
**State Government & Tribal Affairs
Committee**

HB 1837

Brief Description: Regarding listing subcontractors on public works projects.

Sponsors: Representatives Ormsby, Conway, Sullivan, Hunt, Simpson, Eddy, Green, Chase, Haigh, Hasegawa, Miloscia, Kenney and Rolfes.

Brief Summary of Bill

- Adds new requirements relating to substitution of subcontractors by a prime contractor for public works bids.

Hearing Date: 2/17/09

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 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;

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- 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.

Summary of Bill:

Prime contractor bidders, as part of the bid or within one hour after the public bid submittal time, must submit the names of their first-tier subcontractors who will perform work valued at \$50,000 or more and all subcontractors who will perform work valued at more than \$350,000.

Bids submitted by prime contract bidders, alternates, and first-tier subcontractors performing work valued at \$50,000 or more and all subcontractors performing work valued at more than \$350,000 must be opened at the same time.

Prime contractors' contracts for its subcontractors must be a standard or master agreement that is customarily used for projects of similar size and scope in the state of Washington.

Additional reasons for substitution of a listed subcontractor by a prime contractor are added, including:

- the subcontractor has a repeated history of non-performance or inability to meet the terms of the contract;
- the subcontractor does not meet the requirements for a responsible bidder;
- the subcontractor failed to include the entire cost of the subcontract in the bid submittal;
- listing of the subcontractor was due to an inadvertent clerical error;
- the listed subcontractor was not the lowest bidder; or
- good cause, including but not limited to, the financial instability of the subcontractor.

Actions brought may be resolved through binding arbitration or in the superior court of the county in which the public work is located.

Summary of Proposed Substitute:

A prime contractor may not substitute a listed subcontractor except for the reasons provided for substitution. Additional reasons for substitution are added and include: (1) the subcontractor does not meet the requirements for a responsible bidder; and (2) for good cause as determined by an arbitrator or the courts including, but not limited to, clerical errors or misinterpretation of the scope of the project. Actions brought may be resolved through binding arbitration or in the superior court of the county in which the public work is located.

Appropriation: None.

Fiscal Note: Requested on February 12, 2009.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.