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By: **Delegates Morhaim, Cane, Goodwin, Hubbard, Oaks, Shewell, and ~~Weldon~~ Weldon, Barve, Benson, Bromwell, Donoghue, Kohl, Kullen, Mandel, McDonough, Murray, Nathan-Pulliam, Pendergrass, Rudolph, and V. Turner**

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

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 21, 2006

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement - ~~Bid, Payment, and Performance~~ Security Requirements**

3 FOR the purpose of increasing the maximum amount of the bonds that the Maryland  
4 Small Business Development Financing Authority may issue as a surety for the  
5 benefit of a principal in connection with certain contracts; expanding bid,  
6 payment, and performance security to include a bond provided or executed by an  
7 individual surety if the individual surety provides a security interest in certain  
8 assets at the time the bond is furnished and the individual surety pledges  
9 certain assets in an amount equal to or greater than the aggregate penal  
10 amounts of the bonds required by the solicitation; expanding bid security to  
11 include another form of security satisfactory to a certain public body; expanding  
12 payment and performance security to include another form of security allowed  
13 by regulation; requiring the Procurement Advisor appointed by the Board of  
14 Public Works to report to the Governor and certain committees by certain dates  
15 regarding the implementation of this Act; providing for the application of this  
16 Act; providing for the termination of this Act; and generally relating to bid,  
17 payment, and performance security requirements.

18 BY repealing and reenacting, with amendments,  
19 Article 83A - Department of Business and Economic Development  
20 Section 5-1035  
21 Annotated Code of Maryland  
22 (2003 Replacement Volume and 2005 Supplement)

23 BY repealing and reenacting, without amendments,

1 Article 83A - Department of Business and Economic Development  
2 Section 5-1037  
3 Annotated Code of Maryland  
4 (2003 Replacement Volume and 2005 Supplement)

5 BY repealing and reenacting, with amendments,  
6 Article - State Finance and Procurement  
7 Section 13-207 and 17-104  
8 Annotated Code of Maryland  
9 (2001 Replacement Volume and 2005 Supplement)

10 BY repealing and reenacting, without amendments,  
11 Article - State Finance and Procurement  
12 Section 13-208 and 13-216  
13 Annotated Code of Maryland  
14 (2001 Replacement Volume and 2005 Supplement)

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

17 **Article 83A - Department of Business and Economic Development**

18 5-1035.

19 (a) Subject to the restrictions of this Part VI, the Authority, on application,  
20 may guarantee any surety up to the lesser of 90 percent or \$1,350,000 of its losses  
21 incurred under a bid bond, a payment bond, or a performance bond on any contract,  
22 the majority of the funding for which is provided by the federal government or a state  
23 government, a local government or a utility regulated by the Public Service  
24 Commission.

25 (b) The term of a guaranty under this Part VI may not exceed the contract  
26 term.

27 (c) The Authority may vary the terms and conditions of the guaranty from  
28 surety to surety, based upon the Authority's history of experience with that surety and  
29 upon any other factor that the Authority considers relevant.

30 (d) (1) The Authority may execute and perform bid, performance, and  
31 payment bonds as a surety for the benefit of a principal in connection with any  
32 contract, the majority of the funding for which is provided by the federal government  
33 or a state government, a local government, or a utility regulated by the Public Service  
34 Commission.

35 (2) The bonds:

36 (i) May not exceed [\$1,000,000] \$5,000,000 each; and

1                   (ii)     Shall be subject to the approval of the Authority, based on the  
2 bond worthiness of the principal as determined by the Authority on review of an  
3 application.

4                   (3)     The monetary limit in this subsection does not apply if the sources of  
5 funding for the bonds are grants.

6           (e)     (1)     The Authority may not approve a guaranty or a bond under this Part  
7 VI unless the Authority considers the economic impact of the contract, for which a  
8 bond is sought to be guaranteed or issued, to be substantial.

9                   (2)     To determine the economic impact of a contract, the Authority may  
10 consider:

11                   (i)     The amount of the guaranty obligation;

12                   (ii)    The terms of the bond to be guaranteed;

13                   (iii)   The number of new jobs that will be created by the contract to  
14 be bonded; and

15                   (iv)    Any other factor that the Authority considers relevant.  
16 5-1037.

17           (a)     To qualify for a surety bond or guaranty under the Program, a principal  
18 shall meet the requirements of this section.

19           (b)     The principal shall satisfy the Authority that:

20                   (1)     (i)     The principal is of good moral character; or

21                               (ii)    If the principal is not an individual, the principal is owned by  
22 individuals of good moral character;

23                   (2)     As determined from creditors, employers, and other individuals who  
24 have personal knowledge of the principal:

25                   (i)     The principal has a reputation for financial responsibility; or

26                   (ii)    If the principal is not an individual, a majority of the principal  
27 is owned by individuals with a reputation for financial responsibility;

28                   (3)     The principal is a resident of Maryland or has its principal place of  
29 business in Maryland; and

30                   (4)     The principal is unable to obtain adequate bonding on reasonable  
31 terms through normal channels.

32           (c)     The principal shall certify to the Authority and the Authority shall be  
33 satisfied that:



1 (2) A BOND PROVIDED BY AN INDIVIDUAL SURETY THAT MEETS THE  
2 REQUIREMENTS OF ~~SUBSECTION (E) OF THIS SECTION;~~

3 [(2)] (3) cash; or

4 [(3)] (4) another form of security:

5 (I) ~~allowed by regulation~~ AUTHORIZED BY FEDERAL OR STATE  
6 REGULATION; OR

7 (II) THAT IS SATISFACTORY TO THE ~~PUBLIC BODY~~ UNIT AWARDING  
8 THE CONTRACT.

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

11 ~~(4) THE INDIVIDUAL SURETY PROVIDES A SECURITY INTEREST IN ONE~~  
12 ~~OR MORE OF THE ASSETS LISTED IN PARAGRAPH (2) OF THIS SUBSECTION TO THE~~  
13 ~~PROCUREMENT OFFICER AT THE TIME THE BOND IS FURNISHED; AND~~

14 (1) THE CONTRACTOR HAS BEEN DENIED CORPORATE SURETY CREDIT;

15 (2) THE INDIVIDUAL SURETY ONLY TRANSACTS BUSINESS THROUGH AN  
16 INSURANCE AGENCY LICENSED BY THE MARYLAND INSURANCE ADMINISTRATION;

17 (3) THE INDIVIDUAL SURETY ATTACHES THE GSA STANDARD FORM 28,  
18 AFFIDAVIT OF INDIVIDUAL SURETY, TO THE BID SECURITY;

19 (4) THE INDIVIDUAL SURETY PROVIDES A UCC-1 FILING SECURITY  
20 INTEREST TO THE UNIT FOR ONE OR MORE OF THE ASSETS LISTED IN ITEM (5)(I)  
21 THROUGH (IV) AND (VI) OF THIS SUBSECTION AT THE TIME THE BOND IS FURNISHED;  
22 AND

23 ~~(2)~~ (5) THE INDIVIDUAL SURETY PLEDGES ONE OR MORE ~~OF THE~~  
24 ~~FOLLOWING~~ ASSETS IN AN AMOUNT EQUAL TO OR GREATER THAN THE AGGREGATE  
25 PENAL AMOUNTS OF THE BONDS REQUIRED BY THE SOLICITATION, INCLUDING:

26 (I) CASH OR CERTIFICATES OF DEPOSIT;

27 (II) CASH EQUIVALENTS HELD WITH A FEDERALLY INSURED  
28 FINANCIAL INSTITUTION, ~~INCLUDING CASH EQUIVALENTS EVIDENCED BY~~  
29 ~~IRREVOCABLE TRUST RECEIPTS ISSUED BY THE INSTITUTION OR BY AN~~  
30 ~~INDEPENDENT TRUSTEE OR ASSETS THAT ARE EVIDENCED BY A SECURITY~~  
31 INTEREST, INCLUDING AN IRREVOCABLE TRUST RECEIPT ISSUED BY THE FINANCIAL  
32 INSTITUTION OR BY AN INDEPENDENT TRUSTEE IN THE NAME OF THE UNIT THAT:

33 1. ARE ISSUED IN ACCORDANCE WITH ~~THE UNIFORM~~  
34 ~~CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL~~  
35 ~~CHAMBER OF COMMERCE; AND § 9-109 OF THE COMMERCIAL LAW ARTICLE;~~



1 (VI) IRREVOCABLE LETTERS OF CREDIT THAT:

2 1. ARE ISSUED BY A FEDERALLY INSURED FINANCIAL  
3 INSTITUTION IN THE NAME OF THE CONTRACTING AGENCY; ~~AND~~

4 2. IDENTIFY THE AGENCY AND THE SOLICITATION OR  
5 CONTRACT NUMBER FOR WHICH THE IRREVOCABLE LETTER OF CREDIT IS  
6 PROVIDED; AND

7 3. CONTAIN A PAYOUT CLAUSE IF THAT DEFAULT CANNOT  
8 BE REMEDIED.

9 (F) ANY ASSET LISTED UNDER SUBSECTION (E)(5) OF THIS SECTION SHALL BE  
10 PLEDGED ONLY FOR THE INTENDED SECURITY AND MAY NOT BE PLEDGED FOR ANY  
11 OTHER SECURITY OR CONTRACT IN OR OUTSIDE THE STATE UNTIL THE ASSET IS  
12 RELEASED BY THE UNIT.

13 13-208.

14 (a) Except as provided under subsection (b) of this section, if a procurement  
15 officer requires bid security, the procurement officer shall reject a bid or proposal that  
16 is not accompanied by proper security.

17 (b) A procurement officer may accept a bid or proposal that is accompanied by  
18 bid security in less than the amount required if:

19 (1) the procurement officer determines that:

20 (i) the deficiency in the amount is insubstantial; and

21 (ii) acceptance of the bid or proposal would be in the best interests  
22 of the State; and

23 (2) the procurement officer further determines that:

24 (i) the bid or proposal was the only one submitted and there is no  
25 time for rebidding;

26 (ii) the bid security became inadequate as a result of the correction  
27 of a mistake in the bid or proposal or as a result of a modification in the bid or  
28 proposal in accordance with applicable regulations, and the bidder or offeror  
29 increased the amount of bid security to required limits within 48 hours after the  
30 correction or modification; or

31 (iii) after consideration of the risks involved and the difference  
32 between the lowest bid and the next lowest bid, it would be fiscally advantageous to  
33 the State to accept the lowest bid or proposal.

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~~ AUTHORIZED BY FEDERAL OR  
27 STATE REGULATION; OR

28 (II) that is satisfactory to the public body awarding the contract.

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

33 (2) The face amount of a mortgage or deed of trust on real property  
34 granted as security under this subsection may not exceed 75% of the contractor's  
35 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 (1) THE CONTRACTOR HAS BEEN DENIED CORPORATE SURETY CREDIT;

11 (2) THE INDIVIDUAL SURETY ONLY TRANSACTS BUSINESS THROUGH AN  
12 INSURANCE AGENCY LICENSED BY THE MARYLAND INSURANCE ADMINISTRATION;

13 (3) THE INDIVIDUAL SURETY ATTACHES THE GSA STANDARD FORM 28,  
14 AFFIDAVIT OF INDIVIDUAL SURETY, TO THE BID SECURITY;

15 (4) THE INDIVIDUAL SURETY PROVIDES A UCC-1 FILING SECURITY  
16 INTEREST TO THE PUBLIC BODY FOR ONE OR MORE OF THE ASSETS LISTED IN ITEM  
17 (5)(I) THROUGH (IV) AND (VI) OF THIS SUBSECTION AT THE TIME THE BOND IS  
18 FURNISHED; AND

19 ~~(2)~~ (5) THE INDIVIDUAL SURETY PLEDGES ONE OR MORE ~~OF THE~~  
20 ~~FOLLOWING~~ ASSETS IN AN AMOUNT EQUAL TO OR GREATER THAN THE AGGREGATE  
21 PENAL AMOUNTS OF THE BONDS REQUIRED BY THE SOLICITATION, INCLUDING:

22 (I) CASH OR CERTIFICATES OF DEPOSIT;

23 (II) CASH EQUIVALENTS HELD WITH A FEDERALLY INSURED  
24 FINANCIAL INSTITUTION, ~~INCLUDING CASH EQUIVALENTS EVIDENCED BY~~  
25 ~~IRREVOCABLE TRUST RECEIPTS ISSUED BY THE INSTITUTION OR BY AN~~  
26 ~~INDEPENDENT TRUSTEE OR ASSETS THAT ARE EVIDENCED BY A SECURITY~~  
27 INTEREST, INCLUDING AN IRREVOCABLE TRUST RECEIPT ISSUED BY THE FINANCIAL  
28 INSTITUTION OR BY AN INDEPENDENT TRUSTEE IN THE NAME OF THE PUBLIC BODY  
29 THAT:

30 1. ARE ISSUED IN ACCORDANCE WITH ~~THE UNIFORM~~  
31 ~~CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL~~  
32 ~~CHAMBER OF COMMERCE; AND § 9-109 OF THE COMMERCIAL LAW ARTICLE;~~

33 2. CONTAIN A PAYOUT CLAUSE IN THE EVENT THAT  
34 DEFAULT CANNOT BE REMEDIED; AND

35 3. IDENTIFY THE SOLICITATION OR CONTRACT NUMBER FOR  
36 WHICH THE SECURITY INTEREST IS PROVIDED;

1 (III) UNITED STATES GOVERNMENT SECURITIES AT MARKET  
2 VALUE;

3 (IV) STOCKS AND BONDS THAT:

4 1. ARE ACTIVELY TRADED ON A NATIONAL UNITED STATES  
5 SECURITY EXCHANGE;

6 2. ARE ACCOMPANIED BY CERTIFICATES ISSUED IN THE  
7 NAME OF THE INDIVIDUAL SURETY; AND

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

10 (V) REAL PROPERTY ~~THAT~~:

11 1. ~~IS LOCATED IN THE UNITED STATES OR ITS OUTLYING~~  
12 ~~AREAS;~~

13 ~~2.~~ THAT IS OWNED BY THE CONTRACTOR OR INDIVIDUAL  
14 SURETY IN FEE SIMPLE OR WITH COTENANTS THAT ALL AGREE TO ACT JOINTLY;  
15 ~~AND~~

16 2. THAT MAY INCLUDE THE GRANTING OF A MORTGAGE OR  
17 DEED OF TRUST ON REAL PROPERTY LOCATED WITHIN THE STATE IF SATISFACTORY  
18 TO THE PUBLIC BODY;

19 ~~3. A. IS PLEDGED AT 100% OF THE MOST CURRENT REAL~~  
20 ~~ESTATE TAX ASSESSMENT VALUE OF THE PROPERTY, EXCLUSIVE OF~~  
21 ~~ENCUMBRANCES; OR~~

22 ~~B. IS PLEDGED AT 75% OF THE UNENCUMBERED MARKET~~  
23 ~~VALUE OF THE PROPERTY, AS DETERMINED BY AN APPRAISAL DATED NO EARLIER~~  
24 ~~THAN 6 MONTHS BEFORE THE DATE OF THE BOND; OR~~

25 3. FOR WHICH THE FACE AMOUNT OF THE MORTGAGE OR  
26 DEED OF TRUST ON THE REAL PROPERTY LOCATED WITHIN THE STATE DOES NOT  
27 EXCEED 75% OF THE CONTRACTOR'S OR INDIVIDUAL SURETY'S EQUITY INTEREST IN  
28 THE PROPERTY; AND

29 4. FOR WHICH A MORTGAGE OR DEED OF TRUST ACCEPTED  
30 UNDER THIS SUBSECTION IS RECORDED BY AN OFFICIAL DESIGNATED BY THE UNIT  
31 WHERE THE REAL PROPERTY IS SITUATED IN ACCORDANCE WITH § 3-103 OF THE  
32 REAL PROPERTY ARTICLE; OR

33 (VI) IRREVOCABLE LETTERS OF CREDIT THAT:

34 1. ARE ISSUED BY A FEDERALLY INSURED FINANCIAL  
35 INSTITUTION IN THE NAME OF THE CONTRACTING AGENCY; ~~AND~~

