

# HOUSE BILL 1486

P2, L6, K3

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By: **Delegates McHale, Glenn, Barnes, Frick, Hucker, Love, Olszewski, and V. Turner**

Introduced and read first time: February 26, 2013

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Occupational Safety and Health Prequalification**

3 FOR the purpose of requiring the Department of Labor, Licensing, and Regulation to  
4 develop and adopt by regulation a certain safety questionnaire and safety rating  
5 system; requiring the Department to consult with certain persons and review  
6 certain information when developing a certain safety questionnaire and safety  
7 rating system; requiring the safety questionnaire and safety rating system to  
8 assess certain factors; requiring the Department to determine a certain  
9 minimum safety rating; requiring a prospective bidder or offeror to submit  
10 certain documentation to the Department; requiring the Department to  
11 calculate by using a certain safety rating system the safety rating that a  
12 prospective bidder or offeror has attained on a certain safety questionnaire;  
13 providing that a prospective bidder or offeror that attains a certain safety rating  
14 is deemed to have prequalified to submit a bid or an offer on certain contracts;  
15 requiring the Department to publish a prequalification list that includes certain  
16 bidders and offerors and to require that certain documentation be submitted at  
17 least once per year; providing for the removal of prospective bidders and offerors  
18 from a certain list; authorizing certain prospective bidders or offerors to appeal  
19 to the Department or resubmit documentation after a certain time period;  
20 prohibiting, beginning on a certain date, certain prospective bidders and  
21 offerors and public bodies from taking certain actions; prohibiting a certain  
22 prospective bidder or offeror from prequalifying under a certain provision of  
23 law; providing for the debarment of a prospective bidder or offeror under certain  
24 circumstances; providing that the period of debarment may not exceed a certain  
25 number of years; providing that certain debarment procedures apply to  
26 debarment under a certain provision of this Act; defining certain terms; and  
27 generally relating to occupational safety and health prequalification for  
28 prospective bidders and offerors on public work contracts.

29 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – State Finance and Procurement  
2 Section 17–801 through 17–804 to be under the new subtitle “Subtitle 8.  
3 Occupational Safety and Health Prequalification”  
4 Annotated Code of Maryland  
5 (2009 Replacement Volume and 2012 Supplement)

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

8 **Article – State Finance and Procurement**

9 **SUBTITLE 8. OCCUPATIONAL SAFETY AND HEALTH PREQUALIFICATION.**

10 **17–801.**

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
12 INDICATED.

13 (B) “CONSTRUCTION” INCLUDES ALL:

- 14 (1) BUILDING;  
15 (2) RECONSTRUCTING;  
16 (3) IMPROVING;  
17 (4) ENLARGING;  
18 (5) PAINTING AND DECORATING;  
19 (6) ALTERING;  
20 (7) MAINTAINING; AND  
21 (8) REPAIRING.

22 (C) “DEPARTMENT” MEANS THE DEPARTMENT OF LABOR, LICENSING,  
23 AND REGULATION.

24 (D) “MINIMUM SAFETY RATING” MEANS THE MINIMUM SAFETY RATING  
25 SET BY THE DEPARTMENT UNDER § 17–802(D) OF THIS SUBTITLE.

26 (E) “PREQUALIFICATION LIST” MEANS THE PREQUALIFICATION LIST  
27 PUBLISHED BY THE DEPARTMENT UNDER § 17–803(C) OF THIS SUBTITLE.

1           **(F) “PROSPECTIVE BIDDER OR OFFEROR” INCLUDES A**  
2 **SUBCONTRACTOR.**

3           **(G) “PUBLIC BODY” MEANS:**

4                   **(1) THE STATE;**

5                   **(2) A POLITICAL SUBDIVISION; AND**

6                   **(3) A UNIT OR AN INSTRUMENTALITY OF THE STATE OR A**  
7 **POLITICAL SUBDIVISION.**

8           **(H) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, “PUBLIC**  
9 **WORK” MEANS A STRUCTURE OR WORK, INCLUDING A BRIDGE, A BUILDING, A**  
10 **DITCH, A ROAD, AN ALLEY, A WATERWORK, OR A SEWAGE DISPOSAL PLANT,**  
11 **THAT:**

12                   **(I) IS CONSTRUCTED FOR PUBLIC USE OR BENEFIT; OR**

13                   **(II) IS PAID FOR WHOLLY OR PARTLY BY PUBLIC MONEY.**

14                   **(2) “PUBLIC WORK” DOES NOT INCLUDE, UNLESS LET TO**  
15 **CONTRACT, A STRUCTURE OR WORK THE CONSTRUCTION OF WHICH IS**  
16 **PERFORMED BY A PUBLIC SERVICE COMPANY UNDER ORDER OF THE PUBLIC**  
17 **SERVICE COMMISSION OR OTHER PUBLIC AUTHORITY REGARDLESS OF:**

18                   **(I) PUBLIC SUPERVISION OR DIRECTION; OR**

19                   **(II) PAYMENT WHOLLY OR PARTLY FROM PUBLIC MONEY.**

20           **(I) “PUBLIC WORK CONTRACT” MEANS A CONTRACT FOR**  
21 **CONSTRUCTION OF A PUBLIC WORK.**

22           **(J) “SAFETY QUESTIONNAIRE” MEANS THE SAFETY QUESTIONNAIRE**  
23 **DEVELOPED UNDER § 17-802(A) OF THIS SUBTITLE.**

24           **(K) “SAFETY RATING SYSTEM” MEANS THE SAFETY RATING SYSTEM**  
25 **DEVELOPED UNDER § 17-802(A) OF THIS SUBTITLE.**

26 **17-802.**

1           **(A) THE DEPARTMENT SHALL DEVELOP AND ADOPT BY REGULATION A**  
2 **SAFETY QUESTIONNAIRE AND SAFETY RATING SYSTEM TO ASSESS A**  
3 **PROSPECTIVE BIDDER OR OFFEROR ON THE OCCUPATIONAL SAFETY AND**  
4 **HEALTH PERFORMANCE OF THE PROSPECTIVE BIDDER OR OFFEROR FOR THE**  
5 **PURPOSE OF PREQUALIFYING TO SUBMIT A BID OR AN OFFER TO A PUBLIC BODY**  
6 **ON A PUBLIC WORK CONTRACT.**

7           **(B) IN DEVELOPING THE SAFETY QUESTIONNAIRE AND SAFETY RATING**  
8 **SYSTEM, THE DEPARTMENT SHALL:**

9                   **(1) CONSULT WITH:**

10                           **(I) OCCUPATIONAL SAFETY AND HEALTH PROFESSIONALS;**

11                           **(II) CONSTRUCTION CONTRACTORS;**

12                           **(III) BUILDING TRADES UNIONS;**

13                           **(IV) PUBLIC BODIES; AND**

14                           **(V) ANY OTHER INTERESTED PARTY; AND**

15                   **(2) REVIEW:**

16                           **(I) RELEVANT SCIENTIFIC LITERATURE;**

17                           **(II) OCCUPATIONAL SAFETY AND HEALTH STANDARDS THAT**  
18 **HAVE BEEN ADOPTED BY NATIONALLY RECOGNIZED STANDARDS-PRODUCING**  
19 **ORGANIZATIONS; AND**

20                           **(III) FEDERAL OCCUPATIONAL SAFETY AND HEALTH**  
21 **ADMINISTRATION GUIDANCE.**

22           **(C) THE SAFETY QUESTIONNAIRE AND SAFETY RATING SYSTEM SHALL**  
23 **ASSESS:**

24                   **(1) WHETHER THE PROSPECTIVE BIDDER OR OFFEROR USES**  
25 **WRITTEN, SITE-SPECIFIC OCCUPATIONAL HEALTH AND SAFETY PLANS THAT**  
26 **INCLUDE:**

27                           **(I) METHODS FOR IDENTIFYING, ASSESSING, AND**  
28 **DOCUMENTING POTENTIAL OCCUPATIONAL SAFETY AND HEALTH HAZARDS;**

1                   **(II) METHODS FOR PREVENTING AND CONTROLLING, USING**  
2 **THE MOST EFFECTIVE METHODS, OCCUPATIONAL SAFETY AND HEALTH**  
3 **HAZARDS;**

4                   **(III) METHODS FOR COMMUNICATING INFORMATION TO AND**  
5 **TRAINING EMPLOYEES IN ISSUES RELATED TO OCCUPATIONAL SAFETY AND**  
6 **HEALTH HAZARDS;**

7                   **(IV) METHODS OF KEEPING RECORDS REGARDING**  
8 **OCCUPATIONAL SAFETY AND HEALTH HAZARDS; AND**

9                   **(V) A REGULAR EVALUATION OF AND CONTINUOUS**  
10 **IMPROVEMENTS TO THE SITE-SPECIFIC OCCUPATIONAL HEALTH AND SAFETY**  
11 **PLANS AND THE IMPLEMENTATION OF THE PLANS;**

12                   **(2) THE COMMITMENT OF THE MANAGEMENT OF THE**  
13 **PROSPECTIVE BIDDER OR OFFEROR TO ADDRESSING THE SAFETY AND HEALTH**  
14 **OF EMPLOYEES AND THE GENERAL PUBLIC;**

15                   **(3) EMPLOYEE PARTICIPATION IN IDENTIFYING AND RESOLVING**  
16 **SAFETY AND HEALTH ISSUES, INCLUDING:**

17                   **(I) PARTICIPATION OF ON-SITE EMPLOYEES IN THE**  
18 **DEVELOPMENT, IMPLEMENTATION, AND EVALUATION OF AN OCCUPATIONAL**  
19 **SAFETY AND HEALTH PLAN; AND**

20                   **(II) MAINTENANCE OF POLICIES THAT:**

21                   1. **ENCOURAGE WORKERS TO REPORT UNSAFE WORK**  
22 **CONDITIONS AND WORK-RELATED INJURIES; AND**

23                   2. **GRANT EMPLOYEES AUTHORITY TO STOP**  
24 **WORKING IMMEDIATELY IN THE EVENT THAT A HAZARDOUS WORKING**  
25 **CONDITION IS PRESENT;**

26                   **(4) WHETHER THE PROSPECTIVE BIDDER OR OFFEROR PROVIDES**  
27 **SAFETY AND HEALTH INFORMATION AND TRAINING TO EMPLOYEES THAT**  
28 **INCLUDE:**

29                   **(I) THE USE OF WRITTEN OR VERBAL COMMUNICATION;**  
30 **AND**

1                   **(II) INFORMATION AND TRAINING IN A LANGUAGE AND**  
2 **FORMAT THAT ARE UNDERSTANDABLE TO EACH EMPLOYEE;**

3                   **(5) WHETHER THE PROSPECTIVE BIDDER OR OFFEROR**  
4 **EVALUATES PROJECT SUPERVISORS BASED ON SAFETY PERFORMANCE;**

5                   **(6) THE COMPLIANCE OF THE PROSPECTIVE BIDDER OR OFFEROR**  
6 **WITH SAFETY AND HEALTH-RELATED LAWS, INCLUDING THE PROSPECTIVE**  
7 **BIDDER'S OR OFFEROR'S:**

8                   **(I) FEDERAL OCCUPATIONAL HEALTH AND SAFETY**  
9 **ADMINISTRATION LOST TIME INCIDENT FREQUENCY RATES AND RECORDABLE**  
10 **INJURY/ILLNESS FREQUENCY RATES;**

11                   **(II) WORKERS' COMPENSATION EXPERIENCE MODIFICATION**  
12 **RATES;**

13                   **(III) CITATIONS AND PENALTIES ISSUED BY OCCUPATIONAL**  
14 **SAFETY AND HEALTH AGENCIES;**

15                   **(IV) RECEIPT OF AND COMPLIANCE WITH SAFETY AND**  
16 **HEALTH-RELATED STOP WORK ORDERS; AND**

17                   **(V) VIOLATIONS OF OTHER LAWS RELATED TO**  
18 **OCCUPATIONAL SAFETY AND HEALTH; AND**

19                   **(7) ANY OTHER FACTOR THE DEPARTMENT DETERMINES TO BE A**  
20 **USEFUL METRIC TO ASSESS OCCUPATIONAL SAFETY AND HEALTH**  
21 **PERFORMANCE.**

22                   **(D) THE DEPARTMENT SHALL DETERMINE THE MINIMUM SAFETY**  
23 **RATING A PROSPECTIVE BIDDER OR OFFEROR MUST ATTAIN ON THE SAFETY**  
24 **QUESTIONNAIRE TO BE ELIGIBLE TO SUBMIT A BID OR AN OFFER ON A PUBLIC**  
25 **WORK CONTRACT.**

26 **17-803.**

27                   **(A) A PROSPECTIVE BIDDER OR OFFEROR SHALL SUBMIT TO THE**  
28 **DEPARTMENT:**

29                   **(1) A COMPLETED SAFETY QUESTIONNAIRE, ALONG WITH ANY**  
30 **SUPPORTING DOCUMENTATION;**

1           **(2) AN ATTESTATION THAT THE INFORMATION IN THE SAFETY**  
2 **QUESTIONNAIRE AND ANY SUPPORTING DOCUMENTATION IS COMPLETE AND**  
3 **ACCURATE;**

4           **(3) A WRITTEN WHISTLEBLOWER POLICY THAT COMPLIES WITH**  
5 **THE REQUIREMENTS OF TITLE 11, SUBTITLE 3 OF THIS ARTICLE AND THAT THE**  
6 **PROSPECTIVE BIDDER OR OFFEROR PROVIDES TO ITS EMPLOYEES; AND**

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

10           **(B) THE DEPARTMENT SHALL USE THE SAFETY RATING SYSTEM TO**  
11 **CALCULATE THE SAFETY RATING THAT A PROSPECTIVE BIDDER OR OFFEROR**  
12 **HAS ATTAINED ON THE SAFETY QUESTIONNAIRE.**

13           **(C) (1) A PROSPECTIVE BIDDER OR OFFEROR THAT ATTAINS THE**  
14 **MINIMUM SAFETY RATING SHALL BE DEEMED TO HAVE PREQUALIFIED TO**  
15 **SUBMIT A BID OR AN OFFER ON A PUBLIC WORK CONTRACT.**

16           **(2) THE DEPARTMENT SHALL PUBLISH A PREQUALIFICATION**  
17 **LIST WITH THE PROSPECTIVE BIDDERS AND OFFERORS THAT ARE DEEMED TO**  
18 **HAVE PREQUALIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

19           **(D) (1) THE DEPARTMENT SHALL REQUIRE PROSPECTIVE BIDDERS**  
20 **AND OFFERORS TO SUBMIT THE DOCUMENTATION REQUIRED UNDER**  
21 **SUBSECTION (A) OF THIS SECTION AT LEAST ONCE PER YEAR.**

22           **(2) A PROSPECTIVE BIDDER OR OFFEROR SHALL BE REMOVED**  
23 **FROM THE PREQUALIFICATION LIST IF THE PROSPECTIVE BIDDER OR OFFEROR:**

24                   **(I) FAILS TO SUBMIT THE DOCUMENTATION AS REQUIRED**  
25 **UNDER PARAGRAPH (1) OF THIS SUBSECTION; OR**

26                   **(II) FAILS TO ATTAIN THE MINIMUM SAFETY RATING BASED**  
27 **ON THE DOCUMENTS THAT WERE SUBMITTED UNDER PARAGRAPH (1) OF THIS**  
28 **SUBSECTION.**

29           **(E) (1) IF A PROSPECTIVE BIDDER OR OFFEROR FAILS TO ATTAIN**  
30 **THE MINIMUM SAFETY RATING, THE PROSPECTIVE BIDDER OR OFFEROR MAY**  
31 **APPEAL TO THE DEPARTMENT IN ACCORDANCE WITH REGULATIONS ADOPTED**  
32 **BY THE DEPARTMENT; OR**

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

6 **17-804.**

7           **(A) ON OR AFTER JANUARY 1, 2014:**

8           **(1) A PROSPECTIVE BIDDER OR OFFEROR THAT IS NOT ON THE**  
9 **PREQUALIFICATION LIST MAY NOT SUBMIT A BID OR AN OFFER TO A PUBLIC**  
10 **BODY FOR A PUBLIC WORK CONTRACT;**

11           **(2) A PUBLIC BODY MAY NOT AWARD A PUBLIC WORK CONTRACT**  
12 **TO A BIDDER OR AN OFFEROR THAT IS NOT ON THE PREQUALIFICATION LIST;**  
13 **AND**

14           **(3) A BIDDER OR AN OFFEROR THAT HAS BEEN AWARDED A**  
15 **PUBLIC WORK CONTRACT MAY NOT PERMIT A SUBCONTRACTOR TO PERFORM**  
16 **WORK ON THE PUBLIC WORK CONTRACT UNLESS THE SUBCONTRACTOR IS ON**  
17 **THE PREQUALIFICATION LIST.**

18           **(B) A PROSPECTIVE BIDDER OR OFFEROR THAT FAILS TO PREQUALIFY**  
19 **UNDER THIS SUBTITLE MAY NOT PREQUALIFY UNDER § 13-204 OF THIS**  
20 **ARTICLE.**

21           **(C) (1) IF THE DEPARTMENT DETERMINES THAT WITHIN THE**  
22 **PRECEDING 5 YEARS A PROSPECTIVE BIDDER OR OFFEROR HAS PROVIDED**  
23 **FALSE OR MISLEADING INFORMATION UNDER THIS SUBTITLE, THE**  
24 **PROSPECTIVE BIDDER OR OFFEROR MAY BE DEBARRED FROM ENTERING INTO A**  
25 **PUBLIC WORK CONTRACT.**

26           **(2) THE PERIOD OF DEBARMENT UNDER PARAGRAPH (1) OF THIS**  
27 **SUBSECTION MAY NOT EXCEED 3 YEARS.**

28           **(3) THE PROCEDURES FOR DEBARMENT UNDER TITLE 16,**  
29 **SUBTITLE 3 OF THIS ARTICLE APPLY TO A DEBARMENT UNDER THIS**  
30 **SUBSECTION.**

31           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 July 1, 2013.