



## House Bill 404

*Procurement – Public Work Contracts – Contractor Occupational Safety  
and Health Requirements*

MACo Position: **SUPPORT**

To: Economic Matters Committee

**WITH AMENDMENTS**

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From: Andrea Mansfield

The Maryland Association of Counties (MACo) **SUPPORTS** HB 404 **WITH AMENDMENTS**. This bill would require a prospective bidder or offeror for a public works project over \$100,000 to submit a public safety plan and an attestation that the plan meets certain requirements as part of the procurement process. The bill also requires the Department of Labor, Licensing, and Regulation (DLLR) to develop a safety and health calculation worksheet and rating system, and enforce the bills' many new requirements.

Currently, to ensure worker safety, all companies - construction and otherwise - must comply with federal and state occupational safety and health standards. DLLR administers Maryland's program. HB 951 from 2014 attempted to further regulate safety and health standards by requiring DLLR to establish a safety questionnaire and rating system to prequalify bidders for a public works projects. Many stakeholders, including MACo, strongly opposed this bill as it would have increased project costs by limiting the number of qualified bidders and placed more onerous requirements on local government procurement. Many also objected to limiting effects on small and minority contractors.

To address these concerns and others raised by the industry, HB 951 was amended to create a workgroup to further examine issues related to occupational safety and health plan prequalification and make recommendations on these requirements. HB 404 is nominally a product of this workgroup effort. However, as introduced, the bill's requirements vary substantially from the workgroup's recommendations. To address these variations and other concerns MACo has with this legislation, MACo suggests the following amendments:

### **Increase the Project Threshold to Projects of More Than \$1 Million**

MACo is concerned these requirements will have a deleterious and limiting effect on small and minority contractors. Larger companies may have staff to develop and monitor the rigorous safety plans envisioned under the bill, but smaller companies may not be able to afford staff or to contract out for this purpose, even if they engage in safe practices. The

administrative burden of this requirement could make it extremely difficult for a smaller contractor to comply, disqualifying the contractor from bidding altogether. Increasing the threshold to \$1 million would better target higher risk projects and lessen the effect on smaller contractors.

### **Require the Safety Plan at Contract Award, Not as Part of Procurement Process**

Requiring a safety plan and an attestation to be submitted by a prospective bidder or offeror at the time of responding to a Request for Proposal places an onerous requirement on a business prior to contract award. From review of the workgroup's report, it appears that the recommendation was to require a contractor to comply with the safety plan process and submit the attestation once being selected as the winning bidder or offeror, not as a part of the project selection criteria. Implementing the process in this manner would be much less onerous on both the contractor and procurement official. Procurement officials do not have expertise to review the adequacy of safety plans.

### **Completion of Safety Questionnaire and Implementation of Additional Measures Should Not Affect Work on the Project**

The bill specifies that within 7 days after entering a public work contract, each contractor and subcontractor shall complete a safety and health calculation worksheet and implement any additional safety and health measures required based on the questionnaire. The bill does not specify whether DLLR is to review this documentation in any manner. However, MACo would like to clarify that the completion of the safety questionnaire and implementation of any additional measures would not impede work on a project.

### **Local Jurisdictions Should Not Be Considered Liable For Any Deficiencies in Safety Plans**

As mentioned previously, local procurement officials do not have the expertise to adequately review the sufficiency of an occupational safety and health plan. The procurement officer's role is simply to be the recipient of the attestation that the questionnaire has been completed and a safety plan is being followed. Local jurisdictions should not be held liable for any deficiencies in safety plans or any safety-related issues that may occur at a worksite.

For these reasons, MACo **SUPPORTS HB 404 WITH AMENDMENTS** and urges the Committee to lessen the effects of this legislation on contractors and procurement officials.