

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
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 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:

1 Existing law requires certain prime contractors who submit bids for a public
2 work to include with the bid a list that discloses the first tier subcontractors who
3 will perform a certain portion of the work on the public work. (NRS 338.141)
4 **Section 6** of this bill amends the provisions prescribing which subcontractors must
5 be named on the list. **Section 6** also requires the prime contractor to include on the
6 list: (1) a description of the labor or portion of the work that the prime contractor
7 will perform; or (2) a statement that the prime contractor will perform all work
8 other than that being performed by a subcontractor named on the list.
9 Existing law allows a public body to contract with a construction manager at
10 risk, which is a construction manager who is required to construct a public work
11 within a guaranteed maximum price, a fixed price or a fixed price plus
12 reimbursement for certain costs. (NRS 338.169, 338.1696) **Section 7.5** of this bill
13 limits to two per year the number of public works for which each public body in a



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14 county whose population is less than 100,000 (currently counties other than Clark
15 and Washoe Counties) may enter into contracts with a construction manager at risk.

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

19 Existing law requires a proposal for a construction manager at risk to include an
20 explanation of the experience that the applicant has with projects of similar size and
21 scope. **Section 8** specifies that the explanation may include an explanation of
22 experience by any delivery method, regardless of whether that method was the use
23 of a construction manager at risk, and including design-build, design-assist,
24 negotiated work or value-engineered work. **Section 8** also requires the public body
25 or its authorized representative to make available to the public the name of each
26 applicant who submits a proposal for a public work to be performed by a
27 construction manager at risk.

28 **Section 10** of this bill requires a construction manager at risk who has entered
29 into a contract with a public body for services related to construction that are
30 provided before actual construction begins to provide to the public body, before
31 entering into a contract for construction of the public work, a list of the labor or
32 portions of the work which are estimated by the construction manager at risk to
33 exceed a certain percentage of the estimated cost of the public work.

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

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

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

50 Under existing law, the Department of Transportation may award a contract for
51 the construction, reconstruction, improvement and maintenance of a highway to a
52 construction manager at risk on or before June 30, 2013. **Sections 5 and 5.3** of this
53 bill authorize the Department to contract with a construction manager at risk for the
54 construction, reconstruction, improvement and maintenance of highways through
55 June 30, 2017. **Section 5** also specifies the circumstances under which the
56 provisions of chapter 338 of NRS apply to such contracts.

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



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

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

1 Section 1. Chapter 338 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *The Legislature hereby declares that the provisions of this*
4 *section and NRS 338.169 to 338.16995, inclusive, relating to*
5 *contracts involving construction managers at risk, are intended:*

6 1. *To promote public confidence and trust in the contracting*
7 *and bidding procedures for public works established therein;*

8 2. *For the benefit of the public, to promote the philosophy of*
9 *obtaining the best possible value as compared to low-bid*
10 *contracting; and*

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

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

14 338.010 As used in this chapter:

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

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

22 3. "Contractor" means:

23 (a) A person who is licensed pursuant to the provisions of
24 chapter 624 of NRS.

25 (b) A design-build team.

26 4. "Day labor" means all cases where public bodies, their
27 officers, agents or employees, hire, supervise and pay the wages
28 thereof directly to a worker or workers employed by them on public
29 works by the day and not under a contract in writing.

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

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

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

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



1 (1) A building and its site, at least one person who holds a
2 certificate of registration to practice architecture pursuant to chapter
3 623 of NRS.

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

9 7. "Design professional" means:

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

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

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

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

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

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

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

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

29 (b) Determined by a public body or its authorized representative
30 which awarded a contract for a public work pursuant to NRS
31 338.1375 to 338.139, inclusive, to be qualified to bid on that
32 contract pursuant to NRS 338.1379 or 338.1382.

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

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

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

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

43 12. *"Horizontal construction" means the construction of any*
44 *fixed work, including any irrigation, drainage, water supply, flood*
45 *control, harbor, railroad, highway, tunnel, airport or airway,*



1 *sewer, sewage disposal plant or water treatment facility and any*
2 *ancillary vertical components thereof, bridge, inland waterway,*
3 *pipeline for the transmission of petroleum or any other liquid or*
4 *gaseous substance, pier, and work incidental thereto. The term*
5 *does not include vertical construction, the construction of any*
6 *terminal or other building of an airport or airway, or the*
7 *construction of any other building.*

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

19 ~~H3-1~~ **14.** “Offense” means failing to:

- 20 (a) Pay the prevailing wage required pursuant to this chapter;
21 (b) Pay the contributions for unemployment compensation
22 required pursuant to chapter 612 of NRS;
23 (c) Provide and secure compensation for employees required
24 pursuant to chapters 616A to 617, inclusive, of NRS; or
25 (d) Comply with subsection 4 or 5 of NRS 338.070.

26 ~~H4-1~~ **15.** “Prime contractor” means a contractor who:

- 27 (a) Contracts to construct an entire project;
28 (b) Coordinates all work performed on the entire project;
29 (c) Uses his or her own workforce to perform all or a part of the
30 public work; and
31 (d) Contracts for the services of any subcontractor or
32 independent contractor or is responsible for payment to any
33 contracted subcontractors or independent contractors.

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

37 ~~H5-1~~ **16.** “Public body” means the State, county, city, town,
38 school district or any public agency of this State or its political
39 subdivisions sponsoring or financing a public work.

40 ~~H6-1~~ **17.** “Public work” means any project for the new
41 construction, repair or reconstruction of:

- 42 (a) A project financed in whole or in part from public money
43 for:
44 (1) Public buildings;
45 (2) Jails and prisons;



- 1 (3) Public roads;
- 2 (4) Public highways;
- 3 (5) Public streets and alleys;
- 4 (6) Public utilities;
- 5 (7) Publicly owned water mains and sewers;
- 6 (8) Public parks and playgrounds;
- 7 (9) Public convention facilities which are financed at least in
- 8 part with public money; and
- 9 (10) All other publicly owned works and property.

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

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

16 ~~H8~~ 19. “Stand-alone underground utility project” means an
17 underground utility project that is not integrated into a larger
18 project, including, without limitation:

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

22 (b) A project for the construction or installation of a storm drain,
23 including facilities appurtenant thereto,
24 ➔ that is not located at the site of a public work for the design and
25 construction of which a public body is authorized to contract with a
26 design-build team pursuant to subsection 2 of NRS 338.1711.

27 ~~H9~~ 20. “Subcontract” means a written contract entered into
28 between:

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

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

31 ➔ for the provision of labor, materials, equipment or supplies for a
32 construction project.

33 ~~H10~~ 21. “Subcontractor” means a person who:

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

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

40 ~~H11~~ 22. “Supplier” means a person who provides materials,
41 equipment or supplies for a construction project.

42 23. *“Vertical construction” means the construction or*
43 *remodeling of any building, structure or other improvement that is*
44 *predominantly vertical, including, without limitation, a building,*
45 *structure or improvement for the support, shelter and enclosure of*



1 *persons, animals, chattels or movable property of any kind, and*
2 *any improvement appurtenant thereto.*

3 ~~22.1~~ 24. "Wages" means:

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

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

15 **Sec. 2.3.** NRS 338.010 is hereby amended to read as follows:
16 338.010 As used in this chapter:

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

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

24 3. "Contractor" means:

25 (a) A person who is licensed pursuant to the provisions of
26 chapter 624 of NRS.

27 (b) A design-build team.

28 4. "Day labor" means all cases where public bodies, their
29 officers, agents or employees, hire, supervise and pay the wages
30 thereof directly to a worker or workers employed by them on public
31 works by the day and not under a contract in writing.

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

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

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

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

40 (1) A building and its site, at least one person who holds a
41 certificate of registration to practice architecture pursuant to chapter
42 623 of NRS.

43 (2) Anything other than a building and its site, at least one
44 person who holds a certificate of registration to practice architecture
45 pursuant to chapter 623 of NRS or landscape architecture pursuant



1 to chapter 623A of NRS or who is licensed as a professional
2 engineer pursuant to chapter 625 of NRS.

3 7. "Design professional" means:

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

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

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

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

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

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

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

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

23 (b) Determined by a public body or its authorized representative
24 which awarded a contract for a public work pursuant to NRS
25 338.1375 to 338.139, inclusive, to be qualified to bid on that
26 contract pursuant to NRS 338.1379 or 338.1382.

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

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

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

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

37 12. ~~"Horizontal construction" means the construction of any~~
38 ~~fixed work, including any irrigation, drainage, water supply, flood~~
39 ~~control, harbor, railroad, highway, tunnel, airport or airway, sewer,~~
40 ~~sewage disposal plant or water treatment facility and any ancillary~~
41 ~~vertical components thereof, bridge, inland waterway, pipeline for~~
42 ~~the transmission of petroleum or any other liquid or gaseous~~
43 ~~substance, pier, and work incidental thereto. The term does not~~
44 ~~include vertical construction, the construction of any terminal or~~



~~1 other building of an airport or airway, or the construction of any~~
~~2 other building.~~

~~3 —13.†~~ “Local government” means every political subdivision or
4 other entity which has the right to levy or receive money from ad
5 valorem or other taxes or any mandatory assessments, and includes,
6 without limitation, counties, cities, towns, boards, school districts
7 and other districts organized pursuant to chapters 244A, 309, 318,
8 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
9 inclusive, and any agency or department of a county or city which
10 prepares a budget separate from that of the parent political
11 subdivision. The term includes a person who has been designated by
12 the governing body of a local government to serve as its authorized
13 representative.

~~14 †4.†~~ 13. “Offense” means failing to:

- 15 (a) Pay the prevailing wage required pursuant to this chapter;
- 16 (b) Pay the contributions for unemployment compensation
17 required pursuant to chapter 612 of NRS;
- 18 (c) Provide and secure compensation for employees required
19 pursuant to chapters 616A to 617, inclusive, of NRS; or
- 20 (d) Comply with subsection 4 or 5 of NRS 338.070.

~~21 †5.†~~ 14. “Prime contractor” means a contractor who:

- 22 (a) Contracts to construct an entire project;
- 23 (b) Coordinates all work performed on the entire project;
- 24 (c) Uses his or her own workforce to perform all or a part of the
25 public work; and
- 26 (d) Contracts for the services of any subcontractor or
27 independent contractor or is responsible for payment to any
28 contracted subcontractors or independent contractors.

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

~~32 †6.†~~ 15. “Public body” means the State, county, city, town,
33 school district or any public agency of this State or its political
34 subdivisions sponsoring or financing a public work.

~~35 †7.†~~ 16. “Public work” means any project for the new
36 construction, repair or reconstruction of:

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

- 39 (1) Public buildings;
- 40 (2) Jails and prisons;
- 41 (3) Public roads;
- 42 (4) Public highways;
- 43 (5) Public streets and alleys;
- 44 (6) Public utilities;
- 45 (7) Publicly owned water mains and sewers;



- 1 (8) Public parks and playgrounds;
- 2 (9) Public convention facilities which are financed at least in
- 3 part with public money; and
- 4 (10) All other publicly owned works and property.

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

8 ~~{18.}~~ 17. "Specialty contractor" means a person who is
9 licensed to conduct business as described in subsection 4 of NRS
10 624.215.

11 ~~{19.}~~ 18. "Stand-alone underground utility project" means an
12 underground utility project that is not integrated into a larger
13 project, including, without limitation:

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

17 (b) A project for the construction or installation of a storm drain,
18 including facilities appurtenant thereto,
19 ↪ that is not located at the site of a public work for the design and
20 construction of which a public body is authorized to contract with a
21 design-build team pursuant to subsection 2 of NRS 338.1711.

22 ~~{20.}~~ 19. "Subcontract" means a written contract entered into
23 between:

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

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

28 ~~{21.}~~ 20. "Subcontractor" means a person who:

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

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

35 ~~{22.}~~ 21. "Supplier" means a person who provides materials,
36 equipment or supplies for a construction project.

37 ~~{23.} "Vertical construction" means the construction or~~
38 ~~remodeling of any building, structure or other improvement that is~~
39 ~~predominantly vertical, including, without limitation, a building,~~
40 ~~structure or improvement for the support, shelter and enclosure of~~
41 ~~persons, animals, chattels or movable property of any kind, and any~~
42 ~~improvement appurtenant thereto.~~

43 ~~—24.}~~ 22. "Wages" means:

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



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

5 ~~25.~~ 23. "Worker" means a skilled mechanic, skilled worker,
6 semiskilled mechanic, semiskilled worker or unskilled worker in the
7 service of a contractor or subcontractor under any appointment or
8 contract of hire or apprenticeship, express or implied, oral or
9 written, whether lawfully or unlawfully employed. The term does
10 not include a design professional.

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

12 338.0117 1. To qualify to receive a preference in bidding
13 pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS
14 338.147, ~~subsection 3 of NRS 338.1693,~~ subsection 3 of NRS
15 338.1727 or subsection 2 of NRS 408.3886, a contractor, an
16 applicant or a design-build team, respectively, must submit to the
17 public body sponsoring or financing a public work a signed affidavit
18 which certifies that, for the duration of the project:

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

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

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

28 (2) Registered in this State;

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

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

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

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



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

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

8 3. A person or entity who believes that a contractor, applicant
9 or design-build team has obtained a preference in bidding as
10 described in subsection 1 but has failed to comply with a
11 requirement of paragraphs (a) to (e), inclusive, of subsection 1 may
12 file a written objection with the public body for which the
13 contractor, applicant or design-build team is performing the public
14 work. A written objection authorized pursuant to this subsection
15 must set forth proof or substantiating evidence to support the belief
16 of the person or entity that the contractor, applicant or design-build
17 team has failed to comply with a requirement of paragraphs (a) to
18 (e), inclusive, of subsection 1.

19 4. If a public body receives a written objection pursuant to
20 subsection 3, the public body shall determine whether the objection
21 is accompanied by the proof or substantiating evidence required
22 pursuant to that subsection. If the public body determines that the
23 objection is not accompanied by the required proof or substantiating
24 evidence, the public body shall dismiss the objection. If the public
25 body determines that the objection is accompanied by the required
26 proof or substantiating evidence or if the public body determines on
27 its own initiative that proof or substantiating evidence of a failure to
28 comply with a requirement of paragraphs (a) to (e), inclusive, of
29 subsection 1 exists, the public body shall determine whether the
30 contractor, applicant or design-build team has failed to comply with
31 a requirement of paragraphs (a) to (e), inclusive, of subsection 1 and
32 the public body or its authorized representative may proceed to
33 award the contract accordingly or, if the contract has already been
34 awarded, seek the remedy authorized in subsection 5.

35 5. A public body may recover, by civil action against the party
36 responsible for a failure to comply with a requirement of paragraphs
37 (a) to (e), inclusive, of subsection 1, liquidated damages as
38 described in subsection 6 for a breach of a contract for a public work
39 caused by a failure to comply with a requirement of paragraphs (a)
40 to (e), inclusive, of subsection 1. If a public body recovers
41 liquidated damages pursuant to this subsection for a breach of a
42 contract for a public work, the public body shall report to the State
43 Contractors' Board the date of the breach, the name of each entity
44 which breached the contract and the cost of the contract. The Board
45 shall maintain this information for not less than 6 years. Upon



1 request, the Board shall provide this information to any public body
2 or its authorized representative.

3 6. If a contractor, applicant or design-build team submits the
4 affidavit described in subsection 1, receives a preference in bidding
5 described in subsection 1 and is awarded the contract, the contract
6 between the contractor, applicant or design-build team and the
7 public body, each contract between the contractor, applicant or
8 design-build team and a subcontractor or supplier and each contract
9 between a subcontractor and a subcontractor or supplier must
10 provide that:

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

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

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

23 7. A public body that awards a contract for a public work to a
24 contractor, applicant or design-build team who submits the affidavit
25 described in subsection 1 and who receives a preference in bidding
26 described in subsection 1 shall, on or before July 31 of each year,
27 submit a written report to the Director of the Legislative Counsel
28 Bureau for transmittal to the Legislative Commission. The report
29 must include information on each contract for a public work
30 awarded to a contractor, applicant or design-build team who submits
31 the affidavit described in subsection 1 and who receives a
32 preference in bidding described in subsection 1, including, without
33 limitation, the name of the contractor, applicant or design-build
34 team who was awarded the contract, the cost of the contract, a brief
35 description of the public work and a description of the degree to
36 which the contractor, applicant or design-build team and each
37 subcontractor complied with the requirements of paragraphs (a) to
38 (e), inclusive, of subsection 1.

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

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



1 **Sec. 3.5.** NRS 338.018 is hereby amended to read as follows:
2 338.018 The provisions of NRS 338.013 to 338.018, inclusive,
3 apply to any contract for construction work of the Nevada System of
4 Higher Education for which the estimated cost exceeds \$100,000
5 even if the construction work does not qualify as a public work, as
6 defined in subsection ~~H7~~ **16** of NRS 338.010.

7 **Sec. 4.** NRS 338.075 is hereby amended to read as follows:
8 338.075 The provisions of NRS 338.020 to 338.090, inclusive,
9 apply to any contract for construction work of the Nevada System of
10 Higher Education for which the estimated cost exceeds \$100,000
11 even if the construction work does not qualify as a public work, as
12 defined in subsection ~~H6~~ **17** of NRS 338.010.

13 **Sec. 4.5.** NRS 338.075 is hereby amended to read as follows:
14 338.075 The provisions of NRS 338.020 to 338.090, inclusive,
15 apply to any contract for construction work of the Nevada System of
16 Higher Education for which the estimated cost exceeds \$100,000
17 even if the construction work does not qualify as a public work, as
18 defined in subsection ~~H7~~ **16** of NRS 338.010.

19 **Sec. 5.** NRS 338.1373 is hereby amended to read as follows:
20 338.1373 1. A local government or its authorized
21 representative shall award a contract for a public work pursuant to
22 the provisions of NRS 338.1415 and:

- 23 (a) NRS 338.1377 to 338.139, inclusive;
- 24 (b) NRS 338.143 to 338.148, inclusive;
- 25 (c) NRS 338.169 to 338.16995, inclusive ~~H~~ , and *section 1 of*
26 *this act*; or
- 27 (d) NRS 338.1711 to 338.173, inclusive.

28 2. *Except as otherwise provided in this subsection, subsection*
29 *3 and chapter 408 of NRS, the provisions of this chapter apply*
30 *with respect to contracts for the construction, reconstruction,*
31 *improvement and maintenance of highways that are awarded by*
32 *the Department of Transportation pursuant to NRS 408.201 and*
33 *408.313 to 408.433, inclusive.* The provisions of NRS 338.1375 to
34 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139,
35 338.142 ~~1, 338.169 to 338.16995, inclusive,~~ and 338.1711 to
36 338.1727, inclusive, do not apply with respect to contracts for the
37 construction, reconstruction, improvement and maintenance of
38 highways that are awarded by the Department of Transportation
39 pursuant to NRS 408.201 and 408.313 to 408.433, inclusive.

40 3. *To the extent that a provision of this chapter precludes the*
41 *granting of federal assistance or reduces the amount of such*
42 *assistance with respect to a contract for the construction,*
43 *reconstruction, improvement or maintenance of highways that is*
44 *awarded by the Department of Transportation pursuant to NRS*
45 *408.201 and 408.313 to 408.433, inclusive, that provision of this*



1 *chapter does not apply to the Department of Transportation or the*
2 *contract.*

3 **Sec. 5.3.** NRS 338.1373 is hereby amended to read as follows:

4 338.1373 1. A local government or its authorized
5 representative shall award a contract for a public work pursuant to
6 the provisions of NRS 338.1415 and:

7 (a) NRS 338.1377 to 338.139, inclusive;

8 (b) NRS 338.143 to 338.148, inclusive; *or*

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

11 ~~(d)~~ NRS 338.1711 to 338.173, inclusive.

12 2. Except as otherwise provided in this subsection, subsection
13 3 and chapter 408 of NRS, the provisions of this chapter apply with
14 respect to contracts for the construction, reconstruction,
15 improvement and maintenance of highways that are awarded by the
16 Department of Transportation pursuant to NRS 408.201 and
17 408.313 to 408.433, inclusive. The provisions of NRS 338.1375 to
18 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139,
19 338.142 and 338.1711 to 338.1727, inclusive, do not apply with
20 respect to contracts for the construction, reconstruction,
21 improvement and maintenance of highways that are awarded by the
22 Department of Transportation pursuant to NRS 408.201 and
23 408.313 to 408.433, inclusive.

24 3. To the extent that a provision of this chapter precludes the
25 granting of federal assistance or reduces the amount of such
26 assistance with respect to a contract for the construction,
27 reconstruction, improvement or maintenance of highways that is
28 awarded by the Department of Transportation pursuant to NRS
29 408.201 and 408.313 to 408.433, inclusive, that provision of this
30 chapter does not apply to the Department of Transportation or the
31 contract.

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

33 338.1381 1. If, within 10 days after receipt of the notice
34 denying an application pursuant to NRS 338.1379 ~~for 338.16991~~ or
35 disqualifying a subcontractor pursuant to NRS 338.1376, the
36 applicant or subcontractor, as applicable, files a written request for
37 a hearing with the Division or the local government, the State Public
38 Works Board or governing body shall set the matter for a hearing
39 within 20 days after receipt of the request. The hearing must be held
40 not later than 45 days after the receipt of the request for a hearing
41 unless the parties, by written stipulation, agree to extend the time.

42 2. The hearing must be held at a time and place prescribed by
43 the Board or local government. At least 10 days before the date set
44 for the hearing, the Board or local government shall serve the
45 applicant or subcontractor with written notice of the hearing. The



1 notice may be served by personal delivery to the applicant or
2 subcontractor or by certified mail to the last known business or
3 residential address of the applicant or subcontractor.

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

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

11 (a) Administer oaths;

12 (b) Take testimony;

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

15 (d) Require the production of related books, papers and
16 documents; and

17 (e) Issue commissions to take testimony.

18 5. If a witness refuses to attend or testify or produce books,
19 papers or documents as required by the subpoena issued pursuant to
20 subsection 4, the Board or governing body may petition the district
21 court to order the witness to appear or testify or produce the
22 requested books, papers or documents.

23 6. The Board or governing body shall issue a decision on the
24 matter during the hearing. The decision of the Board or governing
25 body is a final decision for purposes of judicial review.

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

27 338.1385 1. Except as otherwise provided in subsection 9,
28 this State, or a governing body or its authorized representative that
29 awards a contract for a public work in accordance with paragraph
30 (a) of subsection 1 of NRS 338.1373 shall not:

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

39 (b) Commence a public work for which the estimated cost is
40 \$100,000 or less unless it complies with the provisions of NRS
41 338.1386, 338.13862 and 338.13864 and, with respect to the State,
42 NRS 338.1384 to 338.13847, inclusive.

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



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

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

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

13 5. Except as otherwise provided in subsection 6 and NRS
14 338.1389, a public body or its authorized representative shall award
15 a contract to the lowest responsive and responsible bidder.

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

19 (a) The bidder is not a qualified bidder pursuant to NRS
20 338.1379 or 338.1382;

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

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

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

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

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

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

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

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

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

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



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

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

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

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

12 9. This section does not apply to:

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

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

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

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

23 (e) The design and construction of a public work for which a
24 public body contracts with a design-build team pursuant to NRS
25 338.1711 to 338.1727, inclusive; *or*

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

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

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

33 338.141 1. Except as otherwise provided in NRS 338.1727,
34 each bid submitted to a public body for any public work to which
35 paragraph (a) of subsection 1 of NRS 338.1385 , ~~† or~~ paragraph (a)
36 of subsection 1 of NRS 338.143 *or NRS 408.327* applies, must
37 include:

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

44 (b) If the public body does not provide a list of the labor or
45 portions of the public work which are estimated by the public body



1 to exceed 3 percent of the estimated cost of the public work, the
2 name of each first tier subcontractor who will provide labor or a
3 portion of the work on the public work to the prime contractor for
4 which the first tier subcontractor will be paid an amount exceeding 5
5 percent of the prime contractor's total bid. If the bid is submitted
6 pursuant to this paragraph, within 2 hours after the completion of
7 the opening of the bids, the contractors who submitted the three
8 lowest bids must submit a list containing ~~the~~ :

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

41 7. If a prime contractor, ~~indicated pursuant to subsection 3~~
42 ~~that he or she would perform a portion of work on the public work~~
43 ~~and,~~ after the submission of the bid, substitutes a subcontractor to
44 perform ~~such work,~~ *the work indicated pursuant to subsection 3*
45 *that the prime contractor would perform,* the prime contractor shall



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

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

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

10 8. As used in this section:

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

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

22 **Sec. 6.5.** NRS 338.143 is hereby amended to read as follows:

23 338.143 1. Except as otherwise provided in subsection 8, a
24 local government or its authorized representative that awards a
25 contract for a public work in accordance with paragraph (b) of
26 subsection 1 of NRS 338.1373 shall not:

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

36 (b) Commence a public work for which the estimated cost is
37 \$100,000 or less unless it complies with the provisions of NRS
38 338.1442, 338.1444 or 338.1446.

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

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



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

6 4. Except as otherwise provided in subsection 5 and NRS
7 338.147, the local government or its authorized representative shall
8 award a contract to the lowest responsive and responsible bidder.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

7 8. This section does not apply to:

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

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

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

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

18 (e) The design and construction of a public work for which a
19 public body contracts with a design-build team pursuant to NRS
20 338.1711 to 338.1727, inclusive; *or*

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

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

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

28 **Sec. 7.5.** NRS 338.169 is hereby amended to read as follows:
29 338.169 ~~†A†~~

30 **1. Subject to the provisions of subsection 2, a** public body
31 may construct a public work by:

32 ~~†1†~~ **(a)** Selecting a construction manager at risk pursuant to the
33 provisions of NRS 338.1691 to 338.1696, inclusive; and

34 ~~†2†~~ **(b)** Entering into separate contracts with a construction
35 manager at risk:

36 ~~†a†~~ **(I)** For preconstruction services, including, without
37 limitation:

38 ~~†1†~~ **(I)** Assisting the public body in determining whether
39 scheduling or constructability problems exist that would delay the
40 construction of the public work;

41 ~~†2†~~ **(II)** Estimating the cost of the labor and material for
42 the public work; and

43 ~~†3†~~ **(III)** Assisting the public body in determining whether
44 the public work can be constructed within the public body's budget;
45 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 ~~+~~ 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

~~(b)~~ (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:



1 (a) An explanation of the experience that the applicant has with
2 projects of similar size and scope in both the public and private
3 sectors ~~† by any delivery method, whether or not that method was~~
4 ~~the use of a construction manager at risk, and~~ including, without
5 limitation, ~~[an explanation of the experience that the applicant has in~~
6 ~~assisting in the design of such projects]~~ *design-build, design-assist,*
7 *negotiated work or value-engineered work,* and an explanation of
8 the experience that the applicant has in such projects in Nevada;

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

12 (c) Evidence of the ability of the applicant to obtain the
13 necessary bonding for the work to be required by the public body;

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

16 (e) A statement of whether the applicant has been:

17 (1) Found liable for breach of contract with respect to a
18 previous project, other than a breach for legitimate cause, during the
19 5 years immediately preceding the date of the advertisement for
20 proposals; and

21 (2) Disqualified from being awarded a contract pursuant to
22 NRS 338.017, 338.13895, 338.1475 or 408.333;

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

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

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

31 (i) The proposed plan of the applicant to manage the
32 preconstruction and construction of the public work which sets forth
33 in detail the ability of the applicant to provide preconstruction
34 services and to construct the public work ~~†~~ and *which includes, if*
35 *the public work involves predominantly horizontal construction, a*
36 *statement that the applicant will perform construction work equal*
37 *in value to at least 25 percent of the estimated cost of construction;*
38 *and*

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

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



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

2 338.1693 1. The public body or its authorized representative
3 shall appoint a panel consisting of at least three *but not more than*
4 *seven* members, ~~at least two~~ *a majority* of whom must have
5 experience in the construction industry, to rank the proposals
6 submitted to the public body by evaluating the proposals as required
7 pursuant to subsections 2 and 3.

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

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

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

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

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

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

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



1 *may be made only by key personnel employed by the applicant, as*
2 *determined by the applicant, and the employees of the applicant*
3 *who will be directly responsible for managing the preconstruction*
4 *and construction of the public work.*

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

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

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

22 ~~6.1~~ 9. Upon receipt of the final rankings of the applicants from
23 the panel ~~1.1~~ *that conducted the interviews*, the public body or its
24 authorized representative shall enter into negotiations with the most
25 qualified applicant determined pursuant to ~~subsections 2, 3 and 4~~
26 *the provisions of this section* for a contract for preconstruction
27 services, unless the public body required the submission of a
28 proposed amount of compensation, in which case the proposed
29 amount of compensation submitted by the applicant must be the
30 amount offered for the contract. If the public body or its authorized
31 representative is unable to negotiate a contract with the most
32 qualified applicant for an amount of compensation that the public
33 body or its authorized representative and the most qualified
34 applicant determine to be fair and reasonable, the public body or its
35 authorized representative shall terminate negotiations with that
36 applicant. The public body or its authorized representative may then
37 undertake negotiations with the next most qualified applicant in
38 sequence until an agreement is reached and, if the negotiation is
39 undertaken by an authorized representative of the public body,
40 approved by the public body or until a determination is made by the
41 public body to reject all applicants.

42 ~~7.1~~ 10. The public body or its authorized representative shall
43 make available to all applicants and the public the final rankings of
44 the applicants , *as determined by the panel that conducted the*
45 *interviews*, and shall provide, upon request, an explanation to any



1 unsuccessful applicant of the reasons why the applicant was
2 unsuccessful.

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

4 338.1696 1. If a public body enters into a contract with a
5 construction manager at risk for preconstruction services pursuant to
6 NRS 338.1693, after the public body has finalized the design for the
7 public work, or any portion thereof sufficient to determine the
8 provable cost of that portion, the public body shall enter into
9 negotiations with the construction manager at risk for a contract to
10 construct the public work or the portion thereof for the public body
11 for:

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

14 (b) A fixed price; or

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

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

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

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

25 (2) If the public body is a local government, pursuant to the
26 provisions of NRS 338.1377 to 338.139, inclusive, or 338.143 to
27 338.148, inclusive; and

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

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

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

38 ***(b) Select each subcontractor who is to provide labor or a***
39 ***portion of the work which is estimated by the construction***
40 ***manager at risk to exceed 1 percent of the estimated cost of the***
41 ***public work in accordance with NRS 338.16991 and 338.16995***
42 ***and provide the names of each selected subcontractor to the public***
43 ***body.***

44 **4. *Except as otherwise provided in subsection 13 of NRS***
45 ***338.16995, a public body shall not interfere with the right of the***



1 *construction manager at risk to select the subcontractor whom the*
2 *construction manager at risk determines to have submitted the*
3 *best proposal pursuant to NRS 338.16995.*

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

6 338.16985 A construction manager at risk who enters into a
7 contract for the construction of a public work pursuant to
8 NRS 338.1696:

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

14 2. If the public work involves ~~the~~ *predominantly horizontal*
15 *construction*, ~~of a fixed work that is described in subsection 2 of~~
16 ~~NRS 624.215,~~ shall perform ~~not less than 25~~ *construction work*
17 *equal in value to at least 25* percent of the *estimated cost of*
18 *construction* ~~of the fixed work~~ himself or herself, or using his or
19 her own employees.

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

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

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

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

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

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

42 3. *Not earlier than 30 days after a construction manager at*
43 *risk has been selected pursuant to NRS 338.1693* ~~After the design~~
44 ~~and schedule for the construction of the public work is sufficiently~~
45 ~~detailed and complete to allow a subcontractor to apply to qualify to~~



1 ~~submit a meaningful and responsive proposal for the provision of~~
2 ~~labor, materials or equipment on the public work}~~ and not later than
3 ~~{24}~~ **10 working** days before the date by which ~~{such}~~ an application
4 must be submitted, the construction manager at risk shall advertise
5 for ~~{such}~~ applications **from subcontractors** in a newspaper
6 qualified pursuant to chapter 238 of NRS that is published in the
7 county where the public work will be performed. If no qualified
8 newspaper is published in the county where the public work will be
9 performed, the advertisement must be published in some qualified
10 newspaper that is printed in the State of Nevada and has a general
11 circulation in the county. **The construction manager at risk may**
12 **accept an application from a subcontractor before advertising for**
13 **applications pursuant to this subsection.**

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

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

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

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

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

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

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

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

36 (h) The principal personnel of the applicant;

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

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

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

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



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

6 **Sec. 13.** NRS 338.16995 is hereby amended to read as
7 follows:

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

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

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

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

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

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

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

36 (d) ~~+~~ ***If a preproposal meeting regarding the scope of the***
37 ***work to be performed by the subcontractor is to be held, the*** date,
38 time and place at which ~~+~~ ***the*** preproposal meeting will be held;

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

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

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



- 1 (h) Any other information reasonably necessary for a
- 2 subcontractor to submit a responsive proposal; and
- 3 (i) A statement in substantially the following form:

4
5 Notice: For a proposal for a subcontract on the public work to
6 be considered:

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

9 2. The proposal must be timely received;

10 3. ~~The~~ *If a preproposal meeting regarding the scope*
11 *of the work to be performed by the subcontractor is held, the*
12 subcontractor must attend the preproposal meeting; and

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

15
16 5. A subcontractor may not modify a proposal after the date
17 and time the proposal is received.

18 6. To be considered responsive, a proposal must:

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

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

24 7. The opening of the proposals must be attended by an
25 authorized representative of the public body . ~~and~~ *The public body*
26 *may require* the architect or engineer responsible for the design of
27 the public work ~~but~~ *to attend the opening of the proposals. The*
28 *opening of the proposals* is not otherwise open to the public.

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

36 9. Not ~~less~~ *more* than 10 working days after opening the
37 proposals ~~it~~ *and before the construction manager at risk submits*
38 *a guaranteed maximum price, a fixed price or a fixed price plus*
39 *reimbursement pursuant to NRS 338.1696*, the construction
40 manager at risk shall:

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

43 (b) Select the subcontractor who submits the proposal that the
44 construction manager at risk determines is the best proposal. *Subject*
45 *to the provisions of subparagraphs (1), (2) and (3), if only one*



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~~ *subsections*
21 ~~§~~ *and 15*, the construction manager at risk shall enter into a
22 subcontract with a subcontractor selected pursuant to subsection 9 to
23 provide the labor, materials or equipment described in the request
24 for proposals.

25 13. A construction manager at risk shall not substitute a
26 subcontractor for any subcontractor selected pursuant to subsection
27 9 unless:

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

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

33 (1) Files for bankruptcy or becomes insolvent;

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

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

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

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



1 14. *If a construction manager at risk substitutes a*
2 *subcontractor for any subcontractor selected pursuant to*
3 *subsection 9 without complying with the provisions of subsection*
4 *13, the construction manager at risk shall forfeit, as a penalty to*
5 *the public body, an amount equal to 1 percent of the total amount*
6 *of the contract.*

7 15. *If a construction manager at risk does not select a*
8 *subcontractor pursuant to subsection 9 to perform a portion of*
9 *work on a public work, the construction manager at risk shall*
10 *notify the public body that the construction manager at risk*
11 *intends to perform that portion of work. If, after providing such*
12 *notification, the construction manager at risk substitutes a*
13 *subcontractor to perform the work, the construction manager at*
14 *risk shall forfeit, as a penalty to the public body, the lesser of, and*
15 *excluding any amount of the contract that is attributable to*
16 *change orders:*

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

19 (b) *An amount equal to 35 percent of the estimate by the*
20 *engineer of the cost of the work the construction manager at risk*
21 *selected himself or herself to perform on the public work.*

22 16. The construction manager at risk shall make available to
23 the public ~~[, including, without limitation,] the name of each~~
24 subcontractor who submits a proposal . ~~[, the final rankings of the~~
25 ~~subcontractors and shall provide, upon request, an explanation to~~
26 ~~any subcontractor who is not selected of the reasons why the~~
27 ~~subcontractor was not selected.]~~

28 ~~[15.]~~ 17. If a public work is being constructed in phases, and a
29 construction manager at risk selects a subcontractor pursuant to
30 subsection 9 for the provision of labor, materials or equipment for
31 any phase of that construction, the construction manager at risk may
32 select that subcontractor for the provision of labor, materials or
33 equipment for any other phase of the construction without following
34 the requirements of subsections 3 to 11, inclusive.

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

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

39 338.1711 1. Except as otherwise provided in this section and
40 NRS 338.161 to ~~[338.16995.]~~ 338.168, inclusive, a public body
41 shall contract with a prime contractor for the construction of a
42 public work for which the estimated cost exceeds \$100,000.

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



1 design and construction of the public work and the public work has
2 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
5 shall, by July 28, 2009, develop a plan to retrofit public buildings,
6 facilities and structures, including, without limitation, traffic-control
7 systems, and to otherwise use sources of renewable energy to serve
8 those buildings, facilities and structures. Such a plan must:

9 (a) Include a list of specific projects. The projects must be
10 prioritized and 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
13 project.

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

16 (4) The estimated cost of the project.

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

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

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

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

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

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

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

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

39 3. As used in this section:

40 (a) "Local government" means each city or county that meets
41 the definition of "eligible unit of local government" as set forth in
42 42 U.S.C. § 17151 and each unit of local government, as defined in
43 subsection ~~H2~~ 13 of NRS 338.010, that does not meet the
44 definition of "eligible entity" as set forth in 42 U.S.C. § 17151.



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

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

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

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

14 **Sec. 14.1.** NRS 338.1908 is hereby amended to read as
15 follows:

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

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

- 23 (1) The length of time necessary to commence the project.
- 24 (2) The number of workers estimated to be employed on the
25 project.

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

28 (4) The estimated cost of the project.

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

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

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

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

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

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

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



1 donations or other sources of money from public and private
2 sources.

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

7 3. As used in this section:

8 (a) "Local government" means each city or county that meets
9 the definition of "eligible unit of local government" as set forth in
10 42 U.S.C. § 17151 and each unit of local government, as defined in
11 subsection ~~H3~~ 12 of NRS 338.010, that does not meet the
12 definition of "eligible entity" as set forth in 42 U.S.C. § 17151.

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

- 15 (1) Biomass;
- 16 (2) Fuel cells;
- 17 (3) Geothermal energy;
- 18 (4) Solar energy;
- 19 (5) Waterpower; and
- 20 (6) Wind.

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

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

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

27 1. Conduct a study on the benefits to this State of entering into
28 contracts with construction managers at risk pursuant to NRS
29 338.169 to 338.16995, inclusive, for the construction,
30 reconstruction, improvement or maintenance of highways; and

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

35 **Sec. 14.5.** 1. On or before January 1 of each year, each
36 public body that enters into a contract during the immediately
37 preceding year with a construction manager at risk pursuant to NRS
38 338.169 to 338.16995, inclusive, for preconstruction services for or
39 to construct a public work shall submit a report to the Director of the
40 Legislative Counsel Bureau for transmittal to the Legislature, or to
41 the Legislative Commission if the report is submitted during an odd-
42 numbered year.

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



- 1 (a) A description of the public work;
2 (b) The name of the construction manager at risk;
3 (c) If the public work has not been completed at the time the
4 report is submitted, a report on the progress of the public work; and
5 (d) If the public work has been completed at the time the report
6 is submitted, an explanation of whether the public body is satisfied
7 with the public work and with the contractual arrangement with the
8 construction manager at risk.
- 9 3. As used in this section:
- 10 (a) "Public body" has the meaning ascribed to it in subsection
11 16 of NRS 338.010, as amended by section 2 of this act.
- 12 (b) "Public work" has the meaning ascribed to it in subsection
13 17 of NRS 338.010, as amended by section 2 of this act.
- 14 **Sec. 14.7.** NRS 338.169, 338.1691, 338.1692, 338.1693,
15 338.16935, 338.1696, 338.1697, 338.1698, 338.16985, 338.16991
16 and 338.16995 are hereby repealed.
- 17 **Sec. 15.** 1. This section and sections 1, 2, 3, 4, 5, 6, 7.5 to
18 13, inclusive, 14, 14.3 and 14.5 of this act become effective on July
19 1, 2013.
- 20 2. Section 1 of this act expires by limitation on June 30, 2017.
- 21 3. Sections 2.3, 2.5, 3.5, 4.5, 5.3, 5.5, 5.7, 6.5, 13.5, 14.1 and
22 14.7 of this act become effective 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.



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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.



