

ENROLLED BILL

-- Education, Health, and Environmental Affairs/Health and Government Operations --

Introduced by **Senator Conway**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Procurement - Payment Security and Performance Security**
3 **-Subcontractors**

4 FOR the purpose of ~~specifying that a procurement officer may require the~~
5 ~~subcontractor of a contractor to provide certain security on certain procurement~~
6 ~~contracts; specifying the manner in which a subcontractor may satisfy the~~
7 ~~security requirement; requiring each subcontractor of a contractor, before a~~
8 ~~public body awards to the contractor a construction contract in excess of a~~
9 ~~certain amount of money, to provide payment security and performance security~~
10 ~~that meet certain requirements~~ altering the amount of the dollar value
11 threshold for which a procurement officer may require certain contractors to
12 provide payment security and performance security on certain contracts;
13 requiring the Department of General Services to report to certain committees of
14 the General Assembly on or before a certain date; and generally relating to
15 payment security and performance security on procurement contracts by
16 subcontractors.

17 BY repealing and reenacting, with amendments,

1 Article - State Finance and Procurement
 2 Section 13-216 ~~and 17-103~~
 3 Annotated Code of Maryland
 4 (2001 Replacement Volume and 2004 Supplement)

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

7 **Article - State Finance and Procurement**

8 13-216.

9 (a) Except as provided in subsection (b) of this section, a procurement officer
 10 may not require a contractor to provide a performance bond, payment bond, or other
 11 security on a procurement contract for construction, construction related services,
 12 services, or supplies if the price of the procurement contract is ~~\$100,000~~ \$400,000
 13 \$200,000 or less.

14 (b) A procurement officer shall require a contractor to provide a performance
 15 bond, payment bond, or other security if federal law or a condition of federal
 16 assistance requires the security.

17 (c) If the price of a procurement contract for construction exceeds ~~\$100,000~~
 18 ~~\$400,000~~ \$200,000, a procurement officer shall require a contractor to provide security
 19 as required under Title 17, Subtitle 1 of this article.

20 (d) ~~(1)~~ A procurement officer may require a contractor, ~~AND EACH~~
 21 ~~SUBCONTRACTOR OF THE CONTRACTOR~~, to provide a performance bond or other
 22 security on a procurement contract for supplies, services, or construction related
 23 services if:

24 ~~{(1)}~~ ~~(1)~~ circumstances warrant security; and

25 ~~{(2)}~~ ~~(2)~~ the price of the procurement contract exceeds ~~\$100,000~~ \$400,000
 26 \$200,000.

27 ~~(2)~~ ~~A SUBCONTRACTOR OF A CONTRACTOR MAY SATISFY A~~
 28 ~~REQUIREMENT TO PROVIDE A PERFORMANCE BOND OR OTHER SECURITY UNDER~~
 29 ~~PARAGRAPH (1) OF THIS SUBSECTION BY COMPLYING WITH § 17-103(A)(3) OF THIS~~
 30 ~~ARTICLE.~~

31 ~~17-103.~~

32 (a) ~~(1)~~ ~~Before a public body awards a construction contract exceeding~~
 33 ~~\$100,000~~ \$400,000, the contractor, ~~AND EACH SUBCONTRACTOR OF THE CONTRACTOR~~,
 34 ~~shall provide payment security and performance security that meet the requirements~~
 35 ~~of § 17-104 of this subtitle.~~

36 ~~(2)~~ The security shall be:

1 (i) for performance security, in an amount that the public body
2 considers adequate for its protection; and

3 (ii) for payment security, at least 50% of the total amount payable
4 under the contract.

5 (3) ~~A SUBCONTRACTOR OF A CONTRACTOR MAY SATISFY THE SECURITY~~
6 ~~REQUIREMENT UNDER THIS SECTION BY:~~

7 (I) ~~PROVIDING ITS OWN PAYMENT SECURITY AND PERFORMANCE~~
8 ~~SECURITY; OR~~

9 (II) ~~WITH THE APPROVAL OF THE CONTRACTOR AND ITS SURETY,~~
10 ~~OBTAINING PAYMENT SECURITY AND PERFORMANCE SECURITY THROUGH THE~~
11 ~~CONTRACTOR.~~

12 (b) ~~A public body, other than the State or a unit of the State government, may~~
13 ~~require payment security or performance security for a construction contract if:~~

14 (1) ~~the contract exceeds \$25,000 but does not exceed \$100,000 \$400,000;~~
15 ~~and~~

16 (2) ~~the amount of the security does not exceed 50% of the contract~~
17 ~~amount.~~

18 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of
19 General Services shall report to the Senate Education, Health, and Environmental
20 Affairs Committee and the House Health and Government Operations Committee on
21 or before November 1, 2007, on the implementation of this Act.

22 ~~SECTION 2. 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take
23 effect October 1, 2005.