

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, RAFFERTY AND MENSCH,
JANUARY 23, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JANUARY 27, 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; and, in source selection and contract
4 formation, further providing for sole source procurement and
5 for emergency procurement AND PROVIDING FOR LEGAL SERVICES <--
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}] THREE quotes shall be solicited. A <--
28 written 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 SECTION TO READ: <--

5 § 544. LEGAL SERVICES CONTRACTS.

6 (A) GENERAL RULE.--A PURCHASING AGENCY SHALL DETERMINE THE
7 PAYMENT METHOD TO BE USED PURSUANT TO A LEGAL SERVICES CONTRACT
8 ENTERED INTO UNDER SECTION 512.1 (RELATING TO COMPETITIVE
9 ELECTRONIC AUCTION BIDDING), 515 (RELATING TO SOLE SOURCE
10 PROCUREMENT) OR 518 (RELATING TO COMPETITIVE SELECTION
11 PROCEDURES FOR CERTAIN SERVICES).

12 (B) CONTRACT.--THE METHOD OF COMPENSATION DETERMINED UNDER
13 SUBSECTION (A) SHALL BE PART OF THE CONTRACT FOR LEGAL SERVICES.

14 (C) CONTINGENT FEE CONTRACTS.--THE FOLLOWING SHALL APPLY:

15 (1) IN ORDER TO ENTER INTO A LEGAL SERVICES CONTRACT
16 PAID ON A CONTINGENT FEE BASIS, THE PURCHASING AGENCY SHALL
17 MAKE A WRITTEN DETERMINATION THAT PAYMENT ON A CONTINGENT FEE
18 BASIS IS ALL OF THE FOLLOWING:

19 (I) FEASIBLE AND EFFICIENT.

20 (II) IN THE BEST INTEREST OF THE COMMONWEALTH.

21 (2) CONTINGENT FEE CONTRACTS UNDER THIS SUBSECTION SHALL
22 COMPLY WITH ALL OF THE FOLLOWING:

23 ~~(I) COMPENSATION SHALL NOT EXCEED \$50,000,000 IN~~ <--
24 ~~TOTAL OR 25% IN THE AGGREGATE OF AN AWARD OR SETTLEMENT~~
25 ~~IN FAVOR OF THE COMMONWEALTH, WHICHEVER IS LESS.~~

26 (I) COMPENSATION SHALL NOT EXCEED THE LESSER OF THE <--
27 FOLLOWING:

28 (A) FIFTY MILLION DOLLARS, WHICH SHALL BE
29 ADJUSTED ANNUALLY FOR INFLATION BEGINNING JANUARY 1,
30 2018, AND EACH JANUARY 1 THEREAFTER, TO REFLECT THE

1 PERCENTAGE CHANGE IN THE CONSUMER PRICE INDEX FOR ALL
2 URBAN CONSUMERS FOR THE PENNSYLVANIA, NEW JERSEY,
3 DELAWARE AND MARYLAND AREA FOR THE MOST RECENT 12-
4 MONTH PERIOD FOR WHICH FIGURES HAVE BEEN OFFICIALLY
5 REPORTED BY THE UNITED STATES DEPARTMENT OF LABOR,
6 BUREAU OF LABOR STATISTICS; OR

7 (B) TWENTY-FIVE PERCENT IN THE AGGREGATE OF AN
8 AWARD OR SETTLEMENT IN FAVOR OF THE COMMONWEALTH.

9 (II) A CONTINGENT FEE SHALL NOT BE BASED ON A
10 PENALTY OR CIVIL FINE AWARDED OR AN AMOUNT ATTRIBUTABLE
11 TO A PENALTY OR CIVIL FINE.

12 (III) THE FOLLOWING PROVISIONS SHALL BE INCLUDED IN
13 THE CONTRACT:

14 (A) COMMONWEALTH ATTORNEYS DESIGNATED BY THE
15 HEAD OF THE PURCHASING AGENCY OR, IN THE CASE OF A <--
16 LEGAL SERVICES CONTRACT ENTERED INTO BY AN EXECUTIVE
17 AGENCY AS DEFINED IN SECTION 102 OF THE ACT OF
18 OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN AS THE
19 COMMONWEALTH ATTORNEYS ACT, DESIGNATED BY THE GENERAL
20 COUNSEL, SHALL RETAIN FINAL AUTHORITY OVER THE COURSE
21 AND CONDUCT OF THE LEGAL ACTION, INCLUDING AUTHORITY
22 TO:

23 (I) REVIEW AND APPROVE ALL COURT FILINGS,
24 INCLUDING BRIEFS, PLEADINGS, MOTIONS AND OTHER
25 MATERIALS.

26 (II) VETO ANY DECISION OF OUTSIDE COUNSEL.

27 (III) RETAIN THE ABILITY TO HAVE DIRECT
28 CONTACT WITH ANY PARTY TO THE ACTION.

29 (IV) PARTICIPATE IN ANY CONFERENCE CALL,
30 HEARING, TRIAL OR COMMONWEALTH SETTLEMENT.

1 (B) THE COMMONWEALTH SHALL MAINTAIN THE
2 EXCLUSIVE AUTHORITY TO ACCEPT A SETTLEMENT.

3 (C) A DETAILED DESCRIPTION OF THE EXPECTATIONS
4 FOR BOTH THE CONTRACTOR AND THE COMMONWEALTH.

5 (3) THIS SUBSECTION SHALL NOT APPLY TO CONTRACTS IN
6 WHICH THE GROSS AMOUNT OF THE AWARD OR SETTLEMENT IS LESS
7 THAN \$100,000.

8 (D) APPLICABILITY.--THIS SECTION SHALL NOT APPLY TO LEGAL <--
9 SERVICES CONTRACTS ENTERED INTO BY THE PUBLIC SCHOOL EMPLOYEES'
10 RETIREMENT SYSTEM OR THE STATE EMPLOYEES' RETIREMENT SYSTEM.

11 ~~(D)~~ (E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING <--
12 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
13 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

14 "COMMONWEALTH ATTORNEY." AN ATTORNEY AT LAW EMPLOYED BY THE
15 PURCHASING AGENCY WHO IS ELIGIBLE TO PARTICIPATE IN THE
16 RETIREMENT SYSTEM UNDER 71 PA.C.S. PT. XXV (RELATING TO
17 RETIREMENT FOR STATE EMPLOYEES AND OFFICERS).

18 "OUTSIDE COUNSEL." A PRIVATE ATTORNEY AT LAW, LAW FIRM,
19 PARTNERSHIP, ASSOCIATION OR PROFESSIONAL CORPORATION.

20 Section 3 4. This act shall take effect in 60 days. <--