

SENATE BILL 599

P2

3lr2926
CF HB 585

By: **Senator Conway**

Introduced and read first time: February 1, 2013

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 5, 2013

CHAPTER _____

1 AN ACT concerning

2 **Procurement – Subcontractor Equal Access to Bonding Act of 2013**

3 FOR the purpose of prohibiting a prime contractor from requiring certain bonding
4 from a subcontractor on certain procurement contracts that is more stringent
5 than certain bonding requirements for prime contractors on certain
6 procurement contracts under a certain circumstance; requiring certain prime
7 contractors and the State to be dual obligees on certain bonds under a certain
8 circumstance; ~~establishing certain underwriting requirements for certain bonds~~
9 ~~that are provided by subcontractors; requiring a subcontractor to provide~~
10 ~~certain evidence with a certain bond under certain circumstances; requiring a~~
11 ~~procurement officer to make a certain determination and to obtain advice from~~
12 ~~the Office of the Attorney General under certain circumstances; requiring~~
13 certain bonds provided by a subcontractor to be accepted by a prime contractor
14 under certain circumstances; and generally relating to bonding requirements for
15 subcontractors on procurement contracts with the State.

16 BY adding to

17 Article – State Finance and Procurement

18 Section 13–227

19 Annotated Code of Maryland

20 (2009 Replacement Volume and 2012 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – State Finance and Procurement

2 13-227.

3 (A) IF A PRIME CONTRACTOR REQUIRES A SUBCONTRACTOR TO
4 PROVIDE A BID, PERFORMANCE, OR PAYMENT BOND ON A PROCUREMENT
5 CONTRACT FOR SERVICES, SUPPLIES, OR CONSTRUCTION-RELATED SERVICES
6 WITH THE STATE:

7 (1) THE PRIME CONTRACTOR MAY NOT REQUIRE BID,
8 PERFORMANCE, OR PAYMENT BONDING FROM A SUBCONTRACTOR THAT IS
9 MORE STRINGENT THAN THE BONDING REQUIREMENTS IN §§ 13-207 AND
10 13-216 OF THIS SUBTITLE AND § 17-104 OF THIS ARTICLE; AND

11 (2) THE PRIME CONTRACTOR AND THE STATE SHALL BE DUAL
12 OBLIGEEES ON THE BOND.

13 (B) A BID, PERFORMANCE, OR PAYMENT BOND THAT IS PROVIDED BY A
14 SUBCONTRACTOR UNDER SUBSECTION (A) OF THIS SECTION SHALL BE
15 UNDERWRITTEN BY:

16 (1) ~~A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THE~~
17 ~~STATE;~~

18 (2) ~~AN INDIVIDUAL SURETY THAT MEETS THE REQUIREMENTS OF~~
19 ~~THIS SECTION; OR~~

20 (3) ~~THE MARYLAND SMALL BUSINESS DEVELOPMENT~~
21 ~~FINANCING AUTHORITY ESTABLISHED IN TITLE 5, SUBTITLE 5 OF THE~~
22 ~~ECONOMIC DEVELOPMENT ARTICLE ACCEPTED BY THE PRIME CONTRACTOR IF~~
23 ~~IT WOULD BE ACCEPTED BY THE STATE IF PROVIDED BY A PRIME CONTRACTOR.~~

24 (C) ~~IF A SUBCONTRACTOR ELECTS TO PROVIDE A BOND UNDERWRITTEN~~
25 ~~BY AN INDIVIDUAL SURETY IN ACCORDANCE WITH SUBSECTION (B)(2) OF THIS~~
26 ~~SECTION;~~

27 (1) ~~THE SUBCONTRACTOR SHALL PROVIDE EVIDENCE WITH THE~~
28 ~~BOND THAT IS SATISFACTORY TO THE UNIT THAT:~~

29 (i) ~~THE SUBCONTRACTOR HAS BEEN DENIED CREDIT BY A~~
30 ~~SURETY COMPANY WITHIN THE PAST 3 YEARS FROM THE DATE THE BOND WAS~~
31 ~~SUBMITTED, BASED ON A GOOD FAITH APPLICATION BY THE SUBCONTRACTOR;~~
32 ~~AND~~

1 ~~(H) THE INDIVIDUAL SURETY TRANSACTS BUSINESS ONLY~~
2 ~~THROUGH AN INSURANCE AGENCY LICENSED BY THE MARYLAND INSURANCE~~
3 ~~ADMINISTRATION; AND~~

4 ~~(2) THE PROCUREMENT OFFICER SHALL:~~

5 ~~(I) DETERMINE THE ACCEPTABILITY OF AN INDIVIDUAL~~
6 ~~PROPOSED AS A SURETY AND ENSURE THAT THE SURETY'S PLEDGED ASSETS~~
7 ~~ARE SUFFICIENT TO COVER THE BOND REQUIRED BY THE SOLICITATION; AND~~

8 ~~(II) OBTAIN THE ADVICE OF THE OFFICE OF THE ATTORNEY~~
9 ~~GENERAL AS TO THE ADEQUACY OF THE DOCUMENTS PLEDGING THE ASSETS~~
10 ~~BEFORE ACCEPTING THE BOND.~~

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2013.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.