

ASSEMBLY BILL NO. 69—COMMITTEE ON TRANSPORTATION

(ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION)

PREFILED DECEMBER 15, 2010

Referred to Committee on Transportation

SUMMARY—Authorizes the Department of Transportation to contract with a construction manager at risk for certain projects under certain circumstances. (BDR 35-486)

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 the Department of Transportation to contract with a construction manager at risk for the preconstruction and construction of certain projects under certain circumstances; establishing the method for selecting a construction manager at risk; prescribing the procedure for negotiating a contract with a construction manager at risk and for certain terms of such a contract; authorizing the Department to retain a consultant in connection with the design of such a project; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Under existing law, the Department of Transportation is authorized to  
2 construct, reconstruct, improve and maintain highways by a variety of methods,  
3 including competitive bidding and the use of a design-build team. (NRS 408.313-  
4 408.3887) The Department also has the discretion to authorize the development,  
5 construction, improvement, maintenance and operation of transportation facilities.  
6 (NRS 408.5471-408.549) **Sections 2-14** of this bill authorize an additional method  
7 by which the Department may carry out highway and transportation facility projects  
8 through the use of a construction manager at risk. Under existing law, local  
9 governments are authorized to use the construction manager at risk method and the  
10 State Public Works Board is required to resume compliance with the requirements  
11 for selecting a construction manager at risk on July 1, 2011, after a 2-year  
12 exemption from compliance. (NRS 338.169-338.1699; Chapter 118, Statutes of  
13 Nevada 2009, p. 434)



\* A B 6 9 \*

Under the construction manager at risk method described in **section 3** of this bill, the Department is authorized to enter into a contract for a negotiated price with a construction manager at risk to provide preconstruction services for a project, including design support, estimation of costs, value and system analysis and scheduling. **Section 4** of this bill prescribes the qualifications for eligibility to contract with the Department under this method. **Sections 5-8** of this bill establish the process for obtaining proposals for a project pursuant to either the two-step process of a request for statements of qualifications and a request for proposals or, on certain projects, the one-step process of a request for proposals. **Section 9** of this bill requires the Department to evaluate and rank the proposals and negotiate a contract for preconstruction services with the applicants in the order of their rankings.

After the Department has obtained the final design for the project and has decided to proceed, the Department and the construction manager at risk are required to attempt to negotiate a contract for the construction manager at risk to construct the project, which must be for: (1) a guaranteed maximum price; (2) a fixed price; (3) a fixed price plus reimbursement for certain costs and expenses; or (4) such other terms as the Department determines appropriate. **Sections 10 and 11** of this bill establish the process for negotiating the contract and prescribe certain terms for the contract. **Sections 12 and 13** of this bill establish requirements concerning subcontractors and performance of a portion of the work on the project by the construction manager at risk. **Section 14** of this bill authorizes the Department to retain a consultant in connection with the design of a project to be constructed using the construction manager at risk method.

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

**Section 1.** Chapter 408 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this act.

**Sec. 2.** *As used in sections 2 to 14, inclusive, of this act, unless the context otherwise requires, "project" means a project for the construction, reconstruction, improvement or maintenance of a highway or a transportation facility as defined in NRS 408.5471. The term includes, without limitation, a phase, section, segment or portion of such construction, reconstruction, improvement or maintenance.*

**Sec. 3.** *The Department may undertake a project by:*

*1. Selecting a construction manager at risk pursuant to the provisions of sections 5 to 9, inclusive, of this act; and*

*2. Entering into one or more separate contracts with a construction manager at risk:*

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

*(1) Assisting the Department to identify issues relating to the project, including, without limitation, the issues of cost, quality and constructability, that may interfere with the completion of the project or reduce the benefit of the project to stakeholders,*



1 *including, without limitation, scheduling or design issues that may*  
2 *delay the construction of the project;*

3 *(2) Assisting the Department to determine solutions to*  
4 *issues relating to the project, including, without limitation, the*  
5 *issues identified in subparagraph (1), that will accelerate*  
6 *completion of the project, reduce costs, improve the quality and*  
7 *constructability of the project, enhance the benefits of the project*  
8 *to stakeholders and ensure that the project can be constructed*  
9 *within the Department's budget; and*

10 *(3) Estimating the cost of the labor and materials for the*  
11 *project; and*

12 *(b) To construct the project.*

13 **Sec. 4.** *To qualify to enter into one or more contracts for a*  
14 *project undertaken by the Department pursuant to section 3 of this*  
15 *act, a person must:*

16 *1. Be licensed as a general engineering contractor or a*  
17 *general building contractor pursuant to chapter 624 of NRS;*

18 *2. Be qualified to bid on a project of the Department pursuant*  
19 *to NRS 408.333;*

20 *3. Not have been found liable for breach of contract with*  
21 *respect to a previous project with a public body of this State or any*  
22 *other state, other than a breach for legitimate cause, during the*  
23 *5 years immediately preceding the date of the advertisement for*  
24 *statements of qualifications pursuant to section 5 of this act or for*  
25 *proposals pursuant to section 8 of this act; and*

26 *4. Not have been disqualified from being awarded a contract*  
27 *pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333.*

28 **Sec. 5.** *1. Except as otherwise provided in section 8 of this*  
29 *act, if the Department wishes to undertake a project pursuant to*  
30 *section 3 of this act, the Department must advertise for statements*  
31 *of qualifications for a construction manager at risk at least once a*  
32 *week for 2 consecutive weeks for a total of at least two*  
33 *publications in:*

34 *(a) A newspaper of general circulation in the county in which*  
35 *the major portion of the proposed project is located; and*

36 *(b) One or more daily newspapers of general circulation*  
37 *throughout the State. The first publication of the advertisement in*  
38 *the daily newspapers having general circulation throughout the*  
39 *State must be made not less than 15 days before the date by which*  
40 *the statements of qualifications must be submitted to the*  
41 *Department.*

42 *2. A request for statements of qualifications published*  
43 *pursuant to subsection 1 must include, without limitation:*

44 *(a) A description of the project;*

45 *(b) An estimate of the cost of construction;*



1 (c) A description of the work that the Department expects a  
2 construction manager at risk to perform;

3 (d) The dates on which it is anticipated that the separate  
4 phases of the preconstruction and construction of the project will  
5 begin and end;

6 (e) The date by which statements of qualifications must be  
7 submitted to the Department;

8 (f) A statement setting forth that the construction manager at  
9 risk must be qualified to bid on a project of the Department  
10 pursuant to NRS 408.333;

11 (g) The name, title, address and telephone number of a person  
12 employed by the Department whom an applicant may contact for  
13 further information regarding the project; and

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

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

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

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

24 (c) The preliminary proposal of the applicant for performing  
25 the preconstruction and construction of the project;

26 (d) Evidence of the ability of the applicant to obtain the  
27 necessary bonding for the project to be required by the  
28 Department;

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

31 (f) The safety programs established and the safety records  
32 accumulated by the applicant; and

33 (g) Any other information specified in the request for  
34 statements of qualifications or deemed by the Department to be  
35 pertinent for the specific project.

36 **Sec. 6. 1.** The Department shall appoint a panel consisting  
37 of at least three members to rank the statements of qualifications  
38 submitted to the Department in response to a request for  
39 statements of qualifications published pursuant to section 5 of this  
40 act.

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

42 (a) Verifying that each applicant satisfies the requirements of  
43 section 4 of this act; and

44 (b) Conducting an evaluation of the qualifications of each  
45 applicant based on the factors and relative weight assigned to each



1 *factor that the Department specified in the request for statements*  
2 *of qualifications published pursuant to section 5 of this act.*

3 3. *Except as otherwise provided in this subsection, in ranking*  
4 *the statements of qualifications, the panel shall assign a relative*  
5 *weight of 5 percent to the possession of a certificate of eligibility to*  
6 *receive a preference in bidding on public works. If any federal*  
7 *financial assistance is or may be involved in the project, or any*  
8 *federal statute or regulation or program precludes the assignment*  
9 *of such weighting, the provisions of this subsection do not apply*  
10 *insofar as their application would be contrary to federal law or*  
11 *preclude or reduce federal assistance for that project.*

12 4. *After the panel ranks the statements of qualifications, the*  
13 *Department shall:*

14 (a) *Except as otherwise provided in subsection 5, select at least*  
15 *two but not more than five applicants that the panel determined to*  
16 *be qualified as finalists to submit proposals to the Department*  
17 *pursuant to section 7 of this act.*

18 (b) *Make available to the public a list of the finalists.*

19 5. *If the Department did not receive at least two statements of*  
20 *qualifications from applicants that the panel determines to be*  
21 *qualified pursuant to this section and section 4 of this act, the*  
22 *Department may not enter into a contract pursuant to section 9 of*  
23 *this act.*

24 **Sec. 7. 1.** *After the finalists are selected pursuant to*  
25 *paragraph (a) of subsection 4 of section 6 of this act, the*  
26 *Department shall provide to each finalist a request for proposals*  
27 *for the project unless, after the finalists have been selected, the*  
28 *Department decides to delay, modify or cancel the project. The*  
29 *request for proposals must:*

30 (a) *Set forth the date and time by which proposals must be*  
31 *submitted to the Department;*

32 (b) *Set forth the proposed form or forms of the contract to*  
33 *perform preconstruction services for the project and to construct*  
34 *the project that include, without limitation, the proposed terms and*  
35 *general conditions of the contracts; and*

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

38 2. *A proposal submitted by a finalist must include, without*  
39 *limitation:*

40 (a) *The professional qualifications and experience of the*  
41 *finalist, including, without limitation, the resumes of any*  
42 *employees of the finalist who will be managing the*  
43 *preconstruction and construction of the project;*

44 (b) *The performance history of the finalist concerning other*  
45 *recent, similar projects completed by the finalist, if any;*



(c) *The proposed plan of the finalist to manage the preconstruction and construction of the project, which demonstrates the ability of the finalist to provide preconstruction services and to construct the project;*

(d) *A proposed plan of the finalist for the selection of any necessary subcontractors by a competitive process; and*

(e) *Any other information specified in the request for proposals or deemed by the Department to be pertinent for the specific project.*

**Sec. 8. 1.** *If the Department determines that the circumstances of a particular project deem it appropriate, the Department may, in lieu of obtaining statements of qualifications and proposals for the project pursuant to sections 5, 6 and 7 of this act, obtain proposals for the project pursuant to this section.*

**2.** *The Department must advertise for proposals for a construction manager at risk at least once a week for 2 consecutive weeks for a total of at least two publications in:*

(a) *A newspaper of general circulation in the county in which the major portion of the proposed project is located; and*

(b) *One or more daily newspapers of general circulation throughout the State. The first publication of the advertisement in the daily newspapers having general circulation throughout the State must be made not less than 15 days before the date by which the proposals must be submitted to the Department.*

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

(a) *A description of the project;*

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

(c) *A description of the work that the Department 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 project will begin and end;*

(e) *The date by which proposals must be submitted to the Department;*

(f) *A statement setting forth that the construction manager at risk must be qualified to bid on a project pursuant to NRS 408.333;*

(g) *The name, title, address and telephone number of a person employed by the Department whom an applicant may contact for further information regarding the project;*

(h) *The proposed form or forms of the contract to perform the preconstruction services for the project and to construct the project that include, without limitation, the proposed terms and general conditions of the contracts; and*



(i) A list of the selection criteria and relative weight of the selection criteria that will be used to evaluate the proposals.

4. A proposal submitted by an applicant pursuant to this section must include, without limitation:

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

(b) 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 project;

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

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

(e) The proposed plan of the applicant to perform the preconstruction and construction of the project, which demonstrates the ability of the applicant to provide preconstruction services and to construct the project;

(f) A proposed plan of the applicant for the selection of any necessary subcontractors using a competitive process;

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

(h) Evidence of the ability of the applicant to obtain the necessary bonding for the work to be required by the Department;

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

(j) Any other information specified in the request for proposals or deemed by the Department to be pertinent for the specific project.

**Sec. 9. 1.** The Department shall appoint a panel consisting of at least three members to evaluate the proposals submitted to the Department pursuant to section 7 or 8 of this act pursuant to the criteria set forth in the request for proposals.

2. As part of its evaluation, the panel may interview, as applicable, any finalist who submitted a proposal pursuant to section 7 of this act or any applicant who submitted a proposal pursuant to section 8 of this act.

3. After receipt of the proposals and, if applicable, conducting interviews pursuant to subsection 2, the panel shall rank the applicants based on the factors and relative weight assigned to each factor that the Department specified in the request for proposals.

4. Upon receipt of the final rankings of the applicants from the panel, the Department shall enter into negotiations with the





1 *highest-ranked applicant determined pursuant to subsection 3 for*  
2 *a contract. If the Department is unable to negotiate a contract with*  
3 *the highest-ranked applicant at an amount of compensation and*  
4 *upon such terms and conditions that the Department determines to*  
5 *be fair and reasonable, the Department shall suspend or terminate*  
6 *negotiations with that applicant. The Department may then*  
7 *undertake negotiations with the next highest-ranked applicant in*  
8 *sequence until a contract is entered into or a determination is*  
9 *made by the Department to reject all applicants that submitted*  
10 *proposals.*

11 5. *After a contract for the project has been awarded and*  
12 *executed, the Department shall make available to the applicants*  
13 *and the public:*

14 (a) *The results of the evaluations of proposals and the final*  
15 *rankings of the applicants; and*

16 (b) *If applicable, the results of the interviews.*

17 **Sec. 10. 1.** *If, after the Department has entered into a*  
18 *contract pursuant to section 9 of this act:*

19 (a) *The construction manager at risk has complied with the*  
20 *requirements concerning preconstruction services under*  
21 *the contract and with all other applicable terms and conditions of*  
22 *the contract;*

23 (b) *The Department has decided to proceed with the*  
24 *construction of the project; and*

25 (c) *The design for the project is sufficiently complete to allow*  
26 *for the determination of the price of construction,*

27 *↳ the Department shall negotiate one or more additional phases*  
28 *of an existing contract with the construction manager at risk, if*  
29 *the contract provided for both preconstruction and construction of*  
30 *the project, or enter into negotiations with the construction*  
31 *manager at risk for a contract to construct the project for the*  
32 *Department.*

33 2. *Any contract or addition to an existing contract negotiated*  
34 *pursuant to subsection 1 must provide for:*

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

37 (b) *A fixed price;*

38 (c) *A fixed price plus reimbursement for overhead and other*  
39 *costs and expenses related to the construction of the project; or*

40 (d) *Any combination of the foregoing or on such other terms*  
41 *as the Department determines are appropriate for the project.*

42 *↳ If the contract provides for a guaranteed maximum price, the*  
43 *contract may also include a provision that authorizes the*  
44 *construction manager at risk to receive all or part of any*  
45 *difference between the guaranteed maximum price set forth in the*





1 *contract and the actual price of construction of the project, if the*  
2 *actual price is less than the guaranteed maximum price.*

3 *3. If the Department is unable to negotiate a satisfactory*  
4 *contract or additional phase of a contract entered into pursuant to*  
5 *section 9 of this act to construct the project, the Department:*

6 *(a) Shall, upon 15 calendar days' written notice, terminate the*  
7 *contract or negotiations with that construction manager at risk, as*  
8 *applicable; and*

9 *(b) May advertise and award a contract for construction of the*  
10 *project pursuant to the provisions of NRS 408.323 to 408.387,*  
11 *inclusive, or any other procurement method that the Department is*  
12 *authorized to use.*

13 *4. As used in this section, "guaranteed maximum price"*  
14 *means a fixed sum of money representing the full and complete*  
15 *cost of construction of a project, including, without limitation, the*  
16 *overhead and profit of the construction manager at risk and an*  
17 *allowance for contingencies.*

18 **Sec. 11.** *A contract entered into pursuant to section 9 or 10*  
19 *of this act:*

20 *1. Must comply with the provisions of NRS 338.020 to*  
21 *338.090, inclusive.*

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

24 *3. May set forth the terms by which the construction manager*  
25 *at risk agrees to name the Department as an additional insured in*  
26 *an insurance policy held by the construction manager at risk*  
27 *pursuant to the contract.*

28 *4. Must require that the construction manager at risk to*  
29 *which a contract is awarded assume overall responsibility for*  
30 *ensuring that the preconstruction or construction of the project, as*  
31 *applicable, is completed in a satisfactory manner as set forth in the*  
32 *contract.*

33 *5. May include such additional provisions as may be agreed*  
34 *upon by the Department and the construction manager at risk.*

35 **Sec. 12.** *A construction manager at risk that enters into a*  
36 *contract for a project pursuant to section 9 or 10 of this act:*

37 *1. Except for such services that the contract expressly*  
38 *specifies will be performed by the Department or other parties, is*  
39 *responsible for contracting for the services of any subcontractor,*  
40 *supplier or independent contractor necessary for the*  
41 *preconstruction and construction of the project and for the*  
42 *performance of and payment to any such subcontractors, suppliers*  
43 *or independent contractors; and*

44 *2. Shall perform a portion of the work on the project using its*  
45 *own employees. The value of the work performed by the employees*



1 *of the construction manager at risk on that portion of the project*  
2 *must be equal to at least 30 percent of the total original contract*  
3 *price, excluding specialty items identified in the contract.*

4 **Sec. 13. 1.** *To be eligible to provide materials, equipment,*  
5 *work or other services on a project for which a construction*  
6 *manager at risk was awarded a contract pursuant to section 9 or*  
7 *10 of this act, a subcontractor must be:*

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

9 *(b) Unless included as part of the proposal for the project,*  
10 *selected by the construction manager at risk based on the process*  
11 *of competitive bidding set forth in the applicable provisions of*  
12 *NRS 408.323 to 408.387, inclusive, or such other competitive*  
13 *process as is acceptable to the Department.*

14 **2.** *A construction manager at risk to which a contract is*  
15 *awarded pursuant to section 9 or 10 of this act shall notify the*  
16 *Department in writing of the name of a subcontractor who enters*  
17 *into a subcontract with the construction manager at risk to provide*  
18 *materials, equipment, work or other services on the project and*  
19 *who was not included in the proposal submitted by the*  
20 *construction manager at risk for the project. Such notice must be*  
21 *provided within 15 days after the award of the subcontract to the*  
22 *subcontractor.*

23 **Sec. 14.** *The Department may retain a registered architect or*  
24 *licensed professional engineer as a consultant to prepare the*  
25 *design or assist the Department in preparing the design of a*  
26 *project.*

27 **Sec. 15.** *NRS 408.327 is hereby amended to read as follows:*

28 408.327 Except as otherwise provided in NRS 408.3875 to  
29 408.3887, inclusive ~~§~~, *and sections 2 to 14, inclusive, of this act:*

30 1. Whenever the provisions of NRS 408.323 do not apply, the  
31 Director shall advertise for bids for such work according to the plans  
32 and specifications prepared by the Director.

33 2. The advertisement must state the place where the bidders  
34 may obtain or inspect the plans and specifications and the time and  
35 place for opening the plans and specifications.

36 3. Publication of the advertisement must be made at least once  
37 a week for 2 consecutive weeks for a total of at least two  
38 publications in a newspaper of general circulation in the county in  
39 which the major portion of the proposed improvement or  
40 construction is to be made, and the advertisement must also be  
41 published at least once a week for 2 consecutive weeks for a total of  
42 at least two publications in one or more daily papers of general  
43 circulation throughout the State. The first publication of the  
44 advertisement in the daily newspapers having general circulation



1 throughout the State must be made not less than 15 days before the  
2 time set for opening bids.

3 **Sec. 16.** NRS 408.333 is hereby amended to read as follows:

4 408.333 Except as otherwise provided in NRS 408.3875 to  
5 408.3887, inclusive ~~H~~, *and sections 2 to 14, inclusive, of this act:*

6 1. Before furnishing any person proposing to bid on any  
7 advertised work with the plans and specifications for such work, the  
8 Director shall require from the person a statement, verified under  
9 oath, in the form of answers to questions contained in a standard  
10 form of questionnaire and financial statement, which must include a  
11 complete statement of the person's financial ability and experience  
12 in performing public work of a similar nature.

13 2. Such statements must be filed with the Director in ample  
14 time to permit the Department to verify the information contained  
15 therein in advance of furnishing proposal forms, plans and  
16 specifications to any person proposing to bid on the advertised  
17 public work, in accordance with the regulations of the Department.

18 3. Whenever the Director is not satisfied with the sufficiency  
19 of the answers contained in the questionnaire and financial  
20 statement, the Director may refuse to furnish the person with plans  
21 and specifications and the official proposal forms on the advertised  
22 project. Any bid of any person to whom plans and specifications and  
23 the official proposal forms have not been issued in accordance with  
24 this section must be disregarded, and the certified check, cash or  
25 undertaking of such a bidder returned forthwith.

26 4. Any person who is disqualified by the Director, in  
27 accordance with the provisions of this section, may request, in  
28 writing, a hearing before the Director and present again the person's  
29 check, cash or undertaking and such further evidence with respect to  
30 the person's financial responsibility, organization, plant and  
31 equipment, or experience, as might tend to justify, in his or her  
32 opinion, issuance to him or her of the plans and specifications for  
33 the work.

34 5. Such a person may appeal the decision of the Director to the  
35 Board no later than 5 days before the opening of the bids on the  
36 project. If the appeal is sustained by the Board, the person must be  
37 granted the rights and privileges of all other bidders.

38 **Sec. 17.** NRS 408.337 is hereby amended to read as follows:

39 408.337 Except as otherwise provided in NRS 408.3875 to  
40 408.3887, inclusive ~~H~~, *and sections 2 to 14, inclusive, of this act:*

41 1. All bids must be accompanied by an undertaking executed  
42 by a corporate surety authorized to do business in the State, or by  
43 cash or a certified check in an amount equal to at least 5 percent of  
44 the amount bid. Such undertaking, cash or check furnished to  
45 accompany a bid submitted on-line pursuant to NRS 408.343 must



1 be furnished in accordance with the procedures set forth by the  
2 Director.

3 2. If the successful bidder fails to execute the contract in  
4 accordance with his or her bid and give any bond required by law  
5 and the contract and bond are not postmarked or delivered to the  
6 Department within 20 days after award of the contract, the  
7 undertaking, cash or certified check is forfeited and the proceeds  
8 must be paid into the State Highway Fund.

9 3. The failure of the successful bidder to furnish any bond  
10 required of the bidder by law within the time fixed for his or her  
11 execution of the contract constitutes a failure to execute the contract.

12 4. If the Director deems it is for the best interests of the State,  
13 the Director may, on refusal or failure of the successful bidder to  
14 execute the contract, award it to the second lowest responsible  
15 bidder. If the second lowest responsible bidder fails or refuses to  
16 execute the contract, the Director may likewise award it to the third  
17 lowest responsible bidder. On the failure or refusal to execute the  
18 contract of the second or third lowest bidder to whom a contract is  
19 so awarded, their bidder's security is likewise forfeited to the State.

20 5. The bidder's security of the second and third lowest  
21 responsible bidders may be withheld by the Department until the  
22 contract has been finally executed and the bond given as required  
23 under the provisions of the contract, at which time the security must  
24 be returned. The bidder's security submitted by all other  
25 unsuccessful bidders must be returned to them within 10 days after  
26 the contract is awarded.

27 **Sec. 18.** NRS 408.343 is hereby amended to read as follows:

28 408.343 1. Except as otherwise provided in NRS 408.3875 to  
29 408.3887, inclusive ~~§ 1~~, *and sections 2 to 14, inclusive, of this act:*

30 (a) All bids must be submitted:

31 (1) Under sealed cover and received at the address in Nevada  
32 stated in the advertisement for bids and must be opened publicly and  
33 read at the time stated in the advertisement; or

34 (2) Pursuant to the process of on-line bidding established by  
35 the Director.

36 (b) No bids may be received after the time stated in the  
37 advertisement even though bids are not opened exactly at the time  
38 stated in the advertisement. No bid, whether submitted in  
39 accordance with subparagraph (1) or (2) of paragraph (a), may be  
40 opened before that time.

41 (c) Any bid may be withdrawn by request at any time before the  
42 time stated in the advertisement. The withdrawal must be filed with  
43 the Director and executed by the bidder or the bidder's duly  
44 authorized representative. The withdrawal may be filed  
45 electronically. The withdrawal of a bid does not prejudice the right



1 of the bidder to file a new bid before the time stated in the  
2 advertisement.

3 (d) The Department may reject any bid or all bids if, in the  
4 opinion of the Department, the bids are unbalanced, incomplete,  
5 contain irregularities of any kind or for any good cause.

6 (e) Until the final award of the contract, the Department may  
7 reject or accept any bids and may waive technical errors contained  
8 in the bids, as may be deemed best for the interests of the State.

9 (f) In awarding a contract, the Department shall make the award  
10 to the lowest responsible bidder who has qualified and submitted his  
11 or her bid in accordance with the provisions of this chapter.

12 2. The Director may adopt regulations to carry out the  
13 provisions of this section.

14 3. As used in this section, "on-line bidding" means a process:

15 (a) That is established by the Director; and

16 (b) By which bidders submit proposals or bids for contracts on a  
17 secure website on the Internet or its successor, if any, which is  
18 established and maintained by the Department for that purpose.

19 **Sec. 19.** NRS 408.357 is hereby amended to read as follows:

20 408.357 1. Except as otherwise provided in NRS 408.354,  
21 every contract must provide for the filing and furnishing of one or  
22 more bonds by the ~~[successful bidder.]~~ *person to whom the contract*  
23 *is awarded* with corporate sureties approved by the Department and  
24 authorized to do business in the State, in a sum equal to the full or  
25 total amount of the contract awarded. The bond or bonds must be  
26 performance bonds or labor and material bonds, or both.

27 2. The performance bonds must:

28 (a) Guarantee the faithful performance of the contract in  
29 accordance with the plans, specifications and terms of the contract.

30 (b) Be maintained for 1 year after the date of completion of the  
31 contract.

32 3. The labor and material bonds must:

33 (a) Secure payment of state and local taxes relating to the  
34 contract, premiums under the Nevada Industrial Insurance Act,  
35 contributions under the Unemployment Compensation Law, and  
36 payment of claims for labor, materials, provisions, implements,  
37 machinery, means of transportation or supplies furnished upon or  
38 used for the performance of the contract; and

39 (b) Provide that if the contractor or his or her subcontractors, or  
40 assigns, fail to pay for such taxes, premiums, contributions, labor  
41 and materials required of, and used or consumed by, the contractor  
42 or his or her subcontractors, the surety shall make the required  
43 payment in an amount not exceeding the total sum specified in the  
44 bond together with interest at a rate of 8 percent per annum.



1 ➡ All such bonds must be otherwise conditioned as required by law  
2 or the Department.

3 4. No person bidding for work or submitting proposals under  
4 the provisions of this chapter may be accepted as surety on any  
5 bond.

6 5. Whenever the Department has cause to believe that the  
7 sureties or any of them have become insufficient, it may demand in  
8 writing of the contractor such further bonds or additional sureties, in  
9 a total sum not exceeding that originally required, as are necessary,  
10 considering the extent of the work remaining to be done. Thereafter  
11 no payment may be made upon the contract to the contractor or any  
12 assignee of the contractor until the further bonds or additional  
13 sureties have been furnished.

14 6. The Department in every contract may require the furnishing  
15 of proof by the successful bidder of public liability and insurance  
16 coverage for damage to property.

17 **Sec. 20.** NRS 408.5473 is hereby amended to read as follows:

18 408.5473 ~~[The]~~ *In addition to the provisions of sections 2 to*  
19 *14, inclusive, of this act, the* Department may authorize a person to  
20 develop, construct, improve, maintain or operate, or any  
21 combination thereof, a transportation facility pursuant to NRS  
22 408.5475 or 408.548.

23 **Sec. 21.** NRS 338.1373 is hereby amended to read as follows:

24 338.1373 1. A local government or its authorized  
25 representative shall award a contract for a public work pursuant to  
26 the provisions of:

- 27 (a) NRS 338.1377 to 338.139, inclusive;  
28 (b) NRS 338.143 to 338.148, inclusive;  
29 (c) NRS 338.169 to 338.1699, inclusive; or  
30 (d) NRS 338.1711 to 338.1727, inclusive.

31 2. The provisions of NRS 338.1375 to 338.1382, inclusive,  
32 338.1386, 338.13862, 338.13864, 338.139, 338.142, 338.169 to  
33 338.1699, inclusive, and 338.1711 to 338.1727, inclusive, do not  
34 apply with respect to contracts for the construction, reconstruction,  
35 improvement and maintenance of highways that are awarded by the  
36 Department of Transportation pursuant to NRS 408.313 to 408.433,  
37 inclusive ~~[,]~~ *or sections 2 to 14, inclusive, of this act.*

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

39 338.1385 1. Except as otherwise provided in subsection 9  
40 and NRS 338.1906 and 338.1907, this State, or a governing body or  
41 its authorized representative that awards a contract for a public work  
42 in accordance with paragraph (a) of subsection 1 of NRS 338.1373  
43 shall not:

44 (a) Commence a public work for which the estimated cost  
45 exceeds \$100,000 unless it advertises in a newspaper qualified



1 pursuant to chapter 238 of NRS that is published in the county  
2 where the public work will be performed for bids for the public  
3 work. If no qualified newspaper is published in the county where the  
4 public work will be performed, the required advertisement must be  
5 published in some qualified newspaper that is printed in the State of  
6 Nevada and has a general circulation in the county.

7 (b) Commence a public work for which the estimated cost is  
8 \$100,000 or less unless it complies with the provisions of NRS  
9 338.1386, 338.13862 and 338.13864 and, with respect to the State,  
10 NRS 338.1384 to 338.13847, inclusive.

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

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

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

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

25 5. Except as otherwise provided in subsection 6 and NRS  
26 338.1389, a public body or its authorized representative shall award  
27 a contract to the lowest responsive and responsible bidder.

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

31 (a) The bidder is not a qualified bidder pursuant to NRS  
32 338.1379 or 338.1382;

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

34 (c) The quality of the services, materials, equipment or labor  
35 offered does not conform to the approved plans or specifications; or  
36 (d) The public interest would be served by such a rejection.

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

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

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

44 (c) The public body lets the contract not less than 7 days after  
45 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;~~ *the provisions of chapter 408 of NRS;*

(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 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. 23.** 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;~~ *the provisions of chapter 408 of NRS;*

(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



1 (g) The preconstruction or construction of a public work for  
2 which a local government or its authorized representative enters into  
3 a contract with a construction manager at risk pursuant to NRS  
4 338.169 to 338.1699, inclusive.

5 **Sec. 24.** 1. This act becomes effective upon passage and  
6 approval.

7 2. Sections 22 and 23 of this act expire by limitation on  
8 June 30, 2011.

