

SENATE BILL NO. 111—SENATOR GOICOECHEA (BY REQUEST)

FEBRUARY 8, 2023

JOINT SPONSOR: ASSEMBLYMAN GURR

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works.
(BDR 28-78)

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 certain requirements relating to prime contractors; 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, or submit within 2 hours after the completion of the opening of the bids, a list that discloses the first tier subcontractors who will provide labor or a certain portion of the work on the public work. With certain exceptions, existing law requires a contractor's bid to be deemed not responsive if the contractor fails to submit the required list. (NRS 338.141) This bill: (1) prohibits a bid from being deemed not responsive on the grounds that the contractor failed to submit the list within the required time or include certain information on the list; and (2) provides instead that if a prime contractor fails to submit the list within the required time, the prime contractor is required to pay a penalty in an amount equal to 1 percent of the total amount of the contract.

Existing law prohibits a prime contractor from substituting a subcontractor: (1) for any subcontractor named in a bid unless the public body or its authorized representative takes certain actions, including requesting the substitution, approving the substitution and agreeing to pay any increase in costs; and (2) to perform the work the prime contractor indicated he or she would perform. (NRS 338.141) This bill instead: (1) authorizes a prime contractor to substitute a subcontractor to perform work the prime contractor indicated he or she would perform under certain circumstances; (2) requires, with certain exceptions, a prime contractor who substitutes a subcontractor for any subcontractor named in the bid or substitutes a subcontractor to perform work that the prime contractor indicated he or she would perform to do so in the order of the lowest bid; and (3) provides that if a prime contractor substitutes a subcontractor without complying with these requirements,



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24 the prime contractor is subject to a penalty in an amount equal to 1 percent of the
25 total amount of the contract.

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

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

2 338.141 1. Except as otherwise provided in NRS 338.1727,
3 each bid submitted to a public body for any public work to which
4 paragraph (a) of subsection 1 of NRS 338.1385, paragraph (a) of
5 subsection 1 of NRS 338.143 or NRS 408.327 applies, must
6 include:

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

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

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

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

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



2. The lists 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 ~~and an attestation that the prime contractor is capable of performing any work included pursuant to paragraph (a) or (b) of subsection 1 and properly licensed to perform such work under the provisions of chapter 624 of NRS.~~ 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~~ If a contractor ~~fails~~

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

~~— (b) Submits~~ **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~~ the contractor's bid shall be deemed not responsive.

5. A contractor's bid shall not be deemed not responsive on the grounds that the contractor ~~submitted~~ :

(a) **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 ~~and~~ ;

(b) **Failed to submit a list within the required time pursuant to subsection 1; or**

(c) **Failed to include with a list the information required pursuant to subsection 1, 2 or 3.**

~~5.6.~~ 6. 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.

~~16. If a~~

7. Except as otherwise provided in this subsection, if a prime contractor, after the submission of the bid, substitutes a subcontractor who is named in the bid pursuant to subsection 6 or substitutes a subcontractor to perform the work indicated pursuant to subsection 3 that the prime contractor would perform, the substitution must be made in the order of the lowest bid submitted by a subcontractor, if such a bid was submitted. A prime contractor may substitute a subcontractor who is not next in order of the lowest bid if:

(a) The subcontractor who is next in order of the lowest bid approves the substitution; or

(b) The public body or its authorized representative approve the substitution. The substitution must be approved if the public body or its authorized representative determines that the subcontractor who is next in order of the lowest bid:

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

(2) Files for bankruptcy or becomes insolvent;

(3) Fails or refuses to perform his or her subcontract within a reasonable amount of time or is unable to furnish a performance bond and payment bond pursuant to NRS 339.025; or



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

8. A prime contractor ~~[substitutes]~~ 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 if the prime contractor:

(a) *Fails to submit the list within the required time pursuant to subsection 1;*

(b) *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] subsection 6 or 7; or~~

(c) *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.] without complying with the provisions of subsection 7.~~

9. 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.

