

HOUSE BILL REPORT

SB 6577

As Reported by House Committee On:

State Government

Title: An act relating to identification of subcontractors on public works contracts.

Brief Description: Prohibiting substitution of subcontractors on larger public works contracts.

Sponsors: Senators Gardner, Roach and Costa.

Brief History:

Committee Activity:

State Government: 2/26/02, 3/1/02 [DPA].

Brief Summary of Bill (As Amended by House Committee)

- Entitles original subcontractors to recover damages from the prime contract bidder and the substituted subcontractor.
- In cases of bid shopping, the burden of proof is with the original subcontractor.
- Identifies instances when substitution of an original subcontractor may occur.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass as amended. Signed by 7 members: Representatives Romero, Chair; Miloscia, Vice Chair; McMorris, Ranking Minority Member; McDermott, Schindler, Schmidt and Upthegrove.

Staff: Marsha Reilly (786-7135).

Background:

Invitations to bid on contracts of \$1 million or more for the construction, alteration, or repair of public buildings or public works of the state or institutions of higher education require each bidder to include the names of its subcontractors for heating, ventilation, and air conditioning, plumbing, and electrical, as part of the bid, or within one hour after the published bid submittal time.

The contract bidder may not list more than one subcontractor for each category of work unless subcontractors vary with bid alternates. In that case, the bidder must indicate which subcontractor will be used for which alternate. Failure to submit the names of its subcontractors or naming two or more subcontractors for the same work will render the bid unresponsive and, therefore, void.

In 2001 the Court of Appeals of the State of Washington ruled that a general contractor had engaged in the practice of bid shopping, but also found that the statute did not afford the original subcontractor a remedy.

Summary of Amended Bill:

Prime contract bidders may not substitute a listed subcontractor, in furtherance of bid shopping, before or after the award of the prime contract. Originally listed subcontractors are entitled to recover damages from the prime contract bidder and the substituted subcontractor, but may not seek damages from the public entity inviting the bid. The burden of proof lies with the originally listed subcontractor and is by a preponderance of the evidence. Prime contractors may replace originally listed subcontractors under the following conditions:

- Refusal of the listed subcontractor to sign a contract with the prime contractor;
- Bankruptcy or insolvency of the listed subcontractor;
- Inability of the listed subcontractor to perform the requirements of the proposed contract or the project;
- Inability of the listed subcontractor to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work detailed in the contract; or
- The listed subcontractor is barred from participating in the project as a result of a court order or summary judgment.

Changes are made to delineate references in statute from "contracts" to "prime contracts," and from "contract bidders" to "prime contract bidders."

Amended Bill Compared to Original Bill:

The burden of proving that bid shopping occurred is on the original subcontractor, and is by a preponderance of the evidence. Conditions under which substitution of a listed subcontractor may be made by the prime contractor are included.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: This is a good, simple, uncomplicated bill. If a preponderance of evidence is shown, the court may invoke damages or a remedy. It stipulates that if the effort is made to take action, and the court finds in favor, a remedy is available.

Testimony Against: None.

Testified: (In support) Darrell Chapman and Richard King, International Brotherhood of Electrical Workers; Kathleen Collins, Sheet Metal and Air Conditioning Contractors; and Larry Stevens, National Electrical Contractors Association.

(In support with amendment) Duke Schaub, Associated General Contractors of Washington.