

---

By: **Senator Grosfeld**

Introduced and read first time: January 31, 2006

Assigned to: Education, Health, and Environmental Affairs

---

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Security Requirements - Individual Surety**

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; and generally relating to bid, payment, and performance security  
9 requirements.

10 BY repealing and reenacting, with amendments,  
11 Article - State Finance and Procurement  
12 Section 13-207 and 17-104  
13 Annotated Code of Maryland  
14 (2001 Replacement Volume and 2005 Supplement)

15 BY repealing and reenacting, without amendments,  
16 Article - State Finance and Procurement  
17 Section 13-208 and 13-216  
18 Annotated Code of Maryland  
19 (2001 Replacement Volume and 2005 Supplement)

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

22 **Article - State Finance and Procurement**

23 13-207.

24 (a) Except as otherwise provided in this section, a procurement officer may  
25 not require a bidder or offeror to provide bid security on a procurement contract if the  
26 procurement officer expects the price to be \$100,000 or less.

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

- 1 (i) the price is expected to exceed \$100,000; or
- 2 (ii) the price is expected to be \$100,000 or less but federal law or a  
3 condition of federal assistance requires the security.

4 (2) The amount of bid security required for a procurement contract for  
5 construction shall be:

- 6 (i) at least 5% of the bid or price proposal; or
- 7 (ii) if the bid or price proposal states a rate but not a total price, an  
8 amount determined by the procurement officer.

9 (c) (1) A procurement officer may require a bidder or offeror to provide bid  
10 security on a procurement contract for services, supplies, or construction related  
11 services if the price of the procurement contract is expected to exceed \$50,000.

12 (2) A procurement officer shall require a bidder or offeror to provide bid  
13 security on a procurement contract for services, supplies, or construction related  
14 services if federal law or a condition of federal assistance requires the security.

15 (3) The amount of bid security required for a procurement contract for  
16 services, supplies, or construction related services shall be an amount determined by  
17 the procurement officer. If a bid or proposal states a rate but not a total price, the  
18 procurement officer shall determine the dollar amount of the bid security.

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

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

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

24 [(2)] (3) cash; or

25 [(3)] (4) another form of security allowed by regulation.

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

28 (1) THE INDIVIDUAL SURETY PROVIDES A SECURITY INTEREST IN ONE  
29 OR MORE OF THE ASSETS LISTED IN PARAGRAPH (2) OF THIS SUBSECTION TO THE  
30 PROCUREMENT OFFICER AT THE TIME THE BOND IS FURNISHED; AND

31 (2) THE INDIVIDUAL SURETY PLEDGES ONE OR MORE OF THE  
32 FOLLOWING ASSETS IN AN AMOUNT EQUAL TO OR GREATER THAN THE AGGREGATE  
33 PENAL AMOUNTS OF THE BONDS REQUIRED BY THE SOLICITATION:

34 (I) CASH OR CERTIFICATES OF DEPOSIT;

1 (II) CASH EQUIVALENTS WITH A FEDERALLY INSURED FINANCIAL  
2 INSTITUTION, INCLUDING IRREVOCABLE TRUST RECEIPTS THAT:

3 1. ARE ISSUED IN ACCORDANCE WITH THE UNIFORM  
4 CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL  
5 CHAMBER OF COMMERCE; AND

6 2. CONTAIN A PAYOUT CLAUSE IN THE EVENT THAT  
7 DEFAULT CANNOT BE REMEDIED;

8 (III) UNITED STATES GOVERNMENT SECURITIES AT MARKET  
9 VALUE;

10 (IV) STOCKS AND BONDS THAT:

11 1. ARE ACTIVELY TRADED ON A NATIONAL UNITED STATES  
12 SECURITY EXCHANGE;

13 2. ARE ACCOMPANIED BY CERTIFICATES ISSUED IN THE  
14 NAME OF THE INDIVIDUAL SURETY; AND

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

17 (V) REAL PROPERTY THAT:

18 1. IS LOCATED IN THE UNITED STATES OR ITS OUTLYING  
19 AREAS;

20 2. IS OWNED BY THE INDIVIDUAL SURETY IN FEE SIMPLE OR  
21 WITH COTENANTS THAT ALL AGREE TO ACT JOINTLY; AND

22 3. A. IS PLEDGED AT 100% OF THE MOST CURRENT REAL  
23 ESTATE TAX ASSESSMENT VALUE OF THE PROPERTY, EXCLUSIVE OF  
24 ENCUMBRANCES; OR

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

28 (VI) IRREVOCABLE LETTERS OF CREDIT THAT:

29 1. ARE ISSUED BY A FEDERALLY INSURED FINANCIAL  
30 INSTITUTION IN THE NAME OF THE CONTRACTING AGENCY; AND

31 2. IDENTIFY THE AGENCY AND THE SOLICITATION OR  
32 CONTRACT NUMBER FOR WHICH THE IRREVOCABLE LETTER OF CREDIT IS  
33 PROVIDED.

1 13-208.

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

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

7 (1) the procurement officer determines that:

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

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

11 (2) the procurement officer further determines that:

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

14 (ii) the bid security became inadequate as a result of the correction  
15 of a mistake in the bid or proposal or as a result of a modification in the bid or  
16 proposal in accordance with applicable regulations, and the bidder or offeror  
17 increased the amount of bid security to required limits within 48 hours after the  
18 correction or modification; or

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

22 13-216.

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

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

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

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

36 (1) circumstances warrant security; and

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

2 17-104.

3 (a) Payment security or performance security required under this subtitle  
4 shall be:

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

7 (2) A BOND EXECUTED BY AN INDIVIDUAL SURETY THAT MEETS THE  
8 REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION;

9 [(2)] (3) cash in an amount equivalent to a bond; or

10 [(3)] (4) other security that is satisfactory to the public body awarding  
11 the contract.

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

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

19 (3) A mortgage or deed of trust accepted under this subsection shall be  
20 recorded by an official designated by the public body accepting the mortgage or deed  
21 of trust in the land records of the county where the real property is situated in  
22 accordance with § 3-103 of the Real Property Article.

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

25 (1) THE INDIVIDUAL SURETY PROVIDES A SECURITY INTEREST IN ONE  
26 OR MORE OF THE ASSETS LISTED IN PARAGRAPH (2) OF THIS SUBSECTION TO THE  
27 PROCUREMENT OFFICER AT THE TIME THE BOND IS FURNISHED; AND

28 (2) THE INDIVIDUAL SURETY PLEDGES ONE OR MORE OF THE  
29 FOLLOWING ASSETS IN AN AMOUNT EQUAL TO OR GREATER THAN THE AGGREGATE  
30 PENAL AMOUNTS OF THE BONDS REQUIRED BY THE SOLICITATION:

31 (I) CASH OR CERTIFICATES OF DEPOSIT;

32 (II) CASH EQUIVALENTS WITH A FEDERALLY INSURED FINANCIAL  
33 INSTITUTION, INCLUDING IRREVOCABLE TRUST RECEIPTS THAT:

34 1. ARE ISSUED IN ACCORDANCE WITH THE UNIFORM  
35 CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL  
36 CHAMBER OF COMMERCE; AND

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

3                                    (III)    UNITED STATES GOVERNMENT SECURITIES AT MARKET  
4 VALUE;

5                                    (IV)    STOCKS AND BONDS THAT:

6                                    1.        ARE ACTIVELY TRADED ON A NATIONAL UNITED STATES  
7 SECURITY EXCHANGE;

8                                    2.        ARE ACCOMPANIED BY CERTIFICATES ISSUED IN THE  
9 NAME OF THE INDIVIDUAL SURETY; AND

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

12                                  (V)     REAL PROPERTY THAT:

13                                  1.        IS LOCATED IN THE UNITED STATES OR ITS OUTLYING  
14 AREAS;

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

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

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

23                                  (VI)    IRREVOCABLE LETTERS OF CREDIT THAT:

24                                  1.        ARE ISSUED BY A FEDERALLY INSURED FINANCIAL  
25 INSTITUTION IN THE NAME OF THE CONTRACTING AGENCY; AND

26                                  2.        IDENTIFY THE AGENCY AND THE SOLICITATION OR  
27 CONTRACT NUMBER FOR WHICH THE IRREVOCABLE LETTER OF CREDIT IS  
28 PROVIDED.

29        SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 2006.