

# STATE OF NEW YORK

3057--B

2017-2018 Regular Sessions

## IN ASSEMBLY

January 25, 2017

Introduced by M. of A. MAGNARELLI, SKOUFIS, STECK, MAYER, COOK, JAFFEE, D'URSO, MOYA, HARRIS, ORTIZ, JENNE, BRONSON, BRINDISI -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, SIMON, WOERNER -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to establishing a registration system for contractors and subcontractors engaged in public work projects in order to better enforce existing labor laws and regulations in the public works industry

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

Section 1. The labor law is amended by adding a new section 220-i to read as follows:

§ 220-i. Registration system for contractors and subcontractors. 1. As used in this section:

a. "Contractor" means any contractor or subcontractor 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.

2. a. Prior to submitting a bid on a contract for a public work, a contractor shall register in writing with the bureau on a form provided by the commissioner. The form shall require the following information:

i. The name, principal business address and telephone number of the contractor.

ii. Whether the contractor is a person, partnership, association, joint stock company, trust, corporation, or other form of business entity.

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

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1 iii. The name and address of each person with a financial interest in  
2 the contractor and the percentage interest, except that if the contrac-  
3 tor is a publicly-traded corporation, the contractor shall supply the  
4 names and addresses of the corporation's officers.

5 iv. The contractor's tax identification number and unemployment insur-  
6 ance registration number.

7 v. Whether the contractor has any outstanding wage assessments against  
8 it, pursuant to this article.

9 vi. Whether the contractor has been debarred under New York or federal  
10 law within the last ten years.

11 vii. Whether the contractor has been debarred pursuant to the laws of  
12 any other state within the last ten years.

13 viii. Whether the contractor has been finally determined by the appro-  
14 priate authority to have violated any labor laws or employment tax laws  
15 including, but not limited to, the requirement to have workers' compen-  
16 sation coverage, payment of workers' compensation premiums, deduction  
17 and payment of income taxes, payment of unemployment insurance contrib-  
18 utions or payment of prevailing wage.

19 ix. Whether the contractor has been finally determined by the appro-  
20 priate authority to have violated any laws establishing workplace safety  
21 standards including the federal Occupational Safety and Health Act.

22 x. Whether or not the contractor is associated, or a signatory to, an  
23 apprenticeship program under article twenty-three of this chapter. If  
24 so, the apprenticeship program shall be provided by the contractor.

25 xi. Whether or not the contractor is a minority or women-owned busi-  
26 ness enterprise pursuant to the provisions of article fifteen-A of the  
27 executive law.

28 b. At the time of registration, and upon request, the contractor shall  
29 submit to the commissioner documentation demonstrating that the contrac-  
30 tor has workers' compensation insurance coverage for all workers as  
31 required by law. This information shall be made readily available to the  
32 public by the bureau within forty-eight hours of the initial public  
33 request.

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

39 4. Unless, following notice and a hearing, the bureau determines a  
40 contractor unfit to be registered, the commissioner shall issue a  
41 certificate of registration to the contractor upon receipt of the fee,  
42 form and documentation required by this section. A registration certif-  
43 icate shall be valid for two calendar years from the date of registra-  
44 tion. Registrations may be renewed not less than thirty days before the  
45 expiration date of the immediately preceding registration. The commis-  
46 sioner shall promulgate regulations to determine under what circum-  
47 stances a contractor would be unfit to be registered pursuant to this  
48 section. The notice to a contractor initially determined by the commis-  
49 sioner to be unfit based upon the registration application shall be in  
50 writing, shall not be conclusory, and shall state the factual basis upon  
51 which the determination is based. Any documents, reports, or information  
52 that form a basis for such determination shall be provided to the  
53 contractor within a reasonable time before the hearing. For purposes of  
54 this subdivision, the term "unfit" shall mean a contractor who the  
55 commissioner determines to be unable to lawfully adhere to public work  
56 contractual obligations and responsibilities including prevailing wage

1 requirements pursuant to this article. Such determination shall be based  
2 on a clearly documented history, official record of past dealings, or a  
3 present demonstrable inability to lawfully adhere to such obligations  
4 and responsibilities.

5 5. No contractor shall bid on a contract for public work unless they  
6 and all subcontractors listed in the bid, in addition to any subcontractors  
7 associated with wage and/or fringe benefit payments to employees on  
8 the public work project, are registered pursuant to this section.  
9 Further, each contractor must submit their certificate of registration  
10 as well as all certificates of registration for any and all subcontractors  
11 for such contract at the time the bid is made. Applications for  
12 registration shall not be accepted as a substitute for a certificate of  
13 registration for the purposes of this section.

14 6. a. A contractor who knowingly bids on a contract for public work  
15 without registering, or knowingly submits a bid with subcontractors that  
16 are not registered pursuant to subdivision five of this section shall,  
17 after notice and a hearing, be subject to a civil penalty of up to one  
18 thousand dollars.

19 b. The commissioner may revoke or suspend a registration if a contrac-  
20 tor or subcontractor has been finally determined to be in violation of  
21 the prevailing wage requirements of this article.

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

26 d. A registration pursuant to this section is not necessary for a bid  
27 or work on a contract for public work and penalties pursuant to this  
28 section shall not apply when a state of emergency is declared pursuant  
29 to section twenty-four of the executive law, when the governor declares  
30 a disaster emergency pursuant to section twenty-eight of the executive  
31 law, or when the President issues a major disaster or emergency declara-  
32 tion and such work arises from or is in connection with the actual or  
33 impending declared emergency or disaster or pursuant to an emergency  
34 construction contract, or other contract entered into due to an urgent  
35 and unexpected event where public safety or the conservation of public  
36 resources is at risk, as authorized by law, including but not limited to  
37 the public buildings law, the state finance law, the general municipal  
38 law, or the public authorities law.

39 7. The department shall prescribe regulations necessary to carry out  
40 the provisions of this section within one hundred eighty days after its  
41 effective date.

42 § 2. This act shall take effect immediately, provided however, subdi-  
43 visions five and six of section 220-i of the labor law as added by  
44 section one of this act shall take effect one year after such date and  
45 shall apply to bids for public work projects on or after such date.