

FINAL BILL REPORT

ESB 5457

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Synopsis as Enacted

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

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

Senate Committee on State Government, Tribal Relations & Elections
House Committee on Capital Budget

Background: Public works include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality. Most public works construction projects are procured using an architect selected by the public body. The architect develops the plans and specifications that contractors bid on through a competitive bidding process. The contract to perform the work described in the plans and specifications is awarded to a responsible bidder with the lowest responsive bid. Contractors that provide the bid are referred to as the prime contractor and they may subcontract portions of the work to other specialized contractors.

Current state law requires that for projects, except job order contracts, expected to cost over \$1 million the prime contractor identify certain subcontractors that will perform heating, ventilation, and air conditioning; plumbing; and electrical work. 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. Substitution of a listed subcontractor in the furtherance of bid shopping or bid peddling before or after the award of the contract is prohibited; however, substitutions of a listed subcontractor may be made for the following reasons:

- refusal of the subcontractor to sign a contract with the prime contractor;
- bankruptcy or insolvency of the subcontractor;
- inability of the subcontractor to perform the requirements;
- inability of the subcontractor to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work; or
- the subcontractor is barred from participating in the project as a result of a court order or summary judgement.

Capital Projects Advisory Review Board. The Capital Projects Advisory Review Board (CPARB) consists of 23 members, including four legislative ex-officio members, two from the House of Representatives, appointed by the Speaker of the House, and two from the

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.

Senate, appointed by the President of the Senate. CPARB provides an evaluation of public capital project construction processes, including the impact of contracting methods on project outcomes, and advises the Legislature on policies related to public works delivery methods.

Summary: The prime contractor must name subcontractors for structural steel installation and rebar installation on public works construction projects expected to cost over \$1 million, 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.

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 be listed under law.

Votes on Final Passage:

Senate	31	16
House	97	0

Effective: June 11, 2020