

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 316 Session of 2015

INTRODUCED BY FOLMER, VOGEL, VULAKOVICH, TEPLITZ, TARTAGLIONE, WARD, FONTANA, SCHWANK, WHITE, AUMENT, GORDNER, HUTCHINSON, GREENLEAF, YUDICHAK, COSTA, BAKER, SCARNATI, STEFANO, BOSCOLA, BARTOLOTTA, EICHELBERGER, DINNIMAN, VANCE, PILEGGI, ALLOWAY, FARNESE, BROWNE AND RAFFERTY, JANUARY 23, 2015

REFERRED TO STATE GOVERNMENT, JANUARY 23, 2015

AN ACT

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

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

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

10 § 106.1. Public access to procurement records.

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

14 (b) Public posting and availability of procurement  
 15 information.--The purchasing agency shall post the following  
 16 procurement documents on the department's, or, in the case of an  
 17 independent agency, its own publicly accessible Internet website  
 18 or otherwise make available in the manner indicated below:

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

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

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

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

24       (5) Requests to award a contract pursuant to section  
25 515(a) (1), (2), (4) and (10) (relating to sole source  
26 procurement) shall be posted for seven calendar days for  
27 public comment prior to approval of the request by the  
28 department or independent purchasing agency. Upon approval of  
29 a request by the department or independent purchasing agency,  
30 the signed and written determination required under section

1 515(b) shall be posted.

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

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

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

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

25 Section 2. Sections 515 and 516 of Title 62 are amended to  
26 read:

27 § 515. Sole source procurement.

28 (a) General rule.--A contract may be awarded for a supply,  
29 service or construction item without competition if the  
30 contracting officer first determines in writing that one of the

1 following conditions exists:

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

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

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

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

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

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

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

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

28 (9) The contract is for financial or investment experts  
29 to be used and selected by the Treasury Department or  
30 financial or investment experts selected by the Secretary of

1 the Budget.

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

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

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

18 § 516. Emergency procurement.

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

1 invoice.

2 Section 3. This act shall take effect in 60 days.