

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2107 Session of
2015

INTRODUCED BY BAKER, MILLARD, SCHLOSSBERG, TOEPEL, PICKETT,
CUTLER, MURT, DeLUCA, WHEELAND, ZIMMERMAN, PHILLIPS-HILL,
WATSON, EVERETT, GROVE, PETRI, RAPP, FRANKEL, GILLEN, MOUL,
BENNINGHOFF, KLUNK, KAUFER, SAYLOR, MACKENZIE, DUSH,
SANTARSIERO AND MICCARELLI, MAY 27, 2016

SENATOR BROWNE, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, OCTOBER 18, 2016

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, in general provisions, providing for public access
3 to procurement records; in source selection and contract
4 formation, further providing for sole source procurement and
5 for emergency procurement; and providing for prohibited
6 contracts.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Title 62 of the Pennsylvania Consolidated
10 Statutes is amended by adding a section to read:

11 § 106.1. Public access to procurement records.

12 (a) General rule.--Records concerning a procurement shall be
13 made public, consistent with the act of February 14, 2008
14 (P.L.6, No.3), known as the Right-to-Know Law.

15 (b) Public posting and availability of procurement
16 information.--The purchasing agency shall post the following
17 procurement documents on the department's, or, in the case of an

1 independent agency, its own publicly accessible Internet website
2 or otherwise make available in the manner indicated below:

3 (1) Public notice of an invitation for bids or request
4 for proposals may be given in accordance with section 512(c)
5 (1) (relating to competitive sealed bidding) or 513(b)
6 (relating to competitive sealed proposals) by posting the
7 invitation for bids or request for proposals, including, if
8 applicable, the written determination required by section
9 513(a), on the date issued and until the closing date for
10 receipt of bids or proposals.

11 (2) Bid tabulations recording the name of each bidder
12 and bid amount in accordance with section 512(d) shall be
13 posted as soon as practicable after bid opening, unless the
14 purchasing agency elects to cancel the invitation for bids.

15 (3) Notices of award pursuant to an invitation for bids
16 shall be posted as soon as practicable after the purchasing
17 agency elects to make an award in accordance with section
18 512(g).

19 (4) The written determination required by section 513(g)
20 shall be posted upon receipt of the final negotiated contract
21 signed by the selected offeror. Subject to proper redaction
22 under the Right-to-Know Law, responsive proposals received by
23 the purchasing agency and, until fully executed, the final
24 negotiated contract are not required to be posted but shall
25 be made available to the public upon request.

26 (5) Requests to award a contract pursuant to section
27 515(a) (1), (2), (4) and (10) (relating to sole source
28 procurement) shall be posted for seven calendar days for
29 public comment prior to approval of the request by the
30 department or independent purchasing agency. Upon approval of

1 a request by the department or independent purchasing agency,
2 the signed and written determination required under section
3 515(b) shall be posted.

4 (6) The written determinations required by section 516
5 (relating to emergency procurement) shall be posted in
6 advance, if feasible, but no later than seven calendar days
7 after authorization by the department or independent
8 purchasing agency.

9 (7) A contract resulting from a procurement under this
10 part shall be posted as soon as practicable upon its full
11 execution by the Commonwealth.

12 (8) Requests under section 515 or 516 to extend a
13 contract for which no further options, renewals or extensions
14 are available in the contract shall be posted for seven
15 calendar days for public comment prior to approval of the
16 request by the department or independent purchasing agency.
17 Upon approval of a request by the department or an
18 independent purchasing agency, the signed and written
19 determination required under section 515(b) or 516 shall be
20 posted.

21 (c) Access and retention.--Procurement documents specified
22 under subsection (b) must be accessible on the Internet website
23 for a minimum of 30 days from posting and further retained in
24 accordance with section 563 (relating to retention of
25 procurement records) and applicable agency record retention
26 policies.

27 Section 2. Sections 515 and 516 of Title 62 are amended to
28 read:

29 § 515. Sole source procurement.

30 (a) General rule.--A contract may be awarded for a supply,

1 service or construction item without competition if the
2 contracting officer first determines in writing that one of the
3 following conditions exists:

4 (1) Only a single contractor is capable of providing the
5 supply, service or construction.

6 (2) A Federal or State statute or Federal regulation
7 exempts the supply, service or construction from the
8 competitive procedure.

9 (3) The total cost of the supply, service or
10 construction is less than the amount established by the
11 department for small, no-bid procurements under section 514
12 (relating to small procurements).

13 (4) It is clearly not feasible to award the contract for
14 supplies or services on a competitive basis.

15 (5) The services are to be provided by attorneys or
16 litigation consultants selected by the Office of General
17 Counsel, the Office of Attorney General, the Department of
18 the Auditor General or the Treasury Department.

19 (6) The services are to be provided by expert witnesses.

20 (7) The services involve the repair, modification or
21 calibration of equipment and they are to be performed by the
22 manufacturer of the equipment or by the manufacturer's
23 authorized dealer, provided the contracting officer
24 determines that bidding is not appropriate under the
25 circumstances.

26 (8) The contract is for investment advisors or managers
27 selected by the Public School Employees' Retirement System,
28 the State Employees' Retirement System or a State-affiliated
29 entity.

30 (9) The contract is for financial or investment experts

1 to be used and selected by the Treasury Department or
2 financial or investment experts selected by the Secretary of
3 the Budget.

4 (10) The contract for supplies or services is in the
5 best interest of the Commonwealth.

6 (b) Written determination.--The written determination
7 authorizing sole source procurement shall be included in the
8 contract file. For procurements over \$250,000 made under
9 subsection (a)(10), the determination shall be signed by the
10 head of the purchasing agency.

11 (c) Approval required by board of commissioners of public
12 grounds and buildings.--With the exception of small procurements
13 under section 514 and emergency procurements under section 516
14 (relating to emergency procurement), if the sole source
15 procurement is for a supply, except for computer software
16 updates under \$50,000, for which the department acts as
17 purchasing agency, it must be approved by the Board of
18 Commissioners of Public Grounds and Buildings prior to the award
19 of a contract.

20 § 516. Emergency procurement.

21 The head of a purchasing agency may make or authorize others
22 to make an emergency procurement when there exists a threat to
23 public health, welfare or safety or circumstances outside the
24 control of the agency create an urgency of need which does not
25 permit the delay involved in using more formal competitive
26 methods. Whenever practical, in the case of a procurement of a
27 supply, at least two [bids] quotes shall be solicited. A written
28 determination of the basis for the emergency and for the
29 selection of the particular contractor shall be included in the
30 [contract file.] procurement file. No written contract may be

1 required. The supplier of the supply, service or construction
2 may be paid based on the emergency approval and approved
3 invoice.

4 Section 3. Title 62 is amended by adding a chapter to read:

5 CHAPTER 36

6 PROHIBITED CONTRACTS

7 Sec.

8 3601. Short title of chapter.

9 3602. Declaration of purpose.

10 3603. Definitions.

11 3604. Prohibition.

12 3605. Certification.

13 3606. Penalties for false certification.

14 § 3601. Short title of chapter.

15 This chapter shall be known and may be cited as the
16 Prohibited Contracts Act.

17 § 3602. Declaration of purpose.

18 The General Assembly finds and declares as follows:

19 (1) Pennsylvania is privileged to engage in
20 international trade and commercial activities.

21 (2) Israel is America's dependable, democratic ally in
22 the Middle East, an area of paramount strategic importance to
23 the United States.

24 (3) It is in the interest of the United States and the
25 Commonwealth to stand with Israel and other countries by
26 promoting trade and commercial activities and to discourage
27 policies that disregard that interest.

28 § 3603. Definitions.

29 The following words and phrases when used in this chapter
30 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Boycott." To blacklist, divest from or otherwise refuse to
3 deal with a person or firm when the action is based on race,
4 color, religion, gender or national affiliation or origin of the
5 targeted person or entity.

6 "Company." Any sole proprietorship, organization,
7 association, corporation, partnership, joint venture, limited
8 partnership, limited liability company or other entity or
9 business association qualified to do business in this
10 Commonwealth.

11 § 3604. Prohibition.

12 Notwithstanding any other provision of law, the department
13 may not contract with a company to acquire or dispose of
14 supplies, services or construction unless the company certifies
15 that:

16 (1) the company is not currently engaged in a boycott of
17 a person or an entity based in or doing business with a
18 jurisdiction which the Commonwealth is not prohibited by
19 Congressional statute from engaging in trade or commerce; and

20 (2) the company will not during the duration of the
21 contract engage in a boycott of a person or an entity based
22 in or doing business with a jurisdiction where the
23 Commonwealth is not prohibited by Congressional statute from
24 engaging in trade or commerce.

25 § 3605. Certification.

26 The department shall make available a certification form
27 indicating that a company is eligible to contract with the
28 department under section 3604 (relating to prohibition). The
29 company shall provide a certification form to the department
30 prior to entering into a contract WHEN REGISTERING TO DO

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1 BUSINESS AS A VENDOR WITH THE COMMONWEALTH.

2 § 3606. Penalties for false certification.

3 (a) Penalties.--A company shall pay a civil penalty in the
4 amount of \$250,000 or twice the amount of the contract,
5 whichever is greater, if the department determines that the
6 company provided a false certification form to the department
7 under section 3604 (relating to prohibition).

8 (b) Report of false certification.--The department shall
9 report to the Attorney General the name of the company that
10 submitted the false certification and the pertinent information
11 that led to the department's determination. No later than three
12 years after the department makes a determination under
13 subsection (a), the Attorney General shall determine whether to
14 bring a civil action against the company to collect the penalty
15 described in subsection (a). If a court determines the company
16 submitted a false certification, the company shall pay all
17 reasonable costs and fees incurred in the civil action.
18 Reasonable costs shall include the reasonable costs incurred by
19 the Commonwealth entity in investigating the authenticity of the
20 certification. Only one civil action against the company may be
21 brought for a false certification on a contract.

22 (c) No private right of action.--Nothing in this section may
23 be construed to create or authorize a private right of action.

24 Section 4. This act shall take effect in 60 days.