
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 201 Session of
2013

INTRODUCED BY DUNBAR, BLOOM, PICKETT, SAYLOR, TOEPEL, TRUITT,
METCALFE, D. COSTA, QUINN, KAUFFMAN, SIMMONS, MOUL, SWANGER,
REESE, R. MILLER, GINGRICH, V. BROWN, MATZIE, LAWRENCE,
MILNE, GRELL, STERN, BENNINGHOFF, GROVE, GILLEN, EVANKOVICH,
DENLINGER, ENGLISH AND FRANKEL, JANUARY 22, 2013

SENATOR CORMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, OCTOBER 6, 2014

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, in source selection and contract formation, further
3 providing for competitive sealed proposals; providing for
4 investment activities in Iran; and imposing civil penalties.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 513(e) of Title 62 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 513. Competitive sealed proposals.

10 * * *

11 (e) Evaluation.--The relative importance of the evaluation
12 factors shall be fixed prior to opening the proposals. A
13 Commonwealth agency [is required to] shall invite its
14 comptroller to participate in the evaluation as a nonvoting
15 member of any evaluation committee. No individual who has been
16 employed by an offeror within the preceding two years may

1 participate in the evaluation of proposals.

2 * * *

3 Section 2. The heading of Chapter 35 of Title 62 is amended
4 to read:

5 CHAPTER 35

6 [(RESERVED)]

7 IRAN FREE PROCUREMENT

8 Section 3. Title 62 is amended by adding sections to read:
9 § 3501. Definitions.

10 "Department." The Department of General Services of the
11 Commonwealth.

12 "ENERGY-RELATED ACTIVITIES." THE TERM INCLUDES ALL OF THE <--
13 FOLLOWING:

14 (1) DEVELOPMENT OF PETROLEUM, NATURAL GAS OR NUCLEAR
15 ENERGY RESOURCES. THIS PARAGRAPH DOES NOT INCLUDE THE MERE
16 SALE OF GASOLINE AND RELATED CONSUMER PRODUCTS.

17 (2) OWNING RIGHTS TO OIL OR NATURAL GAS BLOCKS OR
18 NUCLEAR FACILITIES.

19 (3) EXPORTING, EXTRACTING, PRODUCING, REFINING,
20 PROCESSING, EXPLORING FOR, TRANSPORTING, SELLING OR TRADING
21 OIL OR NATURAL GAS OR DEVELOPING NUCLEAR ENERGY.

22 (4) CONSTRUCTING, MAINTAINING OR OPERATING ANY PIPELINE,
23 REFINERY, LIQUEFACTION FACILITY, NUCLEAR REACTOR OR OTHER
24 OIL, NATURAL GAS OR NUCLEAR ENERGY INFRASTRUCTURE.

25 "Financial institution." The term as defined in section 14
26 of the Iran Sanctions Act of 1996 (Public Law 104-172, 50 U.S.C.
27 § 1701).

28 "Iran." The government of Iran or an agency or
29 instrumentality of Iran.

30 "Person." An individual, organization, a financial

1 institution, sole proprietorship, association, corporation,
2 partnership, joint venture, limited partnership, limited
3 liability partnership, limited liability company or other entity
4 or business association that exists for the purpose of making a
5 profit or government entity that includes a multilateral
6 development institution as defined in section 1701 of the
7 International Financial Institutions Act (Public Law 95-118, 22
8 U.S.C. 262r).

9 § 3502. Engaging in investment activities.

10 A person or financial institution engages in an investment
11 activity by doing any of the following:

12 (1) Providing goods or services worth at least
13 \$20,000,000, including oil tankers or transporters and
14 liquefied natural gas tankers or transporters, to the ~~energy~~ <--
15 ~~sector~~ ENERGY-RELATED ACTIVITIES of Iran, or products used to <--
16 construct or maintain pipelines used to transport oil or
17 liquefied natural gas for the energy sector of Iran.

18 (2) Extending at least \$20,000,000 in credit to a person
19 for 45 days or more if all of the following apply:

20 (i) The person uses the credit to provide goods or
21 services to the energy sector in Iran.

22 (ii) The person is, AT THE TIME THE FINANCIAL <--
23 INSTITUTION OR PERSON EXTENDS CREDIT, identified on a
24 list created under section 3503 (relating to list of
25 persons engaged in investment activities).

26 § 3503. List of persons engaged in investment activities.

27 (a) List.--The department shall develop a list of persons
28 whom the department determines are engaged in investment
29 activities in Iran as described in section 3502 (relating to
30 engaging in investment activities). The department shall make

1 its determination based on publicly available, credible
2 information. The department shall update the list every 180
3 days. Ninety days prior TO adding a person to the list, the <--
4 department shall do all of the following:

5 (1) Provide notice to the person of the department's
6 intention to add the person to the list. The notice shall
7 inform the person that inclusion on the list makes the person
8 ineligible to enter into a contract with a Commonwealth
9 entity for goods or services worth at least \$1,000,000. The
10 notice shall specify that if the person ceases to engage in
11 investment activities in Iran, the person may regain
12 eligibility upon removal from the list.

13 (2) Provide the person an opportunity to comment in
14 writing to the department. The person shall maintain
15 eligibility if the person demonstrates no engagement in
16 investment activities in Iran.

17 (b) Ineligibility of persons on list.--A person identified
18 on a list under subsection (a) shall be ineligible to enter into
19 a contract with a Commonwealth entity TO PROVIDE for goods or <--
20 services worth at least \$1,000,000.

21 (c) Fee LIST.--The department may assess a fee to obtain a <--
22 copy of the list SHALL POST THE LIST ON ITS PUBLICLY ACCESSIBLE <--
23 INTERNET WEBSITE. Upon request, the department shall provide the
24 list free of charge to the General Assembly or a public entity.

25 (d) Retirement system investments. A person who enters into <--
26 a contract with the Public School Employees' Retirement System
27 or the State Employees' Retirement System shall not be deemed a
28 person who engages in investment activities in Iran on the basis
29 of the person's investments with the retirement system.

30 (D) INVESTMENT SERVICE CONTRACTS.--SERVICE CONTRACTS ENTERED <--

1 INTO BY COMMONWEALTH ENTITIES FOR THE MANAGEMENT AND INVESTMENT
2 OF A FUND FOR WHICH THERE IS A FIDUCIARY RESPONSIBILITY AND FOR
3 WHICH COMPLIANCE WITH THE ACT OF JULY 2, 2010 (P.L.266, NO.44),
4 KNOWN AS THE PROTECTING PENNSYLVANIA'S INVESTMENTS ACT, IS
5 REQUIRED, SHALL BE EXEMPT FROM THE PROVISIONS OF THIS CHAPTER.

6 (e) Exception.--On a case-by-case basis, the department may
7 permit a person engaging in investment activities in Iran to
8 enter a contract with a Commonwealth entity for goods or
9 services worth at least \$1,000,000 if ~~all~~ ANY of the following <--
10 apply:

11 (1) The investment activities in Iran were made before
12 and were not expanded after July 1, ~~2010~~ 2015. <--

13 (2) The person refrains from ~~engaging~~ ENTERING INTO NEW <--
14 AGREEMENTS TO ENGAGE in any future investment activities in
15 Iran.

16 (3) The department determines that the Commonwealth
17 entity has no other COST-EFFECTIVE method of obtaining the <--
18 goods or services than entering into a contract with the
19 person.

20 § 3504. Certification.

21 (A) GENERAL RULE.--The department shall make available a <--
22 certification form indicating that a person is not on the list
23 under section 3503(a) (relating to list of persons engaged in
24 investment activities) and is eligible under this chapter to
25 contract with the Commonwealth. Prior to entering into a
26 contract with a Commonwealth entity, a person shall provide a
27 certification form to the Commonwealth entity, unless the person
28 is exempt under section 3503(e).

29 (B) RIGHT TO CURE.-- <--

30 (1) IF THE DEPARTMENT DETERMINES, USING CREDIBLE

1 INFORMATION AVAILABLE TO THE PUBLIC, THAT A PERSON HAS
2 SUBMITTED A FALSE CERTIFICATION UNDER SUBSECTION (A), THE
3 PERSON SHALL BE PROVIDED WITH WRITTEN NOTICE AND AN
4 OPPORTUNITY TO DEMONSTRATE TO THE DEPARTMENT THAT THE PERSON
5 HAS CEASED ITS ENGAGEMENT IN ENERGY-RELATED ACTIVITIES IN
6 IRAN WITHIN 90 DAYS OF THE NOTICE.

7 (2) A PERSON WHO REASONABLY DEMONSTRATES TO THE
8 DEPARTMENT THAT THE PERSON HAS CEASED ITS ENGAGEMENT IN
9 ENERGY-RELATED ACTIVITIES IN IRAN WITHIN 90 DAYS AFTER THE
10 WRITTEN NOTICE SHALL NOT BE SUBJECT TO THE PENALTIES UNDER
11 SECTION 3505 (RELATING TO PENALTIES FOR FALSE CERTIFICATION.)
12 § 3505. Penalties for false certification.

13 (a) Penalties.--~~Upon determination by~~ SUBJECT TO THE <--
14 PROVISIONS OF SECTION 3504(B) (RELATING TO CERTIFICATION), IF
15 the department DETERMINES that a person has provided a false <--
16 certification form to a Commonwealth entity under section 3504
17 ~~(relating to certification)~~, the person shall be subject to the <--
18 following:

19 (1) A civil penalty in the amount of \$250,000 or twice
20 the amount of the ~~investment~~ CONTRACT, whichever is greater. <--
21 Only one civil penalty may be imposed upon a person per
22 investment.

23 (2) ~~Termination~~ SUSPENSION of the existing contract with <--
24 the Commonwealth entity for a period of three years from the
25 date of the determination that the person submitted the false
26 certification. Following the three-year SUSPENSION period, <--
27 the Commonwealth entity or the department may ~~permanently~~ <--
28 terminate the contract.

29 (b) Report of false certification.--The department shall
30 report to the Attorney General the name of the person who

1 submitted the false certification and the pertinent information
2 that led to the department's determination. No later than three
3 years after the department makes a determination under
4 subsection (a), the Attorney General shall determine whether to
5 bring a civil action against the person to collect the penalty
6 described in subsection (a). If a court determines the person
7 submitted a false certification, the person shall pay all
8 reasonable costs and fees incurred in the civil action.
9 Reasonable costs shall include the reasonable costs incurred by
10 the Commonwealth entity in investigating the authenticity of the
11 certification. Only one civil action against the person may be
12 brought for a false certification on a contract.

13 (c) No private right of action.--Nothing in this section may
14 be construed to create or authorize a private right of action.
15 § 3506. Expiration.

16 The department shall have no obligations under this chapter
17 with respect to a company engaged in business activities in Iran
18 upon the occurrence of any of the following:

19 (1) Iran does not appear on the List of State Sponsors
20 of Terrorism.

21 (2) The President or Congress of the United States,
22 through legislation or executive order, declares that
23 mandatory divestment of the type provided for in this chapter
24 interferes with the conduct of United States foreign policy.

25 Section 4. This act shall take effect as follows:

26 (1) The amendment of 62 Pa.C.S. Ch. 35 shall take effect
27 ~~January 1, 2014, or immediately, whichever is later.~~ JULY 1, <--
28 2015.

29 (2) This section shall take effect immediately.

30 (3) The remainder of this act shall take effect in 60

1 days.