

HOUSE BILL 776

P2

8lr1245
CF SB 492

By: **Delegates Rosenberg, Bromwell, Angel, Frick, Hayes, Hill, Kelly, Morales, Pena-Melnyk, and Sample-Hughes**

Introduced and read first time: February 1, 2018

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Responsible Workforce Development Percentage Price**
3 **Preference Act**

4 FOR the purpose of requiring the Board of Public Works to adopt regulations to require
5 certain units to establish a certain responsible workforce development percentage
6 price preference; requiring a procurement officer to apply a certain responsible
7 workforce development percentage price preference if a certain certification is
8 submitted; requiring certain responsible bidders and subcontractors to certify on a
9 certain form that certain health care expenses were at least a certain percentage of
10 certain wages paid for during a certain period of time before the submission of a
11 certain bid; requiring the Department of General Services to collaborate with the
12 Department of Labor, Licensing, and Regulation to develop a certain form;
13 authorizing a procurement officer to require a responsible bidder or subcontractor to
14 submit certain records under certain circumstances; prohibiting a certain
15 responsible workforce development percentage price preference from being applied
16 under certain circumstances; requiring certain health care expenses paid by a
17 certain bidder or subcontractor to be at least a certain percentage of certain wages
18 paid during a certain period of time after the award of a certain contract; authorizing
19 a procurement officer to void a certain contract under certain circumstances;
20 requiring a certain bidder or subcontractor that fails to comply with a certain
21 provision of law to pay a certain unit a certain amount; prohibiting a certain person
22 or entity from providing certain false information; establishing certain civil penalties
23 under certain circumstances; authorizing certain action to be brought by certain
24 persons; defining certain terms; and generally relating to percentage price
25 preferences and procurement.

26 BY adding to

27 Article – State Finance and Procurement

28 Section 14–701 through 14–705 to be under the new subtitle “Subtitle 7. Responsible
29 Workforce Development Percentage Price Preference”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2015 Replacement Volume and 2017 Supplement)

3 Preamble

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

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

11 **Article – State Finance and Procurement**

12 **SUBTITLE 7. RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE**
13 **PREFERENCE.**

14 **14-701.**

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

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

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

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

26 (D) “EMPLOYEE” MEANS AN INDIVIDUAL WHO IS EMPLOYED TO WORK IN
27 THE STATE BY A RESPONSIBLE BIDDER OR SUBCONTRACTOR.

28 (E) (1) “EMPLOYEE HEALTH CARE EXPENSES” MEANS ANY COSTS FOR
29 HEALTH CARE SERVICES THAT ARE PAID BY A RESPONSIBLE BIDDER OR
30 SUBCONTRACTOR TO AN EMPLOYEE.

31 (2) “EMPLOYEE HEALTH CARE EXPENSES” INCLUDES:

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

6 (II) REIMBURSEMENTS TO AN EMPLOYEE FOR EXPENSES
7 INCURRED IN THE PURCHASE OF HEALTH CARE SERVICES;

8 (III) PAYMENTS TO A THIRD PARTY FOR THE PURPOSE OF
9 PROVIDING HEALTH CARE SERVICES FOR AN EMPLOYEE;

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

12 (V) COSTS INCURRED IN THE DIRECT DELIVERY OF HEALTH
13 CARE SERVICES TO AN EMPLOYEE.

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

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

18 (2) HAVE A SUBSTANTIALLY EQUIVALENT PURPOSE TO MEDICAL
19 CARE, SERVICES, OR GOODS THAT QUALIFY AS A TAX DEDUCTIBLE EXPENSE UNDER
20 § 213 OF THE INTERNAL REVENUE CODE.

21 (G) “RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE
22 PREFERENCE” MEANS THE PERCENT BY WHICH A RESPONSIVE BID SUBMITTED WITH
23 THE CERTIFICATION OF EMPLOYEE HEALTH CARE EXPENSES REQUIRED UNDER §
24 14-703(A) AND (B) OF THIS SUBTITLE MAY EXCEED THE LOWEST RESPONSIVE BID
25 THAT WAS NOT SUBMITTED WITH THE CERTIFICATION OF EMPLOYEE HEALTH CARE
26 EXPENSES REQUIRED UNDER § 14-703(A) AND (B) OF THIS SUBTITLE.

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

29 14-702.

30 THE BOARD SHALL ADOPT REGULATIONS THAT REQUIRE EACH UNIT TO
31 ESTABLISH A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE
32 PREFERENCE OF AT LEAST 4%.

1 14-703.

2 (A) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A
3 PROCUREMENT OFFICER SHALL APPLY A RESPONSIBLE WORKFORCE
4 DEVELOPMENT PERCENTAGE PRICE PREFERENCE TO A RESPONSIVE BID IF THE
5 RESPONSIBLE BIDDER AND EACH SUBCONTRACTOR SUBMIT TO THE PROCUREMENT
6 OFFICER THE CERTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION.

7 (B) THE RESPONSIBLE BIDDER AND EACH SUBCONTRACTOR SHALL
8 CERTIFY ON A FORM REQUIRED BY THE DEPARTMENT OF GENERAL SERVICES THAT
9 THE AGGREGATE EMPLOYEE HEALTH CARE EXPENSES PAID BY THE BIDDER OR
10 SUBCONTRACTOR WERE AT LEAST 6.5% OF THE AGGREGATE SOCIAL SECURITY
11 WAGES PAID BY THE BIDDER OR SUBCONTRACTOR DURING:

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

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

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

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

27 (E) A RESPONSIBLE WORKFORCE DEVELOPMENT PERCENTAGE PRICE
28 PREFERENCE MAY NOT BE APPLIED TO A BID IF:

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

32 (2) A BIDDER OR SUBCONTRACTOR HAS NOT EMPLOYED AN
33 INDIVIDUAL IN THE STATE FOR AT LEAST 3 MONTHS IMMEDIATELY BEFORE THE

1 SUBMISSION OF THE BID.

2 14-704.

3 (A) FOR AT LEAST 1 YEAR AFTER THE AWARD OF A CONTRACT FOR A
4 RESPONSIVE BID TO WHICH A RESPONSIBLE WORKFORCE DEVELOPMENT
5 PERCENTAGE PRICE PREFERENCE WAS APPLIED, THE AGGREGATE EMPLOYEE
6 HEALTH CARE EXPENSES PAID BY THE RESPONSIBLE BIDDER AWARDED THE
7 CONTRACT AND EACH SUBCONTRACTOR SHALL BE AT LEAST 6.5% OF THE
8 AGGREGATE SOCIAL SECURITY WAGES PAID BY THE BIDDER OR SUBCONTRACTOR.

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

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

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

24 14-705.

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

27 (B) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION SHALL BE
28 SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$2,500 AND NOT EXCEEDING
29 \$25,000, FOR EACH VIOLATION.

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

32 (1) THE UNIT THAT AWARDED THE CONTRACT, IN ITS OWN NAME;

1 **(2) THE ATTORNEY GENERAL, IN THE NAME OF THE STATE; OR**

2 **(3) A STATE’S ATTORNEY, IN THE NAME OF THE STATE.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
4 1, 2018.