

# HOUSE BILL REPORT

## HB 1370

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As Reported By House Committee On:  
Commerce & Labor

**Title:** An act relating to public works subletting and subcontracting.

**Brief Description:** Regulating public works.

**Sponsors:** Representatives Ludwig, Heavey, Orr, Bray, Veloria, King and G. Cole.

**Brief History:**

Reported by House Committee on:  
Commerce & Labor, March 2, 1993, DPS.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Conway; Horn; King; Springer; and Veloria.

**Staff:** Chris Cordes (786-7117).

**Background:** General contractors bidding on public works projects include in the bid the work to be done by subcontractors. These contractors, however, are usually not required to name the subcontractors on which the bid was based or to use these subcontractors once the contract is awarded. The general contractor who is awarded the contract is not prohibited from finding subcontractors willing to do the contract work at a lower price than the subcontractors incorporated into the original bid.

**Summary of Substitute Bill:** An invitation to bid on a public works contract of \$100,000 or more must require as part of the bid the submission of the names of subcontractors with whom the prime contractor will contract to perform the categories of work listed in the bid, if the subcontract amount is more than 10 percent of the contract price. Subcontractor names may also be submitted within 24 hours of the bid. Failure to name the subcontractors constitutes a nonresponsive bid.

### **Substitute Bill Compared to Original Bill:**

The substitute makes the following changes to the original bill:

- (1) The requirements for listing subcontractors on public works bids applies only to contracts expected to cost more than \$100,000.
- (2) The invitation to bid must require the listing of the names of those subcontractors whose subcontract amount is more than 10 percent of the contract price and with whom the prime contractor will contract to perform the categories of work listed in the bid. Failure to name the subcontractors constitutes a nonresponsive bid. The names may be submitted within 24 hours of the bid.
- (3) The other provisions of the original bill are deleted, including provisions that would have made the prime contractor responsible for performing the subcontracted work if he or she failed to list a subcontractor; made it a violation of the act for the prime contractor to circumvent the act by listing subcontractors who would sublet the work to other subcontractors; required subcontractors to have a performance and payment bond for submitting a bid; made a prime contractor's violation of the act a violation of the public works contract and a violation of the contractor registration law; allowed a subcontractor operating as a hazardous waste hauler to serve a stop notice if the subcontractor is not paid; and provided that the bill did not limit any rights or remedies that the subcontractor or agency may have against the prime contractor.

**Fiscal Note:** Requested February 15, 1993.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The bill addresses an issue of fairness. Currently, bidders on a public works contract are able to "bid shop" after submitting the bid to find subcontractors who will do the work for less than the amount submitted with the bid. If the bid procedures in this bill are correctly administered, prohibiting bid shopping should save money for the public. The bill could be amended to address some of the concerns that have been expressed. It should also be amended to apply to the private sector. The courts have not been able to address this issue.

**Testimony Against:** Although bid shopping is unethical, the solution in this bill creates its own problems. The process for substitution of subcontractors is too cumbersome. It could delay projects and affect the relationship of the

awarding agency with the subcontractors. The prime contractor also has to deal with subcontractors who call in a bid 15 minutes before the bid is submitted. The larger subcontractors will not prepare bids for prime contractors who engage in bid shopping.

**Witnesses:** (In favor): Representative Curt Ludwig, prime sponsor; Bob Dilger, Washington Building and Construction Trades Council; and Larry Stevens, United Subcontractors Association. (Opposed): Eric Berger, Washington State Association of County Engineers; Duke Schaub, Associated General Contractors; and Jim Justin, Association of Washington Cities. (In support of concept): Gary Smith, Independent Business Association.