

SENATE BILL NO. 473—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 23, 2001

Referred to Committee on Government Affairs

SUMMARY—Authorizes public bodies to use indefinite quantity contracts for certain public works projects. (BDR 28-746)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public works projects; authorizing public bodies to use indefinite quantity contracts for certain public works projects; 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 10, inclusive, of this act.  
3     **Sec. 2.** *As used in sections 2 to 10, inclusive, of this act, the words*  
4     *and terms defined in sections 3 and 4 of this act have the meanings*  
5     *ascribed to them in those sections.*  
6     **Sec. 3.** *“Indefinite quantity contract” means a contract which:*  
7     1. *Provides for the completion of various public works as set forth in*  
8     *a catalog of construction tasks developed pursuant to section 6 of this*  
9     *act; and*  
10    2. *Requires a public body to award a minimum dollar amount of*  
11    *work to the contractor.*  
12    **Sec. 4.** *“Normal business hours” means 6 a.m. to 6 p.m., Monday*  
13    *through Friday, except legal holidays declared pursuant to NRS 236.015.*  
14    **Sec. 5.** 1. *A public body may award an indefinite quantity contract*  
15    *to a successful bidder pursuant to sections 2 to 10, inclusive, of this act.*  
16    2. *Except as otherwise provided in this section, a public body that*  
17    *desires to award an indefinite quantity contract must accept bids and*  
18    *award the contract in the manner provided for bidding and awarding a*  
19    *contract for a public work pursuant to NRS 338.1375 to 338.1389,*  
20    *inclusive. A public body that is a local government may accept bids and*  
21    *award an indefinite quantity contract in the manner provided for bidding*  
22    *and awarding a contract for a public work pursuant to NRS 338.143,*  
23    *338.145 and 338.147.*



- 1     3. For the purposes of NRS 338.1385 and 338.143, an indefinite  
2     quantity contract shall be deemed to be a project for which the estimated  
3     cost exceeds \$100,000.
- 4     4. After awarding an indefinite quantity contract, a public body may  
5     issue orders for work pursuant to section 10 of this act without  
6     complying with the provisions of NRS 338.1375 to 338.1389, inclusive, or  
7     the provisions of NRS 338.143, 338.145 and 338.147.
- 8     5. For the purposes of NRS 338.400 to 338.645, inclusive:  
9     (a) An order for work issued pursuant to section 10 of this act is a  
10    contract; and  
11    (b) An indefinite quantity contract is not a contract.
- 12    Sec. 6. A public body that desires to award an indefinite quantity  
13    contract must develop:  
14    1. A catalog of construction tasks which must:  
15    (a) Contain a list of public works that may be requested of the  
16    contractor pursuant to the indefinite quantity contract;  
17    (b) Define what constitutes a unit of each public work listed in the  
18    catalog; and  
19    (c) Set forth a per-unit price for each public work listed in the catalog,  
20    the price of which must be based upon prevailing wages and local costs  
21    for materials and equipment necessary to perform a unit of the public  
22    work; and  
23    2. Specifications and standard drawings, if appropriate, for each  
24    public work listed in the catalog of construction tasks.
- 25    Sec. 7. An advertisement for bids on an indefinite quantity contract  
26    must include an address from which a bidder may obtain a copy of the  
27    catalog of construction tasks developed pursuant to section 6 of this act  
28    and the specifications and standards for the public works contained in  
29    the catalog.
- 30    Sec. 8. 1. A contractor who desires to bid on an indefinite quantity  
31    contract must submit as a bid:  
32    (a) An adjustment factor for work which is subject to the provisions of  
33    NRS 338.020 to 338.090, inclusive, and which is performed during  
34    normal business hours that is calculated by determining the percentage  
35    of the per-unit prices established by the public body for which the  
36    contractor agrees to complete the public works contained in the catalog  
37    of construction tasks during normal business hours;  
38    (b) An adjustment factor for work which is subject to the provisions of  
39    NRS 338.020 to 338.090, inclusive, and which is performed during times  
40    other than normal business hours that is calculated by determining the  
41    percentage of the per-unit prices established by the public body for which  
42    the contractor agrees to complete any of the public works contained in  
43    the catalog of construction tasks during times other than normal  
44    business hours;  
45    (c) An adjustment factor for work which is not subject to the  
46    provisions of NRS 338.020 to 338.090, inclusive, and which is performed  
47    during normal business hours that is calculated by determining the  
48    percentage of the per-unit prices established by the public body for which



1 *the contractor agrees to complete any of the public works contained in*  
2 *the catalog of construction tasks during normal business hours; and*

3 *(d) An adjustment factor for work which is not subject to the*  
4 *provisions of NRS 338.020 to 338.090, inclusive, and which is performed*  
5 *at times other than normal business hours that is calculated by*  
6 *determining the percentage of the per-unit prices established by the*  
7 *public body for which the contractor agrees to complete any of the public*  
8 *works contained in the catalog of construction tasks during times other*  
9 *than normal business hours.*

10 *2. A contractor who submits a bid on an indefinite quantity contract*  
11 *is not required to submit the information described in NRS 338.141 with*  
12 *his bid.*

13 **Sec. 9.** *An indefinite quantity contract must include, without*  
14 *limitation:*

15 *1. The adjustment factors submitted pursuant to section 8 of this act*  
16 *by the contractor;*

17 *2. A minimum dollar amount of work which the public body agrees*  
18 *to provide to the contractor pursuant to the contract;*

19 *3. A method for amending the catalog of construction tasks to*  
20 *include additional public works and a formula for determining a per-unit*  
21 *price for public works that are added to the catalog of construction tasks;*

22 *4. A method for issuing orders for work to the contractor;*

23 *5. A method for resolving disputes between a public body and the*  
24 *contractor who is a party to the indefinite quantity contract; and*

25 *6. A method for annually reviewing and revising, if necessary, the*  
26 *adjustment factors submitted pursuant to section 8 of this act. The*  
27 *method must be based upon a price index of construction costs that is*  
28 *nationally recognized in the construction industry, as determined by the*  
29 *public body.*

30 **Sec. 10.** *1. If a public body desires to have a public work completed*  
31 *pursuant to an indefinite quantity contract, the public body must describe*  
32 *the scope of work to the contractor in writing.*

33 *2. After receiving the description of the scope of work pursuant to*  
34 *subsection 1, the contractor shall prepare and submit to the public body a*  
35 *proposal in writing that must include, without limitation:*

36 *(a) An estimated cost of the project determined pursuant to*  
37 *subsection 3;*

38 *(b) A schedule for completing the project; and*

39 *(c) The information required to be submitted with a bid on a contract*  
40 *for public work pursuant to NRS 338.141.*

41 *3. The estimated cost of a project submitted pursuant to subsection 2*  
42 *must be in an amount equal to the number of units of the project to be*  
43 *completed by the contractor during normal business hours multiplied by*  
44 *the adjusted price for work performed during normal business hours plus*  
45 *the number of units of the project to be completed during times other*  
46 *than normal business hours multiplied by the adjusted price for work*  
47 *performed during times other than normal business hours. The adjusted*  
48 *price for work performed during normal business hours is equal to the*  
49 *per-unit price of the public work set forth in the catalog of construction*



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1 *tasks pursuant to section 6 of this act multiplied by the appropriate*  
2 *adjustment factor submitted pursuant to section 8 of this act for work*  
3 *performed during normal business hours. The adjusted price for work*  
4 *performed during times other than normal business hours is equal to the*  
5 *per-unit price of the public work set forth in the catalog of construction*  
6 *tasks pursuant to section 6 of this act multiplied by the appropriate*  
7 *adjustment factor submitted pursuant to section 8 of this act for work*  
8 *performed during times other than normal business hours.*

9 4. *After receiving a proposal pursuant to subsection 2, a public body*  
10 *shall review the proposal and:*

11 (a) *If the public body agrees with the proposal, submit an order for*  
12 *work to the contractor that must include, without limitation:*

13 (1) *The scope of work for the project;*

14 (2) *The estimated cost of the project; and*

15 (3) *The schedule for completing the project; or*

16 (b) *If the public body does not agree with the proposal, reject the*  
17 *proposal.*

18 5. *If a public body rejects a proposal pursuant to subsection 4, the*  
19 *contractor may amend the proposal and resubmit the proposal to the*  
20 *public body.*

21 6. *A public body shall not:*

22 (a) *Issue an order for work pursuant to this section for a project with*  
23 *an estimated cost of more than \$1,000,000; or*

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

26 **Sec. 11.** NRS 338.141 is hereby amended to read as follows:

27 338.141 1. Except as otherwise provided in subsection 2 ~~§~~ *and*  
28 *section 8 of this act*, each bid submitted to any officer, department, board  
29 or commission for the construction of any public work or improvement  
30 must include:

31 (a) The name of each subcontractor who will provide labor or a portion  
32 of the work or improvement to the contractor for which he will be paid an  
33 amount exceeding 5 percent of the prime contractor's total bid. Within 2  
34 hours after the completion of the opening of the bids, the general  
35 contractors who submitted the three lowest bids must submit a list of the  
36 name of each subcontractor who will provide labor or a portion of the work  
37 or improvement to the contractor for which he will be paid an amount  
38 exceeding 1 percent of the prime contractor's total bid or \$50,000,  
39 whichever is greater, and the number of the license issued to the  
40 subcontractor pursuant to chapter 624 of NRS. If a general contractor fails  
41 to submit such a list within the required time, his bid shall be deemed not  
42 responsive.

43 (b) A description of the portion of the work or improvement which each  
44 subcontractor named in the bid will complete.

45 2. The contractor shall list in his bid pursuant to subsection 1 the name  
46 of a subcontractor for each portion of the project that will be completed by  
47 a subcontractor.

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



- 1 (a) The awarding authority objects to the subcontractor, requests in
- 2 writing a change in the subcontractor and pays any increase in costs
- 3 resulting from the change; or
- 4 (b) The substitution is approved by the awarding authority and:
- 5 (1) The subcontractor, after having a reasonable opportunity, fails or
- 6 refuses to execute a written contract with the contractor which was offered
- 7 to the subcontractor with the same terms that all other subcontractors on
- 8 the project were offered;
- 9 (2) The named subcontractor files for bankruptcy or becomes
- 10 insolvent; or
- 11 (3) The named subcontractor fails or refuses to perform his
- 12 subcontract within a reasonable time or is unable to furnish a performance
- 13 bond and payment bond pursuant to NRS 339.025.
- 14 **Sec. 12.** This act becomes effective on July 1, 2001.

