

ASSEMBLY BILL NO. 371—ASSEMBLYMAN
CARRILLO (BY REQUEST)

MARCH 21, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises the manner in which a construction manager at risk may solicit bids and select a subcontractor for a public work. (BDR 28-1044)

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; revising the manner in which a construction manager at risk may solicit bids and select a subcontractor for a public work; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 In order for a subcontractor to be eligible to provide materials, equipment, work
2 or other services on a public work for which a construction manager at risk was
3 awarded a contract, existing law requires the subcontractor to be licensed and to be
4 selected based on a process of competitive bidding set forth for all subcontractors
5 on any public work in the State. (NRS 338.1699) This bill amends the manner in
6 which construction managers at risk select subcontractors and sets forth specific
7 procedures construction managers at risk must follow when selecting
8 subcontractors to provide materials, equipment, work or other services on a public
9 work for which a construction manager at risk was awarded a contract.

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

1 **Section 1.** NRS 338.1699 is hereby amended to read as
2 follows:

3 338.1699 1. To be eligible to provide materials, equipment,
4 work or other services on a public work for which a construction
5 manager at risk was awarded a contract pursuant to NRS 338.1696,
6 a subcontractor must be ~~f:~~

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



* A B 3 7 1 *

~~(b) Selected~~ *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.~~ *this section.*

2. ~~[A] At least 21 days before a~~ construction manager at risk to whom a contract for the construction of a public work is awarded pursuant to NRS 338.1696 ~~[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 intends to enter into a contract]~~ *receives any proposals from a subcontractor* for the provision of materials, equipment, work or other services on the public work ~~[-]~~ *, the construction manager at risk shall advertise a request for proposals for subcontractors 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 advertisement must be published in some qualified newspaper which is printed in the State of Nevada and which has a general circulation in the county.*

3. A request for proposals for subcontractors must include, without limitation:

(a) A description of the design of the public work and a statement indicating where a copy of the documents relating to that design may be obtained;

(b) A description of the trade or craft for which subcontractor proposals are being sought together with a detailed description of the work, materials or equipment to be performed or provided;

(c) The dates on which it is anticipated that the construction of the public work will begin and end;

(d) The date, time and place at which a preproposal meeting will be held;

(e) The date and time by which proposals must be submitted and to whom they must be submitted;

(f) The date, time and place at which proposals will be opened and read;

(g) A description of the bonding and insurance requirements for the public work;

(h) Any other information reasonably necessary for a subcontractor to submit a responsive proposal; and

(i) A statement in substantially the following form:

Notice: For a proposal for the public work to be considered:

1. A subcontractor must be qualified pursuant to subsection 4 of NRS 338.1699;

2. A proposal must be timely submitted and received;



3. A subcontractor must attend the preproposal meeting;
and

4. A subcontractor may not modify his or her proposal
after the date and time the proposal is to be submitted and
received.

4. A person is qualified to submit a proposal for a public
work as a subcontractor if the person:

(a) Is licensed pursuant to chapter 624 of NRS and the
proposal submitted does not exceed the monetary limit placed on
his or her license by the State Contractors' Board pursuant to
NRS 624.220;

(b) Has the ability to obtain the necessary bonding for the
work to be required by the public body;

(c) During the 2 years immediately preceding the date of the
advertisement for the request for proposals, has not been
disciplined or fined by the State Contractors' Board or another
state or federal agency for conduct that relates to the ability of the
person to perform the public work;

(d) During the 5 years immediately preceding the date of the
advertisement for the request for proposals, has not:

(1) Filed for bankruptcy;

(2) Breached any contracts with a public body or person in
this State or any other state; or

(3) Been disqualified from being awarded a contract for a
public work in this State;

(e) Has the ability to obtain and maintain insurance coverage
for public liability and property damage within limits sufficient to
protect the person and all the subcontractors of the person from
claims for personal injury, accidental death and damage to
property that may arise in connection with the work to be required
by the public body; and

(f) Has established a safety program that complies with the
requirements of chapter 618 of NRS.

5. A subcontractor may not modify his or her proposal after
the date and time the proposal is due.

6. To be considered responsive, a proposal must:

(a) Be timely submitted and received; and

(b) Substantially and materially conform with the details and
requirements included in the bid instructions and for the design
for the public work, including, without limitation, those details
and requirements affecting price and performance.

7. The opening and reading of the proposals:



(a) Must be attended by an authorized representative of the public body and the architect or engineer responsible for the design of the public work; and

(b) May be attended by any subcontractor who submitted a proposal.

8. The construction manager at risk shall compile and provide to the public body or its authorized representative the name and contact information of each subcontractor whose proposal was opened and read, together with the price of the proposal the subcontractor submitted.

9. If a construction manager at risk determines a subcontractor is not qualified to submit a proposal, the construction manager at risk shall provide written notice of the disqualification to the subcontractor within 5 calendar days after the opening of the proposals. A subcontractor may appeal a disqualification in the manner set forth in NRS 338.1381. If a subcontractor appeals his or her disqualification, the selection of a subcontractor must be stayed until a final decision on the appeal is issued.

10. Not less than 16 days or more than 20 days after opening the subcontractor proposals, the construction manager at risk shall:

(a) Evaluate and determine which proposals are responsive;

(b) Select a subcontractor from those who:

(1) Attended the preproposal meeting;

(2) Submitted a responsive proposal; and

(3) Were included on the list provided to the public body pursuant to subsection 8; and

(c) Inform the public body which subcontractor he or she has chosen.

11. Except as otherwise provided in subsection 12, a construction manager at risk shall enter into a subcontract with the subcontractor chosen pursuant to subsection 10 to perform or provide the work, materials or equipment described in the request for proposals for the price the subcontractor proposed.

12. A construction manager at risk shall not substitute another subcontractor for any subcontractor chosen pursuant to subsection 10 unless:

(a) The public body or its authorized representative objects to the subcontractor because he or she is not qualified pursuant to subsection 4, requests in writing a change in the subcontractor and pays any increase in costs resulting from the change; or

(b) The substitution of the selected subcontractor is approved by the public body and the selected subcontractor:

(1) Files for bankruptcy or becomes insolvent;



- 1 (2) *Fails or refuses to perform his or her subcontract*
- 2 *within a reasonable period or is unable to furnish a performance*
- 3 *bond and payment bond pursuant to NRS 339.025; or*
- 4 (3) *Is not licensed to provide that labor or portion of the*
- 5 *work.*

