STATE OF NEW YORK

5994--C

Cal. No. 1216

2021-2022 Regular Sessions

IN SENATE

March 25, 2021

Introduced by Sens. RYAN, GAUGHRAN, MANNION, MATTERA, PALUMBO, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report -- reported favorably from said committee, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

AN ACT to amend the labor law, in relation 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

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.

c. "Covered project" means any project subject to the provisions of this article, including but not limited to, public work projects and those subject to the provisions of sections two hundred twenty-four-a and two hundred twenty-four-d of this article.

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

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2. a. Prior to submitting a bid on a contract for public work or commencing work on a covered project under private contract, 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.

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

iv. The contractor's tax identification number, unemployment insurance registration number, and workers' compensation board employee number.

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

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

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

viii. Whether the contractor has been finally determined by the appropriate authority to have violated any labor laws or employment tax laws including, but not limited to, the requirement to have workers' compensation coverage, payment of workers' compensation premiums, deduction and payment of income taxes, payment of unemployment insurance contributions or payment of prevailing wage.

ix. Whether the contractor has been finally determined by the appropriate authority to have violated any laws establishing workplace safety standards including the federal Occupational Safety and Health Act.

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

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

b. At the time of registration, and upon request, the contractor shall submit to the commissioner documentation demonstrating that the contractor has workers' compensation insurance coverage for all workers as required by law, including any and all declarations and information pages related to such policy which shall be electronically accessible and searchable to the public, provided however, that in no event shall a worker's name or other personal identifying information be included in such database. This information shall be made readily available to the public by the bureau within forty-eight hours of the initial public request.

3. The contractor 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 determines a contractor unfit to be registered, the commissioner shall issue a certificate of registration to the contractor 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 registra-

tion. Registrations may be renewed not less than thirty days before the expiration date of the immediately preceding registration. The commissioner shall promulgate regulations to determine under what circumstances a contractor would be unfit to be registered pursuant to this section; provided that a contractor shall not be determined to be unfit solely because a contractor was debarred within the last ten years, unless such contractor 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. 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. Any documents, reports, or information that form a basis for such determination shall be provided to the contractor no less than ten days before the hearing. For purposes of this subdivision, the term "unfit" shall mean a contractor 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. No contractor shall bid on a contract for public work unless they and all subcontractors listed in the bid, in addition to any subcontractors associated with wage and/or fringe benefit payments to employees on the public work project, are registered pursuant to this section. Further, each contractor must submit their certificate of registration as well as all certificates of registration for any and all subcontractors for such contract at the time the bid is made. Applications for registration shall not be accepted as a substitute for a certificate of registration for the purposes of this section. For covered projects performed under private contract, the owner or developer of such project must ensure that any contractor which it hires, or subcontractor that is hired, to perform work on such project is registered pursuant to this section.

6. a. A contractor who bids on a contract for public work knowing that it is not registered, or submits a bid with a subcontractor that it knows or should have known is not registered pursuant to subdivision five of this section shall, after notice and a hearing, be subject to a civil penalty of up to one thousand dollars. For covered projects performed under private contract, an owner or developer who commences work with a contractor or subcontractor that it knows or should have known is not registered pursuant to subdivision five of this section shall, after notice and hearing, be subject to a civil penalty of up to one thousand dollars. A contractor who commences work on a covered project knowing that it is not registered or contracts with a subcontractor that it knows or should have known is not registered for work on a covered project shall, after notice and hearing be subject to a civil penalty of up to one thousand dollars. Any subcontractor who commences work on any covered project knowing that it is not registered shall, after notice and hearing, be subject to a civil penalty of up to one thousand dollars.

b. The commissioner may revoke or suspend a registration if a contractor or subcontractor has been finally determined to be in violation of the prevailing wage requirements of this article.

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

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

7. The department shall establish and maintain an online system to make available all registrations and disclosures required by this section.

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

§ 2. This act shall take effect immediately, provided however, subdivisions one through six of section 220-i of the labor law as added by section one of this act shall take effect one year after such date.