

SENATE BILL NO. 201—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 1, 2007

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works.
(BDR 28-526)

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; authorizing a public body to contract with a construction manager at risk for the preconstruction and construction of a public work; setting forth the method for selecting a construction manager at risk; authorizing a public body to hire a construction manager as agent to assist the public body in overseeing the construction of a public work; requiring local governments to conduct a constructability review under certain circumstances before constructing certain public works; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Sections 2-12** of this bill authorize a public body to enter into contracts with a
2 construction manager at risk for the preconstruction and construction of a public
3 work and provide the method for selecting a construction manager at risk. Under
4 the construction manager at risk method for constructing a public work, a public
5 body may enter into a contract for a negotiated price with a construction manager at
6 risk to provide preconstruction services for the public work that include, without
7 limitation, design support, construction estimating, value and system analysis and
8 scheduling. After the public body has obtained the final design for the public work,
9 the public body and the construction manager at risk are required to attempt to
10 negotiate a contract for the construction manager at risk to construct the public
11 work. If the public body and the construction manager at risk enter into such a
12 contract, the contract must be for a guaranteed maximum price, a fixed price or a
13 fixed price plus reimbursement for overhead and other costs and expenses related to
14 the construction of the public work.



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Section 14 of this bill requires a local government or its authorized representative to conduct a constructability review to determine if the plans and specifications for a public work are complete and contain all necessary information, if: (1) such plans and specifications are to be used for the first time on a public work; or (2) such plans and specifications are for a public work that has an estimated cost which exceeds \$10,000,000. This review must be performed by a contractor licensed pursuant to chapter 624 of NRS.

Sections 13 and 21 authorize a public body to employ a construction manager as agent to assist the public body in overseeing the construction of a public work. A construction manager as agent assists in the planning, scheduling and management of a public work without assuming any responsibility for the cost, quality or timely completion of the construction of the public work. A construction manager as agent is prohibited from taking part in the design or construction of the public work.

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

Section 1. Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this act.

Sec. 2. *A public body may construct a public work by:*

1. Selecting a construction manager at risk pursuant to the provisions of sections 4 to 8, inclusive, of this act; and

2. Entering into separate contracts with a construction manager at risk:

(a) For preconstruction services, including, without limitation:

(1) Determining whether scheduling or design problems exist that would delay the construction of the public work;

(2) Estimating the cost of the labor and material for the public work; and

(3) Assisting the public body in determining whether the public work can be constructed within the public body's budget; and

(b) To construct the public work.

Sec. 3. *To qualify to enter into contracts with a public body for preconstruction services and to construct a public work, a construction manager at risk must:*

1. Not have been found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause, during the 5 years immediately preceding the date of the advertisement for statements of qualifications pursuant to section 4 of this act;

2. Not have been disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333;

3. Be licensed as a contractor pursuant to chapter 624 of NRS; and



1 4. If the project is for the design of a public work of the State,
2 be qualified to bid on a public work of the State pursuant to
3 NRS 338.1379.

4 **Sec. 4.** 1. A public body shall advertise for statements of
5 qualifications for a construction manager at risk in a newspaper
6 qualified pursuant to chapter 238 of NRS that is published in the
7 county where the public work will be performed. If no qualified
8 newspaper is published in the county where the public work will
9 be performed, the required advertisement must be published in
10 some qualified newspaper that is printed in the State of Nevada
11 and has a general circulation in the county.

12 2. A request for a statement of qualifications published
13 pursuant to subsection 1 must include, without limitation:

14 (a) A description of the public work;

15 (b) An estimate of the cost for preconstruction services;

16 (c) A description of the work that the public body expects a
17 construction manager at risk to perform;

18 (d) The dates on which it is anticipated that the separate
19 phases of the design and construction of the public work will
20 begin and end;

21 (e) The date by which statements of qualifications must be
22 submitted to the public body;

23 (f) If the project is a public work of the State, a statement
24 setting forth that the construction manager at risk must be
25 qualified to bid on a public work of the State pursuant to NRS
26 338.1379 before submitting a statement of qualifications;

27 (g) The name, title, address and telephone number of a person
28 employed by the public body that an applicant may contact for
29 further information regarding the public work; and

30 (h) A list of the selection criteria and relative weight of the
31 selection criteria that will be used to evaluate statements of
32 qualifications.

33 3. A statement of qualifications must include, without
34 limitation:

35 (a) An explanation of the experience that the applicant has
36 with projects of similar size and scope;

37 (b) The contact information for references who have
38 knowledge of the background, character and technical
39 competence of the applicant;

40 (c) The applicant's preliminary proposal for managing the
41 preconstruction and construction of the public work;

42 (d) Evidence of the ability of the applicant to obtain the
43 necessary bonding for the work to be required by the public body;

44 (e) Evidence that the applicant has obtained insurance
45 covering general liability and liability for errors and omissions;



(f) 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 for legitimate cause; and

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

(g) Evidence of the financial condition of the applicant.

Sec. 5. 1. The public body shall appoint a panel consisting of at least three members to rank the statements of qualifications submitted to the public body by evaluating the statements of qualifications as required pursuant to subsections 2 and 3.

2. The panel shall rank the statements of qualifications by:

(a) Verifying that each applicant satisfies the requirements of section 3 of this act; and

(b) Conducting an evaluation of the qualifications of each applicant based on the factors and relative weight assigned to each factor that the public body specified in the request for statements of qualifications advertised pursuant to section 4 of this act.

3. When ranking the statements of qualifications, the panel shall assign a relative weight of 5 percent to the possession of a certificate of eligibility to receive a preference in bidding on public works.

4. After the panel ranks the statements of qualifications, the public body shall:

(a) Make available to the public the results of the panel's evaluations of the statements of qualifications and the rankings of the applicants; and

(b) Except as otherwise provided in subsection 5, select at least the two but not more than the five applicants that the panel determined to be most qualified as finalists to submit final proposals to the public body pursuant to section 6 of this act.

5. If the public body did not receive at least two statements of qualifications from applicants that the panel determines to be qualified pursuant to this section and section 3 of this act, the public body may not contract with a construction manager at risk.

Sec. 6. 1. After the finalists are selected pursuant to paragraph (b) of subsection 4 of section 5 of this act, the public body shall provide to each finalist a request for final proposals. The request for final proposals must:

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

(b) Set forth the proposed forms of the contract to assist in the preconstruction of the public work and the contract to construct the public work that include, without limitation, the terms and general conditions of the contracts; and



(c) Set forth the selection criteria and relative weight of the selection criteria that will be used to evaluate the final proposals.

2. A final proposal must include, without limitation:

(a) The professional qualifications and experience of the applicant, including, without limitation, the resumes of any employees of the applicant who will be managing the preconstruction and construction of the public work;

(b) The performance history of the applicant concerning other recent, similar projects completed by the applicant, if any;

(c) The safety programs established and the safety records accumulated by the applicant;

(d) The proposed plan of the applicant to manage the preconstruction and construction of the public work, which plan sets forth in detail the ability of the applicant to provide preconstruction services and to construct the public work;

(e) A proposed plan of the applicant for the selection of any necessary subcontractors; and

(f) A detailed estimate of the proposed fee for the preconstruction services that the applicant will provide to the public body related to the public work.

Sec. 7. 1. The panel appointed by the public body pursuant to section 5 of this act shall evaluate and assign a score to each of the final proposals received by the public body based on the factors and relative weight assigned to each factor that the public body specified in the request for final proposals. The panel shall interview the two or three applicants whose final proposals received the highest scores. After conducting such interviews, the panel shall rank the applicants based on the final proposals and interviews, which must be given equal weight.

2. Upon receipt of the final rankings of the applicants from the panel, the public body shall enter into negotiations with the most qualified applicant determined pursuant to subsection 1 for a contract for preconstruction services. If the public body is unable to negotiate a contract with the most qualified applicant at an amount of compensation that the public body and the most qualified applicant determine to be fair and reasonable, the public body shall terminate negotiations with that applicant. The public body may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached or a determination is made by the public body to reject all applicants.

3. The public body shall make available to the applicants and the public the results of the evaluations of final proposals and interviews conducted pursuant to subsection 1 and the final rankings of the applicants.



Sec. 8. 1. *If a public body enters into a contract with a construction manager at risk for preconstruction services pursuant to section 7 of this act, after the public body has finalized the design for the public work, the public body and construction manager at risk shall enter into negotiations with the construction manager at risk for a contract to construct the public work for the public body at:*

- (a) A guaranteed maximum price;*
- (b) A fixed price; or*
- (c) A fixed price plus reimbursement for overhead and other costs and expenses related to the construction of the public work.*

2. *If the public body is unable to negotiate a satisfactory contract with the construction manager at risk to construct the public work, the public body:*

- (a) Shall terminate negotiations with that applicant; and*
- (b) May award the contract for the public work:*
 - (1) If the public body is not a local government, pursuant to the provisions of NRS 338.1377 to 338.139, inclusive.*
 - (2) If the public body is a local government, pursuant to the provisions of NRS 338.1377 to 338.139, inclusive, or 338.143 to 338.148, inclusive, and section 14 of this act.*

Sec. 9. *A contract entered into pursuant to section 8 of this act that is for a guaranteed maximum price may include a provision that authorizes the construction manager at risk to receive all or part of any difference between the guaranteed maximum price set forth in the contract and the actual price of construction of the public work, if the actual price is less than the guaranteed maximum price.*

Sec. 10. *A contract awarded to a construction manager at risk pursuant to section 7 or 8 of this act:*

1. *Must comply with the provisions of NRS 338.020 to 338.090, inclusive.*

2. *Must specify a date by which performance of the work required by the contract must be completed.*

3. *May set forth the terms by which the construction manager at risk agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the construction manager at risk.*

4. *Except as otherwise provided in subsection 5, must not require the construction manager at risk 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.*



1 5. *May require the construction manager at risk to defend,*
2 *indemnify and hold harmless the public body and the employees,*
3 *officers and agents of the public body from any liabilities,*
4 *damages, losses, claims, actions or proceedings, including, without*
5 *limitation, reasonable attorney's fees, that are caused by the*
6 *negligence, errors, omissions, recklessness or intentional*
7 *misconduct of the construction manager at risk or the employees*
8 *or agents of the construction manager at risk in the performance*
9 *of the contract.*

10 6. *Must require that the construction manager at risk to*
11 *whom a contract is awarded assume overall responsibility for*
12 *ensuring that the preconstruction or construction of the public*
13 *work, as applicable, is completed in a satisfactory manner.*

14 **Sec. 11.** *A construction manager at risk who enters into a*
15 *contract for the construction of a public work pursuant to section*
16 *8 of this act:*

17 1. *Is responsible for contracting for the services of any*
18 *necessary subcontractor, supplier or independent contractor*
19 *necessary for the construction of the public work and for the*
20 *performance of and payment to any such subcontractors, suppliers*
21 *or independent contractors.*

22 2. *If the public work involves the construction of a fixed work*
23 *that is described in subsection 2 of NRS 624.215, shall perform*
24 *not less than 25 percent of the construction of the fixed work*
25 *himself or using his own employees.*

26 3. *If the public work involves the construction of a building*
27 *or structure that is described in subsection 3 of NRS 624.215, may*
28 *perform himself or using his own employees as much of the*
29 *construction of the building or structure that the construction*
30 *manager at risk is able to demonstrate that he or his own*
31 *employees have performed on similar projects.*

32 **Sec. 12.** *If a construction manager at risk contracts for the*
33 *services of a subcontractor, the subcontractor must be selected by*
34 *the construction manager at risk:*

35 1. *If the labor or portions of the public work that will be*
36 *provided by the subcontractor are estimated by the public body to*
37 *be 5 percent or more of the estimated cost of the public work,*
38 *based on the skill and experience in a particular trade or*
39 *classification or a combination of price and skill and experience in*
40 *a particular trade or classification; or*

41 2. *If the labor or portions of the public work that will be*
42 *provided by the subcontractor are estimated by the public body to*
43 *be less than 5 percent of the estimated cost of the public work,*
44 *based on the process of competitive bidding.*



Sec. 13. 1. A construction manager as agent:

(a) Must:

(1) Be a contractor licensed pursuant to chapter 624 of NRS;

(2) Hold a certificate of registration to practice architecture, interior design or residential design pursuant to chapter 623 of NRS; or

(3) Be licensed as a professional engineer pursuant to chapter 625 of NRS.

(b) May enter into a contract with a public body to assist in the planning, scheduling and management of the construction of a public work without assuming any responsibility for the cost, quality or timely completion of the construction of the public work. A construction manager as agent who enters into a contract with a public body pursuant to this section may not take part in the design or construction of the public work.

2. A contract between a public body and a construction manager as agent is not required to be awarded by competitive bidding.

Sec. 14. 1. Before a local government or its authorized representative advertises for bids for a contract for a public work, the local government or its authorized representative shall perform a review of the approved plans and specifications to determine if the plans and specifications are complete and contain all necessary information and specifications to construct the public work, if:

(a) The plans and specifications are to be used for the first time on a public work; and

(b) The plans and specifications are for a public work that has an estimated cost which exceeds \$10,000,000.

2. A constructability review required pursuant to subsection 1 must be performed by a contractor licensed pursuant to chapter 624 of NRS and include, without limitation:

(a) A determination of whether a competent contractor would be able to construct the public work based on the approved plans and specifications; and

(b) A review of the approved plans and specifications for the public work for completeness, clarity and economic feasibility.

3. If the local government or its authorized representative does not employ a person who has the expertise to perform a constructability review as described in subsection 2, the local government or its authorized representative must contract with an independent third party who is a contractor licensed pursuant to chapter 624 of NRS to perform the constructability review. Such an independent third party may not participate in the construction



1 *of the public work and is not liable for any recommendations that*
2 *he may make in his constructability review. A contract entered*
3 *into pursuant to this section between a local government or its*
4 *authorized representative and an independent third party is not*
5 *required to be awarded by competitive bidding.*

6 **Sec. 15.** NRS 338.1373 is hereby amended to read as follows:

7 338.1373 1. A local government or its authorized
8 representative shall award a contract for a public work pursuant to
9 the provisions of:

10 (a) NRS 338.1377 to 338.139, inclusive;

11 (b) NRS 338.143 to 338.148, inclusive ~~[; or]~~, *and section 14 of*
12 *this act;*

13 (c) NRS 338.1711 to 338.1727, inclusive ~~[; or]~~ *;*

14 *(d) Sections 2 to 12, inclusive, of this act.*

15 2. The provisions of NRS 338.1375 to 338.1382, inclusive,
16 338.1386, 338.13862, 338.13864, 338.139, 338.142 and 338.1711 to
17 338.1727, inclusive, *and sections 2 to 12, inclusive, of this act*, do
18 not apply with respect to contracts for the construction,
19 reconstruction, improvement and maintenance of highways that are
20 awarded by the Department of Transportation pursuant to NRS
21 408.313 to 408.433, inclusive.

22 **Sec. 16.** NRS 338.1385 is hereby amended to read as follows:

23 338.1385 1. Except as otherwise provided in subsection 9
24 and NRS 338.1906 and 338.1907, this State, or a governing body or
25 its authorized representative that awards a contract for a public work
26 in accordance with paragraph (a) of subsection 1 of NRS 338.1373
27 shall not:

28 (a) Commence a public work for which the estimated cost
29 exceeds \$100,000 unless it advertises in a newspaper qualified
30 pursuant to chapter 238 of NRS that is published in the county
31 where the public work will be performed for bids for the public
32 work. If no qualified newspaper is published in the county where the
33 public work will be performed, the required advertisement must be
34 published in some qualified newspaper that is printed in the State of
35 Nevada and has a general circulation in the county.

36 (b) Commence a public work for which the estimated cost is
37 \$100,000 or less unless it complies with the provisions of NRS
38 338.1386, 338.13862 and 338.13864.

39 (c) Divide a public work into separate portions to avoid the
40 requirements of paragraph (a) or (b).

41 2. At least once each quarter, the authorized representative of a
42 public body shall report to the public body any contract that the
43 authorized representative awarded pursuant to subsection 1 in the
44 immediately preceding quarter.



3. Each advertisement for bids must include a provision that sets forth the requirement that a contractor must be qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

4. 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 public work must be awarded on the basis of bids received.

5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public body or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

6. Any bids received in response to an advertisement for bids may be rejected if the public body or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(b) The bidder is not responsive or responsible;

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

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

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the bidder who has submitted the lowest responsive and responsible bid.

8. Before a public body may commence the performance of a public work itself pursuant 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, the public body shall prepare and make available for public inspection a written statement containing:

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

(b) A list of all equipment that the public body intends to use on the public work, 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 public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. 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 ~~or~~;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to section 14 of this act; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to sections 2 to 12, inclusive, of this act.

Sec. 17. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection 9, this State, or a governing body or its authorized representative that awards a contract for a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and having a general circulation within the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864.

(c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).



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2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Each advertisement for bids must include a provision that sets forth the requirement that a contractor must be qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

4. 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 public work must be awarded on the basis of bids received.

5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public body or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

6. Any bids received in response to an advertisement for bids may be rejected if the public body or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(b) The bidder is not responsive or responsible;

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

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

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

8. Before a public body may commence the performance of a public work itself pursuant 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, the public body shall prepare and make available for public inspection a written statement containing:

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



(b) A list of all equipment that the public body intends to use on the public work, 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 public work;

(d) An estimate of the total cost of the public work, including, the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. 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 ~~or~~;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to section 14 of this act; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to sections 2 to 12, inclusive, of this act.

Sec. 18. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 8 and NRS 338.1907, a local government or its authorized representative that awards a contract for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.



(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1442, 338.1444 and 338.1446.

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

2. At least once each quarter, the authorized representative of a local government shall report to the governing body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

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 public work must be awarded on the basis of bids received.

4. Except as otherwise provided in subsection 5 and NRS 338.147, the local government or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

5. Any bids received in response to an advertisement for bids may be rejected if the local government or its authorized representative 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 plans or specifications; or

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

6. A local government may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The local government publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The local government considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The local government lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

7. Before a local government may commence the performance of a public work itself pursuant 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, the local government 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 public work, together with their



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1 classifications and an estimate of the direct and indirect costs of
2 their labor;

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

7 (c) An estimate of the cost of administrative support for the
8 persons assigned to the public work;

9 (d) An estimate of the total cost of the public work, including
10 the fair market value of or, if known, the actual cost of all materials,
11 supplies, labor and equipment to be used for the public work; and

12 (e) An estimate of the amount of money the local government
13 expects to save by rejecting the bids and performing the public work
14 itself.

15 8. This section does not apply to:

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

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

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

21 (d) The Las Vegas Valley Water District created pursuant to
22 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
23 District created pursuant to chapter 477, Statutes of Nevada 1983 or
24 the Virgin Valley Water District created pursuant to chapter 100,
25 Statutes of Nevada 1993; ~~or~~

26 (e) The design and construction of a public work for which a
27 public body contracts with a design-build team pursuant to NRS
28 338.1711 to 338.1727, inclusive ~~or~~;

29 *(f) A constructability review of a public work, which review a*
30 *local government or its authorized representative is required to*
31 *perform pursuant to section 14 of this act; or*

32 *(g) The preconstruction or construction of a public work for*
33 *which a public body enters into a contract with a construction*
34 *manager at risk pursuant to sections 2 to 12, inclusive, of this act.*

35 **Sec. 19.** NRS 338.143 is hereby amended to read as follows:

36 338.143 1. Except as otherwise provided in subsection 8, a
37 local government or its authorized representative that awards a
38 contract for a public work in accordance with paragraph (b) of
39 subsection 1 of NRS 338.1373 shall not:

40 (a) Commence a public work for which the estimated cost
41 exceeds \$100,000 unless it advertises in a newspaper qualified
42 pursuant to chapter 238 of NRS that is published in the county
43 where the public work will be performed for bids for the public
44 work. If no qualified newspaper is published within the county
45 where the public work will be performed, the required



1 advertisement must be published in some qualified newspaper that is
2 printed in the State of Nevada and has a general circulation within
3 the county.

4 (b) Commence a public work for which the estimated cost is
5 \$100,000 or less unless it complies with the provisions of NRS
6 338.1442, 338.1444 or 338.1446.

7 (c) Divide a public work into separate portions to avoid the
8 requirements of paragraph (a) or (b).

9 2. At least once each quarter, the authorized representative of a
10 local government shall report to the governing body any contract
11 that the authorized representative awarded pursuant to subsection 1
12 in the immediately preceding quarter.

13 3. Approved plans and specifications for the bids must be on
14 file at a place and time stated in the advertisement for the inspection
15 of all persons desiring to bid thereon and for other interested
16 persons. Contracts for the public work must be awarded on the basis
17 of bids received.

18 4. Except as otherwise provided in subsection 5 and NRS
19 338.147, the local government or its authorized representative shall
20 award a contract to the lowest responsive and responsible bidder.

21 5. Any bids received in response to an advertisement for bids
22 may be rejected if the local government or its authorized
23 representative responsible for awarding the contract determines that:

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

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

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

28 6. A local government may let a contract without competitive
29 bidding if no bids were received in response to an advertisement for
30 bids and:

31 (a) The local government publishes a notice stating that no bids
32 were received and that the contract may be let without further
33 bidding;

34 (b) The local government considers any bid submitted in
35 response to the notice published pursuant to paragraph (a);

36 (c) The local government lets the contract not less than 7 days
37 after publishing a notice pursuant to paragraph (a); and

38 (d) The contract is awarded to the lowest responsive and
39 responsible bidder.

40 7. Before a local government may commence the performance
41 of a public work itself pursuant to the provisions of this section,
42 based upon a determination that the public interest would be served
43 by rejecting any bids received in response to an advertisement for
44 bids, the local government shall prepare and make available for
45 public inspection a written statement containing:



(a) A list of all persons, including supervisors, whom the local government intends to assign to the public work, 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 public work, 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 public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

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

8. 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 ~~or~~;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to section 14 of this act; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to sections 2 to 12, inclusive, of this act.

Sec. 20. NRS 338.1711 is hereby amended to read as follows:

338.1711 1. Except as otherwise provided in this section and NRS 338.161 to 338.168, inclusive, *and sections 2 to 12, inclusive, of this act*, a public body shall contract with a prime contractor for the construction of a public work for which the estimated cost exceeds \$100,000.

2. A public body may contract with a design-build team for the design and construction of a public work that is a discrete project if



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1 the public body has approved the use of a design-build team for the
2 design and construction of the public work and the public work:

3 (a) Is the construction of a park and appurtenances thereto, the
4 rehabilitation or remodeling of a public building, or the construction
5 of an addition to a public building; or

6 (b) Has an estimated cost which exceeds \$10,000,000.

7 **Sec. 21.** NRS 338.1717 is hereby amended to read as follows:

8 338.1717 A public body may employ a registered architect,
9 *general contractor, construction manager as agent*, landscape
10 architect or licensed professional engineer as a consultant to assist
11 the public body in overseeing the construction of a public work. An
12 architect, *general contractor, construction manager as agent*,
13 landscape architect or engineer so employed shall not:

14 1. Construct the public work; or

15 2. Assume overall responsibility for ensuring that the
16 construction of the public work is completed in a satisfactory
17 manner.

18 **Sec. 22.** 1. This section and sections 1 to 16, inclusive, 18,
19 20 and 21 of this act become effective on October 1, 2007.

20 2. Sections 16 and 18 of this act expire by limitation on
21 April 30, 2013.

22 3. Sections 17 and 19 of this act become effective on May 1,
23 2013.

