

SB 5457 - S AMD 917
By Senator Keiser

ADOPTED 01/24/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 39.30.060 and 2003 c 301 s 5 are each amended to
4 read as follows:

5 (1) Every invitation to bid on a prime contract that is expected
6 to cost one million dollars or more for the construction, alteration,
7 or repair of any public building or public work of the state or a
8 state agency or municipality as defined under RCW 39.04.010 or an
9 institution of higher education as defined under RCW 28B.10.016 shall
10 require each prime contract bidder to submit (~~as part of the bid, or~~
11 ~~within~~);

12 (a) Within one hour after the published bid submittal time, the
13 names of the subcontractors with whom the bidder, if awarded the
14 contract, will subcontract for performance of the work of: HVAC
15 (heating, ventilation, and air conditioning); plumbing as described
16 in chapter 18.106 RCW; and electrical as described in chapter 19.28
17 RCW, or to name itself for the work; or

18 (b) Within forty-eight hours after the published bid submittal
19 time, the names of the subcontractors with whom the bidder, if
20 awarded the contract, will subcontract for performance of the work of
21 structural steel installation and rebar installation.

22 (2) The prime contract bidder shall not list more than one
23 subcontractor for each category of work identified, unless
24 subcontractors vary with bid alternates, in which case the prime
25 contract bidder must indicate which subcontractor will be used for
26 which alternate. Failure of the prime contract bidder to submit as
27 part of the bid the names of such subcontractors or to name itself to
28 perform such work or the naming of two or more subcontractors to
29 perform the same work shall render the prime contract bidder's bid
30 nonresponsive and, therefore, void.

31 ~~((+2))~~ (3) Substitution of a listed subcontractor in furtherance
32 of bid shopping or bid peddling before or after the award of the

1 prime contract is prohibited and the originally listed subcontractor
2 is entitled to recover monetary damages from the prime contract
3 bidder who executed a contract with the public entity and the
4 substituted subcontractor but not from the public entity inviting the
5 bid. It is the original subcontractor's burden to prove by a
6 preponderance of the evidence that bid shopping or bid peddling
7 occurred. Substitution of a listed subcontractor may be made by the
8 prime contractor for the following reasons:

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

11 (b) Bankruptcy or insolvency of the listed subcontractor;

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

14 (d) Inability of the listed subcontractor to obtain the necessary
15 license, bonding, insurance, or other statutory requirements to
16 perform the work detailed in the contract; ~~((e))~~

17 (e) Refusal or inability to provide a letter of bondability from
18 a surety company; or

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

21 ~~((3))~~ (4) The requirement of this section to name the prime
22 contract bidder's proposed ~~((HVAC, plumbing, and electrical))~~
23 subcontractors applies only to proposed HVAC, plumbing, ~~((and))~~
24 electrical, structural steel installation, and rebar installation
25 subcontractors who will contract directly with the prime contract
26 bidder submitting the bid to the public entity.

27 ~~((4))~~ (5) This section does not apply to job order contract
28 requests for proposals under RCW ~~((39.10.130))~~ 39.10.420.

29 (6) The legislature finds that there are hundreds of capital
30 construction projects completed each year which include complex
31 contracting and bidding requirements. It is the intent of the
32 legislature to review current subcontractor listing requirements to
33 allow fair, transparent, and competitive bidding while prohibiting
34 bid shopping. The capital projects advisory review board must submit
35 a report to the governor and the appropriate committees of the
36 legislature by November 1, 2020. The report must:

37 (a) Evaluate current subcontractor listing policies and
38 practices;

39 (b) Recommend appropriate expansion of the number of
40 subcontractors that may be listed in order to improve transparency

1 and fairness without reducing competitive bidding and access to
2 public works by minority and women-owned businesses; and
3 (c) Recommend possible project threshold and time frames for
4 purposes of subcontractor listings for all scopes of work that are
5 not required to list under law, including: The timing of
6 subcontractor listing, bond requirements for subcontractors, general
7 contractors standard contract request, and general contractor/
8 construction manager and design-build applications."

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9 On page 1, line 2 of the title, after "contracts;" strike the
10 remainder of the title and insert "and amending RCW 39.30.060."

EFFECT: Removes requirement that names of the subcontractors with whom the bidder will subcontract for all work performed by contractors required to be registered with Department of Labor and Industries.

Adds requirement that names of the subcontractors with whom the bidder will subcontract for the work of structural steel installation and rebar installation be submitted within forty-eight hours.

Allows substitution of a listed subcontractor for refusal or inability to provide a letter of bondability from a surety company.

Requires the Capital Projects Advisory Review Board evaluate current subcontractor listing policies and practices and submit a report to the governor and the appropriate committees of the legislature by November 1, 2020, with recommendations.

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