

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5457

66th Legislature
2020 Regular Session

Passed by the Senate January 24, 2020
Yeas 31 Nays 16

President of the Senate

Passed by the House March 5, 2020
Yeas 97 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5457** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5457

Passed Legislature - 2020 Regular Session

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.

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