

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1302 Session of
2009

INTRODUCED BY SOLOBAY, BELFANTI, BRENNAN, COHEN, DALEY, EVERETT,
GIBBONS, GOODMAN, KOTIK, KULA, MARSHALL, MUSTIO, M. O'BRIEN,
O'NEILL, PAYNE, PYLE, READSHAW, ROAE, ROCK, MILNE AND
MAHONEY, APRIL 21, 2009

REFERRED TO COMMITTEE ON STATE GOVERNMENT, APRIL 21, 2009

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, further providing for reciprocal limitations.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Section 107 of Title 62 of the Pennsylvania
6 Consolidated Statutes is amended to read:

7 § 107. Reciprocal limitations.

8 (a) Short title of section.--This section shall be known and
9 may be cited as the [Reciprocal Limitations] Pennsylvania First
10 Act.

11 (b) Legislative findings.--It is hereby determined by the
12 General Assembly [to reaffirm the legislative findings contained
13 in the act of November 28, 1986 (P.L.1465, No.146), known as the
14 Reciprocal Limitations Act, and codified in this section] that:

15 (1) The award of contracts to the lowest responsible
16 bidder generally provides for the most economical procurement
17 of supplies and construction.

1 (2) In some cases, award to the lowest responsible
2 bidder may not be the most economical and practicable when
3 the best interests of the Commonwealth are concerned.

4 (3) Some states apply a preference favoring in-state
5 supplies or bidders or they apply a prohibition against the
6 use of out-of-state supplies or bidders.

7 (4) The application of this preference or prohibition by
8 other states diminishes or eliminates opportunities for
9 bidders and manufacturers who reside in this Commonwealth to
10 obtain construction contracts from or to sell supplies to
11 states that have this preference, thereby resulting in the
12 loss of business for resident bidders and manufacturers.
13 Therefore, in order to offset or counteract the
14 discriminatory practices of other states, [discourage other
15 states from applying a preference and ultimately to] aid
16 employment, help business and industry located in this
17 Commonwealth, attract new business and industry to this
18 Commonwealth and provide additional tax revenue both from
19 those receiving contracts and those employed by contractors,
20 the General Assembly hereby declares that it is the policy of
21 this Commonwealth to [respond in like manner against those
22 states that apply preferences or prohibitions by giving a
23 similar offsetting] give preference to residents in this
24 Commonwealth and bidders offering supplies manufactured in
25 this Commonwealth and [by prohibiting] prohibit the purchase
26 or use of certain supplies, in accordance with the provisions
27 of this section.

28 (c) Preference for supplies.--In all procurements of
29 supplies exceeding the amount established by the department for
30 small procurements under section 514 (relating to small

1 procurements), all Commonwealth agencies shall give preference
2 to those bidders or offerors offering supplies produced,
3 manufactured, mined, grown or performed in this Commonwealth [as
4 against those bidders or offerors offering supplies produced,
5 manufactured, mined, grown or performed in any state that gives
6 or requires a preference to supplies produced, manufactured,
7 mined, grown or performed in that state. The amount of the
8 preference shall be equal to the amount of the preference
9 applied by the other state for that particular supply].

10 (d) Preference for resident bidders or offerors.--When a
11 contract for construction or supplies exceeding the amount
12 established by the department for small procurements under
13 section 514 is to be awarded, a resident bidder or offeror shall
14 be granted a preference as against a nonresident bidder or
15 offeror [from any state that gives or requires a preference to
16 bidders or offerors from that state. The amount of the
17 preference shall be equal to the amount of the preference
18 applied by the state of the nonresident bidder or offeror].

19 (e) Prohibition.--For all contracts for construction or
20 supplies exceeding the amount established by the department for
21 small procurements under section 514, no Commonwealth agency
22 shall specify for, use or procure any supplies which are
23 produced, manufactured, mined, grown or performed in any state
24 that prohibits the specification for, use or procurement of
25 these supplies in or on its public buildings or other works when
26 these supplies are not produced, manufactured, mined, grown or
27 performed in that state.

28 (f) Listing discriminating states.--The department shall
29 prepare a list of the states which apply a [preference favoring
30 in-state supplies or bidders or offerors or a] prohibition

1 against the use of out-of-state supplies or bidders or offerors
2 and shall publish the list in the Pennsylvania Bulletin. When a
3 state applies a new preference or prohibition, the department
4 shall publish that information in the Pennsylvania Bulletin as
5 an addition to the original list.

6 (g) Inclusion in invitation for bids or request for
7 proposals.--[In all invitations for bids and requests for
8 proposals for the procurement of supplies exceeding the amount
9 established by the department for small procurements under
10 section 514, all Commonwealth agencies shall include a list of
11 all the states that have been found by the department to have
12 applied a preference favoring in-state supplies, bidders or
13 offerors and the amount of the preference.] All invitations for
14 bids, requests for proposals and notices issued for the purpose
15 of securing bids or proposals for contracts for construction or
16 supplies exceeding the amount established by the department for
17 small procurements under section 514 shall include a list of all
18 states that have been found by the department to have applied a
19 preference for in-state bidders or offerors and the amount of
20 the preference. All invitations for bids, requests for proposals
21 and notices issued for the purpose of securing bids or proposals
22 for contracts for construction or supplies exceeding the amount
23 established by the purchasing agency for small procurements
24 under section 514 shall also include a list of all states that
25 apply a prohibition against certain supplies and shall inform
26 potential bidders or offerors that they are prohibited from
27 using supplies from those states. If a bid or proposal discloses
28 that the bidder or offeror is offering supplies from a state
29 which prohibits the use of out-of-state supplies, the bid or
30 proposal shall be rejected.

1 (h) Federal funds.--The provisions of this section shall not
2 be applicable when the application of this section may
3 jeopardize the receipt of Federal funds.

4 (i) Waiver.--The provisions of this section may be waived
5 when the head of the purchasing agency determines in writing
6 that it is in the best interests of the Commonwealth.

7 (j) Definitions.--As used in this section, the following
8 words and phrases shall have the meanings given to them in this
9 subsection:

10 "Resident bidder or offeror." A person, partnership,
11 corporation or other business entity authorized to transact
12 business in this Commonwealth and having a bona fide
13 establishment for transacting business in this Commonwealth at
14 which it was transacting business on the date when bids or
15 proposals for the public contract were first solicited.

16 Section 2. This act shall take effect in 60 days.