

STATE OF NEW YORK

1802

2019-2020 Regular Sessions

IN ASSEMBLY

January 17, 2019

Introduced by M. of A. MAGNARELLI, STECK, COOK, JAFFEE, D'URSO, ORTIZ, BRONSON, BARNWELL, LIFTON -- Multi-Sponsored by -- M. of A. ENGLE-BRIGHT, SIMON, WOERNER -- read once and referred to the Committee on Labor

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:

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

3 § 220-i. Registration system for contractors and subcontractors. 1.
4 As used in this section:

5 a. "Contractor" means any contractor or subcontractor entering into a
6 contract to perform construction, demolition, reconstruction, exca-
7 vation, rehabilitation, repair, installation, renovation, alteration, or
8 custom fabrication, which is subject to the provisions of this article.

9 b. "Bureau" means the department's bureau of public works.

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

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

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

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

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

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1 iv. The contractor's tax identification number and unemployment insur-
2 ance registration number.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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