

Amendment No. 796

Assembly Amendment to Senate Bill No. 201 First Reprint	(BDR 28-526)
Proposed by: Assembly Committee on Government Affairs	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

MSM



Date: 5/17/2007

S.B. No. 201—Revises provisions governing public works. (BDR 28-526)



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:

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

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.~~ **is a building at least three stories in height.** This review must be performed by an architect registered pursuant to chapter 623 of NRS, a contractor licensed pursuant to chapter 624 of NRS or a professional engineer licensed pursuant to chapter 625 of NRS.

Sections 13 and 21 of this bill 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~~ Assisting the public body in 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

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

Sec. 4. *1. A public body shall advertise for statements of qualifications for a construction manager at risk in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed. 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.*

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

(a) A description of the public work;

(b) An estimate of the cost ~~for preconstruction services,~~ of construction;

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

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

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

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

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

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

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

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

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

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

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

(e) Evidence that the applicant has obtained or has the ability to obtain such insurance covering general liability and liability for errors and omissions; as may be required by law; and

(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. ~~It 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.

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

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

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

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

12 2. A final proposal must include, without limitation:

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

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

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

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

24 (e) A proposed plan of the applicant for the selection of any necessary
25 subcontractors. ~~It and~~

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

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

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

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

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

1 construction manager at risk for a contract to construct the public work for the
2 public body ~~for~~

3 ~~—(a) A fee for:~~

4 (a) The cost of the work, plus a fee, with a guaranteed maximum price;

5 (b) A fixed price; or

6 (c) A fixed price plus reimbursement for overhead and other costs and
7 expenses related to the construction of the public work.

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

10 (a) Shall terminate negotiations with that applicant; and

11 (b) May award the contract for the public work:

12 (1) If the public body is not a local government, pursuant to the
13 provisions of NRS 338.1377 to 338.139, inclusive.

14 (2) If the public body is a local government, pursuant to the provisions of
15 NRS 338.1377 to 338.139, inclusive, or 338.143 to 338.148, inclusive, and section
16 14 of this act.

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

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

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

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

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

31 ~~4. [Except as otherwise provided in subsection 5, must not require the~~
32 ~~construction manager at risk to defend, indemnify or hold harmless the public~~
33 ~~body or the employees, officers or agents of that public body from any liability,~~
34 ~~damage, loss, claim, action or proceeding caused by the negligence, errors,~~
35 ~~omissions, recklessness or intentional misconduct of the employees, officers and~~
36 ~~agents of the public body.~~

37 ~~5. May require the construction manager at risk to defend, indemnify and~~
38 ~~hold harmless the public body and the employees, officers and agents of the~~
39 ~~public body from any liabilities, damages, losses, claims, actions or proceedings,~~
40 ~~including, without limitation, reasonable attorney's fees, that are caused by the~~
41 ~~negligence, errors, omissions, recklessness or intentional misconduct of the~~
42 ~~construction manager at risk or the employees or agents of the construction~~
43 ~~manager at risk in the performance of the contract.~~

44 ~~6.] Must require that the construction manager at risk to whom a contract~~
45 ~~is awarded assume overall responsibility for ensuring that the preconstruction or~~
46 ~~construction of the public work, as applicable, is completed in a satisfactory~~
47 ~~manner.~~

48 5. May include such additional provisions as may be agreed upon by the
49 public body and the construction manager at risk.

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

52 1. Is responsible for contracting for the services of any necessary
53 subcontractor, supplier or independent contractor necessary for the construction

of the public work and for the performance of and payment to any such subcontractors, suppliers or independent contractors.

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

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

Sec. 12. 1. If a construction manager at risk to whom a contract for the construction of a public work is awarded pursuant to section 8 of this act wishes to enter into a contract with a subcontractor to provide materials, equipment, work or other services on the public work, the subcontractor must be ~~licensed~~;

(a) Licensed pursuant to chapter 624 of NRS; and ~~selected~~

(b) Selected by the construction manager at risk based on the process of competitive bidding ~~set forth in the applicable provisions of NRS 338.1373 to 338.148, inclusive.~~

2. A construction manager at risk to whom a contract for the construction of a public work is awarded pursuant to section 8 of this act shall submit to the public body that awarded the contract a list containing the names of each subcontractor with whom the construction manager at risk entered into a contract for the provision of materials, equipment, work or other services on the public work.

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;~~ is a building at least three stories in height.

2. A constructability review required pursuant to subsection 1 must be performed by an architect registered pursuant to chapter 623 of NRS, a contractor licensed pursuant to chapter 624 of NRS or a professional engineer licensed pursuant to chapter 625 of NRS and must include, without limitation:

1 (a) A determination of whether a competent contractor would be able to
2 construct the public work based on the approved plans and specifications; and
3 (b) A review of the approved plans and specifications for the public work for
4 completeness, clarity and economic feasibility.

5 3. If the local government or its authorized representative does not employ a
6 person who has the expertise to perform a constructability review as described in
7 subsection 2, the local government or its authorized representative must contract
8 with an independent third party who is an architect registered pursuant to
9 chapter 623 of NRS, a contractor licensed pursuant to chapter 624 of NRS or a
10 professional engineer licensed pursuant to chapter 625 of NRS to perform the
11 constructability review. ~~[Such an independent third party may not participate in
12 the construction of the public work and is not liable for any recommendations
13 that he may make in his constructability review.]~~ A contract entered into
14 pursuant to this section between a local government or its authorized
15 representative and an independent third party is not required to be awarded by
16 competitive bidding.

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

18 338.1373 1. A local government or its authorized representative shall award
19 a contract for a public work pursuant to the provisions of:

- 20 (a) NRS 338.1377 to 338.139, inclusive;
21 (b) NRS 338.143 to 338.148, inclusive ~~[to or]~~, and section 14 of this act;
22 (c) NRS 338.1711 to 338.1727, inclusive ~~[to or]~~; or
23 (d) Sections 2 to 12, inclusive, of this act.

24 2. The provisions of NRS 338.1375 to 338.1382, inclusive, 338.1386,
25 338.13862, 338.13864, 338.139, 338.142 and 338.1711 to 338.1727, inclusive, and
26 sections 2 to 12, inclusive, of this act, do not apply with respect to contracts for the
27 construction, reconstruction, improvement and maintenance of highways that are
28 awarded by the Department of Transportation pursuant to NRS 408.313 to 408.433,
29 inclusive.

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

31 338.1385 1. Except as otherwise provided in subsection 9 and NRS
32 338.1906 and 338.1907, this State, or a governing body or its authorized
33 representative that awards a contract for a public work in accordance with
34 paragraph (a) of subsection 1 of NRS 338.1373 shall not:

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

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

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

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

49 3. Each advertisement for bids must include a provision that sets forth the
50 requirement that a contractor must be qualified pursuant to NRS 338.1379 or
51 338.1382 to bid on the contract.

52 4. Approved plans and specifications for the bids must be on file at a place
53 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; ~~for~~

(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 ~~for~~;

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

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

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

8 338.1385 1. Except as otherwise provided in subsection 9, this State, or a
9 governing body or its authorized representative that awards a contract for a public
10 work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

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

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

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

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

25 3. Each advertisement for bids must include a provision that sets forth the
26 requirement that a contractor must be qualified pursuant to NRS 338.1379 or
27 338.1382 to bid on the contract.

28 4. Approved plans and specifications for the bids must be on file at a place
29 and time stated in the advertisement for the inspection of all persons desiring to bid
30 thereon and for other interested persons. Contracts for the public work must be
31 awarded on the basis of bids received.

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

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

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

39 (b) The bidder is not responsive or responsible;

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

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

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

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

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

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

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

52 8. Before a public body may commence the performance of a public work
53 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 ~~H~~;

(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 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; ~~for~~

(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 ~~H~~;

(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. 19. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 8, 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 within 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 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 338.1442, 338.1444 or 338.1446.

(c) Divide a public 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 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; ~~for~~

(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 ~~H~~;

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

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

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

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

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

- 1 1. Construct the public work; or
- 2 2. Assume overall responsibility for ensuring that the construction of the
- 3 public work is completed in a satisfactory manner.

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

- 6 2. Sections 16 and 18 of this act expire by limitation on April 30, 2013.
- 7 3. Sections 17 and 19 of this act become effective on May 1, 2013.