

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 583

(Delegate Cullison, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

State Procurement - Payment of Employee Health Care Expenses - Revisions

This bill (1) alters the definition of “subcontractor” as it relates to the payment of employee health care expenses by contractors and subcontractors on State construction projects and (2) extends by one year less stringent compliance requirements for contractors and subcontractors under current law. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: The bill has no material effect on State governmental finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Subcontractor,” for purposes of the bill, includes a person listed on a responsive bid or added to a contract with the State after the contract is awarded in order to provide construction services under a portion of the contract.

Current Law: Chapters 686 and 687 of 2019 require the Board of Public Works (BPW) to adopt regulations that require all bidders, contractors, and subcontractors on State-funded construction projects to pay employee health care expenses. This requirement does not apply to minority business enterprises (MBEs) or businesses with 30 or fewer employees. The Department of General Services (DGS) and the Maryland Department of Transportation (MDOT) must establish procedures for bidders, contractors, and subcontractors to certify that they pay employee health care expenses. BPW must collect

and report on specified information for three years. For purposes of this requirement, a “subcontractor” is a person listed on a responsive bid to provide goods or services under a portion of a contract with the State.

Health Care Expenses Defined

“Employee health care expenses” are any costs for health care services paid by a responsible bidder or subcontractor to an employee, unless the employee has coverage under another plan, including:

- contributions made on behalf of an employee to provide specified credible health care coverage that arranges or provides medical, hospital, and surgical coverage that is not designated to supplement other private or governmental plans;
- contributions made on behalf of an employee to a health savings account, as defined under the federal Internal Revenue Code, or any other similar account;
- reimbursements to an employee for health care expenses;
- payments to a third party to provide health care services to an employee;
- payments under a collective bargaining agreement to provide health care services to an employee; and
- costs incurred in the direct delivery of health care services to an employee.

Certification Requirements

A bidder, contractor, or subcontractor on a State-funded construction contract must demonstrate the payment of employee health care expenses by submitting certification or a valid contract to DGS or MDOT that shows that, for employees who will work on the construction project:

- the employer pays aggregate employee health care expenses of at least 5% of the wages paid by the employer; or
- the employer pays 50% or more of the required premium necessary to obtain coverage by a credible health insurance plan.

However, there are less stringent certification requirements in effect until July 1, 2020; the bill extends the less stringent requirements for one year, to July 1, 2021. A procurement officer may require a responsible bidder or subcontractor to submit records that are sufficient to support the required certification. DGS, MDOT, and the Maryland Department of Labor must collaborate on the development of a certification form.

Enforcement

If a contract awardee fails to provide the required documentation in a reasonable period of time, the procurement officer may void the contract. A person who provides false information is subject to a civil penalty of between \$2,500 and \$25,000 for each violation. An action for the civil penalty may be brought by the agency that awarded the contract, the Attorney General, or the State's Attorney.

Board of Public Works Study

For three years following the enactment of Chapters 686 and 687, BPW must collect the following information for all construction-related, competitive sealed bids:

- whether the bidding company and any subcontractor provides employee or family health care coverage on projects that require a prevailing wage;
- for the year preceding the bid, the percentage of total wages and the total amount spent on employee health care;
- the percentage of total health insurance costs paid by the insurance company (instead of the employee), the type and scope of coverage provided, and the average percentage of the monthly premium paid by the bidder or subcontractor; and
- the average percentage of monthly premium paid by the employee and the average per employee deductible for each health care plan offered.

BPW must direct any relevant agency to incorporate the necessary data in requests for competitive sealed bids, and BPW must report the information it collects to specified committees of the General Assembly by August 1 of each of three years (2020 through 2022).

Prevailing Wages

Contractors and subcontractors working on eligible public works projects in Maryland must pay their employees the prevailing wage rate. "Public works" are structures or works, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that are constructed for public use or benefit or paid for entirely or in part by public money.

Eligible public works projects are:

- those carried out by the State;
- an elementary or secondary school for which at least 25% of the money used for construction is State money;

- any other public work for which at least 50% of the money used for construction is State money; and
- specified projects in tax increment financing districts if the local governing body approves of the application of prevailing wages.

Any public works contract valued at less than \$500,000 is not required to pay prevailing wages. The State prevailing wage rate also does not apply to (1) any part of a public works contract funded with federal funds for which the contractor must pay the prevailing wage rate determined by the federal government or (2) specified construction projects carried out by public service companies under order of the Public Service Commission.

The calculation of the prevailing wage rate is required to include a fringe benefit component (which is in addition to the base hourly rate) that reflects the cost of providing medical coverage, retirement benefits, and other fringe benefits. The contractor must pay the fringe benefit rate either to a third party to provide fringe benefits to the employee, or as additional wages directly to the employee.

Background: Chapter 468 of 2018 required BPW to collect the information listed below for all construction-related contracts awarded by competitive sealed bids in the three months following the enactment of the bill and submit a report on its findings to specified committees of the General Assembly by November 1, 2018:

- whether the bidder and any subcontractor provide employee health care coverage on projects that require payment of prevailing wages;
- 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;
- the percentage of total health insurance coverage costs paid by an insurance company compared with the percentage paid by an employee;
- the type and scope of coverage as well as the average percentage of monthly premiums paid by the bidder or subcontractor; and
- the average percentage of monthly premium paid by the bidder's or subcontractor's employees and the average deductible in each health care plan offered.

The report included information from more than 300 contractors and subcontractors involved with 48 different procurements. It found that 75% of respondents provided employee health insurance coverage on prevailing wage projects. Coverage levels among those that provided health insurance varied tremendously, but most employers paid at least 50% of plan premiums, and most deductibles were at or below \$2,500.

Additional Comments: The Attorney General concluded in his analysis of Chapters 686 and 687 of 2019 that the exemption for MBEs in those Acts might be found to be an unconstitutional racial preference. The bill retains this exemption.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 782 (Senator Zucker) - Education, Health, and Environmental Affairs..

Information Source(s): University System of Maryland; Department of General Services; Maryland Department of Labor; Department of Public Safety and Correctional Services; Maryland Stadium Authority; Department of Legislative Services

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