

CHAPTER.....

AN ACT relating to public works; revising provisions governing a contract for a public work involving a construction manager at risk; revising provisions relating to the authority of public bodies 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:

Under existing law, public bodies are authorized to construct public works under certain circumstances through a method by which a construction manager at risk provides preconstruction services on the public work and, in some cases, construction services on the public work within a guaranteed maximum price, a fixed price or a fixed price plus reimbursement for certain costs. (NRS 338.1685-338.16995) Existing law declares the legislative intent for authorizing this method of construction, including to benefit the public by promoting the philosophy of obtaining the best possible value as compared to low-bid contracting. (NRS 338.1685) **Section 1** of this bill declares that this method of construction is not intended to be used by the State or a political subdivision to limit competition, discourage competitive bidding or engage in or allow bid-shopping.

Existing law requires a public body that wishes to use the construction manager at risk method to construct a public work to advertise for proposals for a construction manager at risk by publication in a qualified newspaper. Similarly, any construction manager at risk selected by a public body is required to advertise for applications from subcontractors to provide labor, materials or equipment on the public work by publication in a qualified newspaper. (NRS 338.1692, 338.16995) **Sections 1.3 and 2** of this bill make the procedure with which a public body and a construction manager at risk are required to comply for advertising for proposals or applications, as applicable, under the project delivery method of construction manager at risk the same as the procedure with which a public body is required to comply to advertise for bids on a public work for which the estimated cost exceeds \$100,000 under the project delivery method of “design-bid-build.” Additionally, **section 1.3** prohibits an applicant for selection as a construction manager at risk from substituting another employee for an employee whose resume was included in the applicant’s proposal to the public body, unless the original employee is unavailable for certain specified reasons or the public body fails to enter into a contract for preconstruction services with a construction manager at risk within a certain period.

Existing law authorizes a public body, in selecting a construction manager at risk, to require applicants who are invited for an interview to submit a preliminary proposed amount of compensation for managing the preconstruction and construction of the public work, but limits consideration of that amount of compensation to not more than 20 percent of the scoring for the selection of the most qualified applicant. (NRS 338.1693) **Section 1.7** of this bill requires that the preliminary proposed amount of compensation include general overhead and profit and requires that consideration of that proposed amount constitute at least 5 percent of the scoring of an applicant.



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

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

Existing law authorizes a public body to contract with a design-build team for the design and construction of a public work if the estimated cost of the public work exceeds \$5,000,000. (NRS 338.1711) **Section 4** of this bill authorizes a public body, within a 12-month period, to contract with a design-build team for the design and construction of not more than two discrete public works projects, each of which have an estimated cost of \$5,000,000 or less.

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

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

Section 1. NRS 338.1685 is hereby amended to read as follows:

338.1685 The Legislature hereby declares that the provisions of NRS 338.1685 to 338.16995, inclusive, relating to contracts involving construction managers at risk ~~are~~:

1. Are intended:

~~1-1~~ (a) To promote public confidence and trust in the contracting and bidding procedures for public works established therein;

~~1-2~~ (b) For the benefit of the public, to promote the philosophy of obtaining the best possible value as compared to low-bid contracting; and

~~1-3~~ (c) To better equip public bodies to address public works that present unique and complex construction challenges.

2. Are not intended to be used by the State or a political subdivision of this State to:

(a) Limit competition;

(b) Discourage competitive bidding; or

(c) Engage in or allow bid-shopping.



Sec. 1.3. 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 ~~the 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.~~ *the manner set forth in paragraph (a) of subsection 1 of NRS 338.1385.*

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

3. A proposal must include, without limitation:

- (a) An explanation of the experience that the applicant has with projects of similar size and scope in both the public and private sectors by any delivery method, whether or not that method was the use of a construction manager at risk, and including, without



limitation, design-build, design-assist, negotiated work or value-engineered work, and an explanation of the experience that the applicant has in such projects in Nevada;

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

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

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

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

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

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

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

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

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

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

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

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

5. An applicant shall not substitute a different employee for an employee whose resume was submitted pursuant to paragraph (f) of subsection 3, unless:



(a) The employee whose resume was submitted is no longer employed by the applicant or is unavailable for medical reasons; or

(b) The public body enters into a contract with the applicant for preconstruction services pursuant to NRS 338.1693 more than 90 days after the date on which the final ranking of applicants was made pursuant to subsection 7 of NRS 338.1693.

Sec. 1.7. NRS 338.1693 is hereby amended to read as follows:

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

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

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

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

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

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

5. The public body or its authorized representative may appoint a separate panel to interview and rank the applicants selected pursuant to subsection 4. If a separate panel is appointed pursuant to this subsection, the panel must consist of at least three but not more



than seven members, a majority of whom must have experience in the construction industry.

6. During the interview process, the panel conducting the interview may require the applicants to submit a preliminary proposed amount of compensation for managing the preconstruction and construction of the public work, *including, without limitation, the cost of general overhead and profit*, but in no event shall the proposed amount of compensation ~~exceed~~ *be less than 5 percent or more than* 20 percent of the scoring for the selection of the most qualified applicant. All presentations made at any interview conducted pursuant to this subsection or subsection 5 may be made only by key personnel employed by the applicant, as determined by the applicant, and the employees of the applicant who will be directly responsible for managing the preconstruction and construction of the public work.

7. After conducting such interviews, the panel that conducted the interviews shall rank the applicants by using a ranking process that is separate from the process used to rank the applicants pursuant to subsection 2 and is based only on information submitted during the interview process. The score to be given for the proposed amount of compensation, if any, must be calculated by dividing the lowest of all the proposed amounts of compensation by the applicant's proposed amount of compensation multiplied by the total possible points available to each applicant. When ranking the applicants, the panel that conducted the interviews shall assign a relative weight of 5 percent to the applicant's possession of a certificate of eligibility to receive a preference in bidding on public works if the applicant submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that work.

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

9. Upon receipt of the final rankings of the applicants from the panel that conducted the interviews, the public body or its authorized representative shall enter into negotiations with the most qualified applicant determined pursuant to the provisions of this section for a contract for preconstruction services, unless the public body required the submission of a proposed amount of compensation, in which case the proposed amount of compensation



submitted by the applicant must be the amount offered for the contract. If the public body or its authorized representative is unable to negotiate a contract with the most qualified applicant for an amount of compensation that the public body or its authorized representative and the most qualified applicant determine to be fair and reasonable, the public body or its authorized representative shall terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.

10. The public body or its authorized representative shall:

(a) Make available to all applicants and the public the following information, as determined by the panel appointed pursuant to subsection 1 and the panel that conducted the interviews, as applicable:

(1) The final rankings of the applicants;

(2) The score assigned to each proposal received by the public body; and

(3) For each proposal received by the public body, the score assigned to each factor that the public body specified in the request for proposals; and

(b) Provide, upon request, an explanation to any unsuccessful applicant of the reasons why the applicant was unsuccessful.

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

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

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

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

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

3. Not earlier than 30 days after a construction manager at risk has been selected pursuant to NRS 338.1693 and not later than 10 working days before the date by which an application must be



submitted, the construction manager at risk shall advertise for applications from subcontractors in ~~in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed. If no qualified newspaper is published in the county where the public work will be performed, the advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.~~ **the manner set forth in paragraph (a) of subsection 1 of NRS 338.1385.** The construction manager at risk may accept an application from a subcontractor before advertising for applications pursuant to this subsection.

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

- (a) The monetary limit placed on the license of the applicant by the State Contractors' Board pursuant to NRS 624.220;
- (b) The financial ability of the applicant to provide the labor, materials or equipment required on the public work;
- (c) Whether the applicant has the ability to obtain the necessary bonding for the work required by the public body;
- (d) The safety programs established and the safety records accumulated by the applicant;
- (e) Whether the applicant has breached any contracts with a public body or person in this State or any other state during the 5 years immediately preceding the application;
- (f) Whether the applicant has been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the applicant to perform the public work;
- (g) The performance history of the applicant concerning other recent, similar public or private contracts, if any, completed by the applicant in Nevada;
- (h) The principal personnel of the applicant;
- (i) Whether the applicant has been disqualified from the award of any contract pursuant to NRS 338.017 or 338.13895; and
- (j) The truthfulness and completeness of the application.

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

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



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

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

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

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

3. After the design and schedule for the construction of the public work is sufficiently detailed and complete to allow a subcontractor to submit a meaningful and responsive proposal, and not later than 21 days before the date by which a proposal for the provision of labor, materials or equipment by a subcontractor must be submitted, the construction manager at risk shall notify in writing each subcontractor who was determined pursuant to NRS 338.16991 to be qualified to submit such a proposal of a request for such proposals ~~H~~ *and shall provide to each such subcontractor a form prepared by the construction manager at risk and approved by the public body on which any proposal in response to the request for proposals must be submitted.* A copy of the notice required pursuant to this subsection must be provided to the public body.

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

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

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

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

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

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



- (f) The date, time and place at which proposals will be opened for evaluation;
- (g) A description of the bonding and insurance requirements for subcontractors;
- (h) Any other information reasonably necessary for a subcontractor to submit a responsive proposal; and
- (i) A statement in substantially the following form:

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

1. The subcontractor must be licensed pursuant to chapter 624 of NRS;
 2. The proposal must be ***submitted on the form provided by the construction manager at risk and be*** timely received;
 3. If a preproposal meeting regarding the scope of the work to be performed by the subcontractor is held, the subcontractor must attend the preproposal meeting; and
 4. The subcontractor may not modify the proposal after the date and time the proposal is received.
5. A subcontractor may not modify a proposal after the date and time the proposal is received.
6. To be considered responsive, a proposal must:
- (a) Be ***submitted on the form provided by the construction manager at risk pursuant to subsection 3;***
 - ~~(b)~~ ***(c)*** Substantially and materially conform to the details and requirements included in the proposal instructions and for the finalized bid package for the public work, including, without limitation, details and requirements affecting price and performance.
7. The opening of the proposals must be attended by an authorized representative of the public body. The public body may require the architect or engineer responsible for the design of the public work to attend the opening of the proposals. The opening of the proposals is not otherwise open to the public.
8. At the time the proposals are opened, the construction manager at risk shall compile and provide to the public body or its authorized representative a list that includes, without limitation, the name and contact information of each subcontractor who submits a timely proposal.
9. Not more than 10 working days after opening the proposals and before the construction manager at risk submits a guaranteed



maximum price, a fixed price or a fixed price plus reimbursement pursuant to NRS 338.1696, the construction manager at risk shall:

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

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

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

(2) Who submitted a responsive proposal; and

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

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

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

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

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

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

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

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

(1) Files for bankruptcy or becomes insolvent;

(2) After having a reasonable opportunity, fails or refuses to execute a written contract with the construction manager at risk which was offered to the selected subcontractor with the same



general terms that all other subcontractors on the project were offered;

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

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

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

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

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

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

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

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

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

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

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

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



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

3. Within any 12-month period, a public body may contract with a design-build team for the design and construction of not more than two discrete public works projects, each of which have an estimated cost of \$5,000,000 or less if the public body has approved the use of a design-build team.

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

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

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

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

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

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

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

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

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

3. Sections 1 to 3, inclusive, of this act expire by limitation on June 30, 2021.



