SB-674 Public Contracts: workforce development: covered public contracts. (2021-2022)

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Senate Bill No. 674

CHAPTER 875

An act to add and repeal Chapter 6.8 (commencing with Section 6980) of Part 1 of Division 2 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 674, Durazo. Public Contracts: workforce development: covered public contracts.

Existing law, the State Contract Act, governs contracting between state agencies and private contractors, and sets forth requirements for the bidding, awarding, and overseeing of contracts for projects.

This bill would establish the High Road Jobs in Transportation-Related Public Contracts and Grants Pilot Program to support the creation of equitable high-quality transportation and related manufacturing and infrastructure jobs. The bill would require a covered public contract, defined as a public contract awarded by the Department of General Services or the Department of Transportation for the acquisition of zero-emission transit vehicles or electric vehicle supply equipment valued at $10,000,000 or more, except as specified, to incorporate high road job standards, as specified.

This bill would require high road job standards, that warrant that the contractor and any subcontractors shall satisfy specified requirements, to be material terms of the final contract between the bidder and the relevant public agency. The bill would require the Department of General Services, in consultation with the Labor and Workforce Development Agency and the Department of Transportation, to develop and publish policies, procedures, and requirements applicable to covered public contracts in the State Contracting Manual for the purpose of implementing these provisions.

This bill would require, beginning 12 months after an entity is awarded a covered public contract, that the contractor annually submit information necessary to demonstrate its compliance with the specified requirements to the relevant public agency, and before it receives any final payment on a covered public contract, that it submit a final report that demonstrates its compliance with those requirements for the duration of the covered public contract to the relevant public agency. The bill would authorize a relevant public agency to withhold payments to the contractor of up to $10,000 for each missed report if a contractor fails to comply with the reporting requirements until the contractor takes steps to cure the defect, as specified. The bill would authorize a relevant public agency to permanently deduct $10,000 from the final payment, or the full payment, if the amount due is less than $10,000, if, after a specified time period, the contractor refuses to comply with the reporting requirements. The bill would authorize the Department of General Services to prescribe additional or alternative mechanisms for enforcing the reporting requirements described above for covered public contracts awarded pursuant to a master agreement or a master contact agreement.

This bill would declare that the state has an interest in rolling out zero-emission transit vehicles as quickly and expeditiously as possible and would require, to protect that interest from interruption due to a labor dispute, a contractor or subcontractor to enter into a labor peace agreement with an organization representing its employees, as specified, if the organization requests a labor peace agreement.

This bill would repeal its provisions on January 1, 2028.

This bill would state that its provisions are severable.
Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 6.8 (commencing with Section 6980) is added to Part 1 of Division 2 of the Public Contract Code, to read:

CHAPTER 6.8. High Road Jobs in Transportation-Related Public Contracts and Grants Pilot Program

6980. This chapter shall be known, and may be cited, as the High Road Jobs in Transportation-Related Public Contracts and Grants Pilot Program.

6981. (a) The Legislature finds and declares all of the following:

(1) In a time of uncertainty with so many Americans out of work, employment stability and equity are a primary concern.

(2) Spending on green investments creates more jobs per dollar than other infrastructure investments and these jobs are accessible and well paying. Every one million dollars ($1,000,000) in spending on renewable energy creates 7.5 full-time jobs.

(3) Historically vulnerable groups have been disproportionately impacted by economic downturns. For example, for every one percentage point increase in the overall unemployment rate, there is a 1.8-percent increase in African American unemployment.

(4) It is essential that the state, in cooperation with the federal government, use all practical and commercially feasible means to promote the prompt and efficient development of energy sources that are renewable or that more efficiently use and conserve scarce energy resources.

(5) It is in the public interest to do all of the following:

(A) Prioritize reversing factors that have resulted in disproportionate health impacts and economic suffering due to the coronavirus (COVID-19) pandemic among California's low-income communities, communities of color, and immigrant communities that have historically faced underinvestment and discriminatory policies.

(B) Promote sustainable and renewable energy sources, implement measures that increase efficient energy use, advance transportation technologies that reduce the degradation of the environment, lessen the state's dependence of fossil fuels, and protect the health, welfare, and safety of the people of this state.

(C) Spend resources to avoid recreating historical patterns of injustice by allocating resources in a manner that will create a just transition to a green, regenerative economy, founded on climate, racial, and economic justice, that puts an end to extreme inequality and systemic racial injustice, and ensures all Californians have a clean and safe environment in which to live, work, and play.

(D) Support a just recovery where workers from all sectors who have lost wages or jobs as a direct result of the pandemic will be prioritized for new employment opportunities that guarantee family-sustaining incomes, pensions, benefit training, retraining, and early retirement assistance.

(E) Require recovery spending to include a mandate for a robust, fully funded public sector that includes significant investments in job creation and community development with a particular focus on a just transition for affected workers.

(F) Expend resources in a broadly inclusive economic and democratic process that ensures robust, accessible opportunities for all Californians to determine the future of our government and economy.

(G) Allocate state funds to programs, businesses, organizations, agencies, and institutions that provide the greatest opportunities for good green jobs, strong labor provisions, and climate-based solutions in a manner that is consistent with the urgency of the climate crisis and the need to make rapid and sustained reductions in greenhouse gases and statewide emissions reduction targets and recommendations from the Intergovernmental Panel on Climate Change.

(H) Ensure that recovery funds reach communities most impacted by the coronavirus (COVID-19) pandemic and prioritize high road employers, as identified by the Labor and Workforce Development Agency, to enhance labor standards, workers' rights, career pathways, and community benefits.

(I) Restore frontline communities and rapidly accelerate achievements in environmental justice and climate goals, including, but not limited to, climate, environmental, and biodiversity protection and stimulating growth.

(b) It is therefore the intent of the Legislature to support the creation of equitable high-quality transportation and related manufacturing and infrastructure jobs in California through the enactment and implementation of this chapter.

6982. Unless the context requires otherwise, for the purposes of this chapter, the following terms shall have the following meanings:

(a) (1) “Bidder” means a private entity that applies, bids, or seeks qualification for a covered public contract. “Bidder” may be more than a single entity.

(2) “Bidder” shall not include a firm, as defined in Section 4525 of the Government Code.

(b) “Contractor” means a private entity that has been awarded a covered public contract.

(c) (1) Except as provided in paragraph (2), “covered public contract” means, to the extent otherwise permitted by law, a public contract awarded by a relevant public agency for the acquisition of zero-emission transit vehicles or electric vehicle supply equipment valued at ten million dollars ($10,000,000) or more.

(2) (A) “Covered public contract” does not mean contracts for the construction or design of infrastructure, including, but not limited to, roads, bridges, or highways.

(B) “Covered public contract” does not mean a local agreement approved by the Labor and Workforce Development Agency that creates high road jobs.

(C) “Covered public contract” does not mean a contract relating to architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(D) “Covered public contract” does not include any of the following:

(i) A contract awarded before January 1, 2023.

(ii) A contract awarded based on a solicitation issued before January 1, 2023.

(iii) A grant or contract related to a grant award announced pursuant to a call for projects that occurred before January 1, 2023.

(d) “High road job standards” means a set of contract terms developed pursuant to Section 6983 that is a material part of the final contract between the bidder and the relevant public agency. Noncompliance with these commitments would violate the terms of the covered public contract.

(e) “Relevant public agency” means the Department of General Services or the Department of Transportation.

(f) “Subcontractor” means a private entity performing a portion of the work of the covered public contract through a subcontract or subgrant.

(g) “Zero-emission transit vehicle” means a vehicle, including, but not limited to, one operated on rails or tracks, which is used for public transportation service and which carries more than 20 persons, including the driver, that produces no emissions of criteria pollutants, toxic air contaminants, and greenhouse gases when stationary or operating.

6983. (a) It is the intent of the Legislature that a relevant public agency maximize economic cobenefits by conditioning eligibility to be awarded a covered public contract on a commitment to comply with the labor standards established in this section.

(b) A covered public contract shall incorporate high road job standards designed to achieve the following goals:

(1) Support the creation and retention of quality, nontemporary and full-time jobs that provide high wages, including benefits and access to training.

(2) Support the hiring of displaced workers and individuals facing barriers to employment.

(3) Encourage the development of the state’s long-term, climate-sustainable transportation and related infrastructure and manufacturing sectors.

(4) Protect public health by supporting the adoption of specific protections for worker health and safety.

(c) At a minimum, the high road jobs standards shall warrant that the contractor, and any subcontractors that it may use to fulfill the covered public contract, shall satisfy the following requirements:

(1) Individuals performing work to fulfill the covered public contract shall not be misclassified as independent contractors.

(2) The contractor and any subcontractors performing work to fulfill the covered public contract shall comply with all applicable federal, state, and local laws pertaining to paid sick leave, including any antiretaliation provisions contained in those laws.

(3) The contractor and any subcontractors performing work to fulfill the covered public contract shall comply with all applicable safety and health laws and regulations, and shall comply with the employee protections set forth in Sections 6310 and 6311 of the Labor Code.

(4) The contractor shall warrant that it complies, and will continue to comply, with the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.) and all regulations thereunder.

(d) A relevant public agency may incorporate additional high road factors, as defined in subdivision (r) of Section 14005 of the Unemployment Insurance Code, into its scoring criteria for covered public contracts, including, but not limited to, a consideration of job creation, wages, and benefits.

(e) The Department of General Services, in consultation with the Labor and Workforce Development Agency and the Department of Transportation, shall develop and publish policies, procedures, and requirements applicable to covered public contracts in the State Contracting Manual for the purpose of implementing this chapter. The exemption established in Section 14615.1 of the Government Code shall apply to these policies, procedures, and requirements.

(f) The programs created pursuant to this chapter shall not apply to solicitations or covered public contracts issued before January 1, 2023.

6984. (a) Beginning 12 months after an entity is awarded a covered public contract, the contractor shall annually submit information that is necessary to demonstrate its compliance with the requirements, as specified in Sections 6983 and 6985, to the relevant public agency.

(b) Before receiving any final payment on a covered public contract, a contractor shall submit a final report to the relevant public agency that demonstrates its compliance with the requirements, as specified in Sections 6983 and 6985, for the duration of the covered public contract.

(c) If a contractor fails to comply with the reporting requirements specified in subdivision (a), for each missed report the relevant public agency shall withhold ten thousand dollars ($10,000) in payment to the contractor, or the full payment to the contractor if the amount due is less than ten thousand dollars ($10,000), until the contractor takes steps to cure the defect, pursuant to subdivision (e).

(d) If a contractor fails to comply with the final reporting requirements specified in subdivision (b), the relevant public agency shall withhold ten thousand dollars ($10,000) from the final payment, or the full final payment, if the amount due is less than ten thousand dollars ($10,000), until the contractor takes steps to cure the defect, pursuant to subdivision (e).

(e) A contractor that fails to comply with the reporting requirements established in subdivision (a) or (b) shall, after notice, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 calendar days, but not more than 30 calendar days from the date of notice, the contractor refuses to comply with the reporting requirements, the relevant public agency shall permanently deduct ten thousand dollars ($10,000) from the final payment, or the full payment if the amount due is less than ten thousand dollars ($10,000).

(f) For covered public contracts awarded pursuant to a master agreement or master contract agreement, the Department of General Services may prescribe additional or alternative mechanisms for enforcing the reporting requirements described in subdivisions (a) and (b).

(g) This section does not limit the availability of standard breach of contract remedies if a contractor fails to comply with the requirements specified in Sections 6983 and 6985, including, but not limited to, termination of the covered contract.

6985. (a) The Legislature declares all of the following:

(1) California will experience an increased prevalence of severe wildfires, heat, drought, and rising sea levels in the coming years as a result of climate change.

(2) The effects of climate change have already cost the state billions of dollars and will only continue to increase if we do not take immediate and decisive action to cut emissions. To name a few, these costs include all of the following:

(A) In 2018, California wildfire damages were estimated to total one hundred forty-eight billion five hundred million dollars ($148,500,000,000).

(B) The 2021 drought directly cost the California agriculture sector about one billion one hundred million dollars ($1,100,000,000) and nearly 8,750 full- and part-time jobs.

(C) The sea level along California's coasts is projected to rise by as much as 20 to 55 inches by the end of the century. A 55-inch sea level rise could put nearly half a million people at risk of flooding by 2100, and threaten one hundred billion dollars ($100,000,000,000) in costs to property and infrastructure, including roadways, buildings, hazardous waste sites, power plants, parks, and tourist destinations.

(3) The Intergovernmental Panel on Climate Change (IPCC) has found global emissions must be reduced by 43 percent by 2030 in order to limit global warming to around 1.5 degrees Celsius.

(4) The transportation sector in California accounts for 41 percent of the state’s total carbon emissions.

(5) Recognizing the extreme financial threat climate change poses to the economy of California, the state has a financial interest in rolling out zero-emission transit vehicles as quickly and expeditiously as possible.

(b) To protect the state’s proprietary and economic interests in performing the covered public contract without interruption due to the economic effects of a labor dispute, the contractor and any subcontractors performing work to fulfill the covered public contract, shall enter into a labor peace agreement with any organization of any kind in which its employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and which requests a labor peace agreement.

(1) The labor peace agreement shall include a binding and enforceable provision prohibiting the organization and its members from engaging in picketing, work stoppages, boycotts, or any other economic interference for the duration of the labor peace agreement, which shall include the entire term of the covered public contract.

(2) This subdivision shall not be construed as requiring a contractor or any subcontractor to change terms and conditions of employment for its employees, recognize a labor organization as the bargaining representative for its employees, adopt any particular recognition process, or enter into a collective bargaining agreement with a labor organization.

(3) This subdivision does not abridge the rights, privileges, and benefits afforded by federal law, as applicable, including, but not limited to, Section 5333 of Title 49 of the United States Code.

6986. This chapter shall remain in effect only until January 1, 2028, and as of that date is repealed.

SEC. 2. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.