
By: **Senator Conway**

Introduced and read first time: January 31, 2005

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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; and generally relating to payment security and
11 performance security on procurement contracts by subcontractors.

12 BY repealing and reenacting, with amendments,
13 Article - State Finance and Procurement
14 Section 13-216 and 17-103
15 Annotated Code of Maryland
16 (2001 Replacement Volume and 2004 Supplement)

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

19 **Article - State Finance and Procurement**

20 13-216.

21 (a) Except as provided in subsection (b) of this section, a procurement officer
22 may not require a contractor to provide a performance bond, payment bond, or other
23 security on a procurement contract for construction, construction related services,
24 services, or supplies if the price of the procurement contract is \$100,000 or less.

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

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

4 (d) (1) A procurement officer may require a contractor, AND EACH
5 SUBCONTRACTOR OF THE CONTRACTOR, to provide a performance bond or other
6 security on a procurement contract for supplies, services, or construction related
7 services if:

8 [(1)] (I) circumstances warrant security; and

9 [(2)] (II) the price of the procurement contract exceeds \$100,000.

10 (2) A SUBCONTRACTOR OF A CONTRACTOR MAY SATISFY A
11 REQUIREMENT TO PROVIDE A PERFORMANCE BOND OR OTHER SECURITY UNDER
12 PARAGRAPH (1) OF THIS SUBSECTION BY COMPLYING WITH § 17-103(A)(3) OF THIS
13 ARTICLE.

14 17-103.

15 (a) (1) Before a public body awards a construction contract exceeding
16 \$100,000, the contractor, AND EACH SUBCONTRACTOR OF THE CONTRACTOR, shall
17 provide payment security and performance security that meet the requirements of §
18 17-104 of this subtitle.

19 (2) The security shall be:

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

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

24 (3) A SUBCONTRACTOR OF A CONTRACTOR MAY SATISFY THE SECURITY
25 REQUIREMENT UNDER THIS SECTION BY:

26 (I) PROVIDING ITS OWN PAYMENT SECURITY AND PERFORMANCE
27 SECURITY; OR

28 (II) WITH THE APPROVAL OF THE CONTRACTOR AND ITS SURETY,
29 OBTAINING PAYMENT SECURITY AND PERFORMANCE SECURITY THROUGH THE
30 CONTRACTOR.

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

33 (1) the contract exceeds \$25,000 but does not exceed \$100,000; and

34 (2) the amount of the security does not exceed 50% of the contract
35 amount.

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