

# Chapter 504

(Senate Bill 599)

AN ACT concerning

## Procurement – Subcontractor Equal Access to Bonding Act of 2013

FOR the purpose of prohibiting a prime contractor from requiring certain bonding from a subcontractor on certain procurement contracts that is more stringent than certain bonding requirements for prime contractors on certain procurement contracts under a certain circumstance; ~~requiring certain prime contractors and the State to be dual obligees on certain bonds under a certain circumstance; establishing certain underwriting requirements for certain bonds that are provided by subcontractors; requiring a subcontractor to provide certain evidence with a certain bond under certain circumstances; requiring a procurement officer to make a certain determination and to obtain advice from the Office of the Attorney General under certain circumstances; requiring a contractor to accept certain bonds provided by bonding from a subcontractor to be accepted by a prime contractor~~ requiring a contractor to accept certain bonds provided by bonding from a subcontractor to be accepted by a prime contractor under certain circumstances; requiring certain agencies to provide certain notice on bid security to certain bidders; and generally relating to bonding requirements for subcontractors on procurement contracts with the State.

BY adding to

Article – State Finance and Procurement

Section 13–227

Annotated Code of Maryland

(2009 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

### Article – State Finance and Procurement

#### 13–227.

(A) IF A PRIME CONTRACTOR REQUIRES A SUBCONTRACTOR TO PROVIDE A BID, PERFORMANCE, OR PAYMENT BOND ON A PROCUREMENT CONTRACT FOR SERVICES, SUPPLIES, OR CONSTRUCTION-RELATED SERVICES WITH THE STATE:

(1) , THE PRIME CONTRACTOR MAY NOT REQUIRE BID, PERFORMANCE, OR PAYMENT BONDING FROM ~~A~~ THE SUBCONTRACTOR THAT IS

MORE STRINGENT THAN THE BONDING REQUIREMENTS IN §§ 13-207 AND 13-216 OF THIS SUBTITLE AND § 17-104 OF THIS ARTICLE; ~~AND~~

~~(2) THE PRIME CONTRACTOR AND THE STATE SHALL BE DUAL OBLIGEEES ON THE BOND.~~

(B) A BID, PERFORMANCE, OR PAYMENT BOND THAT IS PROVIDED BY A SUBCONTRACTOR UNDER SUBSECTION (A) OF THIS SECTION SHALL BE UNDERWRITTEN BY:

~~(1) A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THE STATE;~~

~~(2) AN INDIVIDUAL SURETY THAT MEETS THE REQUIREMENTS OF THIS SECTION; OR~~

~~(3) THE MARYLAND SMALL BUSINESS DEVELOPMENT FINANCING AUTHORITY ESTABLISHED IN TITLE 5, SUBTITLE 5 OF THE ECONOMIC DEVELOPMENT ARTICLE ACCEPTED BY THE PRIME CONTRACTOR IF ~~IF~~ THE BOND WOULD BE ACCEPTED BY THE STATE ~~IF~~ AND PROVIDED BY A PRIME CONTRACTOR.~~

(1) A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THE STATE; OR

(2) THE MARYLAND SMALL BUSINESS DEVELOPMENT FINANCING AUTHORITY ESTABLISHED IN TITLE 5, SUBTITLE 5 OF THE ECONOMIC DEVELOPMENT ARTICLE.

~~(C) IF A SUBCONTRACTOR ELECTS TO PROVIDE A BOND UNDERWRITTEN BY AN INDIVIDUAL SURETY IN ACCORDANCE WITH SUBSECTION (B)(2) OF THIS SECTION:~~

~~(1) THE SUBCONTRACTOR SHALL PROVIDE EVIDENCE WITH THE BOND THAT IS SATISFACTORY TO THE UNIT THAT:~~

~~(i) THE SUBCONTRACTOR HAS BEEN DENIED CREDIT BY A SURETY COMPANY WITHIN THE PAST 3 YEARS FROM THE DATE THE BOND WAS SUBMITTED, BASED ON A GOOD FAITH APPLICATION BY THE SUBCONTRACTOR; AND~~

~~(H) THE INDIVIDUAL SURETY TRANSACTS BUSINESS ONLY THROUGH AN INSURANCE AGENCY LICENSED BY THE MARYLAND INSURANCE ADMINISTRATION; AND~~

~~(2) THE PROCUREMENT OFFICER SHALL:~~

~~(I) DETERMINE THE ACCEPTABILITY OF AN INDIVIDUAL PROPOSED AS A SURETY AND ENSURE THAT THE SURETY'S PLEDGED ASSETS ARE SUFFICIENT TO COVER THE BOND REQUIRED BY THE SOLICITATION; AND~~

~~(II) OBTAIN THE ADVICE OF THE OFFICE OF THE ATTORNEY GENERAL AS TO THE ADEQUACY OF THE DOCUMENTS PLEDGING THE ASSETS BEFORE ACCEPTING THE BOND.~~

(C) IN A SOLICITATION OR PRE-BID CONFERENCE FOR A PROCUREMENT CONTRACT FOR SERVICES, SUPPLIES, OR CONSTRUCTION RELATED SERVICES WITH THE STATE, THE PROCUREMENT AGENCY SHALL PROVIDE NOTICE TO ALL BIDDERS THAT BID SECURITY SHALL BE:

(1) A BOND PROVIDED BY A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE;

(2) A BOND PROVIDED BY AN INDIVIDUAL SURETY THAT MEETS THE REQUIREMENTS OF §§ 13-207 AND 13-216 OF THIS SUBTITLE AND § 17-104 OF THIS ARTICLE;

(3) CASH; OR

(4) ANOTHER FORM OF SECURITY:

(I) AUTHORIZED BY FEDERAL OR STATE REGULATION; OR

(II) THAT IS SATISFACTORY TO THE UNIT AWARDING THE CONTRACT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ July 1, 2013.

Approved by the Governor, May 16, 2013.