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**SUBSTITUTE HOUSE BILL 1391**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** House Capital Budget (originally sponsored by Representatives Goehner, Senn, and Pollet)

1 AN ACT Relating to prime contractor bidding submission  
2 requirements on public works contracts; and amending RCW 39.30.060.

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

4 **Sec. 1.** RCW 39.30.060 and 2020 c 140 s 1 are each amended to  
5 read as follows:

6 (1) Every invitation to bid on a prime contract that is expected  
7 to cost (~~one million dollars~~) \$1,000,000 or more for the  
8 construction, alteration, or repair of any public building or public  
9 work of the state or a state agency or municipality as defined under  
10 RCW 39.04.010 or an institution of higher education as defined under  
11 RCW 28B.10.016 shall require each prime contract bidder to submit:

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~~) and

18 (b) Within (~~forty-eight~~) 48 hours after the published bid  
19 submittal time, the names of the subcontractors with whom the bidder,  
20 if awarded the contract, will subcontract for performance of the work  
21 of structural steel installation and rebar installation.

1 (2) The prime contract bidder shall not list more than one  
2 subcontractor for each category of work identified, unless  
3 subcontractors vary with bid alternates, in which case the prime  
4 contract bidder must indicate which subcontractor will be used for  
5 which alternate. Failure of the prime contract bidder to submit as  
6 part of the bid the names of such subcontractors or to name itself to  
7 perform such work or the naming of two or more subcontractors to  
8 perform the same work shall render the prime contract bidder's bid  
9 nonresponsive and, therefore, void.

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

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

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

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

25 (d) Inability of the listed subcontractor to obtain the necessary  
26 license, bonding, insurance, or other statutory requirements to  
27 perform the work detailed in the contract;

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

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

32 (4) The requirement of this section to name the prime contract  
33 bidder's proposed subcontractors applies only to proposed HVAC,  
34 plumbing, electrical, structural steel installation, and rebar  
35 installation subcontractors who will contract directly with the prime  
36 contract bidder submitting the bid to the public entity.

37 (5) This section does not apply to design-build requests for  
38 proposals under RCW 39.10.330, to general contractor/construction  
39 manager requests for proposal under RCW 39.10.350, or to job order  
40 contract requests for proposals under RCW 39.10.420.

1 (6) The legislature finds that there are hundreds of capital  
2 construction projects completed each year which include complex  
3 contracting and bidding requirements. It is the intent of the  
4 legislature to review current subcontractor listing requirements to  
5 allow fair, transparent, and competitive bidding while prohibiting  
6 bid shopping. The capital projects advisory review board must submit  
7 a report to the governor and the appropriate committees of the  
8 legislature by November 1, 2020(~~(.The))~~, and a second report by  
9 November 1, 2022. The reports must:

10 (a) Evaluate current subcontractor listing policies and  
11 practices;

12 (b) Recommend appropriate expansion of the number of  
13 subcontractors that may be listed in order to improve transparency  
14 and fairness without reducing competitive bidding and access to  
15 public works by minority and women-owned businesses; and

16 (c) Recommend possible project threshold and time frames for  
17 purposes of subcontractor listings for all scopes of work that are  
18 not required to list under law, including: The timing of  
19 subcontractor listing, bond requirements for subcontractors, general  
20 contractors standard contract request, and general contractor/  
21 construction manager and design-build applications.

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