

2 **SHB 2974** - H AMD 998

3 By Representative D. Schmidt

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5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 39.30.060 and 1995 c 94 s 1 are each amended to read
8 as follows:

9 (1) Every invitation to bid on a contract that is expected to cost
10 ((in excess of one hundred thousand)) one million dollars or more for
11 the construction, alteration, or repair of any public building or
12 public work of the state or a state agency, other than the department
13 of transportation, or municipality as defined under RCW 39.04.010, or
14 an institution of higher education as defined under RCW 28B.10.016((~~7~~
15 or a school district)) shall require each prime contract bidder to
16 submit as part of ((the)) its bid, ((or within one hour after the
17 published bid submittal time, the names of the subcontractors whose
18 subcontract amount is more than ten percent of the bid price with whom
19 the bidder)) the names of each subcontractor who, if the prime contract
20 bidder were awarded the contract, the prime contract bidder will
21 subcontract with for performance of ((the work designated on the list
22 to be submitted with the bid)): (a) Any work described in construction
23 specification institute division fifteen or sixteen of the contract
24 specifications constituting five percent or more of the prime contract
25 bidder's base bid price; and (b) no more than one other specialty
26 subcontractor if required by the public entity in its bid document for
27 the project. For purposes of this section, "named subcontractor" means
28 a subcontractor named by the prime contract bidder as part of its bid
29 to the public entity. Failure to name each such subcontractor((s)),
30 naming subcontractors who did not comply with the requirements of
31 subsection (3) this section, or naming of two or more subcontractors
32 for the same work shall render the prime contract bidder's bid
33 nonresponsive and, therefore, void.

34 (2) The requirement of subsection (1) of this section to name
35 subcontractors only applies to subcontractors who will have a direct

1 contract with the prime contract bidder submitting a bid to the public
2 entity.

3 (3) Each potential subcontractor submitting a bid to any prime
4 contract bidder under subsection (1) of this section must submit its
5 bid for its portion of the project and a clearly defined scope of work
6 to the prime contract bidder at least two hours before the time
7 specified for bids to be received from prime contract bidders. Each
8 potential subcontractor submitting a bid to any prime contract bidder
9 under subsection (1) of this section must also submit a sealed copy of
10 its bid and scope of work submitted to each prime contract bidder to
11 the public entity at least two hours before the time specified for bids
12 to be received from prime contract bidders. A subcontract for a
13 portion of this project may not be awarded to a potential subcontractor
14 failing to comply with this section.

15 (4) Immediately after expiration of two hours before the time
16 specified for bids to be received from prime contract bidders, the
17 public entity shall post a list of the names of the subcontractors who
18 timely submitted copies of their bids to the public entity in
19 accordance with subsection (3) of this section. The list shall be
20 posted at the place where bids from prime contract bidders will be
21 opened. Immediately after the apparent low prime contract bidder is
22 identified by the public entity, the public entity shall make available
23 for public inspection and copying the subcontract bids of the
24 subcontractors named by the apparent low prime contract bidder. In the
25 event the apparent low or successful prime contract bidder attempts to
26 substitute or substitutes another subcontractor for a named
27 subcontractor, the public entity shall make available for public
28 inspection and copying all subcontract bids for the affected work.

29 (5) A successful prime contract bidder shall not substitute another
30 subcontractor for a named subcontractor unless:

31 (a) The public entity objects to the subcontractor and requests the
32 substitution in writing. The public entity shall reimburse the prime
33 contract bidder for any increases incurred as a result of this
34 substitution; or

35 (b) Any of the following occurs:

36 (i) The named subcontractor fails or refuses to execute a written
37 contract with the successful prime contract bidder within the time
38 prescribed by the prime contract bidder, which shall not be less than
39 one business day from the time the contract was offered, or if no time

1 was prescribed, within a reasonable time, when the subcontract that was
2 offered to the named subcontractor includes the same general terms and
3 conditions offered or to be offered to other subcontractors for the
4 same work;

5 (ii) The named subcontractor files for bankruptcy or becomes
6 insolvent;

7 (iii) The named subcontractor fails, refuses, or is unable to
8 furnish a performance bond and payment bond, where the public entity or
9 prime contract bidder requires the bond as a condition of awarding the
10 contract or subcontract;

11 (iv) If the named subcontractor is not registered under chapter
12 18.27 RCW or licensed under chapter 19.28 RCW;

13 (v) If the successful prime contract bidder demonstrates to the
14 public entity that the name of the subcontractor or type of work
15 identified in the prime contractor's bid was named as a result of a
16 good faith, inadvertent clerical error;

17 (vi) If the successful prime contract bidder reasonably believes
18 the named subcontractor is unable or unwilling to perform the
19 subcontract and the public entity approves the substitution; or

20 (vii) If the alternate bid accepted by the public entity displaces
21 the named subcontractor with another subcontractor who complied with
22 subsection (3) of this section and whose combined base bid and accepted
23 alternate bid is lower than the combined base bid and accepted
24 alternate bid for the same work by the named subcontractor.

25 (6) Subcontracting with subcontractors who have not complied with
26 subsection (3) of this section or substitution of a named subcontractor
27 for reasons other than those under subsection (5) of this section is
28 prohibited. Injunctive relief to enforce this section must be brought
29 in the superior court of the county in which the work is to be
30 performed within ten days after the named subcontractor knew or should
31 have known of the substitution. RCW 7.40.080 and 7.40.085 apply to an
32 action for injunctive relief brought under this section. The
33 prevailing party in such an action is entitled to recover reasonable
34 attorneys' fees, costs, and disbursements.

35 (7) Public entities subject to this section shall include the prime
36 contractor and subcontractor bidding requirements in this section in
37 any bid advertisement for the project and in the plans and
38 specifications for the project and shall prepare prime contract bid
39 documents for the naming of subcontractors.

1 NEW SECTION. **Sec. 2.** Section 1 of this act only applies to
2 projects that are initially advertised for bids after September 1,
3 1998."

4 Correct the title.

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