
HOUSE BILL 2974

State of Washington

55th Legislature

1998 Regular Session

By Representatives D. Schmidt, Scott, Wensman, Dunshee, Wolfe, Dunn, Romero, Smith, Gardner and Alexander

Read first time 01/26/98. Referred to Committee on Government Administration.

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(~~(7, 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~~) performing
5 any work described in construction specification institute division 15
6 of the contract specifications, performing any work described in
7 construction specification institute division 16 of the contract
8 specifications or whose subcontract amount is more than (~~ten~~) fifteen
9 percent of the bid price with whom the bidder, if awarded the contract,
10 will subcontract for performance of the work designated on the list to
11 be submitted with the bid. Failure to name each such
12 subcontractor(~~s~~) or naming of two or more subcontractors for the same
13 work shall render the bidder's bid nonresponsive and, therefore, void.

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

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

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

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

25 (ii) The named subcontractor files for bankruptcy or becomes
26 insolvent;

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

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

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

37 (vi) When the named subcontractor is not registered under chapter
38 18.27 RCW or licensed under chapter 19.28 RCW; or

1 (vii) When the bidder determines that the work performed by the
2 named subcontractor is substantially unsatisfactory and not in
3 substantial accordance with the contract documents or that the
4 subcontractor is substantially delaying or disrupting the progress of
5 the work.

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

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