
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2363 Session of
1974

INTRODUCED BY MESSRS. LEE AND SCHULZE, MAY 29, 1974

REFERRED TO COMMITTEE ON RULES, MAY 29, 1974

AN ACT

1 Providing for the regulation in the selection and awarding of
2 contracts relating to design, feasibility and landscaping
3 which are awarded to architects and engineers; establishing
4 the Public Works Professional Services Board, imposing powers
5 and duties on the board; transferring certain powers, making
6 an appropriation and providing penalties.

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

9 Section 1. Statement of Policy.--It is necessary to the
10 public interest that a new system for selection of architects,
11 engineers, landscape architects and surveyors for public works
12 projects be established through law. The General Assembly of
13 Pennsylvania has responded by adopting the "Public Works
14 Professional Services Act," for the express purpose of ensuring
15 that professional services contracts will be awarded to firms in
16 a fair and open manner which will encourage professional
17 competition among all who seek the benefit of public works
18 professional contracts within Pennsylvania.

19 Section 2. Short Title.--This act shall be known and may be
20 cited as the "Public Works Professional Services Act."

1 Section 3. Definitions.--As used in this act:

2 "Agency" means all departments, bureaus, boards, commissions,
3 authorities and tax supported institutions which are directly or
4 indirectly a part of the State Government, its political
5 subdivisions, school districts, public authorities and publicly
6 owned utilities.

7 "Agency official" means any elected or appointed
8 officeholder, employee, consultant, or any other person acting
9 on behalf of an agency for the purpose of engaging professional
10 services.

11 "Board" means the Public Works Professional Services Board.

12 "Compensation" means the total amount paid by the agency for
13 professional services.

14 "Firm" means any individual, partnership, association,
15 corporation or other legal entity permitted by law to practice
16 the professions of architecture, landscape architecture,
17 engineering, or surveying within the Commonwealth of
18 Pennsylvania.

19 "Professional services" means those services within the scope
20 of the practice of the professions of architecture, landscape
21 architecture, engineering, or surveying as defined under the
22 laws of the Commonwealth of Pennsylvania which are performed by
23 a firm in connection with its professional employment or
24 practice.

25 Section 4. Registration and Notice.--(a) Any firm desiring
26 to provide professional services to any agency for a public
27 works project must be certified by the board as being eligible
28 to render professional services, and must be included on the
29 comprehensive register.

30 (b) To be certified as eligible to render professional

1 services and to be included in the comprehensive register, a
2 firm must apply to the board on a form provided by the board.
3 The board shall certify and include on the comprehensive
4 register, all firms which meet the standards established by the
5 board for certification.

6 (c) Any agency desiring professional services for a public
7 works project must notify the board of the project in sufficient
8 time to be published in the bulletin as hereinafter provided.
9 Such notice shall be of such detail as to permit a firm to be
10 sufficiently informed of the scope of the professional services
11 desired.

12 Section 5. The Board; Membership; Qualifications and
13 Compensation.--(a) There is hereby created a Public Works
14 Professional Services Board within the Treasury Department. The
15 board shall consist of three members appointed by the Governor
16 with the advice and consent of the Senate, one of whom shall be
17 a professional engineer licensed and registered under the laws
18 of this Commonwealth, one of whom shall be an architect
19 certified and registered under the laws of this Commonwealth,
20 and one of whom shall be a business person with either a
21 bachelor's or master's degree in business administration and at
22 least ten years experience in a responsible executive position
23 in business or finance who in addition is neither an engineer
24 nor an architect. Said person shall be the chairman of the
25 board.

26 (b) The term of office for the first appointees shall be the
27 engineer for a period of two years, the architect for a period
28 of four years and the business executive for a period of six
29 years. Thereafter all board members shall serve for six years.
30 Board members shall be eligible for reappointment. Any vacancy

1 shall be filled for the unexpired term of office and in the same
2 manner as regular members are selected.

3 (c) Members of the board may be removed from office for
4 cause. Any member before removal, shall be entitled to
5 reasonable notice of the charges filed and a public hearing
6 prior to any dismissal.

7 (d) Board members shall not engage in any other occupation
8 for which a salary or any other form of compensation is paid.
9 Board members shall receive a salary of forty-five thousand
10 dollars (\$45,000) annually.

11 Section 6. Powers and Duties.--The board shall have the
12 following powers and duties in addition to others set forth in
13 this act.

14 (a) The board shall designate, in accordance with the
15 procedures set forth herein, in section 7 and the rules and
16 regulations adopted pursuant to this act, which firm shall be
17 awarded the professional service contract for each public works
18 project of every agency: Provided, That for the public works
19 project of any political subdivision, local authority and
20 publicly owned utility for which professional services are
21 required, the professional service contract shall be awarded in
22 accordance with existing law: And, provided further, That for a
23 public works project of any political subdivision, local
24 authority or publicly owned utility for which State funds are
25 directly or indirectly expended, no such contract shall be
26 awarded unless and until the local agency responsible for
27 awarding the contract, shall select a firm from the
28 comprehensive register maintained by the board, and submit such
29 firm to the board for approval. The board shall notify the local
30 agency of approval or disapproval of the firm within thirty days

1 from receipt of notice of selection, in accord with the criteria
2 established herein in the procedures for designation of a firm
3 for a State agency.

4 (b) The board shall establish and maintain a comprehensive
5 register of all firms which are eligible, in accord with the law
6 and the rules and regulations of the board, to perform
7 professional services for all agencies. The register shall be
8 available for public inspection during the board's working days.

9 (c) (1) The board shall establish and cause to be published
10 a monthly bulletin which shall contain a complete listing of all
11 nonlocal public works projects which require professional
12 services but for which no firm has been designated. The first
13 such listing of a requirement for professional services shall be
14 published in the bulletin not later than six months before the
15 date on which commencement of the professional services is
16 required. The bulletin shall be mailed monthly to each firm on
17 the comprehensive register.

18 (2) Every agency shall notify the board of each public works
19 project for which professional services are required. Such
20 notification shall be made in sufficient time that the first
21 publication of the notice will be in conformity with clause (1)
22 of this subsection. The notification shall include a general
23 description of the project, the date when the services are to
24 commence, and be in sufficient detail to reasonably notify a
25 firm of the requirements of the project.

26 (d) The board shall adopt generally accepted accounting
27 principles to account for compensation paid and moneys expended.
28 Firms shall adopt such procedures prior to being eligible for
29 inclusion on the comprehensive register. The Auditor General
30 may, in his sole discretion, or shall at the direction of the

board, perform an annual audit of any firm on the comprehensive register which has received compensation from any agency, or is presently engaged with an agency in a professional services contract for a public works project.

(e) The board shall make an annual report to the General Assembly by January 31st of each year. The report shall include, but not be limited to, the following:

(1) the total value of all professional service contracts the board has designated or approved during the preceding year;

(2) the aggregate and individual total contract price for all professional service contracts designated or approved for every firm during the preceding year; and

(3) the aggregate and individual total contract price for all professional service contracts entered into by each agency during the preceding year.

(f) The board shall maintain comprehensive records of all business conducted by the board. All public meetings of the board shall be recorded verbatim. The board shall maintain separate files for each firm on the comprehensive register, and such file shall contain all records of any business transaction between the board and the firm. All records required to be kept by this section shall be open for public inspection, and copies of any record may be had by any member of the public upon payment of the cost of reproduction.

(g) The board shall adopt such rules and regulations as it deems necessary and proper for implementation of this act.

Section 7. Procedures for Designation or Approval of a Firm.--(a) In order for a firm to be considered by the board for a specific professional service contract, the firm must be included on the comprehensive register of firms eligible to

1 perform public services.

2 (b) Once a project has been announced in the monthly
3 bulletin, any eligible firm may apply to the board to be
4 designated for the project. Such application must be submitted
5 to the board at least ninety days before the date on which the
6 professional services are to commence. Such application shall
7 include, but is not limited to, an itemized estimated contract
8 price and the qualifications of the firm to perform the required
9 professional services.

10 (c) The board may evaluate applications in public or private
11 meetings, and shall consider among other factors, the estimated
12 contract price, the ability of the firm's professional
13 personnel, the past performance of the firm, the willingness to
14 meet project times and budget requirements, recent, current and
15 projected workloads, and financial ability of the firm.

16 (d) All final designations or approvals shall be made at a
17 public meeting of the board. In making such designation or
18 approval, the board shall make public its reason for designating
19 or approving a particular firm.

20 Section 8. Cost of Operation.--The board shall make an
21 annual assessment, not to exceed one hundred fifty dollars
22 (\$150) per firm, against every firm on the comprehensive
23 register. Such assessment shall be used to meet the costs of
24 publishing and distributing the monthly bulletin. In addition
25 the board shall assess costs of operation against each agency it
26 serves on a cost per project basis. Any deficiency in revenue
27 from the prior sources shall be appropriated to the board from
28 the General Fund.

29 Section 9. Employees.--The board may employ such personnel
30 as it deems necessary for the efficient operation of the board.

1 All such personnel, with the exception of legal counsel, shall
2 be employed through the State civil service system. The board
3 may employ legal counsel, which counsel shall be selected by the
4 board with the approval of the Attorney General.

5 Section 10. Exemptions.--(a) The provisions of this act
6 governing the procedures for designating or approving a firm
7 shall not apply to:

8 (1) Contracts not in excess of ten thousand dollars
9 (\$10,000): Provided, That the contract is not for the purpose of
10 conducting studies which in the opinion of the board, are
11 preliminary or feasibility studies, in which case the act
12 applies.

13 (2) Those contracts for professional services for public
14 works projects necessitated by public emergency upon
15 certification by the board chairman that a public emergency
16 exists.

17 (b) When the provisions of this act do not apply because of
18 clauses (1) or (2) of this section, contracts for professional
19 services shall be negotiated directly between the firm and the
20 agency, and shall be awarded at the sole discretion of the
21 official in charge of the agency. Such exercise of discretion is
22 subject to review by the board for either misuse or abuse.

23 Section 11. Prohibitions.--(a) No firm shall employ, retain,
24 or otherwise engage any individual, partnership, association,
25 corporation, or other entity to solicit or secure any
26 professional service contract for any public works project for
27 which State funds are directly or indirectly expended: Provided
28 however, That a bona fide employee of a firm who is employed
29 solely by said firm may so solicit or secure such contract.

30 (b) No firm shall pay, or offer or agree to pay, any

1 individual, partnership, association, corporation, or other
2 entity any fee, compensation, percentage, gift or any other
3 thing of value contingent upon or resulting from the designation
4 or approval of a firm by the board.

5 (c) No firm, or any officer, employee, or shareholder in any
6 firm shall hold any interest whatever in any manufacturer or
7 supplier of any goods used in any public works project for which
8 said firm holds a professional service contract, nor shall any
9 firm hold any interest in any other contractor or subcontractor
10 who is engaged in the public works project for which said firm
11 holds a professional service contract.

12 (d) No agency official, whether or not such agency official
13 is to be paid, has been offered or has been paid any fee,
14 compensation, percentage, gift or any other thing of value from
15 any firm, individual, partnership, association, corporation or
16 other entity which is contingent upon or results from the award
17 of any professional service contract, shall offer to solicit or
18 secure or solicit or secure any professional service contract
19 for any public works project for which State funds are, directly
20 or indirectly, expended.

21 (e) Each professional services contract entered into between
22 any agency and any firm shall contain the following clause:
23 "(Name of firm) warrants that the firm has not violated any
24 provisions of subsections (a), (b) or (c) of section 11 of the
25 'Public Works Professional Services Act.'"

26 Section 12. Penalties.--(a) Any firm, which violates any of
27 the provisions of subsections (a), (b) and (c) of section 11 of
28 this act, shall be subject to all of the following penalties:

29 (1) Guilty of a misdemeanor of the third degree and shall
30 pay a fine of not more than two thousand five hundred dollars

1 (\$2,500), or to undergo imprisonment for not more than one year
2 or both.

3 (2) Enable the contracting agency to terminate the contract
4 without further liability to the Commonwealth or the agency and
5 in addition the firm shall return to the agency any and all
6 compensation paid.

7 (3) The firm shall also be banned for a period of five years
8 from the date of conviction in a court of competent jurisdiction
9 from entering a contract for professional services and from
10 engaging in any other business whatever involving public works
11 projects for any public agency. The board shall inform the
12 Federal Government and all other states of the ban imposed on
13 the firm.

14 (b) Any agency official who shall violate any provision of
15 subsection (d) of section 11 of this act shall be guilty of a
16 misdemeanor of the third degree and subject to a fine of not
17 more than two thousand five hundred dollars (\$2,500), or to
18 undergo imprisonment of one year or both.

19 Section 13. Validity of Existing Contracts.--Nothing herein
20 shall affect the validity of any contract in existence at the
21 effective date of this act.

22 Section 14. Appeals.--The decisions of the board shall be
23 appealable to the Commonwealth Court within thirty days of the
24 decision and the appeal shall be only for an abuse of discretion
25 by the board.

26 Section 15. Appropriation.--The sum of five hundred thousand
27 dollars (\$500,000) or as much as may be necessary is hereby
28 specifically appropriated to the Public Works Professional
29 Services Board to implement the provisions of this act.

30 Section 16. Repealer.--All other acts and parts of acts

1 inconsistent with this act are repealed to the extent of the
2 inconsistency.

3 Section 17. Effective Date.--This act shall take effect
4 January 1, 1975.