

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5356

67th Legislature
2021 Regular Session

Passed by the Senate February 23,
2021

Yeas 49 Nays 0

President of the Senate

Passed by the House April 5, 2021

Yeas 98 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5356** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5356

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By Senators Short, Kuderer, and Conway

Read first time 01/27/21. Referred to Committee on Housing & Local Government.

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 proposals 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, and a second report by November 1,
9 2022. The (~~report~~) 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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