

ACT 219

S.B. NO. 292

A Bill for an Act Relating to Labor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103-55, Hawaii Revised Statutes, is amended to read as follows:

“§103-55 Wages, hours, and working conditions of employees of contractors performing services. (a) Before any offeror enters into a contract to perform services in excess of \$25,000 for any governmental agency, the offeror shall certify that the services to be performed will be performed under the following conditions:

- (1) Wages. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work. For contracts for services performed by laborers and mechanics, the contractor or the contractor's subcontractor shall give a copy of the rates of wages to each laborer and mechanic employed under the contract by the contractor at the time each laborer and mechanic is employed; provided that the contractor does not have to provide the contractor's employees the wage rate schedules where there is a collective bargaining agreement; and
- (2) Compliance with labor laws. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

(b) For contracts for services performed by laborers and mechanics, the governmental contracting agency may withhold from the contractor so much of the accrued payments as the governmental contracting agency may consider necessary to pay to the laborers and mechanics employed by the contractor or any subcontractor on the job site the difference between the required wages and the wages received and not refunded by the laborers and mechanics.

(c) Every contract covered under this section for services performed by laborers and mechanics and the specifications for the contract shall contain a provision that a certified copy of all payrolls shall be submitted weekly to the governmental contracting agency for review. The contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, the wage rates contained therein are not less than the applicable rates, and the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. Any certification discrepancy found by the governmental contracting agency shall be reported to the contractor and the agency director to effect compliance.

Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the contractor and the contractor's subcontractors, if any, during the course of the work and preserved for a period of three years thereafter. The records shall contain the name of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The contractor shall make payroll records available for examination within ten days from the date of a written request by a governmental contracting agency or any authorized representatives thereof.

(d) For contracts for services performed by laborers and mechanics, the governmental contracting agency shall:

- (1) Pay or cause to be paid, within sixty days of a determination made by the contracting agency, directly to laborers and mechanics, from any accrued payment withheld under the terms of the contract, any wages or overtime compensation found to be due to laborers or mechanics under the terms of the contract subject to this section; and
- (2) Order any contractor to pay, within sixty days of a determination made by the contracting agency, any wages or overtime compensation that the contractor, or any of the contractor's subcontractors, should have paid to any laborer or mechanic under any contract subject to this section.

~~[(b)]~~ (e) No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of contract to perform services shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Final payment of a contract or release of bonds or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$25,000 to enforce this section.

~~[(e)]~~ (f) This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel;
- (2) Contracts for supplies, materials, or printing;
- (3) Contracts for utility services;
- (4) Contracts to perform personal services under section 46-33(7), (8), and (9), section 76-16(b)(2), (3), (12), and (15), and section 76-77(7), (8), and (12);
- (5) Contracts for professional services;
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions;
- (7) Contracts to provide transportation services for school children;
- ~~[(e)]~~
- (8) Contracts with nonprofit institutions~~[-];~~
- (9) Contracts for furniture and equipment type work; or
- (10) Existing contracts that were executed prior to the effective date of Act , Session Laws of Hawaii 2019."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on September 1, 2019.

(Approved July 2, 2019.)