

SENATE BILL 774

P2, L6, K3
HB 1486/13 – ECM

4r1945
CF HB 951

By: **Senators Montgomery, Benson, Currie, Feldman, Forehand,
Jones-Rodwell, Madaleno, Manno, Peters, Ramirez, Raskin, Stone, and
Young**

Introduced and read first time: January 31, 2014
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 27, 2014

CHAPTER _____

1 AN ACT concerning

2 ~~Procurement~~ **Department of Labor, Licensing, and Regulation – Workgroup**
3 **on Public Works Contractor Occupational Safety and Health**
4 **Prequalification Requirements**

5 FOR the purpose of ~~requiring the Department of Labor, Licensing, and Regulation to~~
6 ~~develop and adopt by regulation a certain safety questionnaire and safety rating~~
7 ~~system; requiring the Department to consult with certain persons and review~~
8 ~~certain information when developing a certain safety questionnaire and safety~~
9 ~~rating system; requiring the safety questionnaire and safety rating system to~~
10 ~~assess certain factors; requiring the Department to determine a certain~~
11 ~~minimum safety rating; requiring a prospective bidder or offeror to submit~~
12 ~~certain documentation to the Department; requiring the Department to~~
13 ~~calculate by using a certain safety rating system the safety rating that a~~
14 ~~prospective bidder or offeror has attained on a certain safety questionnaire;~~
15 ~~providing that a prospective bidder or offeror that attains a certain safety rating~~
16 ~~is deemed to have prequalified to submit a bid or an offer on certain contracts;~~
17 ~~requiring the Department to publish a prequalification list that includes certain~~
18 ~~bidders and offerors and to require that certain documentation be submitted at~~
19 ~~least once per year; providing for the removal of prospective bidders and offerors~~
20 ~~from a certain list; authorizing certain prospective bidders or offerors to appeal~~
21 ~~to the Department or resubmit documentation after a certain time period;~~
22 ~~prohibiting, beginning on a certain date, certain prospective bidders and~~
23 ~~offerors and public bodies from taking certain actions; prohibiting a certain~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~prospective bidder or offeror from prequalifying under a certain provision of law; providing for the debarment of a prospective bidder or offeror under certain circumstances; providing that the period of debarment may not exceed a certain number of years; providing that certain debarment procedures apply to debarment under a certain provision of this Act; defining certain terms; requiring the Department of Labor, Licensing, and Regulation to convene a certain workgroup to study and make recommendations regarding public works contractor occupational safety and health prequalification requirements; requiring that the workgroup include representatives of certain organizations; requiring the Department to report its findings and recommendations to the General Assembly on or before a certain date; providing for the termination of this Act; and generally relating to occupational safety and health prequalification for prospective bidders and offerors on public work contracts~~
the workgroup on public works contractor occupational safety and health prequalification requirements.

~~BY adding to~~

~~Article State Finance and Procurement~~

~~Section 17-801 through 17-804 to be under the new subtitle "Subtitle 8,~~

~~Occupational Safety and Health Prequalification"~~

~~Annotated Code of Maryland~~

~~(2009 Replacement Volume and 2013 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That ~~the Laws of Maryland read as follows:~~

(a) The Department of Labor, Licensing, and Regulation shall convene a workgroup to:

(1) analyze the potential effects of the public works contractor occupational safety and health prequalification requirements proposed in Senate Bill 774 and House Bill 951 of 2014, as the bills were originally introduced;

(2) study the effectiveness of public works contractor occupational safety and health prequalification requirements that exist in other jurisdictions in the United States;

(3) study the requirements and practices currently used by units in the State to evaluate public works bids and offers to ensure contractor adherence to safety standards; and

(4) make recommendations regarding the establishment of public works contractor occupational safety and health prequalification requirements in the State.

(b) The workgroup convened under subsection (a) of this section shall include representatives from:

- 1 (1) the Maryland Associated General Contractors;
- 2 (2) the Maryland Association of Counties;
- 3 (3) the Maryland State and District of Columbia AFL-CIO;
- 4 (4) the Maryland Associated Building Contractors;
- 5 (5) the Center for Construction Research and Training;
- 6 (6) the Public Citizen;
- 7 (7) the American Society of Safety Engineers; and
- 8 (8) the Alliance for Construction Excellence.

9 (c) On or before December 31, 2014, the Department of Labor, Licensing, and
 10 Regulation shall report its findings and recommendations to the General Assembly in
 11 accordance with § 2-1246 of the State Government Article.

12 ~~Article State Finance and Procurement~~

13 ~~SUBTITLE 8. OCCUPATIONAL SAFETY AND HEALTH PREQUALIFICATION.~~

14 ~~17-801.~~

15 ~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
 16 ~~INDICATED.~~

17 ~~(B) "CONSTRUCTION" INCLUDES ALL:~~

- 18 ~~(1) BUILDING;~~
- 19 ~~(2) RECONSTRUCTING;~~
- 20 ~~(3) IMPROVING;~~
- 21 ~~(4) ENLARGING;~~
- 22 ~~(5) PAINTING AND DECORATING;~~
- 23 ~~(6) ALTERING;~~
- 24 ~~(7) MAINTAINING; AND~~

1 ~~(S) REPAIRING.~~

2 ~~(C) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR, LICENSING,~~
3 ~~AND REGULATION.~~

4 ~~(D) "MINIMUM SAFETY RATING" MEANS THE MINIMUM SAFETY RATING~~
5 ~~SET BY THE DEPARTMENT UNDER § 17-802(D) OF THIS SUBTITLE.~~

6 ~~(E) "PREQUALIFICATION LIST" MEANS THE PREQUALIFICATION LIST~~
7 ~~PUBLISHED BY THE DEPARTMENT UNDER § 17-803(C) OF THIS SUBTITLE.~~

8 ~~(F) "PROSPECTIVE BIDDER OR OFFEROR" INCLUDES A~~
9 ~~SUBCONTRACTOR.~~

10 ~~(G) "PUBLIC BODY" MEANS:~~

11 ~~(1) THE STATE;~~

12 ~~(2) A POLITICAL SUBDIVISION; OR~~

13 ~~(3) A UNIT OR AN INSTRUMENTALITY OF THE STATE OR A~~
14 ~~POLITICAL SUBDIVISION.~~

15 ~~(H) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, "PUBLIC~~
16 ~~WORK" MEANS A STRUCTURE OR WORK, INCLUDING A BRIDGE, A BUILDING, A~~
17 ~~DITCH, A ROAD, AN ALLEY, A WATERWORK, OR A SEWAGE DISPOSAL PLANT,~~
18 ~~THAT:~~

19 ~~(I) IS CONSTRUCTED FOR PUBLIC USE OR BENEFIT; OR~~

20 ~~(II) IS PAID FOR WHOLLY OR PARTLY BY PUBLIC MONEY.~~

21 ~~(2) "PUBLIC WORK" DOES NOT INCLUDE, UNLESS LET TO~~
22 ~~CONTRACT, A STRUCTURE OR WORK THE CONSTRUCTION OF WHICH IS~~
23 ~~PERFORMED BY A PUBLIC SERVICE COMPANY UNDER ORDER OF THE PUBLIC~~
24 ~~SERVICE COMMISSION OR OTHER PUBLIC AUTHORITY REGARDLESS OF:~~

25 ~~(I) PUBLIC SUPERVISION OR DIRECTION; OR~~

26 ~~(II) PAYMENT WHOLLY OR PARTLY FROM PUBLIC MONEY.~~

27 ~~(I) "PUBLIC WORK CONTRACT" MEANS A CONTRACT FOR~~
28 ~~CONSTRUCTION OF A PUBLIC WORK.~~

1 ~~(J) "SAFETY QUESTIONNAIRE" MEANS THE SAFETY QUESTIONNAIRE~~
2 ~~DEVELOPED UNDER § 17-802(A) OF THIS SUBTITLE.~~

3 ~~(K) "SAFETY RATING SYSTEM" MEANS THE SAFETY RATING SYSTEM~~
4 ~~DEVELOPED UNDER § 17-802(A) OF THIS SUBTITLE.~~

5 ~~17-802.~~

6 ~~(A) THE DEPARTMENT SHALL DEVELOP AND ADOPT BY REGULATION A~~
7 ~~SAFETY QUESTIONNAIRE AND SAFETY RATING SYSTEM TO ASSESS A~~
8 ~~PROSPECTIVE BIDDER OR OFFEROR ON THE OCCUPATIONAL SAFETY AND~~
9 ~~HEALTH PERFORMANCE OF THE PROSPECTIVE BIDDER OR OFFEROR FOR THE~~
10 ~~PURPOSE OF PREQUALIFYING TO SUBMIT A BID OR AN OFFER TO A PUBLIC BODY~~
11 ~~ON A PUBLIC WORK CONTRACT.~~

12 ~~(B) IN DEVELOPING THE SAFETY QUESTIONNAIRE AND SAFETY RATING~~
13 ~~SYSTEM, THE DEPARTMENT SHALL:~~

14 ~~(1) CONSULT WITH:~~

15 ~~(I) OCCUPATIONAL SAFETY AND HEALTH PROFESSIONALS;~~

16 ~~(II) CONSTRUCTION CONTRACTORS;~~

17 ~~(III) BUILDING TRADES UNIONS;~~

18 ~~(IV) PUBLIC BODIES; AND~~

19 ~~(V) ANY OTHER INTERESTED PARTY; AND~~

20 ~~(2) REVIEW:~~

21 ~~(I) RELEVANT SCIENTIFIC LITERATURE;~~

22 ~~(II) OCCUPATIONAL SAFETY AND HEALTH STANDARDS THAT~~
23 ~~HAVE BEEN ADOPTED BY NATIONALLY RECOGNIZED STANDARDS PRODUCING~~
24 ~~ORGANIZATIONS; AND~~

25 ~~(III) FEDERAL OCCUPATIONAL SAFETY AND HEALTH~~
26 ~~ADMINISTRATION GUIDANCE.~~

27 ~~(C) THE SAFETY QUESTIONNAIRE AND SAFETY RATING SYSTEM SHALL~~
28 ~~ASSESS:~~

1 ~~(1) WHETHER THE PROSPECTIVE BIDDER OR OFFEROR USES~~
2 ~~WRITTEN SITE SPECIFIC OCCUPATIONAL HEALTH AND SAFETY PLANS THAT~~
3 ~~INCLUDE:~~

4 ~~(I) METHODS FOR IDENTIFYING, ASSESSING, AND~~
5 ~~DOCUMENTING POTENTIAL OCCUPATIONAL SAFETY AND HEALTH HAZARDS;~~

6 ~~(II) METHODS FOR PREVENTING AND CONTROLLING, USING~~
7 ~~THE MOST EFFECTIVE METHODS, OCCUPATIONAL SAFETY AND HEALTH~~
8 ~~HAZARDS;~~

9 ~~(III) METHODS FOR COMMUNICATING INFORMATION TO AND~~
10 ~~TRAINING EMPLOYEES IN ISSUES RELATED TO OCCUPATIONAL SAFETY AND~~
11 ~~HEALTH HAZARDS;~~

12 ~~(IV) METHODS OF KEEPING RECORDS REGARDING~~
13 ~~OCCUPATIONAL SAFETY AND HEALTH HAZARDS; AND~~

14 ~~(V) A REGULAR EVALUATION OF AND CONTINUOUS~~
15 ~~IMPROVEMENTS TO THE SITE SPECIFIC OCCUPATIONAL HEALTH AND SAFETY~~
16 ~~PLANS AND THE IMPLEMENTATION OF THE PLANS;~~

17 ~~(2) THE COMMITMENT OF THE MANAGEMENT OF THE~~
18 ~~PROSPECTIVE BIDDER OR OFFEROR TO ADDRESSING THE SAFETY AND HEALTH~~
19 ~~OF EMPLOYEES AND THE GENERAL PUBLIC;~~

20 ~~(3) EMPLOYEE PARTICIPATION IN IDENTIFYING AND RESOLVING~~
21 ~~SAFETY AND HEALTH ISSUES, INCLUDING:~~

22 ~~(I) PARTICIPATION OF ON SITE EMPLOYEES IN THE~~
23 ~~DEVELOPMENT, IMPLEMENTATION, AND EVALUATION OF AN OCCUPATIONAL~~
24 ~~SAFETY AND HEALTH PLAN; AND~~

25 ~~(II) MAINTENANCE OF POLICIES THAT:~~

26 ~~1. ENCOURAGE WORKERS TO REPORT UNSAFE WORK~~
27 ~~CONDITIONS AND WORK RELATED INJURIES; AND~~

28 ~~2. GRANT EMPLOYEES AUTHORITY TO STOP~~
29 ~~WORKING IMMEDIATELY IN THE EVENT THAT A HAZARDOUS WORKING~~
30 ~~CONDITION IS PRESENT;~~

1 ~~(4) WHETHER THE PROSPECTIVE BIDDER OR OFFEROR PROVIDES~~
2 ~~SAFETY AND HEALTH INFORMATION AND TRAINING TO EMPLOYEES THAT~~
3 ~~INCLUDE:~~

4 ~~(I) THE USE OF WRITTEN OR VERBAL COMMUNICATION;~~
5 ~~AND~~

6 ~~(H) INFORMATION AND TRAINING IN A LANGUAGE AND~~
7 ~~FORMAT THAT ARE UNDERSTANDABLE TO EACH EMPLOYEE;~~

8 ~~(5) WHETHER THE PROSPECTIVE BIDDER OR OFFEROR~~
9 ~~EVALUATES PROJECT SUPERVISORS BASED ON SAFETY PERFORMANCE;~~

10 ~~(6) THE COMPLIANCE OF THE PROSPECTIVE BIDDER OR OFFEROR~~
11 ~~WITH SAFETY AND HEALTH RELATED LAWS, INCLUDING THE PROSPECTIVE~~
12 ~~BIDDER'S OR OFFEROR'S:~~

13 ~~(I) FEDERAL OCCUPATIONAL SAFETY AND HEALTH~~
14 ~~ADMINISTRATION LOST TIME INCIDENT FREQUENCY RATES AND RECORDABLE~~
15 ~~INJURY/ILLNESS FREQUENCY RATES;~~

16 ~~(II) WORKERS' COMPENSATION EXPERIENCE MODIFICATION~~
17 ~~RATES;~~

18 ~~(III) CITATIONS AND PENALTIES ISSUED BY OCCUPATIONAL~~
19 ~~SAFETY AND HEALTH AGENCIES;~~

20 ~~(IV) RECEIPT OF AND COMPLIANCE WITH SAFETY AND~~
21 ~~HEALTH RELATED STOP WORK ORDERS; AND~~

22 ~~(V) VIOLATIONS OF OTHER LAWS RELATED TO~~
23 ~~OCCUPATIONAL SAFETY AND HEALTH; AND~~

24 ~~(7) ANY OTHER FACTOR THE DEPARTMENT DETERMINES TO BE A~~
25 ~~USEFUL METRIC TO ASSESS OCCUPATIONAL SAFETY AND HEALTH~~
26 ~~PERFORMANCE.~~

27 ~~(D) THE DEPARTMENT SHALL DETERMINE THE MINIMUM SAFETY~~
28 ~~RATING A PROSPECTIVE BIDDER OR OFFEROR MUST ATTAIN ON THE SAFETY~~
29 ~~QUESTIONNAIRE TO BE ELIGIBLE TO SUBMIT A BID OR AN OFFER ON A PUBLIC~~
30 ~~WORK CONTRACT.~~

31 ~~17-803.~~

1 ~~(A) A PROSPECTIVE BIDDER OR OFFEROR SHALL SUBMIT TO THE~~
2 ~~DEPARTMENT:~~

3 ~~(1) A COMPLETED SAFETY QUESTIONNAIRE, ALONG WITH ANY~~
4 ~~SUPPORTING DOCUMENTATION;~~

5 ~~(2) AN ATTESTATION THAT THE INFORMATION IN THE SAFETY~~
6 ~~QUESTIONNAIRE AND ANY SUPPORTING DOCUMENTATION IS COMPLETE AND~~
7 ~~ACCURATE;~~

8 ~~(3) A WRITTEN WHISTLEBLOWER POLICY THAT COMPLIES WITH~~
9 ~~THE REQUIREMENTS OF TITLE 11, SUBTITLE 3 OF THIS ARTICLE AND THAT THE~~
10 ~~PROSPECTIVE BIDDER OR OFFEROR PROVIDES TO ITS EMPLOYEES; AND~~

11 ~~(4) PROOF THAT THE PROSPECTIVE BIDDER OR OFFEROR HAS~~
12 ~~WORKERS' COMPENSATION COVERAGE AS REQUIRED UNDER § 9-402 OF THE~~
13 ~~LABOR AND EMPLOYMENT ARTICLE.~~

14 ~~(B) THE DEPARTMENT SHALL USE THE SAFETY RATING SYSTEM TO~~
15 ~~CALCULATE THE SAFETY RATING THAT A PROSPECTIVE BIDDER OR OFFEROR~~
16 ~~HAS ATTAINED ON THE SAFETY QUESTIONNAIRE.~~

17 ~~(C) (1) A PROSPECTIVE BIDDER OR OFFEROR THAT ATTAINS THE~~
18 ~~MINIMUM SAFETY RATING SHALL BE DEEMED TO HAVE PREQUALIFIED TO~~
19 ~~SUBMIT A BID OR AN OFFER ON A PUBLIC WORK CONTRACT.~~

20 ~~(2) THE DEPARTMENT SHALL PUBLISH A PREQUALIFICATION~~
21 ~~LIST WITH THE PROSPECTIVE BIDDERS AND OFFERORS THAT ARE DEEMED TO~~
22 ~~HAVE PREQUALIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION.~~

23 ~~(D) (1) THE DEPARTMENT SHALL REQUIRE PROSPECTIVE BIDDERS~~
24 ~~AND OFFERORS TO SUBMIT THE DOCUMENTATION REQUIRED UNDER~~
25 ~~SUBSECTION (A) OF THIS SECTION AT LEAST ONCE PER YEAR.~~

26 ~~(2) A PROSPECTIVE BIDDER OR OFFEROR SHALL BE REMOVED~~
27 ~~FROM THE PREQUALIFICATION LIST IF THE PROSPECTIVE BIDDER OR OFFEROR:~~

28 ~~(I) FAILS TO SUBMIT THE DOCUMENTATION AS REQUIRED~~
29 ~~UNDER PARAGRAPH (1) OF THIS SUBSECTION; OR~~

30 ~~(II) FAILS TO ATTAIN THE MINIMUM SAFETY RATING BASED~~
31 ~~ON THE DOCUMENTS THAT WERE SUBMITTED UNDER PARAGRAPH (1) OF THIS~~
32 ~~SUBSECTION.~~

1 ~~(E) (1) IF A PROSPECTIVE BIDDER OR OFFEROR FAILS TO ATTAIN~~
2 ~~THE MINIMUM SAFETY RATING, THE PROSPECTIVE BIDDER OR OFFEROR MAY~~
3 ~~APPEAL TO THE DEPARTMENT IN ACCORDANCE WITH REGULATIONS ADOPTED~~
4 ~~BY THE DEPARTMENT.~~

5 ~~(2) IF A PROSPECTIVE BIDDER OR OFFEROR DID NOT APPEAL TO~~
6 ~~THE DEPARTMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION OR THE~~
7 ~~APPEAL WAS NOT SUCCESSFUL, THE PROSPECTIVE BIDDER OR OFFEROR MAY~~
8 ~~RESUBMIT THE DOCUMENTATION REQUIRED UNDER SUBSECTION (A) OF THIS~~
9 ~~SECTION NO EARLIER THAN 6 MONTHS AFTER RECEIVING THE SAFETY RATING.~~

10 ~~17-804.~~

11 ~~(A) ON OR AFTER JANUARY 1, 2015:~~

12 ~~(1) A PROSPECTIVE BIDDER OR OFFEROR THAT IS NOT ON THE~~
13 ~~PREQUALIFICATION LIST MAY NOT SUBMIT A BID OR AN OFFER TO A PUBLIC~~
14 ~~BODY FOR A PUBLIC WORK CONTRACT;~~

15 ~~(2) A PUBLIC BODY MAY NOT AWARD A PUBLIC WORK CONTRACT~~
16 ~~TO A BIDDER OR AN OFFEROR THAT IS NOT ON THE PREQUALIFICATION LIST;~~
17 ~~AND~~

18 ~~(3) A BIDDER OR AN OFFEROR THAT HAS BEEN AWARDED A~~
19 ~~PUBLIC WORK CONTRACT MAY NOT PERMIT A SUBCONTRACTOR TO PERFORM~~
20 ~~WORK ON THE PUBLIC WORK CONTRACT UNLESS THE SUBCONTRACTOR IS ON~~
21 ~~THE PREQUALIFICATION LIST.~~

22 ~~(B) A PROSPECTIVE BIDDER OR OFFEROR THAT FAILS TO PREQUALIFY~~
23 ~~UNDER THIS SUBTITLE MAY NOT PREQUALIFY UNDER § 13-204 OF THIS~~
24 ~~ARTICLE.~~

25 ~~(C) (1) IF THE DEPARTMENT DETERMINES THAT WITHIN THE~~
26 ~~PRECEDING 5 YEARS A PROSPECTIVE BIDDER OR OFFEROR HAS PROVIDED~~
27 ~~FALSE OR MISLEADING INFORMATION UNDER THIS SUBTITLE, THE~~
28 ~~PROSPECTIVE BIDDER OR OFFEROR MAY BE DEBARRED FROM ENTERING INTO A~~
29 ~~PUBLIC WORK CONTRACT.~~

30 ~~(2) THE PERIOD OF DEBARMENT UNDER PARAGRAPH (1) OF THIS~~
31 ~~SUBSECTION MAY NOT EXCEED 3 YEARS.~~

32 ~~(3) THE PROCEDURES FOR DEBARMENT UNDER TITLE 16,~~
33 ~~SUBTITLE 3 OF THIS ARTICLE APPLY TO A DEBARMENT UNDER THIS~~
34 ~~SUBSECTION.~~

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2014. It shall remain effective for a period of 1 year and, at the end of June 30,
3 2015, with no further action required by the General Assembly, this Act shall be
4 abrogated and of no further force and effect.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.