

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Cottie Petrie-Norris, Chair

AB 964 (Ortega) – As Amended April 11, 2023

SUBJECT: State contracts: certification process

SUMMARY: This bill would revise the current contracting requirements for any state agency for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, to also require a contractor to certify, under penalty of perjury, that the contract complies with specified requirements relating to human trafficking, including certain prohibitions on contractors, contractor employees, subcontractors, subcontractor employees, and their agents. Specifically, **this bill:**

- 1) The bill would provide that a contractor is ineligible for, and shall not bid on, or submit a proposal for, a contract under these provisions if the contractor has failed to certify its compliance.
- 2) The bill would also require a contractor to exercise due diligence in ensuring that its subcontractors comply with those requirements, including requiring each subcontractor to sign a certification under penalty of perjury.
- 3) This bill would require, before a contract or subcontract is awarded, a proposed contractor or proposed subcontractor to provide a certification to the contracting officer or contractor, as applicable, that states the contractor or subcontractor has implemented a compliance plan, as specified, and has conducted due diligence that either (1) to the best of the contractor's or subcontractor's knowledge and belief, certain parties have not engaged in any specified prohibited activities or (2) if the contractor or subcontractor is aware of abuses relating to the specified prohibited activities, then certain parties have taken the appropriate remedial and referral actions.
- 4) This bill would require contractors and subcontractors to notify employees of specified prohibited activities and the actions that may be taken against them for violations.
- 5) The bill would also require, after the contract or subcontract is awarded and during the performance period of the contract or subcontract, a contractor or subcontractor to provide an annual certification to the contracting officer or contractor, as applicable, that states that the above-mentioned compliance plan has been implemented and has conducted due diligence regarding the above requirements.
- 6) This bill would specify certain actions a contractor would be required to take if a contractor, contractor employee, subcontractor, subcontractor employee, or agent violates these provisions or specified federal provisions, including, among others, notifying it's employees of the actions that will be taken against the employee or agent for violations.
- 7) This bill would authorize additional sanctions to be imposed on a contractor contracting with the state, including, among others, requiring a contractor to remove a contractor employee from the performance of the contract, requiring the contractor to terminate a

subcontractor, and suspending contract payments until the contractor has taken appropriate remedial action.

- 8) The bill would also specify that these requirements govern contracts and subcontracts entered into by a state agency, regardless of place of performance.

EXISTING LAW: Imposes a series of requirements on state contractors awarded state contracts for the procurement of equipment, materials, supplies and garments. It requires that all state contractors comply with a Department of Industrial Relations contractor responsibility program, including a "Sweatfree Code of Conduct." More specifically, it provides that:

State contractors must certify that no foreign-made equipment, materials, or supplies provided under contract are produced by forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit thereof.

Contractors providing or laundering apparel, garments or corresponding accessories, materials, equipment or supplies, must certify that no materials furnished to the state pursuant to the contract have been produced by sweatshop labor.

Contracting between state agencies and any contractor that does not meet the terms and conditions of employment ("the Sweatfree Code of Conduct"), including payment of non-poverty wages, is prohibited. Imposes liability on any contractor that knows or should have known they were not in compliance.

Certain sanctions may be imposed if a contractor contracting with the state who knew or should have known that the apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state were laundered or produced in violation of specified conditions, including, among others, voiding the contract under which the prohibited apparel, garments, or corresponding accessories, equipment, materials, or supplies were laundered or provided at the option of the state agency and removing the contractor from the bidder's list for a period not to exceed 360 days. **(Public Contract Code Section 6108)**

FISCAL EFFECT: Unknown. This bill has not been analyzed by a fiscal committee.

COMMENTS:

Author's Purpose and Intent.

"Human trafficking and forced labor have no place in California. As the fourth largest economy in the world, we must do all we can to protect the workers that enable us to enjoy such a thriving economy. AB 964 will ensure that the State of California prevents any and all labor trafficking within the supply chains of the companies it contracts with by providing guidelines each contractor needs to meet in order to enter into a procurement contract with the state. This bill will hold our procurement system to the highest standard when it comes to contracting with private companies and represents a major step closer to ending forced labor, child labor, and sex trafficking in California."

In general, the adoption of this bill would do the following:

- 1) Ensure clear definitions of what constitutes human trafficking and/or forced labor, recruitment fees (often used to entrap workers in forced labor), and who qualifies as a subcontractor.
- 2) Provides further guidance on prohibited actions that involve fraud and misrepresentation for government solicitations and contracts including failing to provide key terms of employment in a worker's native language, charging recruitment fees, and failing to provide return transportation for workers.
- 3) Requires a California government contractor to certify a compliance plan for all its subcontractors.

Background.

Existing law requires state agencies to provide in every contract for procurement of equipment, materials, or supplies, other than procurement related to a public works contract, that the contractor certify that no foreign-made equipment, materials, or supplies provided under contract are produced by forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit thereof. By placing various requirements on contractors seeking to do business with the state or other governmental entities within the state, including the "Sweatshop Code of Conduct", the existing state contracting process is designed to improve working conditions in the United States and overseas.

These restrictions on state contracting notwithstanding, it is the general state policy to require a competitive bidding process to ensure that the state contracts with qualified responsible suppliers at the lowest possible cost.

Need to Update Current Law.

California's current law to protect California contractors' employees was in adopted in 2003. Today's global supply chains have become far more complex with raw materials crossing international borders, creating greater uncertainty about how those materials were produced. There have been a number of recent studies confirming that human trafficking in the supply chain continues to be a serious problem.

In 2012, President Barack Obama signed Executive Order 13627 directing his administration to adopt regulations to strengthen the federal government's zero-tolerance policy on trafficking in persons by federal contractors and subcontractors in solicitations, contracts, and subcontracts for supplies and services. This Executive Order was ultimately codified in Title 48 Code of Federal Regulations Subpart 22.17 – Combating Trafficking in Persons (48 C.F.R. Subpart 22.17).

In the Executive Order, President Obama stated "[as] the largest single purchaser of good and services in the world, the United States Government bears a responsibility to ensure that taxpayer dollars do not contribute to trafficking in persons." He also stated "by providing additional clarity to Government contractors and subcontractors on the steps necessary to fully comply with that policy, this order will help to protect vulnerable individuals as contractors and subcontractors perform vital services and manufacture the good procured by the United States."

The provisions of this bill parallel the provisions of Executive Order 13627 and 48 C.F.R. Subpart 22.17.

PREVIOUS LEGISLATION:

SB 578 (Alarcon), Chapter 711, Statutes of 2003, enacted non-sweatshop labor guidelines to state procurement policies that ensure that goods and services purchased by the State be produced in workplaces that adhere to minimum standards for protecting workers.

SB 1888 (Hayden), Chapter 891, Statutes of 2000, extended the existing law prohibiting state agencies from procuring foreign goods made by forced labor, convict labor, of indentured labor to include goods made by abusive forms of child labor or exploitation of children in sweatshop labor.

AB 2457 (Figueroa), Chapter 1149, Statutes of 1996, required every contract entered into by a state agency for the procurement of equipment, materials or supplies to specify that no foreign-made equipment, materials or supplies furnished to the state may be produced by forced labor, convict labor or indentured labor under penal sanction.

REGISTERED SUPPORT / OPPOSITION:

Support

Loyola Law School, the Sunita Jain Anti-trafficking Initiative (Co-Sponsor)
Western Center on Law & Poverty (Co-Sponsor)
3strands Global Foundation
AFSCME
California Catholic Conference
California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation, INC.
California State Council of Service Employees International Union (SEIU California)
Center for Human Rights and Constitutional Law
Dolores Street Community Services
Freedom Network USA
International Corporate Accountability Roundtable (ICAR)
Loyola Law School, Loyola Immigrant Justice Clinic
Public Counsel
Thai Community Development Center
Verite
Waymakers
Worksafe>

Opposition

None on file.

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