

SENATE BILL NO. 268—SENATOR LEE

MARCH 18, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works.
(BDR 28-740)

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 provisions relating to preferences when competing for contracts for certain public works projects; requiring a contractor to replace an unacceptable subcontractor on a public work of this State without an increase in the amount of the bid; requiring a prime contractor to forfeit a portion of the amount of a contract for a public work under certain circumstances; revising the manner in which a construction manager at risk may solicit bids and select a subcontractor for a public work; 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:

Under existing law, a contract for a public work involving a design-build team is awarded by a public body based on the application of certain criteria. A design-build team may qualify for a preference in bidding on such a contract if the contractor on the design-build team has submitted proof to the State Contractors' Board that the contractor has paid certain taxes to the State for the past 5 years. (NRS 338.1389, 338.147, 338.1727, 408.3886)

Section 2 of this bill allows a person who holds a certificate of registration to engage in the practice of architecture or landscape architecture or who holds a license as a professional engineer or professional land surveyor to qualify for a preference when competing for public works if the person has submitted proof to the appropriate licensing board that the person has paid certain taxes to the State for the past 3 years. **Sections 26 and 31** of this bill allow a design-build team to



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receive a preference in selection as a finalist for a public work or a project for the construction, reconstruction or improvement of a highway if both the contractor and the design professionals on the design-build team possess a certificate of eligibility to receive their respective preferences. **Sections 28 and 32** of this bill allow a design-build team that has been selected as a finalist for a public work or a project for the construction, reconstruction or improvement of a highway to receive a preference in selection for a contract only if both the contractor and the design professionals on the design-build team possess a certificate of eligibility to receive their respective preferences. **Section 33** of this bill allows an architect, professional engineer or professional land surveyor to receive a preference in selection for certain public works if the architect, professional engineer or professional land surveyor possesses a certificate of eligibility to receive a preference when competing for public works.

Existing law provides that a public body which selects a design-build team as a finalist in the selection process for a contract for a public work must make public specified information concerning the design-build team and its selection. (NRS 338.1725) **Section 31** of this bill adds a similar requirement for the Department of Transportation to make public specified information concerning a design-build team and the selection of that design-build team as a finalist in the selection process for a contract for a project for the construction, reconstruction or improvement of a highway. **Section 16** of this bill requires that a public body must, after selecting but before entering into a contract with a design professional who is not a member of a design-build team, transmit certain information concerning the selection of the design profession to the licensing board that regulates the design professional. That licensing board must post the information on its Internet website.

Before a contract for a public work of this State is awarded, existing law requires a contractor to replace a subcontractor that is named in the contractor's bid for the contract if the subcontractor is not properly licensed or has been disqualified from participating in public works sponsored by the State Public Works Board. (NRS 338.13895) **Section 12** of this bill requires the contractor to replace such a subcontractor without an increase in the amount of the bid. This same requirement currently applies with respect to the replacement of a subcontractor named in a bid for a contract for a public work of a local government if the subcontractor is not properly licensed. (NRS 338.13895)

Under existing law, a contractor is required to list in his or her bid for a public work the names of certain subcontractors who will be performing work on the public work if the contractor is awarded the contract. Existing law sets forth requirements with which a prime contractor who is awarded the contract must comply to substitute a subcontractor for another subcontractor. (NRS 338.141) If a prime contractor does not comply with the requirements related to the substitution of subcontractors, **section 13** of this bill requires the prime contractor to forfeit 1 percent of the contract amount as a penalty.

Existing law also requires a contractor to include his or her name on a bid for a public work if, as the prime contractor, the contractor will perform a portion of the work on the public work which is estimated to exceed 3 percent of the estimated cost of the public work. (NRS 338.141) **Section 13** of this bill requires a prime contractor to forfeit a specified amount as a penalty if the prime contractor substitutes a subcontractor to perform the work that the prime contractor indicated on the bid that the prime contractor or another subcontractor would perform.

In order for a subcontractor to be eligible to provide materials, equipment, work or other services on a public work for which a construction manager at risk was awarded a contract, existing law requires the subcontractor to be licensed and to be selected based on a process of competitive bidding set forth for all subcontractors on any public work in the State. (NRS 338.1699) **Sections 4 and 5** of this bill changes the manner in which a construction manager at risk selects subcontractors



and sets forth specific procedures a construction manager at risk must follow when selecting subcontractors to provide materials, equipment, work or other services on a public work for which the construction manager at risk was awarded a contract.

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 18-22** 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 20 and 21** 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 any material existing law required to be included in a final proposal, and the public body chooses which applicants to interview and which to select from those proposals. **Section 22** 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 22** allows the construction manager at risk providing preconstruction services to bid on the project if negotiations for the contract fail and the public body opens it up for bids.

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

Section 1. Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. 1. *The State Board of Architecture, Interior Design and Residential Design shall issue a certificate of eligibility to receive a preference when competing for public works to a person who holds a certificate of registration to engage in the practice of architecture pursuant to the provisions of chapter 623 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the person has, while holding a certificate of registration to engage in the practice of architecture in this State:*

(a) Paid directly, on his or her own behalf the excise tax imposed upon an employer by NRS 363B.110 of not less than \$1,500 for each consecutive 12-month period for 36 months immediately preceding the submission of the affidavit from the certified public accountant; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating business that engages in the practice of architecture that:



(1) Satisfies the requirements of NRS 623.350; and

(2) Possesses a certificate of eligibility to receive a preference when competing for public works.

2. The State Board of Landscape Architecture shall issue a certificate of eligibility to receive a preference when competing for public works to a person who holds a certificate of registration to engage in the practice of landscape architecture pursuant to the provisions of chapter 623A of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the person has, while holding a certificate of registration to engage in the practice of landscape architecture in this State:

(a) Paid directly, on his or her own behalf the excise tax imposed upon an employer by NRS 363B.110 of not less than \$1,500 for each consecutive 12-month period for 36 months immediately preceding the submission of the affidavit from the certified public accountant; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating business that engages in the practice of landscape architecture that:

(1) Satisfies the requirements of NRS 623A.250; and

(2) Possesses a certificate of eligibility to receive a preference when competing for public works.

3. The State Board of Professional Engineers and Land Surveyors shall issue a certificate of eligibility to receive a preference when competing for public works to a professional engineer or professional land surveyor who is licensed pursuant to the provisions of chapter 625 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the professional engineer or professional land surveyor has, while licensed as a professional engineer or professional land surveyor in this State:

(a) Paid directly, on his or her own behalf the excise tax imposed upon an employer by NRS 363B.110 of not less than \$1,500 for each consecutive 12-month period for 36 months immediately preceding the submission of the affidavit from the certified public accountant; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating business that engages in engineering or land surveying that:

(1) Satisfies the requirements of NRS 625.407; and

(2) Possesses a certificate of eligibility to receive a preference when competing for public works.



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1 4. For the purposes of complying with the requirements set
2 forth in paragraph (a) of subsection 1, paragraph (a) of subsection
3 2 and paragraph (a) of subsection 3, a person shall be deemed to
4 have paid:

5 (a) The excise tax imposed upon an employer by NRS
6 363B.110 by an affiliate or parent company of the person, if the
7 affiliate or parent company also satisfies the requirements of NRS
8 623.350, 623A.250 or 625.407, as applicable; and

9 (b) The excise tax imposed upon an employer by NRS
10 363B.110 by a joint venture in which the person is a participant, in
11 proportion to the amount of interest the person has in the joint
12 venture.

13 5. A design professional who has received a certificate of
14 eligibility to receive a preference when competing for public works
15 pursuant to subsection 1, 2 or 3 must, at the time for the renewal
16 of his or her professional license or certificate of registration, as
17 applicable, pursuant to chapter 623, 623A or 625 of NRS, submit
18 to the applicable licensing board an affidavit from a certified
19 public accountant setting forth that the design professional has,
20 during the immediately preceding 12 months, paid the taxes
21 required pursuant to paragraph (a) of subsection 1, paragraph (a)
22 of subsection 2 or paragraph (a) of subsection 3, as applicable, to
23 maintain eligibility to hold such a certificate.

24 6. A design professional who fails to submit an affidavit to
25 the applicable licensing board pursuant to subsection 5 ceases to
26 be eligible to receive a preference when competing for public
27 works unless the design professional reapplies for and receives a
28 certificate of eligibility pursuant to subsection 1, 2 or 3, as
29 applicable.

30 7. If a design professional holds more than one license or
31 certificate of registration, the design professional must submit a
32 separate application for each license or certificate of registration
33 pursuant to which the design professional wishes to qualify for a
34 preference when competing for public works. Upon issuance, the
35 certificate of eligibility to receive a preference when competing for
36 public works becomes part of the design professional's license or
37 certificate of registration for which the design professional
38 submitted the application.

39 8. If a design professional who applies to a licensing board
40 for a certificate of eligibility to receive a preference when
41 competing for public works pursuant to subsection 1, 2 or 3
42 submits false information to the licensing board regarding the
43 required payment of taxes, the design professional is not eligible to
44 receive a preference when competing for public works for a period



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1 of 5 years after the date on which the licensing board becomes
2 aware of the submission of the false information.

3 9. The State Board of Architecture, Interior Design and
4 Residential Design, the State Board of Landscape Architecture
5 and the State Board of Professional Engineers and Land
6 Surveyors shall adopt regulations and may assess reasonable fees
7 relating to their respective certification of design professionals for
8 a preference when competing for public works.

9 10. A person or entity who believes that a design professional
10 wrongfully holds a certificate of eligibility to receive a preference
11 when competing for public works may challenge the validity of the
12 certificate by filing a written objection with the public body which
13 selected, for the purpose of providing services for a public work,
14 the design professional who holds the certificate. A written
15 objection authorized pursuant to this subsection must:

16 (a) Set forth proof or substantiating evidence to support the
17 belief of the person or entity that the design professional
18 wrongfully holds a certificate of eligibility to receive a preference
19 when competing for public works; and

20 (b) Be filed with the public body not later than 3 business days
21 after:

22 (1) The date on which the public body makes available to
23 the public pursuant to subsection 3 of NRS 338.1725 the
24 information required by that subsection, if the design-build team
25 of which the design profession who holds the certificate is a part
26 was selected as a finalist pursuant to NRS 338.1725;

27 (2) The date on which the Department of Transportation
28 makes available to the public pursuant to subsection 3 of NRS
29 408.3885 the information required by that subsection, if the
30 design-build team of which the design professional who holds the
31 certificate is a part was selected as a finalist pursuant to NRS
32 408.3885; or

33 (3) The date on which the licensing board which issued the
34 certificate to the design professional posted on its Internet website
35 the information required by subsection 3 of NRS 338.155, if the
36 design professional is identified in that information as being
37 selected for a contract governed by NRS 338.155.

38 11. If a public body receives a written objection pursuant to
39 subsection 10, the public body shall determine whether the
40 objection is accompanied by the proof or substantiating evidence
41 required pursuant to paragraph (a) of that subsection. If the
42 public body determines that the objection is not accompanied by
43 the required proof or substantiating evidence, the public body
44 shall dismiss the objection and the public body or its authorized
45 representative may proceed immediately to award the contract. If



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1 *the public body determines that the objection is accompanied by*
2 *the required proof or substantiating evidence, the public body*
3 *shall determine whether the design professional qualifies for the*
4 *certificate pursuant to the provisions of this section and the public*
5 *body or its authorized representative may proceed to award the*
6 *contract accordingly.*

7 **Sec. 3.** 1. *Notwithstanding the provisions of sections 4 and*
8 *5 of this act, and subject to the provisions of subsection 2, if a*
9 *public body enters into a contract with a construction manager at*
10 *risk for preconstruction services pursuant to NRS 338.1693, the*
11 *construction manager at risk may enter into a contract with a*
12 *subcontractor licensed pursuant to chapter 624 of NRS to provide*
13 *any of the following preconstruction services, the basis of payment*
14 *for which is a negotiated price:*

15 (a) *Assisting the construction manager at risk in identifying*
16 *and selecting materials and equipment to be provided by each*
17 *subcontractor;*

18 (b) *Assisting the construction manager at risk in creating a*
19 *schedule for the provision of labor, materials or equipment by*
20 *each subcontractor;*

21 (c) *For the purpose of enabling the construction manager at*
22 *risk to establish a budget for the construction of the public work,*
23 *estimating the cost of labor, materials or equipment to be provided*
24 *by each subcontractor; and*

25 (d) *Providing recommendations to the construction manager*
26 *at risk regarding the design for the public work, as the design*
27 *pertains to the labor, materials or equipment to be provided by*
28 *each subcontractor.*

29 2. *A subcontractor may not provide preconstruction services*
30 *pursuant to this section in an area of work outside the field or*
31 *scope of the license of the subcontractor.*

32 **Sec. 4.** 1. *To be eligible to provide labor, materials or*
33 *equipment on a public work, the contract for which a public body*
34 *has entered into with a construction manager at risk pursuant to*
35 *NRS 338.1696, a subcontractor must be:*

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

37 (b) *Qualified pursuant to the provisions of this section to*
38 *submit a proposal for the provision of labor, materials or*
39 *equipment on a public work.*

40 2. *Subject to the provisions of subsections 3, 4 and 5, the*
41 *construction manager at risk shall determine whether an applicant*
42 *is qualified to submit a proposal for the provision of labor,*
43 *materials or equipment on the public work for the purposes of*
44 *paragraph (b) of subsection 1.*



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3. After the design and schedule for the construction of the public work is sufficiently detailed and complete to allow a subcontractor to apply to qualify to submit a meaningful and responsive proposal for the provision of labor, materials or equipment on the public work, and not later than 21 days before the date by which such an application must be submitted, the construction manager at risk shall advertise for such applications 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 that is printed in the State of Nevada and has a general circulation in the county.

4. The criteria to be used by the construction manager at risk when determining whether an applicant is qualified to submit a proposal for the provision of labor, materials or equipment must include, and must be limited to:

(a) The monetary limit placed on the license of the applicant by the State Contractors' Board pursuant to NRS 624.220;

(b) The financial ability of the applicant to provide the labor, materials or equipment required on the public work;

(c) Whether the applicant has the ability to obtain the necessary bonding for the work required by the public body;

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

(e) Whether the applicant has breached any contracts with a public body or person in this State or any other state during the 5 years immediately preceding the application;

(f) Whether the applicant has been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the applicant to perform the public work;

(g) The performance history of the applicant concerning other recent, similar public or private contracts, if any, completed by the applicant in Nevada;

(h) The principal personnel of the applicant;

(i) Whether the applicant has been disqualified from the award of any contract pursuant to NRS 338.017 or 338.13895; and

(j) The truthfulness and completeness of the application.

5. The public body or its authorized representative shall ensure that each determination made pursuant to subsection 2 is made subject to the provisions of subsection 4.

6. The construction manager at risk shall notify each applicant and the public body in writing of a determination made pursuant to subsection 2.



7. A determination made pursuant to subsection 2 that an applicant is not qualified may be appealed pursuant to NRS 338.1381 to the public body with whom the construction manager at risk has entered into a contract for the construction of the public work.

Sec. 5. 1. If a public body enters into a contract with a construction manager at risk for the construction of a public work pursuant to NRS 338.1696, the construction manager at risk may enter into a subcontract for the provision of labor, materials and equipment necessary for the construction of the public work only as provided in this section.

2. The provisions of this section apply only to a subcontract for which the estimated value is at least 1 percent of the total cost of the public work.

3. After the design and schedule for the construction of the public work is sufficiently detailed and complete to allow a subcontractor to submit a meaningful and responsive proposal, and not later than 21 days before the date by which a proposal for the provision of labor, materials or equipment by a subcontractor must be submitted, the construction manager at risk shall notify in writing each subcontractor who was determined pursuant to section 4 of this act to be qualified to submit such a proposal of a request for such proposals. A copy of the notice required pursuant to this subsection must be provided to the public body.

4. The notice required pursuant to subsection 3 must include, without limitation:

(a) A description of the design for 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 type and scope of labor, equipment and materials for which subcontractor proposals are being sought;

(c) The dates on which it is anticipated that 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 received, and to whom they must be submitted;

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

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

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

(i) A statement in substantially the following form:



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

1. The subcontractor must be licensed pursuant to chapter 624 of NRS;

2. The proposal must be timely received;

3. The subcontractor must attend the preproposal meeting; and

4. The subcontractor may not modify the proposal after the date and time the proposal is received.

5. A subcontractor may not modify a proposal after the date and time the proposal is received.

6. To be considered responsive, a proposal must:

(a) Be timely received by the construction manager at risk; and

(b) Substantially and materially conform to the details and requirements included in the proposal instructions and for the finalized bid package for the public work, including, without limitation, details and requirements affecting price and performance.

7. The opening of the proposals must be attended by an authorized representative of the public body and the architect or engineer responsible for the design of the public work but is not otherwise open to the public.

8. At the time the proposals are opened, the construction manager at risk shall compile and provide to the public body or its authorized representative a list that includes, without limitation, the name and contact information of each subcontractor who submits a timely proposal and the price of the proposal submitted by the subcontractor. The list must be made available to the public upon request.

9. Not less than 10 working days after opening the proposal, the construction manager at risk shall:

(a) Evaluate the proposals and determine which proposals are responsive.

(b) Select the subcontractor who submits the proposal that the construction manager at risk determines is the best proposal. The subcontractor must be selected from among those:

(1) Who attended the preproposal meeting;

(2) Who submitted a responsive proposal; and

(3) Whose names are included on the list compiled and provided to the public body or its authorized representative pursuant to subsection 8.

(c) Inform the public body or its authorized representative which subcontractor has been selected.



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1 10. The public body or its authorized representative shall
2 ensure that the evaluation of proposals and selection of
3 subcontractors are done pursuant to the provisions of this section
4 and regulations adopted by the State Public Works Board.

5 11. A subcontractor selected pursuant to subsection 9 need
6 not be selected by the construction manager at risk solely on the
7 basis of lowest price.

8 12. Except as otherwise provided in subsection 13, the
9 construction manager at risk shall enter into a subcontract with a
10 subcontractor selected pursuant to subsection 9 to provide the
11 labor, materials or equipment described in the request for
12 proposals.

13 13. A construction manager at risk shall not substitute a
14 subcontractor for any subcontractor selected pursuant to
15 subsection 9 unless:

16 (a) The public body or its authorized representative objects to
17 the subcontractor, requests in writing a change in the
18 subcontractor and pays any increase in costs resulting from the
19 change; or

20 (b) The substitution is approved by the public body after the
21 selected subcontractor:

22 (1) Files for bankruptcy or becomes insolvent;

23 (2) After having a reasonable opportunity, fails or refuses
24 to execute a written contract with the construction manager at risk
25 which was offered to the selected subcontractor with the same
26 general terms that all other subcontractors on the project were
27 offered;

28 (3) Fails or refuses to perform the subcontract within a
29 reasonable time;

30 (4) Is unable to furnish a performance bond and payment
31 bond pursuant to NRS 339.025, if required for the public work; or

32 (5) Is not properly licensed to provide that labor or portion
33 of the work.

34 14. The construction manager at risk shall make available to
35 the public, including, without limitation, each subcontractor who
36 submits a proposal, the final rankings of the subcontractors and
37 shall provide, upon request, an explanation to any subcontractor
38 who is not selected of the reasons why the subcontractor was not
39 selected.

40 15. If a public work is being constructed in phases, and a
41 construction manager at risk selects a subcontractor pursuant to
42 subsection 9 for the provision of labor, materials or equipment for
43 any phase of that construction, the construction manager at risk
44 may select that subcontractor for the provision of labor, materials



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or equipment for any other phase of the construction without following the requirements of subsections 3 to 11, inclusive.

Sec. 6. NRS 338.1373 is hereby amended to read as follows:

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

(a) NRS 338.1377 to 338.139, inclusive;

(b) NRS 338.143 to 338.148, inclusive;

(c) NRS 338.169 to ~~338.1699,~~ **338.16985**, inclusive ~~;~~ **, and sections 3, 4 and 5 of this act;** or

(d) NRS 338.1711 to 338.1727, inclusive.

2. The provisions of NRS 338.1375 to 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142 ~~338.169 to 338.1699, inclusive,~~ and 338.1711 to 338.1727, inclusive, do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.313 to 408.433, inclusive.

Sec. 7. NRS 338.1373 is hereby amended to read as follows:

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

(a) NRS 338.1377 to 338.139, inclusive;

(b) NRS 338.143 to 338.148, inclusive;

(c) NRS 338.169 to 338.16985, inclusive, and sections 3, 4 and 5 of this act; or

(d) NRS 338.1711 to 338.1727, inclusive ~~;~~ **, and section 2 of this act.**

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

Sec. 8. NRS 338.1373 is hereby amended to read as follows:

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

(a) NRS 338.1377 to 338.139, inclusive;

(b) NRS 338.143 to 338.148, inclusive;

(c) NRS 338.169 to 338.16985, inclusive, and sections 3, 4 and 5 of this act; or

(d) NRS 338.1711 to 338.1727, inclusive, and section 2 of this act.



2. The provisions of NRS 338.1375 to 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142, *338.169 to 338.16985, inclusive, and sections 3, 4 and 5 of this act* and 338.1711 to 338.1727, inclusive, do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.313 to 408.433, inclusive.

Sec. 9. NRS 338.1373 is hereby amended to read as follows:

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

(a) NRS 338.1377 to 338.139, inclusive;

(b) NRS 338.143 to 338.148, inclusive;

(c) NRS 338.169 to 338.16985, inclusive, and sections 3, 4 and 5 of this act; or

(d) NRS 338.1711 to 338.1727, inclusive. ~~[, and section 2 of this act.]~~

2. The provisions of NRS 338.1375 to 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142, 338.169 to 338.16985, inclusive, and sections 3, 4 and 5 of this act and 338.1711 to 338.1727, inclusive, do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.313 to 408.433, inclusive.

Sec. 10. NRS 338.1381 is hereby amended to read as follows:

338.1381 1. If, within 10 days after receipt of the notice denying an application pursuant to NRS 338.1379 *or section 4 of this act* or disqualifying a subcontractor pursuant to NRS 338.1376, the applicant or subcontractor, as applicable, files a written request for a hearing with the State Public Works Board or the local government, the Board or governing body shall set the matter for a hearing within 20 days after receipt of the request. The hearing must be held not later than 45 days after the receipt of the request for a hearing unless the parties, by written stipulation, agree to extend the time.

2. The hearing must be held at a time and place prescribed by the Board or local government. At least 10 days before the date set for the hearing, the Board or local government shall serve the applicant or subcontractor with written notice of the hearing. The notice may be served by personal delivery to the applicant or subcontractor or by certified mail to the last known business or residential address of the applicant or subcontractor.

3. The applicant or subcontractor has the burden at the hearing of proving by substantial evidence that the applicant is entitled to be qualified to bid on a contract for a public work, or that the



1 subcontractor is qualified to be a subcontractor on a contract for a
2 public work.

3 4. In conducting a hearing pursuant to this section, the Board
4 or governing body may:

5 (a) Administer oaths;

6 (b) Take testimony;

7 (c) Issue subpoenas to compel the attendance of witnesses to
8 testify before the Board or governing body;

9 (d) Require the production of related books, papers and
10 documents; and

11 (e) Issue commissions to take testimony.

12 5. If a witness refuses to attend or testify or produce books,
13 papers or documents as required by the subpoena issued pursuant to
14 subsection 4, the Board or governing body may petition the district
15 court to order the witness to appear or testify or produce the
16 requested books, papers or documents.

17 6. The Board or governing body shall issue a decision on the
18 matter during the hearing. The decision of the Board or governing
19 body is a final decision for purposes of judicial review.

20 **Sec. 11.** NRS 338.1385 is hereby amended to read as follows:

21 338.1385 1. Except as otherwise provided in subsection 9
22 and NRS 338.1906 and 338.1907, this State, or a governing body or
23 its authorized representative that awards a contract for a public work
24 in accordance with paragraph (a) of subsection 1 of NRS 338.1373
25 shall not:

26 (a) Commence a public work for which the estimated cost
27 exceeds \$100,000 unless it advertises in a newspaper qualified
28 pursuant to chapter 238 of NRS that is published in the county
29 where the public work will be performed for bids for the public
30 work. If no qualified newspaper is published in the county where the
31 public work will be performed, the required advertisement must be
32 published in some qualified newspaper that is printed in the State of
33 Nevada and has a general circulation in the county.

34 (b) Commence a public work for which the estimated cost is
35 \$100,000 or less unless it complies with the provisions of NRS
36 338.1386, 338.13862 and 338.13864 and, with respect to the State,
37 NRS 338.1384 to 338.13847, inclusive.

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

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



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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 enters into a contract with a construction manager at risk pursuant to NRS 338.169 to ~~338.1699,~~ **338.16985**, inclusive ~~§~~, **and sections 3, 4 and 5 of this act.**

Sec. 12. NRS 338.13895 is hereby amended to read as follows:

338.13895 1. The State Public Works Board shall not award a contract to a person who, at the time of the bid, is not properly licensed under the provisions of chapter 624 of NRS or if the contract would exceed the limit of the person's license. A subcontractor who is:

(a) Named in the bid for the contract as a subcontractor who will provide a portion of the work on the public work pursuant to NRS 338.141; and

(b) Not properly licensed for that portion of the work, or who, at the time of the bid, is on disqualified status with the State Public Works Board pursuant to NRS 338.1376,

➡ shall be deemed unacceptable. If the subcontractor is deemed unacceptable pursuant to this subsection, the contractor shall provide an acceptable subcontractor ~~§~~ **with no increase in the amount of the contract or bid.**



2. A local government awarding a contract for a public work shall not award the contract to a person who, at the time of the bid, is not properly licensed under the provisions of chapter 624 of NRS or if the contract would exceed the limit of the person's license. A subcontractor who is:

(a) Named in the bid for the contract as a subcontractor who will provide a portion of the work on the public work pursuant to NRS 338.141; and

(b) Not properly licensed for that portion of work, shall be deemed unacceptable. If the subcontractor is deemed unacceptable pursuant to this subsection, the contractor shall provide an acceptable subcontractor with no increase in the amount of the contract ~~or~~ *or bid*.

3. If, after awarding the contract, but before commencement of the work, the public body or its authorized representative discovers that the person to whom the contract was awarded is not licensed, or that the contract would exceed the person's license, the public body or its authorized representative shall rescind the award of the contract and may accept the next lowest bid for that public work from a responsive bidder who was determined by the public body or its authorized representative to be a qualified bidder pursuant to NRS 338.1379 or 338.1382 without requiring that new bids be submitted.

Sec. 13. NRS 338.141 is hereby amended to read as follows:

338.141 1. Except as otherwise provided in NRS 338.1727, each bid submitted to a public body for any public work to which paragraph (a) of subsection 1 of NRS 338.1385 or paragraph (a) of subsection 1 of NRS 338.143 applies, must include:

(a) If the public body provides a list of the labor or portions of the public work which are estimated by the public body to exceed 3 percent of the estimated cost of the public work, the name of each first tier subcontractor who will provide such labor or portion of the work on the public work which is estimated to exceed 3 percent of the estimated cost of the public work; or

(b) If the public body does not provide a list of the labor or portions of the public work which are estimated by the public body to exceed 3 percent of the estimated cost of the public work, the name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid an amount exceeding 5 percent of the prime contractor's total bid. If the bid is submitted pursuant to this paragraph, within 2 hours after the completion of the opening of the bids, the contractors who submitted the three lowest bids must submit a list containing the name of each first tier subcontractor who will provide labor or a portion of the work on the



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1 public work to the prime contractor for which the first tier
2 subcontractor will be paid an amount exceeding 1 percent of the
3 prime contractor's total bid or \$50,000, whichever is greater, and the
4 number of the license issued to the first tier subcontractor pursuant
5 to chapter 624 of NRS.

6 2. The lists required by subsection 1 must include a description
7 of the labor or portion of the work which each first tier
8 subcontractor named in the list will provide to the prime contractor.

9 3. A prime contractor shall include his or her name on a list
10 required by paragraph (a) *or (b)* of subsection 1 if , *as* the prime
11 contractor , *the prime contractor* will perform any of the work
12 required to be listed pursuant to paragraph (a) *or (b)* of subsection 1.

13 4. Except as otherwise provided in this subsection, if a
14 contractor:

15 (a) Fails to submit the list within the required time; or

16 (b) Submits a list that includes the name of a subcontractor who,
17 at the time of the submission of the list, is on disqualified status with
18 the State Public Works Board pursuant to NRS 338.1376,

19 ➡ the contractor's bid shall be deemed not responsive. A
20 contractor's bid shall not be deemed not responsive on the grounds
21 that the contractor submitted a list that includes the name of a
22 subcontractor who, at the time of the submission of the list, is on
23 disqualified status with the State Public Works Board pursuant to
24 NRS 338.1376 if the contractor, before the award of the contract,
25 provides an acceptable replacement subcontractor in the manner set
26 forth in subsection 1 or 2 of NRS 338.13895.

27 5. A *prime* contractor ~~{whose bid is accepted}~~ shall not
28 substitute a subcontractor for any subcontractor who is named in the
29 bid, unless:

30 (a) The public body or its authorized representative objects to
31 the subcontractor, requests in writing a change in the subcontractor
32 and pays any increase in costs resulting from the change.

33 (b) The substitution is approved by the public body or its
34 authorized representative. The substitution must be approved if the
35 public body or its authorized representative determines that:

36 (1) The named subcontractor, after having a reasonable
37 opportunity, fails or refuses to execute a written contract with the
38 contractor which was offered to the named subcontractor with the
39 same general terms that all other subcontractors on the project were
40 offered;

41 (2) The named subcontractor files for bankruptcy or becomes
42 insolvent;

43 (3) The named subcontractor fails or refuses to perform his
44 or her subcontract within a reasonable time or is unable to furnish a
45 performance bond and payment bond pursuant to NRS 339.025; or



(4) The named subcontractor is not properly licensed to provide that labor or portion of the work.

(c) If the public body awarding the contract is a governing body, the public body or its authorized representative, in awarding the contract pursuant to NRS 338.1375 to 338.139, inclusive:

(1) Applies such criteria set forth in NRS 338.1377 as are appropriate for subcontractors and determines that the subcontractor does not meet that criteria; and

(2) Requests in writing a substitution of the subcontractor.

6. *If a prime contractor substitutes a subcontractor for any subcontractor who is named in the bid without complying with the provisions of subsection 5, the prime contractor shall forfeit, as a penalty to the public body that awarded the contract, an amount equal to 1 percent of the total amount of the contract.*

7. If a *prime* contractor ~~indicates~~ *indicated* pursuant to subsection ~~4~~ *3* that he or she ~~will~~ *would* perform a portion of work on the public work and ~~thereafter requests to substitute~~ , *after the submission of the bid, substitutes* a subcontractor to perform such work, the *prime* contractor shall ~~provide to the public body a written explanation in the form required by the public body which contains the reasons that:~~

~~—(a) A subcontractor was not originally contemplated to be used on that portion of the public work; and~~

~~—(b) The substitution is in the best interest of the public body.~~

~~7.1 forfeit as a penalty to the public body that awarded the contract, the lesser of, and excluding any amount of the contract that is attributable to change orders:~~

(a) *An amount equal to 2.5 percent of the total amount of the contract; or*

(b) *An amount equal to 35 percent of the estimate by the engineer of the cost of the work the prime contractor indicated pursuant to subsection 3 that he or she would perform on the public work.*

8. As used in this section:

(a) “First tier subcontractor” means a subcontractor who contracts directly with a prime contractor to provide labor, materials or services for a construction project.

(b) “General terms” means the terms and conditions of a contract that set the basic requirements for a public work and apply without regard to the particular trade or specialty of a subcontractor, but does not include any provision that controls or relates to the specific portion of the public work that will be completed by a subcontractor, including, without limitation, the materials to be used by the subcontractor or other details of the work to be performed by the subcontractor.



Sec. 14. NRS 338.142 is hereby amended to read as follows:

338.142 1. A person who bids on a contract may file a notice of protest regarding the awarding of the contract with the authorized representative designated by the public body within 5 business days after the date the ~~{bids were opened}~~ *recommendation to award a contract is issued* by the public body or its authorized representative.

2. The notice of protest must include a written statement setting forth with specificity the reasons the person filing the notice believes the applicable provisions of law were violated.

3. A person filing a notice of protest may be required by the public body or its authorized representative, at the time the notice of protest is filed, to post a bond with a good and solvent surety authorized to do business in this state or submit other security, in a form approved by the public body, to the public body who shall hold the bond or other security until a determination is made on the protest. A bond posted or other security submitted with a notice of protest must be in an amount equal to the lesser of:

(a) Twenty-five percent of the total value of the bid submitted by the person filing the notice of protest; or

(b) Two hundred fifty thousand dollars.

4. A notice of protest filed in accordance with the provisions of this section operates as a stay of action in relation to the awarding of any contract until a determination is made by the public body on the protest.

5. A person who makes an unsuccessful bid may not seek any type of judicial intervention until the public body has made a determination on the protest and awarded the contract.

6. Neither a public body nor any authorized representative of the public body is liable for any costs, expenses, attorney's fees, loss of income or other damages sustained by a person who makes a bid, whether or not the person files a notice of protest pursuant to this section.

7. If the protest is upheld, the bond posted or other security submitted with the notice of protest must be returned to the person who posted the bond or submitted the security. If the protest is rejected, a claim may be made against the bond or other security by the public body in an amount equal to the expenses incurred by the public body because of the unsuccessful protest. Any money remaining after the claim has been satisfied must be returned to the person who posted the bond or submitted the security.

Sec. 15. 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



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1 that awards a contract for a public work in accordance with
2 paragraph (b) of subsection 1 of NRS 338.1373 shall not:

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

11 (b) Commence a public work for which the estimated cost is
12 \$100,000 or less unless it complies with the provisions of NRS
13 338.1442, 338.1444 and 338.1446.

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

16 2. At least once each quarter, the authorized representative of a
17 local government shall report to the governing body any contract
18 that the authorized representative awarded pursuant to subsection 1
19 in the immediately preceding quarter.

20 3. 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 4. Except as otherwise provided in subsection 5 and NRS
26 338.147, the local government or its authorized representative shall
27 award a contract to the lowest responsive and responsible bidder.

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

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

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

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

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

38 (a) The local government publishes a notice stating that no bids
39 were received and that the contract may be let without further
40 bidding;

41 (b) The local government considers any bid submitted in
42 response to the notice published pursuant to paragraph (a);

43 (c) The local government lets the contract not less than 7 days
44 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 enters into a contract with a construction manager at risk pursuant to NRS 338.169 to ~~338.1699,~~ **338.16985,** inclusive ~~],~~ **and sections 3, 4 and 5 of this act.**



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Sec. 16. NRS 338.155 is hereby amended to read as follows:

338.155 1. If a public body enters into a contract with a design professional who is not a member of a design-build team, for the provision of services in connection with a public work, the contract:

(a) Must set forth:

(1) The specific period within which the public body must pay the design professional.

(2) The specific period and manner in which the public body may dispute a payment or portion thereof that the design professional alleges is due.

(3) The terms of any penalty that will be imposed upon the public body if the public body fails to pay the design professional within the specific period set forth in the contract pursuant to subparagraph (1).

(4) That the prevailing party in an action to enforce the contract is entitled to reasonable attorney's fees and costs.

(b) May set forth the terms of any discount that the public body will receive if the public body pays the design professional within the specific period set forth in the contract pursuant to subparagraph (1) of paragraph (a).

(c) May set forth the terms by which the design professional agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the design professional, if the policy allows such an addition.

(d) Must not require the design professional to defend, indemnify or hold harmless the public body or the employees, officers or agents of that public body from any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers or agents of the public body.

(e) Except as otherwise provided in this paragraph, may require the design professional to defend, indemnify and hold harmless the public body, and the employees, officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees and costs, to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the design professional or the employees or agents of the design professional in the performance of the contract. If the insurer by which the design professional is insured against professional liability does not so defend the public body and the employees, officers and agents of the public body and the design professional is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's



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1 fees and costs to be paid to the public body by the design
2 professional in an amount which is proportionate to the liability of
3 the design professional.

4 2. Any provision of a contract entered into by a public body
5 and a design professional who is not a member of a design-build
6 team that conflicts with the provisions of paragraph (d) or (e) of
7 subsection 1 is void.

8 3. *A public body shall not enter into a contract with a design
9 professional who is not a member of a design-build team for the
10 provision of services in connection with a public work until 3 days
11 after the public body has transmitted the information relating to
12 the selection of the design professional to the licensing board that
13 regulates the design professional, including, without limitation,
14 the name of the public body, the name of the design professional,
15 whether the design professional possesses a certificate of eligibility
16 to receive a preference when competing for public works and a
17 brief description of the project and services the design professional
18 was selected for, and the licensing board has posted such
19 information on its Internet website. A licensing board shall post
20 any information received pursuant to this subsection within 1
21 business day after receiving such information.*

22 4. As used in this section, “agents” means those persons who
23 are directly involved in and acting on behalf of the public body or
24 the design professional, as applicable, in furtherance of the contract
25 or the public work to which the contract pertains.

26 **Sec. 17.** NRS 338.155 is hereby amended to read as follows:

27 338.155 1. If a public body enters into a contract with a
28 design professional who is not a member of a design-build team, for
29 the provision of services in connection with a public work, the
30 contract:

31 (a) Must set forth:

32 (1) The specific period within which the public body must
33 pay the design professional.

34 (2) The specific period and manner in which the public body
35 may dispute a payment or portion thereof that the design
36 professional alleges is due.

37 (3) The terms of any penalty that will be imposed upon the
38 public body if the public body fails to pay the design professional
39 within the specific period set forth in the contract pursuant to
40 subparagraph (1).

41 (4) That the prevailing party in an action to enforce the
42 contract is entitled to reasonable attorney’s fees and costs.

43 (b) May set forth the terms of any discount that the public body
44 will receive if the public body pays the design professional within



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1 the specific period set forth in the contract pursuant to subparagraph
2 (1) of paragraph (a).

3 (c) May set forth the terms by which the design professional
4 agrees to name the public body, at the cost of the public body, as an
5 additional insured in an insurance policy held by the design
6 professional, if the policy allows such an addition.

7 (d) Must not require the design professional to defend,
8 indemnify or hold harmless the public body or the employees,
9 officers or agents of that public body from any liability, damage,
10 loss, claim, action or proceeding caused by the negligence, errors,
11 omissions, recklessness or intentional misconduct of the employees,
12 officers or agents of the public body.

13 (e) Except as otherwise provided in this paragraph, may require
14 the design professional to defend, indemnify and hold harmless the
15 public body, and the employees, officers and agents of the public
16 body from any liabilities, damages, losses, claims, actions or
17 proceedings, including, without limitation, reasonable attorneys'
18 fees and costs, to the extent that such liabilities, damages, losses,
19 claims, actions or proceedings are caused by the negligence, errors,
20 omissions, recklessness or intentional misconduct of the design
21 professional or the employees or agents of the design professional in
22 the performance of the contract. If the insurer by which the design
23 professional is insured against professional liability does not so
24 defend the public body and the employees, officers and agents of the
25 public body and the design professional is adjudicated to be liable
26 by a trier of fact, the trier of fact shall award reasonable attorney's
27 fees and costs to be paid to the public body by the design
28 professional in an amount which is proportionate to the liability of
29 the design professional.

30 2. Any provision of a contract entered into by a public body
31 and a design professional who is not a member of a design-build
32 team that conflicts with the provisions of paragraph (d) or (e) of
33 subsection 1 is void.

34 3. A public body shall not enter into a contract with a design
35 professional who is not a member of a design-build team for the
36 provision of services in connection with a public work until 3 days
37 after the public body has transmitted the information relating to the
38 selection of the design professional to the licensing board that
39 regulates the design professional, including, without limitation, the
40 name of the public body, the name of the design professional ~~and~~
41 ~~whether the design professional possesses a certificate of eligibility~~
42 ~~to receive a preference when competing for public works}~~ and a
43 brief description of the project and services the design professional
44 was selected for, and the licensing board has posted such
45 information on its Internet website. A licensing board shall post any



1 information received pursuant to this subsection within 1 business
2 day after receiving such information.

3 4. As used in this section, "agents" means those persons who
4 are directly involved in and acting on behalf of the public body or
5 the design professional, as applicable, in furtherance of the contract
6 or the public work to which the contract pertains.

7 **Sec. 18.** NRS 338.169 is hereby amended to read as follows:

8 338.169 A public body may construct a public work by:

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

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

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

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

17 (2) Estimating the cost of the labor and material for the
18 public work; and

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

21 (b) To construct the public work.

22 **Sec. 19.** NRS 338.1691 is hereby amended to read as follows:

23 338.1691 To qualify to enter into contracts with a public body
24 for preconstruction services and to construct a public work, a
25 construction manager at risk must:

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

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

33 3. Be licensed as a contractor pursuant to chapter 624 of NRS;
34 and

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

38 **Sec. 20.** NRS 338.1692 is hereby amended to read as follows:

39 338.1692 1. A public body *or its authorized representative*
40 shall advertise for ~~{statements of qualifications}~~ *proposals* for a
41 construction manager at risk in a newspaper qualified pursuant to
42 chapter 238 of NRS that is published in the county where the public
43 work will be performed. If no qualified newspaper is published in
44 the county where the public work will be performed, the required
45 advertisement must be published in some qualified newspaper that is



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1 printed in the State of Nevada and has a general circulation in the
2 county.

3 2. A request for ~~{a statement of qualifications}~~ *proposals*
4 published 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 expects a
8 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}~~ *proposals*
13 must be submitted to the public body;

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

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

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

24 *(i) A notice that the proposed form of the contract to assist in*
25 *the preconstruction of the public work or to construct the public*
26 *work, including, without limitation, the terms and general*
27 *conditions of the contract, is available from the public body.*

28 3. A ~~{statement of qualifications}~~ *proposal* must include,
29 without limitation:

30 (a) An explanation of the experience that the applicant has with
31 projects of similar size and scope ~~{;}~~ *in both the public and private*
32 *sectors, including, without limitation, an explanation of the*
33 *experience that the applicant has in assisting in the design of such*
34 *projects and an explanation of the experience that the applicant*
35 *has in such projects in Nevada;*

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

39 ~~{The applicant's preliminary proposal for managing the~~
40 ~~preconstruction and construction of the public work;~~

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

43 ~~{(e)}~~ *(d)* Evidence that the applicant has obtained or has the
44 ability to obtain such insurance as may be required by law; ~~{and}~~

45 ~~{(f)}~~ *(e)* A statement of whether the applicant has been:



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

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

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

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

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

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

(j) If the project is for the design of a public work of the State, evidence that the applicant is qualified to bid on a public work of the State pursuant to NRS 338.1379.

Sec. 21. NRS 338.1693 is hereby amended to read as follows:

338.1693 1. The public body *or its authorized representative* shall appoint a panel consisting of at least three members, *at least two of whom must have experience in the construction industry*, to rank the ~~[statements of qualifications]~~ *proposals* submitted to the public body by evaluating the ~~[statements of qualifications]~~ *proposals* as required pursuant to subsections 2 and 3.

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

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

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

3. When ranking the ~~[statements of qualifications]~~ *proposals*, the panel shall assign a relative weight of 5 percent to the possession of a certificate of eligibility to receive a preference in bidding on public works. *If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that*



1 *assistance for a particular public work because of the provisions*
2 *of this subsection, those provisions of this subsection do not apply*
3 *insofar as their application would preclude or reduce federal*
4 *assistance for that work.*

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

7 ~~—(a) Make available to the public the rankings of the applicants;~~
8 ~~and~~

9 ~~—(b) Except], except~~ as otherwise provided in subsection 5, select
10 at least the two but not more than the five applicants ~~[that the panel~~
11 ~~determined to be most qualified as finalists to submit final proposals~~
12 ~~to the public body pursuant to NRS 338.1694.]~~ *whose proposals*
13 *received the highest scores for interviews. During the interview*
14 *process, the public body or its authorized representative may*
15 *require the applicants to submit a preliminary proposed amount of*
16 *compensation for managing the preconstruction and construction*
17 *of the public work, but in no event shall the proposed amount of*
18 *compensation exceed 20 percent of the scoring for the selection of*
19 *the most qualified applicant. After conducting such interviews, the*
20 *panel shall rank the applicants by using a ranking process that is*
21 *separate from the process used to rank proposals pursuant to*
22 *subsection 2 and is based only on information submitted during*
23 *the interview process. The score to be given for the proposed*
24 *amount of compensation, if any, must be calculated by dividing*
25 *the lowest of all the proposed amounts of compensation by the*
26 *applicant's proposed amount of compensation multiplied by the*
27 *total possible points available to each applicant.*

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

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



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1 *representative may then undertake negotiations with the next most*
2 *qualified applicant in sequence until an agreement is reached and,*
3 *if the negotiation is undertaken by an authorized representative of*
4 *the public body, approved by the public body or until a*
5 *determination is made by the public body to reject all applicants.*

6 7. *The public body or its authorized representative shall make*
7 *available to all applicants and the public the final rankings of the*
8 *applicants and shall provide, upon request, an explanation to any*
9 *unsuccessful applicant of the reasons why the applicant was*
10 *unsuccessful.*

11 **Sec. 22.** NRS 338.1696 is hereby amended to read as follows:

12 338.1696 1. If a public body enters into a contract with a
13 construction manager at risk for preconstruction services pursuant to
14 NRS ~~[338.1695.]~~ **338.1693**, after the public body has finalized the
15 design for the public work, *or any portion thereof sufficient to*
16 *determine the provable cost of that portion*, the public body shall
17 enter into negotiations with the construction manager at risk for a
18 contract to construct the public work *or the portion thereof* for the
19 public body for:

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

22 (b) A fixed price; or

23 (c) A fixed price plus reimbursement for overhead and other
24 costs and expenses related to the construction of the public work ~~[.]~~
25 *or portion thereof.*

26 2. If the public body is unable to negotiate a satisfactory
27 contract with the construction manager at risk to construct the public
28 work ~~[.]~~ *or portion thereof*, the public body ~~[.]~~

29 ~~—(a) Shall]~~ *shall* terminate negotiations with that applicant ~~[.]~~ and
30 *:*

31 ~~[(b)]~~ (a) May award the contract for the public work:

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

34 (2) If the public body is a local government, pursuant to the
35 provisions of NRS 338.1377 to 338.139, inclusive, or 338.143 to
36 338.148, inclusive ~~[.]~~; *and*

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

40 **Sec. 23.** NRS 338.1698 is hereby amended to read as follows:

41 338.1698 A contract awarded to a construction manager at risk
42 pursuant to NRS ~~[338.1695-or]~~ 338.1696:

43 1. Must comply with the provisions of NRS 338.020 to
44 338.090, 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, at the cost of the public body, 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 and the construction manager at risk.

Sec. 24. NRS 338.1711 is hereby amended to read as follows:

338.1711 1. Except as otherwise provided in this section and NRS 338.161 to ~~[338.1699.]~~ **338.16985**, inclusive, **and sections 3, 4 and 5 of this act**, a public body shall contract with a prime contractor for the construction of a public work for which the estimated cost exceeds \$100,000.

2. A public body may contract with a design-build team for the design and construction of a public work that is a discrete project if the public body has approved the use of a design-build team for the design and construction of the public work and the public work ~~is:~~

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

~~—(b) Has] has~~ an estimated cost which exceeds ~~[\$10,000,000.]~~ **\$5,000,000.**

Sec. 25. NRS 338.1718 is hereby amended to read as follows:

338.1718 1. A construction manager as agent:

(a) Must:

(1) Be a contractor licensed pursuant to chapter 624 of NRS;

(2) Hold a certificate of registration to practice architecture, interior design or residential design pursuant to chapter 623 of NRS; or

(3) Be licensed as a professional engineer pursuant to chapter 625 of NRS.

(b) May enter into a contract with a public body to assist in the planning, scheduling and management of the construction of a public work without assuming any responsibility for the cost, quality or timely completion of the construction of the public work. A construction manager as agent who enters into a contract with a public body pursuant to this section may not ~~[take]~~ :

(1) Take part in the design or construction of the public work ~~is; or~~



(2) Act as an agent of the public body to select a subcontractor if the work to be performed by the subcontractor is part of a larger public work.

2. A contract between a public body and a construction manager as agent is not required to be awarded by competitive bidding.

Sec. 26. NRS 338.1725 is hereby amended to read as follows:

338.1725 1. The public body shall select at least two but not more than four finalists from among the design-build teams that submitted preliminary proposals. If the public body does not receive at least two preliminary proposals from design-build teams that the public body determines to be qualified pursuant to this section and NRS 338.1721, the public body may not contract with a design-build team for the design and construction of the public work.

2. The public body shall select finalists pursuant to subsection 1 by:

(a) Verifying that each design-build team which submitted a preliminary proposal satisfies the requirements of NRS 338.1721; ~~and~~

(b) Conducting an evaluation of the qualifications of each design-build team that submitted a preliminary proposal, including, without limitation, an evaluation of:

(1) The professional qualifications and experience of the members of the design-build team;

(2) The performance history of the members of the design-build team concerning other recent, similar projects completed by those members, if any;

(3) The safety programs established and the safety records accumulated by the members of the design-build team; and

(4) The proposed plan of the design-build team to manage the design and construction of the public work that sets forth in detail the ability of the design-build team to design and construct the public work ~~and~~; *and*

(c) Except as otherwise provided in this paragraph, assigning, without limitation, a relative weight of 5 percent to the possession of both a certificate of eligibility to receive a preference in bidding on public works by all contractors on the design-build team and a certificate of eligibility to receive a preference when competing for public works by all design professionals on the design-build team. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this paragraph relating to a preference in bidding on public works or a preference when competing for public works, those provisions of this



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paragraph do not apply insofar as their application would preclude or reduce federal assistance for that public work.

3. After the selection of finalists pursuant to this section, the public body shall make available to the public the results of the evaluations of preliminary proposals conducted pursuant to paragraph (b) of subsection 2 and ~~[the rankings of the design-build teams who submitted preliminary proposals.]~~ *identify which of the finalists, if any, received an assignment of 5 percent pursuant to paragraph (c) of subsection 2.*

Sec. 27. NRS 338.1727 is hereby amended to read as follows:

338.1727 1. After selecting the finalists pursuant to NRS 338.1725, the public body shall provide to each finalist a request for final proposals for the public work. The request for final proposals must:

(a) Set forth the factors that the public body will use to select a design-build team to design and construct the public work, including the relative weight to be assigned to each factor; and

(b) Set forth the date by which final proposals must be submitted to the public body.

2. If one or more of the finalists selected pursuant to NRS 338.1725 is disqualified or withdraws, the public body may select a design-build team from the remaining finalist or finalists.

3. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the public body shall assign, without limitation, a relative weight of 5 percent to the possession of a certificate of eligibility to receive a preference in bidding on public works and a relative weight of at least 30 percent to the proposed cost of design and construction of the public work. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection relating to preference in bidding on public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that public work.

4. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly and be responsive to the criteria that the public body will use to select a design-build team to design and construct the public work described in subsection 1. A design-build team that submits a final proposal which is not responsive shall not be awarded the contract and shall not be eligible for the partial reimbursement of costs provided for in subsection 7.

5. A final proposal is exempt from the requirements of NRS 338.141.



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6. After receiving and evaluating the final proposals for the public work, the public body ~~[, at a regularly scheduled meeting,]~~ *or its authorized representative* shall ~~[-~~ *(a) Select the final proposal, using]* *enter into negotiations with the most qualified applicant, as determined pursuant to* the criteria set forth pursuant to subsections 1 and 3, and award the design-build contract to the design-build team whose proposal is selected. ~~[-or~~ *(b) Reject all the final proposals.] If the public body or its authorized representative is unable to negotiate with the most qualified applicant a contract that is determined by the parties to be fair and reasonable, the public body may terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.*

7. If a public body selects a final proposal and awards a design-build contract pursuant to ~~[paragraph (a) of]~~ subsection 6, the public body shall:

(a) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (j) of subsection 2 of NRS 338.1723. The amount of reimbursement must not exceed, for each unsuccessful finalist, 3 percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

(b) Make available to the public the results of the evaluation of final proposals that was conducted and the ranking of the design-build teams who submitted final proposals. The public body shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

8. A contract awarded pursuant to this section:

(a) Must comply with the provisions of NRS 338.020 to 338.090, inclusive.

(b) Must specify:

(1) An amount that is the maximum amount that the public body will pay for the performance of all the work required by the contract, excluding any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;

(2) An amount that is the maximum amount that the public body will pay for the performance of the professional services required by the contract; and

(3) A date by which performance of the work required by the contract must be completed.



(c) May set forth the terms by which the design-build team agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the design-build team.

(d) Except as otherwise provided in paragraph (e), must not require the design professional to defend, indemnify or hold harmless the public body or the employees, officers or agents of that public body from any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers and agents of the public body.

(e) May require the design-build team to defend, indemnify and hold harmless the public body, and the employees, officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the design-build team or the employees or agents of the design-build team in the performance of the contract.

(f) Must require that the design-build team to whom a contract is awarded assume overall responsibility for ensuring that the design and construction of the public work is completed in a satisfactory manner.

9. Upon award of the design-build contract, the public body shall make available to the public copies of all preliminary and final proposals received.

Sec. 28. NRS 338.1727 is hereby amended to read as follows:

338.1727 1. After selecting the finalists pursuant to NRS 338.1725, the public body shall provide to each finalist a request for final proposals for the public work. The request for final proposals must:

(a) Set forth the factors that the public body will use to select a design-build team to design and construct the public work, including the relative weight to be assigned to each factor; and

(b) Set forth the date by which final proposals must be submitted to the public body.

2. If one or more of the finalists selected pursuant to NRS 338.1725 is disqualified or withdraws, the public body may select a design-build team from the remaining finalist or finalists.

3. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the public body shall assign, without limitation, a relative weight of 5 percent to the possession of *both* a certificate of eligibility to receive a preference in bidding on public works *by all contractors on the design-build team and a certificate*



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1 *of eligibility to receive a preference when competing for public*
2 *works by all design professionals on the design-build team,* and a
3 relative weight of at least 30 percent to the proposed cost of design
4 and construction of the public work. If any federal statute or
5 regulation precludes the granting of federal assistance or reduces the
6 amount of that assistance for a particular public work because of the
7 provisions of this subsection relating to *a preference in bidding on*
8 *public works, or a preference when competing for public* works,
9 those provisions of this subsection do not apply insofar as their
10 application would preclude or reduce federal assistance for that
11 public work.

12 4. A final proposal submitted by a design-build team pursuant
13 to this section must be prepared thoroughly and be responsive to the
14 criteria that the public body will use to select a design-build team to
15 design and construct the public work described in subsection 1. A
16 design-build team that submits a final proposal which is not
17 responsive shall not be awarded the contract and shall not be eligible
18 for the partial reimbursement of costs provided for in subsection 7.

19 5. A final proposal is exempt from the requirements of
20 NRS 338.141.

21 6. After receiving and evaluating the final proposals for the
22 public work, the public body or its authorized representative shall
23 enter into negotiations with the most qualified applicant, as
24 determined pursuant to the criteria set forth pursuant to subsections
25 1 and 3, and award the design-build contract to the design-build
26 team whose proposal is selected. If the public body or its authorized
27 representative is unable to negotiate with the most qualified
28 applicant a contract that is determined by the parties to be fair and
29 reasonable, the public body may terminate negotiations with that
30 applicant. The public body or its authorized representative may then
31 undertake negotiations with the next most qualified applicant in
32 sequence until an agreement is reached and, if the negotiation is
33 undertaken by an authorized representative of the public body,
34 approved by the public body or until a determination is made by the
35 public body to reject all applicants.

36 7. If a public body selects a final proposal and awards a design-
37 build contract pursuant to subsection 6, the public body shall:

38 (a) Partially reimburse the unsuccessful finalists if partial
39 reimbursement was provided for in the request for preliminary
40 proposals pursuant to paragraph (j) of subsection 2 of NRS
41 338.1723. The amount of reimbursement must not exceed, for each
42 unsuccessful finalist, 3 percent of the total amount to be paid to the
43 design-build team as set forth in the design-build contract.

44 (b) Make available to the public the results of the evaluation
45 of final proposals that was conducted and the ranking of the



1 design-build teams who submitted final proposals. The public body
2 shall not release to a third party, or otherwise make public, financial
3 or proprietary information submitted by a design-build team.

4 8. A contract awarded pursuant to this section:

5 (a) Must comply with the provisions of NRS 338.020 to
6 338.090, inclusive.

7 (b) Must specify:

8 (1) An amount that is the maximum amount that the public
9 body will pay for the performance of all the work required by the
10 contract, excluding any amount related to costs that may be incurred
11 as a result of unexpected conditions or occurrences as authorized by
12 the contract;

13 (2) An amount that is the maximum amount that the public
14 body will pay for the performance of the professional services
15 required by the contract; and

16 (3) A date by which performance of the work required by the
17 contract must be completed.

18 (c) May set forth the terms by which the design-build team
19 agrees to name the public body, at the cost of the public body, as an
20 additional insured in an insurance policy held by the design-build
21 team.

22 (d) Except as otherwise provided in paragraph (e), must not
23 require the design professional to defend, indemnify or hold
24 harmless the public body or the employees, officers or agents of that
25 public body from any liability, damage, loss, claim, action or
26 proceeding caused by the negligence, errors, omissions, recklessness
27 or intentional misconduct of the employees, officers and agents of
28 the public body.

29 (e) May require the design-build team to defend, indemnify and
30 hold harmless the public body, and the employees, officers and
31 agents of the public body from any liabilities, damages, losses,
32 claims, actions or proceedings, including, without limitation,
33 reasonable attorneys' fees, that are caused by the negligence, errors,
34 omissions, recklessness or intentional misconduct of the design-
35 build team or the employees or agents of the design-build team in
36 the performance of the contract.

37 (f) Must require that the design-build team to whom a contract is
38 awarded assume overall responsibility for ensuring that the design
39 and construction of the public work is completed in a satisfactory
40 manner.

41 9. Upon award of the design-build contract, the public body
42 shall make available to the public copies of all preliminary and final
43 proposals received.



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Sec. 29. NRS 338.485 is hereby amended to read as follows:

338.485 1. A person may not waive or modify a right, obligation or liability set forth in the provisions of NRS 338.400 to 338.645, inclusive.

2. A condition, stipulation or provision in a contract or other agreement that:

(a) Requires a person to waive a right set forth in the provisions of NRS 338.400 to 338.645, inclusive; ~~for~~

(b) Relieves a person of an obligation or liability imposed by the provisions of NRS 338.400 to 338.645, inclusive ~~is~~;

(c) Requires a contractor to waive, release or extinguish a claim or right for damages or an extension of time that the contractor may otherwise possess or acquire as a result of a delay that is:

(1) So unreasonable in length as to amount to an abandonment of the public work;

(2) Caused by fraud, misrepresentation, concealment or other bad faith by the public body;

(3) Caused by active interference by the public body; or

(4) Caused by a decision by the public body to significantly add to the scope or duration of the public work; or

(d) Requires a contractor or public body to be responsible for any consequential damages suffered or incurred by the other party that arise from or relate to a contract for a public work, including, without limitation, rental expenses or other damages resulting from a loss of use or availability of the public work, lost income, lost profit, lost financing or opportunity, business or reputation, and loss of management or employee availability, productivity, opportunity or services,

is against public policy and is void ~~is~~ and unenforceable.

3. The provisions of subsection 2 do not prohibit the use of a liquidated damages clause which otherwise satisfies the requirements of law.

Sec. 30. NRS 408.3883 is hereby amended to read as follows:

408.3883 1. The Department shall advertise for preliminary proposals for the design and construction of a project by a design-build team in a newspaper of general circulation in this State.

2. A request for preliminary proposals published pursuant to subsection 1 must include, without limitation:

(a) A description of the proposed project;

(b) Separate estimates of the costs of designing and constructing the project;

(c) The dates on which it is anticipated that the separate phases of the design and construction of the project will begin and end;



(d) The date by which preliminary proposals must be submitted to the Department, which must not be less than 30 days after the date that the request for preliminary proposals is first published in a newspaper pursuant to subsection 1; and

(e) A statement setting forth the place and time in which a design-build team desiring to submit a proposal for the project may obtain the information necessary to submit a proposal, including, without limitation, the information set forth in subsection 3.

3. The Department shall maintain at the time and place set forth in the request for preliminary proposals the following information for inspection by a design-build team desiring to submit a proposal for the project:

(a) The extent to which designs must be completed for both preliminary and final proposals and any other requirements for the design and construction of the project that the Department determines to be necessary;

(b) A list of the requirements set forth in NRS 408.3884;

(c) A list of the factors that the Department will use to evaluate design-build teams who submit a proposal for the project, including, without limitation:

(1) The relative weight to be assigned to each factor pursuant to NRS 408.3886; and

(2) A disclosure of whether the factors that are not related to cost are, when considered as a group, more or less important in the process of evaluation than the factor of cost;

(d) Notice that a design-build team desiring to submit a proposal for the project must include with its proposal the information used by the Department to determine finalists among the design-build teams submitting proposals pursuant to subsection 2 of NRS 408.3885 and a description of that information;

(e) A statement that a design-build team whose prime contractor holds a certificate of eligibility to receive a preference in bidding on public works issued pursuant to NRS 338.1389 or 338.147 *and whose members who hold a certificate of registration to practice architecture or a license as a professional engineer and who hold a certificate of eligibility to receive a preference when competing for public works issued pursuant to section 2 of this act* should submit a copy of ~~the~~ *each* certificate of eligibility with its proposal; and

(f) A statement as to whether a ~~bidding~~ design-build team that is selected as a finalist pursuant to NRS 408.3885 but is not awarded the design-build contract pursuant to NRS 408.3886 will be partially reimbursed for the cost of preparing a final proposal or best and final offer, or both, and, if so, an estimate of the amount of the partial reimbursement.



Sec. 31. NRS 408.3885 is hereby amended to read as follows:

408.3885 1. The Department shall select at least three but not more than five finalists from among the design-build teams that submitted preliminary proposals. If the Department does not receive at least three preliminary proposals from design-build teams that the Department determines to be qualified pursuant to this section and NRS 408.3884, the Department may not contract with a design-build team for the design and construction of the project.

2. The Department shall select finalists pursuant to subsection 1 by:

(a) Verifying that each design-build team which submitted a preliminary proposal satisfies the requirements of NRS 408.3884;

~~and~~
(b) Conducting an evaluation of the qualifications of each design-build team that submitted a preliminary proposal, including, without limitation, an evaluation of:

(1) The professional qualifications and experience of the members of the design-build team;

(2) The performance history of the members of the design-build team concerning other recent, similar projects completed by those members, if any;

(3) The safety programs established and the safety records accumulated by the members of the design-build team;

(4) The proposed plan of the design-build team to manage the design and construction of the project that sets forth in detail the ability of the design-build team to design and construct the project; and

(5) The degree to which the preliminary proposal is responsive to the requirements of the Department for the submittal of a preliminary proposal ~~and~~; and

(c) Except as otherwise provided in this paragraph, assigning, without limitation, a relative weight of 5 percent to the possession of both a certificate of eligibility to receive a preference in bidding on public works by the prime contractor on the design-build team and a certificate of eligibility to receive a preference when competing for public works by all persons who hold a certificate of registration to practice architecture or a license as a professional engineer on the design-build team. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this paragraph relating to a preference in bidding on public works or a preference when competing for public works, those provisions of this paragraph do not apply insofar as their application would preclude or reduce federal assistance for that public work.



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1 **3. After the selection of finalists pursuant to this section, the**
2 **Department shall make available to the public the results of the**
3 **evaluations of preliminary proposals conducted pursuant to**
4 **paragraph (b) of subsection 2 and identify which of the finalists, if**
5 **any, received an assignment of 5 percent pursuant to paragraph**
6 **(c) of subsection 2.**

7 **Sec. 32.** NRS 408.3886 is hereby amended to read as follows:

8 408.3886 1. After selecting the finalists pursuant to NRS
9 408.3885, the Department shall provide to each finalist a request for
10 final proposals for the project. The request for final proposals must:

11 (a) Set forth the factors that the Department will use to select a
12 design-build team to design and construct the project, including the
13 relative weight to be assigned to each factor; and

14 (b) Set forth the date by which final proposals must be
15 submitted to the Department.

16 2. Except as otherwise provided in this subsection, in assigning
17 the relative weight to each factor for selecting a design-build team
18 pursuant to subsection 1, the Department shall assign, without
19 limitation, a relative weight of 5 percent to the possession of **both** a
20 certificate of eligibility to receive a preference in bidding on public
21 works **by the prime contractor on the design-build team and a**
22 **certificate of eligibility to receive a preference when competing for**
23 **public works by all persons who hold a certificate of registration to**
24 **practice architecture or a license as a professional engineer on the**
25 **design-build team**, and a relative weight of at least 30 percent for
26 the proposed cost of design and construction of the project. If any
27 federal statute or regulation precludes the granting of federal
28 assistance or reduces the amount of that assistance for a particular
29 project because of the provisions of this subsection relating to a
30 preference in bidding on public works **or a preference when**
31 **competing for public works**, those provisions of this subsection do
32 not apply insofar as their application would preclude or reduce
33 federal assistance for that project.

34 3. A final proposal submitted by a design-build team pursuant
35 to this section must be prepared thoroughly, be responsive to the
36 criteria that the Department will use to select a design-build team to
37 design and construct the project described in subsection 1 and
38 comply with the provisions of NRS 338.141.

39 4. After receiving the final proposals for the project, the
40 Department shall:

41 (a) Select the most cost-effective and responsive final proposal,
42 using the criteria set forth pursuant to subsections 1 and 2;

43 (b) Reject all the final proposals; or

44 (c) Request best and final offers from all finalists in accordance
45 with subsection 5.



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5. If the Department determines that no final proposal received is cost-effective or responsive and the Department further determines that requesting best and final offers pursuant to this subsection will likely result in the submission of a satisfactory offer, the Department may prepare and provide to each finalist a request for best and final offers for the project. In conjunction with preparing a request for best and final offers pursuant to this subsection, the Department may alter the scope of the project, revise the estimates of the costs of designing and constructing the project, and revise the selection factors and relative weights described in paragraph (a) of subsection 1. A request for best and final offers prepared pursuant to this subsection must set forth the date by which best and final offers must be submitted to the Department. After receiving the best and final offers, the Department shall:

(a) Select the most cost-effective and responsive best and final offer, using the criteria set forth in the request for best and final offers; or

(b) Reject all the best and final offers.

6. If the Department selects a final proposal pursuant to paragraph (a) of subsection 4 or selects a best and final offer pursuant to paragraph (a) of subsection 5, the Department shall hold a public meeting to:

(a) Review and ratify the selection.

(b) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (f) of subsection 3 of NRS 408.3883. The amount of reimbursement must not exceed, for each unsuccessful finalist, 3 percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

(c) Make available to the public a summary setting forth the factors used by the Department to select the successful design-build team and the ranking of the design-build teams who submitted final proposals and, if applicable, best and final offers. The Department shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

7. A contract awarded pursuant to this section:

(a) Must comply with the provisions of NRS 338.020 to 338.090, inclusive; and

(b) Must specify:

(1) An amount that is the maximum amount that the Department will pay for the performance of all the work required by the contract, excluding any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;



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(2) An amount that is the maximum amount that the Department will pay for the performance of the professional services required by the contract; and

(3) A date by which performance of the work required by the contract must be completed.

8. A design-build team to whom a contract is awarded pursuant to this section shall:

(a) Assume overall responsibility for ensuring that the design and construction of the project is completed in a satisfactory manner; and

(b) Use the workforce of the prime contractor on the design-build team to construct at least 15 percent of the project.

Sec. 33. NRS 625.530 is hereby amended to read as follows:

625.530 Except as otherwise provided in NRS 338.1711 to 338.1727, inclusive, *and section 2 of this act* and 408.3875 to 408.3887, inclusive:

1. The State of Nevada or any of its political subdivisions, including a county, city or town, shall not engage in any public work requiring the practice of professional engineering or land surveying, unless the maps, plans, specifications, reports and estimates have been prepared by, and the work executed under the supervision of, a professional engineer, professional land surveyor or registered architect.

2. The provisions of this section do not:

(a) Apply to any public work wherein the expenditure for the complete project of which the work is a part does not exceed \$35,000.

(b) Include any maintenance work undertaken by the State of Nevada or its political subdivisions.

(c) Authorize a professional engineer, registered architect or professional land surveyor to practice in violation of any of the provisions of this chapter or chapter 623 of NRS.

(d) Require the services of an architect registered pursuant to the provisions of chapter 623 of NRS for the erection of buildings or structures manufactured in an industrial plant, if those buildings or structures meet the requirements of local building codes of the jurisdiction in which they are being erected.

3. The selection of a professional engineer, professional land surveyor or registered architect to perform services pursuant to subsection 1 must be made on the basis of the competence and qualifications of the engineer, land surveyor or architect for the type of services to be performed and not on the basis of competitive fees. If, after selection of the engineer, land surveyor or architect, an agreement upon a fair and reasonable fee cannot be reached with him or her, the public agency may terminate negotiations and select



1 another engineer, land surveyor or architect. *Except as otherwise*
2 *provided in this subsection, in assigning the relative weight to*
3 *each factor for selecting a professional engineer, professional*
4 *land surveyor or registered architect pursuant to this subsection,*
5 *the public agency shall assign, without limitation, a relative weight*
6 *of 5 percent to the possession of a certificate of eligibility to*
7 *receive a preference when competing for public works. If any*
8 *federal statute or regulation precludes the granting of federal*
9 *assistance or reduces the amount of that assistance for a*
10 *particular public work because of the provisions of this subsection*
11 *relating to a preference when competing for public works, those*
12 *provisions of this subsection do not apply insofar as their*
13 *application would preclude or reduce federal assistance for that*
14 *public work.*

15 **Sec. 34.** NRS 338.1694, 338.1695 and 338.1699 are hereby
16 repealed.

17 **Sec. 35.** 1. The State Board of Architecture, Interior Design
18 and Residential Design, the State Board of Landscape Architecture
19 and the State Board of Professional Engineers and Land Surveyors
20 shall, before October 1, 2011, adopt any regulations which are
21 required by or necessary to carry out the provisions of this act.

22 2. The State Public Works Board shall, as soon as practicable
23 after the effective date of this section, adopt regulations governing
24 the acts required by subsection 9 of section 5 of this act.

25 **Sec. 36.** 1. The State Public Works Board and each local
26 government that awards a contract pursuant to NRS 338.1727, as
27 amended by section 28 of this act, or NRS 408.3886, as amended by
28 section 32 of this act, or selects a professional engineer, professional
29 land surveyor or registered architect pursuant to NRS 625.530, as
30 amended by section 33 of this act, shall, on or before October 1 of
31 the year in which it awards such a contract or makes such a
32 selection, submit to the Director of the Legislative Counsel Bureau a
33 report detailing those contracts and selections on the form
34 prescribed by the Committee on Local Government Finance.

35 2. Before August 1, 2011, the Committee on Local
36 Government Finance created pursuant to NRS 354.105 shall
37 prescribe a form for the report described in subsection 1, which
38 must include, without limitation:

39 (a) The total number of contracts and selections described in
40 subsection 1 awarded and made by the State Public Works Board or
41 local government during the year to which the report pertains; and

42 (b) A description of each such contract or selection, including,
43 without limitation:

44 (1) The name of the person or entity who was selected or to
45 whom the contract was awarded.



(2) The particular type of goods or services involved in the contract or selection.

(3) The dollar amount of the contract or selection.

(4) Whether the person or entity who was selected or to whom the contract was awarded was awarded the contract or selected as a result of the person or entity possessing a certificate of eligibility to receive a preference when competing for public works pursuant to subsection 1, 2 or 3 of section 2 of this act.

(5) If the person or entity who was selected or to whom the contract was awarded did not possess a certificate for eligibility to receive a preference when competing for public works pursuant to subsection 1, 2 or 3 of section 2 of this act, the number of persons or entities that did possess such a certificate that bid on the contract or were considered for selection.

Sec. 37. The provisions of sections 4 and 5 of this act apply only to contracts entered into on or after July 1, 2011.

Sec. 38. 1. This section and sections 1, 3 to 6, inclusive, 10 to 15, inclusive, 18 to 25, inclusive, 27, 29, 34, 35 and 37 of this act become effective:

(a) Upon passage and approval for the purposes of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of those sections; and

(b) On July 1, 2011, for all other purposes.

2. Sections 2, 7, 16, 26, 28, 30 to 33, inclusive, and 36 of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of those sections; and

(b) On October 1, 2011, for all other purposes.

3. Section 8 of this act becomes effective on July 1, 2013.

4. Sections 2, 26, 28, 30 to 33, inclusive, and 36 of this act expire by limitation on September 30, 2013.

5. Sections 9 and 17 of this act become effective on October 1, 2013.

TEXT OF REPEALED SECTIONS

NRS 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.

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.

NRS 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.

NRS 338.1699 Subcontractors on public works for which contractor at risk was awarded contract: Eligibility; submission of list to public body.

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

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

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

2. A construction manager at risk to whom a contract for the construction of a public work is awarded pursuant to 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 for the provision of materials, equipment, work or other services on the public work.

