



Virginia Workers' Comp Bill Creates Opportunity

Earlier this year, the Virginia legislature unanimously passed a very productive piece of legislation that will hopefully create new opportunities for contractors who may have previously been excluded from bidding on state work. The legislation, House Bill 1108, was a culmination of years of work by many organizations and various delegates and is a great example of bipartisan cooperation to improve business practices in the state.

The bill amended the Code of Virginia to prohibit the use of the Experience Modification Rating Factor, commonly referred to as an Experience Mod, as a condition of bidding for work.

The summary of the bill provided by the Virginia Legislative Information System is as follows:

Virginia Public Procurement Act (VPPA) and contracting generally; use of experience modification factor in contracting prohibited. Prohibits the use of any experience modification factor as a condition of any bidder's or offeror's eligibility to participate in a solicitation for construction. The bill includes the same prohibition for any contract or offer to contract not covered by the VPPA. The bill also provides that it applies to any offer to contract as defined in the bill, Invitation to Bid, or Request for Proposal for construction services issued on or after July 1, 2016. The bill defines "experience modification factor."

What does this mean?

Previously, RFPs for work under the VPPA could include a specified Experience Mod for bidders. This practice inaccurately utilized an Experience Mod as a measure of safety performance - which it is not. The Experience Mod is only intended to be a pricing mechanism for workers' compensation premiums. Not-at-fault auto accidents or simple "unfavorable medical outcomes as part of a medical treatment" for an individual employee are just a couple of examples of occurrences that can result in an increased Experience Mod but do not accurately represent the safety track record of an individual company. This is especially true with smaller contractors where one claim can bring their Experience Mod over 1.00, which would have previously prevented them from competing for the work impacted by this bill.

Virginia Governor Terry McAuliffe signed House Bill 1108 into law in June and the provisions of the amendment apply to RFPs for construction services issued on or after July 1, 2016.

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