

ASSEMBLY BILL NO. 174—ASSEMBLYWOMAN KIRKPATRICK

FEBRUARY 13, 2009

Referred to Committee on Government Affairs

SUMMARY—Exempts the State Public Works Board from the requirements relating to construction managers at risk. (BDR 28-992)

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; exempting the State Public Works Board from the requirements relating to construction managers at risk; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, the State Public Works Board and local governments are
2 authorized to enter into contracts with a construction manager at risk for the
3 preconstruction and construction of a public work and provide the requirements for
4 selecting a construction manager at risk. (NRS 338.169-338.1699) This bill
5 exempts the State Public Works Board from the requirements for selecting a
6 construction manager at risk until June 30, 2011. However, the State Public Works
7 Board has authority in existing law to enter into a contract with a licensed
8 contractor for services which assist the Board in the design and construction of a
9 capital improvement project. (NRS 341.161)

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

1 **Section 1.** NRS 338.1385 is hereby amended to read as
2 follows:
3 338.1385 1. Except as otherwise provided in subsection 9
4 and NRS 338.1906 and 338.1907, this State, or a governing body or
5 its authorized representative that awards a contract for a public work
6 in accordance with paragraph (a) of subsection 1 of NRS 338.1373
7 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 338.1386, 338.13862 and 338.13864.

(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 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 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;

(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;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a ~~public body~~ local government or its authorized



1 **representative** enters into a contract with a construction manager at
2 risk pursuant to NRS 338.169 to 338.1699, inclusive.

3 **Sec. 2.** NRS 338.143 is hereby amended to read as follows:

4 338.143 1. Except as otherwise provided in subsection 8 and
5 NRS 338.1907, a local government or its authorized representative
6 that awards a contract for a public work in accordance with
7 paragraph (b) of subsection 1 of NRS 338.1373 shall not:

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

16 (b) Commence a public work for which the estimated cost is
17 \$100,000 or less unless it complies with the provisions of NRS
18 338.1442, 338.1444 and 338.1446.

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

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

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

30 4. Except as otherwise provided in subsection 5 and NRS
31 338.147, the local government or its authorized representative shall
32 award a contract to the lowest responsive and responsible bidder.

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

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

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

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

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

43 (a) The local government publishes a notice stating that no bids
44 were received and that the contract may be let without further
45 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;

(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;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or



(g) The preconstruction or construction of a public work for which a ~~[public-body]~~ *local government or its authorized representative* enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.1699, inclusive.

Sec. 3. NRS 338.169 is hereby amended to read as follows:

338.169 A ~~[public-body]~~ *local government* may construct a public work by:

1. Selecting a construction manager at risk pursuant to the provisions of NRS 338.1691 to 338.1696, inclusive; and

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

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

(1) Assisting the ~~[public-body]~~ *local government* 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]~~ *local government* in determining whether the public work can be constructed within the ~~[public-body's]~~ *local government's* budget; and

(b) To construct the public work.

Sec. 4. NRS 338.1691 is hereby amended to read as follows:

338.1691 To qualify to enter into contracts with a ~~[public-body]~~ *local government or its authorized representative* 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 NRS 338.1692;

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

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. 5. NRS 338.1692 is hereby amended to read as follows:

338.1692 1. A ~~[public-body]~~ *local government* 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



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

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

5 (a) A description of the public work;

6 (b) An estimate of the cost of construction;

7 (c) A description of the work that the ~~{public-body}~~ **local**
8 **government** expects a construction manager at risk to perform;

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

12 (e) The date by which statements of qualifications must be
13 submitted to the ~~{public-body;}~~ **local government**;

14 ~~{f} If the project is a public work of the State, a statement~~
15 ~~setting forth that the construction manager at risk must be qualified~~
16 ~~to bid on a public work of the State pursuant to NRS 338.1379~~
17 ~~before submitting a statement of qualifications;~~

18 ~~{g}~~ The name, title, address and telephone number of a person
19 employed by the ~~{public-body}~~ **local government** that an applicant
20 may contact for further information regarding the public work; and

21 ~~{h}~~ (g) A list of the selection criteria and relative weight of the
22 selection criteria that will be used to evaluate statements of
23 qualifications.

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

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

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

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

33 (d) Evidence of the ability of the applicant to obtain the
34 necessary bonding for the work to be required by the ~~{public-body;}~~
35 **local government**;

36 (e) Evidence that the applicant has obtained or has the ability to
37 obtain such insurance as may be required by law; and

38 (f) A statement of whether the applicant has been:

39 (1) Found liable for breach of contract with respect to a
40 previous project, other than a breach for legitimate cause; and

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

43 **Sec. 6.** NRS 338.1693 is hereby amended to read as follows:

44 338.1693 1. The ~~{public-body}~~ **local government** shall
45 appoint a panel consisting of at least three members to rank the



1 statements of qualifications submitted to the ~~{public-body}~~ **local**
2 **government** by evaluating the statements of qualifications as
3 required pursuant to subsections 2 and 3.

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

5 (a) Verifying that each applicant satisfies the requirements of
6 NRS 338.1691; and

7 (b) Conducting an evaluation of the qualifications of each
8 applicant based on the factors and relative weight assigned to each
9 factor that the ~~{public-body}~~ **local government** specified in the
10 request for statements of qualifications advertised pursuant to
11 NRS 338.1692.

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

16 4. After the panel ranks the statements of qualifications, the
17 ~~{public-body}~~ **local government** shall:

18 (a) Make available to the public the rankings of the applicants;
19 and

20 (b) Except as otherwise provided in subsection 5, select at least
21 the two but not more than the five applicants that the panel
22 determined to be most qualified as finalists to submit final proposals
23 to the ~~{public-body}~~ **local government** pursuant to NRS 338.1694.

24 5. If the ~~{public-body}~~ **local government** did not receive at least
25 two statements of qualifications from applicants that the panel
26 determines to be qualified pursuant to this section and NRS
27 338.1691, the ~~{public-body}~~ **local government** may not contract
28 with a construction manager at risk.

29 **Sec. 7.** NRS 338.1694 is hereby amended to read as follows:

30 338.1694 1. After the finalists are selected pursuant to
31 paragraph (b) of subsection 4 of NRS 338.1693, the ~~{public-body}~~
32 **local government** shall provide to each finalist a request for final
33 proposals. The request for final proposals must:

34 (a) Set forth the date by which final proposals must be submitted
35 to the ~~{public-body};~~ **local government;**

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

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

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

43 (a) The professional qualifications and experience of the
44 applicant, including, without limitation, the resumes of any



1 employees of the applicant who will be managing the
2 preconstruction and construction of the public work;

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

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

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

11 (e) A proposed plan of the applicant for the selection of any
12 necessary subcontractors.

13 **Sec. 8.** NRS 338.1695 is hereby amended to read as follows:

14 338.1695 1. The panel appointed by the ~~{public-body}~~ *local*
15 *government* pursuant to NRS 338.1693 shall evaluate and assign a
16 score to each of the final proposals received by the ~~{public-body}~~
17 *local government* based on the factors and relative weight assigned
18 to each factor that the ~~{public-body}~~ *local government* specified in
19 the request for final proposals. The panel shall interview the two or
20 three applicants whose final proposals received the highest scores.
21 After conducting such interviews, the panel shall rank the applicants
22 based on the final proposals and interviews, which must be given
23 equal weight.

24 2. Upon receipt of the final rankings of the applicants from the
25 panel, the ~~{public-body}~~ *local government or its authorized*
26 *representative* shall enter into negotiations with the most qualified
27 applicant determined pursuant to subsection 1 for a contract for
28 preconstruction services. If the ~~{public-body}~~ *local government or*
29 *its authorized representative* is unable to negotiate a contract with
30 the most qualified applicant at an amount of compensation that the
31 ~~{public-body}~~ *local government or its authorized representative* and
32 the most qualified applicant determine to be fair and reasonable, the
33 ~~{public-body}~~ *local government or its authorized representative*
34 shall terminate negotiations with that applicant. The ~~{public-body}~~
35 *local government or its authorized representative* may then
36 undertake negotiations with the next most qualified applicant in
37 sequence until an agreement is reached or a determination is made
38 by the ~~{public-body}~~ *local government or its authorized*
39 *representative* to reject all applicants.

40 3. The ~~{public-body}~~ *local government or its authorized*
41 *representative* shall make available to the applicants and the public
42 the results of the evaluations of final proposals and interviews
43 conducted pursuant to subsection 1 and the final rankings of the
44 applicants.



Sec. 9. NRS 338.1696 is hereby amended to read as follows:

338.1696 1. If a ~~{public-body}~~ *local government or its authorized representative* enters into a contract with a construction manager at risk for preconstruction services pursuant to NRS 338.1695, after the ~~{public-body}~~ *local government* has finalized the design for the public work, the ~~{public-body}~~ *local government or its authorized representative* shall enter into negotiations with the construction manager at risk for a contract to construct the public work for the ~~{public-body}~~ *local government* for:

(a) The cost of the work, plus a fee, with 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}~~ *local government or its authorized representative* is unable to negotiate a satisfactory contract with the construction manager at risk to construct the public work, the ~~{public-body;}~~ *local government or its authorized representative:*

(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.

Sec. 10. NRS 338.1698 is hereby amended to read as follows:

338.1698 A contract awarded to a construction manager at risk pursuant to NRS 338.1695 or 338.1696:

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;}~~ *local government*, at the cost of the ~~{public-body;}~~ *local government*, as an additional insured in an insurance policy held by the construction manager at risk.

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

5. May include such additional provisions as may be agreed upon by the ~~{public-body}~~ *local government or its authorized representative* and the construction manager at risk.



1 **Sec. 11.** NRS 338.1699 is hereby amended to read as follows:
2 338.1699 1. To be eligible to provide materials, equipment,
3 work or other services on a public work for which a construction
4 manager at risk was awarded a contract pursuant to NRS 338.1696,
5 a subcontractor must be:

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

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

10 2. A construction manager at risk to whom a contract for the
11 construction of a public work is awarded pursuant to NRS 338.1696
12 shall submit to the ~~[public body]~~ *local government* that awarded the
13 contract *or its authorized representative* a list containing the names
14 of each subcontractor with whom the construction manager at risk
15 intends to enter into a contract for the provision of materials,
16 equipment, work or other services on the public work.

17 **Sec. 12.** This act becomes effective upon passage and approval
18 and expires by limitation on June 30, 2011.

