CF 6lr2020

P2 6lr1024

By: Delegates Morhaim, Cane, Goodwin, Hubbard, Oaks, Shewell, and

Weldon

Introduced and read first time: January 19, 2006 Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 Procurement - Bid, Payment, and Performance Security Requirements

- 3 FOR the purpose of expanding bid, payment, and performance security to include a
- bond provided or executed by an individual surety if the individual surety
- 5 provides a security interest in certain assets at the time the bond is furnished
- 6 and the individual surety pledges certain assets in an amount equal to or
- 7 greater than the aggregate penal amounts of the bonds required by the
- 8 solicitation; expanding bid security to include another form of security
- 9 satisfactory to a certain public body; expanding payment and performance
- security to include another form of security allowed by regulation; and generally
- relating to bid, payment, and performance security requirements.
- 12 BY repealing and reenacting, with amendments,
- 13 Article State Finance and Procurement
- 14 Section 13-207 and 17-104
- 15 Annotated Code of Maryland
- 16 (2001 Replacement Volume and 2005 Supplement)
- 17 BY repealing and reenacting, without amendments,
- 18 Article State Finance and Procurement
- 19 Section 13-208 and 13-216
- 20 Annotated Code of Maryland
- 21 (2001 Replacement Volume and 2005 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 13-207. Except as otherwise provided in this section, a procurement officer may 3 (a) 4 not require a bidder or offeror to provide bid security on a procurement contract if the 5 procurement officer expects the price to be \$100,000 or less. A procurement officer shall require a bidder or offeror to provide bid 6 (1) security on a procurement contract for construction if: 8 the price is expected to exceed \$100,000; or (i) 9 (ii) the price is expected to be \$100,000 or less but federal law or a 10 condition of federal assistance requires the security. 11 (2) The amount of bid security required for a procurement contract for 12 construction shall be: 13 (i) at least 5% of the bid or price proposal; or 14 (ii) if the bid or price proposal states a rate but not a total price, an 15 amount determined by the procurement officer. 16 (c) (1) A procurement officer may require a bidder or offeror to provide bid security on a procurement contract for services, supplies, or construction related services if the price of the procurement contract is expected to exceed \$50,000. 19 A procurement officer shall require a bidder or offeror to provide bid 20 security on a procurement contract for services, supplies, or construction related 21 services if federal law or a condition of federal assistance requires the security. 22 The amount of bid security required for a procurement contract for 23 services, supplies, or construction related services shall be an amount determined by 24 the procurement officer. If a bid or proposal states a rate but not a total price, the procurement officer shall determine the dollar amount of the bid security. 26 (d) Bid security under this section shall be: 27 a bond provided by a surety company authorized to do business in the (1) 28 State; A BOND PROVIDED BY AN INDIVIDUAL SURETY THAT MEETS THE 29 (2)30 REQUIREMENTS OF SUBSECTION (E) OF THIS SECTION: 31 [(2)](3) cash; or 32 [(3)](4) another form of security: 33 (I) allowed by regulation; OR

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(II)THAT IS SATISFACTORY TO THE PUBLIC BODY AWARDING THE 1 2 CONTRACT. A BOND PROVIDED BY AN INDIVIDUAL SURETY SHALL BE ACCEPTABLE AS 4 BID SECURITY UNDER THIS SECTION IF: THE INDIVIDUAL SURETY PROVIDES A SECURITY INTEREST IN ONE 6 OR MORE OF THE ASSETS LISTED IN PARAGRAPH (2) OF THIS SUBSECTION TO THE 7 PROCUREMENT OFFICER AT THE TIME THE BOND IS FURNISHED; AND THE INDIVIDUAL SURETY PLEDGES ONE OR MORE OF THE 9 FOLLOWING ASSETS IN AN AMOUNT EQUAL TO OR GREATER THAN THE AGGREGATE 10 PENAL AMOUNTS OF THE BONDS REQUIRED BY THE SOLICITATION: 11 (I) CASH OR CERTIFICATES OF DEPOSIT: 12 CASH EQUIVALENTS HELD WITH A FEDERALLY INSURED (II)13 FINANCIAL INSTITUTION, INCLUDING CASH EQUIVALENTS EVIDENCED BY 14 IRREVOCABLE TRUST RECEIPTS ISSUED BY THE INSTITUTION OR BY AN 15 INDEPENDENT TRUSTEE THAT: ARE ISSUED IN ACCORDANCE WITH THE UNIFORM 16 1. 17 CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL 18 CHAMBER OF COMMERCE; AND 19 CONTAIN A PAYOUT CLAUSE IN THE EVENT THAT 2. 20 DEFAULT CANNOT BE REMEDIED; 21 (III) UNITED STATES GOVERNMENT SECURITIES AT MARKET 22 VALUE; 23 STOCKS AND BONDS THAT: (IV) ARE ACTIVELY TRADED ON A NATIONAL UNITED STATES 24 1. 25 SECURITY EXCHANGE; ARE ACCOMPANIED BY CERTIFICATES ISSUED IN THE 26 2. 27 NAME OF THE INDIVIDUAL SURETY; AND ARE PLEDGED AT 90% OF THEIR 52-WEEK LOW, AS 28 29 REFLECTED AT THE TIME OF SUBMISSION OF THE BOND; REAL PROPERTY THAT: 30 (V) 31 1. IS LOCATED IN THE UNITED STATES OR ITS OUTLYING 32 AREAS; 33 2. IS OWNED BY THE INDIVIDUAL SURETY IN FEE SIMPLE OR 34 WITH COTENANTS THAT ALL AGREE TO ACT JOINTLY; AND

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	ESTATE TAX ASSE ENCUMBRANCES;		3. A. IS PLEDGED AT 100% OF THE MOST CURRENT REAL VALUE OF THE PROPERTY, EXCLUSIVE OF				
			B. IS PLEDGED AT 75% OF THE UNENCUMBERED MARKET, AS DETERMINED BY AN APPRAISAL DATED NO EARLIER THE DATE OF THE BOND; OR				
7		(VI)	IRREVOCABLE LETTERS OF CREDIT THAT:				
8 9	INSTITUTION IN T	HE NAM	1. ARE ISSUED BY A FEDERALLY INSURED FINANCIAL E OF THE CONTRACTING AGENCY; AND				
	CONTRACT NUME PROVIDED.	BER FOR	2. IDENTIFY THE AGENCY AND THE SOLICITATION OR WHICH THE IRREVOCABLE LETTER OF CREDIT IS				
13	13-208.						
	(a) Except as provided under subsection (b) of this section, if a procurement officer requires bid security, the procurement officer shall reject a bid or proposal that is not accompanied by proper security.						
17 18	(b) A procurement officer may accept a bid or proposal that is accompanied by bid security in less than the amount required if:						
19	(1)	the proc	urement officer determines that:				
20		(i)	the deficiency in the amount is insubstantial; and				
21 22	of the State; and	(ii)	acceptance of the bid or proposal would be in the best interests				
23	(2)	the procurement officer further determines that:					
24 25	time for rebidding;	(i)	the bid or proposal was the only one submitted and there is no				
28 29	proposal in accordance	ce with appropriate to the contract of the con	the bid security became inadequate as a result of the correction osal or as a result of a modification in the bid or opplicable regulations, and the bidder or offeror ecurity to required limits within 48 hours after the				
	between the lowest b		after consideration of the risks involved and the difference e next lowest bid, it would be fiscally advantageous to				

1	13-216.							
4	(a) Except as provided in subsection (b) of this section, a procurement officer may not require a contractor to provide a performance bond, payment bond, or other security on a procurement contract for construction, construction related services, services, or supplies if the price of the procurement contract is \$100,000 or less.							
	(b) A procurement officer shall require a contractor to provide a performance bond, payment bond, or other security if federal law or a condition of federal assistance requires the security.							
	(c) If the price of a procurement contract for construction exceeds \$100,000, a procurement officer shall require a contractor to provide security as required under Title 17, Subtitle 1 of this article.							
	2 (d) A procurement officer may require a contractor to provide a performance 3 bond or other security on a procurement contract for supplies, services, or 4 construction related services if:							
15		(1)	circums	tances warrant security; and				
16		(2)	the price	e of the procurement contract exceeds \$100,000.				
17	17-104.							
18 19	(a) shall be:	Payment security or performance security required under this subtitle						
20 21	State;	(1)	a bond o	executed by a surety company authorized to do business in the				
22 23	2 (2) A BOND EXECUTED BY AN INDIVIDUAL SURETY THAT MEETS THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION;							
24		[(2)]	(3)	cash in an amount equivalent to a bond; or				
25		[(3)]	(4)	[other] ANOTHER FORM OF security:				
26			(I)	ALLOWED BY REGULATION; OR				
27			(II)	that is satisfactory to the public body awarding the contract.				
30	(b) (1) Subject to paragraphs (2) and (3) of this subsection, performance security may include the granting of a mortgage or deed of trust on real property located within the State if such security is satisfactory to the public body awarding the contract.							
	The face amount of a mortgage or deed of trust on real property granted as security under this subsection may not exceed 75% of the contractor's equity interest in the property.							

1 A mortgage or deed of trust accepted under this subsection shall be 2 recorded by an official designated by the public body accepting the mortgage or deed 3 of trust in the land records of the county where the real property is situated in 4 accordance with § 3-103 of the Real Property Article. A BOND EXECUTED BY AN INDIVIDUAL SURETY SHALL BE ACCEPTABLE AS 6 PAYMENT SECURITY OR PERFORMANCE SECURITY UNDER THIS SUBTITLE IF: THE INDIVIDUAL SURETY PROVIDES A SECURITY INTEREST IN ONE (1) 8 OR MORE OF THE ASSETS LISTED IN PARAGRAPH (2) OF THIS SUBSECTION TO THE 9 PROCUREMENT OFFICER AT THE TIME THE BOND IS FURNISHED; AND THE INDIVIDUAL SURETY PLEDGES ONE OR MORE OF THE 11 FOLLOWING ASSETS IN AN AMOUNT EQUAL TO OR GREATER THAN THE AGGREGATE 12 PENAL AMOUNTS OF THE BONDS REQUIRED BY THE SOLICITATION: 13 (I) CASH OR CERTIFICATES OF DEPOSIT; 14 CASH EQUIVALENTS HELD WITH A FEDERALLY INSURED (II)15 FINANCIAL INSTITUTION, INCLUDING CASH EQUIVALENTS EVIDENCED BY 16 IRREVOCABLE TRUST RECEIPTS ISSUED BY THE INSTITUTION OR BY AN 17 INDEPENDENT TRUSTEE THAT: ARE ISSUED IN ACCORDANCE WITH THE UNIFORM 18 1. 19 CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL 20 CHAMBER OF COMMERCE; AND CONTAIN A PAYOUT CLAUSE IN THE EVENT THAT 21 2. 22 DEFAULT CANNOT BE REMEDIED; 23 (III) UNITED STATES GOVERNMENT SECURITIES AT MARKET 24 VALUE; 25 STOCKS AND BONDS THAT: (IV) ARE ACTIVELY TRADED ON A NATIONAL UNITED STATES 26 1. 27 SECURITY EXCHANGE: ARE ACCOMPANIED BY CERTIFICATES ISSUED IN THE 28 2. 29 NAME OF THE INDIVIDUAL SURETY; AND ARE PLEDGED AT 90% OF THEIR 52-WEEK LOW, AS 30 3. 31 REFLECTED AT THE TIME OF SUBMISSION OF THE BOND; REAL PROPERTY THAT: 32 (V) 33 1. IS LOCATED IN THE UNITED STATES OR ITS OUTLYING 34 AREAS; IS OWNED BY THE INDIVIDUAL SURETY IN FEE SIMPLE OR 35 2. 36 WITH COTENANTS THAT ALL AGREE TO ACT JOINTLY; AND

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7	(VI)	IRREVO	OCABLE LETTERS OF CREDIT THAT:
8 9			ARE ISSUED BY A FEDERALLY INSURED FINANCIAL IE CONTRACTING AGENCY; AND
			IDENTIFY THE AGENCY AND THE SOLICITATION OR THE IRREVOCABLE LETTER OF CREDIT IS

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

14 October 1, 2006.