

HOUSE BILL REPORT

ESB 5457

As Passed House:
March 5, 2020

Title: An act relating to the naming of subcontractors by prime contract bidders on public works contracts.

Brief Description: Naming of subcontractors by prime contract bidders on public works contracts.

Sponsors: Senators Keiser, Saldaña, Conway, Hasegawa, Hunt and Nguyen.

Brief History:

Committee Activity:

Capital Budget: 2/20/20, 3/2/20 [DP].

Floor Activity:

Passed House: 3/5/20, 97-0.

Brief Summary of Engrossed Bill

- Requires prime contractors to list all subcontractors that will perform structural steel installation and rebar installation work within 48-hours of submitting a bid for a public works contract that is \$1 million or more.
- Permits prime contractors to change listed subcontractors if the subcontractor refuses or is unable to provide a letter of bondability from a surety company.
- Directs the Capital Projects Advisory Review Board to review current subcontractor listing requirements and submit a report to the Governor and Legislature by November 1, 2020.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass. Signed by 18 members: Representatives Tharinger, Chair; Callan, Vice Chair; Doglio, Vice Chair; DeBolt, Ranking Minority Member; Steele, Assistant Ranking Minority Member; Davis, Gildon, Leavitt, Lekanoff, Maycumber, Morgan, Pellicciotti, Peterson, Riccelli, Santos, Sells, Stonier and Walsh.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Without recommendation. Signed by 2 members: Representatives Smith, Assistant Ranking Minority Member; Corry.

Minority Report: Do not pass. Signed by 1 member: Representative Dye.

Staff: Richelle Geiger (786-7139).

Background:

Public Works.

The term "public works" refers to all work, construction, repair, or improvement other than ordinary maintenance performed by a municipality. A municipality includes cities, towns, port districts, public institutions of higher education, and any other public body authorized to execute public works. Most public works projects require a bidding process that awards the contract to the lowest responsive bidder. Competitive bids are required except for certain conditions including an emergency. The bidding process allows for a prime contractor to provide bids for a specific scope of work. Before the award of the contract, the prime contract bidder must submit statements that they are in compliance with responsible bidder criteria.

For public works projects \$1 million or more, the prime contractor awarded the bid must also provide names of subcontractors that will perform: heating, ventilation, and air conditioning; plumbing; and electrical work. The subcontractors must be submitted within one hour after the published bid submittal time. If the prime contractor submits more than one subcontractor listed for each category of work, or fails to list subcontractors, then the prime contract bidder is considered nonresponsive and their bid is void.

Capital Projects Advisory Review Board.

In 2005 the Capital Projects Advisory Review Board (CPARB) was established to monitor and evaluate the use of traditional and alternative public works contracting procedures and to evaluate potential future use of other alternative contracting procedures. The CPARB also provides a forum in which best practices and concerns about alternative public works contracting can be discussed. The CPARB consists of 23 members, including four Legislative members: two from the House of Representatives, appointed by the Speaker of the House, and two from the Senate, appointed by the President of the Senate.

Summary of Bill:

For public works projects \$1 million or more, the prime contractor awarded the bid must provide names of subcontractors that will perform structural steel installation and rebar installation work. The subcontractors must be submitted within 48 hours after the published bid submittal time.

A prime contractor may provide a substitution for a listed subcontractor due to the subcontractor's refusal or inability to provide a letter of bondability from a surety company.

The CPARB must 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 on:

- appropriate expansion of the number of subcontractors listed in order to improve transparency and fairness without reducing competitive bidding and access to public works by minority and women-owned businesses; and
- possible project threshold and time frames for purposes of subcontractor listings for all scopes of work that are not required to list under law.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) There have been concerns regarding bid shopping for long time. Bid shopping leads to lower quality and lower outcomes on public works projects. Originally, the bill required naming all contractors and subcontractors, which would be too onerous on contractors and the public entity with the project. It would have driven up prices and driven down competition. This version of the bill is the result of months of collaboration and is supported by many stakeholders, including building trades and associated general contractors. The bill will help stabilize the construction industry and help develop a well-trained workforce.

It makes sense to require listing of rebar and steel subcontractors because those materials are fundamental components of any building.

Another strength of this version of the bill is directing the CPARB to continue digging into the complex issue of public works procurement and preventing bid shopping. This work will help determine when and how many apprentices and other tradespeople are needed for a project. Additionally, the current method to report bid shopping disincentivizes reporting. The study will help improve this system.

(Opposed) None.

Persons Testifying: Senator Keiser, prime sponsor; Neil Hartman, Washington State Building and Construction Trades Council; Heather Kurtenbach and Chris McClain, Ironworkers Local 86; Brian Sims, Washington State School Directors' Association; and Jerry VanderWood, Associated General Contractors.

Persons Signed In To Testify But Not Testifying: None.