

AMENDED IN ASSEMBLY MAY 28, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1853**

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**Introduced by Assembly Member Huffman**  
*(Coauthors: Assembly Members Jones and Torlakson)*

February 12, 2010

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An act to add Chapter 2.3 (commencing with Section 2030) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1853, as amended, Huffman. Public contracts: bid preferences: employee health care expenditures.

Existing law imposes various requirements with respect to contracting by public entities.

This bill would require a state agency awarding a public works contract to provide a 2% bid preference to a bidder ~~whose employee health care expenditures, and those of its subcontractors, are at least 6.5% of the aggregate social security wages paid to its employees in California~~ *or subcontractor meeting specified criteria related to providing employee health care coverage*. This bill would require a bidder and its subcontractors to submit statements certifying that they qualify for the bid preference, would require the bidder and contractors to continue to make employee health care expenditures, as specified, and would impose civil penalties in connection therewith, as provided. This bill would become operative on January 1, ~~2011~~ 2012, *and would not apply to contracts advertised for bid on or after January 1, 2017*.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 2.3 (commencing with Section 2030) is  
2 added to Part 1 of Division 2 of the Public Contract Code, to read:

3  
4 CHAPTER 2.3. EMPLOYEE HEALTH CARE ~~EXPENDITURE~~  
5 COVERAGE BID PREFERENCE  
6

7 2030. The Legislature finds and declares that the state and the  
8 state’s political subdivisions incur substantial direct and indirect  
9 expenses when employers do not pay for employee health care  
10 expenses. Accordingly, it makes economic sense for state agencies  
11 to offer a bid preference to contractors that pay for employee health  
12 care expenses for employees in California.

13 2031. Whenever a statute requires a state agency to award a  
14 public works contract to the lowest bidder or lowest responsible  
15 bidder, the state agency shall provide a 2-percent bid preference  
16 to a bidder that qualifies for the employee health care expenditure  
17 bid preference. This preference shall be calculated by reducing the  
18 bid by 2 percent of the amount of the bid for purposes of comparing  
19 the bid with competing bids.

20 2032. A bidder shall be entitled to claim the employee health  
21 care expenditure bid preference only if the bidder and all of the  
22 bidder’s listed subcontractors each qualify for the bid preference.

23 2033. (a) A bidder, or a subcontractor, qualifies for the  
24 employee health care expenditure bid preference if, during the  
25 12-month period immediately preceding submission of the bid,  
26 ~~the bidder’s, or subcontractor’s, aggregate California employee~~  
27 ~~health care expenditures were at least equal to 6.5 percent of the~~  
28 ~~bidder’s, or subcontractor’s, aggregate California social security~~  
29 ~~wages the bidder, or subcontractor, provided credible health care~~  
30 ~~coverage.~~ A bidder, or a subcontractor, that employed employees  
31 in California for more than three months but fewer than 12 months  
32 immediately preceding submission of the bid qualifies for the  
33 employee health care expenditure bid preference if, during that  
34 ~~period of time, the bidder’s, or subcontractor’s, aggregate~~  
35 ~~California employee health care expenditures were at least equal~~  
36 ~~to 6.5 percent of the bidder’s, or subcontractor’s, aggregate~~  
37 ~~California social security wages.~~

1 ~~(b) The bidder, or subcontractor, shall spend at least 6.5 percent~~  
2 ~~of the bidder's, or subcontractor's, aggregate California social~~  
3 ~~security wages on health care for its employees for not less than~~  
4 ~~period of time, the bidder, or subcontractor, provided credible~~  
5 ~~health care coverage.~~

6 *(b) The bidder, or subcontractor, shall provide credible health*  
7 *care coverage for not less than one year following acceptance of*  
8 *the bid.*

9 (c) In the event of the failure of a bidder, or subcontractor, to  
10 comply with subdivision (b), that bidder, or subcontractor, shall  
11 pay the state agency an amount equal to twice the cost that the  
12 bidder, or subcontractor, would have incurred for health care, if it  
13 had complied with the provisions of subdivision (b). *A bidder shall*  
14 *not be liable for a subcontractor's failure to comply with*  
15 *subdivision (b).*

16 2034. (a) A bidder may claim an employee health care  
17 expenditure bid preference by submitting separate statements from  
18 the bidder and all of the bidder's listed subcontractors, each  
19 certifying that it qualifies for the bid preference. The Department  
20 of General Services, working with the Department of Industrial  
21 Relations, shall develop a form for this purpose, and a bidder that  
22 seeks the bid preference under this chapter, and all the bidder's  
23 listed subcontractors, shall use that form.

24 (b) A person or entity that knowingly provides false information  
25 in the certification required by this section shall be subject to a  
26 civil penalty for each violation in the minimum amount of two  
27 thousand five hundred dollars (\$2,500) and the maximum amount  
28 of twenty-five thousand dollars (\$25,000). An action for a civil  
29 penalty under this section may be brought by any public prosecutor  
30 in the name of the people of the State of California.

31 2035. (a) If the winning bidder has claimed an employee health  
32 care expenditure bid preference, at the request of the state agency,  
33 the bidder and the bidder's listed subcontractors shall supply to  
34 the state agency records sufficient to show that the bidder is entitled  
35 to the preference. The failure to supply the records within a  
36 reasonable time shall result in denial of the bid preference.

37 *(b) If the winning bidder is denied the employee health care*  
38 *expenditure bid preference because of the failure of a listed*  
39 *subcontractor to establish its entitlement to the bid preference, the*  
40 *winning bidder shall be granted 14 days to substitute a new*

1 subcontractor that is entitled to the bid preference, and the original  
2 subcontractor shall be liable to the winning bidder for any  
3 reasonable increase in the cost of the new subcontract.

4 2036. For purposes of this chapter, the following terms have  
5 the following meanings:

6 ~~(a) “Aggregate California employee health care expenditures”~~  
7 ~~means all amounts paid by the bidder, or a subcontractor, to the~~  
8 ~~bidder’s, or subcontractor’s, employees in California or to a third~~  
9 ~~party on behalf of the bidder’s, or subcontractor’s, employees in~~  
10 ~~California, for the purpose of providing health care services to the~~  
11 ~~employees or reimbursing the cost of those services for the~~  
12 ~~employees, including, but not limited to, all of the following:~~

13 ~~(1) Contributions on behalf of employees to a health savings~~  
14 ~~account, as defined under Section 223 of the Internal Revenue~~  
15 ~~Code, or to any other account having substantially the same~~  
16 ~~purpose or effect without regard to whether the contributions~~  
17 ~~qualify for a tax deduction or are excludable from employee~~  
18 ~~income.~~

19 ~~(2) Reimbursement to employees for expenses incurred in the~~  
20 ~~purchase of health care services.~~

21 ~~(3) Payments to a third party for the purpose of providing health~~  
22 ~~care services for employees.~~

23 ~~(4) Payments pursuant to a collective bargaining agreement for~~  
24 ~~the purpose of providing health care services for employees.~~

25 ~~(5) Costs incurred in the direct delivery of health care services~~  
26 ~~to employees.~~

27 ~~(b) “Aggregate California social security wages” means the~~  
28 ~~aggregate amount of wages paid to all of the bidder’s, or~~  
29 ~~subcontractor’s, employees in California, not including any wages~~  
30 ~~that are above the federal social security contribution and benefit~~  
31 ~~base, sometimes referred to as the social security wage base, for~~  
32 ~~the year in which they are paid.~~

33 ~~(c) “Health care services” means medical care, services, or~~  
34 ~~goods that may qualify as tax deductible medical care expenses~~  
35 ~~under Section 213 of the Internal Revenue Code, or medical care,~~  
36 ~~services, or goods having substantially the same purpose or effect~~  
37 ~~as those deductible expenses.~~

38 ~~(a) “Credible health care coverage” means any group policy,~~  
39 ~~contract, or program that is written or administered by a disability~~  
40 ~~insurer, health care service plan, fraternal benefits society,~~

1 *self-insured employer plan, or any other entity, in this state or*  
2 *elsewhere, and that arranges or provides medical, hospital, and*  
3 *surgical coverage not designated to supplement other private or*  
4 *governmental plans.*

5 ~~(d)~~

6 (b) “State agency” means a department, division, board, bureau,  
7 commission, or agency of the executive branch of government.

8 2037. This chapter shall become operative on January 1, 2012.

9 2038. *This chapter shall not apply to contract advertised for*  
10 *bid on or after January 1, 2017.*

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