

Senate Bill No. 255—Committee on Government Affairs

CHAPTER.....

AN ACT relating to public works; requiring and authorizing certain terms in a contract between a design professional who is a member of a design-build team and a public body; prohibiting a public body from requiring a design professional to indemnify the public body against any liability in a contract with the design professional; providing an exception to such a prohibition; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 338.010 is hereby amended to read as follows:

338.010 As used in this chapter:

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

2. “Design-build contract” means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.

3. “Design-build team” means an entity that consists of:

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

(b) For a public work that consists of:

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

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

4. “Design professional” means ~~“a person with a professional license or certificate issued pursuant to chapter 623, 623A or 625 of NRS.”~~ :

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

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

(c) A person who holds a certificate of registration to engage in the practice of architecture pursuant to chapter 623 of NRS;

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

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

5. “Eligible bidder” means a person who is:

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

(b) Determined by a public body which awarded a contract for a public work pursuant to NRS 338.1375 to 338.1389, inclusive, to be qualified to

bid on that contract pursuant to NRS 338.1379 or was exempt from meeting such qualifications pursuant to NRS 338.1383.

6. "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision.

7. "Offense" means failing to:

- (a) Pay the prevailing wage required pursuant to this chapter;
- (b) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS; or
- (c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS.

8. "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 work force 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.

9. "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.

10. "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 that is a part of a project is included in the cost of the project to determine whether a project meets that 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 this state or from federal money.

11. "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.

12. "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 design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 338.1711.

13. "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.

14. "Workman" means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman. The term does not include a design professional.

Sec. 2. NRS 338.155 is hereby amended to read as follows:

338.155 **1.** 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)** Must set forth:

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

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

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

~~(d)~~ **subparagraph (1).**

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

~~(2)~~ **(b)** May set forth the terms of any discount that the public body will receive if the public body pays the design professional within the specific period set forth in the contract pursuant to ~~paragraph (a) of subsection 1~~ **subparagraph (1) of paragraph (a).**

(c) *May set forth the terms by which the design professional agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the design professional.*

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

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

2. Any provision of a contract that is in violation of paragraph (d) of subsection 1 is declared to be contrary to the public policy of this state and is void.

Sec. 3. NRS 338.155 is hereby amended to read as follows:

338.155 1. If a public body enters into a contract with a design professional for the provision of services in connection with a public work, the contract:

(a) Must set forth:

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

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

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

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

(b) May set forth the terms of any discount that the public body will receive if the public body pays the design professional within the specific period set forth in the contract pursuant to subparagraph (1) of paragraph (a).

(c) May set forth the terms by which the design professional agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the design professional.

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

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

2. Any provision of a contract that is in violation of paragraph (d) of subsection 1 is declared to be contrary to the public policy of this state and is void.

3. As used in this section, “design professional” means ~~“a person with a professional license or certificate issued pursuant to chapter 623, 623A or 625 of NRS.”~~ :

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

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

(c) A person who holds a certificate of registration to engage in the practice of architecture pursuant to chapter 623 of NRS; and

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

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

Sec. 4. NRS 338.1727 is hereby amended to read as follows:

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

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

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

2. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly, be responsive to the criteria that the public body will use to select a design-build team to design and construct the public work described in subsection 1 and comply with the provisions of NRS 338.141. If the cost of construction is a factor in the selection of a design-build team, a design-build team whose prime contractor has submitted with its proposal a certificate of eligibility to receive a preference in bidding on public works issued pursuant to NRS 338.1389 or 338.147 shall be deemed to have submitted a better proposal than a competing design-build team whose prime contractor has not submitted such a certificate of eligibility if the amount proposed by the design-build team is not more than 5 percent higher than the amount proposed by the competing design-build team.

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

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

(b) Reject all the final proposals.

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

(a) Review and ratify the selection.

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

(c) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (i) of subsection 2 of NRS 338.1723. The amount of reimbursement must not exceed, for each unsuccessful finalist, 3 percent of

the total amount to be paid to the design-build team as set forth in the design-build contract.

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

5. A contract awarded pursuant to this section : ~~{must specify:}~~

(a) *Must specify:*

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

~~{(b)}~~ *(2) An amount that is the maximum amount that the public body will pay for the performance of the professional services required by the contract; and*

~~{(c)}~~ *(3) A date by which performance of the work required by the contract must be completed.*

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

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

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

6. Any provision of a contract that is in violation of paragraph (c) of subsection 5 is declared to be contrary to the public policy of this state and is void.

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

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

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

Sec. 5. The amendatory provisions of this act do not apply to contracts entered into before October 1, 2001.

Sec. 6. 1. This section and sections 1, 2, 4 and 5 of this act become effective on October 1, 2001.

2. Sections 1, 2 and 4 of this act expire by limitation on October 1, 2003.
3. Section 3 of this act becomes effective at 12:01 a.m. on October 1, 2003.