
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
4 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
10 security to include another form of security allowed by regulation; and generally
11 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.

3 (a) Except as otherwise provided in this section, a procurement officer may
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.

6 (b) (1) A procurement officer shall require a bidder or offeror to provide bid
7 security on a procurement contract for construction if:

8 (i) the price is expected to exceed \$100,000; or

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
17 security on a procurement contract for services, supplies, or construction related
18 services if the price of the procurement contract is expected to exceed \$50,000.

19 (2) 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 (3) 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
25 procurement officer shall determine the dollar amount of the bid security.

26 (d) Bid security under this section shall be:

27 (1) a bond provided by a surety company authorized to do business in the
28 State;

29 (2) A BOND PROVIDED BY AN INDIVIDUAL SURETY THAT MEETS THE
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

1 (II) THAT IS SATISFACTORY TO THE PUBLIC BODY AWARDING THE
2 CONTRACT.

3 (E) A BOND PROVIDED BY AN INDIVIDUAL SURETY SHALL BE ACCEPTABLE AS
4 BID SECURITY UNDER THIS SECTION IF:

5 (1) 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

8 (2) 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 (II) CASH EQUIVALENTS HELD WITH A FEDERALLY INSURED
13 FINANCIAL INSTITUTION, INCLUDING CASH EQUIVALENTS EVIDENCED BY
14 IRREVOCABLE TRUST RECEIPTS ISSUED BY THE INSTITUTION OR BY AN
15 INDEPENDENT TRUSTEE THAT:

16 1. ARE ISSUED IN ACCORDANCE WITH THE UNIFORM
17 CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL
18 CHAMBER OF COMMERCE; AND

19 2. CONTAIN A PAYOUT CLAUSE IN THE EVENT THAT
20 DEFAULT CANNOT BE REMEDIED;

21 (III) UNITED STATES GOVERNMENT SECURITIES AT MARKET
22 VALUE;

23 (IV) STOCKS AND BONDS THAT:

24 1. ARE ACTIVELY TRADED ON A NATIONAL UNITED STATES
25 SECURITY EXCHANGE;

26 2. ARE ACCOMPANIED BY CERTIFICATES ISSUED IN THE
27 NAME OF THE INDIVIDUAL SURETY; AND

28 3. ARE PLEDGED AT 90% OF THEIR 52-WEEK LOW, AS
29 REFLECTED AT THE TIME OF SUBMISSION OF THE BOND;

30 (V) REAL PROPERTY THAT:

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

1 13-216.

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

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

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

12 (d) A procurement officer may require a contractor to provide a performance
13 bond or other security on a procurement contract for supplies, services, or
14 construction related services if:

15 (1) circumstances warrant security; and

16 (2) the price of the procurement contract exceeds \$100,000.

17 17-104.

18 (a) Payment security or performance security required under this subtitle
19 shall be:

20 (1) a bond executed by a surety company authorized to do business in the
21 State;

22 (2) A BOND EXECUTED BY AN INDIVIDUAL SURETY THAT MEETS THE
23 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.

28 (b) (1) Subject to paragraphs (2) and (3) of this subsection, performance
29 security may include the granting of a mortgage or deed of trust on real property
30 located within the State if such security is satisfactory to the public body awarding
31 the contract.

32 (2) The face amount of a mortgage or deed of trust on real property
33 granted as security under this subsection may not exceed 75% of the contractor's
34 equity interest in the property.

1 (3) 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.

5 (C) A BOND EXECUTED BY AN INDIVIDUAL SURETY SHALL BE ACCEPTABLE AS
6 PAYMENT SECURITY OR PERFORMANCE SECURITY UNDER THIS SUBTITLE IF:

7 (1) THE INDIVIDUAL SURETY PROVIDES A SECURITY INTEREST IN ONE
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

10 (2) 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 (II) CASH EQUIVALENTS HELD WITH A FEDERALLY INSURED
15 FINANCIAL INSTITUTION, INCLUDING CASH EQUIVALENTS EVIDENCED BY
16 IRREVOCABLE TRUST RECEIPTS ISSUED BY THE INSTITUTION OR BY AN
17 INDEPENDENT TRUSTEE THAT:

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