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SENATE BILL 5969

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State of Washington

61st Legislature

2009 Regular Session

By Senator McDermott

Read first time 02/11/09. Referred to Committee on Government Operations & Elections.

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.

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