

---

ENGROSSED SENATE BILL 5457

---

State of Washington

66th Legislature

2019 Regular Session

By Senators Keiser, Saldaña, Conway, Hasegawa, Hunt, and Nguyen

Read first time 01/21/19. Referred to Committee on State Government,  
Tribal Relations & Elections.

1 AN ACT Relating to the naming of subcontractors by prime contract  
2 bidders on public works contracts; and amending RCW 39.30.060.

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

4 **Sec. 1.** RCW 39.30.060 and 2003 c 301 s 5 are each amended to  
5 read as follows:

6 (1) Every invitation to bid on a prime contract that is expected  
7 to cost one million dollars or more for the construction, alteration,  
8 or repair of any public building or public work of the state or a  
9 state agency or municipality as defined under RCW 39.04.010 or an  
10 institution of higher education as defined under RCW 28B.10.016 shall  
11 require each prime contract bidder to submit (~~as part of the bid, or~~  
12 ~~within~~);

13 (a) Within one hour after the published bid submittal time, the  
14 names of the subcontractors with whom the bidder, if awarded the  
15 contract, will subcontract for performance of the work of: HVAC  
16 (heating, ventilation, and air conditioning); plumbing as described  
17 in chapter 18.106 RCW; and electrical as described in chapter 19.28  
18 RCW, or to name itself for the work; or

19 (b) Within forty-eight hours after the published bid submittal  
20 time, the names of the subcontractors with whom the bidder, if

1 awarded the contract, will subcontract for performance of the work of  
2 structural steel installation and rebar installation.

3 (2) The prime contract bidder shall not list more than one  
4 subcontractor for each category of work identified, unless  
5 subcontractors vary with bid alternates, in which case the prime  
6 contract bidder must indicate which subcontractor will be used for  
7 which alternate. Failure of the prime contract bidder to submit as  
8 part of the bid the names of such subcontractors or to name itself to  
9 perform such work or the naming of two or more subcontractors to  
10 perform the same work shall render the prime contract bidder's bid  
11 nonresponsive and, therefore, void.

12 ~~((+2))~~ (3) Substitution of a listed subcontractor in furtherance  
13 of bid shopping or bid peddling before or after the award of the  
14 prime contract is prohibited and the originally listed subcontractor  
15 is entitled to recover monetary damages from the prime contract  
16 bidder who executed a contract with the public entity and the  
17 substituted subcontractor but not from the public entity inviting the  
18 bid. It is the original subcontractor's burden to prove by a  
19 preponderance of the evidence that bid shopping or bid peddling  
20 occurred. Substitution of a listed subcontractor may be made by the  
21 prime contractor for the following reasons:

22 (a) Refusal of the listed subcontractor to sign a contract with  
23 the prime contractor;

24 (b) Bankruptcy or insolvency of the listed subcontractor;

25 (c) Inability of the listed subcontractor to perform the  
26 requirements of the proposed contract or the project;

27 (d) Inability of the listed subcontractor to obtain the necessary  
28 license, bonding, insurance, or other statutory requirements to  
29 perform the work detailed in the contract; ~~((+))~~

30 (e) Refusal or inability to provide a letter of bondability from  
31 a surety company; or

32 (f) The listed subcontractor is barred from participating in the  
33 project as a result of a court order or summary judgment.

34 ~~((+3))~~ (4) The requirement of this section to name the prime  
35 contract bidder's proposed ~~((HVAC, plumbing, and electrical))~~  
36 subcontractors applies only to proposed HVAC, plumbing, ~~((and))~~  
37 electrical, structural steel installation, and rebar installation  
38 subcontractors who will contract directly with the prime contract  
39 bidder submitting the bid to the public entity.

1        ~~((4))~~ (5) This section does not apply to job order contract  
2 requests for proposals under RCW ~~((39.10.130))~~ 39.10.420.

3        (6) The legislature finds that there are hundreds of capital  
4 construction projects completed each year which include complex  
5 contracting and bidding requirements. It is the intent of the  
6 legislature to review current subcontractor listing requirements to  
7 allow fair, transparent, and competitive bidding while prohibiting  
8 bid shopping. The capital projects advisory review board must submit  
9 a report to the governor and the appropriate committees of the  
10 legislature by November 1, 2020. The report must:

11        (a) Evaluate current subcontractor listing policies and  
12 practices;

13        (b) Recommend appropriate expansion of the number of  
14 subcontractors that may be listed in order to improve transparency  
15 and fairness without reducing competitive bidding and access to  
16 public works by minority and women-owned businesses; and

17        (c) Recommend possible project threshold and time frames for  
18 purposes of subcontractor listings for all scopes of work that are  
19 not required to list under law, including: The timing of  
20 subcontractor listing, bond requirements for subcontractors, general  
21 contractors standard contract request, and general contractor/  
22 construction manager and design-build applications.

--- END ---