
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 1838	Hearing Date:	June 17, 2026
Author:	Berman		
Version:	June 11, 2026		
Urgency:	No	Fiscal:	Yes
Consultant:	Emma Bruce		

SUBJECT: Public contracts: local agencies: responsive bidders

KEY ISSUE

This bill requires a contractor submitting a bid to a local agency for a public works contract to fully disclose any history of wage and hour violations and provide supporting documentation, as specified.

ANALYSIS

Existing law:

- 1) Establishes the Department of Industrial Relations (DIR), within the Labor and Workforce Development Agency, to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (Labor Code §50 et seq.)
- 2) Defines “public works,” for the purposes of regulating public works contracts, as, among other things, construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, out of public funds. (Labor Code §1720(a))
- 3) Requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a “public works” project costing over \$1,000 dollars and imposes misdemeanor penalties for violation of this requirement. (Labor Code §1771)
- 4) Requires contractors and subcontractors to register with the DIR, as specified, to be qualified to bid on, be listed in a bid proposal, or engage in the performance for any public work contract. (Labor Code §1725.5)
- 5) Provides that the Public Contract Code is the basis of contracts between most public entities in the state and their contractors and subcontractors. Applies the Public Contract Code to charter cities in the absence of an express exemption or a city charter provision or ordinance that conflicts with the relevant provision of this code. (Public Contract Code §1100.7)
- 6) Defines “public works contract,” to mean an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. (Public Contract Code §1101)
- 7) Defines a “responsible bidder” to mean a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract. (Public Contract Code §1103)

- 8) Requires, if a public entity awards a contract, that it be awarded to the lowest responsible bidder. If two or more bids are the same and the lowest, the public agency may accept the one it chooses. (Public Contract Code §22038)
- 9) Prohibits a public entity from permitting a contractor or subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to the Labor Code to bid on, be awarded, or perform work as a subcontractor on, a public works project. (Public Contract Code §6109)
- 10) Establishes the Local Agency Public Construction Act which authorizes a public entity to require each prospective bidder for a contract complete and submit to the entity a standardized questionnaire and financial statement in a form specified by the entity, including a complete statement of the prospective bidder's experience in performing public works. Requires DIR to develop a model questionnaire that may be used by public entities, as specified. (Public Contract Code §20100-20101)
- 11) Requires any public entity requiring prospective bidders to complete and submit questionnaires and financial statements to adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, as specified. (Public Contract Code §20101)
- 12) Requires any public entity requiring prospective bidders on a public works project to prequalify pursuant to 10) to establish a process that will allow prospective bidders to dispute their proposed prequalification rating prior to the closing time for receipt of bids, as specified. (Public Contract Code §20101)

This bill:

- 1) Requires as a condition of submitting a bid to a local agency for a public works contract, a contractor to fully disclose any history of wage and hour violations and provide supporting documentation.
- 2) Requires, to the extent applicable, a contractor to submit all of the following:
 - a) A written disclosure of any federal, state, or local wage and hour violations within the past five years, including violations involving unpaid wages, overtime, meal or rest break violations, or misclassification of employees or independent contractors.
 - b) Documents demonstrating that each disclosed wage and hour violation has been corrected or otherwise resolved.
 - i. To the extent applicable, the documentation shall include copies of court orders, judgments, or final administrative determinations, along with proof that all fines, penalties, or back wages have been paid in full.
- 3) Provides that failure to provide the required disclosures and supporting materials pursuant to these provisions may result in disqualification of the bid.
- 4) Requires a local agency to establish a process that allows a contractor to appeal a bid disqualification for failure to comply with these provisions and to ensure that the process complies with all of the following:

- a) The process shall include a written notification to the contractor regarding the basis for the contractor's disqualification and any supporting evidence, including any disclosures submitted to the local agency or adduced as a result of an investigation by the local agency.
 - b) The contractor shall be given the opportunity to rebut any evidence used as a basis for disqualification and to present evidence to the local agency that supports why the contractor should be found qualified.
 - c) If the contractor elects to not avail themselves of this process, the proposed bid disqualification may be adopted without further proceedings.
- 5) Provides that these provisions do not apply to either of the following:
- a) A public works contract that is covered by a project labor agreement.
 - b) A project for which a local agency requires contractors, as a condition of bidding, to prequalify by disclosing all wage and hour violations within the past five years, including violations regarding unpaid wages, overtime, meal or rest break requirements, or the misclassification of employees or independent contractors.
- 6) Defines "violation" as a final judgment, order, or determination by a court or any federal, state, or local administrative agency finding the contractor liable for owed wages or related damages, interest, fines, or penalties.
- 7) Specifies that a contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

COMMENTS

1. Background:

Public Works Contractor Registration

All contractors and subcontractors working on "public works" projects are required to abide by a set of laws that ensure the responsible use of public funds. Among other requirements, this means registering as a contractor with DIR. When enforced consistently and accurately, California's public works law prevents worker exploitation and promotes the creation of a skilled workforce.

Contractors and subcontractors that bid on or engage in the performance of a public works contract must register with DIR by paying an initial application and an annual renewal fee. Registration covers one fiscal year (July 1- June 30) regardless of the date on which the fee is paid. Currently, the fee is set at \$400 and can be renewed for up to three years at a time. Although the Director has discretion to raise the fee above \$800. All fees are deposited in the State Public Works Enforcement Fund to be used for enforcement.

To be eligible to register, contractors and subcontractors must have workers' compensation insurance and be licensed with the Contractors State License Board. They cannot have any delinquent unpaid wage or penalty assessments, nor can they be under federal or state debarment. Bidding or working on a public works project while unregistered will result in a

\$2,000 penalty and repeat offenders may be disqualified from working in public works for up to 12 months at a time.

In addition to registering with DIR, contractors must obtain a license from the Contractors State License Board. The process to register and obtain a license requires contractors to, among other things, disclose their workers' compensation coverage and debarment status, certify their work experience, and pass an examination. Local agencies, when awarding contracts, determine whether a contractor is a "responsible bidder" by verifying the contractor's public works registration and Contractors State Licensing Board license.

Public Works Pre-Qualification

In 1999, the Legislature authorized specified public agencies to require licensed contractors that wish to bid for public works projects to "pre-qualify" for the right to bid. The law applies to all cities, counties, and special districts but does not apply to K-12 school districts. Public agencies that choose to adopt a pre-qualification system must abide by certain requirements, such as:

- Use a standardized questionnaire and financial statement in a form specified by the public entity.
- Adopt and apply a uniform system of rating bidders on objective criteria.
- Create an appeal procedure by which a contractor that is denied pre-qualification may seek a reversal of that determination.

Public agencies can establish two different kinds of pre-qualification procedures for public works projects. The first pre-qualifies a contractor for a single, specific project and the second pre-qualifies contractors to bid on projects that are put out for bid by that agency for a one-year period.

The law that authorized pre-qualification also directed DIR to develop model guidelines for rating bidders and to draft a standardized questionnaire. The initial questionnaire was developed by representatives of public agencies and other interested parties. In 2018, DIR released an updated questionnaire after holding a series of meetings with key stakeholders, representatives of public agencies, unions, contractors, and other interested parties. The model questionnaire includes questions about a bidder's five-year history of wage and hour violations, as well as apprenticeship violations.

Wage Theft

Although California leads the nation with some of the strongest workplace protections, wage theft remains rampant. Even public works projects with their extensive wage and reporting requirements are not immune. In the 2020-2021 fiscal year, the Public Works Unit within the Labor Commissioner's Office, tasked with investigating wage and apprenticeship violations, opened 1,964 cases and assessed over \$12.6 million in penalties against employers.¹ However, recovering wages is not always easy. A 2024 audit conducted by the State Auditor

¹The Bureau of Field Enforcement, *Fiscal Year Report. 2020-2021*. California Labor Commissioner's Office. p.12. https://www.dir.ca.gov/dlse/BOFE_LegReport2021.pdf

found that due to an inefficient wage claim process, the Labor Commissioner often takes two years or longer to resolve the wage claims it receives.²

The author and sponsor of AB 1838 argue a contractor's history of wage and hour violations directly impacts whether the contractor can be considered responsible.

This bill

AB 1838 would require, as a condition of submitting a bid to a local agency for a public works contract, a contractor to fully disclose any history of wage and hour violations within the past five years and provide supporting documentation. Local agencies would be authorized, *but not required*, to disqualify a contractor who fails to provide the required disclosures and supporting materials. For purposes of the bill, "violation" would mean a final judgement, order, or determination by a court or any federal, state, or local administrative agency finding the contractor liable for owed wages or related damages, interest, fines, or penalties.

This bill would also require local agencies to establish a process, as specified, that allows contractors to appeal bid disqualifications. The appeals procedure outlined in this bill closely mirrors the one required under the optional public works pre-qualification process.

Lastly, this bill would exempt public works projects covered by a project labor agreement and projects for which a local agency requires contractors, as a condition of bidding, to prequalify by disclosing all wage and hour violations within the past five years.

2. Need for this bill?

According to the author:

"AB 1838 will help local agencies make informed decisions when awarding contracts by requiring bidders for public contracts to disclose any history of wage-and-hour violations within the last five years. This bill will give local agencies more information to determine if contractors bidding for public contracts are responsible and can be trusted to utilize taxpayer funds. AB 1838 will increase transparency into the use of taxpayer dollars for public works projects, protect workers and fair labor practices, and give greater transparency to local agencies and the public.

The City of San Jose and City of Gilroy have already taken steps to require contractors to disclose in their bid documents whether they have been found to have violated wage-and-hour laws to better determine if a contractor can be considered trusted and responsible.

Additionally, the Department of Industrial Relations has developed a pre-qualification model questionnaire for localities to pre-qualify contractors for construction projects. This questionnaire includes wage-and-hour violation information and outlines the importance of wage theft history as an indicator of contractor responsibility.

²Auditor of the State of California. *The California Labor Commissioner's Office: Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers*. Report 2023-104. May 2024. <https://www.auditor.ca.gov/wp-content/uploads/2024/05/2023-104-Report.pdf>

AB 1838 will give local agencies a more complete and clearer view of a bidder's history and trustworthiness while they are determining if a contractor can be deemed a 'responsible bidder'."

3. Proponent Arguments:

The sponsors of the measure, the California-Nevada Conference of Operating Engineers and the District Council of Ironworkers argue:

"Under existing law, most public works construction contracts are required to be awarded to the lowest responsible bidder. For purposes of determining if a bidder is responsible or not, existing law defines a responsible bidder as 'a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract'.

While existing law is clear on what constitutes a responsible bidder, awarding agencies are often not privy to certain information that could be critical in determining if a contractor who is securing taxpayer dollars for a public construction project is actually 'responsible'. Currently, most awarding bodies determine if a contractor is responsible through verifying their Contractors' State License Board license and their public works registration, as the process to obtain these critical documents requires contractors to disclose of their workers' compensation coverage, debarment status and other helpful information. **While these are important safeguards, they do not always capture a contractor's history of labor law violations, which may directly reflect whether a contractor can be considered responsible...**

While existing law prohibits awarding bodies from awarding contracts to debarred or suspended contractors, awarding agencies have few tools available to assess a contractor's previous history with wage and hour violations, which can and should be a critical component of determining if a contractor can be trusted to properly utilize taxpayer funds...

In an effort to protect taxpayer dollars and assist awarding agencies in determining whether contractors bidding for their public construction projects meet the definition of being responsible, **AB 1838 (Berman)** requires contractors submitting public works construction bids to local awarding agencies to fully disclose wage and hour violations over the previous 5 years as part of their bid. Providing this change will ensure an additional tool that awarding agencies can utilize to assist in ensuring the proper utilization of taxpayer dollars while protecting workers performing critical construction on behalf of an awarding agency."

4. Opponent Arguments:

The Associated General Contractors of California oppose the measure, arguing:

"[AB 1838] requires contractors to disclose five years of wage-and-hour violations and provide extensive supporting documentation, including court orders, settlements, and proof of payment of penalties or back wages. For many contractors, particularly small and mid-sized firms, gathering and submitting this information for every local bid would require substantial time and resources. This added paperwork requirement could discourage otherwise qualified contractors from bidding on public projects.

AB 1838 also captures a wide range of wage-and-hour issues, including minor or technical violations that were promptly corrected years ago. Treating all violations the same — regardless of severity, context, or corrective action — unfairly penalizes responsible contractors and exposes them to reputational harm long after issues have been resolved. The bill further authorizes disqualification of a bid if the required disclosures are incomplete or inadvertently missing documentation. Given the breadth and complexity of the required materials, contractors could be excluded from public contracts due to administrative errors rather than actual noncompliance. This creates uncertainty in the bidding process and increases the risk of bid protests and delays in project delivery.

Additionally, AB 1838 will lead to inconsistent local enforcement. Each local agency will inevitably interpret the disclosure requirements differently, resulting in uneven application of the law and arbitrary disqualification decisions. Rather than improving compliance, this inconsistency will reduce competition, increase costs for public agencies, and make it more difficult for contractors — especially emerging, diverse, and small businesses — to participate in public works projects.

California’s public contracting system already includes robust mechanisms to ensure contractor responsibility and compliance with labor laws, including Department of Industrial Relations prequalification programs, workforce requirements, labor compliance monitoring, public works registration, and existing debarment authority.”

5. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Local Government Committee, where it passed on a 5-2 vote, and to the Senate Labor, Public Employment and Retirement Committee.

6. Prior Legislation:

SB 909 (Smallwood-Cuevas, 2026) would 1) authorize the Director of DIR to establish and adjust contractor registration and renewal fees of up to \$1000, as specified; 2) increase penalties for various public works violations; and 3) direct 50% of penalties recovered through a civil wage and penalty assessment to the State Public Works Enforcement Fund. *This bill is pending in the Assembly Appropriations Committee.*

SB 458 (Gonzalez, 2023) would have required local agencies to publish a database of their contracts online, as specified. *This bill died in the Senate Governance and Finance Committee.*

AB 2844 (Bloom, Chapter 581, Statutes of 2016) required a person who submits a bid or proposal to enter into, or renew, a contract of \$100,000 or more with a state agency to certify the following, under penalty of perjury: 1) they are in compliance with the California Fair Employment and Housing Act and the Unruh Civil Rights Act and, 2) any policy that they have against any sovereign nation or peoples recognized by the government of the United States is not used to discriminate in violation of the FEHA or the Unruh Act.

AB 574 (Hertzberg, Chapter 972, Statutes of 1999) among other things, defined the term “responsible bidder,” authorized public entities to require prospective bidders to complete

questionnaires with specified information, and required DIR to develop a model questionnaire that public entities may use.

SUPPORT

California-Nevada Conference of Operating Engineers (Co-sponsor)
District Council of Ironworkers (Co-sponsor)
American Federation of State, County and Municipal Employees
California Federation of Labor Unions
California State Association of Electrical Workers
California State Pipe Trades Council
El Dorado Irrigation District
Filoli
International Union of Painters and Allied Trades, District Council 16
International Union of Painters and Allied Trades, District Council 36
SEIU California
State Building and Construction Trades Council of California
Teamsters California
Valley Sanitary District
Western States Council Sheet Metal, Air, Rail and Transportation

OPPOSITION

Associated General Contractors of California
Western Electrical Contractors Association

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