

Amendment No. CA3

Conference Committee Amendment to (BDR 28-658)  
Assembly Bill No. 283 Second Reprint

Proposed by: Conference Committee

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

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

HAC/MSN



Date: 6/1/2013

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



ASSEMBLY BILL NO. 283—ASSEMBLYMEN DALY, HEALEY; BENITEZ-THOMPSON,  
CARRILLO, NEAL, PIERCE AND SPRINKLE

MARCH 15, 2013

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions governing 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:**

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

Existing law allows a public body to contract with a construction manager at risk, which is a construction manager who is required to construct a public work within a guaranteed maximum price, a fixed price or a fixed price plus reimbursement for certain costs. (NRS 338.169, 338.1696) **Section 7.5** of this bill limits to two per year the number of public works for which each public body in a county whose population is less than 100,000 (currently counties other than Clark and Washoe Counties) may enter into contracts with a construction manager at risk.

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

Existing law requires a proposal for a construction manager at risk to include an explanation of the experience that the applicant has with projects of similar size and scope. **Section 8** specifies that the explanation may include an explanation of experience by any delivery method, regardless of whether that method was the use of a construction manager at

22 risk, and including design-build, design-assist, negotiated work or value-engineered work.  
23 **Section 8** also requires the public body or its authorized representative to make available to  
24 the public the name of each applicant who submits a proposal for a public work to be  
25 performed by a construction manager at risk.

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

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

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

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

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

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

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

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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 thereto a new  
2 section to read as follows:

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

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

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

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

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

6 338.010 As used in this chapter:

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

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

13 3. "Contractor" means:

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

15 (b) A design-build team.

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

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

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

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

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

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

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

33 7. "Design professional" means:

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

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

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

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

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

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

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

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

50 (b) Determined by a public body or its authorized representative which  
51 awarded a contract for a public work pursuant to NRS 338.1375 to 338.139,

1 inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or  
2 338.1382.

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

5 (a) General engineering contracting, as described in subsection 2 of NRS  
6 624.215.

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

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

10 12. *"Horizontal construction" means the construction of any fixed work,  
11 including any irrigation, drainage, water supply, flood control, harbor, railroad,  
12 highway, tunnel, airport or airway, sewer, sewage disposal plant or water  
13 treatment facility and any ancillary vertical components thereof, bridge, inland  
14 waterway, pipeline for the transmission of petroleum or any other liquid or  
15 gaseous substance, pier, and work incidental thereto. The term does not include  
16 vertical construction, the construction of any terminal or other building of an  
17 airport or airway, or the construction of any other building.*

18 13. "Local government" means every political subdivision or other entity  
19 which has the right to levy or receive money from ad valorem or other taxes or any  
20 mandatory assessments, and includes, without limitation, counties, cities, towns,  
21 boards, school districts and other districts organized pursuant to chapters 244A,  
22 309, 318, 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,  
23 inclusive, and any agency or department of a county or city which prepares a  
24 budget separate from that of the parent political subdivision. The term includes a  
25 person who has been designated by the governing body of a local government to  
26 serve as its authorized representative.

27 ~~H3~~ 14. "Offense" means failing to:

28 (a) Pay the prevailing wage required pursuant to this chapter;

29 (b) Pay the contributions for unemployment compensation required pursuant to  
30 chapter 612 of NRS;

31 (c) Provide and secure compensation for employees required pursuant to  
32 chapters 616A to 617, inclusive, of NRS; or

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

34 ~~H4~~ 15. "Prime contractor" means a contractor who:

35 (a) Contracts to construct an entire project;

36 (b) Coordinates all work performed on the entire project;

37 (c) Uses his or her own workforce to perform all or a part of the public work;  
38 and

39 (d) Contracts for the services of any subcontractor or independent contractor or  
40 is responsible for payment to any contracted subcontractors or independent  
41 contractors.

42 ➤ The term includes, without limitation, a general contractor or a specialty  
43 contractor who is authorized to bid on a project pursuant to NRS 338.139 or  
44 338.148.

45 ~~H5~~ 16. "Public body" means the State, county, city, town, school district or  
46 any public agency of this State or its political subdivisions sponsoring or financing  
47 a public work.

48 ~~H6~~ 17. "Public work" means any project for the new construction, repair or  
49 reconstruction of:

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

51 (1) Public buildings;

52 (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 part with
- 8 public money; and
- 9 (10) All other publicly owned works and property.

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

13 ~~17.7~~ 18. “Specialty contractor” means a person who is licensed to conduct  
14 business as described in subsection 4 of NRS 624.215.

15 ~~18.8~~ 19. “Stand-alone underground utility project” means an underground  
16 utility project that is not integrated into a larger project, including, without  
17 limitation:

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

20 (b) A project for the construction or installation of a storm drain, including  
21 facilities appurtenant thereto,

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

25 ~~19.9~~ 20. “Subcontract” means a written contract entered into between:

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

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

28 ↪ for the provision of labor, materials, equipment or supplies for a construction  
29 project.

30 ~~20.9~~ 21. “Subcontractor” means a person who:

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

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

36 ~~21.9~~ 22. “Supplier” means a person who provides materials, equipment or  
37 supplies for a construction project.

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

43 ~~22.9~~ 24. “Wages” means:

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

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

48 ~~23.9~~ 25. “Worker” means a skilled mechanic, skilled worker, semiskilled  
49 mechanic, semiskilled worker or unskilled worker in the service of a contractor or  
50 subcontractor under any appointment or contract of hire or apprenticeship, express  
51 or implied, oral or written, whether lawfully or unlawfully employed. The term  
52 does not include a design professional.

1       **Sec. 2.3.** NRS 338.010 is hereby amended to read as follows:

2       338.010 As used in this chapter:

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

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

9       3. "Contractor" means:

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

11       (b) A design-build team.

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

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

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

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

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

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

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

29       7. "Design professional" means:

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

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

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

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

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

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

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

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

46       (b) Determined by a public body or its authorized representative which  
47 awarded a contract for a public work pursuant to NRS 338.1375 to 338.139,  
48 inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or  
49 338.1382.

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

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

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

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

6 ~~12. "[Horizontal construction]" means the construction of any fixed work,  
7 including any irrigation, drainage, water supply, flood control, harbor, railroad,  
8 highway, tunnel, airport or airway, sewer, sewage disposal plant or water treatment  
9 facility and any ancillary vertical components thereof, bridge, inland waterway,  
10 pipeline for the transmission of petroleum or any other liquid or gaseous substance,  
11 pier, and work incidental thereto. The term does not include vertical construction,  
12 the construction of any terminal or other building of an airport or airway, or the  
13 construction of any other building.~~

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

23 ~~14.~~ 13. "Offense" means failing to:

24 (a) Pay the prevailing wage required pursuant to this chapter;

25 (b) Pay the contributions for unemployment compensation required pursuant to  
26 chapter 612 of NRS;

27 (c) Provide and secure compensation for employees required pursuant to  
28 chapters 616A to 617, inclusive, of NRS; or

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

30 ~~15.~~ 14. "Prime contractor" means a contractor who:

31 (a) Contracts to construct an entire project;

32 (b) Coordinates all work performed on the entire project;

33 (c) Uses his or her own workforce to perform all or a part of the public work;  
34 and

35 (d) Contracts for the services of any subcontractor or independent contractor or  
36 is responsible for payment to any contracted subcontractors or independent  
37 contractors.

38 ↪ The term includes, without limitation, a general contractor or a specialty  
39 contractor who is authorized to bid on a project pursuant to NRS 338.139 or  
40 338.148.

41 ~~16.~~ 15. "Public body" means the State, county, city, town, school district or  
42 any public agency of this State or its political subdivisions sponsoring or financing  
43 a public work.

44 ~~17.~~ 16. "Public work" means any project for the new construction, repair or  
45 reconstruction of:

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

47 (1) Public buildings;

48 (2) Jails and prisons;

49 (3) Public roads;

50 (4) Public highways;

51 (5) Public streets and alleys;

52 (6) Public utilities;



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

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

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10 business as described in subsection 4 of NRS 624.215.

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12 utility project that is not integrated into a larger project, including, without  
13 limitation:

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

16 (b) A project for the construction or installation of a storm drain, including  
17 facilities appurtenant thereto,

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

21 ~~20.1~~ 19. “Subcontract” means a written contract entered into between:

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

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

24 ➤ for the provision of labor, materials, equipment or supplies for a construction  
25 project.

26 ~~21.1~~ 20. “Subcontractor” means a person who:

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

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

32 ~~22.1~~ 21. “Supplier” means a person who provides materials, equipment or  
33 supplies for a construction project.

34 ~~23. “Vertical construction” means the construction or remodeling of any  
35 building, structure or other improvement that is predominantly vertical, including,  
36 without limitation, a building, structure or improvement for the support, shelter and  
37 enclosure of persons, animals, chattels or movable property of any kind, and any  
38 improvement appurtenant thereto.~~

39 ~~24.1~~ 22. “Wages” means:

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

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

44 ~~25.1~~ 23. “Worker” means a skilled mechanic, skilled worker, semiskilled  
45 mechanic, semiskilled worker or unskilled worker in the service of a contractor or  
46 subcontractor under any appointment or contract of hire or apprenticeship, express  
47 or implied, oral or written, whether lawfully or unlawfully employed. The term  
48 does not include a design professional.

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

50 338.0117 1. To qualify to receive a preference in bidding pursuant to  
51 subsection 2 of NRS 338.1389, subsection 2 of NRS 338.147, ~~subsection 3 of NRS~~  
52 ~~338.1693.1~~ subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, a

1 contractor, an applicant or a design-build team, respectively, must submit to the  
2 public body sponsoring or financing a public work a signed affidavit which certifies  
3 that, for the duration of the project:

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

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

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

12 (2) Registered in this State;

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

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

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

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

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

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

32 3. A person or entity who believes that a contractor, applicant or design-build  
33 team has obtained a preference in bidding as described in subsection 1 but has  
34 failed to comply with a requirement of paragraphs (a) to (e), inclusive, of  
35 subsection 1 may file a written objection with the public body for which the  
36 contractor, applicant or design-build team is performing the public work. A written  
37 objection authorized pursuant to this subsection must set forth proof or  
38 substantiating evidence to support the belief of the person or entity that the  
39 contractor, applicant or design-build team has failed to comply with a requirement  
40 of paragraphs (a) to (e), inclusive, of subsection 1.

41 4. If a public body receives a written objection pursuant to subsection 3, the  
42 public body shall determine whether the objection is accompanied by the proof or  
43 substantiating evidence required pursuant to that subsection. If the public body  
44 determines that the objection is not accompanied by the required proof or  
45 substantiating evidence, the public body shall dismiss the objection. If the public  
46 body determines that the objection is accompanied by the required proof or  
47 substantiating evidence or if the public body determines on its own initiative that  
48 proof or substantiating evidence of a failure to comply with a requirement of  
49 paragraphs (a) to (e), inclusive, of subsection 1 exists, the public body shall  
50 determine whether the contractor, applicant or design-build team has failed to  
51 comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1 and  
52 the public body or its authorized representative may proceed to award the contract

1 accordingly or, if the contract has already been awarded, seek the remedy  
2 authorized in subsection 5.

3 5. A public body may recover, by civil action against the party responsible for  
4 a failure to comply with a requirement of paragraphs (a) to (e), inclusive, of  
5 subsection 1, liquidated damages as described in subsection 6 for a breach of a  
6 contract for a public work caused by a failure to comply with a requirement of  
7 paragraphs (a) to (e), inclusive, of subsection 1. If a public body recovers liquidated  
8 damages pursuant to this subsection for a breach of a contract for a public work, the  
9 public body shall report to the State Contractors' Board the date of the breach, the  
10 name of each entity which breached the contract and the cost of the contract. The  
11 Board shall maintain this information for not less than 6 years. Upon request, the  
12 Board shall provide this information to any public body or its authorized  
13 representative.

14 6. If a contractor, applicant or design-build team submits the affidavit  
15 described in subsection 1, receives a preference in bidding described in subsection  
16 1 and is awarded the contract, the contract between the contractor, applicant or  
17 design-build team and the public body, each contract between the contractor,  
18 applicant or design-build team and a subcontractor or supplier and each contract  
19 between a subcontractor and a subcontractor or supplier must provide that:

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

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

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

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

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

44 338.018 The provisions of NRS 338.013 to 338.018, inclusive, apply to any  
45 contract for construction work of the Nevada System of Higher Education for  
46 which the estimated cost exceeds \$100,000 even if the construction work does not  
47 qualify as a public work, as defined in subsection ~~16~~ 17 of NRS 338.010.

48 **Sec. 3.5.** NRS 338.018 is hereby amended to read as follows:

49 338.018 The provisions of NRS 338.013 to 338.018, inclusive, apply to any  
50 contract for construction work of the Nevada System of Higher Education for  
51 which the estimated cost exceeds \$100,000 even if the construction work does not  
52 qualify as a public work, as defined in subsection ~~16~~ 16 of NRS 338.010.

1       **Sec. 4.** NRS 338.075 is hereby amended to read as follows:  
2       338.075 The provisions of NRS 338.020 to 338.090, inclusive, apply to any  
3 contract for construction work of the Nevada System of Higher Education for  
4 which the estimated cost exceeds \$100,000 even if the construction work does not  
5 qualify as a public work, as defined in subsection ~~H6~~ 17 of NRS 338.010.

6       **Sec. 4.5.** NRS 338.075 is hereby amended to read as follows:  
7       338.075 The provisions of NRS 338.020 to 338.090, inclusive, apply to any  
8 contract for construction work of the Nevada System of Higher Education for  
9 which the estimated cost exceeds \$100,000 even if the construction work does not  
10 qualify as a public work, as defined in subsection ~~H7~~ 16 of NRS 338.010.

11       **Sec. 5.** NRS 338.1373 is hereby amended to read as follows:  
12       338.1373 1. A local government or its authorized representative shall award  
13 a contract for a public work pursuant to the provisions of NRS 338.1415 and:

- 14       (a) NRS 338.1377 to 338.139, inclusive;  
15       (b) NRS 338.143 to 338.148, inclusive;  
16       (c) NRS 338.169 to 338.16995, inclusive ~~H~~, and section 1 of this act; or  
17       (d) NRS 338.1711 to 338.173, inclusive.

18       2. *Except as otherwise provided in this subsection, subsection 3 and chapter*  
19 *408 of NRS, the provisions of this chapter apply with respect to contracts for the*  
20 *construction, reconstruction, improvement and maintenance of highways that are*  
21 *awarded by the Department of Transportation pursuant to NRS 408.201 and*  
22 *408.313 to 408.433, inclusive. The provisions of NRS 338.1375 to 338.1382,*  
23 *inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142 ~~H~~, ~~338.169 to~~*  
24 *~~338.16995, inclusive,~~ and 338.1711 to 338.1727, inclusive, do not apply with*  
25 *respect to contracts for the construction, reconstruction, improvement and*  
26 *maintenance of highways that are awarded by the Department of Transportation*  
27 *pursuant to NRS 408.201 and 408.313 to 408.433, inclusive.*

28       3. *To the extent that a provision of this chapter precludes the granting of*  
29 *federal assistance or reduces the amount of such assistance with respect to a*  
30 *contract for the construction, reconstruction, improvement or maintenance of*  
31 *highways that is awarded by the Department of Transportation pursuant to NRS*  
32 *408.201 and 408.313 to 408.433, inclusive, that provision of this chapter does not*  
33 *apply to the Department of Transportation or the contract.*

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

35       338.1373 1. A local government or its authorized representative shall award  
36 a contract for a public work pursuant to the provisions of NRS 338.1415 and:

- 37       (a) NRS 338.1377 to 338.139, inclusive;  
38       (b) NRS 338.143 to 338.148, inclusive; *or*  
39       (c) ~~NRS 338.169 to 338.16995, inclusive, and section 1 of this act, or~~  
40 ~~—(d)~~ NRS 338.1711 to 338.173, inclusive.

41       2. Except as otherwise provided in this subsection, subsection 3 and chapter  
42 408 of NRS, the provisions of this chapter apply with respect to contracts for the  
43 construction, reconstruction, improvement and maintenance of highways that are  
44 awarded by the Department of Transportation pursuant to NRS 408.201 and  
45 408.313 to 408.433, inclusive. The provisions of NRS 338.1375 to 338.1382,  
46 inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142 and 338.1711 to  
47 338.1727, inclusive, do not apply with respect to contracts for the construction,  
48 reconstruction, improvement and maintenance of highways that are awarded by the  
49 Department of Transportation pursuant to NRS 408.201 and 408.313 to 408.433,  
50 inclusive.

51       3. To the extent that a provision of this chapter precludes the granting of  
52 federal assistance or reduces the amount of such assistance with respect to a

1 contract for the construction, reconstruction, improvement or maintenance of  
2 highways that is awarded by the Department of Transportation pursuant to NRS  
3 408.201 and 408.313 to 408.433, inclusive, that provision of this chapter does not  
4 apply to the Department of Transportation or the contract.

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

6 338.1381 1. If, within 10 days after receipt of the notice denying an  
7 application pursuant to NRS 338.1379 ~~for 338.16991~~ or disqualifying a  
8 subcontractor pursuant to NRS 338.1376, the applicant or subcontractor, as  
9 applicable, files a written request for a hearing with the Division or the local  
10 government, the State Public Works Board or governing body shall set the matter  
11 for a hearing within 20 days after receipt of the request. The hearing must be held  
12 not later than 45 days after the receipt of the request for a hearing unless the parties,  
13 by written stipulation, agree to extend the time.

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

20 3. The applicant or subcontractor has the burden at the hearing of proving by  
21 substantial evidence that the applicant is entitled to be qualified to bid on a contract  
22 for a public work, or that the subcontractor is qualified to be a subcontractor on a  
23 contract for a public work.

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

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

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

36 6. The Board or governing body shall issue a decision on the matter during  
37 the hearing. The decision of the Board or governing body is a final decision for  
38 purposes of judicial review.

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

40 338.1385 1. Except as otherwise provided in subsection 9, this State, or a  
41 governing body or its authorized representative that awards a contract for a public  
42 work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

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

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

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

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

6 3. Each advertisement for bids must include a provision that sets forth the  
7 requirement that a contractor must be qualified pursuant to NRS 338.1379 or  
8 338.1382 to bid on the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 9. This section does not apply to:

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

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

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

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

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

11 (f) A constructability review of a public work, which review a local  
12 government or its authorized representative is required to perform pursuant to NRS  
13 338.1435. ~~}; or~~

14 ~~—(g) The preconstruction or construction of a public work for which a public  
15 body enters into a contract with a construction manager at risk pursuant to NRS  
16 338.169 to 338.16995, inclusive.}~~

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

18 338.141 1. Except as otherwise provided in NRS 338.1727, each bid  
19 submitted to a public body for any public work to which paragraph (a) of  
20 subsection 1 of NRS 338.1385, ~~for~~ paragraph (a) of subsection 1 of NRS 338.143  
21 *or NRS 408.327* applies, must include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (c) If the public body awarding the contract is a governing body, the public  
42 body or its authorized representative, in awarding the contract pursuant to NRS  
43 338.1375 to 338.139, inclusive:

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

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

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



1 7. If a prime contractor , ~~indicated pursuant to subsection 3 that he or she~~  
2 ~~would perform a portion of work on the public work and,]~~ after the submission of  
3 the bid, substitutes a subcontractor to perform ~~{such work,}~~ *the work indicated*  
4 *pursuant to subsection 3 that the prime contractor would perform,* the prime  
5 contractor shall forfeit as a penalty to the public body that awarded the contract, the  
6 lesser of, and excluding any amount of the contract that is attributable to change  
7 orders:

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

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

12 8. As used in this section:

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

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

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

22 338.143 1. Except as otherwise provided in subsection 8, a local  
23 government or its authorized representative that awards a contract for a public work  
24 in accordance with paragraph (b) of subsection 1 of NRS 338.1373 shall not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 8. This section does not apply to:

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

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

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

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

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

41 (f) A constructability review of a public work, which review a local  
42 government or its authorized representative is required to perform pursuant to NRS  
43 338.1435. ~~†-or~~

44 ~~—(g) The preconstruction or construction of a public work for which a public  
45 body enters into a contract with a construction manager at risk pursuant to NRS  
46 338.169 to 338.16995, inclusive.†~~

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

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

49 338.169 ~~†A†~~

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

1 ~~1.1~~ (a) Selecting a construction manager at risk pursuant to the provisions of  
2 NRS 338.1691 to 338.1696, inclusive; and

3 ~~1.2~~ (b) Entering into separate contracts with a construction manager at risk:

4 ~~1.2(a)~~ (I) For preconstruction services, including, without limitation:

5 ~~1.2(a)(1)~~ (I) Assisting the public body in determining whether scheduling or  
6 constructability problems exist that would delay the construction of the public  
7 work;

8 ~~1.2(a)(2)~~ (II) Estimating the cost of the labor and material for the public work;  
9 and

10 ~~1.2(a)(3)~~ (III) Assisting the public body in determining whether the public  
11 work can be constructed within the public body's budget; and

12 ~~1.2(b)~~ (2) To construct the public work.

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

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

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

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

27 (a) A description of the public work;

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

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

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

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

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

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

40 (h) A list of the selection criteria and relative weight of the selection criteria  
41 that will be used to ~~evaluate~~ rank proposals ~~to~~ pursuant to subsection 2 of NRS  
42 338.1693;

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

46 ~~1.2(j)~~ (j) A notice that the proposed form of the contract to assist in the  
47 preconstruction of the public work or to construct the public work, including,  
48 without limitation, the terms and general conditions of the contract, is available  
49 from the public body.

50 3. A proposal must include, without limitation:

51 (a) An explanation of the experience that the applicant has with projects of  
52 similar size and scope in both the public and private sectors ~~to~~ by any delivery

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

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

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

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

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

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

16 (2) Disqualified from being awarded a contract pursuant to NRS 338.017,  
17 338.13895, 338.1475 or 408.333;

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

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

23 (h) Evidence that the applicant is licensed as a contractor pursuant to chapter  
24 624 of NRS;

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

31 (j) If the project is for the design of a public work of the State, evidence that  
32 the applicant is qualified to bid on a public work of the State pursuant to NRS  
33 338.1379.

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

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

38 338.1693 1. The public body or its authorized representative shall appoint a  
39 panel consisting of at least three *but not more than seven* members, ~~at least two~~ *a*  
40 *majority* of whom must have experience in the construction industry, to rank the  
41 proposals submitted to the public body by evaluating the proposals as required  
42 pursuant to subsections 2 and 3.

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

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

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

49 3. When ranking the proposals, the panel *appointed pursuant to subsection 1*  
50 shall assign a relative weight of 5 percent to the applicant's possession of a  
51 certificate of eligibility to receive a preference in bidding on public works if the  
52 applicant submits a signed affidavit that meets the requirements of subsection 1 of

1 NRS 338.0117. If any federal statute or regulation precludes the granting of federal  
2 assistance or reduces the amount of that assistance for a particular public work  
3 because of the provisions of this subsection, those provisions of this subsection do  
4 not apply insofar as their application would preclude or reduce federal assistance for  
5 that work.

6 4. After the panel *appointed pursuant to subsection 1* ranks the proposals,  
7 the public body or its authorized representative shall, except as otherwise provided  
8 in subsection ~~4.5~~ 8, select at least the two but not more than the five applicants  
9 whose proposals received the highest scores for interviews.

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

15 6. During the interview process, the ~~{public body or its authorized~~  
16 ~~representative}~~ *panel conducting the interview* may require the applicants to  
17 submit a preliminary proposed amount of compensation for managing the  
18 preconstruction and construction of the public work, but in no event shall the  
19 proposed amount of compensation exceed 20 percent of the scoring for the  
20 selection of the most qualified applicant. *All presentations made at any interview*  
21 *conducted pursuant to this subsection or subsection 5 may be made only by key*  
22 *personnel employed by the applicant, as determined by the applicant, and the*  
23 *employees of the applicant who will be directly responsible for managing the*  
24 *preconstruction and construction of the public work.*

25 7. After conducting such interviews, the panel *that conducted the interviews*  
26 shall rank the applicants by using a ranking process that is separate from the  
27 process used to rank ~~{proposals}~~ *the applicants* pursuant to subsection 2 and is  
28 based only on information submitted during the interview process. The score to be  
29 given for the proposed amount of compensation, if any, must be calculated by  
30 dividing the lowest of all the proposed amounts of compensation by the applicant's  
31 proposed amount of compensation multiplied by the total possible points available  
32 to each applicant.

33 ~~{5}~~ *When ranking the applicants, the panel that conducted the interviews*  
34 *shall assign a relative weight of 5 percent to the applicant's possession of a*  
35 *certificate of eligibility to receive a preference in bidding on public works if the*  
36 *applicant submits a signed affidavit that meets the requirements of subsection 1*  
37 *of NRS 338.0117. If any federal statute or regulation precludes the granting of*  
38 *federal assistance or reduces the amount of that assistance for a particular public*  
39 *work because of the provisions of this subsection, those provisions of this*  
40 *subsection do not apply insofar as their application would preclude or reduce*  
41 *federal assistance for that work.*

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

44 ~~{6}~~ 9. Upon receipt of the final rankings of the applicants from the panel ~~{~~  
45 *that conducted the interviews*, the public body or its authorized representative shall  
46 enter into negotiations with the most qualified applicant determined pursuant to  
47 ~~{subsections 2, 3 and 4}~~ *the provisions of this section* for a contract for  
48 preconstruction services, unless the public body required the submission of a  
49 proposed amount of compensation, in which case the proposed amount of  
50 compensation submitted by the applicant must be the amount offered for the  
51 contract. If the public body or its authorized representative is unable to negotiate a  
52 contract with the most qualified applicant for an amount of compensation that the

1 public body or its authorized representative and the most qualified applicant  
2 determine to be fair and reasonable, the public body or its authorized representative  
3 shall terminate negotiations with that applicant. The public body or its authorized  
4 representative may then undertake negotiations with the next most qualified  
5 applicant in sequence until an agreement is reached and, if the negotiation is  
6 undertaken by an authorized representative of the public body, approved by the  
7 public body or until a determination is made by the public body to reject all  
8 applicants.

9 ~~7+~~ **10.** The public body or its authorized representative shall make available  
10 to all applicants and the public the final rankings of the applicants, *as determined*  
11 *by the panel that conducted the interviews*, and shall provide, upon request, an  
12 explanation to any unsuccessful applicant of the reasons why the applicant was  
13 unsuccessful.

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

15 338.1696 1. If a public body enters into a contract with a construction  
16 manager at risk for preconstruction services pursuant to NRS 338.1693, after the  
17 public body has finalized the design for the public work, or any portion thereof  
18 sufficient to determine the provable cost of that portion, the public body shall enter  
19 into negotiations with the construction manager at risk for a contract to construct  
20 the public work or the portion thereof for the public body for:

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

22 (b) A fixed price; or

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

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

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

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

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

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

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

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

42 (b) *Select each subcontractor who is to provide labor or a portion of the work*  
43 *which is estimated by the construction manager at risk to exceed 1 percent of the*  
44 *estimated cost of the public work in accordance with NRS 338.16991 and*  
45 *338.16995 and provide the names of each selected subcontractor to the public*  
46 *body.*

47 **4.** *Except as otherwise provided in subsection 13 of NRS 338.16995, a*  
48 *public body shall not interfere with the right of the construction manager at risk*  
49 *to select the subcontractor whom the construction manager at risk determines to*  
50 *have submitted the best proposal pursuant to NRS 338.16995.*

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

2       338.16985 A construction manager at risk who enters into a contract for the  
3 construction of a public work pursuant to NRS 338.1696:

4       1. Is responsible for contracting for the services of any necessary  
5 subcontractor, supplier or independent contractor necessary for the construction of  
6 the public work and for the performance of and payment to any such  
7 subcontractors, suppliers or independent contractors.

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

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

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

20       338.16991 1. To be eligible to provide labor, materials or equipment on a  
21 public work, the contract for which a public body has entered into with a  
22 construction manager at risk pursuant to NRS 338.1696, a subcontractor must be:

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

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

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

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

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

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

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

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

1 (d) The safety programs established and the safety records accumulated by the  
2 applicant;

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

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

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

11 (h) The principal personnel of the applicant;

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

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

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

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

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

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

25 338.16995 1. If a public body enters into a contract with a construction  
26 manager at risk for the construction of a public work pursuant to NRS 338.1696,  
27 the construction manager at risk may enter into a subcontract for the provision of  
28 labor, materials and equipment necessary for the construction of the public work  
29 only as provided in this section.

30 2. The provisions of this section apply only to a subcontract for which the  
31 estimated value is at least 1 percent of the total cost of the public work ~~+~~ **or**  
32 **\$50,000, whichever is greater.**

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

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

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

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

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

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



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

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

4 (g) A description of the bonding and insurance requirements for  
5 subcontractors;

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

8 (i) A statement in substantially the following form:  
9

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

12 1. The subcontractor must be licensed pursuant to chapter 624 of  
13 NRS;

14 2. The proposal must be timely received;

15 3. ~~It~~ *If a preproposal meeting regarding the scope of the work to  
16 be performed by the subcontractor is held, the* subcontractor must attend  
17 the preproposal meeting; and

18 4. The subcontractor may not modify the proposal after the date and  
19 time the proposal is received.  
20

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

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

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

25 (b) Substantially and materially conform to the details and requirements  
26 included in the proposal instructions and for the finalized bid package for the public  
27 work, including, without limitation, details and requirements affecting price and  
28 performance.

29 7. The opening of the proposals must be attended by an authorized  
30 representative of the public body. ~~and~~ *The public body may require* the architect  
31 or engineer responsible for the design of the public work ~~but~~ *to attend the*  
32 *opening of the proposals. The opening of the proposals* is not otherwise open to  
33 the public.

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

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

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

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

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

1 (2) Who submitted a responsive proposal; and

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

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

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

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

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

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

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

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

22 (1) Files for bankruptcy or becomes insolvent;

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

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

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

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

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

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

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

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

48 16. The construction manager at risk shall make available to the public ~~+~~  
49 ~~including, without limitation,~~ **the name of** each subcontractor who submits a  
50 proposal. ~~+, the final rankings of the subcontractors and shall provide, upon~~  
51 ~~request, an explanation to any subcontractor who is not selected of the reasons why~~  
52 ~~the subcontractor was not selected.~~

1 ~~15.1~~ 17. If a public work is being constructed in phases, and a construction  
2 manager at risk selects a subcontractor pursuant to subsection 9 for the provision of  
3 labor, materials or equipment for any phase of that construction, the construction  
4 manager at risk may select that subcontractor for the provision of labor, materials or  
5 equipment for any other phase of the construction without following the  
6 requirements of subsections 3 to 11, inclusive.

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

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

10 338.1711 1. Except as otherwise provided in this section and NRS 338.161  
11 to ~~338.16995~~ **338.168**, inclusive, a public body shall contract with a prime  
12 contractor for the construction of a public work for which the estimated cost  
13 exceeds \$100,000.

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

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

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

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

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

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

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

29 (4) The estimated cost of the project.

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

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

34 (I) The Solar Energy Systems Incentive Program created by NRS  
35 701B.240;

36 (II) The Renewable Energy School Pilot Program created by NRS  
37 701B.350;

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

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

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

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

50 3. As used in this section:

51 (a) "Local government" means each city or county that meets the definition of  
52 "eligible unit of local government" as set forth in 42 U.S.C. § 17151 and each unit

1 of local government, as defined in subsection ~~H2~~ 13 of NRS 338.010, that does  
2 not meet the definition of “eligible entity” as set forth in 42 U.S.C. § 17151.

3 (b) “Renewable energy” means a source of energy that occurs naturally or is  
4 regenerated naturally, including, without limitation:

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

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

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

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

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

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

- 24 (1) The length of time necessary to commence the project.
- 25 (2) The number of workers estimated to be employed on the project.
- 26 (3) The effectiveness of the project in reducing energy consumption.
- 27 (4) The estimated cost of the project.
- 28 (5) Whether the project is able to be powered by or otherwise use sources  
29 of renewable energy.

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

- 32 (I) The Solar Energy Systems Incentive Program created by NRS  
33 701B.240;
- 34 (II) The Renewable Energy School Pilot Program created by NRS  
35 701B.350;
- 36 (III) The Wind Energy Systems Demonstration Program created by  
37 NRS 701B.580; or
- 38 (IV) The Waterpower Energy Systems Demonstration Program created  
39 by NRS 701B.820.

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

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

48 3. As used in this section:

49 (a) “Local government” means each city or county that meets the definition of  
50 “eligible unit of local government” as set forth in 42 U.S.C. § 17151 and each unit  
51 of local government, as defined in subsection ~~H3~~ 12 of NRS 338.010, that does  
52 not meet the definition of “eligible entity” as set forth in 42 U.S.C. § 17151.

1 (b) "Renewable energy" means a source of energy that occurs naturally or is  
2 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 other fossil fuel,  
10 or nuclear energy.

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

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

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

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

21 **Sec. 14.5.** 1. On or before January 1 of each year, each public body that  
22 enters into a contract during the immediately preceding year with a construction  
23 manager at risk pursuant to NRS 338.169 to 338.16995, inclusive, for  
24 preconstruction services for or to construct a public work shall submit a report to  
25 the Director of the Legislative Counsel Bureau for transmittal to the Legislature, or  
26 to the Legislative Commission if the report is submitted during an odd-numbered  
27 year.

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

- 30 (a) A description of the public work;
- 31 (b) The name of the construction manager at risk;
- 32 (c) If the public work has not been completed at the time the report is  
33 submitted, a report on the progress of the public work; and
- 34 (d) If the public work has been completed at the time the report is submitted,  
35 an explanation of whether the public body is satisfied with the public work and with  
36 the contractual arrangement with the construction manager at risk.

37 3. As used in this section:

38 (a) "Public body" has the meaning ascribed to it in subsection 16 of NRS  
39 338.010, as amended by section 2 of this act.

40 (b) "Public work" has the meaning ascribed to it in subsection 17 of NRS  
41 338.010, as amended by section 2 of this act.

42 **Sec. 14.7.** NRS 338.169, 338.1691, 338.1692, 338.1693, 338.16935,  
43 338.1696, 338.1697, 338.1698, 338.16985, 338.16991 and 338.16995 are hereby  
44 repealed.

45 **Sec. 15.** 1. This section and sections 1, 2, 3, 4, 5, 6, 7.5 to 13, inclusive, 14,  
46 14.3 and 14.5 of this act become effective on July 1, 2013.

47 2. Section 1 of this act expires by limitation on June 30, 2017.

48 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  
49 become effective on July 1, 2017.

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**LEADLINES OF REPEALED SECTIONS**

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

**338.1691 Qualifications for construction manager at risk.**

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

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

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

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

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

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

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

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

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