

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, MILLER, GINGRICH, V. BROWN, MATZIE, LAWRENCE, MILNE, GRELL, STERN, BENNINGHOFF, GROVE, GILLEN, EVANKOVICH, DENLINGER AND ENGLISH, JANUARY 22, 2013

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 8, 2013

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
17 participate in the evaluation of proposals.

1 * * *

2 SECTION 2. THE HEADING OF CHAPTER 35 OF TITLE 62 IS AMENDED <--
3 TO READ:

4 CHAPTER 35

5 [(RESERVED)]

6 IRAN FREE PROCUREMENT

7 SECTION 3. TITLE 62 IS AMENDED BY ADDING SECTIONS TO READ:

8 § 3501. DEFINITIONS.

9 "DEPARTMENT." THE DEPARTMENT OF GENERAL SERVICES OF THE
10 COMMONWEALTH.

11 "FINANCIAL INSTITUTION." THE TERM AS DEFINED IN SECTION 14
12 OF THE IRAN SANCTIONS ACT OF 1996 (PUBLIC LAW 104-172, 50 U.S.C.
13 § 1701).

14 "IRAN." THE GOVERNMENT OF IRAN OR AN AGENCY OR
15 INSTRUMENTALITY OF IRAN.

16 "PERSON." AN INDIVIDUAL, ORGANIZATION, A FINANCIAL
17 INSTITUTION, SOLE PROPRIETORSHIP, ASSOCIATION, CORPORATION,
18 PARTNERSHIP, JOINT VENTURE, LIMITED PARTNERSHIP, LIMITED
19 LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY OR OTHER ENTITY
20 OR BUSINESS ASSOCIATION THAT EXISTS FOR THE PURPOSE OF MAKING A
21 PROFIT OR GOVERNMENT ENTITY THAT INCLUDES A MULTILATERAL
22 DEVELOPMENT INSTITUTION AS DEFINED IN SECTION 1701 OF THE
23 INTERNATIONAL FINANCIAL INSTITUTIONS ACT (PUBLIC LAW 95-118, 22
24 U.S.C. 262R).

25 § 3502. ENGAGING IN INVESTMENT ACTIVITIES.

26 A PERSON OR FINANCIAL INSTITUTION ENGAGES IN AN INVESTMENT
27 ACTIVITY BY DOING ANY OF THE FOLLOWING:

28 (1) PROVIDING GOODS OR SERVICES WORTH AT LEAST
29 \$20,000,000, INCLUDING OIL TANKERS OR TRANSPORTERS AND
30 LIQUEFIED NATURAL GAS TANKERS OR TRANSPORTERS, TO THE ENERGY

1 SECTOR OF IRAN, OR PRODUCTS USED TO CONSTRUCT OR MAINTAIN
2 PIPELINES USED TO TRANSPORT OIL OR LIQUEFIED NATURAL GAS FOR
3 THE ENERGY SECTOR OF IRAN.

4 (2) EXTENDING AT LEAST \$1,000,000 IN CREDIT TO A PERSON
5 FOR 45 DAYS OR MORE IF ALL OF THE FOLLOWING APPLY:

6 (I) THE PERSON USES THE CREDIT TO PROVIDE GOODS OR
7 SERVICES TO THE ENERGY SECTOR IN IRAN.

8 (II) THE PERSON IS IDENTIFIED ON A LIST CREATED
9 UNDER SECTION 3503 (RELATING TO LIST OF PERSONS ENGAGED
10 IN INVESTMENT ACTIVITIES).

11 § 3503. LIST OF PERSONS ENGAGED IN INVESTMENT ACTIVITIES.

12 (A) LIST.--THE DEPARTMENT SHALL DEVELOP A LIST OF PERSONS
13 WHOM THE DEPARTMENT DETERMINES ARE ENGAGED IN INVESTMENT
14 ACTIVITIES IN IRAN AS DESCRIBED IN SECTION 3502 (RELATING TO
15 ENGAGING IN INVESTMENT ACTIVITIES). THE DEPARTMENT SHALL MAKE
16 ITS DETERMINATION BASED ON PUBLICLY AVAILABLE, CREDIBLE
17 INFORMATION. THE DEPARTMENT SHALL UPDATE THE LIST EVERY 180
18 DAYS. NINETY DAYS PRIOR ADDING A PERSON TO THE LIST, THE
19 DEPARTMENT SHALL DO ALL OF THE FOLLOWING:

20 (1) PROVIDE NOTICE TO THE PERSON OF THE DEPARTMENT'S
21 INTENTION TO ADD THE PERSON TO THE LIST. THE NOTICE SHALL
22 INFORM THE PERSON THAT INCLUSION ON THE LIST MAKES THE PERSON
23 INELIGIBLE TO ENTER INTO A CONTRACT WITH A COMMONWEALTH
24 ENTITY FOR GOODS OR SERVICES WORTH AT LEAST \$1,000,000. THE
25 NOTICE SHALL SPECIFY THAT IF THE PERSON CEASES TO ENGAGE IN
26 INVESTMENT ACTIVITIES IN IRAN, THE PERSON MAY REGAIN
27 ELIGIBILITY UPON REMOVAL FROM THE LIST.

28 (2) PROVIDE THE PERSON AN OPPORTUNITY TO COMMENT IN
29 WRITING TO THE DEPARTMENT. THE PERSON SHALL MAINTAIN
30 ELIGIBILITY IF THE PERSON DEMONSTRATES NO ENGAGEMENT IN

1 INVESTMENT ACTIVITIES IN IRAN.

2 (B) INELIGIBILITY OF PERSONS ON LIST.--A PERSON IDENTIFIED
3 ON A LIST UNDER SUBSECTION (A) SHALL BE INELIGIBLE TO ENTER INTO
4 A CONTRACT WITH A COMMONWEALTH ENTITY FOR GOODS OR SERVICES
5 WORTH AT LEAST \$1,000,000.

6 (C) FEE.--THE DEPARTMENT MAY ASSESS A FEE TO OBTAIN A COPY
7 OF THE LIST. UPON REQUEST, THE DEPARTMENT SHALL PROVIDE THE LIST
8 FREE OF CHARGE TO THE GENERAL ASSEMBLY OR A PUBLIC ENTITY.

9 (D) RETIREMENT SYSTEM INVESTMENTS.--A PERSON WHO ENTERS INTO
10 A CONTRACT WITH THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM
11 OR THE STATE EMPLOYEES' RETIREMENT SYSTEM SHALL NOT BE DEEMED A
12 PERSON WHO ENGAGES IN INVESTMENT ACTIVITIES IN IRAN ON THE BASIS
13 OF THE PERSON'S INVESTMENTS WITH THE RETIREMENT SYSTEM.

14 (E) EXCEPTION.--ON A CASE-BY-CASE BASIS, THE DEPARTMENT MAY
15 PERMIT A PERSON ENGAGING IN INVESTMENT ACTIVITIES IN IRAN TO
16 ENTER A CONTRACT WITH A COMMONWEALTH ENTITY FOR GOODS OR
17 SERVICES WORTH AT LEAST \$1,000,000 IF ALL OF THE FOLLOWING
18 APPLY:

19 (1) THE INVESTMENT ACTIVITIES IN IRAN WERE MADE BEFORE
20 AND WERE NOT EXPANDED AFTER JULY 1, 2010.

21 (2) THE PERSON REFRAINS FROM ENGAGING IN ANY FUTURE
22 INVESTMENT ACTIVITIES IN IRAN.

23 (3) THE DEPARTMENT DETERMINES THAT THE COMMONWEALTH
24 ENTITY HAS NO OTHER METHOD OF OBTAINING THE GOODS OR SERVICES
25 THAN ENTERING INTO A CONTRACT WITH THE PERSON.

26 § 3504. CERTIFICATION.

27 THE DEPARTMENT SHALL MAKE AVAILABLE A CERTIFICATION FORM
28 INDICATING THAT A PERSON IS NOT ON THE LIST UNDER SECTION
29 3503(A) (RELATING TO LIST OF PERSONS ENGAGED IN INVESTMENT
30 ACTIVITIES) AND IS ELIGIBLE UNDER THIS CHAPTER TO CONTRACT WITH

1 THE COMMONWEALTH. PRIOR TO ENTERING INTO A CONTRACT WITH A
2 COMMONWEALTH ENTITY, A PERSON SHALL PROVIDE A CERTIFICATION FORM
3 TO THE COMMONWEALTH ENTITY, UNLESS THE PERSON IS EXEMPT UNDER
4 SECTION 3503(E).

5 § 3505. PENALTIES FOR FALSE CERTIFICATION.

6 (A) PENALTIES.--UPON DETERMINATION BY THE DEPARTMENT THAT A
7 PERSON HAS PROVIDED A FALSE CERTIFICATION FORM TO A COMMONWEALTH
8 ENTITY UNDER SECTION 3504 (RELATING TO CERTIFICATION), THE
9 PERSON SHALL BE SUBJECT TO THE FOLLOWING:

10 (1) A CIVIL PENALTY IN THE AMOUNT OF \$250,000 OR TWICE
11 THE AMOUNT OF THE INVESTMENT, WHICHEVER IS GREATER. ONLY ONE
12 CIVIL PENALTY MAY BE IMPOSED UPON A PERSON PER INVESTMENT.

13 (2) TERMINATION OF THE EXISTING CONTRACT WITH THE
14 COMMONWEALTH ENTITY FOR A PERIOD OF THREE YEARS FROM THE DATE
15 OF THE DETERMINATION THAT THE PERSON SUBMITTED THE FALSE
16 CERTIFICATION. FOLLOWING THE THREE-YEAR PERIOD, THE
17 COMMONWEALTH ENTITY OR THE DEPARTMENT MAY PERMANENTLY
18 TERMINATE THE CONTRACT.

19 (B) REPORT OF FALSE CERTIFICATION.--THE DEPARTMENT SHALL
20 REPORT TO THE ATTORNEY GENERAL THE NAME OF THE PERSON WHO
21 SUBMITTED THE FALSE CERTIFICATION AND THE PERTINENT INFORMATION
22 THAT LED TO THE DEPARTMENT'S DETERMINATION. NO LATER THAN THREE
23 YEARS AFTER THE DEPARTMENT MAKES A DETERMINATION UNDER
24 SUBSECTION (A), THE ATTORNEY GENERAL SHALL DETERMINE WHETHER TO
25 BRING A CIVIL ACTION AGAINST THE PERSON TO COLLECT THE PENALTY
26 DESCRIBED IN SUBSECTION (A). IF A COURT DETERMINES THE PERSON
27 SUBMITTED A FALSE CERTIFICATION, THE PERSON SHALL PAY ALL
28 REASONABLE COSTS AND FEES INCURRED IN THE CIVIL ACTION.
29 REASONABLE COSTS SHALL INCLUDE THE REASONABLE COSTS INCURRED BY
30 THE COMMONWEALTH ENTITY IN INVESTIGATING THE AUTHENTICITY OF THE

1 CERTIFICATION. ONLY ONE CIVIL ACTION AGAINST THE PERSON MAY BE
2 BROUGHT FOR A FALSE CERTIFICATION ON A CONTRACT.

3 (C) NO PRIVATE RIGHT OF ACTION.--NOTHING IN THIS SECTION MAY
4 BE CONSTRUED TO CREATE OR AUTHORIZE A PRIVATE RIGHT OF ACTION.
5 § 3506. EXPIRATION.

6 THE DEPARTMENT SHALL HAVE NO OBLIGATIONS UNDER THIS CHAPTER
7 WITH RESPECT TO A COMPANY ENGAGED IN BUSINESS ACTIVITIES IN IRAN
8 UPON THE OCCURRENCE OF ANY OF THE FOLLOWING:

9 (1) IRAN DOES NOT APPEAR ON THE LIST OF STATE SPONSORS
10 OF TERRORISM.

11 (2) THE PRESIDENT OR CONGRESS OF THE UNITED STATES,
12 THROUGH LEGISLATION OR EXECUTIVE ORDER, DECLARES THAT
13 MANDATORY DIVESTMENT OF THE TYPE PROVIDED FOR IN THIS CHAPTER
14 INTERFERES WITH THE CONDUCT OF UNITED STATES FOREIGN POLICY.

15 Section 2 4. This act shall take effect in ~~60 days~~. AS <--
16 FOLLOWS:

17 (1) THE AMENDMENT OF 62 PA.C.S. CH. 35 SHALL TAKE EFFECT
18 JANUARY 1, 2014, OR IMMEDIATELY, WHICHEVER IS LATER.

19 (2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

20 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
21 DAYS.