

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 245

(Senators Robinson and Smith)

Education, Health, and Environmental Affairs

Health and Government Operations

Procurement – Security Requirements – Forms

This bill requires the Board of Public Works to adopt regulations that establish separate surety bond forms for security for fixed-price contracts and for multiyear contracts. The latter forms must provide for annual and renewable contracts.

Fiscal Summary

State Effect: None. The bill’s requirements can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Depending on the size and type of a procurement contract, there are three types of security that the State must or may require:

- bid security protects the State against a bidder withdrawing a bid before a contract is awarded or refusing to sign a contract if the bid is awarded;
- performance security guarantees the performance of a contract by a contractor; and
- payment security guarantees that a contractor will pay all of its suppliers and subcontractors for labor and materials, leaving the project free of any liens.

In general, performance and payment bonds may not be required for procurements valued at \$100,000 or less, unless required by federal law or a condition of federal assistance. However, a procurement officer *may* require *bid* security on contracts for services, supplies, or construction-related services valued at \$50,000 or more.

Bid, performance, and payment security are all required on *construction* contracts valued at more than \$100,000 or if federal law or a condition of federal assistance requires security. The bid security must be at least 5% of the bid price or proposal or as determined by the procurement officer if the contract does not have a total price. The amount of the performance security is determined by the procurement officer. The amount of payment security must be at least 50% of the total amount payable under the contract.

For contracts other than for construction exceeding \$100,000 in cost, a procurement officer *may* require performance and payment security.

Background: Security is usually provided in the form of a surety bond, which is a three-way contract between the State, a contractor, and a surety (typically an insurance company or other established financial company). Surety bonds require the surety to cover any losses incurred by the State if the contractor defaults or otherwise cannot complete a project as promised.

Small Business Effect: The calculation of security is based on the total value of a contract, including optional renewals. By providing for annual and renewable contracts, the new forms required by the bill may allow payment of security only on the base contracts, potentially reducing the amount of security payments by small businesses that bid on State contracts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): University System of Maryland; Department of General Services; Board of Public Works; Department of Legislative Services

Fiscal Note History:
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