
HOUSE BILL 1837

State of Washington

61st Legislature

2009 Regular Session

By Representatives Ormsby, Conway, Sullivan, Hunt, Simpson, Eddy, Green, Chase, Haigh, Hasegawa, Miloscia, Kenney, and Rolfes

Read first time 01/30/09. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to listing subcontractors on public works projects;
2 amending RCW 39.30.060; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
5 ensure that the public bidding process be a fair and open one and to
6 protect subcontractors against the possibility of bid shopping by
7 requiring all prime contractors who bid on public works projects to
8 include as part of their bid submittals a list of all subcontractors
9 that the prime contractor will directly contract with on a public works
10 project.

11 **Sec. 2.** RCW 39.30.060 and 2003 c 301 s 5 are each amended to read
12 as follows:

13 (1) Every invitation to bid on a prime contract that is expected to
14 cost one million dollars or more for the construction, alteration, or
15 repair of any public building or public work of the state or a state
16 agency or municipality as defined under RCW 39.04.010 or an institution
17 of higher education as defined under RCW 28B.10.016 shall require each
18 prime contract bidder to submit as part of the bid, or within one hour

1 after the published bid submittal time, the names of (~~the~~
2 ~~subcontractors with whom the bidder, if awarded the contract, will~~
3 ~~subcontract for performance of the work of: HVAC (heating,~~
4 ~~ventilation, and air conditioning); plumbing as described in chapter~~
5 ~~18.106 RCW; and electrical as described in chapter 19.28 RCW, or to~~
6 ~~name itself for the work): (a) The first tier subcontractors who will
7 perform work valued at fifty thousand dollars or more; and (b) all
8 subcontractors who will perform work valued in excess of three hundred
9 fifty thousand dollars. The prime contract bidder must list all
10 subcontract work that it will perform.~~

11 (2) The prime contract bidder shall not list more than one
12 subcontractor for each category of work identified, unless
13 subcontractors vary with bid alternates, in which case the prime
14 contract bidder must indicate which subcontractor will be used for
15 which alternate. Failure of the prime contract bidder to submit as
16 part of the bid the names of such subcontractors or to name itself to
17 perform such work or the naming of two or more subcontractors to
18 perform the same work shall render the prime contract bidder's bid
19 nonresponsive and, therefore, void.

20 ~~((+2))~~ (3) The public entity shall open all bids submitted by
21 prime contract bidders, alternates, and subcontractors that are
22 required to be listed under this section at the end of the published
23 bid submittal time. Bids submitted by prime contract bidders and their
24 subcontractors may not be opened separately.

25 (4) Substitution of a listed subcontractor (~~in furtherance of bid~~
26 ~~shopping or bid peddling~~) before or after the award of the prime
27 contract is prohibited, except as provided under subsection (5) of this
28 section, and the originally listed subcontractor is entitled to recover
29 monetary damages from the prime contract bidder who executed a contract
30 with the public entity and the substituted subcontractor but not from
31 the public entity inviting the bid. It is the original subcontractor's
32 burden to prove by a preponderance of the evidence that bid shopping or
33 bid peddling occurred.

34 (5) Substitution of a listed subcontractor may only be made by the
35 prime contractor for the following reasons:

36 (a) (~~Refusal of~~) The listed subcontractor fails or refuses to
37 sign a contract with the prime contractor after having a reasonable
38 opportunity to do so. The contract must be a standard or master

1 agreement customarily used by the prime contractor when contracting
2 with subcontractors for projects in similar size and scope in the state
3 of Washington;

4 (b) ~~((Bankruptcy or insolvency of))~~ The listed subcontractor is
5 bankrupt or insolvent;

6 (c) ~~((Inability of))~~ The listed subcontractor is unable to perform
7 the requirements of the proposed contract or the project;

8 (d) ~~((Inability of))~~ The listed subcontractor is unable to obtain
9 the necessary licenses, certifications, bonding, insurance, or to meet
10 any other statutory requirements necessary to perform the work detailed
11 in the contract; ((or))

12 (e) The listed subcontractor is barred from participating in the
13 project as a result of a court order or summary judgment;

14 (f) The listed subcontractor has demonstrated a repeated history or
15 pattern of being unable to successfully perform the work or meet the
16 terms of public works subcontracts during the five years preceding the
17 award of the contract;

18 (g) The listed subcontractor fails to meet the requirements
19 established in RCW 39.04.350 for responsible bidders;

20 (h) The listed subcontractor is barred from bidding on or
21 participating in the project as a result of a court order or summary
22 judgment, or in accordance with the terms established in RCW
23 39.12.065(3);

24 (i) The listed subcontractor did not include the entire cost of the
25 subcontract in the bid submittal;

26 (j) The listing of the subcontractor was due to an inadvertent
27 clerical error;

28 (k) The subcontractor who legitimately presented the lowest bid
29 prior to bid opening was mistakenly not listed and the listed
30 subcontractor was not the lowest bidder for the subcontract;

31 (l) The listed subcontractor did not include the entire cost of the
32 subcontract in the bid submittal; or

33 (m) Good cause. Good cause includes, but is not limited to, the
34 financial instability of a subcontractor.

35 ~~((+3))~~ (6) Nothing in this section may diminish the prime
36 contractor's right to terminate a contract with a subcontractor for
37 failure to meet the terms of the contract.

1 (7) The requirement of this section to name the prime contract
2 bidder's proposed ((HVAC, plumbing, and electrical)) subcontractors
3 applies ((only)) to ((proposed HVAC, plumbing, and electrical))
4 subcontractors who ((will)) contract directly with the prime contract
5 bidder submitting the bid to the public entity.

6 ((+4)) (8) A violation of this section entitles the prevailing
7 plaintiff to recover damages. Any action brought pursuant to this
8 section may be resolved through binding arbitration or in the superior
9 court of the county in which the public work is located.

10 (9) This section does not apply to job order contract requests for
11 proposals under RCW ((39.10.130)) 39.10.420.

--- END ---