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April 9, 2003 Amendment to

Assembly Bill No. 393—Assemblyman Goldwater

March 17, 2003

Section 1. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

~~1. The contract price for a public work may be increased or decreased during the term of the contract as a result of change orders approved by the public body and its officers or agents awarding the contract.~~

**21. Except as otherwise provided in NRS 338.515 and 338.525, a public body and its officers or agents awarding a contract for a public work shall not:**

~~a. Make a deduction from the contract price; or~~

~~b. Withhold payment except for any and all liquidated damages from the contractor in excess of retainage.~~

Sec. 2. Amend subsection 5 of NRS 338.1385 to read as follows:

**4. Any bids received in response to an advertisement for bids may be rejected if the person responsible for awarding the contract determines that:**

**(a) The bidder is not a qualified bidder pursuant to NRS 338.1379, unless the bidder is exempt from meeting such qualifications pursuant to NRS 338.1383;**

**(b) The bidder is not responsive;**

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

**(d) The bid is unbalanced or the bidder unbalanced his bid or schedule of values in one or more public works contracts during the previous 3 years or**

**(e) The public interest would be served by such a rejection.**

Sec. 3 Amend subsection 4 of NRS 338.143 to read as follows:

**4. Any bids received in response to an advertisement for bids may be rejected if the person responsible for awarding the contract determines that:**

**a. The bidder is not responsive or responsible;**

**b. The quality of the services, materials, equipment or labor offered does not conform to the approved plan or specifications; or**

**c. The bid is unbalanced or the bidder unbalanced his bid or schedule of values in one or more public works contracts during the previous 3 years; or or**

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SUBMITTED BY: Steve Holloway

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

Sec. 24. NRS 338.400 is hereby amended to read as follows:

338.400 As used in NRS 338.400 to 338.645, inclusive, and section 1 of this act, unless the context otherwise requires, the words and terms defined in NRS 338.405 to 338.450, inclusive, have the meanings ascribed to them in those sections.

Sec. 35. NRS 338.515 is hereby amended to read as follows:

338.515 1. Except as otherwise provided in NRS 338.525, a public body and its officers or agents awarding a contract for a public work shall pay or cause to be paid to a contractor the progress payments due under the contract within 30 days after the date the public body receives the progress bill or within a shorter period if the provisions of the contract so provide. Payments shall be based upon estimates of work completed under the terms of the contract that are approved by the public body. The public body shall withhold payment of 5 percent of the value of the work completed until 50 percent of the work required by the contract has been performed. [Not more than 90 percent of the amount of any progress payment may be paid until 50 percent of the work required by the contract has been performed. Thereafter the public body may pay any of the remaining progress payments without withholding additional retainage if, in the opinion of the public body, satisfactory progress is being made in the work.] Thereafter, the public body may pay any of the remaining progress payments without withholding additional retainage if, in the opinion of the public body, satisfactory progress is being made in the work. If, after 50 percent of the work required by the contract has been performed, in the opinion of the public body, satisfactory progress is not being made in the work, the public body may withhold additional retainage from any progress payment in an amount sufficient to establish the retainage at up to 10 percent of the value of the work completed up to that time. The public body shall pay the entire amount of the progress payment for the work as completed until 95 percent of the entire contract price has been paid, or until the final \$50,000 of the contract price is due, whichever is less. Except as otherwise provided in subsection 2, the remaining portion of the contract price must be retained by the public body until the entire contract is completed satisfactorily and accepted by the public body.

~~2. If the work in progress is being performed on a satisfactory basis, the public body may reduce the amount retained pursuant to subsection 1 if the public body finds that sufficient reasons exist for additional payment and has obtained written approval from every surety furnishing bonds for the work. Any remaining money must be retained by the public body until the entire contract is completed satisfactorily and accepted by the public body.~~

~~3-2. Except as otherwise provided in NRS 338.525, a public body shall identify in the contract and pay or cause to be paid to a contractor the actual cost of the supplies, materials and equipment that:~~

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- (a) Are identified in the contract;
- (b) Have been delivered and stored at a location, and in the time and manner, specified in a contract by the contractor or a subcontractor or supplier for use in the construction, repair or reconstruction of the public work; and
- (c) Are in short supply or were specially made for the public work,

Within 30 days after the public body receives a progress bill from the contractor for those supplies, materials or equipment.

4.3. A public body shall pay or cause to be paid to the contractor at the end of each quarter interest for the quarter or any amount withheld by the public body pursuant to NRS 339.400 to 338.645, inclusive, at a rate equal to the rate quoted by at least three financial institutions as the highest rate paid on a certificate of deposit whose duration is approximately 90 days on the first day of the quarter. If the amount due to a contractor pursuant to this subsection for any quarter is less than \$500, the public body may hold the interest until:

~~(a)~~(a) The end of a subsequent quarter after which the amount of interest due is \$500 or more;

~~(b)~~(b) The end of the fourth consecutive quarter for which no interest has been paid to the contractor; or

(e)© The amount withheld under the contract is due pursuant to NRS 338.520,

Whichever occurs first.

5.4. If the Labor Commissioner has reason to believe that an employee has a valid and enforceable claim for wages against a contractor, he may require the public body to withhold from any payment due the contractor under this section and pay the Labor Commissioner instead, an amount equal to the amount claimed by the employee. This amount must be paid to the employee if the claim is resolved in his favor, otherwise it must be returned to the public body for payment to the contractor.

Sec. 46. NRS 338.530 is hereby amended to read as follows:

338.530 1. If a public body receives:

- (a) A progress bill or retainage bill, fails to give a contractor a written notice of any withholding in the manner set forth in subsection 2 of NRS 338.525, and does not pay the contractor within 30 days after receiving the progress bill or retainage bill; or
- (b) A contractor's written notice of the correction of a condition set forth pursuant to subsection 2 of NRS 338.525 as the reason for the withholding, signed by an authorized agent of the contractor, and fails to:

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(1) Pay the amount of the progress payment or retainage payment that was withheld from the contractor within 30 days after the public body receives the next progress bill or retainage bill; or

(2) Object to the scope and manner of the correction, within 30 days after the public body receives the notice of correction, in a written statement that sets forth the reason for the objection and is signed by an authorized agent of the public body, the public body shall pay to the contractor, in addition to the entire amount of progress bill or retainage bill or any unpaid portion thereof, interest from the 30<sup>th</sup> day on the amount delayed, at a rate equal to the amount provided for in subsection [3] ~~43~~ of NRS 338.515, until payment is made to the contractor.

2. If the public body objects pursuant to subparagraph (2) of paragraph (b) of subsection 1, it shall pay to the contractor an amount equal to the value of the corrections to which the public body does not object.