

Proposed Amendment

Nevada AGC

Craig Madole, CEO

S.B. 315

Sec. 10. 1. The Department shall prepare and issue:

(a) In a one-step procurement process, a request for proposals containing the elements described in subsections 2, 3 and 4; or

(b) In a two-step procurement process, a request for qualifications containing the elements described in subsections 2 and 3 followed by a request for proposals containing the elements described in subsection 4.

2. The eligibility requirements that must be demonstrated by applicants include, without limitation:

(a) Evidence of the ability of the applicant to obtain necessary bonding for the work required by the Department to be performed;

(b) Evidence of the ability of the applicant to obtain such insurance as may be required by law, **provided that the insurance requirements for an engineer must not exceed the insurance requirements typically required by the department in its standard professional services contract for engineers;**

(c) Evidence that the prime contractor is qualified to bid on a public work pursuant to NRS 338.1379;

(d) Evidence that the members of the progressive design-build team possess the licenses and certificates necessary to carry out their functions in this State; and

(e) A statement of whether the applicant has been:

(1) Found liable for breach of contract with respect to a previous project, other than a breach of contract for a legitimate cause, during the 5 years immediately preceding the date on which the solicitation was advertised pursuant to section 9 of this act; and

(2) Disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333.

3. The qualification requirements must set forth:

(a) The factors that the Department will use to qualify a progressive design-build team, including, without limitation, the relative weight to be assigned to each factor. Such factors may include, without limitation:

(1) The professional qualifications and experience of the applicant; and

(2) The performance history of the members of the progressive design-build team concerning other recent,

similar projects completed by those members, if any.

(b) The date by which statements of qualifications must be submitted to the Department.

4. The request for proposals must set forth:

(a) The factors that the Department will use to select a progressive design-build team, including, without limitation, the relative weight to be assigned to each factor. Such factors may include, without limitation:

(1) The professional qualifications and experience of the applicant;

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

(3) The proposed plan to manage and carry out the preconstruction phase of the project;

(4) The proposed plan to manage and carry out the final design and construction phase of the project;

(5) The proposed conceptual and technical approach to the project;

(6) **Except as otherwise provided in this subsection** the proposed approach to pricing and estimating the cost of the final design and construction of the project; and

(7) **Except as otherwise provided in this subsection** cost information.

(b) The date by which the proposals must be submitted to the Department.

(c) The requirement that the proposal comply with the provisions of NRS 338.141.

(d) The provisions of this subsection must comply with NRS625.530.

5. After the deadline for submission of a statement of qualifications or proposals, the Department shall review the submissions. The Department may evaluate submissions based solely upon the information provided in the statement of qualifications or proposals of each applicant. After review of the submissions, the Department may interview some or all of the applicants to further evaluate which applicant offers the best value for the project.

6. For each request for qualifications or proposals, the Department shall rank the applicants and generate a final list of eligible applicants that participated in the request for qualifications or proposals before entering into negotiations for one or more contracts to which the request for qualifications or proposals applies. The ranking of the statements of qualifications or proposals must assign a relative weight of 5 percent to the possession by the applicant of a certificate of eligibility to receive a preference in

bidding on public works if the applicant submits a signed affidavit that the applicant meets the requirements of subsection 1 of NRS 338.0117. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection, the provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance.

7. If the Department issues a request for qualifications pursuant to this section, the Department must select at least two but not more than five applicants from the final list of eligible applicants who submitted statements of qualifications and send the selected applicants a request for proposals which includes the information contained in subsection 4.

8. If applicants are required to submit cost information with their proposals for the preconstruction phase of the project, the evaluation must be on a pass or fail basis or based on not more than 20 percent of the scoring, as the Department deems appropriate. **The provisions of this subsection must comply with NRS625.530.**

9. If the submissions in response to a request for proposals provide sufficient information to determine which eligible applicant has offered the best value to the public, the Department may enter into negotiations with that applicant concerning contract terms and award a contract for preconstruction services to that applicant. Such a contract must provide for the subsequent negotiations of terms governing the construction phase of the project. If the Department is unable to negotiate a satisfactory contract with that applicant for preconstruction services, the Department may undertake negotiations with a separate eligible applicant that participated in the request for proposals process.

10. Upon receipt of the final rankings of applicants, the Department shall enter into negotiations with the highest ranked applicant determined pursuant to the provisions of this section. If the Department is unable to negotiate a contract with the highest ranked applicant determined by the Department to be fair and reasonable, the Department may terminate or suspend negotiations with the highest ranked applicant. The Department may undertake negotiations with the next highest ranked applicant in sequence until an agreement is reached or until a determination is made by the Department to reject all applicants.

11. For the purposes of this act, the provisions of NRS338.155 apply to contracts that include design professionals participating on a progressive design build team that enters into any contract with the Department pursuant to this act.

Sec. 12. 1. A progressive design-build contract or contract amendment entered into by the Department with a progressive design-build team pursuant to section 11 of this act must:

(a) Comply with the provisions of NRS 338.013 to 338.090, inclusive; and

(b) Specify:

(1) An amount that is the maximum amount that the Department 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 or change orders as authorized by the contract;

(2) An amount that is the maximum amount that the Department will pay for the performance of the professional Services required by the contract; and

(3) A date or duration by which performance of the work required by the contract must be completed.

2. The Department, the progressive design-build team, any contractor who is awarded a contract or enters into an agreement to perform work on the project and any subcontractor who performs work on the project shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the Department had undertaken the project or had awarded the contract.

3. A progressive design-build team to whom a progressive design-build contract is awarded pursuant to section 11 of this act shall:

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

(b) Use the workforce of the prime contractor on the progressive design-build team to construct at least **30** ~~15~~ percent of the project.