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Walker & Associates

661 Genoa Lane Minden, Nevada 89423

June 11, 2002

Senator Michael Schneider, Chairman
Legislative Committee to Study Competition
Between Local Governments and Private Enterprises
Legislative Building
401 S. Carson Street
Carson City, Nevada 89701-4747

Dear Senator Schneider:

Please find attached the final bill draft language in concurrence with the conceptual proposal on public works projects under \$100,000 submitted to your Committee by the Associated General Contractors and myself a few months ago. I am pleased to report representatives of local governments and the Associated General Contractors have worked very cooperatively on this bill draft over the last few months and have come to final agreement regarding the language.

This bill draft language allows local governments to bid smaller public works projects in a more timely and efficient basis. This will allow more public works projects to be performed by the private sector while addressing the needs of the public in a more expedited manner.

I want to take this opportunity to thank you and the Committee for giving local governments and the private sector the opportunity to work together to discuss problem areas and potential solutions. It has been very fruitful and we are appreciative of your direction and guidance.

If you have any questions, please do not hesitate to contact me at any time.

Sincerely,

Mary C. Walker, CPA

EXHIBIT J Senate Committee on Gov't Affairs

Date: 03/12/03 Page 1 of 6

NRS 338.010 Definitions. 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) 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 338.139, 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. "General contractor" means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business:
 - (a) General engineering contracting, as described in subsection 2 of NRS 624.215.
 - (b) General building contracting, as described in subsection 3 of NRS 624.215.
7. "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.
8. "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;
 - (c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS.; or
 - (d) Comply with subsection 4 or 5 of NRS 338.070.
9. "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.The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to NRS 338.139 or 338.148.
10. "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.
11. "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.

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

13. "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.

14. "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.

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

[1 1/2:139:1937; added 1941, 389; 1931 NCL § 6179.51 1/2]—(NRS A 1969, 735; 1979, 1288; 1981, 526; 1983, 130, 1573; 1989, 1965; 1993, 392, 2131, 2247; 1995, 691; 1999, 1849, 1991, 2396, 3472, 3502; 2001, 252, 1143, 1268, 2022, 2258, 2276)

NRS 338.142 Public works projects estimated to cost less than \$100,000; rejection of bids; public body commencement of a project procedure.

1. Except as otherwise provided in subsection 3, a public body or its authorized representative that awards a contract for a public work shall:

(a) Not issue a contract for which the estimated cost is more than \$25,000, but not more than \$100,000, unless bids are solicited from three or more properly licensed contractors;

(b) Not issue a contract for which the estimated cost is \$25,000 or less, unless bids are solicited and received from at least one properly licensed contractor.

(c) Not divide such a project into separate portions to avoid the requirements of NRS 338.143, NRS 338.1385 or paragraph (a) above.

(d) Report to the public body on at least a quarterly basis, any public work project over \$25,000 awarded by its authorized representative pursuant to this section specifying the name of the contractor who was awarded the contract, the amount of the contract, a brief description of the project, and the names of the contractors solicited.

2. Any bids received in response to a solicitation for bids may be rejected if the person responsible for awarding the contract determines that:

(a) The bidder is not responsive or responsible;

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

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

3. Before the public officer responsible for the management of the public works projects commences a project for which the estimated cost is more than \$25,000, but not more than \$100,000, the public officer shall document in its files, an attestation to the best of the public officer's knowledge:

(a) the estimated cost of the project being performed in-house;

(b) a general statement why the project was performed in-house; and

(c) a general statement that the project follows the same quality and standards as would be required by a contractor on a comparable project.

NRS 338.143 Advertising for bids required for certain projects estimated to exceed \$100,000; [soliciting bids by mail required for certain projects;] plans and specifications concerning project must be available for public inspection; rejection of bids; exemptions. Effective through April 30, 2013.

1. Except as otherwise provided in subsection 6 and NRS 338.1907, a local government that awards a contract for the construction, alteration or repair of a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373, or a public officer, public employee or other person responsible for awarding a contract for the construction, alteration or repair of a public work who represents that local government, shall not:

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

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

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

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

3. ~~[4.]~~ Any bids received in response to an advertisement for bids may be rejected if the person responsible for awarding the contract determines that:

(a) The bidder is not responsive or responsible;

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

or

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

4. ~~[5.]~~ Before a local government may commence a project subject to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, it shall prepare and make available for public inspection a written statement containing:

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

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

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

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

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the project itself.

5. ~~[6.]~~ This section does not apply to:

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

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

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

(d) The Las Vegas Valley water district created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley water district created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley water district created pursuant to chapter 100, Statutes of Nevada 1993; or

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

June 26, 2002

Associated General Contractors changes to Bill Draft for Public Works Projects Under \$100,000.

- 1) NRS 338.1385 paragraph 4 (b). Eliminate the term "or responsible".

This will bring the language back to current law.

- 2) NRS 338.142 paragraph 3. Paragraph 3 should read as follows:

Before the public officer responsible for the management of the public works projects commences a project for which the estimated cost is more than \$25,000, but not more than \$100,000, the public officer shall document in its files, [an] a signed attestation to the best of the public officer's knowledge providing:

- (a) the estimated cost of the project being performed in-house;
- (b) a general statement why the project was performed in-house; and
- (c) a general statement that the project follows the same quality and standards as would be required by a contractor on a comparable project.