

SENATE BILL NO. 246—SENATOR MANENDO (BY REQUEST)

MARCH 8, 2017

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works. (BDR 28-667)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact. Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public works; revising provisions governing advertising for and the submission of proposals relating to a contract for a public work involving a construction manager at risk; eliminating the monetary threshold at which public bodies are authorized to enter into a contract with a design-build team for the construction of a public work; extending the prospective expiration of provisions relating to construction managers at risk; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Under existing law, public bodies are authorized to construct public works  
2 under certain circumstances through a method by which a construction manager at  
3 risk provides preconstruction services on the public work and, in some cases,  
4 construction services on the public work within a guaranteed maximum price, a  
5 fixed price or a fixed price plus reimbursement for certain costs. (NRS 338.1685-  
6 338.16995) Existing law requires a public body that wishes to use this method to  
7 construct a public work to advertise for proposals for a construction manager at risk  
8 by publication in a qualified newspaper. Similarly, any construction manager at risk  
9 selected by a public body is required to advertise for applications from  
10 subcontractors to provide labor, materials or equipment on the public work by  
11 publication in a qualified newspaper. (NRS 338.1692, 338.16995) **Sections 1 and 2**  
12 of this bill make the procedure with which a public body and a construction  
13 manager at risk are required to comply for advertising for proposals or applications,  
14 as applicable, under the project delivery method of construction manager at risk the  
15 same as the procedure with which a public body is required to comply to advertise  
16 for bids on a public work for which the estimated cost exceeds \$100,000 under the  
17 project delivery method of “design-bid-build.”

18 Existing law prescribes the procedure for the award by a construction manager  
19 at risk to qualified subcontractors of subcontracts for which the estimated value is



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20 at least 1 percent of the total cost of the public work or \$50,000, whichever is  
21 greater. The procedure includes the provision to qualified subcontractors of written  
22 notice regarding the specifics of the subcontract and the requirements for  
23 submitting a responsive proposal. (NRS 338.16991, 338.16995) **Section 3** of this  
24 bill requires a construction manager at risk to provide each qualified subcontractor  
25 with a form that has been prepared by the construction manager at risk and  
26 approved by the public body on which any proposal in response to a request for  
27 proposals for the public work is required to be submitted.

28 Existing law eliminates the authority for public bodies to enter into contracts  
29 with construction managers at risk effective July 1, 2017. (Section 15 of chapter  
30 487, Statutes of Nevada 2013, p. 2986 and section 9 of chapter 123, Statutes of  
31 Nevada 2015, p. 457) **Sections 5 and 6** of this bill postpone the prospective  
32 expiration of this authority until June 30, 2021.

33 Existing law authorizes a public body to contract with a design-build team for  
34 the design and construction of a public work if the estimated cost of the public  
35 work exceeds \$5,000,000. (NRS 338.1711) **Section 4** of this bill eliminates the  
36 \$5,000,000 threshold and therefore authorizes a public body to contract with a  
37 design-build team for the design and construction of a public work of any estimated  
38 cost.

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

1 **Section 1.** NRS 338.1692 is hereby amended to read as  
2 follows:

3 338.1692 1. A public body or its authorized representative  
4 shall advertise for proposals for a construction manager at risk in ~~fa~~  
5 ~~newspaper qualified pursuant to chapter 238 of NRS that is~~  
6 ~~published in the county where the public work will be performed. If~~  
7 ~~no qualified newspaper is published in the county where the public~~  
8 ~~work will be performed, the required advertisement must be~~  
9 ~~published in some qualified newspaper that is printed in the State of~~  
10 ~~Nevada and has a general circulation in the county.]~~ *the manner set*  
11 *forth in paragraph (a) of subsection 1 of NRS 338.1385.*

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

- 14 (a) A description of the public work;  
15 (b) An estimate of the cost of construction;  
16 (c) A description of the work that the public body expects a  
17 construction manager at risk to perform;  
18 (d) The dates on which it is anticipated that the separate phases  
19 of the preconstruction and construction of the public work will  
20 begin and end;  
21 (e) The date by which proposals must be submitted to the public  
22 body;  
23 (f) If the project is a public work of the State, a statement setting  
24 forth that the construction manager at risk must be qualified to bid



1 on a public work of the State pursuant to NRS 338.1379 before  
2 submitting a proposal;

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

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

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

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

16 3. A proposal must include, without limitation:

17 (a) An explanation of the experience that the applicant has with  
18 projects of similar size and scope in both the public and private  
19 sectors by any delivery method, whether or not that method was the  
20 use of a construction manager at risk, and including, without  
21 limitation, design-build, design-assist, negotiated work or value-  
22 engineered work, and an explanation of the experience that the  
23 applicant has in such projects in Nevada;

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

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

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

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

32 (1) Found liable for breach of contract with respect to a  
33 previous project, other than a breach for legitimate cause, during the  
34 5 years immediately preceding the date of the advertisement for  
35 proposals; and

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

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

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

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



1 (i) The proposed plan of the applicant to manage the  
2 preconstruction and construction of the public work which sets forth  
3 in detail the ability of the applicant to provide preconstruction  
4 services and to construct the public work and which includes, if the  
5 public work involves predominantly horizontal construction, a  
6 statement that the applicant will perform construction work equal in  
7 value to at least 25 percent of the estimated cost of construction; and

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

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

14 **Sec. 2.** NRS 338.16991 is hereby amended to read as follows:

15 338.16991 1. To be eligible to provide labor, materials or  
16 equipment on a public work, the contract for which a public body  
17 has entered into with a construction manager at risk pursuant to  
18 NRS 338.1696, a subcontractor must be:

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

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

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

28 3. Not earlier than 30 days after a construction manager at risk  
29 has been selected pursuant to NRS 338.1693 and not later than 10  
30 working days before the date by which an application must be  
31 submitted, the construction manager at risk shall advertise for  
32 applications from subcontractors in ~~the manner set forth in~~  
33 ~~chapter 238 of NRS that is published in the county where the~~  
34 ~~public work will be performed. If no qualified newspaper is~~  
35 ~~published in the county where the public work will be performed,~~  
36 ~~the advertisement must be published in some qualified newspaper~~  
37 ~~that is printed in the State of Nevada and has a general circulation in~~  
38 ~~the county.~~ *the manner set forth in paragraph (a) of subsection 1*  
39 *of NRS 338.1385.* The construction manager at risk may accept an  
40 application from a subcontractor before advertising for applications  
41 pursuant to this subsection.

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



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

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

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

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

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

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

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

19 (h) The principal personnel of the applicant;

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

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

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

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

29 7. A determination made pursuant to subsection 2 that an  
30 applicant is not qualified may be appealed pursuant to NRS  
31 338.1381 to the public body with whom the construction manager at  
32 risk has entered into a contract for the construction of the public  
33 work.

34 **Sec. 3.** NRS 338.16995 is hereby amended to read as follows:

35 338.16995 1. If a public body enters into a contract with a  
36 construction manager at risk for the construction of a public work  
37 pursuant to NRS 338.1696, the construction manager at risk may  
38 enter into a subcontract for the provision of labor, materials and  
39 equipment necessary for the construction of the public work only as  
40 provided in this section.

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

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



1 subcontractor to submit a meaningful and responsive proposal, and  
2 not later than 21 days before the date by which a proposal for the  
3 provision of labor, materials or equipment by a subcontractor must  
4 be submitted, the construction manager at risk shall notify in writing  
5 each subcontractor who was determined pursuant to NRS 338.16991  
6 to be qualified to submit such a proposal of a request for such  
7 proposals **H and shall provide to each such subcontractor a form**  
8 **prepared by the construction manager at risk and approved by the**  
9 **public body on which any proposal in response to the request for**  
10 **proposals must be submitted.** A copy of the notice required  
11 pursuant to this subsection must be provided to the public body.

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

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

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

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

21 (d) If a preproposal meeting regarding the scope of the work to  
22 be performed by the subcontractor is to be held, the date, time and  
23 place at which the preproposal meeting will be held;

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

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

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

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

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

33  
34 Notice: For a proposal for a subcontract on the public work to  
35 be considered:

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

38 2. The proposal must be **submitted on the form provided**  
39 **by the construction manager at risk and be** timely received;

40 3. If a preproposal meeting regarding the scope of the  
41 work to be performed by the subcontractor is held, the  
42 subcontractor must attend the preproposal meeting; and

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



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

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

4 (a) Be *submitted on the form provided by the construction*  
5 *manager at risk pursuant to subsection 3;*

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

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

11 7. The opening of the proposals must be attended by an  
12 authorized representative of the public body. The public body may  
13 require the architect or engineer responsible for the design of the  
14 public work to attend the opening of the proposals. The opening of  
15 the proposals is not otherwise open to the public.

16 8. At the time the proposals are opened, the construction  
17 manager at risk shall compile and provide to the public body or its  
18 authorized representative a list that includes, without limitation, the  
19 name and contact information of each subcontractor who submits a  
20 timely proposal.

21 9. Not more than 10 working days after opening the proposals  
22 and before the construction manager at risk submits a guaranteed  
23 maximum price, a fixed price or a fixed price plus reimbursement  
24 pursuant to NRS 338.1696, the construction manager at risk shall:

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

27 (b) Select the subcontractor who submits the proposal that the  
28 construction manager at risk determines is the best proposal. Subject  
29 to the provisions of subparagraphs (1), (2) and (3), if only one  
30 subcontractor submits a proposal, the construction manager at risk  
31 may select that subcontractor. The subcontractor must be selected  
32 from among those:

33 (1) Who attended the preproposal meeting regarding the  
34 scope of the work to be performed by the subcontractor, if such a  
35 preproposal meeting was held;

36 (2) Who submitted a responsive proposal; and

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

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

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



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

4 12. Except as otherwise provided in subsections 13 and 15, the  
5 construction manager at risk shall enter into a subcontract with a  
6 subcontractor selected pursuant to subsection 9 to provide the labor,  
7 materials or equipment described in the request for proposals.

8 13. A construction manager at risk shall not substitute a  
9 subcontractor for any subcontractor selected pursuant to subsection  
10 9 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; or

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

16 (1) Files for bankruptcy or becomes insolvent;

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

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

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

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

28 14. If a construction manager at risk substitutes a subcontractor  
29 for any subcontractor selected pursuant to subsection 9 without  
30 complying with the provisions of subsection 13, the construction  
31 manager at risk shall forfeit, as a penalty to the public body, an  
32 amount equal to 1 percent of the total amount of the contract.

33 15. If a construction manager at risk does not select a  
34 subcontractor pursuant to subsection 9 to perform a portion of work  
35 on a public work, the construction manager at risk shall notify the  
36 public body that the construction manager at risk intends to perform  
37 that portion of work. If, after providing such notification, the  
38 construction manager at risk substitutes a subcontractor to perform  
39 the work, the construction manager at risk shall forfeit, as a penalty  
40 to the public body, the lesser of, and excluding any amount of the  
41 contract that is attributable to change orders:

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





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

4 16. The construction manager at risk shall make available to  
5 the public the name of each subcontractor who submits a proposal.

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

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

15 **Sec. 4.** NRS 338.1711 is hereby amended to read as follows:

16 338.1711 1. Except as otherwise provided in this section and  
17 NRS 338.161 to 338.16995, inclusive, a public body shall contract  
18 with a prime contractor for the construction of a public work for  
19 which the estimated cost exceeds \$100,000.

20 2. A public body may contract with a design-build team for the  
21 design and construction of a public work that is a discrete project if  
22 the public body has approved the use of a design-build team for the  
23 design and construction of the public work . ~~and the public work~~  
24 ~~has an estimated cost which exceeds \$5,000,000.~~

25 **Sec. 5.** Section 15 of chapter 487, Statutes of Nevada 2013, at  
26 page 2986, is hereby amended to read as follows:

27 Sec. 15. 1. This section and sections 1, 2, 3, 4, 5, 6,  
28 7.5 to 13, inclusive, 14, 14.3 and 14.5 of this act become  
29 effective on July 1, 2013.

30 2. Section 1 of this act expires by limitation on June 30,  
31 ~~2017.~~ 2021.

32 3. Sections 2.3, 2.5, 3.5, 4.5, 5.3, 5.5, 5.7, 6.5, 13.5, 14.1  
33 and 14.7 of this act become effective on July 1, ~~2017.~~ 2021.

34 **Sec. 6.** Section 9 of chapter 123, Statutes of Nevada 2015, at  
35 page 457, is hereby amended to read as follows:

36 Sec. 9. 1. This act becomes effective upon passage  
37 and approval.

38 2. Sections 6 and 7.5 of this act expire by limitation on  
39 June 30, ~~2017.~~ 2021.

40 **Sec. 7.** 1. This section and sections 5 and 6 of this act  
41 become effective upon passage and approval.

42 2. Sections 1 to 4, inclusive, of this act become effective on  
43 July 1, 2017.



1        3. Sections 1, 2 and 3 of this act expire by limitation on  
2        June 30, 2021.

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