
SUBSTITUTE HOUSE BILL 2974

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Government Administration (originally sponsored by Representatives D. Schmidt, Scott, Wensman, Dunshee, Wolfe, Dunn, Romero, Smith, Gardner and Alexander)

Read first time 02/05/98. Referred to Committee on .

1 AN ACT Relating to competitive bidding on public contracts;
2 amending RCW 39.30.060 and 7.40.085; and creating new sections.

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 substituting 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 is against public
10 policy.

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

13 (1) Every invitation to bid on a contract that is expected to cost
14 in excess of one (~~hundred thousand~~) million dollars for the
15 construction, alteration, or repair of any public building or public
16 work of the state or a state agency or municipality as defined under
17 RCW 39.04.010(~~(7)~~) or an institution of higher education as defined
18 under RCW 28B.10.016(~~(7 or a school district)~~) shall require each

1 bidder to submit as part of the bid, (~~or within one hour after the~~
2 ~~published bid submittal time,~~) the names of (~~the subcontractors whose~~
3 ~~subcontract amount is more than ten percent of the bid price with whom~~
4 ~~the bidder~~) each subcontractor who, if the bidder were awarded the
5 contract, the bidder will subcontract with for performance of (the
6 work designated on the list to be submitted with the bid): (a) Any
7 work described in construction specification institute division 15 of
8 the contract specifications constituting five percent or more of the
9 bidder's bid price; (b) any work described in construction
10 specification institute division 16 of the contract specifications
11 constituting five percent or more of the bidder's bid price; or (c) any
12 other specialty work that the public entity specifies in its request
13 for bids. Failure to name each such subcontractor(§) or naming of
14 two or more subcontractors for the same work shall render the bidder's
15 bid nonresponsive and, therefore, void.

16 (2) The requirement of subsection (1) of this section to name
17 subcontractors only applies to subcontractors who will have a direct
18 contract with the general contractor submitting the bid to the public
19 entity. Each potential subcontractor desiring to submit a bid to a
20 general contractor under subsection (1) of this section must submit its
21 bid for its portion of the project to both the general contractor and
22 the public entity at least one hour before the specified time by which
23 bids for the entire project must be submitted to the public entity. A
24 subcontract for a portion of this project may not be awarded to a
25 potential subcontractor failing to so submit bids.

26 (3) A bidder whose bid is accepted by the public entity shall not
27 substitute another subcontractor for a subcontractor who is named under
28 subsection (1) of this section unless:

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

31 (b) Any of the following occurs:

32 (i) The named subcontractor fails or refuses to execute a written
33 contract with the bidder when the subcontract that was offered to the
34 subcontractor includes the same general terms and conditions that were
35 included in subcontracts offered to other subcontractors for the same
36 work;

37 (ii) The named subcontractor files for bankruptcy or becomes
38 insolvent;

1 (iii) The named subcontractor fails, refuses, or is unable to
2 furnish a performance bond and payment bond, where the awarding
3 authority or general contractor requires the bond as a condition of
4 awarding the contract or subcontract;

5 (iv) When the named subcontractor is not registered under chapter
6 18.27 RCW or licensed under chapter 19.28 RCW;

7 (v) When the bidder demonstrates to the awarding agency that the
8 name of the subcontractor or type of work listed was listed as a result
9 of a good faith, inadvertent clerical error; or

10 (vi) When the bidder reasonably believes the listed subcontractor
11 is unable or unwilling to perform the subcontract and the awarding
12 authority approves the substitution.

13 (4) Substitution of named subcontractors for reasons other than
14 those under subsection (2) of this section is prohibited. Injunctive
15 relief to enforce this section must be brought in the superior court of
16 the county in which the work is to be performed within ten days after
17 the named subcontractor learned of the substitution. Any injunction
18 bond required of a subcontractor in an action shall be limited to an
19 amount less than fifty thousand dollars. The prevailing party in such
20 an action is entitled to recover reasonable attorneys' fees, costs, and
21 disbursements. Injunctive relief to enforce this section may only be
22 obtained prior to a subcontract being entered into between the
23 successful bidder and subcontractor. After the subcontract is entered
24 into, only remedies under the contract are available.

25 NEW SECTION. Sec. 3. The amendments to RCW 39.30.060 that are
26 included in this act shall only apply to projects that are initially
27 advertised for bids after September 1, 1998.

28 **Sec. 4.** RCW 7.40.085 and 1974 ex.s. c 153 s 1 are each amended to
29 read as follows:

30 Except as provided under RCW 39.30.060, in determining the amount
31 of the bond required by RCW 7.40.080 as now or hereafter amended, with
32 respect to an injunction or restraining order that will delay or enjoin
33 a notice to proceed or the performance of work under a construction
34 contract for a public contracting body among the factors regarded in
35 the exercise of its discretion, the court shall consider:

36 (1) All costs and liquidated damages provided for in the contract
37 or otherwise that may result from such delay;

1 (2) The probable costs to the public in terms of inconvenience,
2 delayed use of the proposed facilities, and escalation of costs of
3 delayed construction of the proposed facilities that may be incurred as
4 a result of a delay subsequently found to be without good cause; and

5 (3) The procedures for consideration of objections to proposed
6 construction and the opportunity the one seeking the injunction had for
7 objecting prior to the letting of the contract.

--- END ---