

Public Works Contractor Registration Fee Budget Trailer Bill Language

**Requested Revisions to Labor Code sections 1725.5, 1771.1, and 1771.3**

SEC. 4. Section 1725.5 is added to the Labor Code to read:

1725.5. A contractor must be registered pursuant to this section in order to be qualified to bid on, be listed in a bid proposal pursuant to Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work that is subject to requirements of this chapter.

(a) To qualify for registration under this section, the applicant or a contractor must do all of the following:

(a) (1) Beginning July 1, 2014, register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial non-refundable registration-application fee of \$300 to qualify for registration under this section and an annual renewal fee on or before July 1st each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(b) (2) Provide such evidence, disclosures, or releases as are necessary to establish all of the following:

(1) (A) Workers' Compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker who the contractor will employ to perform work that is subject to prevailing wage requirements other than a contractor who, whether or not that person may otherwise be exempt from workers' compensation coverage requirements, unless that person is separately licensed-registered under this section. Coverage may be evidenced by a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance required under Section 7125 of the Business and Professions Code.

(B) Where applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(2) (C) The applicant or contractor does not have any outstanding delinquent liability to an employee or the state for any assessment of back wages, or related damages, interest, fines, or penalties due to an employee or the state pursuant to

any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the ~~applicant or contractor~~ will not be disqualified for any judgment, order, or determination that is ~~not yet final or is under appeal,~~ provided that the applicant or contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

~~(3) (D)~~ The applicant or contractor is not currently debarred under Section 1777.1 or under any other federal, or state, or local law providing for the debarment of contractors from public works.

~~(4) (E)~~ The applicant or contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered and licensed in accordance with this section, and licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code, within the preceding 24-12 months, or since the effective date of the requirements set forth in subdivision ~~(d)~~(f), whichever is shorter. For a contractor found to be in violation of the requirements of this paragraph only, the period of disqualification shall be waived if: (i) the contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months; and (ii) the contractor pays an additional non-refundable penalty registration fee of \$2,000.

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established pursuant to Section 1771.3 and shall be used only for the purposes specified in subdivision (b) of Section 1771.3.

(c) The term "contractor," as used in this section, shall include any subcontractor, as defined in Section 1722.1.

(d) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. A contractor who inadvertently fails to pay the renewal fee may retroactively renew its registration by paying an additional non-refundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(e) The requirements of this section shall not apply with respect to any contract, which as a result of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or decision by a court that classifies, after the time at

which the body awarding the contract accepts the contractor's bid or awards the contractor a contract, the work covered by the bid or contract as a "public work," as defined in this chapter, to which Section 1771 applies, provided that:

(1) The body awarding the contract failed to identify as a public work, in the bid specification or in the contract documents, that portion of the work that the determination or decision classifies as a "public work."

(2) Within twenty (20) days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2) of this subdivision.

~~(d)-(f)~~ The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work, as defined in this chapter, entered into on or after April 1, 2015.

SEC. 5. Section 1771.1 is added to the Labor Code, to read:

1771.1. (a) No contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal pursuant to Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered to perform public work pursuant to Section 1725.5. It shall not be a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Sections 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of this requirement shall be included in all bid invitations and public works contracts, and no bid shall be accepted nor any contract or

subcontract entered into without proof of the contractor or subcontractor's current eligibility to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following requirements are met: (1) the subcontractor is registered prior to the bid opening; (2) within 24 hours after the bid opening the subcontractor is registered and has paid the penalty registration fee specified in paragraph (E) of subdivision (2) of Section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) of this Section shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its website a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation. However, no contract for public work shall be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(e)-(g) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015.

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SEC. 7. Section 1771.3 is added to the Labor Code to read.

1771.3. (a) The State Public Works Enforcement Fund is hereby created as a special fund in the State Treasury. All registration fees collected pursuant to Section 1725.5 and such other moneys as are designated by statute or order shall be deposited in the fund and used for the purposes specified in subdivision (b) of this section.

(b) Moneys in the State Public Works Enforcement Fund shall be used only for the following purposes:

(1) The reasonable costs of administering the registration and qualification of contractors and subcontractors to perform public work pursuant to Section 1725.5.

(2) The costs and obligations associated with the administration and enforcement of the requirements of this chapter by the Department of Industrial Relations.

(3) The monitoring and enforcement of any requirement of the Labor Code by the Labor Commissioner on a public works project or in connection with the performance of public work as defined pursuant to this chapter.

(c) The annual contractor registration renewal fee specified in paragraph (1) of subdivision (a) of Section 1725.5, and any adjusted application or renewal fee, shall be set in amounts that are sufficient to support the annual appropriation approved by the Legislature for the State Public Works Enforcement Fund and not result in a fund balance greater than 25% of the appropriation. Any year-end balance in the fund greater than 25% of the appropriation shall be applied as a credit when determining any fee adjustments for the subsequent fiscal year.

(e) (d) To provide adequate cash flow for the purposes specified in subdivision (b), the Director of Finance, with the concurrence of the Secretary of the Labor and Workforce Development Agency, may approve a short-term loan each fiscal year from the Labor and Workforce Development Fund to the State Public Works Enforcement Fund.

(1) The maximum amount of the annual loan allowable may be up to, but shall not exceed 50% of the appropriation authority of the State Public Works Enforcement Fund in the same year in which the loan was made.

(2) For the purposes of this section, a "short-term loan" is a transfer that is made subject to the following conditions:

(A) Any amount loaned is to be repaid in full during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the annual Budget Act for the subsequent fiscal year.

(B) Loans shall be repaid whenever the funds are needed to meet cash expenditure needs in the loaning fund or account.