

ASSEMBLY BILL NO. 283—ASSEMBLYMEN DALY, HEALEY;
BENITEZ-THOMPSON, CARRILLO, NEAL, PIERCE AND
SPRINKLE

MARCH 15, 2013

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions governing
bidding for public works. (BDR 28-658)

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; amending certain requirements governing contractors involved in public works; amending certain requirements governing bidding for public works when a public body decides to contract with a construction manager at risk; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a person who serves as a contractor on a public work to be licensed. (NRS 338.010) **Section 2** of this bill limits that requirement so that a person who performs work that does not otherwise require licensure is not required to be licensed to provide services on a public work.

Sections 6 and 11 of this bill require the prime contractor on a public work, who is the contractor who contracts for and coordinates all of the work performed for an entire public work project, to be included on the list that is required to be submitted with the bid which discloses the first tier subcontractors who will perform a significant portion of the work on the project and require the prime contract to perform a certain percentage of the work for the project. **Section 6** further limits the amount that a prime contractor may use to pay for materials that are not directly associated with work that will actually be performed by the prime contractor. **Section 8** of this bill requires any proposal for a public work to include a statement that the prime contractor will meet these requirements.

Existing law allows a public body to contract with a construction manager at risk, which is a construction manager who is required to construct a public work within a guaranteed maximum price, a fixed price or a fixed price plus reimbursement for certain costs. (NRS 338.169, 338.1696) **Section 7** of this bill limits the authorization of a public body to contract with a construction manager at risk for a discrete project to situations where: (1) the public body has approved the



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use of a construction manager at risk for the design and construction of the project; and (2) the estimated cost of the project is over \$5,000,000. **Section 10** of this bill requires a construction manager at risk who has entered into a contract with a public body for services related to construction that are provided before actual construction begins to select each subcontractor before entering negotiations for construction of the public work.

Existing law requires a public body to appoint a panel of at least three persons, with at least two having experience in the construction industry, to rank proposals and interview the top applicants for a public work. (NRS 338.1693) **Section 9** of this bill limits such a panel to seven members, requires that a majority of the panel have experience in the construction industry and prohibits members of such a panel from being employed by the public body. **Section 9** also requires the public body to appoint another panel, similarly comprised, to interview the top applicants.

Sections 12 and 13 of this bill modify requirements governing the procedure that a construction manager at risk is required to use when selecting and contracting with subcontractors.

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 a new section to read as follows:

The Legislature hereby declares that the provisions of this section and NRS 338.169 to 338.16995, inclusive, relating to contracts involving construction managers at risk, are intended to promote public confidence and trust in the contracting and bidding procedures for public works established therein and, for the benefit of the public, to promote the philosophy of obtaining the best possible value as compared to low-bid contracting.

Sec. 2. NRS 338.010 is hereby amended to read as follows:

338.010 As used in this chapter:

1. "Authorized representative" means a person designated by a public body to be responsible for the development, solicitation, award or administration of contracts for public works pursuant to this chapter.

2. "Contract" means a written contract entered into between a contractor and a public body for the provision of labor, materials, equipment or supplies for a public work.

3. "Contractor" means:

(a) A person who ~~is~~:

(1) Is licensed pursuant to the provisions of chapter 624 of NRS ~~is~~; or

(2) Performs such work that the person is not required to be licensed pursuant to the provisions of chapter 624 of NRS; or

(b) A design-build team.

4. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages



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1 thereof directly to a worker or workers employed by them on public
2 works by the day and not under a contract in writing.

3 5. "Design-build contract" means a contract between a public
4 body and a design-build team in which the design-build team agrees
5 to design and construct a public work.

6 6. "Design-build team" means an entity that consists of:

7 (a) At least one person who is licensed as a general engineering
8 contractor or a general building contractor pursuant to chapter 624
9 of NRS; and

10 (b) For a public work that consists of:

11 (1) A building and its site, at least one person who holds a
12 certificate of registration to practice architecture pursuant to chapter
13 623 of NRS.

14 (2) Anything other than a building and its site, at least one
15 person who holds a certificate of registration to practice architecture
16 pursuant to chapter 623 of NRS or landscape architecture pursuant
17 to chapter 623A of NRS or who is licensed as a professional
18 engineer pursuant to chapter 625 of NRS.

19 7. "Design professional" means:

20 (a) A person who is licensed as a professional engineer pursuant
21 to chapter 625 of NRS;

22 (b) A person who is licensed as a professional land surveyor
23 pursuant to chapter 625 of NRS;

24 (c) A person who holds a certificate of registration to engage in
25 the practice of architecture, interior design or residential design
26 pursuant to chapter 623 of NRS;

27 (d) A person who holds a certificate of registration to engage in
28 the practice of landscape architecture pursuant to chapter 623A of
29 NRS; or

30 (e) A business entity that engages in the practice of professional
31 engineering, land surveying, architecture or landscape architecture.

32 8. "Division" means the State Public Works Division of the
33 Department of Administration.

34 9. "Eligible bidder" means a person who is:

35 (a) Found to be a responsible and responsive contractor by a
36 local government or its authorized representative which requests
37 bids for a public work in accordance with paragraph (b) of
38 subsection 1 of NRS 338.1373; or

39 (b) Determined by a public body or its authorized representative
40 which awarded a contract for a public work pursuant to NRS
41 338.1375 to 338.139, inclusive, to be qualified to bid on that
42 contract pursuant to NRS 338.1379 or 338.1382.

43 10. "General contractor" means a person who is licensed to
44 conduct business in one, or both, of the following branches of the
45 contracting business:



(a) General engineering contracting, as described in subsection 2 of NRS 624.215.

(b) General building contracting, as described in subsection 3 of NRS 624.215.

11. "Governing body" means the board, council, commission or other body in which the general legislative and fiscal powers of a local government are vested.

12. *"Horizontal construction" means the construction of any fixed work, including any irrigation, drainage, water supply, flood control, harbor, railroad, highway, tunnel, airport or airway, sewer or sewage disposal system, bridge, inland waterway, pipeline for the transmission of petroleum or any other liquid or gaseous substance, pier, and work incidental thereto. The term does not include the construction of any terminal or other building of an airport or airway, or the construction of any sewage plant, pump, transfer station or other building.*

13. "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision. The term includes a person who has been designated by the governing body of a local government to serve as its authorized representative.

~~13.1~~ 14. "Offense" means failing to:

(a) Pay the prevailing wage required pursuant to this chapter;

(b) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS;

(c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; or

(d) Comply with subsection 4 or 5 of NRS 338.070.

~~14.1~~ 15. "Prime contractor" means a contractor who:

(a) Contracts to construct an entire project;

(b) Coordinates all work performed on the entire project;

(c) Uses his or her own workforce to perform all or a part of the public work; and

(d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors.

➤ The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to NRS 338.139 or 338.148.



~~15-1~~ 16. "Public body" means the State, county, city, town, school district or any public agency of this State or its political subdivisions sponsoring or financing a public work.

~~16-1~~ 17. "Public work" means any project for the new construction, repair or reconstruction of:

(a) A project financed in whole or in part from public money for:

- (1) Public buildings;
- (2) Jails and prisons;
- (3) Public roads;
- (4) Public highways;
- (5) Public streets and alleys;
- (6) Public utilities;
- (7) Publicly owned water mains and sewers;
- (8) Public parks and playgrounds;
- (9) Public convention facilities which are financed at least in part with public money; and

(10) All other publicly owned works and property.

(b) A building for the Nevada System of Higher Education of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this State or from federal money.

~~17-1~~ 18. "Specialty contractor" means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

~~18-1~~ 19. "Stand-alone underground utility project" means an underground utility project that is not integrated into a larger project, including, without limitation:

(a) An underground sewer line or an underground pipeline for the conveyance of water, including facilities appurtenant thereto; and

(b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto,

↳ that is not located at the site of a public work for the design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 338.1711.

~~19-1~~ 20. "Subcontract" means a written contract entered into between:

(a) A contractor and a subcontractor or supplier; or

(b) A subcontractor and another subcontractor or supplier, ↳ for the provision of labor, materials, equipment or supplies for a construction project.

~~20-1~~ 21. "Subcontractor" means a person who:

(a) Is licensed pursuant to the provisions of chapter 624 of NRS or performs such work that the person is not required to be licensed pursuant to chapter 624 of NRS; and



(b) Contracts with a contractor, another subcontractor or a supplier to provide labor, materials or services for a construction project.

~~22-1~~ 22. "Supplier" means a person who provides materials, equipment or supplies for a construction project.

23. *"Vertical construction" means the construction or remodeling of any building or structure for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, and of any structure not specified in subsection 12.*

~~22-1~~ 24. "Wages" means:

(a) The basic hourly rate of pay; and

(b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the worker.

~~23-1~~ 25. "Worker" means a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker in the service of a contractor or subcontractor under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. The term does not include a design professional.

Sec. 3. NRS 338.018 is hereby amended to read as follows:

338.018 The provisions of NRS 338.013 to 338.018, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$100,000 even if the construction work does not qualify as a public work, as defined in subsection ~~16-1~~ 17 of NRS 338.010.

Sec. 4. NRS 338.075 is hereby amended to read as follows:

338.075 The provisions of NRS 338.020 to 338.090, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$100,000 even if the construction work does not qualify as a public work, as defined in subsection ~~16-1~~ 17 of NRS 338.010.

Sec. 5. 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 NRS 338.1415 and:

(a) NRS 338.1377 to 338.139, inclusive;

(b) NRS 338.143 to 338.148, inclusive;

(c) NRS 338.169 to 338.16995, inclusive ~~1-1~~ , and section 1 of this act; or

(d) NRS 338.1711 to 338.173, 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 338.16995, inclusive, and section 1 of this act, and 338.1711 to



1 338.1727, inclusive, do not apply with respect to contracts for the
2 construction, reconstruction, improvement and maintenance of
3 highways that are awarded by the Department of Transportation
4 pursuant to NRS 408.201 and 408.313 to 408.433, inclusive.

5 **Sec. 6.** NRS 338.141 is hereby amended to read as follows:

6 338.141 1. Except as otherwise provided in NRS 338.1727,
7 each bid submitted to a public body for any public work to which
8 paragraph (a) of subsection 1 of NRS 338.1385 or paragraph (a) of
9 subsection 1 of NRS 338.143 applies, must include:

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

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

26 *(1) The name of each first tier subcontractor who will*
27 *provide labor or a portion of the work on the public work to the*
28 *prime contractor for which the first tier subcontractor will be paid an*
29 *amount exceeding \$250,000.*

30 *(2) If any one of the contractors who submitted one of the*
31 *three lowest bids will employ a first tier subcontractor who will*
32 *provide labor or a portion of the work on the public work to the*
33 *prime contractor for which the first tier subcontractor will not be*
34 *paid an amount exceeding \$250,000, the name of each first tier*
35 *subcontractor who will provide labor or a portion of the work on*
36 *the public work to the prime contractor for which the first tier*
37 *subcontractor will be paid 1 percent of the prime contractor's total*
38 *bid or \$50,000, whichever is greater. ~~and~~*

39 *(3) For each first tier subcontractor who will provide labor*
40 *or a portion of the work on the public work to the prime*
41 *contractor, the number of the license issued to the first tier*
42 *subcontractor pursuant to chapter 624 of NRS.*

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



1 3. A prime contractor shall include his or her name on a list
2 required by paragraph (a) or (b) of subsection 1 . ~~if, as the prime~~
3 ~~contractor, If~~ the prime contractor will perform any ~~of the~~ work
4 ~~required to be~~ *which is more than 1 percent of the prime*
5 *contractor's total bid and which is not being performed by a*
6 *subcontractor* listed pursuant to paragraph (a) or (b) of subsection 1
7 ~~+~~, *the prime contractor shall also include on the list a description*
8 *of the labor or portion of the work that the prime contractor will*
9 *perform.*

10 4. Except as otherwise provided in this subsection, if a
11 contractor:

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

13 (b) Submits a list that includes the name of a subcontractor who,
14 at the time of the submission of the list, is on disqualified status with
15 the Division pursuant to NRS 338.1376,

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

24 5. A prime contractor shall not substitute a subcontractor for
25 any subcontractor who is named in the bid, unless:

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

29 (b) The substitution is approved by the public body or its
30 authorized representative. The substitution must be approved if the
31 public body or its authorized representative determines that:

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

37 (2) The named subcontractor files for bankruptcy or becomes
38 insolvent;

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

42 (4) The named subcontractor is not properly licensed to
43 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 , ~~indicated pursuant to subsection 3 that he or she would perform a portion of work on the public work and,~~ after the submission of the bid, substitutes a subcontractor to perform ~~such work,~~ *the work indicated pursuant to subsection 3 that the prime contractor would perform,* the prime contractor shall 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. *A prime contractor shall perform:*

(a) With respect to a public work that involves predominantly horizontal construction, construction work equal in value to at least 50 percent of his or her total bid. Not more than 30 percent of the cost of the construction work required by this paragraph to be performed by the prime contractor may be used to pay for material that is not directly associated with work which will actually be performed by the prime contractor.

(b) With respect to a public work that involves predominantly vertical construction, construction work equal in value to at least 15 percent of his or her total bid. Not more than 50 percent of the cost of the construction work required by this paragraph to be performed by the prime contractor may be used to pay for material that is not directly associated with work which will actually be performed by the prime contractor.

9. 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. 7. NRS 338.169 is hereby amended to read as follows:

1. A public body may construct a public work by:
~~1.1~~ (a) Selecting a construction manager at risk pursuant to the provisions of NRS 338.1691 to 338.1696, inclusive; and

~~1.2~~ (b) Entering into separate contracts with a construction manager at risk:

~~1.2.1~~ (I) For preconstruction services, including, without limitation:

~~1.2.1.1~~ (I) Assisting the public body in determining whether scheduling or constructability problems exist that would delay the construction of the public work;

~~1.2.1.2~~ (II) Estimating the cost of the labor and material for the public work; and

~~1.2.1.3~~ (III) Assisting the public body in determining whether the public work can be constructed within the public body's budget; and

~~1.2.2~~ (2) To construct the public work.

2. A public body may contract with a construction manager at risk for the design and construction of a public work that is a discrete project only if:

(a) The public body has approved the use of a construction manager at risk for the design and construction of the public work; and

(b) The public work has an estimated cost which exceeds \$5,000,000.

Sec. 8. NRS 338.1692 is hereby amended to read as follows:

338.1692 1. A public body or its authorized representative shall advertise for proposals for a construction manager at risk in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.

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

(a) A description of the public work;



- 1 (b) An estimate of the cost of construction;
- 2 (c) A description of the work that the public body expects a
- 3 construction manager at risk to perform;
- 4 (d) The dates on which it is anticipated that the separate phases
- 5 of the preconstruction and construction of the public work will
- 6 begin and end;
- 7 (e) The date by which proposals must be submitted to the public
- 8 body;
- 9 (f) If the project is a public work of the State, a statement setting
- 10 forth that the construction manager at risk must be qualified to bid
- 11 on a public work of the State pursuant to NRS 338.1379 before
- 12 submitting a proposal;
- 13 (g) The name, title, address and telephone number of a person
- 14 employed by the public body that an applicant may contact for
- 15 further information regarding the public work;
- 16 (h) A list of the selection criteria and relative weight of the
- 17 selection criteria that will be used to evaluate proposals; and
- 18 (i) A notice that the proposed form of the contract to assist in the
- 19 preconstruction of the public work or to construct the public work,
- 20 including, without limitation, the terms and general conditions of the
- 21 contract, is available from the public body.
- 22 3. A proposal must include, without limitation:
- 23 (a) An explanation of the experience that the applicant has with
- 24 projects of similar size and scope in both the public and private
- 25 sectors, including, without limitation, an explanation of the
- 26 experience that the applicant has in assisting in the design of such
- 27 projects and an explanation of the experience that the applicant has
- 28 in such projects in Nevada;
- 29 (b) The contact information for references who have knowledge
- 30 of the background, character and technical competence of the
- 31 applicant;
- 32 (c) Evidence of the ability of the applicant to obtain the
- 33 necessary bonding for the work to be required by the public body;
- 34 (d) Evidence that the applicant has obtained or has the ability to
- 35 obtain such insurance as may be required by law;
- 36 (e) A statement of whether the applicant has been:
- 37 (1) Found liable for breach of contract with respect to a
- 38 previous project, other than a breach for legitimate cause, during the
- 39 5 years immediately preceding the date of the advertisement for
- 40 proposals; and
- 41 (2) Disqualified from being awarded a contract pursuant to
- 42 NRS 338.017, 338.13895, 338.1475 or 408.333;
- 43 (f) The professional qualifications and experience of the
- 44 applicant, including, without limitation, the resume of any employee



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

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

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

7 (i) The proposed plan of the applicant to manage the
8 preconstruction and construction of the public work which sets forth
9 in detail the ability of the applicant to provide preconstruction
10 services and to construct the public work ~~;~~ ~~and~~ **, including a**
11 **statement that the applicant will perform:**

12 **(1) With respect to a public work that involves**
13 **predominantly horizontal construction, construction work equal in**
14 **value to at least 50 percent of the estimated cost of construction.**
15 **Not more than 30 percent of the cost of the construction work**
16 **required by this subparagraph to be performed by the applicant**
17 **may be used to pay for material that is not directly associated with**
18 **work which will actually be performed by the applicant; and**

19 **(2) With respect to a public work that involves**
20 **predominantly horizontal construction, construction work equal in**
21 **value to at least 15 percent of the estimated cost of construction.**
22 **Not more than 50 percent of the cost of the construction work**
23 **required by this subparagraph to be performed by the applicant**
24 **may be used to pay for material that is not directly associated with**
25 **work which will actually be performed by the applicant; and**

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

29 **Sec. 9.** NRS 338.1693 is hereby amended to read as follows:

30 338.1693 1. The public body or its authorized representative
31 shall appoint a panel ~~consisting of at least three members, at least~~
32 ~~two of whom must have experience in the construction industry;~~ to
33 rank the proposals submitted to the public body by evaluating the
34 proposals as required pursuant to subsections 2 and 3. **The panel**
35 **must consist of at least three but not more than seven members, a**
36 **majority of whom:**

37 **(a) Must have experience in the construction industry; and**

38 **(b) Must not be employed by the public body constructing the**
39 **public work.**

40 2. The panel **appointed pursuant to subsection 1** shall rank the
41 proposals by:

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

44 (b) Evaluating and assigning a score to each of the proposals
45 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 proposals, the panel *appointed pursuant to subsection 1* shall assign a relative weight of 5 percent to the applicant's possession of a certificate of eligibility to receive a preference in bidding on public works if the applicant submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117. 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, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that work.

4. After the panel *appointed pursuant to subsection 1* ranks the proposals, the public body or its authorized representative shall, except as otherwise provided in subsection ~~15.1~~ 8, select at least the two but not more than the five applicants whose proposals received the highest scores for interviews.

5. The public body or its authorized representative shall appoint a separate panel to interview and rank the applicants selected pursuant to subsection 4. The panel must consist of at least three but not more than seven members, a majority of whom:

(a) Must have experience in the construction industry; and

(b) Must not be employed by the public body constructing the public work.

6. During the interview process, the ~~public body or its authorized representative~~ *panel appointed pursuant to subsection 5* may require the applicants to submit a preliminary proposed amount of compensation for managing the preconstruction and construction of the public work, but in no event shall the proposed amount of compensation exceed 20 percent of the scoring for the selection of the most qualified applicant. *All presentations made at any interview conducted pursuant to this subsection or subsection 5 may be made only by one senior manager employed by the applicant and the employees of the applicant who will be directly responsible for managing the preconstruction and construction of the public work.*

7. After conducting such interviews, the panel *appointed pursuant to subsection 5* shall rank the applicants by using a ranking process that is separate from the process used to rank ~~proposals~~ *the applicants* pursuant to subsection 2. ~~[and is based only on information submitted during the interview process.]~~ The score to be given for the proposed amount of compensation, if any, must be calculated by dividing the lowest of all the proposed amounts of compensation by the applicant's proposed amount of



1 compensation multiplied by the total possible points available to
2 each applicant.

3 ~~15-1~~ 8. If the public body did not receive at least two proposals,
4 the public body may not contract with a construction manager at
5 risk.

6 ~~16-1~~ 9. Upon receipt of the final rankings of the applicants from
7 the panel ~~17~~ *appointed pursuant to subsection 5*, the public body or
8 its authorized representative shall enter into negotiations with the
9 most qualified applicant determined pursuant to ~~18~~ *subsections 2, 3*
10 ~~and 4~~ *the provisions of this section* for a contract for
11 preconstruction services, unless the public body required the
12 submission of a proposed amount of compensation, in which case
13 the proposed amount of compensation submitted by the applicant
14 must be the amount offered for the contract. If the public body or its
15 authorized representative is unable to negotiate a contract with the
16 most qualified applicant for an amount of compensation that the
17 public body or its authorized representative and the most qualified
18 applicant determine to be fair and reasonable, the public body or its
19 authorized representative shall terminate negotiations with that
20 applicant. The public body or its authorized representative may then
21 undertake negotiations with the next most qualified applicant in
22 sequence until an agreement is reached and, if the negotiation is
23 undertaken by an authorized representative of the public body,
24 approved by the public body or until a determination is made by the
25 public body to reject all applicants.

26 ~~17-1~~ 10. The public body or its authorized representative shall
27 make available to all applicants and the public the final rankings of
28 the applicants *, as determined by the panel appointed pursuant to*
29 *subsection 5*, and shall provide, upon request, an explanation to any
30 unsuccessful applicant of the reasons why the applicant was
31 unsuccessful.

32 **Sec. 10.** NRS 338.1696 is hereby amended to read as follows:

33 338.1696 1. If a public body enters into a contract with a
34 construction manager at risk for preconstruction services pursuant to
35 NRS 338.1693, after the public body has finalized the design for the
36 public work, or any portion thereof sufficient to determine the
37 provable cost of that portion, the public body shall enter into
38 negotiations with the construction manager at risk for a contract to
39 construct the public work or the portion thereof for the public body
40 for:

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

43 (b) A fixed price; or



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

2. *Before entering into negotiations with the construction manager at risk for a contract to construct a public work or a portion thereof pursuant to subsection 1, the public body shall provide the construction manager at risk with a list of the labor or portions of the work which are estimated by the public body to exceed 3 percent of the estimated cost of the public work.*

3. *Before entering into negotiations with the public body for a contract to construct the public work or a portion thereof, the construction manager at risk shall select each subcontractor who is to provide labor or a portion of the work which is estimated to exceed 3 percent of the estimated cost of the public work in accordance with NRS 338.16991 and 338.16995 and provide the names of each selected subcontractor to the public body. A public body shall not interfere with the right of the construction manager at risk to select the subcontractor whom the construction manager at risk determines to have submitted the best proposal pursuant to NRS 338.16995.*

4. If the public body is unable to negotiate a satisfactory contract with the construction manager at risk to construct the public work or portion thereof, the public body shall terminate negotiations with that applicant and:

(a) May award the contract for the public work:

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

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

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

Sec. 11. NRS 338.16985 is hereby amended to read as follows:

338.16985 A construction manager at risk who enters into a contract for the construction of a public work pursuant to NRS 338.1696:

1. Is responsible for contracting for the services of any necessary subcontractor, supplier or independent contractor necessary for the construction of the public work and for the performance of and payment to any such subcontractors, suppliers or independent contractors.

2. If the public work involves ~~the~~ *predominantly horizontal* construction, ~~of a fixed work that is described in subsection 2 of~~



1 ~~NRS 624.215,~~ shall perform ~~[not less than 25]~~ *construction work*
2 *equal in value to at least 50* percent of the *estimated cost of*
3 *construction* ~~[of the fixed work]~~ himself or herself, or using his or
4 her own employees. *Not more than 30 percent of the cost of the*
5 *construction work required by this subsection to be performed by*
6 *the construction manager at risk, or his or her own employees,*
7 *may be used to pay for material that is not directly associated with*
8 *work that will actually be performed by the construction manager*
9 *at risk, or his or her employees.*

10 3. If the public work involves ~~[the]~~ *predominantly vertical*
11 *construction* ~~[of a building or structure that is described in~~
12 ~~subsection 3 of NRS 624.215, may]~~, shall perform *construction*
13 *work equal in value to at least 15 percent of the estimated cost of*
14 *construction* himself or herself, or using his or her own employees.
15 ~~[as much of the construction of the building or structure that the~~
16 ~~construction manager at risk is able to demonstrate that the~~
17 ~~construction manager at risk or his or her own employees have~~
18 ~~performed on similar projects.]~~ *Not more than 50 percent of the*
19 *cost of the construction work required by this subsection to be*
20 *performed by the construction manager at risk, or his or her own*
21 *employees, may be used to pay for material that is not directly*
22 *associated with work which will actually be performed by the*
23 *construction manager at risk, or his or her employees.*

24 **Sec. 12.** NRS 338.16991 is hereby amended to read as
25 follows:

26 338.16991 1. To be eligible to provide labor, materials or
27 equipment on a public work, the contract for which a public body
28 has entered into with a construction manager at risk pursuant to
29 NRS 338.1696, a subcontractor must be:

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

31 (b) Qualified pursuant to the provisions of this section to submit
32 a proposal for the provision of labor, materials or equipment on a
33 public work.

34 2. Subject to the provisions of subsections 3, 4 and 5, the
35 construction manager at risk shall determine whether an applicant is
36 qualified to submit a proposal for the provision of labor, materials or
37 equipment on the public work for the purposes of paragraph (b) of
38 subsection 1.

39 3. *After a construction manager at risk has been selected*
40 *pursuant to NRS 338.1693, the construction manager at risk may*
41 *accept an application from a subcontractor to determine whether*
42 *the subcontractor is qualified to submit a proposal for the*
43 *provision of labor, materials or equipment on the public work.*

44 After the design and schedule for the construction of the public
45 work is sufficiently detailed and complete to allow a subcontractor



1 to apply to qualify to submit a meaningful and responsive proposal
2 for the provision of labor, materials or equipment on the public
3 work, and not later than ~~124~~ 10 working days before the date by
4 which such an application must be submitted, the construction
5 manager at risk shall advertise for such applications in a newspaper
6 qualified pursuant to chapter 238 of NRS that is published in the
7 county where the public work will be performed. If no qualified
8 newspaper is published in the county where the public work will be
9 performed, the advertisement must be published in some qualified
10 newspaper that is printed in the State of Nevada and has a general
11 circulation in the county.

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

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

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

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

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

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

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

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

34 (h) The principal personnel of the applicant;

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

37 (j) The truthfulness and completeness of the application.

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

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

44 7. A determination made pursuant to subsection 2 that an
45 applicant is not qualified may be appealed pursuant to



1 NRS 338.1381 to the public body with whom the construction
2 manager at risk has entered into a contract for the construction of
3 the public work.

4 **Sec. 13.** NRS 338.16995 is hereby amended to read as
5 follows:

6 338.16995 1. If a public body enters into a contract with a
7 construction manager at risk for the construction of a public work
8 pursuant to NRS 338.1696, the construction manager at risk may
9 enter into a subcontract for the provision of labor, materials and
10 equipment necessary for the construction of the public work only as
11 provided in this section.

12 2. The provisions of this section apply only to a subcontract for
13 which the estimated value is at least 1 percent of the total cost of the
14 public work ~~or~~ *or \$50,000, whichever is greater.*

15 3. After the design and schedule for the construction of the
16 public work is sufficiently detailed and complete to allow a
17 subcontractor to submit a meaningful and responsive proposal, and
18 not later than 21 days before the date by which a proposal for the
19 provision of labor, materials or equipment by a subcontractor must
20 be submitted, the construction manager at risk shall notify in writing
21 each subcontractor who was determined pursuant to NRS 338.16991
22 to be qualified to submit such a proposal of a request for such
23 proposals. A copy of the notice required pursuant to this subsection
24 must be provided to the public body.

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

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

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

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

34 (d) ~~The~~ *If a preproposal meeting is to be held, the* date, time
35 and place at which ~~the~~ *the* preproposal meeting will be held;

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

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

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

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

44 (i) A statement in substantially the following form:



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~~ *If a preproposal meeting is held, 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 public body may require* the architect or engineer responsible for the design of the public work ~~but~~ *to attend the opening of the proposals. The opening of the proposals* 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 proposals ~~and~~ *and before the construction manager at risk submits a guaranteed maximum price, a fixed price or a fixed price plus reimbursement pursuant to NRS 338.1696*, 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 ~~and~~ *, if a preproposal meeting was held;*

(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.}~~

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

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

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

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

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

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

(1) Files for bankruptcy or becomes insolvent;

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

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

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

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

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

15. If a public work is being constructed in phases, and a construction manager at risk selects a subcontractor pursuant to subsection 9 for the provision of labor, materials or equipment for any phase of that construction, the construction manager at risk may select that subcontractor for the provision of labor, materials or equipment for any other phase of the construction without following the requirements of subsections 3 to 11, inclusive.



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Sec. 14. NRS 338.1908 is hereby amended to read as follows:

338.1908 1. The governing body of each local government shall, by July 28, 2009, develop a plan to retrofit public buildings, facilities and structures, including, without limitation, traffic-control systems, and to otherwise use sources of renewable energy to serve those buildings, facilities and structures. Such a plan must:

(a) Include a list of specific projects. The projects must be prioritized and selected on the basis of the following criteria:

(1) The length of time necessary to commence the project.

(2) The number of workers estimated to be employed on the project.

(3) The effectiveness of the project in reducing energy consumption.

(4) The estimated cost of the project.

(5) Whether the project is able to be powered by or otherwise use sources of renewable energy.

(6) Whether the project has qualified for participation in one or more of the following programs:

(I) The Solar Energy Systems Incentive Program created by NRS 701B.240;

(II) The Renewable Energy School Pilot Program created by NRS 701B.350;

(III) The Wind Energy Systems Demonstration Program created by NRS 701B.580; or

(IV) The Waterpower Energy Systems Demonstration Program created by NRS 701B.820.

(b) Include a list of potential funding sources for use in implementing the projects, including, without limitation, money available through the Energy Efficiency and Conservation Block Grant Program as set forth in 42 U.S.C. § 17152 and grants, gifts, donations or other sources of money from public and private sources.

2. The governing body of each local government shall transmit the plan developed pursuant to subsection 1 to the Director of the Office of Energy and to any other entity designated for that purpose by the Legislature.

3. As used in this section:

(a) "Local government" means each city or county that meets the definition of "eligible unit of local government" as set forth in 42 U.S.C. § 17151 and each unit of local government, as defined in subsection ~~121~~ 13 of NRS 338.010, that does not meet the definition of "eligible entity" as set forth in 42 U.S.C. § 17151.

(b) "Renewable energy" means a source of energy that occurs naturally or is regenerated naturally, including, without limitation:

(1) Biomass;



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- 1 (2) Fuel cells;
- 2 (3) Geothermal energy;
- 3 (4) Solar energy;
- 4 (5) Waterpower; and
- 5 (6) Wind.

6 ↪ The term does not include coal, natural gas, oil, propane or any
7 other fossil fuel, or nuclear energy.

8 (c) “Retrofit” means to alter, improve, modify, remodel or
9 renovate a building, facility or structure to make that building,
10 facility or structure more energy-efficient.

11 **Sec. 15.** This act becomes effective on July 1, 2013.

