

# HOUSE BILL REPORT

## HB 2974

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### As Reported By House Committee On:

Government Administration

**Title:** An act relating to competitive bidding on public contracts.

**Brief Description:** Regulating competitive bidding on public contracts.

**Sponsors:** Representatives D. Schmidt, Scott, Wensman, Dunshee, Wolfe, Dunn, Romero, Smith, Gardner and Alexander.

### Brief History:

#### Committee Activity:

Government Administration: 2/4/98, 2/5/98 [DPS].

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## HOUSE COMMITTEE ON GOVERNMENT ADMINISTRATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives D. Schmidt, Chairman; D. Sommers, Vice Chairman; Scott, Ranking Minority Member; Gardner, Assistant Ranking Minority Member; Doumit; Dunn; Dunshee; Murray; Reams; Smith; L. Thomas; Wensman and Wolfe.

**Staff:** Steve Lundin (786-7127).

**Background:** Each invitation to bid on a contract for the construction, alteration, or repair of a public building or public work, that is expected to cost in excess of \$100,000, must require a bidder to submit the name or names of every subcontractor who is proposed to be used if the subcontract amount is more than 10 percent of the total bid price. The bidder must include the subcontractor names as part of the bid or within one hour of the published bid submittal time. Failure to name each of these subcontractors renders the bid nonresponsive and void.

**Summary of Substitute Bill:** Requirements are altered for contractors to list subcontractors they intend to use as part of a bid submitted for the construction, alteration, or repair of a public building or public work. These changes only apply to projects initially advertized for bids after September 1, 1998.

1. Bids subject to listing requirements.

The minimum expected value of the contract that is subject to these requirements is increased from \$100,000 to \$1 million. The extent of the relationship between the bidder and subcontractors that must be named is altered from any subcontractor performing 10 percent or more of the value of the bid price to any mechanical subcontractor or electrical subcontractor, performing 5 percent or more of the bid price, and any other type of specialty contractor specified by the public entity in its request for bids.

The failure to list a required subcontractor or the listing of two or more subcontractors for the same work renders the bidder's bid unresponsive and void.

2. Subcontractor bids to the general contractor.

Each subcontractor desiring to contract with the bidder, who would be required to listed as part of its bid, must submit its bid to the general contractor that will submit its bid to the public entity and the public entity itself at least one hour before the specified time by which bids for the entire project must be submitted to the public entity. A subcontract for a portion of this project may not be awarded to a potential subcontractor failing to so submit its bid.

3. When subcontractors must be listed.

A bidder on such a project must list these subcontractors at the time of submitting its bid to the public entity.

4. Substituting subcontractors for named subcontractors.

A contractor who has been awarded a contract for a public works or repair project may not substitute another subcontractor for a subcontractor named in the bid, except in certain circumstances. A subcontractor may be substituted if the awarding authority objects to the subcontractor and requests in writing a change. In addition, a subcontractor may be substituted for a listed subcontractor if:

- The listed subcontractor fails or refuses to execute a written contract where the same general terms and conditions were included in subcontracts offered to other subcontractors for the same work;
- The listed subcontractor files for bankruptcy or becomes insolvent;
- The listed subcontractor does not furnish a performance bond and payment bond when required by the awarding authority or general contractor;
- The listed subcontractor is not registered as a contractor or licensed as an electrical contractor;

- The bidder demonstrates to the awarding agency that the name of the listed subcontractor or the type of work was listed as a result of a good faith, inadvertent clerical error; or
- The bidder reasonably believes the listed subcontractor is unable or unwilling to perform and the awarding authority approves the substitution.

5. Injunctive relief.

Injunctive relief to enforce these requirements must be brought in the superior court where the work is to be performed within ten days after the named subcontractor learned of the substitution. Any injunction bond required of a subcontractor is limited to an amount less than \$50,000. The prevailing party is entitled to reasonable attorneys' fees, costs, and disbursements. Injunctive relief under these provisions may not be obtained after a contract has been awarded to the subcontractor and successful bidder.

**Substitute Bill Compared to Original Bill:** Changes are made to the contracts subject to the listing requirements and the subcontractors that must be listed. Requirements for subcontractor bids were added.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For (original bill):** Problems exist in some relations between subcontractors and general contractors. Some general contractors bid shop for subcontractors after being awarded a contract for the project. This bid shopping reduces the quality of projects.

**Testimony Against (original bill):** This is not a bid shopping bill but a subcontractor listing bill. You are being asked to referee a dispute between general contractors and subcontractors. It is the general contractor who is responsible for the project. This will increase costs.

**Testified:** (Pro): Larry Stevens, United Subcontractors Association of National Electrical Contractors; Arne Hepeen, United Mechanical Subcontractors; Dave Bertschart, Bertschart Electric; and Ed Kommers, University Mechanical Contractors. (Con): Duke Schaub, Associated General Contractors; Fred King, Department of General Administration; and Michael Currie, Office of Superintendent of Public Instruction.