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**SUBSTITUTE HOUSE BILL 1754**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** House Capital Budget (originally sponsored by Representatives Buys, Dunshee, Muri, Haler, Senn, Ormsby, Sullivan, and Smith)

AN ACT Relating to adding building envelope to the list of building trades that a prime contractor must list for bids on public works; and amending RCW 39.30.060.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 39.30.060 and 2003 c 301 s 5 are each amended to read as follows:

(1) Every invitation to bid on a prime contract that is expected to cost one million dollars or more for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under RCW 39.04.010 or an institution of higher education as defined under RCW 28B.10.016 shall require each prime contract bidder to submit as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter 18.106 RCW; and electrical as described in chapter 19.28 RCW, or to name itself for the work. The prime contract bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the prime contract bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid nonresponsive and, therefore, void.

(2) At the time the public entity establishes the low responsive bidder and provides intent to award the contract to the prime contractor, the list of all subcontractors, including subcontract work performed for the building envelope, must be provided to the public entity. Failure of the prime contractor to list the names of all subcontractors or to name itself to perform the work or the naming of two or more subcontractors to perform the same work may render the contract void.

(3) Substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract is prohibited and the originally listed subcontractor is entitled to recover monetary damages from the prime contract bidder who executed a contract with the public entity and the substituted subcontractor but not from the public entity inviting the bid. It is the original subcontractor's burden to prove by a preponderance of the evidence that bid shopping or bid peddling occurred. Substitution of a listed subcontractor may be made by the prime contractor for the following reasons:

(a) Refusal of the listed subcontractor to sign a contract with the prime contractor;

(b) Bankruptcy or insolvency of the listed subcontractor;

(c) Inability of the listed subcontractor to perform the requirements of the proposed contract or the project;

(d) 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

(e) The listed subcontractor is barred from participating in the project as a result of a court order or summary judgment.

((~~(3)~~)) (4) The requirement of this section to name the prime contract bidder's proposed HVAC, plumbing, and electrical subcontractors applies only to proposed HVAC, plumbing, and electrical subcontractors who will contract directly with the prime contract bidder submitting the bid to the public entity.

((~~(4)~~)) (5) This section does not apply to job order contract requests for proposals under RCW ((~~39.10.130~~)) 39.10.420.

(6) For the purposes of this section, "building envelope" means the elements of a building that are the physical separation between the building's interior, conditioned spaces and the exterior, unconditioned environment through which heat, air, light, and sound may be transferred. "Building envelope" does not include any portion of the building that is below grade.

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