

STATE OF NEW YORK

984

2023-2024 Regular Sessions

IN ASSEMBLY

January 11, 2023

Introduced by M. of A. MAGNARELLI -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to clarifying provisions related to a registration system for contractors and subcontractors engaged in public work and covered projects; and to amend a chapter of the laws of 2022 amending the labor law relating to establishing a registration system for contractors and subcontractors engaged in public work and covered projects in order to better enforce existing labor laws and regulations in the public works industry, as proposed in legislative bills numbers S. 5994-C and A. 1338-C, in relation to the effectiveness thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 1, 2, 3, 4, 5 and 6 of section 220-i of the labor law, as added by a chapter of the laws of 2022 amending the labor law relating to establishing a registration system for contractors and subcontractors engaged in public work and covered projects in order to better enforce existing labor laws and regulations in the public works industry, as proposed in legislative bills numbers S. 5994-C and A. 1338-C, are amended to read as follows:

1. As used in this section:

a. "Contractor" means any [~~contractor or subcontractor~~] entity entering into a contract to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication, which is subject to the provisions of this article.

b. [~~"Bureau" means the department's bureau of public works~~] "Subcontractor" means any entity subcontracting with a contractor to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication, which is subject to the provisions of this article.

c. "Covered project" means any project subject to the provisions of this article, including but not limited to, public work projects and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

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1 those subject to the provisions of sections two hundred twenty-four-a
2 and two hundred twenty-four-d of this article.

3 2. a. ~~[Prior to submitting a bid on a contract for public work or~~
4 ~~commencing work on a covered project under private contract]~~ In accord-
5 ance with subdivision six of this section, a contractor or subcontractor
6 shall register in writing with the ~~[bureau]~~ commissioner on a form
7 provided by the commissioner. The form shall require the following
8 information:

9 i. The name, principal business address and telephone number of the
10 contractor or subcontractor.

11 ii. Whether the contractor is a person, partnership, association,
12 joint stock company, trust, corporation, or other form of business enti-
13 ty.

14 iii. The name and address of each person with ~~[a financial]~~ an owner-
15 ship interest in the contractor or subcontractor and the percentage
16 interest, except that if the contractor or subcontractor is a publicly-
17 traded corporation, the contractor or subcontractor shall supply the
18 names and addresses of the corporation's officers.

19 iv. The contractor's or subcontractor's tax identification number,
20 unemployment insurance registration number, and workers' compensation
21 board ~~[employee]~~ employer number.

22 v. Whether the contractor or subcontractor has any outstanding wage
23 assessments against it, pursuant to this article.

24 vi. Whether the contractor or subcontractor has been debarred under
25 New York or federal law within the last ~~[ten]~~ eight years.

26 vii. Whether the contractor or subcontractor has been debarred pursu-
27 ant to the laws of any other state within the last ~~[ten]~~ eight years.

28 viii. Whether the contractor or subcontractor has been finally deter-
29 mined by the appropriate authority to have violated any labor laws or
30 employment tax laws including, but not limited to, the requirement to
31 have workers' compensation coverage, payment of workers' compensation
32 premiums, deduction and payment of income taxes, payment of unemployment
33 insurance contributions or payment of prevailing wage.

34 ix. Whether the contractor or subcontractor has been finally deter-
35 mined by the appropriate authority to have violated any laws establish-
36 ing workplace safety standards including the federal Occupational Safety
37 and Health Act.

38 x. Whether or not the contractor or subcontractor is associated, or a
39 signatory to, an apprenticeship program under article twenty-three of
40 this chapter. If so, the apprenticeship program shall be provided by the
41 contractor or subcontractor.

42 xi. Whether or not the contractor or subcontractor is a minority or
43 women-owned business enterprise pursuant to the provisions of article
44 fifteen-A of the executive law.

45 b. At the time of registration, and upon request, the contractor or
46 subcontractor shall submit to the commissioner documentation demonstrat-
47 ing that the contractor or subcontractor has workers' compensation
48 insurance coverage for all workers as required by law, including any and
49 all declarations and information pages related to such policy which
50 shall be electronically accessible and searchable to the public,
51 provided however, that in no event shall a worker's name or other
52 personal identifying information be included in such database. This
53 information shall be made readily available to the public by the
54 ~~[bureau]~~ commissioner within forty-eight hours of the initial public
55 request.

3. The contractor or subcontractor shall pay a non-refundable registration fee of two hundred dollars to the commissioner which shall be paid to the general fund. The commissioner, through regulations, shall reduce the registration fee associated with minority or women-owned business enterprises in order to promote the use of such businesses on covered projects.

4. Unless~~[, following notice and a hearing, the bureau]~~ the commissioner determines a contractor or subcontractor unfit to be registered, the commissioner shall issue a certificate of registration to the contractor or subcontractor upon receipt of the fee, form and documentation required by this section. A registration certificate shall be valid for two calendar years from the date of registration. Registrations may be renewed not less than ~~[thirty]~~ ninety days before the expiration date of the immediately preceding registration. The commissioner shall promulgate regulations to determine under what circumstances a contractor or subcontractor would be unfit to be registered pursuant to this section; provided that a contractor or subcontractor shall not be determined to be unfit solely because a contractor or subcontractor was debarred within the last ~~[ten]~~ eight years, unless such contractor or subcontractor is currently debarred or ineligible pursuant to subdivision three of section two hundred twenty-b of this article or section one hundred forty-one-b of the workers' compensation law or such contractor or subcontractor is subject to a final administrative or court order for violation of state or federal prevailing wage law which has not been fully satisfied, provided further that a contractor that has made payment for unpaid wages on behalf of a subcontractor shall not be determined unfit solely as a result of actions of a subcontractor. ~~[The notice to a contractor initially determined by the commissioner to be unfit based upon the registration application shall be in writing, shall not be conclusory, and shall state the factual basis upon which the determination is based]~~ The commissioner shall, before making a determination of unfitness, notify the contractor or subcontractor in writing of the reasons for such proposed determination and afford the contractor or subcontractor an opportunity to cure or be heard prior to the determination. Such notice shall notify the contractor or subcontractor that a request for a hearing must be made within thirty days after issuance of such notification. If a hearing is requested, such hearing shall be held at such time and place as the commissioner shall prescribe. If the contractor or subcontractor fails to make a written request for a hearing within thirty days after issuance of such notification, then the notification of determination shall become the final determination of the commissioner. Any documents, reports, or information that form a basis for such determination shall be provided to the contractor or subcontractor no less than ten days before the hearing. For purposes of this subdivision, the term "unfit" shall mean a contractor or subcontractor who the commissioner determines to be unable to lawfully adhere to contractual obligations of this article and responsibilities including prevailing wage requirements pursuant to this article. Such determination shall be based on a clearly documented history, official record of past dealings, or a present demonstrable inability to lawfully adhere to such obligations and responsibilities.

5. If the registration of a contractor or subcontractor lapses while performing contracted work on a covered project, that contractor or subcontractor shall not be prohibited from completing its contracted work on such covered project. For a contractor or subcontractor who has been determined unfit while performing contracted work on a covered

1 project at the time of such determination, then the continuation of its
2 contracted work shall only continue if a monitor is appointed to oversee
3 the work completed at the sole expense of such contractor or subcontract-
4 tor. Nothing herein shall prevent a contractor or subcontractor from
5 fulfilling contractual obligations solely based on receiving a notice of
6 proposed determination of unfitness. Such monitor must be approved by
7 the commissioner.

8 6. No contractor shall bid on a contract for public work unless [~~they~~
9 ~~and all subcontractors listed in the bid, in addition to any subcontract-~~
10 ~~ors associated with wage and/or fringe benefit payments to employees on~~
11 ~~the public work project, are] such contractor is registered pursuant to
12 this section. In the case of a covered project subject to section two
13 hundred twenty-four-a or two hundred twenty-four-d of this article, or
14 other projects that are privately owned and subject to provisions of
15 this article, contractors must register prior to commencing any work on
16 a covered project. Subcontractors must be registered prior to commenc-
17 ing any work on a covered project. Further, each contractor must submit
18 their certificate of registration [~~as well as all certificates of regis-~~
19 ~~tration for any and all subcontractors for such contract]~~ at the time
20 the bid is made. Applications for registration shall not be accepted as
21 a substitute for a certificate of registration for the purposes of this
22 section. [~~For covered projects performed under private contract, the~~
23 ~~owner or developer of such project must ensure that any contractor which~~
24 ~~it hires, or subcontractor that is hired, to perform work on such~~
25 ~~project is registered pursuant to this section.~~~~

26 ~~6-]~~ 7. For covered projects as defined in section two hundred twenty-
27 four-a or two hundred twenty-four-d of this article or other projects
28 that are privately owned and subject to provisions of this article, the
29 owner or developer of such covered project must ensure that any contrac-
30 tor that is hired, or subcontractor that is hired, to perform work on
31 such project is registered pursuant to this section prior to that
32 contractor or subcontractor commencing work on the covered project for
33 which it was contracted.

34 8. a. A contractor who bids on a contract for public work knowing that
35 it is not registered, or [~~submits a bid with~~] allows a subcontractor to
36 commence work on a covered project that it knows or should have known is
37 not registered pursuant to subdivision [~~five~~] six of this section shall,
38 after notice and a hearing, be subject to a civil penalty of up to one
39 thousand dollars. For covered projects performed under private
40 contract, as defined in section two hundred twenty-four-a or two hundred
41 twenty-four-d of this article, or for other projects that are privately
42 owned and subject to the provisions of this article, an owner or devel-
43 oper who commences work with a contractor or subcontractor that it knows
44 or should have known is not registered pursuant to subdivision [~~five~~]
45 six of this section shall, after notice and hearing, be subject to a
46 civil penalty of up to one thousand dollars. A contractor or subcontrac-
47 tor who commences work on a covered project knowing that it is not
48 registered or contracts with a subcontractor that it knows or should
49 have known is not registered for work on a covered project shall, after
50 notice and hearing be subject to a civil penalty of up to one thousand
51 dollars. [~~Any subcontractor who commences work on any covered project~~
52 ~~knowing that it is not registered shall, after notice and hearing, be~~
53 ~~subject to a civil penalty of up to one thousand dollars.~~]

54 b. The commissioner may revoke or suspend a registration if a contrac-
55 tor or subcontractor has been finally determined to be in violation of
56 the prevailing wage requirements of this article, provided however that

1 such contractor or subcontractor shall be afforded a hearing prior to
2 any revocation or suspension.

3 c. Nothing in this section shall be construed to limit or supersede
4 the authority of any state or municipal entity to enforce existing labor
5 laws, safety standards, regulations, codes or any other existing laws
6 relative to public work.

7 d. A registration pursuant to this section is not necessary for a bid
8 or work on a contract for public work and penalties pursuant to this
9 section shall not apply when a state of emergency is declared pursuant
10 to section twenty-four of the executive law, when the governor declares
11 a disaster emergency pursuant to section twenty-eight of the executive
12 law, or when the President issues a major disaster or emergency declara-
13 tion and such work arises from or is in connection with the actual or
14 impending declared emergency or disaster or pursuant to an emergency
15 construction contract, or other contract entered into due to an urgent
16 and unexpected event where public safety or the conservation of public
17 resources is at risk, as authorized by law, including but not limited to
18 the public buildings law, the state finance law, the general municipal
19 law, or the public authorities law.

20 § 2. Subdivisions 7 and 8 of section 220-i of the labor law, as added
21 by a chapter of the laws of 2022 amending the labor law relating to
22 establishing a registration system for contractors and subcontractors
23 engaged in public work and covered projects in order to better enforce
24 existing labor laws and regulations in the public works industry, as
25 proposed in legislative bills numbers S. 5994-C and A. 1338-C, are
26 amended to read as follows:

27 ~~[7-]~~ 9. The ~~[department]~~ commissioner shall establish and maintain an
28 online system to make available all registrations and disclosures
29 required by this section, except for any personally identifiable infor-
30 mation, including home address and percentages of ownership interest in
31 privately held entities.

32 ~~[8-]~~ 10. The ~~[department]~~ commissioner shall prescribe regulations
33 necessary to carry out the provisions of this section ~~[within one~~
34 ~~hundred eighty days after its effective date]~~.

35 § 3. Section 2 of a chapter of the laws of 2022 amending the labor law
36 relating to establishing a registration system for contractors and
37 subcontractors engaged in public work and covered projects in order to
38 better enforce existing labor laws and regulations in the public works
39 industry, as proposed in legislative bills numbers S. 5994-C and A.
40 1338-C, is amended to read as follows:

41 § 2. (a) This act shall take effect immediately, provided however, (b)
42 subdivisions one through six of section 220-i of the labor law as added
43 by section one of this act shall take effect ~~[one year]~~ two years after
44 such date.

45 § 4. This act shall take effect immediately; provided however that the
46 provisions of section two of this act shall take effect on the same date
47 and in the same manner as subdivision (a) of section 2 of a chapter of
48 the laws of 2022 amending the labor law relating to establishing a
49 registration system for contractors and subcontractors engaged in public
50 work and covered projects in order to better enforce existing labor laws
51 and regulations in the public works industry, as proposed in legislative
52 bills numbers S. 5994-C and A. 1338-C, takes effect; provided further
53 that the provisions of section one of this act shall take effect on the
54 same date and in the same manner as subdivision (b) of section 2 of such
55 chapter of the laws of 2022, takes effect.