
By: **Senator Conway**
 Introduced and read first time: January 31, 2005
 Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
 Senate action: Adopted
 Read second time: March 10, 2005

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,
 18 Article - State Finance and Procurement
 19 Section 13-216 and 17-103
 20 Annotated Code of Maryland
 21 (2001 Replacement Volume and 2004 Supplement)

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

1 **Article - State Finance and Procurement**

2 13-216.

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

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

11 (c) If the price of a procurement contract for construction exceeds ~~\$100,000~~
12 \$400,000, a procurement officer shall require a contractor to provide security as
13 required under Title 17, Subtitle 1 of this article.

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

18 ~~{1}~~ ~~(1)~~ circumstances warrant security; and

19 ~~{2}~~ ~~(2)~~ the price of the procurement contract exceeds ~~\$100,000~~ \$400,000.

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

24 17-103.

25 (a) (1) Before a public body awards a construction contract exceeding
26 ~~\$100,000~~ \$400,000, the contractor, ~~AND EACH SUBCONTRACTOR OF THE CONTRACTOR,~~
27 shall provide payment security and performance security that meet the requirements
28 of § 17-104 of this subtitle.

29 (2) The security shall be:

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

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

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

1 (†) ~~PROVIDING ITS OWN PAYMENT SECURITY AND PERFORMANCE~~
2 ~~SECURITY; OR~~

3 (II) ~~WITH THE APPROVAL OF THE CONTRACTOR AND ITS SURETY,~~
4 ~~OBTAINING PAYMENT SECURITY AND PERFORMANCE SECURITY THROUGH THE~~
5 ~~CONTRACTOR.~~

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

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

10 (2) the amount of the security does not exceed 50% of the contract
11 amount.

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

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