
SUBSTITUTE SENATE BILL 5969

State of Washington

61st Legislature

2009 Regular Session

By Senate Government Operations & Elections (originally sponsored by Senator McDermott)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to listing subcontractors on public works projects;
2 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 read
5 as follows:

6 (1) Every invitation to bid on a prime contract that is expected to
7 cost one million dollars or more for the construction, alteration, or
8 repair of any public building or public work of the state or a state
9 agency or municipality as defined under RCW 39.04.010 or an institution
10 of higher education as defined under RCW 28B.10.016 shall require each
11 prime contract bidder to submit as part of the bid, or within one hour
12 after the published bid submittal time, the names of the subcontractors
13 with whom the bidder, if awarded the contract, will subcontract for
14 performance of the work of: HVAC (heating, ventilation, and air
15 conditioning); plumbing as described in chapter 18.106 RCW; and
16 electrical as described in chapter 19.28 RCW, or to name itself for the
17 work.

18 (2) The prime contract bidder shall not list more than one
19 subcontractor for each category of work identified, unless

1 subcontractors vary with bid alternates, in which case the prime
2 contract bidder must indicate which subcontractor will be used for
3 which alternate. Failure of the prime contract bidder to submit as
4 part of the bid the names of such subcontractors or to name itself to
5 perform such work, or ~~((the naming of))~~ to name two or more
6 subcontractors to perform the same work shall render the prime contract
7 bidder's bid nonresponsive and, therefore, void.

8 ~~((+2))~~ (3) Substitution of a listed subcontractor ~~((in furtherance
9 of bid shopping or bid peddling))~~ before or after the award of the
10 prime contract is prohibited, except as provided under subsection (4)
11 of this section, and the originally listed subcontractor is entitled to
12 recover monetary damages from the prime contract bidder who executed a
13 contract with the public entity and the substituted subcontractor but
14 not from the public entity inviting the bid. It is the original
15 subcontractor's burden to prove by a preponderance of the evidence that
16 bid shopping or bid peddling occurred.

17 (4) Substitution of a listed subcontractor may be made by the prime
18 contractor for the following reasons:

19 (a) ~~((Refusal of))~~ The listed subcontractor refuses to sign a
20 contract with the prime contractor;

21 (b) ~~((Bankruptcy or insolvency of))~~ The listed subcontractor is
22 bankrupt or insolvent;

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

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

29 (e) The listed subcontractor ~~((is barred from participating in the~~
30 project as a result of a court order or summary judgment)) fails to
31 meet the requirements established in RCW 39.04.350 for responsible
32 bidders;

33 (f) The listed subcontractor is barred from bidding on or
34 participating in the project as a result of a court order or summary
35 judgment, or in accordance with the terms established in RCW
36 39.12.065(3); or

37 (g) For any other reason that an arbitrator or court determines to

1 be good cause for substitution such as, but not limited to, clerical
2 errors or misinterpretation of the scope of the project.

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

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

12 (7) This section does not apply to job order contract requests for
13 proposals under RCW ~~((39.10.130))~~ 39.10.420.

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