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

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

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

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

§ 106.1. Public access to procurement records.

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

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

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

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

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

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

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

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

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

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

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

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

§ 515. Sole source procurement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 36

PROHIBITED CONTRACTS

Sec.

3601. Short title of chapter.

3602. Declaration of purpose.

3603. Definitions.

3604. Prohibition.

3605. Certification.

3606. Penalties for false certification.

§ 3601. Short title of chapter.

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

§ 3602. Declaration of purpose.

The General Assembly finds and declares as follows:

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

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

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

§ 3603. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the
context clearly indicates otherwise:

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

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

§ 3604. Prohibition.

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

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

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

§ 3605. Certification.

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

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§ 3606. Penalties for false certification.

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

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

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

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