

ASSEMBLY BILL

No. 26

Introduced by Assembly Member Hernandez

December 1, 2008

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 26, as introduced, Hernandez. 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. 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.

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:

1 CHAPTER 2.3. EMPLOYEE HEALTH CARE EXPENDITURE BID
2 PREFERENCE

4 2030. The Legislature finds and declares that the state and the
5 state's political subdivisions incur substantial direct and indirect
6 expenses when employers do not pay for employee health care
7 expenses. Accordingly, it makes economic sense for state agencies
8 to offer a bid preference to contractors that pay for employee health
9 care expenses for employees in California.

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

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

2033. (a) A bidder, or a subcontractor, qualifies for the
employee health care expenditure bid preference if, during the
12-month period immediately preceding submission of the bid,
the bidder's, or subcontractor's, aggregate California employee
health care expenditures were at least equal to 6.5 percent of the
bidder's, or subcontractor's, aggregate California Social Security
wages. A bidder, or a subcontractor, that employed employees in
California for more than three months but fewer than 12 months
immediately preceding submission of the bid qualifies for the
employee health care expenditure bid preference if, during that
period of time, the bidder's, or subcontractor's, aggregate
California employee health care expenditures were at least equal
to 6.5 percent of the bidder's, or subcontractor's, aggregate
California Social Security wages.

34 (b) The bidder, or subcontractor, shall spend at least 6.5 percent
35 of the bidder's, or subcontractor's, aggregate California Social
36 Security wages on health care for its employees for not less than
37 one year following acceptance of the bid.

(c) In the event of the failure of a bidder, or subcontractor, to comply with subdivision (b), that bidder, or subcontractor, shall pay the state agency an amount equal to twice the cost that the

bidder, or subcontractor, would have incurred for health care, if it had complied with the provisions of subdivision (b).

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

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

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

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

(a) "Aggregate California employee health care expenditures" means all amounts paid by the bidder, or a subcontractor, to the bidder's, or subcontractor's, employees in California or to a third party on behalf of the bidder's, or subcontractor's, employees in California, for the purpose of providing health care services to the employees or reimbursing the cost of those services for the employees, including, but not limited to, all of the following:

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

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

1 (3) Payments to a third party for the purpose of providing health
2 care services for employees.

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

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

7 (b) “Aggregate California Social Security wages” means the
8 aggregate amount of wages paid to all of the bidder’s, or
9 subcontractor’s, employees in California, not including any wages
10 that are above the federal Social Security contribution and benefit
11 base, sometimes referred to as the Social Security wage base, for
12 the year in which they are paid.

13 (c) “Health care services” means medical care, services, or
14 goods that may qualify as tax deductible medical care expenses
15 under Section 213 of the Internal Revenue Code, or medical care,
16 services, or goods having substantially the same purpose or effect
17 as those deductible expenses.

18 (d) “State agency” means a department, division, board, bureau,
19 commission, or agency of the executive branch of government.

20 2037. This chapter shall become operative on January 1, 2011.