

SENATE BILL 1370

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 54,
Chapter 5, relative to worker safety.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 54-5-117, is amended by deleting the language “or any other matter” and substituting instead the language “occupational safety and health, or any other matter”.

SECTION 2. Tennessee Code Annotated, Title 54, Chapter 5, is amended by adding the following language as a new part:

54-5-1501. This part shall be known and may be cited as the “Public Construction Contractor Safety Act.”

54-5-1502. As used in this part:

(1) “Bidder” means a person submitting or intending to submit a bid for a construction contract;

(2) “Contractor” means a person that contracts directly with the department to complete a department construction project;

(3) “Department construction project” means a construction project for which a contract is awarded by the department;

(4) “Injury and illness incidence rates” means any measurement based on the number of bidder- or subcontractor-reported nonfatal work-related injuries, cases of illness, or days during which employees were away from work, transferred to other jobs, or restricted in their performance of tasks in the workplace;

(5) “Occupational safety and health agency” means:

(A) The federal occupational safety and health administration (OSHA);

(B) The Tennessee occupational safety and health administration (TOSHA); or

(C) Any agency responsible for implementation of the occupational safety and health plan for any other public jurisdiction established under Section 18 of the federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 667);

(6) "Prequalification score" means the score assigned to a bidder or subcontractor pursuant to § 54-5-1504(e)(1)(C);

(7) "Questionnaire" means the standardized prequalification questionnaire developed by the department pursuant to § 54-5-1503;

(8) "Rating system" means the rating system developed by the department pursuant to § 54-5-1503; and

(9) "Subcontractor"

(A) Means a person that:

(i) Has contracted with a contractor or subcontractor to perform construction work on a department construction project; or

(ii) Has contracted with or intends to contract with a bidder or subcontractor seeking to perform construction work on a department construction project; and

(B) Does not include an employee of a bidder, contractor, or subcontractor.

54-5-1503.

(a) Notwithstanding § 54-5-116, the department of transportation, in consultation with the department of labor and workforce development, shall develop a standardized prequalification questionnaire and rating system to assess bidders on objective metrics of occupational safety and health performance for the purpose of prequalifying bidders and their subcontractors on department construction contracts. The views of the administrator of the Tennessee occupational safety and health administration (TOSHA)

shall be accorded special consideration in developing the prequalification questionnaire and rating system. The department of transportation shall also consult with occupational safety and health professionals, contractor management consulting firms, construction contractors, building trades unions, awarding authorities, and other interested parties in developing the standardized questionnaire and rating system.

(b)

(1) The department of transportation is authorized to use the services of a private sector management consulting firm to assist in developing the prequalification questionnaire and rating system, administering the prequalification questionnaire, evaluating the information contained in answers to the prequalification questionnaire, and updating information for the duration of any resulting contract.

(2) The department is authorized to negotiate a compensation agreement with the private sector management consulting firm whereby the cost of its services are absorbed by bidders for department construction contracts.

(c) The department shall review relevant scientific and engineering literature, standards in use by other awarding bodies, and federal occupational safety and health administration guidance documents to determine key occupational safety and health metrics for the purposes of this section.

(d) The prequalification questionnaire and rating system shall include, without limitation, an assessment of whether the bidder and each of its subcontractors:

(1) Implements written, site-specific occupational health and safety plans that contain the following core elements:

(A) Methods for identifying, assessing, and documenting potential occupational safety and health hazards;

(B) Methods for preventing and controlling occupational safety and health hazards;

(C) Methods for communicating safety information and providing new-hire and refresher training to supervisors and employees;

(D) Methods for assuring that subcontractors on the bidder or subcontractor's projects are equipped to comply with the site-specific occupational health and safety plan and are held accountable for doing so;

(E) Record-keeping requirements; and

(F) Regular evaluation of and continuing improvements to the site-specific occupational health and safety plan and its implementation;

(2) Demonstrates managerial commitment to the health and safety of workers, other personnel, and the general public by adopting, posting, and implementing an explicit company policy that:

(A) Requires directors, officers, and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities related to safety and health;

(B) Describes relevant reporting responsibilities and reporting procedures;

(C) Protects against retaliation for employees who in good faith report problems or incidents related to safety or health;

(D) Assures notice is given to all employees about OSHA-mandated education and training requirements that apply to the employees' specific job duties;

(E) Designates individuals responsible for compliance; and

- (F) Provides for annual review of the policy's effectiveness;
- (3) Promotes employee participation by maintaining policies that encourage employees, and the employees of subcontractors while they are working on a project for the bidder or subcontractor, to:
 - (A) Participate in the establishment, implementation, and evaluation of the company health and safety plan;
 - (B) Report unsafe work conditions or any work-related injuries without fear of management retaliation for making such reports; and
 - (C) Stop work if they encounter what they in good faith believe to be a hazardous condition on the job;
- (4) Conducts training for employees on occupational hazards and on best practices for maintaining a safe and healthy workplace in a language and format that is understandable to each employee;
- (5) Evaluates supervisory personnel based on safety performance; and
- (6) Demonstrates an acceptable record of compliance with safety- or health-related laws and regulations as reflected in the following:
 - (A) OSHA lost-time-incident frequency rates and OSHA recordable injury and illness frequency rates;
 - (B) Workers' compensation experience modification rates;
 - (C) Final assessments of citations and penalties by occupational safety and health agencies;
 - (D) Receipt of and compliance with any safety- or health-related stop-work orders;
 - (E) Violations of any other laws related to occupational safety and health; and

(F) Any other factor the department of transportation determines to be a useful metric to assess occupational safety and health performance.

54-5-1504.

(a) No bidder shall submit a bid for, or be awarded the contract for, a department construction project with an estimated cost exceeding five hundred thousand dollars (\$500,000) unless:

(1) The bidder submits a list of all subcontractors who will perform construction work on the project to the department; and

(2) The bidder and all subcontractors who will perform construction work on the project have valid prequalification scores.

(b) No subcontractor shall perform construction work on any department construction project with an estimated cost exceeding five hundred thousand dollars (\$500,000) unless the subcontractor has a valid prequalification score.

(c) No bidder or subcontractor shall bid for, be awarded, or perform any construction work on a department construction project if:

(1) The department determines that in the preceding five (5) years the bidder or subcontractor, an officer or agent of the bidder or subcontractor, or a person with substantial ownership in the bidder or subcontractor provided false or misleading information in connection with a bid on a department construction project; or

(2) The department determines that the bidder or subcontractor does not have current workers' compensation coverage as required by § 50-6-405.

(d) Any bidder or subcontractor seeking a prequalification score shall submit the following information to the department:

- (1) The prequalification questionnaire;
- (2) Proof that the bidder or subcontractor has current workers' compensation coverage as required by § 50-6-405;
- (3) A sworn statement attesting to the accuracy and completeness of all information submitted under penalty of perjury; and
- (4) Any additional information the department deems necessary.

(e)

(1) The department shall:

(A) Review the information provided in the prequalification questionnaire to determine its validity;

(B) Gather any additional information about past performance or present capacity of bidders and subcontractors that the department deems important for rating them;

(C) Assign each bidder or subcontractor a prequalification score based on objective standards in accordance with the rating system provided in § 54-5-1503(a); and

(D) Notwithstanding any provision of title 10, chapter 7, to the contrary, publish all prequalification questionnaires and bidder and subcontractor prequalification scores on the department's web site in a manner that is accessible to the public. The web site shall also indicate if a bidder or subcontractor is prohibited from being a qualified bidder or subcontractor pursuant to subsection (c).

(2) The department is authorized to use the services of a management consulting firm as described in § 54-5-1503(b), to assist with compliance with subdivision (e)(1).

(3) The department shall consider each bidder's prequalification score in determining if the bidder is responsible and qualified as required by § 54-5-117.

(f) The department shall allow bidders and subcontractors the opportunity to apply for a prequalification score at least once every six (6) months.

(g) Prequalification scores expire and must be renewed after one (1) year.

54-5-1505.

(a) The department shall assign an onsite trained and competent person to monitor and oversee occupational safety and health matters on any department construction project with an estimated cost exceeding five hundred thousand dollars (\$500,000).

(b) All department construction project contracts shall require all contractors and subcontractors to report the following to the department, subject to a penalty for failure to report:

(1) All fatal and nonfatal work-related injuries;

(2) All instances of employee illness or days during which employees were away from work, transferred to other jobs, or restricted in their performance of tasks in the workplace; and

(3) All citations issued to the contractor or subcontractor by TOSHA or any other occupational safety and health agency for serious, willful, or repeated violations.

(c)

(1) The department shall establish and publicize a means through which workers on department construction projects or members of the general public may report concerns about hazardous conditions on department construction projects to the department. The department shall provide language interpretation

services for these reports if needed. The reporting system shall allow individuals who make a report pursuant to this subdivision (c)(1) to provide relevant information for timely consideration by the department, and the department shall inform the individual who made the report of actions taken by the department in response to the report.

(2) Reports from workers employed by a contractor or subcontractor on a department construction project shall be confidential and shall not be subject to public inspection pursuant to title 10, chapter 7.

(d)

(1) All contracts for department construction projects shall include penalties in the event that a worker dies while working on a department construction project and the contractor or subcontractor that employed the worker receives a final citation from TOSHA or another occupational safety and health agency for a serious, willful, or repeated violation, and the violation caused or contributed to the fatality.

(2) The penalties required by subdivision (d)(1), along with the name of the contractor or subcontractor receiving the citation, shall be posted on the department's web site and shall include, but are not limited to:

(A) Forfeiture of any completion bonus that otherwise would have been awarded;

(B) Disqualification of the contractor or subcontractor from bidding on future department construction projects for a specific period of time to be determined by the department; and

(C) A monetary penalty paid to the department.

(3)

(A) Any funds received by the department pursuant to subdivision (d)(2)(C) shall be placed in a special fund to be known as the “public construction contractor safety fund,” which shall be administered by the department and shall be available for use after January 1, 2016, to pay for occupational safety and health training of workers employed by contractors or subcontractors on department construction projects.

(B) Training paid for with funds from the public construction contractor safety fund shall be conducted by nonprofit organizations with a demonstrated capacity to conduct relevant safety and health training of workers in both English and Spanish.

(C) This subdivision (d)(3) shall not be construed to be an appropriation of funds, and no funds shall be obligated or expended pursuant to this subdivision (d)(3) unless provided by a general appropriations act.

(e)

(1) All contracts for department construction projects shall authorize the department to take corrective actions promptly in the event that a contractor or subcontractor receives a citation from TOSHA or another occupational safety and health agency for a serious, willful, or repeated violation while working on a department construction project, whether or not a fatality results from the violation.

(2) Action taken by the department in accordance with subdivision (e)(1) shall be calculated to bring the project into compliance with the relevant standards and the contractor’s own site-specific occupational health and safety plan, shall be posted on the department’s web site, and may include:

(A) Monetary penalties as determined by the department;

(B) Orders to stand down or stop work until the violations have been rectified;

(C) Training or retraining of supervisory personnel and workers, as necessary, as to their obligations under the relevant safety and health standards; and

(D) Other actions that may be deemed by the department as necessary and appropriate.

(3) Any funds received by the department pursuant to subdivision (e)(2)(A) shall be placed in the public construction contractor safety fund, as described in subdivision (d)(3)(A).

(f) The department is authorized to use the assistance of a management consulting firm as described in § 54-5-1503(b) in administering the penalties and remedial actions identified in this section.

(g) The penalties assigned and implemented in this section are subject to appeal in a timely fashion according to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 3. The commissioner of transportation is authorized to promulgate rules to effectuate the purposes of this act. All rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. For the purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2016, the public welfare requiring it, and shall apply to contracts entered into or renewed on or after that date.