

SENATE BILL NO. 475—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 18, 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 28-517)

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 design and construction of a public work in certain circumstances; authorizing a public body to contract with a nonprofit organization for the design and construction of a project to restore, enhance or develop wetlands; authorizing the department of transportation to contract with a design-build team with respect to a project for the design and 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 construction of a public work or project; creating an interim advisory committee to study the use of design-build contracting; 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 construction of a***
5 ***public 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 construction of a public work that is a discrete project if the***
8 ***public body determines that:***

9 ***(a) The public work is:***

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

4 (2) Any other type of public work, except a stand-alone
5 underground utility project, the estimated cost of which exceeds
6 \$30,000,000; and

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

9 (1) Design and construct the public work at a cost that is
10 significantly lower than the cost that the public body would incur to
11 design and construct the public work using a different method;

12 (2) Design and construct the public work in a shorter time than
13 would be required to design and construct the public work using a
14 different method, if exigent circumstances require that the public work
15 be designed and constructed within a short time; or

16 (3) Ensure that the design and construction of the public work is
17 properly coordinated, if the public work is unique, highly technical and
18 complex in nature.

19 3. In a county whose population is 400,000 or more, a public body
20 that is responsible for financing public works may, for its own public
21 works and those financed by a different public body, including, without
22 limitation, an airport if the airport is owned and operated as a
23 department of the public body, contract with a design-build team once in
24 each fiscal year for the design and construction of a public work if the
25 public body determines that:

26 (a) The estimated cost of the public work is at least \$5,000,000 but less
27 than \$30,000,000; and

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

30 (1) Design and construct the public work at a cost that is
31 significantly lower than the cost that the public body would incur to
32 design and construct the public work using a different method;

33 (2) Design and construct the public work in a shorter time than
34 would be required to design and construct the public work using a
35 different method, if exigent circumstances require that the public work
36 be designed and constructed within a short time; or

37 (3) Ensure that the design and construction of the public work is
38 properly coordinated, if the public work is unique, highly technical and
39 complex in nature.

40 4. Notwithstanding the provisions of subsections 1, 2 and 3, a public
41 body may contract with:

42 (a) A nonprofit organization for the design and construction of a
43 project to restore, enhance or develop wetlands.

1 **(b) A prime contractor, specialty contractor or design-build team with**
2 **respect to a public work if the public body determines that the public**
3 **work is:**

4 **(1) Not part of a larger public work; and**

5 **(2) Limited in scope to:**

6 **(I) Removal of asbestos;**

7 **(II) Replacement of equipment or systems for heating, ventilation**
8 **and air-conditioning;**

9 **(III) Replacement of a roof;**

10 **(IV) Landscaping; or**

11 **(V) Restoration, enhancement or development of wetlands.**

12 **Sec. 3. 1. A public body shall not contract with a design-build team**
13 **with respect to a public work unless the governing body of the public**
14 **body makes the determinations, at a public hearing, that are required**
15 **pursuant to subsection 2, 3 or 4 of section 2 of this act, as applicable.**

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

19 **(a) A newspaper of general circulation published in the county in**
20 **which the public work is proposed to be constructed or, if there is no such**
21 **newspaper, in a newspaper of general circulation in the county published**
22 **in this state; and**

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

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

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

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

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

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

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

43 **(a) A description of the public work to be designed and constructed;**

1 (b) *Separate estimates of the costs of designing and constructing the*
2 *public work;*

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

5 (d) *A statement setting forth the place and time in which a design-*
6 *build team desiring to submit a proposal for the public work may obtain*
7 *the information necessary to submit a proposal, including, without*
8 *limitation, the extent to which designs must be completed for both*
9 *preliminary and final proposals and any other requirements for the*
10 *design and construction of the public work that the public body*
11 *determines to be necessary;*

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

13 (f) *A list of the factors that the public body will use to evaluate design-*
14 *build teams who submit a proposal for the public work, including,*
15 *without limitation:*

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

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

20 (g) *Notice that a design-build team desiring to submit a proposal for*
21 *the public work must include with its proposal the information used by*
22 *the public body to determine finalists among the design-build teams*
23 *submitting proposals pursuant to subsection 2 of section 7 of this act and*
24 *a description of that information;*

25 (h) *A statement that a design-build team whose prime contractor*
26 *holds a certificate of eligibility to receive a preference in bidding on*
27 *public works issued pursuant to NRS 338.147 should submit a copy of*
28 *the certificate of eligibility with its proposal;*

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

34 (j) *The date by which preliminary proposals must be submitted to the*
35 *public body, 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. 6.** *To qualify to participate in a project for the design and*
39 *construction of a public work, a design-build team must:*

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

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. 7. 1.** At least 30 days after the date by which preliminary
9 proposals must be submitted to the public body, the public body shall
10 select at least three but not more than five finalists from among the
11 design-build teams that submitted preliminary proposals. If the public
12 body does not receive at least three preliminary proposals from design-
13 build teams that the public body determines to be qualified pursuant to
14 this section and section 6 of this act, the public body may not contract
15 with a design-build team for the design and construction of the public
16 work.

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

18 (a) Verifying that each design-build team which submitted a
19 preliminary proposal satisfies the requirements of section 6 of this act;
20 and

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

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

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

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

31 (4) The proposed plan of the design-build team to manage the
32 design and construction of the public work that sets forth in detail the
33 ability of the design-build team to design and construct the public work.

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

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

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

42 2. A final proposal submitted by a design-build team pursuant to this
43 section must be prepared thoroughly, be responsive to the criteria that the

1 public body will use to select a design-build team to design and construct
2 the public work described in subsection 1 and comply with the provisions
3 of NRS 338.144. If the cost of construction is a factor in the selection of
4 a design-build team, a design-build team whose prime contractor has
5 submitted with its proposal a certificate of eligibility to receive a
6 preference in bidding on public works issued pursuant to NRS 338.147
7 shall be deemed to have submitted a better proposal than a competing
8 design-build team whose prime contractor has not submitted such a
9 certificate of eligibility if the amount proposed by the design-build team
10 is not more than 5 percent higher than the amount proposed by the
11 competing design-build team.

12 3. At least 30 days after receiving the final proposals for the public
13 work, the public body shall:

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

16 (b) Reject all the final proposals.

17 4. If a public body selects a final proposal pursuant to paragraph (a)
18 of subsection 3, the public body shall, at its next regularly scheduled
19 meeting:

20 (a) Review and ratify the selection.

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

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

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

34 5. A contract awarded pursuant to this section must specify:

35 (a) An amount that is the maximum amount that the public body will
36 pay for the performance of all the work required by the contract;

37 (b) An amount that is the maximum amount that the public body will
38 pay for the performance of the professional services required by the
39 contract; and

40 (c) A date by which performance of the work required by the contract
41 must be completed.

42 6. A design-build team to whom a contract is awarded pursuant to
43 this section shall:

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

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

6 **Sec. 9.** A public body may employ a registered architect or licensed
7 professional engineer as a consultant to assist the public body in
8 overseeing the construction of a public work. An architect or engineer so
9 employed shall not:

10 1. Design or construct the public work; or

11 2. Assume overall responsibility for ensuring that the design or
12 construction of the public work is completed in a satisfactory manner.

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

14 338.010 As used in this chapter:

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

19 2. "Design-build contract" means a contract between a public body
20 and a design-build team in which the design-build team agrees to design
21 and construct a public work.

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

23 (a) At least one person who is licensed as a general engineering
24 contractor or a general building contractor pursuant to NRS 624.230 to
25 624.320, inclusive; and

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

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

30 (2) Anything other than a building and its site, at least one person
31 who holds a certificate of registration to practice architecture pursuant to
32 chapter 623 of NRS or is licensed as a professional engineer pursuant to
33 chapter 625 of NRS.

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

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

39 ~~13.1~~ 6. "Offense" means failing to:

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

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

or

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

~~14.1~~ 7. *“Prime contractor” means a person who:*

(a) *Contracts to construct an entire project;*

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

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

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

8. “Public body” means the state, county, city, town, school district or any public agency of this state or its political subdivisions sponsoring or financing a public work.

~~15.1~~ 9. “Public work” means any project for the new construction, repair or reconstruction of:

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

(1) Public buildings;

(2) Jails and prisons;

(3) Public roads;

(4) Public highways;

(5) Public streets and alleys;

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

(7) Publicly owned water mains and sewers;

(8) Public parks and playgrounds;

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

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

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

6 **12.** "Wages" means:

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

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

11 ~~17-1~~ **13.** "Workman" means a skilled mechanic, skilled workman,
12 semiskilled mechanic, semiskilled workman or unskilled workman. *The*
13 *term does not include a design professional.*

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

15 338.143 1. Except as otherwise provided in subsection 6 and NRS
16 338.1906 and 338.1907, an agency or political subdivision of the state, or a
17 public officer, public employee or other person responsible for awarding a
18 contract for the construction, alteration or repair of a public work, shall not:

19 (a) Commence such a project, for which the estimated cost exceeds
20 \$100,000, unless it advertises in a newspaper of general circulation in the
21 state for bids for the project; or

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

24 2. Except as otherwise provided in subsection 6, a public body that
25 maintains a list of properly licensed contractors who are interested in
26 receiving offers to bid on public works projects for which the estimated
27 cost is more than \$25,000 but less than \$100,000 shall solicit bids from not
28 more than three of the contractors on the list for a contract of that value for
29 the construction, alteration or repair of a public work. The public body
30 shall select contractors from the list in such a manner as to afford each
31 contractor an equal opportunity to bid on a public works project. A
32 properly licensed contractor must submit a written request annually to the
33 public body to remain on the list. Offers for bids which are made pursuant
34 to this subsection must be sent by certified mail.

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

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

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

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

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

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

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

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

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

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

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

22 6. This section does not apply to:

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

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

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

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

29 *(e) The design and construction of a public work for which a public*
30 *body contracts with a design-build team pursuant to sections 2 to 9,*
31 *inclusive, of this act.*

32 **Sec. 12.** NRS 338.143 is hereby amended to read as follows:

33 338.143 1. Except as otherwise provided in subsection 6, an agency
34 or political subdivision of the state, or a public officer, public employee or
35 other person responsible for awarding a contract for the construction,
36 alteration or repair of a public work, shall not:

37 (a) Commence such a project, for which the estimated cost exceeds
38 \$100,000, unless it advertises in a newspaper of general circulation in the
39 state for bids for the project; or

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

42 2. Except as otherwise provided in subsection 6, a public body that
43 maintains a list of properly licensed contractors who are interested in

1 receiving offers to bid on public works projects for which the estimated
2 cost is more than \$25,000 but less than \$100,000 shall solicit bids from not
3 more than three of the contractors on the list for a contract of that value for
4 the construction, alteration or repair of a public work. The public body
5 shall select contractors from the list in such a manner as to afford each
6 contractor an equal opportunity to bid on a public works project. A
7 properly licensed contractor must submit a written request annually to the
8 public body to remain on the list. Offers for bids which are made pursuant
9 to this subsection must be sent by certified mail.

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

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

- 17 (a) The bidder is not responsive or responsible;
- 18 (b) The quality of the services, materials, equipment or labor offered
19 does not conform to the approved plan or specifications; or
- 20 (c) The public interest would be served by such a rejection.

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

- 26 (a) A list of all persons, including supervisors, who the agency or
27 political subdivision intends to assign to the project, together with their
28 classifications and an estimate of the direct and indirect costs of their labor;
- 29 (b) A list of all equipment that the agency or political subdivision
30 intends to use on the project, together with an estimate of the number of
31 hours 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 persons
34 assigned to the project;
- 35 (d) An estimate of the total cost of the project; and
- 36 (e) An estimate of the amount of money the agency or political
37 subdivision expects to save by rejecting the bids and performing the project
38 itself.

39 6. This section does not apply to:

- 40 (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;
- 41 (b) Any work of construction, reconstruction, improvement and
42 maintenance of highways subject to NRS 408.323 or 408.327;
- 43 (c) Normal maintenance of the property of a school district; ~~for~~

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

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

Sec. 13. NRS 338.147 is hereby amended to read as follows:

338.147 1. ~~§~~ *Except as otherwise provided in NRS 338.143 and sections 2 to 9, inclusive, of this act, a public body shall award a contract for a public work to the contractor who submits the best bid.*

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

(a) Has been found to be a responsible *and responsive* contractor by the public body; and

(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 preference in bidding on public works issued to him by the state contractors' board pursuant to subsection 3, shall be deemed to have submitted a better bid than a competing contractor who has not provided a copy of such a valid certificate of eligibility if the amount of his bid is not more than 5 percent higher than the amount bid by the competing contractor.*

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

(a) Paid:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction *in this state, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this state that is managed by the Federal Government or is on an Indian reservation or Indian colony*, of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of ~~this bid;~~ *the affidavit from the certified public accountant;*

(2) The motor vehicle privilege tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business *in this state of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of* ~~this bid;~~ *the affidavit from the certified public accountant;* or

(3) Any combination of such sales and use taxes and motor vehicle privilege tax

1 ~~shall be deemed to have submitted a better bid than a competing contractor~~
2 ~~who has not provided proof of the payment of those taxes if the amount of~~
3 ~~his bid is not more than 5 percent higher than the amount bid by the~~
4 ~~competing contractor.~~

5 ~~—3.—A contractor who has previously provided the public body awarding~~
6 ~~a contract with the proof of payment required pursuant to subsection 2 may~~
7 ~~update such proof on or before April 1, July 1, September 1 and December~~
8 ~~1 rather than with each bid.~~

9 ~~—4.1 ; or~~

10 *(b) Acquired, by inheritance, gift or transfer through a stock option*
11 *plan for employees, all the assets and liabilities of a viable, operating*
12 *construction firm that possesses a:*

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

15 *(2) Certificate of eligibility to receive a preference in bidding on*
16 *public works.*

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

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

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

26 *5. A contractor who has received a certificate of eligibility to receive*
27 *a preference in bidding on public works from the state contractors' board*
28 *pursuant to subsection 3 shall, at the time for the annual renewal of his*
29 *contractors' license pursuant to NRS 624.283, submit to the board an*
30 *affidavit from a certified public accountant setting forth that the*
31 *contractor has, during the immediately preceding 12 months, paid the*
32 *taxes required pursuant to paragraph (a) of subsection 3 to maintain his*
33 *eligibility to hold such a certificate.*

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

38 *7. If a contractor who applies to the state contractors' board for a*
39 *certificate of eligibility to receive a preference in bidding on public works*
40 *submits false information to the board regarding the required payment of*
41 *taxes, the contractor is not eligible to receive a preference in bidding on*
42 *public works for a period of 5 years after the date on which the board*
43 *becomes aware of the submission of the false information.*

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

7 ~~[5.]~~ **9.** Except as otherwise provided in ~~[subsection 6,]~~ *subsection 2 of*
8 *section 8 of this act and subsection 2 of section 27 of this act*, if a bid is
9 submitted by two or more contractors as a joint venture or by one of them
10 as a joint venturer, the provisions of subsection 2 apply only if both or all
11 of the joint venturers separately meet the requirements of that subsection.

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

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

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

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

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

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

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

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

35 **11.** *A person or entity who believes that a contractor wrongfully*
36 *holds a certificate of eligibility to receive a preference in bidding on*
37 *public works may challenge the validity of the certificate by filing a*
38 *written objection with the public body to which the contractor has*
39 *submitted a bid or proposal on a contract for the construction of a public*
40 *work. A written objection authorized pursuant to this subsection must:*

41 **(a)** *Set forth proof or substantiating evidence to support the belief of*
42 *the person or entity that the contractor wrongfully holds a certificate of*
43 *eligibility to receive a preference in bidding on public works; and*

1 (b) *Be filed with the public body at or after the time at which the*
2 *contractor submitted the bid or proposal to the public body and before*
3 *the time at which the public body awards the contract for which the bid*
4 *or proposal was submitted.*

5 12. *If a public body receives a written objection pursuant to*
6 *subsection 11, the public body shall determine whether the objection is*
7 *accompanied by the proof or substantiating evidence required pursuant*
8 *to paragraph (a) of that subsection. If the public body determines that the*
9 *objection is not accompanied by the required proof or substantiating*
10 *evidence, the public body shall dismiss the objection and may proceed*
11 *immediately to award the contract. If the public body determines that the*
12 *objection is accompanied by the required proof or substantiating*
13 *evidence, the public body shall determine whether the contractor*
14 *qualifies for the certificate pursuant to the provisions of this section and*
15 *may proceed to award the contract accordingly.*

16 **Sec. 13.5.** NRS 338.147 is hereby amended to read as follows:

17 338.147 1. ~~[A]~~ *Except as otherwise provided in NRS 338.143, a*
18 *public body shall award a contract for a public work to the contractor who*
19 *submits the best bid.*

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

22 (a) *Has been found to be a responsible **and responsive** contractor by the*
23 *public body; and*

24 (b) *At the time he submits his bid, provides to the public body ~~[proof of~~*
25 *~~the payment of:] a copy of a certificate of eligibility to receive a~~*
26 ***preference in bidding on public works issued to him by the state***
27 ***contractors' board pursuant to subsection 3,***
28 ***shall be deemed to have submitted a better bid than a competing***
29 ***contractor who has not provided a copy of such a valid certificate of***
30 ***eligibility if the amount of his bid is not more than 5 percent higher than***
31 ***the amount bid by the competing contractor.***

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

37 (a) ***Paid:***

38 (1) *The sales and use taxes imposed pursuant to chapters 372, 374*
39 *and 377 of NRS on materials used for construction **in this state, including,***
40 ***without limitation, construction that is undertaken or carried out on land***
41 ***within the boundaries of this state that is managed by the Federal***
42 ***Government or is on an Indian reservation or Indian colony,** of not less*

1 than \$5,000 for each consecutive 12-month period for 60 months
2 immediately preceding the submission of ~~this bid;~~ *the affidavit from the*
3 *certified public accountant;*

4 (2) The motor vehicle privilege tax imposed pursuant to chapter 371
5 of NRS on the vehicles used in the operation of his business *in this state* of
6 not less than \$5,000 for each consecutive 12-month period for 60 months
7 immediately preceding the submission of ~~this bid;~~ *the affidavit from the*
8 *certified public accountant;* or

9 (3) Any combination of such sales and use taxes and motor vehicle
10 privilege tax ~~;~~

11 ~~shall be deemed to have submitted a better bid than a competing contractor~~
12 ~~who has not provided proof of the payment of those taxes if the amount of~~
13 ~~his bid is not more than 5 percent higher than the amount bid by the~~
14 ~~competing contractor.~~

15 ~~—3. A contractor who has previously provided the public body awarding~~
16 ~~a contract with the proof of payment required pursuant to subsection 2 may~~
17 ~~update such proof on or before April 1, July 1, September 1 and December~~
18 ~~1 rather than with each bid.~~

19 ~~—4.1 ; or~~

20 *(b) Acquired, by inheritance, gift or transfer through a stock option*
21 *plan for employees, all the assets and liabilities of a viable, operating*
22 *construction firm that possesses a:*

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

25 *(2) Certificate of eligibility to receive a preference in bidding on*
26 *public works.*

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

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

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

36 *5. A contractor who has received a certificate of eligibility to receive*
37 *a preference in bidding on public works from the state contractors' board*
38 *pursuant to subsection 3 shall, at the time for the annual renewal of his*
39 *contractors' license pursuant to NRS 624.283, submit to the board an*
40 *affidavit from a certified public accountant setting forth that the*
41 *contractor has, during the immediately preceding 12 months, paid the*
42 *taxes required pursuant to paragraph (a) of subsection 3 to maintain his*
43 *eligibility to hold such a certificate.*

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

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

11 **8. If any federal statute or regulation precludes the granting of federal**
12 **assistance or reduces the amount of that assistance for a particular public**
13 **work because of the provisions of subsection 2, those provisions do not**
14 **apply insofar as their application would preclude or reduce federal**
15 **assistance for that work. The provisions of subsection 2 do not apply to any**
16 **contract for a public work which is expected to cost less than \$250,000.**

17 ~~**[5.—Except as otherwise provided in subsection 6, if]**~~

18 **9. If** a bid is submitted by two or more contractors as a joint venture or
19 by one of them as a joint venturer, the provisions of subsection 2 apply only
20 if both or all of the joint venturers separately meet the requirements of that
21 subsection.

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

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

31 ~~**—(a) Supplying the labor necessary to perform the contract and paying the**~~
32 ~~**labor and any related taxes and benefits;**~~

33 ~~**—(b) Supplying the equipment necessary to perform the contract and**~~
34 ~~**paying any charges related to the equipment;**~~

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

36 ~~**—(d) Performing the recordkeeping for the joint venture and making any**~~
37 ~~**payments to persons who provide goods or services related to the**~~
38 ~~**performance of the contract.**~~

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

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

4 **11. A person or entity who believes that a contractor wrongfully**
5 **holds a certificate of eligibility to receive a preference in bidding on**
6 **public works may challenge the validity of the certificate by filing a**
7 **written objection with the public body to which the contractor has**
8 **submitted a bid or proposal on a contract for the construction of a public**
9 **work. A written objection authorized pursuant to this subsection must:**

10 **(a) Set forth proof or substantiating evidence to support the belief of**
11 **the person or entity that the contractor wrongfully holds a certificate of**
12 **eligibility to receive a preference in bidding on public works; and**

13 **(b) Be filed with the public body at or after the time at which the**
14 **contractor submitted the bid or proposal to the public body and before**
15 **the time at which the public body awards the contract for which the bid**
16 **or proposal was submitted.**

17 **12. If a public body receives a written objection pursuant to**
18 **subsection 11, the public body shall determine whether the objection is**
19 **accompanied by the proof or substantiating evidence required pursuant**
20 **to paragraph (a) of that subsection. If the public body determines that the**
21 **objection is not accompanied by the required proof or substantiating**
22 **evidence, the public body shall dismiss the objection and may proceed**
23 **immediately to award the contract. If the public body determines that the**
24 **objection is accompanied by the required proof or substantiating**
25 **evidence, the public body shall determine whether the contractor**
26 **qualifies for the certificate pursuant to the provisions of this section and**
27 **may proceed to award the contract accordingly.**

28 **Sec. 14.** NRS 338.155 is hereby amended to read as follows:

29 338.155 ~~1.~~ If a public body enters into a contract with a design
30 professional **who is not a member of a design-build team** for the provision
31 of services in connection with a public work, the contract:

32 ~~1.~~ **1.** Must set forth:

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

35 ~~(2)~~ **(b)** The specific period and manner in which the public body
36 may dispute a payment or portion thereof that the design professional
37 alleges is due.

38 ~~(3)~~ **(c)** The terms of any penalty that will be imposed upon the
39 public body if the public body fails to pay the design professional within
40 the specific period set forth in the contract pursuant to ~~subparagraph (1).~~

41 ~~(4)~~ **paragraph (a).**

42 **(d)** That the prevailing party in an action to enforce the contract is
43 entitled to reasonable attorney's fees and costs.

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

5 ~~2. As used in this section, “design professional” means a person with a~~
6 ~~professional license or certificate issued pursuant to chapter 623, 623A or~~
7 ~~625 of NRS.] of subsection 1.~~

8 **Sec. 14.5.** NRS 341.161 is hereby amended to read as follows:

9 341.161 1. The board may, with the approval of the interim finance
10 committee when the legislature is not in regular or special session, or with
11 the approval of the legislature by concurrent resolution when the legislature
12 is in regular or special session, let to a contractor licensed under chapter
13 624 of NRS a contract for services which assist the architect in the design
14 of a project of capital improvement. The board shall for that purpose
15 participate in the development of plans, outlines of specifications and
16 estimates of costs.

17 2. The board shall adopt regulations establishing procedures for:

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

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

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

25 (d) The scheduling and controlling of projects.

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

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

30 (b) Obtaining all bids for subcontracts.

31 (c) Administering the construction contract.

32 4. ~~[A contractor who is:~~

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

35 ~~—(b) Awarded that contract,~~

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

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

1 **Sec. 15.** Chapter 408 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 16 to 28, inclusive, of this act.

3 **Sec. 16.** *As used in sections 16 to 28, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 17 to*
5 *20, inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*

7 **Sec. 17.** *“Design-build contract” means a contract between the*
8 *department and a design-build team in which the design-build team*
9 *agrees to design and construct a project.*

10 **Sec. 18.** *“Design-build team” means an entity that consists of:*

11 1. *At least one person who is licensed as a general engineering*
12 *contractor or a general building contractor pursuant to NRS 624.230 to*
13 *624.320, inclusive; and*

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

17 **Sec. 19.** *“Prime contractor” means a person who:*

18 1. *Contracts to construct an entire project;*

19 2. *Coordinates all work performed on the entire project;*

20 3. *Uses his own workforce to perform all or a part of the*
21 *construction of the project; and*

22 4. *Contracts for the services of any subcontractor or independent*
23 *contractor or is responsible for payment to any contracted subcontractors*
24 *or independent contractors.*

25 **Sec. 20.** *“Project” means a project for the construction,*
26 *reconstruction or improvement of a highway.*

27 **Sec. 21.** 1. *The department may contract with a design-build team*
28 *for the design and construction of a project if the department determines*
29 *that:*

30 (a) *Except as otherwise provided in subsection 2, the estimated cost of*
31 *the project exceeds \$30,000,000; and*

32 (b) *Contracting with a design-build team will enable the department*
33 *to:*

34 (1) *Design and construct the project at a cost that is significantly*
35 *lower than the cost that the department would incur to design and*
36 *construct the project using a different method;*

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

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

1 2. Notwithstanding the provisions of subsection 1, the department
2 may, once in each fiscal year, contract with a design-build team for the
3 design and construction of a project the estimated cost of which is at least
4 \$5,000,000 but less than \$30,000,000 if the department makes the
5 determinations otherwise required pursuant to paragraph (b) of
6 subsection 1.

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

10 2. If the department is required to hold a public meeting pursuant to
11 this section, the department shall publish notice of the meeting at least
12 once each week for 3 consecutive weeks in:

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

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

18 **Sec. 23.** If the department desires to contract with a design-build
19 team pursuant to sections 21 and 22 of this act, the department must
20 select the design-build team in accordance with sections 24 to 27,
21 inclusive, of this act.

22 **Sec. 24. 1.** The department shall advertise for preliminary
23 proposals for the design and construction of a project by a design-build
24 team at least twice each week for 3 consecutive weeks in:

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

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

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

32 (a) A description of the proposed project;

33 (b) Separate estimates of the costs of designing and constructing the
34 project;

35 (c) The dates on which it is anticipated that the separate phases of the
36 design and construction of the project will begin and end;

37 (d) A statement setting forth the place and time in which a design-
38 build team desiring to submit a proposal for the project may obtain the
39 information necessary to submit a proposal, including, without
40 limitation, the extent to which designs must be completed for both
41 preliminary and final proposals and any other requirements for the
42 design and construction of the project that the department determines to
43 be necessary;

- 1 (e) A list of the requirements set forth in section 25 of this act;
- 2 (f) A list of the factors that the department will use to evaluate design-
- 3 build teams who submit a proposal for the project, including, without
- 4 limitation:
- 5 (1) The relative weight to be assigned to each factor; and
- 6 (2) A disclosure of whether the factors that are not related to cost
- 7 are, when considered as a group, more or less important in the process of
- 8 evaluation than the factor of cost;
- 9 (g) Notice that a design-build team desiring to submit a proposal for
- 10 the project must include with its proposal the information used by the
- 11 department to determine finalists among the design-build teams
- 12 submitting proposals pursuant to subsection 2 of section 26 of this act
- 13 and a description of that information;
- 14 (h) A statement that a design-build team whose prime contractor
- 15 holds a certificate of eligibility to receive a preference in bidding on
- 16 public works issued pursuant to NRS 338.147 should submit a copy of
- 17 the certificate of eligibility with its proposal;
- 18 (i) A statement as to whether a bidding design-build team that is
- 19 selected as a finalist pursuant to section 26 of this act but is not awarded
- 20 the design-build contract pursuant to section 27 of this act will be
- 21 partially reimbursed for the cost of preparing a final proposal and, if so,
- 22 an estimate of the amount of the partial reimbursement; and
- 23 (j) The date by which preliminary proposals must be submitted to the
- 24 department, which must not be less than 30 days or more than 60 days
- 25 after the date on which the request for preliminary proposals is first
- 26 published in a newspaper pursuant to subsection 1.
- 27 **Sec. 25.** To qualify to participate in the design and construction of a
- 28 project for the department, a design-build team must:
- 29 1. Obtain a performance bond and payment bond as the department
- 30 may require;
- 31 2. Obtain insurance covering general liability and liability for errors
- 32 and omissions;
- 33 3. Not have been found liable for breach of contract with respect to a
- 34 previous project, other than a breach for legitimate cause;
- 35 4. Not have been disqualified from being awarded a contract
- 36 pursuant to NRS 338.017, 338.145 or 408.333; and
- 37 5. Ensure that the members of the design-build team possess the
- 38 licenses and certificates required to carry out the functions of their
- 39 respective professions within this state.
- 40 **Sec. 26.** 1. At least 30 days after the date by which preliminary
- 41 proposals must be submitted to the department, the department shall
- 42 select at least three but not more than five finalists from among the
- 43 design-build teams that submitted preliminary proposals. If the

1 department does not receive at least three preliminary proposals from
2 design-build teams that the department determines to be qualified
3 pursuant to this section and section 25 of this act, the department may
4 not contract with a design-build team for the design and construction of
5 the project.

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

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

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

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

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

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

20 (4) The proposed plan of the design-build team to manage the
21 design and construction of the project that sets forth in detail the ability
22 of the design-build team to design and construct the project.

23 **Sec. 27. 1.** After selecting the finalists pursuant to section 26 of
24 this act, the department shall provide to each finalist a request for final
25 proposals for the project. The request for final proposals must:

26 (a) Set forth the factors that the department will use to select a design-
27 build team to design and construct the project, including the relative
28 weight to be assigned to each factor; and

29 (b) Set forth the date by which final proposals must be submitted to
30 the department.

31 2. A final proposal submitted by a design-build team pursuant to this
32 section must be prepared thoroughly, be responsive to the criteria that the
33 department will use to select a design-build team to design and construct
34 the project described in subsection 1 and comply with the provisions of
35 NRS 338.144. If the cost of construction is a factor in the selection of a
36 design-build team, a design-build team whose prime contractor has
37 submitted with its proposal a certificate of eligibility to receive a
38 preference in bidding on public works issued pursuant to NRS 338.147
39 shall be deemed to have submitted a better proposal than a competing
40 design-build team whose prime contractor has not submitted such a
41 certificate of eligibility if the amount proposed by the design-build team
42 is not more than 5 percent higher than the amount proposed by the
43 competing design-build team.

1 3. At least 30 days after receiving the final proposals for the project,
2 the department shall:

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

5 (b) Reject all the final proposals.

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

8 (a) Review and ratify the selection.

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

11 (c) Partially reimburse the unsuccessful finalists if partial
12 reimbursement was provided for in the request for preliminary proposals
13 pursuant to paragraph (i) of subsection 2 of section 24 of this act. The
14 amount of reimbursement must not exceed, for each unsuccessful
15 finalist, three percent of the total amount to be paid to the design-build
16 team as set forth in the design-build contract.

17 (d) Make available to the public a summary setting forth the factors
18 used by the department to select the successful design-build team and the
19 ranking of the design-build teams who submitted final proposals. The
20 department shall not release to a third party, or otherwise make public,
21 financial or proprietary information submitted by a design-build team.

22 5. A contract awarded pursuant to this section must specify:

23 (a) An amount that is the maximum amount that the department will
24 pay for the performance of all the work required by the contract,
25 excluding any amount related to costs that may be incurred as a result of
26 unexpected conditions or occurrences that arise during construction and
27 are authorized by the contract;

28 (b) An amount that is the maximum amount that the department will
29 pay for the performance of the professional services required by the
30 contract; and

31 (c) A date by which performance of the work required by the contract
32 must be completed.

33 6. A design-build team to whom a contract is awarded pursuant to
34 this section shall:

35 (a) Assume overall responsibility for ensuring that the design and
36 construction of the project is completed in a satisfactory manner; and

37 (b) Use the work force of the prime contractor on the design-build
38 team to construct at least 15 percent of the project.

39 Sec. 28. The department may employ a registered architect or
40 licensed professional engineer as a consultant to assist the department in
41 overseeing the construction of a project. An architect or engineer so
42 employed shall not:

- 1 **1. Design, construct, reconstruct or improve the highway; or**
- 2 **2. Assume overall responsibility for ensuring that the design or**
- 3 **construction of the project is completed in a satisfactory manner.**

4 **Sec. 29.** NRS 408.215 is hereby amended to read as follows:

5 408.215 1. The director has charge of all the records of the
6 department, keeping records of all proceedings pertaining to the department
7 and keeping on file information, plans, specifications, estimates, statistics
8 and records prepared by the department, except those financial statements
9 described in NRS 408.333 ~~and~~ **and the financial or proprietary information**
10 **described in paragraph (d) of subsection 4 of section 27 of this act,** which
11 must not become matters of public record.

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

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

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

20 **Sec. 30.** NRS 408.317 is hereby amended to read as follows:

21 408.317 1. ~~Except as otherwise provided in sections 16 to 28,~~
22 **inclusive, of this act, all** work of construction, reconstruction,
23 improvement and maintenance of highways as provided under the
24 provisions of this chapter is under the supervision and direction of the
25 director and must be performed in accordance with the plans, specifications
26 and contracts prepared by him.

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

29 **Sec. 31.** NRS 408.327 is hereby amended to read as follows:

30 408.327 **Except as otherwise provided in sections 16 to 28, inclusive,**
31 **of this act:**

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

35 2. The advertisement must state the place where the bidders may obtain
36 or inspect the plans and specifications and the time and place for opening
37 the plans and specifications.

38 3. Publication of the advertisement must be made at least once a week
39 for 2 consecutive weeks for a total of at least two publications in a
40 newspaper of general circulation in the county in which the major portion
41 of the proposed improvement or construction is to be made, and the
42 advertisement must also be published at least once a week for 2 consecutive
43 weeks for a total of at least two publications in one or more daily papers of

1 general circulation throughout the state. The first publication of the
2 advertisement in the daily newspapers having general circulation
3 throughout the state must be made not less than 15 days before the time set
4 for opening bids.

5 **Sec. 32.** NRS 408.333 is hereby amended to read as follows:

6 408.333 *Except as otherwise provided in sections 16 to 28, inclusive,*
7 *of this act:*

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

15 2. Such statements must be filed with the director in ample time to
16 permit the department to verify the information contained therein in
17 advance of furnishing proposal forms, plans and specifications to any
18 person proposing to bid on the advertised public work, in accordance with
19 the regulations of the department.

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

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

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

37 **Sec. 33.** NRS 408.337 is hereby amended to read as follows:

38 408.337 *Except as otherwise provided in sections 16 to 28, inclusive,*
39 *of this act:*

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

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

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

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

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

Sec. 34. NRS 408.343 is hereby amended to read as follows:

408.343 *Except as otherwise provided in sections 16 to 28, inclusive, of this act:*

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

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

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

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

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

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

Sec. 35. NRS 625.530 is hereby amended to read as follows:

625.530 *Except as otherwise provided in sections 2 to 9, inclusive, and 16 to 28, inclusive, of this act:*

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

2. The provisions of this section do not:

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

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

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

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

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

Sec. 36. NRS 341.171 is hereby repealed.

Sec. 37. 1. The interim advisory committee to study the use of design-build contracting within this state is hereby created. The interim advisory committee consists of 16 members who are appointed as follows:

(a) One member appointed by the Northern Nevada Chapter of the Associated General Contractors.

(b) One member appointed by the Southern Nevada Chapter of the Associated General Contractors.

(c) One member appointed by the Northern Nevada Chapter of the Associated Builders and Contractors.

1 (d) One member appointed by the Southern Nevada Chapter of the
2 Associated Builders and Contractors.

3 (e) One member appointed by the Nevada chapter of the American
4 Institute of Architecture.

5 (f) One member appointed by the American Consulting Engineers
6 Council of Nevada.

7 (g) One member appointed by the Department of Transportation of the
8 State of Nevada.

9 (h) One member appointed by the Southern Nevada Water Authority.

10 (i) One member appointed by the Board of County Commissioners of
11 Clark County.

12 (j) One member appointed by the governing body of the City of Las
13 Vegas.

14 (k) One member appointed by the governing body of the City of
15 Henderson.

16 (l) One member appointed by the governing body of the City of North
17 Las Vegas.

18 (m) One member appointed by the Nevada Contractors Association.

19 (n) One member appointed by the Board of County Commissioners of
20 Washoe County.

21 (o) One member appointed by the governing body of the City of Reno.

22 (p) One member appointed by the governing body of the City of Sparks.

23 2. Members of the interim advisory committee shall serve without
24 compensation, travel expenses or subsistence allowances, except as they
25 may be provided by the members' respective agencies and organizations.

26 3. The interim advisory committee created pursuant to subsection 1
27 shall:

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

30 (b) Submit a report regarding its findings to the 72nd session of the
31 Nevada Legislature, accompanied by any suggestions for legislation that
32 the interim advisory committee determines to be advisable.

33 **Sec. 38.** 1. This section becomes effective on October 1, 1999.

34 2. Sections 1 to 10, inclusive, 13 and 14 to 37, inclusive, of this act
35 become effective on October 1, 1999, and expire by limitation on October
36 1, 2003.

37 3. Section 11 of this act becomes effective on October 1, 1999, and
38 expires by limitation on May 1, 2013.

39 4. Section 13.5 of this act becomes effective at 12:01 a.m. on
40 October 1, 2003.

41 5. Section 12 of this act becomes effective at 12:01 a.m. on May 1,
42 2013.

TEXT OF REPEALED SECTION

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.