

ASSEMBLY BILL NO. 173—ASSEMBLYMEN GRAY, O’NEILL;
DELONG, DICKMAN, GALLANT, GURR AND HIBBETTS

FEBRUARY 15, 2023

JOINT SPONSORS: SENATORS DALY, SEEVERS GANSERT AND STONE

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works.
(BDR 28-735)

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; revising provisions relating to certain bids for a public work for which a list disclosing first tier subcontractors is required; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires a prime contractor who submits a bid for certain public work to include the names of each first tier subcontractor who will provide labor or a certain portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid an amount exceeding \$250,000. Existing law further requires that if any one of the contractors who submitted one of the three lowest bids will employ a first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which that first tier subcontractor will not be paid an amount exceeding \$250,000, the first tier subcontractor will be paid 1 percent of the prime contractor’s total bid or \$50,000, whichever is greater. (NRS 338.141) This bill: (1) removes this payment requirement; and (2) revises the requirement for a prime contractor who submits a bid for certain public work to include the names of each first tier subcontractor who will provide labor or a certain portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid an amount exceeding \$100,000, instead of an amount exceeding \$250,000.



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

Section 1. NRS 338.141 is hereby amended to read as follows:

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

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

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

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

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

~~—(3)]~~ *\$100,000.*

(b) For each first tier subcontractor whose name is listed pursuant to ~~[subparagraph (1) or (2),]~~ *paragraph (a)*, the number of the license issued *, if applicable,* to the first tier subcontractor pursuant to chapter 624 of NRS.



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

7. If a prime contractor, after the submission of the bid, substitutes a subcontractor to perform the work indicated pursuant to subsection 3 that the prime contractor would perform, the prime contractor shall forfeit as a penalty to the public body that awarded the contract, the lesser of, and excluding any amount of the contract that is attributable to change orders:

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

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

8. As used in this section:

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

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

Sec. 2. This act becomes effective on July 1, 2023.

