

**REPORT FROM THE WORKGOUPTO STUDY OCCUPATIONAL
SAEFY AND HEALTH PREQUALIFICATION REQUIREMENTS ON
PUBLIC WORKS PROJECTS**

I. INTRODUCTION

Pursuant to Chapter 625 of the Laws of 2014, the General Assembly mandated that the Department of Labor, Licensing and Regulation (“DLLR”) establish 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 work 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.

DLLR invited representatives from each organization listed in Chapter 625 Section 1 (b) to participate in the workgroup. The letter of invitation is included in Appendix B. In addition to the initial letter of invitation, each organization was invited by phone and by email to participate in the workgroup. The resulting members that formed the workgroup and the DLLR staff supporting the workgroup are listed in Appendix A. The workgroup convened on five (5) occasions on July 9, 2014, August 6, 2014, September 3, 2014, October 15, 2014 and November 5, 2014 at the DLLR offices located at 1100 North Eutaw Street, Baltimore, Maryland 21201. The workgroup divided into subcommittees in order to perform a more in-depth examination of some of the following issues raised by Chapter 625. A list of Subgroup members can be found in Appendix C.

II. ISSUES TO BE CONSIDERED PURSUANT TO CHAPTER 625

A. Analysis of SB 774 and HB 951

As originally proposed, SB 774 and HB 951 would have required that DLLR establish a prequalification list comprised of contractors who had completed a safety questionnaire and provided certain documentation demonstrating that the contractors met a minimum safety rating. Contractors who were not on the prequalification list would have been prohibited from bidding on a public work contract and public bodies would have been precluded from awarding a public work contract to a bidder or offeror who was not on the prequalification list.

While examining the language of SB 744 and HB 951 the workgroup agreed that the prequalification requirements outlined in the proposed legislation would not adequately address the issue of worker safety and health on public projects as written. Subgroup 1 (see Appendix C) was tasked with conducting a more in-depth analysis of this issue. Two main concerns arose from the subgroup's discussion. First, the workgroup determined that not allowing contractors with poor safety records to bid on public projects simply shifted the hazard of such contractors to private projects and provided no intervention to help improve safety practices on the job. Second, the workgroup did not want safety and health prequalification to be a "check the box" process where a procurement agent would only be looking for a completed and signed form before granting qualified status to a contractor. Instead the workgroup agreed addressing safety concerns should be handled on the project site by the prime contractor or project manager. Because each project and contractor is unique, no universal measure of safety compliance can be applied in a meaningful way. With a project specific focus, project managers and prime contractors can rate the safety performance of contractors based on the anticipated safety needs of the project.

B. Occupational Safety and Health Prequalification Requirements in Other Jurisdictions

Subgroup 2 (see Appendix C) examined the issue of occupational safety and health prequalification in other jurisdictions in the United States. The subcommittee was not able to find another State or municipality with a global occupational safety and health prequalification requirement for public work projects. Few other jurisdictions have contractor occupational safety and health prequalification requirements as a prerequisite to bidding on a public work project. Among those with such prequalification requirements studied by the workgroup are North Carolina's Department of Transportation, the Knoxville Utility Board, and the Los Angeles Unified School District.

In North Carolina contractors must be prequalified and placed on the certified vendor list before they are eligible to bid on state work. The prequalification process includes an occupational safety and health section. Within the safety section, contractors receive a safety rating index based primarily on lagging indicator data. A marginal safety rating index may result in a safety audit performed by the State and an unsatisfactory safety rating index will prohibit the contractor from prequalification. Please refer to Appendix D for a copy of the safety rating index worksheets from the North Carolina prequalification application.

For the Los Angeles Unified School District and the Knoxville Utility Board, contractors must complete a section on OSHA citation history and a section on safety policies and procedures (see Appendices E and F). While the OSHA citation history provides lagging indicator information, the safety policies and procedures section uses leading indicators to provide credit for steps taken by the contractor to promote a safe working environment. The workgroup recognizes the importance of leading indicator data when reviewing a contractor for prequalification. Lagging indicators only represent incidents that were reported. Some contractors with excellent safety

practices may suffer an accident or fatality regardless of the preventative measures taken, whereas a contractor with very unsafe practices may have avoided properly reporting an incident or may not have experienced an incident yet, but is likely to in the future.

Additionally, some private entities such as the Metropolitan Indianapolis Coalition for Construction Safety (“MICCS”) and URS were a source of helpful information. MICCS is a non-profit organization focused on safety. MICCS certifies contractors on behalf of public and private construction owners in Indiana and the Midwest. URS is a large engineering and construction consulting firm that, among other things, supplies safety, health and accident prevention information to construction clients.

Prequalification is required by many general contractors before work is awarded to subcontractors. While some businesses rely on third party certifications, large firms such as Clark Construction and Whiting and Turner have implemented their own prequalification processes for subcontractors seeking to bid on any of their projects. Members of the workgroup recognize the direction of the private sector to require subcontractors prequalify for available work.

C. Current Practices Used By Units In State Government to Evaluate Bids to Ensure Contractor Adherence to Safety Standards

Subgroup 3 (see Appendix C) was unable to find examples of Maryland State units evaluating contractor adherence to safety standards when awarding projects.

D. Recommendations Regarding Occupational Safety and Health Prequalification Requirements

The workgroup recommends the legislature pass a bill that requires the following components to improve contractor safety on public projects and require contractors with poor safety performance to adopt additional safety procedures. The legislation should require contractors to have an occupational safety and health plan before submitting bids for public work, and require winning contractors to submit an occupational safety and health score that will be used to prescribe

additional safety measures if necessary. A sample draft bill and draft questionnaire can be found in Appendix G and H.

Pre- Award Requirements:

The contractor prequalification workgroup recommends that the Maryland General Assembly pass a statute that states all contractors, sub-contractors, bidding or offering on publically funded projects to have a management plan that addresses the recognition and avoidance of hazards that could lead to injury, illness, and property damage. This management plan would be called a “Contractor Safety Plan”. The Contractor Safety Plan would be in writing and would generally explain how the contractor provides for: active commitment and leadership; hazard anticipation, identification and control; and hazard avoidance, communication and training. The plan would have to include, at a minimum, the following elements:

1. A sworn statement of the contractor’s commitment to safety on the project, including a provision for designating a representative responsible for safety on the project;
2. The contractor’s methods for identifying, assessing and documenting potential occupational safety and health hazards on the project;
3. The contractor’s methods for preventing and controlling occupational safety and health hazards on the project;
4. The contractor’s methods for communicating information to and training employees on issues related to occupational safety and health hazards on the project;
5. The contractor’s methods for employee participation in identifying and resolving safety and health issues on the project; and
6. The contractor’s methods for continuous evaluation and assessment of the occupational safety and health hazards on the project and provision for modification of the safety plan based on the continuous evaluation and assessment.

The contractor would not be required to submit a copy of the plan to the public body, however, the contractor would have to attest to the public body that the contractor had a written plan meeting the requirements and that the elements of the plan would be implemented on the project. Upon

request, the contractor occupational safety and health plan would be subject to inspection by the public body or the Commissioner of Labor and Industry.

Post Award Requirements:

For contracts over \$100,000 the winning contractor and their sub-contractors would also submit safety and health performance indicator data. All indicator information would be reported using a safety questionnaire developed by the Commissioner of Labor and Industry. The questionnaire would examine the contractor's prior safety performance including lagging indicators, such as the number of willful, serious, and repeat OSHA citations, and leading indicators, such as the implementation of hazard specific safety training for workers and expressions of commitment of job site safety from management. The completed questionnaire would be scored based on the contractor's or sub-contractor's responses. Depending upon the score on the questionnaire, the contractor or subcontractor may have to implement additional safety measures including, but not limited to, weekly "toolbox talks" or if the score was low, a fulltime accredited on-site safety professional. The subgroup drafted a sample questionnaire based on the Los Angeles Unified School District. A final questionnaire was developed and includes contributions from the entire workgroup (see Appendix H).

The project manager would be responsible for confirming what additional safety measures, if any, need to be implemented by the prime contractor while performing work under the contract as a result of the safety score received on the proposed questionnaire. Prime contractors would in turn apply the same safety rating system to any subcontractors working on the contract. Both the rubric and safety score calculation formula would be available to the public and would be used by prospective bidders to anticipate safety costs when preparing a bid for public work.

Enforcement:

No consensus was reached by the workgroup on the issue of enforcement. One proposed enforcement mechanism is included in the draft legislation (Appendix G). Under the proposed enforcement section DLLR would investigate complaints regarding the implementation of any of the required safety measures. In addition, DLLR would verify compliance with the required safety measures as part of existing programmed inspections. Contractors found to be violating their safety commitments would be fined, and upon a second violation fined a greater amount. Contractors who act knowingly or with reckless disregard for the law could potentially be recommended for debarment. The project manager and prime contractor would be responsible for overseeing the day-to-day compliance of contractors working on the contract. At least one member of the workgroup strongly opposed the enforcement provisions proposed in Section 17-805 and 17-806 of the draft legislation found in Appendix G. However, all members agreed neither procurement officials nor third party private entities should be responsible for enforcement.

III. CONCLUSION

The work group agreed that safety on public projects should be a priority of the Maryland General Assembly. To promote safe practices on public projects the work group recommends passing legislation that goes beyond a simple paper process to disqualify poor performing contractors. The legislation should address implementing safety procedures in a site specific way and encourage improvement among those contractors with poor safety records. The work group agreed every contractor on a public project should at least be required to have a safety plan and for contracts over \$100,000 be rated on their safety culture and performance. Such low thresholds were selected because a project value is not proportional to safety risks of the project. The work group holds that each worker performing a task on a public work should have the confidence that quality safety procedures are in place on the job site.

APPENDIX A—WORKGROUP MEMBERS

Members of the workgroup included:

<u>Name</u>	<u>Representing</u>
Adele Abrams	American Society of safety Engineers
Jeffrey Ambrose	AGC Maryland
Carey Dove	Alliance for Construction Excellence
Donna Edwards	Maryland and D.C, AFL-CIO
Jeffrey Guido	CHOICE
Champe McCulloch	AGC of Maryland
Steve Marciszewski	Maryland SHA
Andrea Mansfield	Maryland Association of Counties
Jeanne Lee	Alliance for Construction Excellence
Elizabeth Moss	Maryland Association of Counties
Clayton Sinyai	Center for Construction Research and Training
Frank Trujillo	Association of Building Contractors
Jack Wilson	NCS Incorporated (Electrical)
Keith Wrightson	Public Citizen

DLLR staff members included:

J. Ronald DeJuliis	Commissioner of Labor and Industry
Craig Lowry	Deputy Commissioner of Labor and Industry
Kim Beard	Assistant to the Deputy Commissioner
Sarah Blusiewicz	Policy Director, Labor and Industry
Sarah Harlan	Assistant Attorney General
Melissa Myer	Special Projects Coordinator, Labor and Industry
Mischelle Vanreusel	Program Manager, MOSH

APPENDIX B – LETTER OF INVITATION TO WORKGROUP MEMBERS



LABOR AND INDUSTRY
1100 N. EUTAW STREET, ROOM 600
BALTIMORE, MD 21201

CRAIG DONALDSON LOWRY, CSP
DEPUTY COMMISSIONER

E-mail: Craig.Lowry@Maryland.gov

May 13, 2014

Maryland Associated
General Contractors
1301 York Rd., Lutherville MD 21093

A Request for a Representative:

To whom it may concern,

The Maryland General Assembly considered legislation during the 2014 Session that would require contractor pre-qualification for occupational safety and health prior to performing work on Maryland Public Works. Under House Bill 951 and Senate Bill 774 (2014) that passed, –the Department of Labor, Licensing, and Regulation is required to convene a workgroup to study and make recommendations regarding public works contractor occupational safety and health prequalification requirements – a workgroup shall be assembled with the inclusion of a representative from your organization.

It is the final goal of this workgroup to report to the General Assembly by December 31, 2014 its findings and recommendations regarding the establishment of public work contractor occupational safety and health prequalification requirements in Maryland. As I am sure you realize this is a very tight time frame. We are asking your organization to select a representative who will best meet this goal.

As a preliminary measure, five meetings have been scheduled throughout the remainder of this year. Please ensure that the representative chosen will be in a position to competently discuss issues relative to occupational safety and health indicators and be capable of attending each of the working sessions.

The inaugural meeting of the impending workgroup will take place on July 9, 2014 at 3:00pm at 1100 N. Eutaw Street, Baltimore MD 21201, Room 600. At this same location, four additional meetings are scheduled from 3:00pm to 6:00pm on the following dates:

August 6, 2014
September 3, 2014
October 1, 2014
November 5, 2014

Parking will be provided.

Please forward the name, title, phone number, e-mail and mailing address of the person who will represent your organization within the workgroup.

PHONE: 410.767.2929

FAX: 410.767.2986

www.dllr.maryland.gov/labor

We ask that this request be fulfilled on or before **June 1, 2014**, by email to siobahn.peay@maryland.gov
cc: craig.lowry@maryland.gov or via postal services to:

1100 N Eutaw St. Room 606
Baltimore, Maryland 21201
ATTN: Siobahn Peay

For additional information on the Bills please visit <http://mgaleg.maryland.gov/>

If your representative has any preliminary information that you would like to share or include in the initial package please forward that information to the above address. We look forward to having you join with other community partners as we take a closer look at safety and health prequalification requirements of public works contractors.

Respectfully,

Craig Donaldson Lowry, CSP
Deputy Commissioner
Maryland Division of Labor and Industry

APPENDIX C—MEMBERS OF WORKGROUP

Subgroup Members:

Group 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.

Group 1 Members:

Sarah Blusiewicz, DLI - Coordinator
Francisco Trujillo, ABC - Chairperson
Jeff D'Ambrose, AGC Maryland
Jeanne Lee for Carey Dove, Alliance for Construction Excellence

Group 2: Study the effectiveness of Public Works Contractor Occupational Safety and Health Prequalification Requirements that exist in other jurisdictions in the United States.

Group 2 Members:

Melissa Myer, DLI - Coordinator
Adele Abrams, ASSE - Chairperson
Keith Wrightson, Public Citizen
Clayton Sinyai, The Center for Construction Research Training

Group 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.

Group 3 Members:

Mischelle Vanreusel, MOSH - Coordinator
Champe McCulloch, AGC Maryland - Chairperson
Michael Cavanaugh, Department of General Services
Colleen Haynes, Department of General Services
Steve Manciszewski, SHA Maryland
Elizabeth Moss, MACO
Donna Edwards, Maryland State and DC AFL-CIO

APPENDIX D – NORTH CAROLINA



North Carolina Department of Transportation Safety Index Rating Form

Date: _____

FIRM NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: () _____

FAX NUMBER: () _____



Requirements include provisions for the evaluation of a new or existing firm's safety record. A safety index of D to A+(60 to >100) is considered satisfactory. The Carolina Building Star Program membership can result in receiving extra credit toward your final score. In addition, a safety index of D (60 to 69) may be considered marginal and/or may result in a safety audit or inspection by either the North Carolina Department of Transportation's Construction Unit, Area Resident Engineer's Office or the Occupational Safety and Health Division of the North Carolina Department of Labor. Any safety index of U (≤ 59) is considered unsatisfactory and will prohibit prequalification or approval of new firms and/or renewal for existing firms. These companies will not be approved for prequalification or subcontractor approval until they can provide adequate evidence that safety deficiencies have been corrected.

Safety Index Rating		
<u>Total Safety Profile Score</u>	=	<u>Index</u>
≥ 100	=	A+
90-99	=	A
80-89	=	B
70-79	=	C
60-69	=	D
≤ 59	=	U (Unsatisfactory)

When any existing prequalified bidder or approved subcontractor company's safety index becomes unsatisfactory, that firm will be subject to removal from the Department's List of Prequalified Bidders and/or Approved Subcontractors. Once the Contractor's safety index becomes unsatisfactory, it will be required to show cause in writing as to why the company should not be removed from the prequalified bidders' and/or approved subcontractors' lists. After the Department reviews the Contractor's safety records and show cause response, one of the following actions may be taken: The Contractor may (1) be removed from the list of prequalified bidders and/or approved subcontractors, (2) be placed on probation for up to two years, (3) perform an in-depth safety inspection of their firm's safety practices, (4) receive a written warning to correct the deficiency, or (5) any combination of the previous.

The action taken will depend on the severity and nature of the safety violations. Any removal from the list of prequalified bidders and/or approved subcontractors will be for a minimum of 30 days. To be reinstated, the Contractor must satisfactorily demonstrate that all safety deficiencies have been corrected. Any company that is repeatedly removed from the list of prequalified bidders and/or approved subcontractors due to safety may be subject to permanent disqualification.

The safety index rating procedures have been designed to minimize any impact on the final safety index rating related to the size of the company.

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Safety Index Rating: _____ Prequalification Expires: _____ Approved By: _____ Date: _____

Notes: _____

Part 1: Contractor's Safety Philosophy Profile (Possible 5 Points)

Listed below are questions to be used to determine your company's overall safety profile. Please provide the answer that best describes your company's present business approach towards safety. Any additional responses may be attached as needed. Although the questions are subjective, answers that are judged to provide a positive safety profile will result in an additional 5 points added to the overall index.

1. Do you currently have a written safety program in full force and effect? Yes No

If so, please attach a copy of the Title sheet

2. Do you have a designated safety officer? Yes No

Full Time

Part Time

3. Does your company provide drug/alcohol screening? Yes No

Please check the type of drug/alcohol testing performed:

Random

CDL Complaint

Post Accident

Other _____

Please check the positions below that receive drug/alcohol testing:

Laborers

Field Supervisors

Operators

Others _____

4. Are regular safety meetings held on project sites? Yes No

List frequency _____

Please check the positions that are required to attend on-site safety meetings:

Laborers

Field Supervisors

Operators

Others _____

5. Are new employees (permanent or temporary) provided with safety orientation? Yes No

6. Please check the following personal safety equipment that your firm requires employees to use on each project site:

Hard Hats

Steel Toed Shoes

Safety Vests

Fall Protection

Eye Protection*

Hearing Protection*

7. Does your company provide safety training for field personnel? Yes No

Please check if the following training is provided and list the general frequency that training for these items is provided:

Trench Safety _____

Equipment Operation _____

Work Zone Safety _____

Flagger Training _____

Fall Protection _____

Personal Safety Equipment _____

Is this training by Internal Trainer

Outside Provider

Is safety training documentation available? Yes No

No

8. Does your company perform scheduled inspections and maintenance on equipment and safety devices?

Yes No

List frequency: _____

* Consistent with the hazards for that site

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Score:

Part 2: Contractor's Safety Operating Profile (Possible 105 Points)

Listed below are questions to be used to determine your company's safety operating profile. Please provide the answers that best describe your company's present business operating practices regarding safety. Any additional responses may be attached as needed. The North Carolina Department of Transportation will complete all scoring. Please note that all questions must be answered.

1. List your firm's Experience Modification Rate (EMR) for the three most recent years. (This Rate can be obtained by contacting your firm's Workers' Compensation Insurance carrier.)

Year:		Rate:	
Year:		Rate:	
Year:		Rate:	

Average three year rate: _____

If your Workers' Compensation insurance carrier does not have an EMR for your company, please attach an explanation. If your firm does not have Workers' Compensation Insurance, please check the box below.

This firm does not have Workers' Compensation Insurance

2. Using the formula below, determine your Incidence Rate for Total Lost Workday Cases for the three most recent years. This information can be found on your firm's OSHA 200/300 logs. If your firm does not maintain OSHA 200/300 logs, the Incident Rate must still be calculated.

Year:	Number of injuries and illnesses that resulted in lost work days or days of restricted activity (This is <u>not</u> the number of lost work days, only the number of incidents):	Total number of hours worked by all employees during the calendar year: Note: If Sole Proprietor, list own Hrs.

Incidence Rate for total lost workdays = (Number of accidents that resulted in lost work days or days of restricted work activity) x 200,000 ÷ (Total hours worked by all employees during the Calendar year.)

List your company's North American Industry Classification System Code (NAICS) if different than 23730 (A short list of NAICS codes are listed on Part 3 of the Safety Index)

3. Within the last two years, has your company received any citations (open or closed) for OSHA defined "Repeat" violation(s) in any state where your company operates? Yes No
If so, attach a copy of each citation.

4. Within the last two years, has your company received any citations (opened or closed) for OSHA defined "Willful" violation(s) in any state where your company operates? Yes No
If so, attach a copy of each citation.

5. For any state where your company operates:
Has your company experienced any work-related fatality within the last five years? Yes No
Were any citations (open or closed) issued by OSHA as a result of the work related fatality? Yes No
If so, attach a copy of each citation. Please include a statement explaining each fatality you identified.

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Score: _____

Score: _____

Score: _____

Score: _____

Part 2 continued: Contractor's Safety Operating Profile (cont.)

6. Within the last three years has your company received any formal written suspensions by the NCDOT and/or any other state Department of Transportation with which you do business for violation(s) of any of the safety emphasis areas below?
If so, please attach a detailed list of each occurrence.

Excavating, Trenching, or Shoring: Yes No
 Fall Protection: Yes No
 Crane Safety: Yes No
 Equipment Safety Devices (backup alarms, etc.): Yes No
 Workzone Traffic Control: Yes No

Score: _____

Part 3: Standard Industry Classification Codes For Construction
 For reference purposes to assist with answering Part 2, Question 2. Most firms involved with Highway and Street Construction will use 2373.

- 2361: General Building Contractors – residential
- 2362: General Builders – nonresidential
- 23711: Water and Sewer Line Contractors
- 2373: Highway and Street Construction (Airports, highways, Streets & Sidewalks)
- 2379: Heavy Construction, Except Highway and Street (Bridges, Tunnels, Water & Sewer)
- 23821: Electrical Contractors
- 23822: Plumbing, Heating & Air Conditioning
- 23832: Painting (includes bridge painting and pavement marking)

If your company performs multiple classifications listed above along with Highway and Street construction, use NAICS Code 2373.

For additional NAICS codes, contact OSHA of the U. S. Department of Labor or visit their website.
 (Revised 6/17/2009)

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Contractor's Safety Index

Part 1: Contractor's Safety Philosophy Profile Score: _____ (Maximum of 5 points)

Part 2: Contractor's Safety Operating Profile Score: _____ (Maximum of 105 points)

Contractor's Total Safety Profile Score: _____ (Maximum of 110 points)

Contractor's Safety Index:	A+	A	B	C	D	Unsatisfactory
	≥100	90-99	80-89	70-79	60-69	≤59

APPENDIX E LOS ANGELES UNIFIED SCHOOL DISTRICT

<p>27. Does Applicant intend to request the dispatch of apprentices to Applicant’s company for use on any public work project for which Applicant is awarded a contract by the District?</p> <p>If “yes”, on a separate signed sheet of paper provide the name, address, telephone number and craft of each apprenticeship program (approved by the California Apprenticeship Council) from whom Applicant intends to request the dispatch of apprentices, and state whether each apprenticeship program has graduated apprentices in each of the preceding five years.</p>	<p align="center">Yes No</p> <p align="center"><input type="checkbox"/> <input type="checkbox"/></p>
<p>28. Have any individuals employed by Applicant completed a State-approved apprenticeship training program operated by Applicant in the past three (3) years?</p> <p>If “yes”, on a separate signed sheet of paper:</p> <p>(a) Identify each craft in which Applicant provided State-approved apprenticeship training in the past three (3) years.</p> <p>(b) State the year(s) in which each such apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of Applicant’s apprenticeship program(s).</p> <p>(c) State the number of individuals who were employed by Applicant as apprentices at any time during the past three (3) years in each apprenticeship training program, and the number of persons who, during the past three (3) years, completed apprenticeships in each craft while employed by Applicant.</p>	<p align="center">Yes No</p> <p align="center"><input type="checkbox"/> <input type="checkbox"/></p>
<p>29. On how many public works projects in the past five (5) years has Applicant been found by the Department of Industrial Relations to have violated any provision of the California apprenticeship laws or regulations, or the laws pertaining to the use of apprentices on public works?</p> <p>If none, answer “0”. If any, attach a separate signed page describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed, and the amount of the penalty assessed, and attach copies of the Department of Industrial Relations’ final decision(s).</p>	<p align="center"># of projects:</p> <p align="center">_____</p>

PART VI: CONTRACTOR SAFETY PREQUALIFICATION

This Contractor Safety Prequalification Part evaluates Applicant’s overall safety performance and determines whether Applicant has an acceptable safety record. Once prequalified, Applicant must ensure that it and **all tiers** of its subcontractors meet all of LAUSD’s Safety Prequalification requirements. Failure by Applicant or any of its subcontractors to meet these criteria at all times may be grounds for Applicant’s disqualification. (**NOTE:** All Mechanical, Electrical, and Plumbing (“MEP”) subcontractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 license classifications must obtain Subcontractor Prequalification, which includes Safety Prequalification, directly from LAUSD. All other subcontractors do not need to formally obtain Safety Prequalification status from LAUSD before bidding or performing work on LAUSD construction contracts. It is Applicant’s responsibility to ensure that it and each of its subcontractors of every tier meet all of LAUSD’s Safety Prequalification requirements.)

The information required in this questionnaire must include all construction work undertaken nationwide by the Applicant and any partnership, joint venture, or corporation that any principal of the Applicant participated in as a principal or owner for the last three (3) calendar years and the current calendar year prior to the date of submittal. Separate information shall be submitted for each particular partner or joint venture. The Applicant may be requested to submit additional information or an explanation of data for evaluation of their safety record. Failure to provide all information listed below could result in exclusion from the bid process.

SECTION A.

Workers Compensation insurance coverage covering all employees and operations of Applicant is required at all times. Applicant may be disqualified if either its (a) current EMR, or (b) average EMR for the most recent three-year period, is above 1.00, in which case, it must submit all of the following to LAUSD:

- a. Applicant's written analysis of why the EMR is above 1.00;
- b. Worker's Compensation Loss Runs for the past three (3) years;
- c. Copy of Applicant's Illness and Injury Prevention Program ("IIPP") and Code of Safe Practices;
- d. Written description of actions currently being taken by Applicant to reduce employee injuries, illnesses and Workers' Compensation losses; and
- e. A list of on-site safety representatives and proof of their OSHA 10-hour training.

The District will determine, based on the information submitted, whether Applicant has satisfied the requirements of Section A even if it has a current or three-year average EMR above 1.00.

Workers Compensation Insurance - Experience Modification Rate (EMR)

1. Please obtain from your insurance agent/broker/carrier Applicant's intrastate EMRs for the last three (3) rating periods. If Applicant does not have an intrastate rating, provide its interstate EMRs. Then, complete the following data and check the appropriate box for interstate or intrastate EMR. Experience

	<u>Policy Year</u>	<u>Modification Rate</u>	<u>Rating Type</u>
Current EMR	_____	_____	<input type="checkbox"/> Intrastate
1 year ago	_____	_____	<input type="checkbox"/> Interstate
2 years ago	_____	_____	
3 years ago	_____	_____	

By initialing here, I certify that Applicant does not have an EMR*. _____

* Applicant must submit a copy of your firm's Loss Runs for the last three (3) years if your firm does not have an EMR.

Is Applicant's EMR for the most recent three-year period an average of 1.00 or less? Yes No

Is Applicant self-insured for Workers Compensation Claims? Yes* No

* If yes, please attach a copy of the latest Annual Report to the State of California Dept. of Industrial Relations and/or State of California Certificate of Self-Insurance.

- 2. Anniversary Rating Date: _____ Rating Bureau File # _____
- 3. Name of Applicant's Workers' Compensation carrier _____

SECTION B.

Applicant will be evaluated on OSHA Incident Rates compared to the most current data provided by the Annual Survey of Occupational Injuries and Illnesses conducted by the Bureau of Labor Statistics, U.S. Department of Labor ("BLS"). Applicant may be disqualified if its average total recordable injury/illness rate or average lost work rate for the most recent three-year period exceed the applicable statistical standards for its business category.

If Applicant's average total recordable injury/illness rate or average lost work rate for the most recent three-year period exceed the applicable statistical standards for its business category, it must submit all of the following to LAUSD:

- a. Applicant's written analysis of why its Incidence Rate is higher than the BLS Incidence Rates;
- b. Copy of Applicant's complete OSHA 300 Log for each of the past three (3) years. Applicants with ten (10) or fewer employees at all times during the calendar year are not required to maintain the OSHA 300 Log, but must provide copies of its Workers' Compensation Insurance Loss Runs for the past three (3) years;
- c. Copy of Applicant's Illness and Injury Prevention Program ("IIPP") and Code of Safe Practices;
- d. Written description of actions currently being taken by Applicant to reduce employee injuries and illnesses; and
- e. A list of on-site safety representatives and proof of their OSHA 10-hour training.

LAUSD will determine, based on the information submitted, whether Applicant has satisfied the requirements of Section B even though it has an Incidence Rate above the BLS Incidence Rates.

OSHA Recordable Incidence Rates

To answer the following questions, utilize data obtained from Applicant’s OSHA 300 “Log and Summary of Occupational Injuries and Illnesses,” or Workers’ Compensation Loss Run (if your company has ten (10) or fewer employees).

ALL FIRMS HAVE DATA TO REPORT, AND MUST COMPLETE THIS SECTION!

1. Industry Comparison Information. Enter your NAICS Code below:
North American Industry Classification System (NAICS) Code _____

2. What is Applicant’s company wide OSHA Total Case Incidence Rate* (recordable cases) for the **last three (3) years**?

Year	# of Cases	Co. Hours****	Rate

3. What is Applicant’s company-wide Lost Workday Case Incidence Rate** (recordable cases with lost workdays or restricted duty) for the **last three (3) years**?

Year	# of Cases	Co. Hours****	Rate

4. What is Applicant’s company wide number of No Lost Workday Case Incidence Rate*** (recordable cases without lost workdays) for the **last three (3) years**?

Year	# of Cases	Co. Hours****	Rate

Information to aid in completing Section B, #2, 3 and 4:

* OSHA Total Case Incidence Rate = $\frac{\text{Total \# of Recordable Cases} \times 200,000}{\text{Company Man-hours}}$

** Lost Workday Case Incidence Rate = $\frac{\# \text{ of Lost Workday Cases} \times 200,000}{\text{Company Man-hours}}$

*** No Lost Workday Case Incidence Rate = $\frac{\# \text{ of No Lost Workday Cases} \times 200,000}{\text{Company Man-hours}}$

**** Co. Hours = Hours worked by all employees on the Company payroll in the applicable calendar year.

- Additional information regarding this section can be found in the LAUSD Safety Resource Guide
- Do not use the number of lost workdays in these three (3) calculations.
- Rates are not a “%”, nor should the number be similar to “0.00024”.
- To verify your calculations for a given year, check your math as follows:
Lost Workday Case Rate + No Lost Workday Case Rate = Total Case Incidence Rate

SECTION C.

In accordance with the provisions of Government Code Section 4420.5, evaluation of Applicant shall include consideration of its OSHA record with respect to “serious and willful violations of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code” issued during the past five (5) year period.

OSHA Citation (Violation) History

Has Applicant received any “serious”, “willful”, “repeat”, or “failure to abate” OSHA violations (citations) within the past sixty (60) months, beginning immediately prior to submittal of this Questionnaire? This question includes such citations if they have been appealed or contested, but have not yet been resolved.

No *If Applicant has answered “no” to having received any citations classified as “serious,” “willful,” “repeat” or “failure to abate” and such violations are found during the verification process the Applicant may not be prequalified. A waiting period may be imposed by LAUSD before the Applicant can reapply.*

Yes *If yes, list total number of citations (violations) by type per year in the table below. Submit copies of all citations and descriptions of abatement actions, your company Injury and Illness Prevention Program and Code of Safe Practices, **and** your OSHA 300 Log and Summaries and/or Workers’ Compensation Loss Runs for each of the last three (3) years.*

Year	Serious	Willful	Repeat	Failure to Abate	Total

SECTION D.

District Safety Policies and Procedures (16 Questions)

Applicant must respond “yes” or “no” to each question, and answers are assigned a weighted value. To satisfy the requirements under Section D, Applicant must:

- (1) Receive a score of at least 85 out of 100 points; and
- (2) Respond “Yes” to questions 1, 6, 7, 10, 15 and 16 (see Title 8, California Code of Regulations, Section 3203).

No.	Question	YES	NO	Points
1.	Injury and Illness Prevention Program. Does Applicant have an effective, written Injury and Illness Prevention Program (IIPP) in accordance with 8CCR §1509 & §3203? [LC §6401.7]. If yes, copy of the Program must be available at the jobsite.	<input type="checkbox"/>	<input type="checkbox"/>	21
2.	Does Applicant have a safety policy statement endorsed by top management? [LC §6401]	<input type="checkbox"/>	<input type="checkbox"/>	2
3.	Does Applicant’s on-site safety representative have the authority and been allocated sufficient time to audit and enforce compliance with job site safety protocol? [LC §6401.7(a)(7)]	<input type="checkbox"/>	<input type="checkbox"/>	4
4.	Does Applicant have a disciplinary action program that includes provisions for acting on safety and health issues of its employees (and subcontractors, if applicable), and is the program enforced? [LC §6401.7(a)(6)]	<input type="checkbox"/>	<input type="checkbox"/>	4
5.	Is safety pre-planning included in project planning and/or progress meeting(s) in order to ensure that safety and loss control activities are integrated into the project work plan? [LAUSD OCIP Requirements – Safety Standards]	<input type="checkbox"/>	<input type="checkbox"/>	4

6.	Does Applicant have a comprehensive Hazard Communication Program that (a) details locations for Material Safety Data Sheets (MSDS) and (b) contains provisions for multi-employer job sites? [8 CCR §5194]	<input type="checkbox"/>	<input type="checkbox"/>	6
7.	Does Applicant conduct ongoing job site safety and health inspections, and are the inspection records kept on file and available for review? [LC §6401.7(A)(2)] Is there written verification that job site safety and health violations have been reviewed and corrective action taken? [LC§6401.7(b) and (D)]	<input type="checkbox"/>	<input type="checkbox"/>	13
8.	Safety Reviews/Hazard Analysis. Are all critical (hazardous) job activities identified and Job Safety Analysis' (JSA, a.k.a. Job Hazard Analysis, or JHA) conducted by Applicant (and its subcontractors, if applicable)? [LC§6401.7(A)(5)]	<input type="checkbox"/>	<input type="checkbox"/>	2
9.	Are the procedures for critical (hazardous) job activities written and reviewed with all of Applicant's employees (including subcontractor employees)? [LC 6401.7(a)(5)]	<input type="checkbox"/>	<input type="checkbox"/>	4
10.	Accident/Incident Investigation and Analysis. Does Applicant have a written accident/incident investigation procedure in which: (a) all accidents/incidents (including those of its subcontractors, if applicable) are investigated to determine their root cause, and (b) corrective action is taken by site supervision and management, and (c) written investigation and corrective action records are available for review? [8CCR §3203(a)(5) and (b)]	<input type="checkbox"/>	<input type="checkbox"/>	6
11.	Are reports completed for "near miss" incidents that might have caused serious injury, property or equipment damage? [LC §6403(b)]	<input type="checkbox"/>	<input type="checkbox"/>	4
12.	Emergency Response. Does Applicant have a comprehensive written emergency response plan (i.e., fire, toxic spills, bomb threats, natural disasters, crowd and traffic control, and media relations) for job sites; and do all employees (including its subcontractor employees, if applicable) receive project-specific emergency response training? [8 CCR §3220 (a) and (e)]	<input type="checkbox"/>	<input type="checkbox"/>	4
13.	Substance Abuse Control Program. Does Applicant have a written Substance Abuse Program? [LC §6403]	<input type="checkbox"/>	<input type="checkbox"/>	2
14.	Do Applicant require its subcontractors of all tiers to have a/or comply with its Substance Abuse Program? [LC §6403]	<input type="checkbox"/>	<input type="checkbox"/>	2
15.	Employee Training. Does Applicant ensure that all employees (including subcontractor employees) are trained in accordance with its written training plan, and (a) are competent to perform the work required, and (b) that job tasks requiring specific training and/or certification are performed by employees having the appropriate training documentation and certificates, and the documentation is maintained and available for review? [LC §6401.7(c) and (d)]	<input type="checkbox"/>	<input type="checkbox"/>	11
16.	Is documentation on file and available for review to verify that training and safety meetings for Applicant (and its subcontractors, if applicable) have been completed? [LC §6401.7(c) and 8CCR §1509(e)]	<input type="checkbox"/>	<input type="checkbox"/>	11

APPENDIX F—KNOXVILLE UTILITY BOARD



Contractor Pre-Qualification Statement
Section C; Company Health and Safety Information

Instructions to Contractor:

- I. All blanks must be filled in and all requested attachments must be present for consideration.
- II. If information is not available or does not apply, please put "N/A".

1. Name of Firm: _____ Date: _____
 Submitted By: _____ Title: _____
 Is the Submitting Individual the Company Safety Officer? Yes No; if no, provide the name, telephone and email of Safety Officer _____
 SIC Code: _____ NAICS Code: _____

2. List your firm's Worker's Compensation experience modification rates (EMR) for the last three years, and provide a letter from your Comp. Carrier verifying these rates. If EMR is 1.0 or above, please explain why. If you do not have an EMR, please explain: _____

Year	Rate	Policy Number	Carrier
20__			
20__			
20__			

Current Carrier Telephone: _____
 Policy Anniversary Date: _____
 Type of Policy: Interstate Intrastate If Intrastate, please list applicable states: _____

3. List your firm's OSHA incidence rates for the last three years and attach OSHA 200/300 logs for last 3 years
 Provide the incidence numbers and rates, including employee numbers and hours worked, for the entries in the table below by using your OSHA Form No. 300. Using the formulas provided calculate OSHA Incidence Rates. Data will be checked against that recorded and provided on the submitted copies of your OSHA 300 logs.



**KNOXVILLE UTILITIES BOARD
CONTRACTOR PRE-QUALIFICATIONS**

Categories	PART 1. USE THE FORMULA BELOW TO COMPLETE THE LAST TWO ENTRIES OF THIS TABLE.					
	20__		20__		20__	
a. Fatalities						
b. Number of cases involving days away from work, restrictions, or transfers (DART cases)						
c. Number of days away from work						
d. Number of non-fatal cases without days away from work, restrictions, or transfers						
Average number of employees						
Number of hours worked						
e. Total OSHA recordable cases (injury & illness) <i>Number of recordable cases x 200,000 hrs. = Incidence Rate</i> <i>Number annual hours worked</i>	No.	Rate	No.	Rate	No.	Rate
f. OSHA recordable cases that resulted in DART cases <i>Number DART (b) cases x 200,000 hrs. = Incidence Rate</i> <i>Number annual hours worked</i>						

4. Has your firm been cited by a regulatory agency, e.g. OSHA, EPA, DOT, etc, in the past 3 years? If yes, please attach an explanation..... Yes No
5. Do you have a new employee-training program?..... Yes No
6. Do you plan to operate heavy equipment? Yes No
7. List the employees in your organization who are responsible for developing/implementing your corporate H&S program:

Name: _____ Title: _____

Name: _____ Title: _____

Name: _____ Title: _____



**KNOXVILLE UTILITIES BOARD
CONTRACTOR PRE-QUALIFICATIONS**

8a. Do you have a written safety program? Yes No

8b. If so, does it comply with Title 8 CCR Section 3203 (Illness and Injury Prevention Program IIPP)? Please attach a copy. (California only) Yes No

Does your program include the following (check each applicable box):

	Written Program	Training		Written Program	Training
Company safety policy/rules			Hot Work		
Confined Space Entry* (29 CFR 1910.146)			Decontamination Procedures		
Health and Safety Plan Requirements			Hazard Communication (29 CFR 1910.1200)? Toxic Substances		
Chemical and Physical Hazard Recognition			Electrical Safety/Lockout-Tagout (29 CFR 1910.147)		
Emergency Response Procedures			Safety Belts and Lifelines, Fall Protection* (29 CFR 1926 Subpart M)		
Injury Reporting			First Aid/CPR (29 CFR 1910.151) If so, how many employees _____		
Personal Protective Equipment (29 CFR 1910.132)			Drum Handling		
Non-injury Accident Reporting (near-miss)			Drilling Hazards		
Respiratory Protection (29 CFR 1910.134)/ Respiratory Fit Testing			Hearing Conservation (29 CFR 1910.95)		
Portable Fire Extinguisher (29 CFR 1910.157)			Compressed Gas Cylinders (29 CFR 1910 Subpart M)		
Railroad Roadway Worker Protection* (49 CFR 214)			Trenching/Excavation (29 CFR 1926 Subpart P)		
Bloodborne Pathogens (29 CFR 1910.1030)			If you provide Trenching/Excavation Safety training, do you have a Competent Person?		

9. Can you provide documentation of employee training, if required? Yes No

10a. Does your company have OSHA HAZWOPER trained employees (29 CFR 1910.120(e)(3))? Yes No

10b. If yes how many? _____



**KNOXVILLE UTILITIES BOARD
CONTRACTOR PRE-QUALIFICATIONS**

12. Do you have a medical surveillance program as required by 29 CFR 1910.120(f)? Yes No
13. Does your company have a written Alcohol and Substance Abuse Program? Yes No
If yes, does it include the following?
- a. 5-panel substance testing? Yes No
- b. Pre-employment/pre-job assignment testing (within 30 days of pre-job assignment)? ... Yes No
- c. Post-accident drug and alcohol testing? Yes No
- d. Reasonable suspicion drug and alcohol testing? Yes No
14. Do you hold periodic safety meetings for your employees?..... Yes No
Daily Weekly Bi-weekly Monthly Less often, as needed
15. Does your company perform Job Hazard Analyses (JHA) for new and existing tasks? Yes No
If yes, please provide an example of a recently completed JHA.
16. Do you conduct field safety inspection/audits of work in progress? Yes No
- a) If Yes, How often? _____
- b) If yes, who conducts the inspection? Name: _____
Title: _____
17. Do you conduct routine equipment inspections/maintenance on your vehicles including drill rigs, excavators etc.? Yes No
- a) If Yes, How often? _____
- b) If yes, who conducts the inspection? Name: _____
Title: _____
18. Does your company have written post accident investigation procedures? Yes No
If yes, please provide the written procedures.
19. Do you notify all employees of accidents and precautions related to accidents and near misses? Yes No
If Yes, How is this notification accomplished? _____

- Are accident reports distributed to management? Yes No
If Yes, to whom? _____ How often? _____



**KNOXVILLE UTILITIES BOARD
CONTRACTOR PRE-QUALIFICATIONS**

20. Is safety a specific evaluation criterion in the annual performance reviews of:
- Employees? Yes No
- Supervisors? Yes No
- Management? Yes No

21. Attach documentation for checked boxes below:

- | |
|---|
| <input checked="" type="checkbox"/> EMR documentation from your insurance carrier |
| <input checked="" type="checkbox"/> OSHA 300 Logs (Past 3 years) for new Subcontractors, Past year for Renewal Subcontractors |
| <input checked="" type="checkbox"/> IIPP Copy (California Companies Only) |
| <input checked="" type="checkbox"/> Safety & Health Program (TABLE OF CONTENTS ONLY) |
| <input checked="" type="checkbox"/> Example of Recently Completed JHA |
| <input checked="" type="checkbox"/> Accident/Incident Investigation Procedure |

22. Certification

The authorized individual signing below hereby certifies that the above information is accurate.

By:

Company Name _____

Signature _____ Date: _____

Print Name _____

Its _____

List of items to be submitted with Form, checked items (No. 21) are required to be submitted.

APPENDIX G—SAMPLE DRAFT BILL

SAMPLE DRAFT BILL

AN ACT concerning

Procurement—Occupational Safety and Health Management Plan

FOR the purpose of requiring that certain contractors have an established safety management plan in order to bid and work on a public work project, requiring that the safety records of certain contractors and subcontractors are evaluated prior to the contractor sub-contractor commencing work on a public work project; requiring that additional safety measures be implemented for certain contractors and subcontractors as a result of the safety record evaluation.

Article—State Finance and Procurement

SUBTITLE 8. OCCUPATIONAL SAFETY AND HEALTH MANAGEMENT PLAN

17-801.

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

(B) “CONSTRUCTION” INCLUDES ALL:

(1) BUILDING

(2) RECONSTRUCTING

(3) IMPROVING;

(4) ENLARGING

(5) PAINTING AND DECORATING

(6) ALTERING;

(7) MAINTAINING; AND

(8) REPAIRING

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

(D) “COMMISSIONER” MEANS THE COMMISSIONER OF LABOR AND INDUSTRY.

(E) "CONTRACTOR SAFETY PLAN" MEANS THE WRITTEN PLAN REQUIRED UNDER § 17-802 OF THIS TITLE.

(F) "PUBLIC BODY" MEANS:

(1) THE STATE;

(2) A POLITICAL SUBDIVISION; OR

(3) A UNIT OR INSTRUMENTALITY OF THE STATE OR A POLITICAL SUBDIVISION.

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

(i) IS CONSTRUCTED FOR PUBLIC USE OR BENEFIT; OR (ii) IS PAID FOR WHOLLY OR PARTLY BY PUBLIC MONEY.

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

(i) PUBLIC SUPERVISION OR DIRECTION; OR

(ii) PAYMENT WHOLLY OR PARTLY FROM PUBLIC MONEY.

(H) "PUBLIC WORK CONTRACT" MEANS A CONTRACT FOR CONSTRUCTION OF A PUBLIC WORK.

(I) "SAFETY CALCULATION WORK SHEET" MEANS THE WORKSHEET DEVELOPED UNDER §17-804 OF THIS TITLE.

(J) "SAFETY RATING SYSTEM" MEANS THE RATING SYSTEM DEVELOPED UNDER §17-804 OF THIS TITLE.

17-802.

(A) BEFORE ENTERING INTO A PUBLIC WORK CONTRACT, A PUBLIC BODY SHALL REQUIRE ANY CONTRACTOR OR SUBCONTRACTOR PERFORMING WORK ON THE CONTRACT TO HAVE A CONTRACTOR SAFETY PLAN TOGETHER WITH AN ATTESTATION THAT THE PLAN MEETS THE REQUIREMENTS OF THIS SUBTITLE AND WILL BE IMPLEMENTED ON THE PUBLIC WORK PROJECT.

(B) THE CONTRACTOR SAFETY PLAN SHALL INCLUDE:

(1) A STATEMENT OF THE CONTRACTOR'S COMMITMENT TO SAFETY ON THE PROJECT, INCLUDING A PROVISION FOR DESIGNATING A REPRESENTATIVE RESPONSIBLE FOR SAFETY ON THE PROJECT;

(2) THE CONTRACTOR'S METHODS FOR IDENTIFYING, ASSESSING, AND DOCUMENTING POTENTIAL OCCUPATIONAL SAFETY AND HEALTH HAZARDS ON THE PROJECT;

(3) THE CONTRACTOR'S METHODS FOR PREVENTING AND CONTROLLING OCCUPATIONAL SAFETY AND HEALTH HAZARDS ON THE PROJECT;

(4) THE CONTRACTOR'S METHODS FOR COMMUNICATING INFORMATION TO AND TRAINING EMPLOYEES ON ISSUES RELATED TO OCCUPATIONAL SAFETY AND HEALTH HAZARDS ON THE PROJECT;

(5) THE CONTRACTOR'S METHODS FOR EMPLOYEE PARTICIPATION IN IDENTIFYING AND RESOLVING SAFETY AND HEALTH ISSUES ON THE PROJECT; AND

(6) THE CONTRACTOR'S METHODS FOR CONTINUOUS EVALUATION AND ASSESSMENT OF THE OCCUPATIONAL SAFETY AND HEALTH HAZARDS ON THE PROJECT AND PROVISION FOR MODIFICATION OF THE SAFETY PLAN BASED ON THE CONTINUOUS EVALUATION AND ASSESSMENT

(C) UPON REQUEST, EACH CONTRACTOR AND SUBCONTRACTOR SHALL PROVIDE A COPY OF THE CONTRACTOR SAFETY PLAN AND ATTESTATION TO THE COMMISSIONER OR THE PUBLIC BODY.

17-803.

THE COMMISSIONER SHALL DEVELOP: (1) A SAFETY CALCULATION WORKSHEET TO EVALUATE THE SAFETY AND HEALTH PERFORMANCE INDICATORS OF CONTRACTORS AND SUBCONTRACTORS PERFORMING WORK ON A PUBLIC WORK CONTRACT VALUED AT \$100,000 OR MORE; AND (2) A RATING SYSTEM TO SPECIFY ADDITIONAL SAFETY MEASURES THAT THE CONTRACTOR OR SUBCONTRACTOR MUST IMPLEMENT BASED ON THE SAFETY CALCULATION WORKSHEET SCORE.

17-804.

FOR PUBLIC WORK CONTRACTS VALUED AT \$100,000 OR MORE, ALL CONTRACTORS AND SUBCONTRACTORS SHALL : (1) COMPLETE A SAFETY CALCULATION WORKSHEET AS PROVIDED IN SECTION 17-803 AND (2) IMPLEMENT ANY ADDITIONAL SAFETY MEASURES REQUIRED AS A RESULT OF THE SAFETY CALCULATION WORKSHEET SCORE.

17-805.

- (A) THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.
- (B) THE COMMISSIONER MAY REQUIRE, BY REGULATION, THAT A CONTRACTOR OR SUBCONTRACTOR SUBJECT TO THIS SUBTITLE MAINTAIN SUCH RECORDS AS ARE RELATED TO THIS SUBTITLE AND ITS OBLIGATIONS THEREUNDER.
- (C) THE COMMISSIONER SHALL INVESTIGATE AS NECESSARY TO DETERMINE COMPLIANCE WITH THIS SUBTITLE AND REGULATIONS HEREUNDER.
- (D) THE COMMISSIONER MAY ENTER A PLACE OF BUSINESS OR WORK SITE TO:
 - (1) OBSERVE THE SAFETY MEASURES IN PLACE ON THE WORK SITE;
 - (2) INTERVIEW INDIVIDUALS ON THE WORK SITE REGARDING SAFETY MEASURES IN PLACE ON THE WORK SITE; AND
 - (3) REVIEW AND COPY RECORDS.

****THE FOLLOWING ENFORCEMENT PROVISIONS WERE NOT AGREED UPON BY ALL COMMITTEE MEMBERS****

17-806.

- (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT A CONTRACTOR OR SUBCONTRACTOR HAS VIOLATED A PROVISION OF THIS SUBTITLE OR REGULATIONS PROMULGATED THEREUNDER, THE COMMISSIONER SHALL ISSUE A CITATION AND PROPOSED ORDER TO THE CONTRACTOR OR SUBCONTRACTOR.
- (B) EACH CITATION AND PROPOSED ORDER SHALL:
 - (1) DESCRIBE THE NATURE OF THE ALLEGED VIOLATION;
 - (2) CITE THE PROVISION OF THIS SUBTITLE OR REGULATION PROMULGATED THEREUNDER THAT THE EMPLOYER IS ALLEGED TO HAVE VIOLATED;
 - (3) STATE THE PENALTY THAT THE COMMISSIONER PROPOSES TO ASSESS.
- (C) FOR AN INITIAL VIOLATION, THE COMMISSIONER MAY ASSESS A PENALTY OF UP TO \$5,000. IN DETERMINING THE AMOUNT OF THE PENALTY, THE COMMISSIONER SHALL CONSIDER:
 - (1) THE NATURE OF THE VIOLATION; AND
 - (2) THE CONTRACTOR'S OR SUBCONTRACTOR'S GOOD FAITH EFFORTS AT COMPLIANCE
- (D) FOR A REPEAT VIOLATION BY A CONTRACTOR OR SUBCONTRACTOR, THE COMMISSIONER MAY ASSESS A PENALTY OF UP TO \$10,000 AND, FURTHER, IF THE COMMISSIONER FINDS THAT

THE CONTRACTOR OR SUBCONTRACTOR ACTED KNOWINGLY OR WITH RECKLESS DISREGARD FOR THE REQUIREMENTS OF THIS SUBTITLE OR REGULATIONS PROMULGATED THEREUNDER, THE COMMISSIONER MAY RECOMMEND TO THE PUBLIC BODY THAT THE CONTRACTOR OR SUBCONTRACTOR BE DEBARRED FROM ENTERING INTO A CONTRACT FOR CONSTRUCTION OF A PUBLIC WORK FOR A PERIOD OF TWO YEARS.

(E) WITHIN A REASONABLE TIME AFTER ISSUANCE OF A CITATION AND PROPOSED ORDER, THE COMMISSIONER SHALL SEND BY CERTIFIED MAIL TO THE CONTRACTOR OR SUBCONTRACTOR:

- (1) A COPY OF THE CITATION AND PROPOSED ORDER; AND
- (2) NOTICE OF THE OPPORTUNITY TO REQUEST A HEARING.
- (3)

(F) WITHIN 30 DAYS AFTER A CONTRACTOR OR SUBCONTRACTOR RECEIVES A NOTICE UNDER SUBSECTION (E) OF THIS SECTION, THE EMPLOYER MAY REQUEST A DE NOVO ADMINISTRATIVE HEARING WHICH SHALL BE CONDUCTED IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(G) ON RECEIPT OF A REQUEST FOR A HEARING, THE COMMISSIONER SHALL SCHEDULE A HEARING.

(H) IF A HEARING IS NOT REQUESTED, THE CITATION SHALL BECOME A FINAL ORDER OF THE COMMISSIONER.. (I) IF A PETITION FOR REVIEW IS NOT FILED WITHIN 30 DAYS OF THE ISSUANCE OF THE FINAL ORDER, THE COMMISSIONER SHALL BE ENTITLED TO JUDGMENT IN THE AMOUNT OF THE FINAL ORDER

17-807.

(A) AN EMPLOYER OR OTHER PERSON MAY NOT DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE:

- (1) FILES A COMPLAINT IN GOOD FAITH UNDER OR RELATED TO THIS TITLE; OR
- (2) HAS TESTIFIED OR WILL TESTIFY IN AN ACTION UNDER THIS TITLE OR A PROCEEDING UNDER OR RELATED TO THIS TITLE.

(B) AN EMPLOYEE WHO BELIEVES IN GOOD FAITH THAT AN EMPLOYER OR OTHER PERSON HAS DISCHARGED OR OTHERWISE DISCRIMINATED AGAINST THE EMPLOYEE IN VIOLATION OF SUBSECTION (A) OF THIS SECTION MAY SUBMIT TO THE COMMISSIONER A WRITTEN COMPLAINT THAT ALLEGES THE DISCRIMINATION AND THAT INCLUDES THE SIGNATURE OF THE EMPLOYEE.

(C) AN EMPLOYEE SHALL FILE A COMPLAINT UNDER THIS SUBSECTION WITHIN 60 DAYS AFTER THE ALLEGED DISCRIMINATION OCCURRED.

- (D) ON RECEIPT OF A COMPLAINT UNDER SUBSECTION (C) OF THIS SECTION, THE COMMISSIONER MAY INVESTIGATE
- (E) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THERE IS PROBABLE CAUSE TO FIND THAT AN EMPLOYER OR OTHER PERSON HAS VIOLATED SUBSECTION (A) OF THIS SECTION, THE COMMISSIONER SHALL REFER THE MATTER TO THE OFFICE OF ADMINISTRATIVE HEARINGS IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE FOR FINDINGS OF FACT AND A PROPOSED DECISION.

APPENDIX H—SAMPLE DRAFT QUESTIONNAIRE

Maryland Contractor Safety Questionnaire

General Information			
Contractor Info:			
Contractor Name:	Telephone Number:		
Street Address:	Fax Number:		
City:	Website Address:		
Province/State:	Postal Zip Code:		
Contractor Management			
President:			
Vice President:			
Highest Ranking Safety Professional:			
History:			
How many years has your organization been in business under your present firm's name?			
Insurance Information:			
Workers' Compensation Insurance Carrier:		Effective Date:	
General Liability Insurance Carrier:		Effective Date:	

Performance Safety				
Provide the following data for your firm using your record keeping forms from the past three (3) years.				
<u>Safety performance Definitions and Guidance</u>				
<ul style="list-style-type: none"> • Experience Modification Rate (EMR) – Your workers' compensation insurance rating is available through your insurance company. • Hours Worked – Please report the actual scheduled total hours worked and total overtime hours worked. • Recordable Incidents – Recordable incidents are those that involve any work-related injury or illness, including: lost time cases, restricted work cases, transferred work activity cases, and fatality cases. <ol style="list-style-type: none"> I. Lost Time Work Case – Could not perform any work. II. Restricted Work Case – Could not perform routine functions associated with their permanent job. III. Transferred Work Activity Case – Assigned to another job on a temporary or permanent basis. IV. Fat/Cat Case – Employee dies from a work related injury or illness. 				
Safety Metrics	Current Year	2 nd Year	3 rd Year	Score

Workers' Compensation Experience Modification Rate (EMR)				Score _____ One point for each year under 1.25.
Total Lost Time Incident Rate $\frac{\text{total \# LT incidents} \times 200,000}{\text{total \# hours worked}}$				Score _____ One point for each year under 125% of industry average.
Recordable Incident Rate $\frac{\text{total \# R incidents} \times 200,000}{\text{total \# hours worked}}$				Score _____ One point for each year under 125% of industry average.
Total Number of reportable fatalities or catastrophic injuries in the last seven years				Any fatalities/cat warrants immediate Level 3 status.
NAICS Code: _____ Industry specific incident rates can be found on the bureau of labor statistics website. www.bls.gov				
Safety Enforcement Actions				
Total # of Final Order Serious and Repeat OSHA related citations within the last five years. Include citations from all states.				Any Serious or Repeat listed citations warrants level 2 and must be addressed by Subpart in the mitigation plans submitted for level 2 contractors. (i.e., Fall Protection)
Total # of Final Order Willful OSHA citations within last five years. Include info from all states.				Any willful citation warrants immediate Level 3 status.

Safety Management Plan				
	Yes	No	NA	Score One point for each yes answer
Do you have a company safety process to prevent injury and illness on the job site?				
Do you have a written safety policy that commits management to the safety process?				
Do you have on-site supervisor(s) that are trained to recognize existing and predictable hazards for the work you are performing?				
Do you have a comprehensive Hazard Communication Program?				

Do you conduct ongoing job site safety and health inspections?				
Safety Reviews/Hazard Analysis- Are Job Safety Analysis (JSA)/Job Hazard Analysis(JHA)/Activity Hazard Analysis(AHA) conducted for all hazardous activities to be performed?				
Pre-task Planning- Is the information found in the Job Safety Analysis (JSA)/Job Hazard Analysis(JHA)/Activity Hazard Analysis(AHA) reviewed before each associated task with employee participation required?				
Accident/Incident Investigation and Analysis- Do you have a written accident/incident investigation procedure in which: <ul style="list-style-type: none"> All accidents/incident (including those of subcontractors, if applicable) are investigated to determine their root cause, and Corrective action taken by site supervision and management? 				
Near Misses- Are reports completed for “near miss” incidents that might have caused serious injury, property or equipment damage?				
Emergency Response- Do you have a comprehensive written emergency response plan (i.e., fire, toxic spill, bomb threats, natural disasters, crowd and traffic control, and media relations) for jobsites; and do all employees (including subcontractor employees, if applicable) receive project-specific emergency response training?				
Substance Abuse Program- Do you have a written substance abuse program?				
Employee training- Do you ensure that all employees (including subcontractor employees, if applicable) are trained in accordance with your written training plan?				
Employee training- Do you ensure that all employees (including subcontractor employees, if applicable) are competent and properly classified to perform the work required?				
Employee training- Do you ensure that at least one employee on-site (including subcontractor				

employees, if applicable) is trained and certified in First Aid and Cardio-Pulmonary Resuscitation (CPR) while work is being performed?				
Employee training- Do you encourage and provide the opportunity for employees (including subcontractor employees, if applicable) to report unsafe work conditions and work related injuries?				
Employee training- Do you encourage employees (including subcontractor employees, if applicable) to stop working immediately if an unsafe conditions present a serious risk to their safety?				
Safety Documentation: Are pertinent safety documents kept on site for review?				
Does Designated Safety Representative hold the following certifications: (CSP, ASP, CHST, OSHT, STS, STSC ?				
Does your safety process address the following?				
Fall prevention and protection				
Electrical safety awareness				
Rigging safety (cranes, forklifts, etc)				
Hand and power tool safety				
Personal protective equipment (PPE)				
Confined space entry				
Trench and excavation safety				
Welding and cutting safety				
Confined space entry				
Work zone/traffic safety				
Respiratory protection				
Hazard Communication				
Housekeeping				
Hearing Loss Prevention				

Each NA selection on the safety questionnaire must be explained in an attached document.