

Amendment No. 331

Assembly Amendment to Assembly Bill No. 173	(BDR 28-735)
<b>Proposed by:</b> Assembly Committee on Government Affairs	
<b>Amends:</b> Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.





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.

~

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 ~~perform~~ **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 ~~revises~~ : (1) **removes** this payment requirement ~~to be not less than \$50,000;~~ ; 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 not less than \$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 ~~[list]~~ **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.

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

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

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

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

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

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

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

19       (c) If the public body awarding the contract is a governing body, the public  
20 body or its authorized representative, in awarding the contract pursuant to NRS  
21 338.1375 to 338.139, inclusive:

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

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

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

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

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

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

39       8. As used in this section:

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

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

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