

ASSEMBLY BILL NO. 470—COMMITTEE
ON GOVERNMENT AFFAIRS

MARCH 28, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works contracts involving construction managers at risk. (BDR 28-553)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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 provisions governing the selection of a construction manager at risk for preconstruction services and the construction of a public work; 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:

Existing law authorizes a public body to construct a public work by selecting a construction manager at risk and sets forth certain procedures the public body must follow when selecting the construction manager at risk and entering into a contract with him or her for preconstruction services or to construct the public work. (NRS 338.169-338.1699) **Sections 1-5** of this bill amend the provisions governing the way in which a public body must select a construction manager at risk. Existing law provides for a two-step selection process, wherein construction managers at risk must first submit a statement of qualifications, and then the public body selects finalists who are requested to submit final proposals and are interviewed before one is chosen to be awarded the contract. (NRS 338.1692-338.1695) Instead, **sections 3 and 4** of this bill change the process to a single step: a construction manager at risk submits a proposal from the start, which contains a combination of the statement of qualifications and what existing law requires to be included in a final proposal, and the public body chooses who to interview and who to select from these proposals. **Section 5** of this bill allows a public body to enter into negotiations with the construction manager at risk who is providing the preconstruction services for the construction of a portion of the public work as soon as that portion of the design is finalized instead of waiting until the complete design is finished, as is currently required by existing law. In addition, **section 5** allows the construction manager at



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20 risk providing preconstruction services to bid on the project if negotiations for the
21 contract fail and the public body opens it up for bids.

22 In order for a subcontractor to be eligible to provide materials, equipment, work
23 or other services on a public work for which a construction manager at risk was
24 awarded a contract, existing law requires the subcontractor to be licensed and to be
25 selected based on a process of competitive bidding set forth for all subcontractors
26 on any public work in the State. (NRS 338.1699) **Section 7** of this bill amends the
27 manner in which construction managers at risk select subcontractors and sets forth
28 specific procedures construction managers at risk must follow when selecting
29 subcontractors to provide materials, equipment, work or other services on a public
30 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 338.169 is hereby amended to read as follows:

2 338.169 A public body may construct a public work by:

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

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

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

8 (1) Assisting the public body in determining whether
9 scheduling or ~~{design}~~ **constructability** problems exist that would
10 delay the construction of the public work;

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

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

15 (b) To construct the public work.

16 **Sec. 2.** NRS 338.1691 is hereby amended to read as follows:

17 338.1691 To qualify to enter into contracts with a public body
18 for preconstruction services and to construct a public work, a
19 construction manager at risk must:

20 1. Not have been found liable for breach of contract with
21 respect to a previous project, other than a breach for legitimate
22 cause, during the 5 years immediately preceding the date of the
23 advertisement for ~~{statements of qualifications}~~ **proposals** pursuant
24 to NRS 338.1692;

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

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

29 4. If the project is for the ~~{design}~~ **construction** of a public
30 work of the State, be qualified to bid on a public work of the State
31 pursuant to NRS 338.1379.



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Sec. 3. NRS 338.1692 is hereby amended to read as follows:

338.1692 1. A public body *or its authorized representative* shall advertise for ~~[statements of qualifications]~~ *proposals* 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]~~ *proposal* pursuant to subsection 1 must include, without limitation:

(a) A description of the public work;
(b) An estimate of the cost 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 preconstruction and construction of the public work will begin and end;

(e) The date by which ~~[statements of qualifications]~~ *proposals* 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;]~~ *proposal;*

(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;]~~ *proposals; and*

(i) The proposed form of the contract to assist in the preconstruction of the public work or to construct the public work, including, without limitation, the terms and general conditions of the contract.

3. A ~~[statement of qualifications]~~ *proposal* must include, without limitation:

(a) An explanation of the experience that the applicant has with projects of similar size and scope ~~[;]~~ *in both the public and private sectors;*

(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;]~~



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

3 ~~[(e)]~~ (d) Evidence that the applicant has obtained or has the
4 ability to obtain such insurance as may be required by law; and

5 ~~[(f)]~~ (e) A statement of whether the applicant has been:

6 (1) Found liable for breach of contract with respect to a
7 previous project, other than a breach for legitimate cause ~~[(f)]~~ *during*
8 *the 5 years immediately preceding the date of the advertisement*
9 *for proposals*; and

10 (2) Disqualified from being awarded a contract pursuant to
11 NRS 338.017, 338.13895, 338.1475 or 408.333 ~~[(f)]~~;

12 (f) *The professional qualifications and experience of the*
13 *applicant, including, without limitation, the resume of any*
14 *employee of the applicant who will be managing the*
15 *preconstruction and construction of the public work;*

16 (g) *The safety programs established and the safety records*
17 *accumulated by the applicant;*

18 (h) *Evidence that the applicant is licensed as a contractor*
19 *pursuant to chapter 624 of NRS;*

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

24 (j) *A proposed plan of the applicant for the selection of any*
25 *necessary subcontractors; and*

26 (k) *If the project is for the design of a public work of the State,*
27 *evidence the applicant is qualified to bid on a public work of the*
28 *State pursuant to NRS 338.1379.*

29 **Sec. 4.** NRS 338.1693 is hereby amended to read as follows:

30 338.1693 1. The public body *or its authorized representative*
31 shall appoint a panel consisting of at least three members to rank the
32 ~~[(statements of qualifications)]~~ *proposals* submitted to the public
33 body by evaluating the ~~[(statements of qualifications)]~~ *proposals* as
34 required pursuant to subsections 2 and 3.

35 2. The panel shall rank the ~~[(statements of qualifications)]~~
36 *proposals* by:

37 (a) Verifying that each applicant satisfies the requirements of
38 NRS 338.1691; and

39 (b) ~~[(Conducting an evaluation of the qualifications of each~~
40 ~~applicant based on the factors and relative weight assigned to each~~
41 ~~factor that the public body specified in the request for statements of~~
42 ~~qualifications advertised pursuant to NRS 338.1692.)~~ *Evaluating*
43 *and assigning a score to each of the proposals received by the*
44 *public body based on the factors and relative weight assigned to*



1 *each factor that the public body specified in the request for*
2 *proposals.*

3 3. When ranking the ~~statements of qualifications,~~ *proposals,*
4 the panel shall assign a relative weight of 5 percent to the possession
5 of a certificate of eligibility to receive a preference in bidding on
6 public works. *If any federal statute or regulation precludes the*
7 *granting of federal assistance or reduces the amount of that*
8 *assistance for a particular public work because of the provisions*
9 *of this subsection, those provisions do not apply insofar as their*
10 *application would preclude or reduce federal assistance for that*
11 *work.*

12 4. After the panel ranks the ~~statements of qualifications,~~
13 *proposals,* the public body *or its authorized representative* shall ~~[-~~

14 ~~—(a) Make available to the public the rankings of the applicants;~~
15 ~~and~~

16 ~~—(b) Except], except~~ as otherwise provided in subsection 5, select
17 at least the two but not more than the five applicants ~~[that the panel~~
18 ~~determined to be most qualified as finalists to submit final proposals~~
19 ~~to the public body pursuant to NRS 338.1694.]~~ *whose proposals*
20 *received the highest scores for interviews. After conducting such*
21 *interviews, the panel shall rank the applicants based on the*
22 *proposals and interviews. During the interview process, the public*
23 *body or its authorized representative may require the applicants to*
24 *submit a preliminary proposed amount of compensation for*
25 *managing the preconstruction and construction of the public*
26 *work, but in no event shall the proposed amount of compensation*
27 *exceed 20 percent of the scoring for the selection of the most*
28 *qualified applicant. The score to be given for the proposed amount*
29 *of compensation, if any, must be calculated by dividing the lowest*
30 *of all the proposed amounts of compensation by the applicant's*
31 *proposed amount of compensation multiplied by the total possible*
32 *points available to each applicant.*

33 5. If the public body did not receive at least two ~~statements of~~
34 ~~qualifications from applicants that the panel determines to be~~
35 ~~qualified pursuant to this section and NRS 338.1691,]~~ *proposals,* the
36 public body may not contract with a construction manager at risk.

37 6. *Upon receipt of the final rankings of the applicants from*
38 *the panel, the public body or its authorized representative shall*
39 *enter into negotiations with the most qualified applicant*
40 *determined pursuant to subsections 2, 3 and 4 for a contract for*
41 *preconstruction services, unless the public body required the*
42 *submission of a proposed amount of compensation, in which case*
43 *the proposed amount of compensation submitted by the applicant*
44 *must be the amount offered for the contract. If the public body or*
45 *its authorized representative is unable to negotiate a contract with*



1 *the most qualified applicant an amount of compensation that the*
2 *public body or its authorized representative and the most qualified*
3 *applicant determine to be fair and reasonable, the public body or*
4 *its authorized representative shall terminate negotiations with that*
5 *applicant. The public body or its authorized representative may*
6 *then undertake negotiations with the next most qualified applicant*
7 *in sequence until an agreement is reached or a determination is*
8 *made by the public body or its authorized representative to reject*
9 *all applicants.*

10 7. *The public body or its authorized representative shall make*
11 *available to the applicants and the public the final rankings of the*
12 *applicants and shall provide, upon request, a debriefing for any*
13 *unsuccessful applicant.*

14 **Sec. 5.** NRS 338.1696 is hereby amended to read as follows:

15 338.1696 1. If a public body enters into a contract with a
16 construction manager at risk for preconstruction services pursuant to
17 ~~NRS 338.1695,~~ **NRS 338.1693**, after the public body has finalized
18 the design for the public work, *or any portion thereof sufficient to*
19 *determine the probable cost of that portion*, the public body shall
20 enter into negotiations with the construction manager at risk for a
21 contract to construct the public work *or the portion thereof* for the
22 public body for:

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

25 (b) A fixed price; or

26 (c) A fixed price plus reimbursement for overhead and other
27 costs and expenses related to the construction of the public work ~~or~~
28 *or portion thereof.*

29 2. If the public body is unable to negotiate a satisfactory
30 contract with the construction manager at risk to construct the public
31 work ~~or~~ *or portion thereof*, the public body ~~shall~~
32 ~~—(a) Shall~~ *shall* terminate negotiations with that applicant ~~or~~
33 and :

34 ~~(b)~~ (a) May award the contract for the public work:

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

37 (2) If the public body is a local government, pursuant to the
38 provisions of NRS 338.1377 to 338.139, inclusive, or 338.143 to
39 338.148, inclusive ~~or~~ ; and

40 (b) *Shall accept a bid to construct the public work from the*
41 *construction manager at risk with whom the public body entered*
42 *into a contract for preconstruction services.*

43 **Sec. 6.** NRS 338.1698 is hereby amended to read as follows:

44 338.1698 A contract awarded to a construction manager at risk
45 pursuant to NRS ~~338.1695 or~~ 338.1696:



1 1. Must comply with the provisions of NRS 338.020 to
2 338.090, inclusive.

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

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

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

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

15 **Sec. 7.** NRS 338.1699 is hereby amended to read as follows:

16 338.1699 1. To be eligible to provide materials, equipment,
17 work or other services on a public work for which a construction
18 manager at risk was awarded a contract pursuant to NRS 338.1696,
19 a subcontractor must be:

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

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

24 2. *In selecting a subcontractor to provide materials,*
25 *equipment, work or other services on a public work for which a*
26 *construction manager at risk was awarded a contract pursuant to*
27 *NRS 338.1696, a construction manager at risk shall:*

28 (a) *Advertise for statements of qualifications which must*
29 *include, without limitation:*

30 (1) *The monetary limit placed on an applicant's license by*
31 *the State Contractors' Board pursuant to NRS 624.220;*

32 (2) *The financial ability of the applicant to perform the*
33 *work required by the public body;*

34 (3) *Whether the applicant has the ability to obtain the*
35 *necessary bonding for the work required by the public body;*

36 (4) *The safety programs established and the safety records*
37 *accumulated by the applicant;*

38 (5) *Whether the applicant has breached any contracts with*
39 *a public agency or person in this State or any other state during*
40 *the 5 years immediately preceding the date of application;*

41 (6) *Whether the applicant has been disciplined or fined by*
42 *the State Contractors' Board or another state or federal agency for*
43 *conduct that relates to the ability of the applicant to perform the*
44 *work required by the public body;*



(7) *The performance history of the applicant concerning other recent, similar contracts, if any, completed by the applicant;*

(8) *Any other qualifications the construction manager at risk deems necessary to the work to be performed; and*

(9) *The truthfulness and completeness of the application;*

(b) *Provide to each subcontractor who meets the criteria set forth in paragraph (a) a request for proposals which includes a detailed description of the scope of work to be performed;*

(c) *Open and read the proposals in a private reading which may be attended by an authorized representative of the public body and the architect or engineer responsible for the design of the public work;*

(d) *Evaluate and score for responsiveness and completeness each proposal which is timely submitted; and*

(e) *For each trade required for the public work, select the subcontractor who submits the proposal which has the best value for the project.*

3. 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 *or its authorized representative* 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 for the provision of materials, equipment, work or other services on the public work.

Sec. 8. NRS 338.1694 and 338.1695 are hereby repealed.

Sec. 9. This act becomes effective on July 1, 2011.

TEXT OF REPEALED SECTIONS

338.1694 Final proposals: Requests; requirements.

1. After the finalists are selected pursuant to paragraph (b) of subsection 4 of NRS 338.1693, 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 proposed 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.



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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; and

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

338.1695 Ranking of applicants based on final proposals and interviews; negotiations with certain applicants for contract for preconstruction services; availability to applicants and public of certain information.

1. The panel appointed by the public body pursuant to NRS 338.1693 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.

