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HOUSE BILL 1438

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State of Washington

56th Legislature

1999 Regular Session

By Representatives Miloscia, Campbell, Dunshee, Kastama, Conway and Boldt

Read first time 01/25/1999. Referred to Committee on State Government.

1 AN ACT Relating to competitive bidding on public contracts;  
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.** The legislature finds that the practice of  
5 substitution of named subcontractors for reasons other than those under  
6 RCW 39.30.060(2) in connection with the construction, alteration, or  
7 repair of any public building or public work of the state or a state  
8 agency or municipality as defined under RCW 39.04.010 or an institution  
9 of higher education as defined under RCW 28B.10.016 can deprive the  
10 public of the full value of its public works construction budget, can  
11 adversely affect competition among bidders and subcontractors, and can  
12 lead to insolvencies and loss of wages to employees.

13 **Sec. 2.** RCW 39.30.060 and 1995 c 94 s 1 are each amended to read  
14 as follows:

15 (1) Every invitation to bid on a contract that is expected to cost  
16 in excess of one hundred thousand dollars for the construction,  
17 alteration, or repair of any public building or public work of the  
18 state or a state agency or municipality as defined under RCW

1 39.04.010(~~(7)~~) or an institution of higher education as defined under  
2 RCW 28B.10.016, or a school district shall require each bidder to  
3 submit as part of the bid, or within one hour after the published bid  
4 submittal time, the names of (~~the~~) each subcontractor(~~s~~) whose  
5 subcontract amount is more than ten percent of the bid price with whom  
6 the bidder, if awarded the contract, will subcontract for performance  
7 of the work designated on the list to be submitted with the bid.  
8 Failure to name each such subcontractor(~~s~~) or naming of two or more  
9 subcontractors for the same work shall render the bidder's bid  
10 nonresponsive and, therefore, void.

11 (2) A bidder whose bid is accepted shall not substitute another  
12 subcontractor for a subcontractor who is named under subsection (1) of  
13 this section unless:

14 (a) The awarding authority objects to the subcontractor and  
15 requests in writing a change in the subcontractor; or

16 (b) The substitution is approved by the awarding authority, and any  
17 of the following applies:

18 (i) The subcontractor, after having a reasonable opportunity,  
19 fails or refuses to execute a written contract with the bidder when  
20 such subcontract was offered to the subcontractor with the same terms  
21 that all other subcontractors on the project were offered;

22 (ii) The named subcontractor files for bankruptcy or becomes  
23 insolvent;

24 (iii) The named subcontractor fails or refuses to perform its  
25 subcontract within a reasonable time;

26 (iv) The named subcontractor fails, refuses, or is unable to  
27 furnish a performance bond and payment bond where the named  
28 subcontractor agreed in writing to furnish a performance and payment  
29 bond before being named by the bidder under subsection (1) of this  
30 section;

31 (v) When the bidder demonstrates to the awarding agency that the  
32 name of the subcontractor was listed as a result of a good faith,  
33 inadvertent clerical error;

34 (vi) When the named subcontractor is not registered under chapter  
35 18.27 RCW or licensed under chapter 19.28 RCW; or

36 (vii) When the bidder determines that the work performed by the  
37 named subcontractor is substantially unsatisfactory and not in  
38 substantial accord with the contract documents or that the

1 subcontractor is substantially delaying or disrupting the progress of  
2 the work.

3 (3) Substitution of named subcontractors for reasons other than  
4 those under subsection (2) of this section is prohibited. Any bidder  
5 who violates this section is liable to the named subcontractor in the  
6 amount of ten percent of the substituted subcontractor's bid price or  
7 subcontract price. Legal action to enforce this section shall be  
8 brought in the superior court of the county in which the work is to  
9 be performed and the prevailing party in such an action is entitled  
10 to recover reasonable attorneys' fees, costs, and disbursements.

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