

ASSEMBLY BILL NO. 38—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE STATE PUBLIC WORKS BOARD)

PREFILED DECEMBER 14, 2010

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing contracts for public works. (BDR 28-437)

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; requiring a contractor to replace an unacceptable subcontractor on a public work of the State without an increase in the amount of the bid; requiring a prime contractor to forfeit a portion of the amount of a contract for a public work under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Before a contract for a public work of the State is awarded, existing law
2 requires a contractor to replace a subcontractor that is named in the contractor’s bid
3 for the contract if the subcontractor is not properly licensed or has been disqualified
4 from participating in public works sponsored by the State Public Works Board.
5 (NRS 338.13895) **Section 1** of this bill requires the contractor to replace such a
6 subcontractor without an increase in the amount of the bid. This same requirement
7 currently applies with respect to the replacement of a subcontractor named in a bid
8 for a contract for a public work of a local government if the subcontractor is not
9 properly licensed. (NRS 338.13895)

10 Under existing law, a contractor is required to list in his or her bid for a public
11 work the names of certain subcontractors who will be performing work on the
12 public work if the contractor is awarded the contract. Existing law sets forth
13 requirements with which a prime contractor, who is the contractor who is awarded
14 the contract, must comply to substitute a subcontractor for another subcontractor.
15 (NRS 338.141) If a prime contractor does not comply with the requirements related
16 to the substitution of subcontractors, **section 2** of this bill requires the prime
17 contractor to forfeit 1 percent of the contract amount as a penalty.



18 Existing law also requires a contractor to include his or her name on a bid for a
19 public work if, as the prime contractor, the contractor will perform a portion of the
20 work on the public work which is estimated to exceed 3 percent of the estimated
21 cost of the public work. (NRS 338.141) **Section 2** of this bill requires a prime
22 contractor to forfeit 1 percent of the contract amount as a penalty if the prime
23 contractor substitutes a subcontractor to perform the work that the prime contractor
24 indicated on the bid that the prime contractor would perform.

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

1 **Section 1.** NRS 338.13895 is hereby amended to read as
2 follows:
3 338.13895 1. The State Public Works Board shall not award
4 a contract to a person who, at the time of the bid, is not properly
5 licensed under the provisions of chapter 624 of NRS or if the
6 contract would exceed the limit of the person's license. A
7 subcontractor who is:
8 (a) Named in the bid for the contract as a subcontractor who will
9 provide a portion of the work on the public work pursuant to NRS
10 338.141; and
11 (b) Not properly licensed for that portion of the work, or who, at
12 the time of the bid, is on disqualified status with the State Public
13 Works Board pursuant to NRS 338.1376,
14 ➤ shall be deemed unacceptable. If the subcontractor is deemed
15 unacceptable pursuant to this subsection, the contractor shall
16 provide an acceptable subcontractor ~~with~~ *with no increase in the*
17 *amount of the bid.*
18 2. A local government awarding a contract for a public work
19 shall not award the contract to a person who, at the time of the bid,
20 is not properly licensed under the provisions of chapter 624 of NRS
21 or if the contract would exceed the limit of the person's license. A
22 subcontractor who is:
23 (a) Named in the bid for the contract as a subcontractor who will
24 provide a portion of the work on the public work pursuant to NRS
25 338.141; and
26 (b) Not properly licensed for that portion of work,
27 ➤ shall be deemed unacceptable. If the subcontractor is deemed
28 unacceptable pursuant to this subsection, the contractor shall
29 provide an acceptable subcontractor with no increase in the amount
30 of the ~~contract.~~ *bid.*
31 3. If, after awarding the contract, but before commencement of
32 the work, the public body or its authorized representative discovers
33 that the person to whom the contract was awarded is not licensed, or
34 that the contract would exceed the person's license, the public body



1 or its authorized representative shall rescind the award of the
2 contract and may accept the next lowest bid for that public work
3 from a responsive bidder who was determined by the public body or
4 its authorized representative to be a qualified bidder pursuant to
5 NRS 338.1379 or 338.1382 without requiring that new bids be
6 submitted.

7 **Sec. 2.** NRS 338.141 is hereby amended to read as follows:

8 338.141 1. Except as otherwise provided in NRS 338.1727,
9 each bid submitted to a public body for any public work to which
10 paragraph (a) of subsection 1 of NRS 338.1385 or paragraph (a) of
11 subsection 1 of NRS 338.143 applies, must include:

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

18 (b) If the public body does not provide a list of the labor or
19 portions of the public work which are estimated by the public body
20 to exceed 3 percent of the estimated cost of the public work, the
21 name of each first tier subcontractor who will provide labor or a
22 portion of the work on the public work to the prime contractor for
23 which the first tier subcontractor will be paid an amount exceeding 5
24 percent of the prime contractor's total bid. If the bid is submitted
25 pursuant to this paragraph, within 2 hours after the completion of
26 the opening of the bids, the contractors who submitted the three
27 lowest bids must submit a list containing the name of each first tier
28 subcontractor who will provide labor or a portion of the work on the
29 public work to the prime contractor for which the first tier
30 subcontractor will be paid an amount exceeding 1 percent of the
31 prime contractor's total bid or \$50,000, whichever is greater, and the
32 number of the license issued to the first tier subcontractor pursuant
33 to chapter 624 of NRS.

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

37 3. A ~~prime~~ contractor shall include his or her name on a list
38 required by paragraph (a) of subsection 1 if, *as* the prime contractor
39 *, the contractor* will perform any of the work required to be listed
40 pursuant to paragraph (a) of subsection 1.

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

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



1 (b) Submits a list that includes the name of a subcontractor who,
2 at the time of the submission of the list, is on disqualified status with
3 the State Public Works Board pursuant to NRS 338.1376,
4 ➔ the contractor's bid shall be deemed not responsive. A
5 contractor's bid shall not be deemed not responsive on the grounds
6 that the contractor submitted a list that includes the name of a
7 subcontractor who, at the time of the submission of the list, is on
8 disqualified status with the State Public Works Board pursuant to
9 NRS 338.1376 if the contractor, before the award of the contract,
10 provides an acceptable replacement subcontractor in the manner set
11 forth in subsection 1 or 2 of NRS 338.13895.

12 5. A *prime* contractor ~~[whose bid is accepted]~~ shall not
13 substitute a subcontractor for any subcontractor who is named in the
14 bid, unless:

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

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

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

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

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

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

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

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

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

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



1 7. If a *prime* contractor ~~[indicates]~~ *indicated* pursuant to
2 subsection ~~[H] 3~~ that he or she ~~[will]~~ *would* perform a portion of
3 work on the public work and ~~[thereafter requests to substitute]~~ ,
4 *after the award of the contract, substitutes* a subcontractor to
5 perform such work, the *prime* contractor shall ~~[provide to the public~~
6 ~~body a written explanation in the form required by the public body~~
7 ~~which contains the reasons that:~~
8 ~~—(a) A subcontractor was not originally contemplated to be used~~
9 ~~on that portion of the public work; and~~
10 ~~—(b) The substitution is in the best interest of the public body.~~
11 ~~—7.]~~ *forfeit, as a penalty to the public body that awarded the*
12 *contract, 1 percent of the amount of the contract.*

13 8. As used in this section:

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

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

25 **Sec. 3.** This act becomes effective on July 1, 2011.

