

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; extending the authority for the Department of Transportation to contract with a construction manager at risk for the construction, reconstruction, improvement and maintenance of highways on and after July 1, 2013; 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.

Existing law requires certain prime contractors who submit bids for a public work to include with the bid a list that discloses the first tier subcontractors who will perform a certain portion of the work on the public work. (NRS 338.141) **Section 6** of this bill amends the provisions prescribing which subcontractors must be named on the list. **Section 6** also requires the prime contractor to include on the list: (1) a description of the labor or portion of the work that the prime contractor will perform; or (2) a statement that the prime contractor will perform all work other than that being performed by a subcontractor named on the list.

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 8** of this bill



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requires a proposal for a construction manager at risk to include an explanation of the experience that the applicant has as a construction manager at risk. **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 provide to the public body, before entering into a contract for construction of the public work, a list of the labor or portions of the work which are estimated by the construction manager at risk to exceed a certain percentage of the estimated cost 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 and requires that a majority of the panel have experience in the construction industry. **Section 9** also authorizes the public body to appoint another panel, similarly comprised, to interview the top applicants.

Section 11 of this bill provides that if a public work involves predominantly horizontal construction, a construction manager at risk who enters into a contract for the construction of the public work shall perform construction work equal in value to at least 25 percent of the estimated cost of construction himself or herself, or using his or her own employees. **Section 2** of this bill defines the term "horizontal construction."

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.

Under existing law, the Department of Transportation may award a contract for the construction, reconstruction, improvement and maintenance of a highway to a construction manager at risk on or before June 30, 2013. **Section 5** of this bill authorizes the Department of Transportation to contract with a construction manager at risk for the construction, reconstruction, improvement and maintenance of highways on and after July 1, 2013.

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

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

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

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

(b) For a public work that consists of:

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

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

7. "Design professional" means:

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

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

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

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

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

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



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

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

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

10. "General contractor" means a person who is licensed to conduct business in one, or both, of the following branches of the 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 vertical construction, 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



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

~~144-~~ 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.

~~155-~~ 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.

~~166-~~ 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.

~~177-~~ 18. "Specialty contractor" means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

~~188-~~ 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,



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

4 ~~H9.1~~ 20. "Subcontract" means a written contract entered into
5 between:

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

7 (b) A subcontractor and another subcontractor or supplier,

8 ➔ for the provision of labor, materials, equipment or supplies for a
9 construction project.

10 ~~H20.1~~ 21. "Subcontractor" means a person who:

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

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

17 ~~H21.1~~ 22. "Supplier" means a person who provides materials,
18 equipment or supplies for a construction project.

19 23. *"Vertical construction" means the construction or*
20 *remodeling of any building, structure or other improvement that is*
21 *predominantly vertical, including, without limitation, a building,*
22 *structure or improvement for the support, shelter and enclosure of*
23 *persons, animals, chattels or movable property of any kind, and*
24 *any improvement appurtenant thereto.*

25 ~~H22.1~~ 24. "Wages" means:

26 (a) The basic hourly rate of pay; and

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

31 ~~H23.1~~ 25. "Worker" means a skilled mechanic, skilled worker,
32 semiskilled mechanic, semiskilled worker or unskilled worker in the
33 service of a contractor or subcontractor under any appointment or
34 contract of hire or apprenticeship, express or implied, oral or
35 written, whether lawfully or unlawfully employed. The term does
36 not include a design professional.

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

38 338.018 The provisions of NRS 338.013 to 338.018, inclusive,
39 apply to any contract for construction work of the Nevada System of
40 Higher Education for which the estimated cost exceeds \$100,000
41 even if the construction work does not qualify as a public work, as
42 defined in subsection ~~H6.1~~ 17 of NRS 338.010.

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

44 338.075 The provisions of NRS 338.020 to 338.090, inclusive,
45 apply to any contract for construction work of the Nevada System of



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1 Higher Education for which the estimated cost exceeds \$100,000
2 even if the construction work does not qualify as a public work, as
3 defined in subsection ~~H-6~~ 17 of NRS 338.010.

4 **Sec. 5.** NRS 338.1373 is hereby amended to read as follows:

5 338.1373 1. A local government or its authorized
6 representative shall award a contract for a public work pursuant to
7 the provisions of NRS 338.1415 and:

8 (a) NRS 338.1377 to 338.139, inclusive;

9 (b) NRS 338.143 to 338.148, inclusive;

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

12 (d) NRS 338.1711 to 338.173, inclusive.

13 2. The provisions of NRS 338.1375 to 338.1382, inclusive,
14 338.1386, 338.13862, 338.13864, 338.139, 338.142 ~~1, 338.169 to~~
15 ~~338.16995, inclusive, 1~~ and 338.1711 to 338.1727, inclusive, do not
16 apply with respect to contracts for the construction, reconstruction,
17 improvement and maintenance of highways that are awarded by the
18 Department of Transportation pursuant to NRS 408.201 and
19 408.313 to 408.433, inclusive.

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

21 338.141 1. Except as otherwise provided in NRS 338.1727,
22 each bid submitted to a public body for any public work to which
23 paragraph (a) of subsection 1 of NRS 338.1385 or paragraph (a) of
24 subsection 1 of NRS 338.143 applies, must include:

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

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

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



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1 (2) *If any one of the contractors who submitted one of the*
2 *three lowest bids will employ a first tier subcontractor who will*
3 *provide labor or a portion of the work on the public work to the*
4 *prime contractor for which the first tier subcontractor will not be*
5 *paid an amount exceeding \$250,000, the name of each first tier*
6 *subcontractor who will provide labor or a portion of the work on*
7 *the public work to the prime contractor for which the first tier*
8 *subcontractor will be paid 1 percent of the prime contractor's total*
9 *bid or \$50,000, whichever is greater. ~~†, and†~~*

10 (3) *For each first tier subcontractor whose name is listed*
11 *pursuant to subparagraph (1) or (2), the number of the license*
12 *issued to the first tier subcontractor pursuant to chapter 624 of NRS.*

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

16 3. A prime contractor shall include his or her name on a list
17 required by paragraph (a) or (b) of subsection 1 . ~~†if, as the prime~~
18 ~~contractor,†~~ *If the prime contractor will perform any ~~†of the†~~ work*
19 ~~*†required to be†*~~ *which is more than 1 percent of the prime*
20 *contractor's total bid and which is not being performed by a*
21 *subcontractor listed pursuant to paragraph (a) or (b) of subsection 1*
22 ~~*††, the prime contractor shall also include on the list:*~~

23 (a) *A description of the labor or portion of the work that the*
24 *prime contractor will perform; or*

25 (b) *A statement that the prime contractor will perform all work*
26 *other than that being performed by a subcontractor listed*
27 *pursuant to paragraph (a) or (b) of subsection 1.*

28 4. Except as otherwise provided in this subsection, if a
29 contractor:

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

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

34 ➔ the contractor's bid shall be deemed not responsive. A
35 contractor's bid shall not be deemed not responsive on the grounds
36 that the contractor submitted a list that includes the name of a
37 subcontractor who, at the time of the submission of the list, is on
38 disqualified status with the Division pursuant to NRS 338.1376 if
39 the contractor, before the award of the contract, provides an
40 acceptable replacement subcontractor in the manner set forth in
41 subsection 1 or 2 of NRS 338.13895.

42 5. A prime contractor shall not substitute a subcontractor for
43 any subcontractor who is named in the bid, 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.

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

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

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

(3) The named subcontractor fails or refuses to perform his or her subcontract within a reasonable time or is unable to furnish a 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 , ~~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. As used in this section:



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

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

12 **Sec. 7.** (Deleted by amendment.)

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

14 338.1692 1. A public body or its authorized representative
15 shall advertise for proposals for a construction manager at risk in a
16 newspaper qualified pursuant to chapter 238 of NRS that is
17 published in the county where the public work will be performed. If
18 no qualified newspaper is published in the county where the public
19 work will be performed, the required advertisement must be
20 published in some qualified newspaper that is printed in the State of
21 Nevada and has a general circulation in the county.

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

24 (a) A description of the public work;

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

26 (c) A description of the work that the public body expects a
27 construction manager at risk to perform;

28 (d) The dates on which it is anticipated that the separate phases
29 of the preconstruction and construction of the public work will
30 begin and end;

31 (e) The date by which proposals must be submitted to the public
32 body;

33 (f) If the project is a public work of the State, a statement setting
34 forth that the construction manager at risk must be qualified to bid
35 on a public work of the State pursuant to NRS 338.1379 before
36 submitting a proposal;

37 (g) The name, title, address and telephone number of a person
38 employed by the public body that an applicant may contact for
39 further information regarding the public work;

40 (h) A list of the selection criteria and relative weight of the
41 selection criteria that will be used to evaluate proposals; and

42 (i) A notice that the proposed form of the contract to assist in the
43 preconstruction of the public work or to construct the public work,
44 including, without limitation, the terms and general conditions of the
45 contract, is available from the public body.



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3. A proposal must include, without limitation:

(a) An explanation of the experience that the applicant has with projects of similar size and scope in both the public and private sectors, including, without limitation, an explanation of the experience that the applicant has in assisting in the design of such projects and an explanation of the experience that the applicant has in such projects in Nevada;

(b) *An explanation of the experience that the applicant has as a construction manager at risk;*

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

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

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

~~(e)~~ (f) 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)~~ (g) 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)~~ (h) The safety programs established and the safety records accumulated by the applicant;

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

~~(i)~~ (j) 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~~ *and which includes, if the public work involves predominantly horizontal construction, a statement that the applicant will perform construction work equal in value to at least 25 percent of the estimated cost of construction; and*

~~(j)~~ (k) 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. 9. 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 *but not more than*



1 *seven* members, ~~at least two~~ *a majority* of whom must have
2 experience in the construction industry, to rank the proposals
3 submitted to the public body by evaluating the proposals as required
4 pursuant to subsections 2 and 3.

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

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

9 (b) Evaluating and assigning a score to each of the proposals
10 received by the public body based on the factors and relative weight
11 assigned to each factor that the public body specified in the request
12 for proposals.

13 3. When ranking the proposals, the panel *appointed pursuant*
14 *to subsection 1* shall assign a relative weight of 5 percent to the
15 applicant's possession of a certificate of eligibility to receive a
16 preference in bidding on public works if the applicant submits a
17 signed affidavit that meets the requirements of subsection 1 of NRS
18 338.0117. If any federal statute or regulation precludes the granting
19 of federal assistance or reduces the amount of that assistance for a
20 particular public work because of the provisions of this subsection,
21 those provisions of this subsection do not apply insofar as their
22 application would preclude or reduce federal assistance for that
23 work.

24 4. After the panel *appointed pursuant to subsection 1* ranks
25 the proposals, the public body or its authorized representative shall,
26 except as otherwise provided in subsection ~~5.1~~ 8, select at least the
27 two but not more than the five applicants whose proposals received
28 the highest scores for interviews.

29 5. *The public body or its authorized representative may*
30 *appoint a separate panel to interview and rank the applicants*
31 *selected pursuant to subsection 4. If a separate panel is appointed*
32 *pursuant to this subsection, the panel must consist of at least three*
33 *but not more than seven members, a majority of whom must have*
34 *experience in the construction industry.*

35 6. During the interview process, the ~~public body or its~~
36 ~~authorized representative~~ *panel conducting the interview* may
37 require the applicants to submit a preliminary proposed amount
38 of compensation for managing the preconstruction and construction
39 of the public work, but in no event shall the proposed amount of
40 compensation exceed 20 percent of the scoring for the selection of
41 the most qualified applicant. *All presentations made at any*
42 *interview conducted pursuant to this subsection or subsection 5*
43 *may be made only by key personnel employed by the applicant, as*
44 *determined by the applicant, and the employees of the applicant*



1 *who will be directly responsible for managing the preconstruction*
2 *and construction of the public work.*

3 7. After conducting such interviews, the panel *that conducted*
4 *the interviews* shall rank the applicants by using a ranking process
5 that is separate from the process used to rank ~~proposals~~ *the*
6 *applicants* pursuant to subsection 2 and is based only on
7 information submitted during the interview process. The score to be
8 given for the proposed amount of compensation, if any, must be
9 calculated by dividing the lowest of all the proposed amounts of
10 compensation by the applicant's proposed amount of compensation
11 multiplied by the total possible points available to each applicant.

12 ~~5.1~~ *When ranking the applicants, the panel that conducted the*
13 *interviews shall assign a relative weight of 5 percent to the*
14 *applicant's possession of a certificate of eligibility to receive a*
15 *preference in bidding on public works if the applicant submits a*
16 *signed affidavit that meets the requirements of subsection 1 of*
17 *NRS 338.0117.*

18 8. If the public body did not receive at least two proposals, the
19 public body may not contract with a construction manager at risk.

20 ~~16.1~~ 9. Upon receipt of the final rankings of the applicants from
21 the panel ~~1.1~~ *that conducted the interviews*, the public body or its
22 authorized representative shall enter into negotiations with the most
23 qualified applicant determined pursuant to ~~subsections 2, 3 and 4~~
24 *the provisions of this section* for a contract for preconstruction
25 services, unless the public body required the submission of a
26 proposed amount of compensation, in which case the proposed
27 amount of compensation submitted by the applicant must be the
28 amount offered for the contract. If the public body or its authorized
29 representative is unable to negotiate a contract with the most
30 qualified applicant for an amount of compensation that the public
31 body or its authorized representative and the most qualified
32 applicant determine to be fair and reasonable, the public body or its
33 authorized representative shall terminate negotiations with that
34 applicant. The public body or its authorized representative may then
35 undertake negotiations with the next most qualified applicant in
36 sequence until an agreement is reached and, if the negotiation is
37 undertaken by an authorized representative of the public body,
38 approved by the public body or until a determination is made by the
39 public body to reject all applicants.

40 ~~17.1~~ 10. The public body or its authorized representative shall
41 make available to all applicants and the public the final rankings of
42 the applicants , *as determined by the panel that conducted the*
43 *interviews*, and shall provide, upon request, an explanation to any
44 unsuccessful applicant of the reasons why the applicant was
45 unsuccessful.



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

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

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

(b) A fixed price; or

(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. 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.

3. Before entering into a contract with the public body to construct a public work or a portion thereof pursuant to subsection 1, the construction manager at risk shall:

(a) Provide the public body with a list of the labor or portions of the work which are estimated by the construction manager at risk to exceed 1 percent of the estimated cost of the public work; and

(b) Select each subcontractor who is to provide labor or a portion of the work which is estimated by the construction manager at risk to exceed 1 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.

4. Except as otherwise provided in subsection 5 of NRS 338.141, a public body shall not interfere with the right of the construction manager at risk to select the subcontractor whom the



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construction manager at risk determines to have submitted the best proposal pursuant to NRS 338.16995.

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 NRS 624.215,~~ shall perform ~~not less than 25~~ *construction work equal in value to at least 25* percent of the *estimated cost of* construction ~~of the fixed work~~ himself or herself, or using his or her own employees.

3. If the public work involves ~~the~~ *predominantly vertical* construction, ~~of a building or structure that is described in subsection 3 of NRS 624.215,~~ may perform himself or herself or using his or her own employees as much of the construction of the building or structure that the construction manager at risk is able to demonstrate that the construction manager at risk or his or her own employees have performed on similar projects.

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

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

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

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

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

3. *Not earlier than 30 days after a construction manager at risk has been selected pursuant to NRS 338.1693* ~~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 ~~24~~ **10 working** days before the date by which ~~such~~ an application must be submitted, the construction manager at risk shall advertise for ~~such~~ applications **from subcontractors** in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed. If no qualified newspaper is published in the county where the public work will be performed, the advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county. ***The construction manager at risk may accept an application from a subcontractor before advertising for applications pursuant to this subsection.***

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. 13. NRS 338.16995 is hereby amended to read as follows:

338.16995 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 ~~or~~ *or \$50,000, whichever is greater.*

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 NRS 338.16991 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~~ *If a preproposal meeting regarding the scope of the work to be performed by the subcontractor is to be held, the* date, time and place at which ~~the~~ *the* 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:

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 regarding the scope of the work to be performed by the subcontractor 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~~ *more* than 10 working days after opening the proposals ~~it~~ *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. *Subject to the provisions of subparagraphs (1), (2) and (3), if only one*



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1 *subcontractor submits a proposal, the construction manager at*
2 *risk may select that subcontractor.* The subcontractor must be
3 selected from among those:

4 (1) Who attended the preproposal meeting ~~§~~ *regarding the*
5 *scope of the work to be performed by the subcontractor, if such a*
6 *preproposal meeting was held;*

7 (2) Who submitted a responsive proposal; and

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

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

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

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

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

24 13. A construction manager at risk shall not substitute a
25 subcontractor for any subcontractor selected pursuant to subsection
26 9 unless:

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

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

32 (1) Files for bankruptcy or becomes insolvent;

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

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

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

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

44 14. The construction manager at risk shall make available to
45 the public ~~§, including, without limitation,~~ *the name of* each



1 subcontractor who submits a proposal . ~~the final rankings of the~~
2 ~~subcontractors and shall provide, upon request, an explanation to~~
3 ~~any subcontractor who is not selected of the reasons why the~~
4 ~~subcontractor was not selected.~~

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

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

13 338.1908 1. The governing body of each local government
14 shall, by July 28, 2009, develop a plan to retrofit public buildings,
15 facilities and structures, including, without limitation, traffic-control
16 systems, and to otherwise use sources of renewable energy to serve
17 those buildings, facilities and structures. Such a plan must:

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

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

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

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

25 (4) The estimated cost of the project.

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

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

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

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

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

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

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

44 2. The governing body of each local government shall transmit
45 the plan developed pursuant to subsection 1 to the Director of the



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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 ~~H24~~ 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;
- (2) Fuel cells;
- (3) Geothermal energy;
- (4) Solar energy;
- (5) Waterpower; and
- (6) Wind.

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

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

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

