

HOUSE BILL 585

P2

3lr0542
CF 3lr2926

By: **Delegates Reznik, Bromwell, Costa, Cullison, Donoghue, Elliott, Frank, Frick, Healey, Hubbard, A. Kelly, Kipke, Murphy, Nathan-Pulliam, Oaks, Pena-Melnyk, Ready, B. Robinson, Tarrant, and V. Turner**

Introduced and read first time: January 31, 2013

Assigned to: Health and Government Operations and Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Subcontractor Equal Access to Bonding Act of 2013**

3 FOR the purpose of prohibiting a prime contractor from requiring certain bonding
4 from a subcontractor on certain procurement contracts that is more stringent
5 than certain bonding requirements for prime contractors on certain
6 procurement contracts under a certain circumstance; requiring certain prime
7 contractors and the State to be dual obligees on certain bonds under a certain
8 circumstance; establishing certain underwriting requirements for certain bonds
9 that are provided by subcontractors; requiring a subcontractor to provide
10 certain evidence with a certain bond under certain circumstances; requiring a
11 procurement officer to make a certain determination and to obtain advice from
12 the Office of the Attorney General under certain circumstances; and generally
13 relating to bonding requirements for subcontractors on procurement contracts
14 with the State.

15 BY adding to
16 Article – State Finance and Procurement
17 Section 13–227
18 Annotated Code of Maryland
19 (2009 Replacement Volume and 2012 Supplement)

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

22 **Article – State Finance and Procurement**

23 **13–227.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

5 **(1) THE PRIME CONTRACTOR MAY NOT REQUIRE BID,**
6 **PERFORMANCE, OR PAYMENT BONDING FROM A SUBCONTRACTOR THAT IS**
7 **MORE STRINGENT THAN THE BONDING REQUIREMENTS IN §§ 13-207 AND**
8 **13-216 OF THIS SUBTITLE AND § 17-104 OF THIS ARTICLE; AND**

9 **(2) THE PRIME CONTRACTOR AND THE STATE SHALL BE DUAL**
10 **OBLIGEEES ON THE BOND.**

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

14 **(1) A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THE**
15 **STATE;**

16 **(2) AN INDIVIDUAL SURETY THAT MEETS THE REQUIREMENTS OF**
17 **THIS SECTION; OR**

18 **(3) THE MARYLAND SMALL BUSINESS DEVELOPMENT**
19 **FINANCING AUTHORITY ESTABLISHED IN TITLE 5, SUBTITLE 5 OF THE**
20 **ECONOMIC DEVELOPMENT ARTICLE.**

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

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

26 **(I) THE SUBCONTRACTOR HAS BEEN DENIED CREDIT BY A**
27 **SURETY COMPANY WITHIN THE PAST 3 YEARS FROM THE DATE THE BOND WAS**
28 **SUBMITTED, BASED ON A GOOD FAITH APPLICATION BY THE SUBCONTRACTOR;**
29 **AND**

30 **(II) THE INDIVIDUAL SURETY TRANSACTS BUSINESS ONLY**
31 **THROUGH AN INSURANCE AGENCY LICENSED BY THE MARYLAND INSURANCE**
32 **ADMINISTRATION; AND**

1 **(2) THE PROCUREMENT OFFICER SHALL:**

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

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

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