

HOUSE BILL REPORT

ESB 5356

As Passed House:

April 5, 2021

Title: An act relating to prime contractor bidding submission requirements on public works contracts.

Brief Description: Concerning prime contractor bidding submission requirements on public works contracts.

Sponsors: Senators Short, Kuderer and Conway.

Brief History:

Committee Activity:

Capital Budget: 3/16/21, 3/23/21 [DP].

Floor Activity:

Passed House: 4/5/21, 98-0.

Brief Summary of Engrossed Bill

- Changes submittal requirements for prime contractors awarded a bid of a public works project expected to cost \$1 million or more.
- Exempts design-build and general contractor/construction manager requests for proposal from subcontractor listing requirements.
- Requires a report on subcontracting listing policies and practices by November 1, 2022.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass. Signed by 23 members: Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Steele, Ranking Minority Member; Abbarno, Assistant Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Bateman, Dye, Eslick, Gilday, Kloba, Kraft, Leavitt, MacEwen, Maycumber, Mosbrucker,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Peterson, Riccelli, Rule, Santos, Sells, Shewmake and Volz.

Staff: Richelle Geiger (786-7139).

Background:

Public Works.

The term "public works" refers to all work, construction, repair, or improvement other than ordinary maintenance performed by a municipality. A municipality includes cities, towns, port districts, public institutions of higher education, and any other public body authorized to execute public works. Most public works projects require a bidding process that awards the contract to the lowest responsive bidder. Competitive bids are required except for certain conditions including an emergency. The bidding process allows for a prime contractor to provide bids for a specific scope of work. Before the award of the contract, the prime contract bidder must submit statements that are in compliance with responsible bidder criteria.

For public works projects expected to cost \$1 million or more (eligible projects), the prime contractor awarded the bid must provide the names of subcontractors that will perform one of the following categories of work (specified subcontractors) within the following time periods after the published bid submittal time (defined time frame):

- heating, ventilation, and air conditioning; plumbing; and electrical work within one hour; or
- structural steel and rebar installation within 48 hours.

If the prime contractor submits more than one subcontractor listed for each category of work, or fails to list subcontractors, then the prime contract bidder is considered nonresponsive and their bid is void.

Capital Projects Advisory Review Board.

In 2005 the Capital Projects Advisory Review Board (CPARB) was established to monitor and evaluate the use of traditional and alternative public works contracting procedures and to evaluate potential future use of other alternative contracting procedures. The CPARB also provides a forum in which best practices and concerns about alternative public works contracting can be discussed. The CPARB consists of 23 members, including four legislative members: two from the House of Representatives, appointed by the Speaker of the House of Representatives; and two from the Senate, appointed by the President of the Senate. The CPARB is required to submit a report to the Governor and the Legislature by November 1, 2020, evaluating current subcontractor listing policies and practices and recommending modifications to the requirements (evaluation report).

Summary of Bill:

For eligible projects, the prime contractor awarded the bid must provide the names of all

specified contractors within the defined time frame.

The subcontractor naming requirements do not apply to design-build and general contractor/construction manager requests for proposal.

The CPARB is directed to submit a second evaluation report to the Governor and the Legislature by November 1, 2022.

The bill makes technical corrections, replacing written numbers greater than 10 with numeric values.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Engrossed Senate Bill 5356, and its House companion Substitute House Bill 1391, makes a technical correction to a bill that passed in 2020, requiring prime contractors to name their structural steel and rebar installation subcontractors for public works contracts expected to cost over \$1 million within two days after the published bid submittal time.

The CPARB recommended two changes to the original version of Engrossed Senate Bill 5356, to exempt general contractor/construction manager and design-build proposals from the subcontractor naming requirements and to require the CPARB to submit a report to the Legislature by November 1, 2022, on subcontracting listing policies and practices. Both recommendations are incorporated in both the Senate bill heard today and its House companion.

(Opposed) None.

Persons Testifying: Senator Short, prime sponsor; and Michael Transue, Mechanical Contractors Association of Western Washington.

Persons Signed In To Testify But Not Testifying: None.