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**GOVERNMENT CODE - GOV**

**TITLE 1. GENERAL [100 - 7931.000]** ( Title 1 enacted by Stats. 1943, Ch. 134. )

**DIVISION 5. PUBLIC WORK AND PUBLIC PURCHASES [4000 - 4563]** ( Division 5 enacted by Stats. 1943, Ch. 134. )

**CHAPTER 6. Unfair and Coercive Insurance Requirements [4420 - 4422]** ( Chapter 6 added by Stats. 1967, Ch. 1665. )

**4420.** (a) No state or local governmental agency and no person acting on behalf of any state or local governmental agency, except a governmental agency created pursuant to agreement or compact with another state, shall, with respect to any public building or construction contract that is about to be or that has been competitively bid, require the bidder to make application to, furnish financial data to, or obtain or procure any surety bond or contract of insurance specified in connection with the contract or specified by any law, ordinance, or regulation from, a particular surety or insurance company, agent, or broker.

(b) Notwithstanding subdivision (a), a state or local governmental agency may use owner-controlled or wrap-up insurance with regard to a construction or renovation program for which the total cost exceeds fifty million dollars (\$50,000,000) if the agency meets all of the following conditions and certifies that it has made the following determinations:

(1) Prospective bidders, including contractors and subcontractors, meet minimum occupational safety and health qualifications established to bid on the project. The evaluation of prospective bidders shall be based on consideration of the following factors:

(A) Serious and willful violations of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, by a contractor or subcontractor during the past five-year period.

(B) The contractor's or subcontractor's workers' compensation experience modification factor.

(C) A contractor's or subcontractor's injury prevention program instituted pursuant to Section 3201.5 or 6401.7 of the Labor Code.

(2) The use of owner-controlled or wrap-up insurance will minimize the expenditure of public funds on the project in conjunction with the exercise of appropriate risk management.

(3) The program maintains completed operation coverage for a term for which the Insurance Commissioner has determined that coverage is reasonably commercially available, but in no event less than three years.

(4) Bid specifications clearly specify for all bidders the insurance coverage provided under the program and minimum safety requirements that must be met.

(5) The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor or subcontractor believes is necessary to protect from any liability arising out of the contract.

(6) The program does not include surety insurance.

(c) Safety requirements for a project subject to this section may be developed jointly between the agency and the prime contractor. If the agency requires a safety program different than the prime contractor's usual and customary program, the program shall be mutually agreed upon, taking into account the prime contractor's experience, expertise, existing labor agreements relating to safety issues, and any unique safety issues relating to the project.

(d) This section shall not affect any provision in a collective bargaining agreement specified in Section 3201.5 of the Labor Code that is submitted by the prime contractor with its construction bid.

(e) The use of owner-controlled or wrap-up insurance under this chapter does not abrogate, limit, or otherwise affect any potential liability that is otherwise available at law.

(f) For purposes of this section, the following terms have the following meanings:

(1) "Owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover all of the contractors and subcontractors on a given project for purposes of general liability and workers' compensation.

(2) "State governmental agency" means any state office, officer, department, division, bureau, board, commission, the University of California, or the California State University.

(3) "Local governmental agency" means any city, county, city and county, special district, authority, or other political subdivision of or within the state.

*(Amended by Stats. 2000, Ch. 763, Sec. 2. Effective January 1, 2001.)*

**4420.5.** (a) Section 4420 does not apply to any construction or renovation project undertaken by a school district or community college district.

(b) The district may use owner-controlled or wrap-up insurance with regard to a construction or renovation project if the district makes the following determinations:

(1) Prospective bidders, including contractors and subcontractors, meet minimum occupational safety and health qualifications established to bid on the project. The evaluation of prospective bidders shall be based on consideration of the following factors:

(A) Serious and willful violations of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, by a contractor or subcontractor during the past five-year period.

(B) The contractor's or subcontractor's workers' compensation experience modification factor.

(C) A contractor's or subcontractor's injury prevention program instituted pursuant to Section 3201.5 or 6401.7 of the Labor Code.

(2) The use of owner-controlled or wrap-up insurance will minimize the expenditure of public funds on the project in conjunction with the exercise of appropriate risk management.

(c) For purposes of this section, "owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover all of the contractors and subcontractors on a given project for purposes of general liability and workers' compensation.

(d) Any use of owner-controlled or wrap-up insurance pursuant to this section shall be subject to paragraphs (3) to (6), inclusive, of subdivision (b) of Section 4420 and subdivisions (c) and (d) of that section.

*(Amended (as amended by Stats. 1999, Ch. 521) by Stats. 2001, Ch. 734, Sec. 72. Effective October 11, 2001.)*

**4420.8.** (a) Notwithstanding subdivision (b) of Section 4420, commencing January 1, 1999, a state agency may utilize owner-controlled or wrap-up insurance programs if all of the following conditions are met:

(1) The total cost of the public works project is over one hundred twenty-five million dollars (\$125,000,000).

(2) The program maintains completed operation coverage for a term for which the Insurance Commissioner has determined that coverage is reasonably commercially available, but in no event less than three years.

(3) Bid specifications clearly specify for all bidders the insurance coverage provided under the program, and minimum safety requirements that must be met.

(4) The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor or subcontractor believes is necessary to protect themselves from any liability arising out of the contract.

(5) The program does not include surety insurance.

(b) Safety requirements for a public works project subject to this subdivision may be developed jointly between a state agency and the prime contractor. In the event that a state agency requires a safety program different than the prime contractor's usual and customary program, the program shall be mutually agreed upon, taking into account the prime contractor's experience, expertise, existing labor agreements relating to safety issues, and any unique safety issues relating to the project.

(c) This subdivision shall not affect any provision in a collective bargaining agreement specified in Section 3201.5 of the Labor Code that is submitted by the prime contractor with its construction bid.

(d) For purposes of this section, "owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover all of the contractors and subcontractors on a given project for purposes of general liability and workers' compensation.

(e) For purposes of this section, "public works project" means construction being performed at one site or at a series of contiguous sites separated only by a street, roadway, waterway, or railroad right-of-way, or along a continuous system for the provision of water and power.

*(Added by Stats. 1998, Ch. 679, Sec. 1. Effective January 1, 1999.)*

**4421.** This chapter shall not prevent the exercise by such officer or employee on behalf of the state or such public agency or public authority of the right to approve the form, sufficiency, or manner of execution of the surety bonds or contracts of insurance furnished by the surety or insurance company selected by the bidder to underwrite said bonds or contracts of insurance.

*(Added by Stats. 1967, Ch. 1665.)*

**4422.** All provisions in any invitation for bids, or in any of the contract documents, in conflict with this chapter are hereby declared to be contrary to the public policy of this state.

*(Added by Stats. 1967, Ch. 1665.)*