



The Price of Inaction

A Comprehensive Look at the Costs of Injuries and Fatalities in Maryland's Construction Industry

Acknowledgments

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I. Introduction

Historically, the Occupational Safety and Health Administration (OSHA) has reported that construction is one of the most dangerous occupations in the United States. In 2010, fatalities due to workplace accidents claimed the lives of 774 U.S. construction workers, representing 16 percent of total workplace fatalities.¹ Maryland has not avoided these types of tragedies. From 2008 to 2010, 55 construction workers in Maryland lost their lives on the job. And though construction industry fatalities have generally been on the decline both in Maryland and in the United States, Maryland reported 35 construction industry deaths in 2006 alone.² At least 13 construction workers have died in Maryland in every year since 1993.³

Compared with national trends, Maryland's safety record is mixed. According to the AFL-CIO, Maryland had the eighth fewest worker fatalities in 2010.⁴ However, Maryland slightly exceeded the national rate for workplace injuries and illnesses in 2010.⁵ (This comparison is for all occupations, not just construction.)

Many different issues lead to fatal and nonfatal injuries in the construction industry. Accidental falls and contact with objects and equipment are two of the leading causes of fatal and nonfatal injuries, and oversight agencies have failed to do their part to reduce the frequency of such tragedies. "Despite efforts to reduce the risk of occupational injuries and illness in construction, the [construction] industry continues to account for a disproportionate share of work-related injuries and illnesses in the United States,"⁶ authors Geetha Waehrer *et al.* wrote in a 2007 paper that assessed the costs of construction-related injuries and fatalities.

Also worthy of discussion are the associated costs of construction injuries to the economy. Fatal and nonfatal injuries in the construction industry impose a significant economic burden. This paper highlights the economic burden of occupational injuries and fatalities in Maryland's construction industry by estimating the direct, indirect, and quality of life costs resulting from fatal and nonfatal injuries. From 2008 to 2010, fatal and nonfatal construction injuries in Maryland cost the Maryland economy \$712.8 million, according to

¹ AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLECT 42 (2012), <http://bit.ly/ITBSV8>.

² *Fatal occupational injuries by selected worker characteristics and selected industry, Maryland, all ownerships 2003-2010*, UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

³ *Fatal occupational injuries by selected worker characteristics and selected industry, Maryland, all ownerships, 1993-2010*, UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

⁴ AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLECT, 143 (2012). Ranking based on best to worst (1=best; 50=worst), <http://bit.ly/ITBSV8>.

⁵ *Id.* The national rate was 3.5 injuries and illnesses per 100 workers employed by the private sector. Maryland's rate as 3.6 per 100.

⁶ Waehrer G, Dong X, Miller T, Haile E and Men, Y. *Costs of Occupational Injuries in Construction in the United States*. 39 ACCIDENT ANALYSIS AND PREVENTION 1259-1266 (2007).

a Public Citizen analysis that adjusted findings from a 2004 research paper to account for inflation and the frequency of construction injuries in Maryland from 2008 to 2010. This report breaks down the costs of fatal and nonfatal construction injuries during this time period, and accounts for factors beyond workers' compensation costs, which are often cited as a proxy for the costs of construction accidents.

At a time when the economy is struggling, the last thing we need is a \$712.8 million burden on Maryland and the construction industry. One way for Maryland to address the economic burdens caused by fatal and nonfatal injuries is by taking steps to reduce construction accidents. A significant and inexpensive step the state could take is to use its power as a chief purchaser of construction services to insist on high-standards. In fiscal year 2010, Maryland's capital budget, which includes the majority of the state's construction spending, totaled approximately \$3.2 billion.⁷ Specifically, the state could adopt a policy requiring prospective construction contractors to demonstrate excellent safety records and practices to be eligible to compete for state contracts. For example, only construction firms that provide both worker and site supervisor safety training and that do not have serious occupational safety and health violations should be eligible to bid on public contracts. Such a process would require contractors that derive at least some of their revenue from the state to maintain high standards in all of their work, included that performed for private customers.

Maryland has long been at the forefront of progressive reforms. For example, the state recently increased the fine from \$5,000 to \$25,000 for companies that fail to follow government guidelines for safe handling of asbestos.⁸ In 2009, Gov. Martin O'Malley signed a law to crack down on the misclassification of employees as independent contractors. Senate Bill 909 will help deter the misclassification of employees as independent contractors and includes a tough new set of enforcement tools for state labor officials and allows fines of up to \$20,000 per worker for perennial offenders.⁹ Workers, industry and government should not have to wait any longer for efforts to be made to reduce fatalities and injuries in the construction industry and the economic burdens they create. In a time of economic uncertainty and reduced budgets, it is just common sense to alleviate the economy.

In addition to discussing the frequency of construction injuries in Maryland and their associated costs, this report proposes a policy change to guide lawmakers in addressing the needs of both the construction industry and its workers.

⁷ *Maryland Budget Highlights FY 2010*, MARYLAND DEPARTMENT OF BUDGETS AND MANAGEMENT, <http://bit.ly/4jIMqk>.

⁸ *Maryland Asbestos Law: Beginning of a Trend?* July 09, 2012, <http://bit.ly/PfYOiL>.

⁹ *Maryland - O'Malley Signs Misclassification Crackdown*, WORKCOMP CENTRAL, May 5, 2009, <http://bit.ly/MX3f4e>.

II. Data and Methods

The majority of the literature used in this paper draws from: the Bureau of Labor Statistics (BLS); the AFL-CIO's annual report(s) *Death on the Job: The Toll of Neglect*; and a 2004 study by Waehrer *et al.* that quantifies the costs of occupational injuries.¹⁰

The findings of Waehrer *et al.* are used in concert with recent data on the number of construction injuries and fatalities, as well as the consumer price index data, to estimate the inflation-adjusted costs of construction injuries and fatalities in Maryland for recent years. Appendix A explains how Waehrer *et al.* arrived at estimated costs, and how we adjusted such figures to account for recent data.

Although this report invokes the costs of injuries and fatalities to buttress the case that the Maryland legislature should take steps to reduce the incidence of workplace accidents, this should not be interpreted as an endorsement of the use of cost-benefit analysis as a prerequisite for moving forward with public safety measures.

Policymakers who are beholden to cost-benefit analysis would require government agencies to demonstrate that the quantifiable monetary benefits of any proposed action would outweigh the costs. Adherence to this philosophy inhibits problem-solving for numerous reasons. For instance, the formulas invoked for cost-benefit analyses invariably overstate the costs and understate the benefits. On the cost side, they often ignore the ability of industry to develop less-expensive solutions through innovation and economies of scale. On the benefits side, they typically do not permit agencies to place a value on protecting against likely harms that are not quantifiable. Ultimately, bowing to cost-benefit analysis prevents government agencies from implementing feasible solutions to major problems.

III. Construction: Maryland's Most Dangerous Occupation

Fatalities and injuries in the construction industry are disproportionately high compared to other industries. For example, in 2004, construction workers made up 7.7 percent of the United States workforce, but suffered 22.2 percent (1,278) of the nation's 5,764 reported work-related deaths. In addition, there were more than 150,000 nonfatal injuries resulting in days away from work in construction that year. This rate is 71 percent higher than that for all industry as a whole.¹¹

¹⁰ Waehrer G, Leigh JP, Cassady D, and Miller T., *Costs of occupational injury and illness across states*, 46 JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE 1084-1095 (2004). Two studies by Waehrer *et al.* are cited in this paper. Data calculations in the paper come are based on findings in the 2004 report.

¹¹ Waehrer G, Dong X, Miller T, Haile E and Men, Y., *Costs of Occupational Injuries in Construction in the United States*. 39 ACCIDENT ANALYSIS AND PREVENTION 1259-1266 (2007).

A. Data About Construction Fatalities in Maryland Recent Years

- In 2008, fatal work injuries in Maryland totaled 60. Twenty of those workers were employed in the construction industry, representing more than 33 percent of workplace deaths.¹²
- In 2009, fatal work injuries in Maryland claimed the lives of 65 workers, of whom 17 worked in the construction industry, representing more than 26 percent of workplace deaths.¹³
- In 2010, 71 Maryland workers were killed on the job. Of those, 18 were construction workers, meaning construction accounted for more than 25 percent of occupational deaths.¹⁴

B. Data About Construction-Related Injuries in Maryland in Recent Years¹⁵

- In 2008, it was reported that 6,900 occupational injury and illness cases in Maryland's construction industry occurred. Of these, 4,000 required days away from work, job transfer, or restriction.¹⁶
- Similarly in 2009, the private sector construction industry recorded 5,900 occupational injury and illness cases, of which 3,300 hundred required days away from work, job transfer, or restriction.¹⁷
- In 2010, 5,800 occupational injury and illness cases in Maryland's construction industry occurred, according to the Bureau of Labor Statistics. Of these, 3,700 required days away from work, job transfer, or restriction.¹⁸

C. Summary

From 2008 to 2010, Maryland recorded 18,600 construction industry accidents, of which 11,000 required days away from work, job transfer, or restriction. Likewise, 55 fatalities were reported in Maryland's construction industry in these years. Yet, workers in the

¹² *Fatal occupational injuries by selected worker characteristics and selected industry, Maryland, all ownerships, 2008 – 2009*, UNITED STATES DEPARTMENT LABOR, BUREAU OF LABOR STATISTICS.

¹³ *Id.*

¹⁴ *Fatal Occupational Injuries in Maryland, 2010*. UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, <http://bit.ly/OngxEN>.

¹⁵ All figures rounded by the Bureau of Labor Statistics to the nearest 100.

¹⁶ *Number and rate of nonfatal occupational injuries and illnesses by selected industry, Maryland, private industry, 2008*. UNITED STATES DEPARTMENT LABOR, BUREAU OF LABOR STATISTICS.

¹⁷ *Number and rate of nonfatal occupational injuries and illnesses by selected industry, Maryland, private industry, 2009*. UNITED STATES DEPARTMENT LABOR, BUREAU OF LABOR STATISTICS.

¹⁸ *Maryland Number of nonfatal occupational injuries and illnesses by industry and case types, 2010*. UNITED STATES DEPARTMENT LABOR, BUREAU OF LABOR STATISTICS, <http://1.usa.gov/O0NhsB>.

construction industry are left with few options to safeguard themselves against these perilous conditions. The only means that workers have to mitigate hazards is their self will to stand up and identify health and safety issues. However, it is widely understood that workers are reluctant to do so; fear of job loss and employer intimidation can supersede the potential loss of life or injury in today's construction market.

IV. The Costs of Injuries and Fatalities in Maryland

The Occupational Safety and Health Act of 1970 states “that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.”¹⁹ Days away from work due to occupational injuries are costing employers, workers and Maryland taxpayers. Likewise, when occupational fatalities occur, more is lost than a day's work. Workplace deaths are tragedies that devastate families and their surrounding communities.

This report relies on an analysis by Waehrer *et al.* (2004) coupled with more recent data to estimate the costs of occupational injuries in Maryland. Waehrer *et al.* determined costs of occupational injuries and fatalities by adding up three broad categories of consequences from such incidents: direct costs, indirect costs and quality of life costs. Direct costs include payments for hospital, physician and allied services. Indirect costs refer to victim productivity losses, employer productivity losses and administrative cost associated with an occupational accident. Quality of life costs refer to the value attributed to the pain and suffering of victims and their families.²⁰

The 2004 Waehrer *et al.* study found that the 1993 cost of fatal occupational injuries totaled \$232 million across Maryland's private industry occupations.²¹ This translates to a cost of \$3.5 million per fatal occupational injury, or \$5.2 million in 2010 dollars.

There were 55 fatal construction accidents in Maryland from 2008 to 2010. Adjusting the Waehrer study's cost per fatal injury to 2010 dollars, this translates to a total of \$287.3 million in costs for Maryland.

The costs of occupational nonfatal injuries in Maryland for 1993 were \$938 million. This translates to \$25,627 per injury, or \$38,672 in 2010 dollars. There were 11,000

¹⁹ Occupational Safety and Health Act, S.2193, 91st Congress, § 2 (1970), <http://1.usa.gov/9gSBuk>.

²⁰ Waehrer G, Leigh JP, Cassidy D, and Miller T, *Costs of occupational injury and illness across states*, 46 JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE 1084-1095 (2004).

²¹ *Id.*

construction injuries from 2008 to 2010.²² Thus, the costs to the Maryland economy due to construction-related injuries totaled \$425.4 million for the three years.

Combining the above figures, the total cost to Maryland from construction-related deaths and injuries for the three years was \$712.8 million.

This estimate almost certainly understates actual costs because many of the factors Waehrer *et al.* included in their calculation have increased at a faster rate than inflation. This is particularly true for health care costs, which are one of the primary direct costs of occupational injuries.

V. Maryland Occupational Safety and Health Inaction

Maryland has elected to run its own occupational safety and health program to oversee both public-sector and private-sector workers (excluding federal government employees). Currently, there are 25 states and two territories that administer their own OSHA programs. Maryland's program is called the Maryland Occupational Safety and Health agency (MOSH). In 2010, there were only 65 MOSH inspectors assigned to inspect 164,174 Maryland workplaces.²³ With these paltry resources, MOSH was only able to inspect 0.71 percent of Maryland's workplaces in 2010. With 65 inspectors responsible for 164,174 workplaces, it would take MOSH about 140 years to inspect each workplace in Maryland once.²⁴

Of the 1,173 MOSH workplace inspections in 2010, 746 concerned the construction industry, representing slightly more than 63 percent of all MOSH inspections.²⁵ In 2009, MOSH inspected 1,326 workplaces, of which 771 were in the construction industry, representing 58 percent of all MOSH inspections.²⁶ Similarly, in 2008, MOSH inspected 1,518 workplaces, of which 943 were in the construction industry, representing 62 percent of all MOSH inspections. Even though MOSH has dedicated more resources to the construction industry, fatal and nonfatal injuries continue to occur at exceedingly high rates in the industry, and more needs to be done to deal with this problem.

²² *Number and rate of nonfatal occupational injuries and illnesses by selected industry, Maryland, private industry, 2008-2010*. UNITED STATES DEPARTMENT LABOR, BUREAU OF LABOR STATISTICS.

²³ AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLECT, 137 (2011), <http://bit.ly/ITBSV8>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLECT, 137 (2010), <http://bit.ly/ITBSV8>.

VI. Ways to Address the Problem

More resources to conduct inspections are needed to ensure safe working conditions in Maryland's construction industry. But due to challenging budget issues, the allocation of additional resources seems unlikely.

But Maryland could take a major, yet inexpensive, step toward addressing construction industry safety shortcomings simply by requiring that contractors meet safety standards to qualify to bid for public construction projects. Maryland should implement a comprehensive policy to prequalify contractors who wish to perform public contracting services in the construction industry. This would make Maryland a leader in this area. No state has yet introduced prequalification measures regarding occupational safety and health records as criteria to receive public construction contracts.

The idea of contractor prequalification is not a new one in Maryland; it already does so in a different capacity. As it stands, Maryland state agencies and municipalities prequalify contractors for public construction projects based on past performance, bonding capacity, and legal proceedings. The law does not yet call for consideration to be taken into account regarding occupational safety and health records. However, the change would be right in line with existing prequalification's practices, and so fairly simple to implement. Even better, a model already exists within the state, as the Division of Construction for the Montgomery County Public Schools has adopted a policy of considering an employer's occupational safety and health record in its contractor prequalification process.²⁷

In order to mitigate potential hazards in public construction, Maryland should shield itself from bad actors in the construction industry by developing a standardized 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 public construction contracts (Appendix B). By doing so, Maryland and its municipal construction awarding authorities can begin to weed out construction firms that are contributing to the economic burdens those construction fatalities and injuries create. Such a system would almost certainly improve safety in construction projects for private-sector clients as well, as contractors would need to maintain strong safety records in all of their work to remain eligible for public sector projects.

²⁷ *Montgomery County Public Schools Facilities Guide*, (FY2012), MONTGOMERY COUNTY PUBLIC SCHOOLS, <http://bit.ly/OWmMPZ>.

VII. Conclusion

For many years, state agencies have relied on OSHA for direction and guidance for their occupational safety and health programs. The idea is simple: develop a system for employers to adhere to, and hope that employees will be trained in how to perform their jobs safely. The mechanism for enforcement of these standards was similar; send an inspector out to workplaces and to check for hazards and issue citations for violations.

But over the years, as budgets have been reduced and occupational safety and health staffing levels have failed to keep pace with industry, state and federal OSHAs alike have struggled to deal with workplace injuries and deaths and their associated costs.

However, there is light at the end of the tunnel. Although it must be acknowledged that implementing a prequalification process for public construction projects will not address all of the industry's safety problems, such a step has the potential to yield significant gains for minimal costs. Additionally, workers who are hired on to public construction jobs could feel assured that they are working for a company with demonstrated safety credentials.

Maryland should adopt legislation that speaks to these issues. It's the right thing to do and will keep Maryland as a leader in occupational safety and health.

Appendix A

Calculations of Occupational Fatal and Nonfatal Injuries

Waehrer *et al.* determined the costs of workplace fatalities and injuries by adding up costs under three categories: direct costs, indirect costs, and quality of life costs.

Direct costs include payments for hospital visits, allied services, rehabilitation, nursing home care, medical equipment, burial costs, and insurance administrative costs for medical claims, payments for mental health treatment, police, fire, emergency transport, coroner services, and property damage.²⁸

Indirect costs refer to: victim productivity losses, which include wage losses and household production losses; employer productivity losses, which is time spent by supervisors and coworkers investigating accidents, juggling schedules, and recruiting and training replacements for injured workers; and administrative costs, which include the cost of administering Workers' Compensation programs.

Quality of life costs refer to the value attributed to the pain and suffering of victims and their families.²⁹

In this paper, we adjusted the costs per incident as reported by Waehrer *et al.*, adjusted those costs for inflation (in 2010 dollars), and multiplied the inflation-adjusted costs by Maryland's frequency of incidents from 2008 to 2010.

In 1993, Waehrer *et al.* reported that 67 workers lost their lives across Maryland's private industry occupations and concluded that these fatalities imposed a cost of \$232 million.

$\$232 \text{ million} \div 67 \text{ worker fatalities} = \$3,462,686.57$ (\$3.5 million) in 1993. This is the cost per fatality.

Adjusted for inflation, this would equal \$5,225,325.83 (\$5.2 million) per fatality in 2010 dollars.

This report calculates the costs of Maryland construction related fatalities in 2008, 2009 and 2010. In 2010, there were 18 fatalities among construction workers, resulting in a calculated cost of \$94,055,865 (\$94.1 million). In 2009, there were 17 fatalities among construction workers, resulting in a calculated cost of \$88,830,539 (\$88.8 million). In 2008, there were 20 fatalities among construction workers, resulting in a calculated cost of

²⁸ Waehrer G, Leigh JP, Cassady D, and Miller T, *Costs of occupational injury and illness across states*, 46 JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE 1084-1095 (2004).

²⁹ *Id.*

\$104,506,517 (\$104.5 million). The combined costs were \$287,392,921 (\$287.3 million) to the economy.

We used the same model to calculate the estimated cost of construction-related injuries in Maryland for each corresponding year. Specifically:

Waehrer *et al.* calculated the cost of occupational injuries to be \$938 million 1993. According to the Bureau of Labor Statistics, which Waehrer *et al.* used for their calculation of the number of injuries, there were 36,601 nonfatal occupational injuries and illnesses involving days away from work in Maryland's private industry in 1993.

$\$938 \text{ million} \div 36,601 \text{ nonfatal injuries} = \$25,627 \text{ in } 1993$. This is the cost per nonfatal occupation injury. Adjusted for inflation, this would equal \$38,672 per nonfatal injury in 2010 dollars.

In 2010, there were 3,700 nonfatal injuries involving days away from work among construction workers, resulting in a calculated cost of \$143,090,100 (\$143.1 million). In 2009, there were 3,300 nonfatal injuries involving days away from work among construction workers, resulting in a calculated cost of \$127,620,900 (\$127.6 million). In 2008, there were 4,000 nonfatal injuries involving days away from work among construction workers, resulting in a calculated cost of \$154,692,000 (\$154.7 million). The combined costs were \$425,403,000 (\$425.4 million) to the economy.

The combined costs of fatal and nonfatal occupational injuries for 2008, 2009 and 2010 were \$712,795,921 (\$712.8 million) to the economy in Maryland.³⁰

³⁰ Due to rounding, some category averages may not equal the total sum.

Appendix B

Model Bill for Worker Health and Safety on Public Construction Projects

Section 1. Title

This Act shall be known and may be cited as the Public Contractor Safety Act.

Section 2. Definitions

- (1) "Bidder" means a business or individual submitting or intending to submit an a bid for a construction contract
- (2) "Construction" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind including painting and decoration
- (3) "Injury and Illness Incidence Rates" means any measurement based on the number of bidder- or subcontractor-reported non-fatal 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
- (4) "Awarding Authority" means a city, county, city and county, special district, or a public agency of {the state}, any department, division, public corporation, or public agency of this State, any public school board, public college, or public university, or two or more such entities acting jointly
- (5) "National Consensus Standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization
- (6) "Occupational Safety and Health Agency" means (a) the United States Occupational Safety and Health Administration; (b) {the state OSHA department}; or (c) the occupational safety and health plan for any other public jurisdiction established under Section 18 of the federal Occupational Safety and Health Act (29 USC 667)
- (7) "Subcontractor" means a business or individual that performs construction work for a contractor, regardless of its tier
- (8) "Whistleblower" means an employee who discloses to those in authority within or outside of the corporation, mismanagement, corruption, illegality, or some other wrongdoing regarding workplace safety and health conditions.

Section 3. Bidder Health and Safety Prequalification

(1) The {state labor department} shall develop a standardized 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 construction contracts. The {state labor department} shall consult with occupational safety and health professionals, construction contractors, building trades unions, affected awarding authorities, and any other interested parties in developing these materials. The Department shall also review relevant scientific literature, national consensus standards, and federal Occupational Safety and Health Administration guidance documents to determine key occupational safety and health performance metrics for the purposes of this part. The questionnaire and rating system shall include, but not be limited to, assessment of the following for each bidder and subcontractor:

- a. Safety and Health Planning: Use of written, site-specific occupational health and safety plans that contain the following core elements:
 - i. methods for identifying, assessing, and documenting potential occupational safety and health hazards;
 - ii. methods for preventing and controlling, using the most effective methods, occupational safety and health hazards;
 - iii. communication of information to and training of employees;
 - iv. record keeping; and
 - v. regular evaluation of and continuous improvements to the site-specific occupational health and safety plan and its implementation

- b. Management Leadership: Commitment of company management to addressing health and safety of workers, other affected personnel, and general public.

- c. Employee Participation: Employee participation in identifying and resolving safety and health issues that includes:
 - i. Participation of frontline employees in the establishment, implementation, and evaluation of the company safety and health plan;
 - ii. Maintenance of company policies that encourage workers to report unsafe work conditions;
 - iii. Maintenance of company policies that encourage workers to report any work-related injuries;
 - iv. Maintenance of company policies that grant employees authority to immediately stop working in the event of hazardous conditions

d. Employee training: Provision of health and safety information and training to employees that includes:

- i. Use of one or more methods to communicate occupational hazards to employees;
- ii. Information and training in a language and format that is understandable to each employee.

e. Supervisor accountability: Use of evaluations of project supervisory personnel based on safety performance.

f. Compliance record: Employer's record of compliance with safety- or health-related laws or regulations to include:

- i. OSHA lost time incident frequency rates and OSHA recordable injury/illness frequency rates,
- ii. Worker's Compensation Experience Modification Rates;
- iii. Final assessments of citations and penalties by occupational safety and health agencies;
- iv. Receipt of and compliance with any safety- or health-related stop work orders; and
- v. Violations of any other laws related to occupational safety and health.

g. Any other factor the {state labor department} determines to be a useful metric to assess occupational safety and health performance.

(2) The {state labor department} shall determine the minimum score a bidder and its subcontractors must attain on the rating system to be eligible to bid on public construction contracts.

(3) Any awarding authority soliciting bids for construction contracts with an estimated value exceeding \$[] shall require that each prospective bidder and all of its subcontractors complete and submit the safety prequalification questionnaire developed under Subsection 1 along with any documentary evidence required to substantiate claims made in the questionnaire. The bidder shall attest to the accuracy and completeness of all information submitted in this part under penalty of perjury.

(4) Any awarding authority soliciting bids for construction contracts with an estimated value exceeding \$[] shall require the bidder to develop and implement a whistleblower policy regarding workplace safety and health that requires all directors, officers and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. This policy shall include but not be limited to describing

reporting responsibilities, reporting process, confidentiality protections, employee education regarding the policy, retaliation prohibitions, identifying a compliance officer and an annual review of the program's effectiveness.

(5) Any bidder shall be ineligible to submit a bid on or be awarded any construction contract whose estimated value exceeds \$[] if that bidder or any of its subcontractors do not meet the minimum standards of the awarding authority's safety prequalification assessment.

(6) Each awarding authority shall allow bidders and subcontractors the opportunity to apply for safety prequalification at least once every six (6) months. Awarding authorities shall require all bidders and subcontractors to undergo the safety prequalification procedure at least once per year.

(7) Each bidder shall provide the awarding authority a list of all subcontractors that will perform construction work for the contract. Bidders shall not permit any subcontractor that has not been prequalified under this section, at a minimum, to perform construction work for the contract.

Section 4. Debarment from Bidding on Construction Contracts

(1) Any bidder shall be ineligible to submit a bid on or be awarded any construction contract whose estimated value exceeds \$[] if that bidder does not furnish proof of current workers' compensation coverage as required under {state workers' compensation statute}.

(2) Any bidder shall be ineligible to submit a bid on or be awarded any construction contract whose estimated value exceeds \$[] if an Awarding Authority has determined in the preceding five years that a company officer, agent, or person with substantial ownership in the company provided false or misleading information under Section 3 of this Act.

(3) Any subcontractor that would, as a bidder, be ineligible to submit a bid on or be awarded a construction contract under this section shall be ineligible for prequalification by any awarding authority under Section 3 of this Act.