

Amendment No. 760

Senate Amendment to Assembly Bill No. 283 First Reprint (BDR 28-658)

Proposed by: Senate Committee on Government Affairs

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

SJA/HAC



Date: 5/23/2013

A.B. No. 283—Makes various changes to provisions governing bidding for public works. (BDR 28-658)



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;~~ through June 30, 2017; 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; prospectively repealing provisions relating to construction managers 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 , pursuant to a contract for a public work, 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 7.5 of this bill limits to two per year the number of public works for which each public body in a county whose population is less than 100,000 (currently counties other than Clark and Washoe Counties) may enter into contracts with a construction manager at risk.**

Section 8 of this bill requires a request for proposals for a construction manager at risk to include a list of the selection criteria and the relative weight thereof that will be used to rank applicants for a construction manager at risk.

Existing law 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~~ with projects of similar size and scope. Section 8 specifies that the explanation may include an explanation of experience by any delivery method, regardless of whether that method was the use of a construction manager at risk, and including design-build, design-assist, negotiated work or value-engineered work. Section 8 also requires the public body or its authorized representative to make available to the public the name of each applicant who submits a proposal for a public work to be performed by 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 ~~for Transportation~~ to contract with a construction manager at risk for the construction, reconstruction, improvement and maintenance of highways on and after July 1, 2013. Section 5 also specifies the circumstances under which the provisions of chapter 338 of NRS apply to such contracts.

Section 14.3 of this bill requires the Department to conduct a study on the benefits to this State of entering into contracts with construction managers at risk for the construction, reconstruction, improvement or maintenance of highways and to submit that report on or before January 31, 2017, for transmittal to the 79th Session of the Legislature. Section 14.5 of this bill requires each public body to submit annually, to the Legislature or the Legislative Commission, a report on each public work for which the public body enters into a contract with a construction manager at risk. The report must include a description of the public work, the name of the construction manager at risk and a report on the progress of the public work or, if the public work has been completed, an explanation of whether the public body is satisfied with the public work and with the contractual arrangement with the construction manager at risk.

Section 14.7 of this bill repeals all of the provisions relating to construction managers at risk effective July 1, 2017.

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 ~~for~~ ;

1. To promote public confidence and trust in the contracting and bidding procedures for public works established therein ~~and, for~~ ;

2. For the benefit of the public, to promote the philosophy of obtaining the best possible value as compared to low-bid contracting ~~for~~ ; and

3. To better equip public bodies to address public works that present unique and complex construction challenges.

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 ~~for~~ ; or

(2) ~~Performs such~~ Pursuant to a contract that the person has entered into for a public work, performs work that the person is not required to be licensed to perform 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.

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, ~~for~~ sewage disposal ~~system~~, plant or water treatment facility and any ancillary vertical components thereof, 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

(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.

~~H5+~~ 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.

~~H6+~~ 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.

~~H7+~~ 18. “Specialty contractor” means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

~~H8+~~ 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.

~~H9+~~ 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.

~~H10+~~ 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.

~~H11+~~ 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, structure or other improvement that is predominantly vertical,*

1 *including, without limitation, a building, structure or improvement for the*
2 *support, shelter and enclosure of persons, animals, chattels or movable property*
3 *of any kind, and any improvement appurtenant thereto.*

4 ~~22.1~~ 24. "Wages" means:

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

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

9 ~~23.1~~ 25. "Worker" means a skilled mechanic, skilled worker, semiskilled
10 mechanic, semiskilled worker or unskilled worker in the service of a contractor or
11 subcontractor under any appointment or contract of hire or apprenticeship, express
12 or implied, oral or written, whether lawfully or unlawfully employed. The term
13 does not include a design professional.

14 **Sec. 2.5. NRS 338.0117 is hereby amended to read as follows:**

15 338.0117 1. To qualify to receive a preference in bidding pursuant to
16 subsection 2 of NRS 338.1389, subsection 2 of NRS 338.147, ~~subsection 3 of NRS~~
17 ~~338.1692,~~ subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, a
18 contractor, an applicant or a design-build team, respectively, must submit to the
19 public body sponsoring or financing a public work a signed affidavit which certifies
20 that, for the duration of the project:

21 (a) At least 50 percent of all workers employed on the public work, including,
22 without limitation, any employees of the contractor, applicant or design-build team
23 and of any subcontractor engaged on the public work, will hold a valid driver's
24 license or identification card issued by the Department of Motor Vehicles;

25 (b) All vehicles used primarily for the public work will be:

26 (1) Registered and partially apportioned to Nevada pursuant to the
27 International Registration Plan, as adopted by the Department of Motor Vehicles
28 pursuant to NRS 706.826; or

29 (2) Registered in this State;

30 (c) At least 50 percent of the design professionals working on the public work,
31 including, without limitation, any employees of the contractor, applicant or design-
32 build team and of any subcontractor engaged on the public work, will have a valid
33 driver's license or identification card issued by the Department of Motor Vehicles;

34 (d) At least 25 percent of the suppliers of the materials used for the public
35 work will be located in this State unless the public body requires the acquisition of
36 materials or equipment that cannot be obtained from a supplier located in this State;
37 and

38 (e) The contractor, applicant or design-build team and any subcontractor
39 engaged on the public work will maintain and make available for inspection within
40 this State his or her records concerning payroll relating to the public work.

41 2. Any contract for a public work awarded to a contractor, applicant or
42 design-build team who submits the affidavit described in subsection 1 and who
43 receives a preference in bidding described in subsection 1 must:

44 (a) Include a provision in the contract that substantially incorporates the
45 requirements of paragraphs (a) to (e), inclusive, of subsection 1; and

46 (b) Provide that a failure to comply with any requirement of paragraphs (a) to
47 (e), inclusive, of subsection 1 is a material breach of the contract and entitles the
48 public body to liquidated damages only as provided in subsections 5 and 6.

49 3. A person or entity who believes that a contractor, applicant or design-build
50 team has obtained a preference in bidding as described in subsection 1 but has
51 failed to comply with a requirement of paragraphs (a) to (e), inclusive, of
52 subsection 1 may file a written objection with the public body for which the
53 contractor, applicant or design-build team is performing the public work. A written

1 objection authorized pursuant to this subsection must set forth proof or
2 substantiating evidence to support the belief of the person or entity that the
3 contractor, applicant or design-build team has failed to comply with a requirement
4 of paragraphs (a) to (e), inclusive, of subsection 1.

5 4. If a public body receives a written objection pursuant to subsection 3, the
6 public body shall determine whether the objection is accompanied by the proof or
7 substantiating evidence required pursuant to that subsection. If the public body
8 determines that the objection is not accompanied by the required proof or
9 substantiating evidence, the public body shall dismiss the objection. If the public
10 body determines that the objection is accompanied by the required proof or
11 substantiating evidence or if the public body determines on its own initiative that
12 proof or substantiating evidence of a failure to comply with a requirement of
13 paragraphs (a) to (e), inclusive, of subsection 1 exists, the public body shall
14 determine whether the contractor, applicant or design-build team has failed to
15 comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1 and
16 the public body or its authorized representative may proceed to award the contract
17 accordingly or, if the contract has already been awarded, seek the remedy
18 authorized in subsection 5.

19 5. A public body may recover, by civil action against the party responsible for
20 a failure to comply with a requirement of paragraphs (a) to (e), inclusive, of
21 subsection 1, liquidated damages as described in subsection 6 for a breach of a
22 contract for a public work caused by a failure to comply with a requirement of
23 paragraphs (a) to (e), inclusive, of subsection 1. If a public body recovers liquidated
24 damages pursuant to this subsection for a breach of a contract for a public work, the
25 public body shall report to the State Contractors' Board the date of the breach, the
26 name of each entity which breached the contract and the cost of the contract. The
27 Board shall maintain this information for not less than 6 years. Upon request, the
28 Board shall provide this information to any public body or its authorized
29 representative.

30 6. If a contractor, applicant or design-build team submits the affidavit
31 described in subsection 1, receives a preference in bidding described in subsection
32 1 and is awarded the contract, the contract between the contractor, applicant or
33 design-build team and the public body, each contract between the contractor,
34 applicant or design-build team and a subcontractor or supplier and each contract
35 between a subcontractor and a subcontractor or supplier must provide that:

36 (a) If a party to the contract causes a material breach of the contract between
37 the contractor, applicant or design-build team and the public body as a result of a
38 failure to comply with a requirement of paragraphs (a) to (e), inclusive, of
39 subsection 1, the party is liable to the public body for liquidated damages in the
40 amount of 1 percent of the cost of the largest contract to which he or she is a party;

41 (b) The right to recover the amount determined pursuant to paragraph (a) by
42 the public body pursuant to subsection 5 may be enforced by the public body
43 directly against the party that causes the material breach; and

44 (c) No other party to the contract is liable to the public body for liquidated
45 damages.

46 7. A public body that awards a contract for a public work to a contractor,
47 applicant or design-build team who submits the affidavit described in subsection 1
48 and who receives a preference in bidding described in subsection 1 shall, on or
49 before July 31 of each year, submit a written report to the Director of the
50 Legislative Counsel Bureau for transmittal to the Legislative Commission. The
51 report must include information on each contract for a public work awarded to a
52 contractor, applicant or design-build team who submits the affidavit described in
53 subsection 1 and who receives a preference in bidding described in subsection 1,

including, without limitation, the name of the contractor, applicant or design-build team who was awarded the contract, the cost of the contract, a brief description of the public work and a description of the degree to which the contractor, applicant or design-build team and each subcontractor complied with the requirements of paragraphs (a) to (e), inclusive, of subsection 1.

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 ~~164~~ 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 ~~164~~ 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 ~~164~~, and section 1 of this act; or
- (d) NRS 338.1711 to 338.173, inclusive.

2. Except as otherwise provided in this subsection, subsection 3 and chapter 408 of NRS, the provisions of this chapter apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.201 and 408.313 to 408.433, inclusive. The provisions of NRS 338.1375 to 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142 ~~164~~, 338.169 to 338.16995, inclusive, and 338.1711 to 338.1727, inclusive, do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.201 and 408.313 to 408.433, inclusive.

3. To the extent that a provision of this chapter precludes the granting of federal assistance or reduces the amount of such assistance with respect to a contract for the construction, reconstruction, improvement or maintenance of highways that is awarded by the Department of Transportation pursuant to NRS 408.201 and 408.313 to 408.433, inclusive, that provision of this chapter does not apply to the Department of Transportation or the contract.

Sec. 5.3. 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; or
- (c) ~~NRS 338.169 to 338.16995, inclusive, and section 1 of this act; or~~
- (d) ~~NRS 338.1711 to 338.173, inclusive.~~

2. Except as otherwise provided in this subsection, subsection 3 and chapter 408 of NRS, the provisions of this chapter apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.201 and 408.313 to 408.433, inclusive. The provisions of NRS 338.1375 to 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142 and 338.1711 to 338.1727, inclusive, do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the

1 Department of Transportation pursuant to NRS 408.201 and 408.313 to 408.433,
2 inclusive.

3 3. To the extent that a provision of this chapter precludes the granting of
4 federal assistance or reduces the amount of such assistance with respect to a
5 contract for the construction, reconstruction, improvement or maintenance of
6 highways that is awarded by the Department of Transportation pursuant to NRS
7 408.201 and 408.313 to 408.433, inclusive, that provision of this chapter does not
8 apply to the Department of Transportation or the contract.

9 **Sec. 5.5. NRS 338.1381 is hereby amended to read as follows:**

10 338.1381 1. If, within 10 days after receipt of the notice denying an
11 application pursuant to NRS 338.1379 ~~for 338.16991~~ or disqualifying a
12 subcontractor pursuant to NRS 338.1376, the applicant or subcontractor, as
13 applicable, files a written request for a hearing with the Division or the local
14 government, the State Public Works Board or governing body shall set the matter
15 for a hearing within 20 days after receipt of the request. The hearing must be held
16 not later than 45 days after the receipt of the request for a hearing unless the parties,
17 by written stipulation, agree to extend the time.

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

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

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

- 30 (a) Administer oaths;
31 (b) Take testimony;
32 (c) Issue subpoenas to compel the attendance of witnesses to testify before the
33 Board or governing body;
34 (d) Require the production of related books, papers and documents; and
35 (e) Issue commissions to take testimony.

36 5. If a witness refuses to attend or testify or produce books, papers or
37 documents as required by the subpoena issued pursuant to subsection 4, the Board
38 or governing body may petition the district court to order the witness to appear or
39 testify or produce the requested books, papers or documents.

40 6. The Board or governing body shall issue a decision on the matter during
41 the hearing. The decision of the Board or governing body is a final decision for
42 purposes of judicial review.

43 **Sec. 5.7. NRS 338.1385 is hereby amended to read as follows:**

44 338.1385 1. Except as otherwise provided in subsection 9, this State, or a
45 governing body or its authorized representative that awards a contract for a public
46 work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

47 (a) Commence a public work for which the estimated cost exceeds \$100,000
48 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is
49 published in the county where the public work will be performed for bids for the
50 public work. If no qualified newspaper is published in the county where the public
51 work will be performed, the required advertisement must be published in some
52 qualified newspaper that is printed in the State of Nevada and having a general
53 circulation within the county.

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

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

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

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

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

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

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

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

(b) The bidder is not responsive or responsible;

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

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

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

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

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

(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

8. Before a public body may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the public body shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the public body intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the public body intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including, the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. This section does not apply to:

- (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;
- (b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;
- (c) Normal maintenance of the property of a school district;
- (d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive; or

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435, ~~1, or~~

~~(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.16995, inclusive.~~

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

338.141 1. Except as otherwise provided in NRS 338.1727, each bid submitted to a public body for any public work to which paragraph (a) of subsection 1 of NRS 338.1385, ~~1, or~~ paragraph (a) of subsection 1 of NRS 338.143 or NRS 408.327 applies, must include:

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

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

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

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

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

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

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

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

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

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

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

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

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

5. A prime contractor shall not substitute a subcontractor for 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:

(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. 6.5. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 8, a local government or its authorized representative that awards a contract for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published within 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 within the county.

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

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

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

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

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

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

(a) The bidder is not responsive or responsible;

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

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

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

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

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

(c) The local government lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

7. Before a local government may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the local government shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the local government intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the local government intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the public work itself.

8. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive; or

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435. ~~It or~~

~~(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.1699, inclusive.~~

Sec. 7. (Deleted by amendment.)

Sec. 7.5. NRS 338.169 is hereby amended to read as follows:

338.169 ~~1. Subject to the provisions of subsection 2, a~~ public body may construct a public work by:

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

~~2. (b)~~ (b) Entering into separate contracts with a construction manager at risk:

~~(a)~~ (1) For preconstruction services, including, without limitation:

~~(1)~~ (I) Assisting the public body in determining whether scheduling or constructability problems exist that would delay the construction of the public work;

~~(2)~~ (II) Estimating the cost of the labor and material for the public work; and

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

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

2. A public body in a county whose population is less than 100,000 may enter into contracts with a construction manager at risk pursuant to NRS 338.169 to 338.16995, inclusive, for the construction of not more than two public works in a calendar year that are discrete projects.

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;

(b) An estimate of the cost of construction;

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

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

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

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

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

(h) A list of the selection criteria and relative weight of the selection criteria that will be used to ~~evaluate~~ rank proposals ~~that~~ pursuant to subsection 2 of NRS 338.1693;

(i) A list of the selection criteria and relative weight of the selection criteria that will be used to rank applicants pursuant to subsection 7 of NRS 338.1693; and

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

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 ~~that~~ by any delivery method, whether or not that method was the use of a construction manager at risk, and including, without limitation, ~~an explanation of the experience that the applicant has in assisting in the design of such projects~~ design-build, design-assist, negotiated work or value-engineered work, and an explanation of the experience that the applicant has in such projects in Nevada;

(b) ~~1. 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;

~~(c)~~ ~~(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.

4. The public body or its authorized representative shall make available to the public the name of each applicant who submits a proposal pursuant to this section.

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

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

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

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

3. When ranking the 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 ~~5~~ 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 may appoint a separate panel to interview and rank the applicants selected pursuant to subsection 4. If a separate panel is appointed pursuant to this subsection, the panel must consist of at least three but not more than seven members, a majority of whom must have experience in the construction industry.

6. During the interview process, the ~~public body or its authorized representative~~ *panel conducting the interview* 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 key personnel employed by the applicant, as determined 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 *that conducted the interviews* 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 compensation multiplied by the total possible points available to each applicant.

~~5~~ *When ranking the applicants, the panel that conducted the interviews 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.*

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

~~6~~ 9. Upon receipt of the final rankings of the applicants from the panel ~~that conducted the interviews~~, the public body or its authorized representative shall enter into negotiations with the most qualified applicant determined pursuant to ~~subsections 2, 3 and 4~~ *the provisions of this section* for a contract for preconstruction services, unless the public body required the submission of a proposed amount of compensation, in which case the proposed amount of compensation submitted by the applicant must be the amount offered for the contract. If the public body or its authorized representative is unable to negotiate a contract with the most qualified applicant for an amount of compensation that the public body or its authorized representative and the most qualified applicant determine to be fair and reasonable, the public body or its authorized representative shall terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.

~~7-10.~~ **10.** The public body or its authorized representative shall make available to all applicants and the public the final rankings of the applicants, *as determined by the panel that conducted the interviews*, and shall provide, upon request, an explanation to any unsuccessful applicant of the reasons why the applicant was 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 ~~15~~ 13 of NRS ~~338.141~~ 338.16995, 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.*

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 ~~that~~ *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

1 *estimated cost of* construction ~~of the fixed work~~ himself or herself, or using his or
2 her own employees.

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

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

10 338.16991 1. To be eligible to provide labor, materials or equipment on a
11 public work, the contract for which a public body has entered into with a
12 construction manager at risk pursuant to NRS 338.1696, a subcontractor must be:

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

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

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

20 3. *Not earlier than 30 days after a construction manager at risk has been*
21 *selected pursuant to NRS 338.1693* ~~After the design and schedule for the~~
22 ~~construction of the public work is sufficiently detailed and complete to allow a~~
23 ~~subcontractor to apply to qualify to submit a meaningful and responsive proposal~~
24 ~~for the provision of labor, materials or equipment on the public work~~ and not later
25 than ~~21~~ *10 working* days before the date by which ~~such~~ an application must be
26 submitted, the construction manager at risk shall advertise for ~~such~~ applications
27 *from subcontractors* in a newspaper qualified pursuant to chapter 238 of NRS that
28 is published in the county where the public work will be performed. If no qualified
29 newspaper is published in the county where the public work will be performed, the
30 advertisement must be published in some qualified newspaper that is printed in the
31 State of Nevada and has a general circulation in the county. *The construction*
32 *manager at risk may accept an application from a subcontractor before*
33 *advertising for applications pursuant to this subsection.*

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

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

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

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

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

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

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

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

53 (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~~ *\$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) ~~If a preproposal meeting regarding the scope of the work to be performed by the subcontractor is to be held, 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. ~~That~~ *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 subcontractor submits a proposal, the construction manager at risk may select that subcontractor.* The subcontractor must be selected from among those:

(1) Who attended the preproposal meeting ~~it~~ *regarding the scope of the work to be performed by the subcontractor, if such 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~~ *subsections 13, ~~it~~ and 15,* 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. If a construction manager at risk substitutes a subcontractor for any subcontractor selected pursuant to subsection 9 without complying with the provisions of subsection 13, the construction manager at risk shall forfeit, as a penalty to the public body, an amount equal to 1 percent of the total amount of the contract.

15. If a construction manager at risk does not select a subcontractor pursuant to subsection 9 to perform a portion of work on a public work, the construction manager at risk shall notify the public body that the construction manager at risk intends to perform that portion of work. If, after providing such notification, the construction manager at risk substitutes a subcontractor to perform the work, the construction manager at risk shall forfeit, as a penalty to the public body, 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 construction manager at risk selected himself or herself to perform on the public work.

16. ~~The construction manager at risk shall make available to the public ~~including, without limitation,~~ the name of 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.~~~~

~~17.~~ 17. 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.

18. As used in this section, "general terms" has the meaning ascribed to it in NRS 338.141.

Sec. 13.5. NRS 338.1711 is hereby amended to read as follows:

338.1711 1. Except as otherwise provided in this section and NRS 338.161 to ~~338.16995,~~ 338.168, inclusive, a public body shall contract with a prime contractor for the construction of a public work for which the estimated cost exceeds \$100,000.

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

1 approved the use of a design-build team for the design and construction of the
2 public work and the public work has an estimated cost which exceeds \$5,000,000.

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

4 338.1908 1. The governing body of each local government shall, by July 28,
5 2009, develop a plan to retrofit public buildings, facilities and structures, including,
6 without limitation, traffic-control systems, and to otherwise use sources of
7 renewable energy to serve those buildings, facilities and structures. Such a plan
8 must:

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

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

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

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

14 (4) The estimated cost of the project.

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

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

19 (I) The Solar Energy Systems Incentive Program created by NRS
20 701B.240;

21 (II) The Renewable Energy School Pilot Program created by NRS
22 701B.350;

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

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

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

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

35 3. As used in this section:

36 (a) "Local government" means each city or county that meets the definition of
37 "eligible unit of local government" as set forth in 42 U.S.C. § 17151 and each unit
38 of local government, as defined in subsection ~~H21~~ 13 of NRS 338.010, that does
39 not meet the definition of "eligible entity" as set forth in 42 U.S.C. § 17151.

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

42 (1) Biomass;

43 (2) Fuel cells;

44 (3) Geothermal energy;

45 (4) Solar energy;

46 (5) Waterpower; and

47 (6) Wind.

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

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

53 **Sec. 14.3. The Department of Transportation shall:**

1 1. Conduct a study on the benefits to this State of entering into contracts
2 with construction managers at risk pursuant to NRS 338.169 to 338.16995,
3 inclusive, for the construction, reconstruction, improvement or maintenance of
4 highways; and

5 2. On or before January 31, 2017, submit a report of the results of the
6 study and any recommendations for legislation to the Director of the
7 Legislative Counsel Bureau for transmittal to the 79th Session of the Nevada
8 Legislature.

9 Sec. 14.5. 1. On or before January 1 of each year, each public body
10 that enters into a contract during the immediately preceding year with a
11 construction manager at risk pursuant to NRS 338.169 to 338.16995, inclusive,
12 for preconstruction services for or to construct a public work shall submit a
13 report to the Director of the Legislative Counsel Bureau for transmittal to the
14 Legislature, or to the Legislative Commission if the report is submitted during
15 an odd-numbered year.

16 2. The report required by subsection 1 must include, for each public
17 work for which the public body enters into a contract with a construction
18 manager at risk:

19 (a) A description of the public work;

20 (b) The name of the construction manager at risk;

21 (c) If the public work has not been completed at the time the report is
22 submitted, a report on the progress of the public work; and

23 (d) If the public work has been completed at the time the report is
24 submitted, an explanation of whether the public body is satisfied with the
25 public work and with the contractual arrangement with the construction
26 manager at risk.

27 3. As used in this section:

28 (a) "Public body" has the meaning ascribed to it in subsection 16 of NRS
29 338.010, as amended by section 2 of this act.

30 (b) "Public work" has the meaning ascribed to it in subsection 17 of NRS
31 338.010, as amended by section 2 of this act.

32 Sec. 14.7. NRS 338.169, 338.1691, 338.1692, 338.1693, 338.16935,
33 338.1696, 338.1697, 338.1698, 338.16985, 338.16991 and 338.16995 are hereby
34 repealed.

35 Sec. 15. 1. This section and sections 1, 2, 3, 4, 5, 6 and 7.5 to 14.5,
36 inclusive, of this act ~~(becomes)~~ become effective on July 1, 2013.

37 2. Sections 1, 2, 3, 4, 7.5 and 14 of this act expire by limitation on June 30,
38 2017.

39 3. Sections 2.5, 5.3, 5.5, 5.7, 6.5, 13.5 and 14.7 of this act become effective
40 on July 1, 2017.

LEADLINES OF REPEALED SECTIONS

338.169 Public body authorized to construct public work by selecting and
entering into contracts with construction manager at risk.

338.1691 Qualifications for construction manager at risk.

338.1692 Advertising for proposals for construction manager at risk;
contents of request for proposals; requirements for proposals.

338.1693 Procedure for selection of most qualified applicants; minimum number of proposals required; negotiation of contract for preconstruction services; availability of certain information to applicants and public.

338.16935 Contract between construction manager at risk and subcontractor for certain preconstruction services.

338.1696 Negotiation of contract for construction of public work or portion thereof with construction manager at risk; awarding of contract if public body unable to negotiate satisfactory contract with construction manager at risk.

338.1697 Authorized provision in contract with construction manager at risk for construction of public work or portion thereof for guaranteed maximum price.

338.1698 Required and authorized provisions in contract for construction of public work or portion thereof awarded to construction manager at risk.

338.16985 Duties and powers of construction manager at risk who enters into contract for construction of public work or portion thereof.

338.16991 Contract between construction manager at risk and subcontractor to provide labor, materials or equipment on project; Eligibility; procedure for determination of qualification of subcontractor to submit proposal.

338.16995 Contract between construction manager at risk and subcontractor to provide labor, materials or equipment on project; Authority to enter into; procedure for awarding subcontracts of certain estimated value; substitution of subcontractor on such subcontracts; availability of certain information to applicants and public.