform all or a part of the completion*
37 *of the project; and*

38 4. *Contracts for the services of any subcontractor or independent*
39 *contractor or is responsible for payment to any contracted subcontractors*
40 *or independent contractors.*

41 Sec. 19. *“Project” means a project for the construction,*
42 *reconstruction or improvement of a highway.*

1 **Sec. 20. 1.** *The department may contract with a design-build team*
2 *for the design and completion of a project if the department determines*
3 *that:*

4 *(a) The estimated cost of the project exceeds \$30,000,000; and*
5 *(b) Contracting with a design-build team will enable the department*
6 *to:*

7 *(1) Complete the project constructed at a cost that is significantly*
8 *lower than the cost that the department would incur to complete the*
9 *project using a different method;*

10 *(2) Complete the project constructed in a shorter time than would*
11 *be required to complete the project constructed using a different method,*
12 *if exigent circumstances require that the project be constructed within a*
13 *short time; or*

14 *(3) Ensure that the design and completion of the project is properly*
15 *coordinated, if the project is unique, highly technical and complex in*
16 *nature.*

17 **2.** *The department shall not enter into more than a total of two*
18 *contracts with design-build teams for the completion of projects in any*
19 *fiscal year.*

20 **Sec. 21. 1.** *The department shall not contract with a design-build*
21 *team with respect to a project unless the board makes the determinations,*
22 *at a public hearing, that are required pursuant to section 20 of this act.*

23 **2.** *If the department is required to hold a public hearing pursuant to*
24 *this section, the department shall publish notice of the hearing at least*
25 *once each week for 3 consecutive weeks in:*

26 *(a) A newspaper of general circulation published in each county in*
27 *which the project is proposed to be completed or, if there is no such*
28 *newspaper, in a newspaper of general circulation in each county*
29 *published in this state; and*

30 *(b) A newspaper of general circulation in this state.*

31 **Sec. 22.** *If the department desires to contract with a design-build*
32 *team pursuant to sections 20 and 21 of this act, the department must*
33 *select the design-build team in accordance with sections 23 to 26,*
34 *inclusive, of this act.*

35 **Sec. 23. 1.** *The department shall advertise for preliminary*
36 *proposals for the design and completion of a project by a design-build*
37 *team at least twice each week for 3 consecutive weeks in:*

38 *(a) A newspaper of general circulation published in each county in*
39 *which the project is proposed to be completed or, if there is no such*
40 *newspaper, in a newspaper of general circulation in each county*
41 *published in this state; and*

42 *(b) A newspaper of general circulation in this state.*

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

3 (a) A description of the proposed project;

4 (b) Separate estimates of the costs of designing and completing the
5 project;

6 (c) The dates on which it is anticipated that the separate phases of the
7 design and completion of the project will begin and end;

8 (d) A statement setting forth the place and time in which a design-
9 build team desiring to bid on the project may obtain specifications for
10 bids and other information necessary to bid on the project;

11 (e) A list of the requirements set forth in section 24 of this act;

12 (f) A list of the factors that the department will use to evaluate design-
13 build teams who bid on the project, including, without limitation:

14 (1) The relative weight to be assigned to each factor; and

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

18 (g) A statement setting forth that a design-build team whose prime
19 contractor holds a certificate of eligibility to receive a preference in
20 bidding on public works issued pursuant to NRS 338.147 shall be deemed
21 to have submitted a better proposal than a competing design-build team
22 whose prime contractor does not hold such a certificate of eligibility if
23 the amount of the bid of the design-build team is not more than 5 percent
24 higher than the amount bid by the competing design-build team;

25 (h) Notice that a design-build team desiring to bid on the project must
26 include with its bid the information used by the department to determine
27 finalists among the design-build teams that bid pursuant to subsection 2
28 of section 25 of this act and a description of that information;

29 (i) A statement as to whether a design-build team that submits a bid
30 and is selected as a finalist pursuant to section 25 of this act but is not
31 awarded the design-build contract pursuant to section 26 of this act will
32 be partially reimbursed for the cost of preparing a final proposal and, if
33 so, an estimate of the amount of the partial reimbursement; and

34 (j) The date by which preliminary proposals must be submitted to the
35 department, which must not be less than 30 days or more than 60 days
36 after the date on which the request for preliminary proposals is first
37 published in a newspaper pursuant to subsection 1.

38 **Sec. 24.** To qualify to participate in the design and completion of a
39 project for the department, a design-build team must:

40 1. Obtain a performance bond and payment bond as the department
41 may require;

42 2. Obtain insurance covering general liability and liability for errors
43 and omissions;

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

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

5 5. Ensure that the members of the design-build team possess the
6 licenses and certificates required to carry out the functions of their
7 respective professions within this state.

8 **Sec. 25. 1.** Except as otherwise provided in this subsection, within
9 30 days after the date by which preliminary proposals must be submitted
10 to the department, the department shall select at least three but not more
11 than five finalists that the department determines to be qualified
12 pursuant to this section and section 24 of this act from among the design-
13 build teams that submitted preliminary proposals. If the department
14 receives only two preliminary proposals from design-build teams that the
15 department determines to be qualified pursuant to this section and
16 section 24 of this act, the department shall select both of those design-
17 build teams as finalists. If the department does not receive at least two
18 preliminary proposals from design-build teams that the department
19 determines to be qualified pursuant to this section and section 24 of this
20 act, the department may not contract with a design-build team for the
21 design and completion of the project.

22 2. The department shall select finalists pursuant to subsection 1 by:

23 (a) Verifying that each design-build team which submitted a
24 preliminary proposal satisfies the requirements of section 24 of this act;
25 and

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

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

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

34 (3) The safety programs established and the safety records
35 accumulated by the members of the design-build team; and

36 (4) The proposed plan of the design-build team to manage the
37 design and completion of the project that sets forth in detail the ability of
38 the design-build team to design and complete the project.

39 **Sec. 26. 1.** After selecting the finalists pursuant to section 25 of
40 this act, the department shall provide to each finalist a request for final
41 proposals for the project. The request for final proposals must:

1 (a) Set forth the factors that the department will use to select a design-
2 build team to design and complete the project, including the relative
3 weight to be assigned to each factor;

4 (b) Set forth the date by which final proposals must be submitted to
5 the department; and

6 (c) Include a statement setting forth that a design-build team whose
7 prime contractor holds a certificate of eligibility to receive a preference
8 in bidding on public works issued pursuant to NRS 338.147 shall be
9 deemed to have submitted a better final proposal than a competing
10 design-build team whose prime contractor does not hold such a
11 certificate of eligibility if the amount of the bid of the design-build team
12 is not more than 5 percent higher than the amount bid by the competing
13 design-build team.

14 2. A final proposal submitted by a design-build team pursuant to this
15 section must be prepared thoroughly and be responsive to the criteria
16 that the department will use to select a design-build team to design and
17 complete the project described in subsection 1.

18 3. Within 30 days after receiving the final proposals for the project,
19 the department shall:

20 (a) Select the most cost-effective and responsive final proposal, using
21 the criteria set forth pursuant to subsection 1; or

22 (b) Reject all the final proposals.

23 4. If the department selects a final proposal pursuant to paragraph
24 (a) of subsection 3, the department shall hold a public meeting to:

25 (a) Review and ratify the selection.

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

28 (c) Partially reimburse the unsuccessful finalists if partial
29 reimbursement was provided for in the request for preliminary proposals
30 pursuant to paragraph (i) of subsection 2 of section 23 of this act. The
31 amount of reimbursement must not exceed, for each unsuccessful
32 finalist, three percent of the total amount to be paid to the design-build
33 team as set forth in the design-build contract.

34 (d) Make available to the public a summary setting forth the factors
35 used by the department to select the successful design-build team, the
36 relative weight assigned to each factor and the ranking of the design-
37 build teams who submitted final proposals. The department shall not
38 release to a third party, or otherwise make public, financial or
39 proprietary information submitted by a design-build team.

40 5. A design-build team to whom a contract is awarded pursuant to
41 this section shall:

42 (a) Assume overall responsibility for ensuring that the design and
43 completion of the project is completed in a satisfactory manner; and

1 ***(b) Use the work force of the prime contractor on the design-build***
2 ***team to complete at least 15 percent of the completion of the project.***

3 **Sec. 27.** ***The department may employ a registered architect or***
4 ***licensed professional engineer as a consultant to assist the department in***
5 ***overseeing the completion of a project. An architect or engineer so***
6 ***employed shall not:***

7 ***1. Design, construct, reconstruct or improve the highway; or***

8 ***2. Assume overall responsibility for ensuring that the design or***
9 ***completion of the project is completed in a satisfactory manner.***

10 **Sec. 28.** NRS 408.215 is hereby amended to read as follows:

11 408.215 1. The director has charge of all the records of the
12 department, keeping records of all proceedings pertaining to the department
13 and keeping on file information, plans, specifications, estimates, statistics
14 and records prepared by the department, except those financial statements
15 described in NRS 408.333 ~~and~~ ***and the financial or proprietary information***
16 ***described in paragraph (d) of subsection 4 of section 26 of this act,*** which
17 must not become matters of public record.

18 2. The director may photograph, microphotograph or film or dispose of
19 the records of the department referred to in subsection 1 as provided in
20 NRS 239.051, 239.080 and 239.085.

21 3. The director shall maintain an index or record of deeds or other
22 references of title or interests in and to all lands or interests in land owned
23 or acquired by the department.

24 4. The director shall adopt such regulations as may be necessary to
25 carry out and enforce the provisions of this chapter.

26 **Sec. 29.** NRS 408.317 is hereby amended to read as follows:

27 408.317 1. ~~Except as otherwise provided in sections 15 to 27,~~
28 ***inclusive, of this act, all*** work of construction, reconstruction,
29 improvement and maintenance of highways as provided under the
30 provisions of this chapter is under the supervision and direction of the
31 director and must be performed in accordance with the plans, specifications
32 and contracts prepared by him.

33 2. All maintenance and repair of highways when performed by the
34 department must be paid out of the state highway fund.

35 **Sec. 30.** NRS 408.327 is hereby amended to read as follows:

36 408.327 ***Except as otherwise provided in sections 15 to 27, inclusive,***
37 ***of this act:***

38 1. Whenever the provisions of NRS 408.323 do not apply, the director
39 shall advertise for bids for such work according to the plans and
40 specifications prepared by him.

41 2. The advertisement must state the place where the bidders may obtain
42 or inspect the plans and specifications and the time and place for opening
43 the plans and specifications.

1 3. Publication of the advertisement must be made at least once a week
2 for 2 consecutive weeks for a total of at least two publications in a
3 newspaper of general circulation in the county in which the major portion
4 of the proposed improvement or construction is to be made, and the
5 advertisement must also be published at least once a week for 2 consecutive
6 weeks for a total of at least two publications in one or more daily papers of
7 general circulation throughout the state. The first publication of the
8 advertisement in the daily newspapers having general circulation
9 throughout the state must be made not less than 15 days before the time set
10 for opening bids.

11 **Sec. 31.** NRS 408.333 is hereby amended to read as follows:

12 408.333 *Except as otherwise provided in sections 15 to 27, inclusive,*
13 *of this act:*

14 1. Before furnishing any person proposing to bid on any advertised
15 work with the plans and specifications for such work, the director shall
16 require from the person a statement, verified under oath, in the form of
17 answers to questions contained in a standard form of questionnaire and
18 financial statement, which must include a complete statement of the
19 person's financial ability and experience in performing public work of a
20 similar nature.

21 2. Such statements must be filed with the director in ample time to
22 permit the department to verify the information contained therein in
23 advance of furnishing proposal forms, plans and specifications to any
24 person proposing to bid on the advertised public work, in accordance with
25 the regulations of the department.

26 3. Whenever the director is not satisfied with the sufficiency of the
27 answers contained in the questionnaire and financial statement, he may
28 refuse to furnish the person with plans and specifications and the official
29 proposal forms on the advertised project. Any bid of any person to whom
30 plans and specifications and the official proposal forms have not been
31 issued in accordance with this section must be disregarded, and the certified
32 check, cash or undertaking of such a bidder returned forthwith.

33 4. Any person who is disqualified by the director, in accordance with
34 the provisions of this section, may request, in writing, a hearing before the
35 director and present again his check, cash or undertaking and such further
36 evidence with respect to his financial responsibility, organization, plant and
37 equipment, or experience, as might tend to justify, in his opinion, issuance
38 to him of the plans and specifications for the work.

39 5. Such a person may appeal the decision of the director to the board
40 no later than 5 days before the opening of the bids on the project. If the
41 appeal is sustained by the board, the person must be granted the rights and
42 privileges of all other bidders.

1 **Sec. 32.** NRS 408.337 is hereby amended to read as follows:

2 408.337 *Except as otherwise provided in sections 15 to 27, inclusive,*
3 *of this act:*

4 1. All bids must be accompanied by an undertaking executed by a
5 corporate surety authorized to do business in the state, or by cash or a
6 certified check in an amount equal to at least 5 percent of the amount bid.

7 2. If the successful bidder fails to execute the contract in accordance
8 with his bid and give any bond required by law and the contract and bond
9 are not postmarked or delivered to the department within 20 days after
10 award of the contract, the undertaking, cash or certified check is forfeited
11 and the proceeds must be paid into the state highway fund.

12 3. The failure of the successful bidder to furnish any bond required of
13 him by law within the time fixed for his execution of the contract
14 constitutes a failure to execute the contract.

15 4. If the director deems it is for the best interests of the state, he may,
16 on refusal or failure of the successful bidder to execute the contract, award
17 it to the second lowest responsible bidder. If the second lowest responsible
18 bidder fails or refuses to execute the contract, the director may likewise
19 award it to the third lowest responsible bidder. On the failure or refusal to
20 execute the contract of the second or third lowest bidder to whom a
21 contract is so awarded, their bidder's security is likewise forfeited to the
22 state.

23 5. The bidder's security of the second and third lowest responsible
24 bidders may be withheld by the department until the contract has been
25 finally executed and the bond given as required under the provisions of the
26 contract, at which time the security must be returned. The bidder's security
27 submitted by all other unsuccessful bidders must be returned to them within
28 10 days after the contract is awarded.

29 **Sec. 33.** NRS 408.343 is hereby amended to read as follows:

30 408.343 *Except as otherwise provided in sections 15 to 27, inclusive,*
31 *of this act:*

32 1. All bids must be submitted under sealed cover and received at the
33 address in Nevada stated in the advertisement for bids and must be opened
34 publicly and read at the time stated in the advertisement.

35 2. No bids may be received after the time stated in the advertisement
36 even though bids are not opened exactly at the time stated in the
37 advertisement. No bid may be opened before that time.

38 3. Any bid may be withdrawn at any time before the time stated in the
39 advertisement only by written request or telegram filed with the director
40 and executed by the bidder or his duly authorized representative. The
41 withdrawal of a bid does not prejudice the right of the bidder to file a new
42 bid before the time stated in the advertisement.

1 4. The department may reject any bid or all bids if, in the opinion of
2 the department, the bids are unbalanced, incomplete, contain irregularities
3 of any kind or for any good cause.

4 5. Until the final award of the contract, the department may reject or
5 accept any bids and may waive technical errors contained in the bids, as
6 may be deemed best for the interests of the state.

7 6. In awarding a contract, the department shall make the award to the
8 lowest responsible bidder who has qualified and submitted his bid in
9 accordance with the provisions of this chapter.

10 **Sec. 34.** NRS 625.530 is hereby amended to read as follows:

11 625.530 *Except as otherwise provided in sections 2 to 9, inclusive,*
12 *and 15 to 27, inclusive, of this act:*

13 1. The State of Nevada or any of its political subdivisions, including a
14 county, city or town, shall not engage in any public work requiring the
15 practice of professional engineering or land surveying, unless the maps,
16 plans, specifications, reports and estimates have been prepared by, and the
17 work executed under the supervision of, a professional engineer,
18 professional land surveyor or registered architect.

19 2. The provisions of this section do not:

20 (a) Apply to any public work wherein the expenditure for the complete
21 project of which the work is a part does not exceed \$35,000.

22 (b) Include any maintenance work undertaken by the State of Nevada or
23 its political subdivisions.

24 (c) Authorize a professional engineer, registered architect or
25 professional land surveyor to practice in violation of any of the provisions
26 of chapter 623 of NRS or this chapter.

27 (d) Require the services of an architect registered pursuant to the
28 provisions of chapter 623 of NRS for the erection of buildings or structures
29 manufactured in an industrial plant, if those buildings or structures meet the
30 requirements of local building codes of the jurisdiction in which they are
31 being erected.

32 3. The selection of a professional engineer, professional land surveyor
33 or registered architect to perform services pursuant to subsection 1 must be
34 made on the basis of the competence and qualifications of the engineer,
35 land surveyor or architect for the type of services to be performed and not
36 on the basis of competitive fees. If, after selection of the engineer, land
37 surveyor or architect, an agreement upon a fair and reasonable fee cannot
38 be reached with him, the public agency may terminate negotiations and
39 select another engineer, land surveyor or architect.

40 **Sec. 35.** NRS 341.161 and 341.171 are hereby repealed.

41 **Sec. 36.** 1. The legislative commission is hereby directed to appoint
42 an interim committee to conduct an interim study of the use of design-build
43 contracting within this state.

1 2. The interim committee appointed pursuant to subsection 1 must be
2 composed of seven members selected as follows:

3 (a) Two members of the Senate, one of whom served during the 70th
4 legislative session on the Senate Standing Committee on Government
5 Affairs.

6 (b) Two members of the Assembly, one of whom served during the 70th
7 legislative session on the Assembly Standing Committee on Government
8 Affairs.

9 (c) One member to represent the interests of design professionals.

10 (d) One member to represent the interests of public agencies.

11 (e) One member to represent the interests of builders and contractors.

12 3. The interim committee appointed pursuant to subsection 1 shall:

13 (a) Examine the methods of design-build contracting that are authorized
14 to be used pursuant to the provisions of this act;

15 (b) In cooperation with the consultant hired by the director of the
16 legislative counsel bureau pursuant to subsection 4:

17 (1) Establish criteria to evaluate methods of design-build contracting;
18 and

19 (2) Use those criteria to evaluate the methods of design-build
20 contracting that are authorized to be used pursuant to the provisions of this
21 act; and

22 (c) Submit a report regarding its findings to the 72nd session of the
23 Nevada Legislature, accompanied by any suggestions for legislation that
24 the interim committee determines to be advisable.

25 4. The director of the legislative counsel bureau shall select and hire a
26 consultant to assist the interim committee in carrying out the duties set forth
27 in paragraph (b) of subsection 3.

28 5. As used in this section, "design professional" means a person with a
29 professional license or certificate issued pursuant to chapter 623, 623A or
30 625 of NRS.

31 **Sec. 37.** This act expires by limitation on October 1, 2003.

TEXT OF REPEALED SECTIONS

341.161 Contracts for contractor's services which assist architect in design of capital improvement: Regulations; bids; award of construction contract.

1. The board may, with the approval of the interim finance committee when the legislature is not in regular or special session, or with the approval of the legislature by concurrent resolution when the legislature is in regular or special session, let to a contractor licensed under chapter 624

of NRS a contract for services which assist the architect in the design of a project of capital improvement. The board shall for that purpose participate in the development of plans, outlines of specifications and estimates of costs.

2. The board shall adopt regulations establishing procedures for:

(a) The determination of the qualifications of contractors to bid for contracts for services described in subsection 1.

(b) The bidding and awarding of such contracts, subject to the provisions of subsection 3.

(c) The awarding of construction contracts, subject to the provisions of subsection 4, based on a final cost of the project which the contractor guarantees will not be exceeded.

(d) The scheduling and controlling of projects.

3. Bids on contracts for services which assist the architect in the design of a project of capital improvement must state separately the contractor's cost for:

(a) Assisting the architect in the design of the project.

(b) Obtaining all bids for subcontracts.

(c) Administering the construction contract.

4. A contractor who is:

(a) Qualified under the regulations of the board to bid for a contract for services described in subsection 1; and

(b) Awarded that contract,

is entitled to be awarded the construction contract for the project if his work under the contract for services is satisfactory to the board and he guarantees a final cost for the project which the board is willing to accept.

5. A person who furnishes services under a contract awarded pursuant to subsection 1 is a contractor subject to all provisions pertaining to a contractor in Title 28 of NRS.

341.171 Single contract for design and construction of capital improvement: Legislative approval; regulations.

1. The board may, with the approval of the interim finance committee when the legislature is not in regular or special session, or with the approval of the legislature by concurrent resolution when the legislature is in regular or special session, let to a contractor licensed under chapter 624 of NRS a single contract for both the design and construction of a project of capital improvement. The board shall for the purpose prepare a comprehensive sketch plan and narrative of the scope of the work involved in a project.

2. The board shall adopt regulations establishing procedures for:

(a) The determination of the qualifications of contractors to bid for contracts for the design and construction of such projects. The board shall consult with the American Institute of Architects and the Associated

General Contractors, or the successor of either if the named organization ceases to exist, before adopting procedures under this paragraph.

(b) The board's approval of designs and architects employed in a project.

(c) The bidding and awarding of contracts for the design and construction of projects based on a final cost of the project which the contractor guarantees will not be exceeded.

(d) The scheduling and controlling of projects.

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