

Chapter 686

(House Bill 680)

AN ACT concerning

Responsible Workforce Development Percentage Price Preference Act
State Procurement – State Funded Construction Projects – Payment of
Employee Health Care Expenses

FOR the purpose of requiring the Board of Public Works to adopt regulations to require certain ~~units to establish a certain responsible workforce development percentage price preference; requiring a procurement officer to apply a certain responsible workforce development percentage price preference if a certain certification is submitted or if the bidder is a minority business enterprise; requiring certain responsible bidders and subcontractors to certify on a certain form that certain health care expenses were at least a certain percentage of certain wages paid for during a certain period of time before the submission of a certain bid; bidders, contractors, and subcontractors to pay certain employee health care expenses; requiring the Department of General Services and the Department of Transportation, by regulation, to establish certain procedures to certify that a bidder, contractor, or subcontractor pays certain employee health care expenses; establishing the methods by which a bidder, contractor, or subcontractor demonstrates the payment of certain employee health care expenses; authorizing a bidder, contractor, or subcontractor to demonstrate the payment of employee health care expenses in a certain manner on or before a certain date; requiring the Department of General Services and the Department of Transportation to collaborate with the Department of Labor, Licensing, and Regulation to develop a certain form; authorizing a procurement officer to require a responsible bidder or subcontractor to submit certain records under certain circumstances; prohibiting a certain responsible workforce development percentage price preference from being applied under certain circumstances; requiring certain health care expenses paid by a certain bidder or subcontractor to be at least a certain percentage of certain wages paid during a certain period of time after the award of a certain contract; authorizing a procurement officer to void a certain contract under certain circumstances; requiring a certain bidder or subcontractor that fails to comply with a certain provision of law to pay a certain unit a certain amount; authorizing a procurement officer to void a contract under certain circumstances; prohibiting a certain person or entity from providing certain false information; establishing certain civil penalties under certain circumstances; authorizing certain action to be brought by certain persons; requiring the Board to collect certain information and report to certain committees of the General Assembly; defining certain terms; providing for the application of this Act; and generally relating to ~~percentage price preferences and procurement~~ procurement and the payment of employee health care expenses.~~

BY adding to

Article – State Finance and Procurement

Section ~~14-701 through 14-705~~ 17-801 through 17-804 to be under the new subtitle
~~“Subtitle 7. Responsible Workforce Development Percentage Price Preference”~~
“Subtitle 8. Responsible Payment of Employee Health Care Expenses”

Annotated Code of Maryland
 (2015 Replacement Volume and 2018 Supplement)

Preamble

WHEREAS, The Maryland General Assembly finds that the State and the State’s political subdivisions incur substantial direct and indirect expenses when employers do not pay for employee health care expenses ~~and that it makes economic sense for State agencies to offer a bid preference to contractors that pay for employee health care expenses for employees in Maryland;~~ now, therefore,

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

Article – State Finance and Procurement

~~SUBTITLE 7. RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE PREFERENCE.~~

SUBTITLE 8. RESPONSIBLE PAYMENT OF EMPLOYEE HEALTH CARE EXPENSES.

~~14-701.~~ 17-801.

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

(B) “AGGREGATE EMPLOYEE HEALTH CARE EXPENSES” MEANS ALL EMPLOYEE HEALTH CARE EXPENSES PAID BY A RESPONSIBLE BIDDER OR SUBCONTRACTOR.

(C) (1) “AGGREGATE SOCIAL SECURITY WAGES” MEANS ALL WAGES PAID BY A RESPONSIBLE BIDDER OR SUBCONTRACTOR TO AN EMPLOYEE FOR THE PERIOD OF TIME IN WHICH THE WAGES ARE PAID.

(2) “AGGREGATE SOCIAL SECURITY WAGES” DOES NOT INCLUDE WAGES THAT ARE ABOVE THE FEDERAL SOCIAL SECURITY CONTRIBUTION AND BENEFIT BASE.

(D) “EMPLOYEE” MEANS AN INDIVIDUAL WHO IS EMPLOYED BY A RESPONSIBLE BIDDER, CONTRACTOR, OR SUBCONTRACTOR TO WORK ON OR AT THE SITE OF A STATE-FUNDED CONSTRUCTION PROJECT ~~IN THE STATE BY A RESPONSIBLE BIDDER OR SUBCONTRACTOR.~~

(E) (1) “EMPLOYEE HEALTH CARE EXPENSES” MEANS ANY COSTS FOR HEALTH CARE SERVICES THAT ARE PAID BY A RESPONSIBLE BIDDER OR SUBCONTRACTOR TO AN EMPLOYEE, UNLESS THE EMPLOYEE HAS COVERAGE UNDER ANOTHER PLAN.

(2) “EMPLOYEE HEALTH CARE EXPENSES” INCLUDES:

(I) CONTRIBUTIONS MADE ON BEHALF OF AN EMPLOYEE TO PROVIDE CREDIBLE HEALTH CARE COVERAGE IN THE FORM OF ANY GROUP POLICY, CONTRACT, OR PROGRAM THAT IS WRITTEN OR ADMINISTERED BY A DISABILITY INSURER, HEALTH CARE SERVICE PLAN, FRATERNAL BENEFITS SOCIETY, SELF-INSURED EMPLOYER PLAN, OR ANY OTHER ENTITY, IN THIS STATE OR ELSEWHERE, THAT ARRANGES OR PROVIDES MEDICAL, HOSPITAL, AND SURGICAL COVERAGE NOT DESIGNATED TO SUPPLEMENT OTHER PRIVATE OR GOVERNMENTAL PLANS;

(II) CONTRIBUTIONS MADE ON BEHALF OF AN EMPLOYEE TO A HEALTH SAVINGS ACCOUNT AS DEFINED UNDER § 223 OF THE INTERNAL REVENUE CODE OR TO ANY OTHER ACCOUNT HAVING A SUBSTANTIALLY EQUIVALENT PURPOSE OR EFFECT WITHOUT REGARD TO WHETHER THE CONTRIBUTIONS QUALIFY FOR A TAX DEDUCTION OR ARE EXCLUDABLE FROM EMPLOYEE INCOME;

~~(III)~~ (III) REIMBURSEMENTS TO AN EMPLOYEE FOR EXPENSES INCURRED IN THE PURCHASE OF HEALTH CARE SERVICES;

~~(IV)~~ (IV) PAYMENTS TO A THIRD PARTY FOR THE PURPOSE OF PROVIDING HEALTH CARE SERVICES FOR AN EMPLOYEE;

~~(V)~~ (V) PAYMENTS UNDER A COLLECTIVE BARGAINING AGREEMENT FOR THE PURPOSE OF PROVIDING HEALTH CARE SERVICES FOR AN EMPLOYEE; AND

~~(VI)~~ (VI) COSTS INCURRED IN THE DIRECT DELIVERY OF HEALTH CARE SERVICES TO AN EMPLOYEE.

(F) “HEALTH CARE SERVICES” MEANS MEDICAL CARE, SERVICES, OR GOODS THAT:

(1) QUALIFY AS A TAX DEDUCTIBLE EXPENSE UNDER § 213 OF THE INTERNAL REVENUE CODE; OR

(2) HAVE A SUBSTANTIALLY EQUIVALENT PURPOSE TO MEDICAL CARE, SERVICES, OR GOODS THAT QUALIFY AS A TAX DEDUCTIBLE EXPENSE UNDER § 213 OF THE INTERNAL REVENUE CODE.

~~(C) “RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE PREFERENCE” MEANS THE PERCENT BY WHICH A RESPONSIVE BID SUBMITTED BY A RESPONSIBLE BIDDER THAT MEETS THE REQUIREMENTS UNDER § 14 703(A) OF THIS SUBTITLE MAY EXCEED THE LOWEST RESPONSIVE BID SUBMITTED BY A RESPONSIVE BIDDER THAT DOES NOT MEET THE REQUIREMENTS UNDER § 14 703(A) OF THIS SUBTITLE.~~

~~(H) (G)~~ “SUBCONTRACTOR” MEANS A PERSON LISTED ON A RESPONSIVE BID TO PROVIDE GOODS OR SERVICES UNDER A PORTION OF A CONTRACT WITH THE STATE.

~~14-702. 17-802.~~

(A) ~~THE~~ SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE BOARD SHALL ADOPT REGULATIONS THAT REQUIRE ~~EACH UNIT TO ESTABLISH A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE PREFERENCE OF AT LEAST 4%.~~ ALL BIDDERS, CONTRACTORS, AND SUBCONTRACTORS TO PAY EMPLOYEE HEALTH CARE EXPENSES AS REQUIRED BY THIS SUBTITLE.

(B) THIS SUBTITLE DOES NOT APPLY TO:

(1) A MINORITY BUSINESS ENTERPRISE, AS DEFINED UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE; OR

(2) A SMALL BUSINESS WITH 30 OR FEWER EMPLOYEES.

~~14-703. 17-803.~~

~~(A) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A PROCUREMENT OFFICER SHALL APPLY A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE PREFERENCE TO A RESPONSIVE BID IF:~~

~~(1) THE RESPONSIBLE BIDDER AND EACH SUBCONTRACTOR SUBMIT TO THE PROCUREMENT OFFICER THE CERTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION; OR~~

~~(2) THE RESPONSIBLE BIDDER IS A MINORITY BUSINESS ENTERPRISE UNDER § 14 301 OF THIS TITLE.~~

~~(B) A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE PREFERENCE SHALL BE APPLIED TO A RESPONSIVE BID UNDER SUBSECTION (A)(1) OF THIS SECTION IF THE RESPONSIBLE BIDDER AND EACH SUBCONTRACTOR CERTIFIES ON A FORM REQUIRED BY THE DEPARTMENT OF GENERAL SERVICES THAT THE AGGREGATE EMPLOYEE HEALTH CARE EXPENSES PAID BY THE BIDDER OR SUBCONTRACTOR WERE AT LEAST 10% OF THE AGGREGATE SOCIAL SECURITY WAGES PAID BY THE BIDDER OR SUBCONTRACTOR DURING:~~

~~(1) THE 12-MONTH PERIOD IMMEDIATELY BEFORE THE SUBMISSION OF THE BID; OR~~

~~(2) IF THE BIDDER OR SUBCONTRACTOR DID NOT HAVE AN EMPLOYEE IN THE STATE FOR THE ENTIRE 12-MONTH PERIOD IMMEDIATELY BEFORE SUBMISSION OF THE BID, FOR THE PERIOD OF TIME BETWEEN 3 MONTHS AND 12 MONTHS IMMEDIATELY BEFORE SUBMISSION OF THE BID IN WHICH THE BIDDER OR SUBCONTRACTOR HAD AN EMPLOYEE IN THE STATE.~~

(A) BY REGULATION, THE DEPARTMENT OF GENERAL SERVICES AND THE DEPARTMENT OF TRANSPORTATION SHALL ESTABLISH PROCEDURES FOR EACH BIDDER, CONTRACTOR, OR SUBCONTRACTOR THAT PERFORMS WORK ON A STATE-FUNDED CONSTRUCTION PROJECT TO CERTIFY THAT THE BIDDER, CONTRACTOR, OR SUBCONTRACTOR PAYS EMPLOYEE HEALTH CARE EXPENSES IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A BIDDER, CONTRACTOR, OR SUBCONTRACTOR SHALL DEMONSTRATE THE PAYMENT OF EMPLOYEE HEALTH CARE EXPENSES BY SUBMITTING CERTIFICATION OR A VALID CONTRACT TO THE DEPARTMENT OF GENERAL SERVICES OR THE DEPARTMENT OF TRANSPORTATION EVIDENCING THAT, WITH RESPECT TO THE EMPLOYEES WHO WILL WORK ON OR AT THE SITE OF THE PROJECT:

(I) THE BIDDER, CONTRACTOR, OR SUBCONTRACTOR PAYS AGGREGATE EMPLOYEE HEALTH CARE EXPENSES OF AT LEAST 5% OF THE AGGREGATE SOCIAL SECURITY WAGES PAID BY THE BIDDER, CONTRACTOR, OR SUBCONTRACTOR; OR

(II) THE BIDDER, CONTRACTOR, OR SUBCONTRACTOR PAYS 50% OR MORE OF THE REQUIRED PREMIUM NECESSARY TO OBTAIN COVERAGE BY A CREDIBLE HEALTH CARE INSURANCE PLAN.

(2) BEFORE JULY 1, 2020, A BIDDER, CONTRACTOR, OR SUBCONTRACTOR MAY DEMONSTRATE PAYMENT OF EMPLOYEE HEALTH CARE

EXPENSES BY SUBMITTING CERTIFICATION OR A VALID CONTRACT TO THE DEPARTMENT OF GENERAL SERVICES OR THE DEPARTMENT OF TRANSPORTATION EVIDENCING, WITH RESPECT TO THE EMPLOYEES WHO WILL WORK ON OR AT THE SITE OF THE PROJECT, THAT:

(I) UNDER A CONTRACT WITH A CREDIBLE HEALTH CARE INSURANCE PLAN OR THROUGH A COLLECTIVE BARGAINING AGREEMENT, THE BIDDER, CONTRACTOR, OR SUBCONTRACTOR PAYS SOME PORTION OF EMPLOYEE HEALTH CARE EXPENSES; AND

(II) THE BIDDER, CONTRACTOR, OR SUBCONTRACTOR WILL MEET THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION ON RENEWAL OF THE CONTRACT OR COLLECTIVE BARGAINING AGREEMENT.

(C) THE DEPARTMENT OF GENERAL SERVICES AND THE DEPARTMENT OF TRANSPORTATION SHALL COLLABORATE WITH THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION TO DEVELOP THE FORM REQUIRED FOR CERTIFICATION UNDER SUBSECTION (B) OF THIS SECTION.

(D) A PROCUREMENT OFFICER MAY REQUIRE A RESPONSIBLE BIDDER OR SUBCONTRACTOR TO SUBMIT RECORDS TO THE PROCUREMENT OFFICER THAT ARE SUFFICIENT TO SUPPORT THE CERTIFICATION THAT THE BIDDER OR SUBCONTRACTOR SUBMITTED IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

~~(E) A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE PREFERENCE MAY NOT BE APPLIED TO A BID SUBMITTED BY A BIDDER OR SUBCONTRACTOR THAT MEETS THE REQUIREMENTS UNDER SUBSECTION (A)(1) OF THIS SECTION IF:~~

~~(1) A BIDDER OR SUBCONTRACTOR FAILS TO SUBMIT THE RECORDS REQUIRED UNDER SUBSECTION (D) OF THIS SECTION WITHIN A REASONABLE PERIOD OF TIME; OR~~

~~(2) A BIDDER OR SUBCONTRACTOR HAS NOT EMPLOYED AN INDIVIDUAL IN THE STATE FOR AT LEAST 3 MONTHS IMMEDIATELY BEFORE THE SUBMISSION OF THE BID.~~

(E) IF A RESPONSIBLE BIDDER THAT IS AWARDED A CONTRACT TO WORK ON A STATE-FUNDED CONSTRUCTION PROJECT FAILS TO SUBMIT RECORDS REQUIRED UNDER THIS SECTION WITHIN A REASONABLE PERIOD OF TIME, THE PROCUREMENT OFFICER MAY VOID THE CONTRACT.

~~14-704.~~

~~(A) FOR AT LEAST 1 YEAR AFTER THE AWARD OF A CONTRACT FOR A RESPONSIVE BID TO WHICH A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE PREFERENCE WAS APPLIED UNDER § 14-703(A)(1) OF THIS SUBTITLE, THE AGGREGATE EMPLOYEE HEALTH CARE EXPENSES PAID BY THE RESPONSIBLE BIDDER AWARDED THE CONTRACT AND EACH SUBCONTRACTOR SHALL BE AT LEAST 10% OF THE AGGREGATE SOCIAL SECURITY WAGES PAID BY THE BIDDER OR SUBCONTRACTOR.~~

~~(B) A PROCUREMENT OFFICER MAY REQUIRE THE RESPONSIBLE BIDDER AWARDED A CONTRACT OR SUBCONTRACTOR TO SUBMIT RECORDS TO THE PROCUREMENT OFFICER THAT ARE SUFFICIENT TO SHOW COMPLIANCE WITH SUBSECTION (A) OF THIS SECTION.~~

~~(C) (1) IF THE RESPONSIBLE BIDDER AWARDED A CONTRACT OR SUBCONTRACTOR FAILS TO SUBMIT THE RECORDS REQUIRED UNDER SUBSECTION (B) OF THIS SECTION WITHIN A REASONABLE PERIOD OF TIME, THE PROCUREMENT OFFICER MAY VOID THE CONTRACT.~~

~~(2) IF THE RESPONSIBLE BIDDER AWARDED A CONTRACT OR SUBCONTRACTOR OTHERWISE FAILS TO COMPLY WITH SUBSECTION (A) OF THIS SECTION, THE BIDDER OR SUBCONTRACTOR SHALL PAY THE UNIT THAT AWARDED THE CONTRACT AN AMOUNT EQUAL TO TWICE THE AMOUNT THAT THE BIDDER OR SUBCONTRACTOR WOULD HAVE PAID FOR HEALTH CARE EXPENSES IF THE BIDDER OR SUBCONTRACTOR HAD COMPLIED WITH THE REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION.~~

~~14-705.~~ 17-804.

(A) A PERSON OR AN ENTITY MAY NOT PROVIDE FALSE INFORMATION UNDER THIS SUBTITLE.

(B) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$2,500 AND NOT EXCEEDING \$25,000 FOR EACH VIOLATION.

(C) AN ACTION FOR A CIVIL PENALTY UNDER THIS SECTION MAY BE BROUGHT BY:

- (1) THE UNIT THAT AWARDED THE CONTRACT, IN ITS OWN NAME;
- (2) THE ATTORNEY GENERAL, IN THE NAME OF THE STATE; OR

(3) A STATE'S ATTORNEY, IN THE NAME OF THE STATE.SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Board of Public Works shall collect the following information for all construction-related, competitive sealed bids for projects for a period of 3 years following the enactment of this Act:

(1) whether the bidding company and any subcontractor provides employee health care coverage or family health care coverage on projects that require a prevailing wage;

(2) for the year preceding the bid, what the percentage of total Social Security wages was, as well as the total amount spent on employee health care;

(3) what percentage of total health insurance coverage costs are paid by the insurance company, versus an employee, what the type and scope of the coverage are, and what the average percentage of the monthly premium paid by the bidder or subcontractor is; and

(4) what the average percentage of monthly premium paid by the bidder's employee or subcontractor's employee was, and the average per employee deductible for each health care plan offered.

(b) The Board of Public Works shall direct any relevant agency to include in any request for construction-related, competitive sealed bids the information required under subsection (a) of this section.

(c) On or before August 1, 2020, 2021, and 2022, the Board of Public Works shall report the information collected under this section for the previous fiscal year to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee, in accordance with § 2-1246 of the State Government Article.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2019.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 25, 2019.