

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2159 Session of
2021

INTRODUCED BY ORTITAY AND SCHLEGEL CULVER, DECEMBER 13, 2021

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF
REPRESENTATIVES, AS AMENDED, JANUARY 26, 2022

AN ACT

1 Amending Titles 35 (Health and Safety) and 62 (Procurement) of
2 the Pennsylvania Consolidated Statutes, in Commonwealth
3 services, further providing for laws suspended during
4 emergency assignments; in general provisions, further
5 providing for public access to procurement records; and, in
6 source selection and contract formation, further providing
7 for emergency procurement.

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

10 Section 1. Section 7308(a) of Title 35 of the Pennsylvania
11 Consolidated Statutes is amended to read:

12 § 7308. Laws suspended during emergency assignments.

13 (a) Commonwealth agencies.--In the case of a declaration of
14 a state of emergency by the Governor, Commonwealth agencies may
15 implement their emergency assignments without regard to
16 procedures required by other laws (except mandatory
17 constitutional requirements and the requirements under 62
18 Pa.C.S. (relating to procurement)) pertaining to the performance
19 of public work, entering into contracts, incurring of
20 obligations, employment of temporary workers, rental of

1 equipment, purchase of supplies and materials and expenditures
2 of public funds.

3 * * *

4 Section 2. Sections 106.1(b)(6), (7) and (8) and 516 of
5 Title 62 are amended to read:

6 § 106.1. Public access to procurement records.

7 * * *

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

13 * * *

14 (6) The written determinations required by section [516]
15 ~~516(g)~~ 516(F) (relating to emergency procurement) shall be <--
16 posted in advance, if feasible, but no later than seven
17 calendar days after authorization by the department or
18 independent purchasing agency.

19 (7) A contract resulting from a procurement under this
20 part or, in the case of section ~~516(f)~~ 516(E), an invoice, <--
21 shall be posted as soon as practicable upon its full
22 execution by the Commonwealth.

23 (8) Requests under section 515 or 516 to extend a
24 contract for which no further options, renewals or extensions
25 are available in the contract shall be posted for seven
26 calendar days for public comment prior to approval of the
27 request by the department or independent purchasing agency.
28 Upon approval of a request by the department or an
29 independent purchasing agency, the signed and written
30 determination required under section 515(b) or [516] ~~516(g)~~ <--

1 516(F) shall be posted.

2 * * *

3 § 516. Emergency procurement.

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

16 (a) Authorization.--The head of a purchasing agency may make
17 an emergency procurement for supply, service or construction
18 under this section.

19 (b) Requests by Commonwealth agencies.--For an emergency
20 procurement in which the department acts as the agent for a
21 Commonwealth agency, the Secretary of General Services may only
22 make an emergency procurement upon the written request of the
23 head of the Commonwealth agency.

24 ~~(c) Approval by committee. If an emergency procurement is~~ <--
25 ~~valued at more than \$1,000,000, the head of a purchasing agency~~
26 ~~may only make an emergency procurement upon approval by the~~
27 ~~Emergency Procurement Approval Committee established under~~
28 ~~subsection (h). Upon receipt of a request for an emergency~~
29 ~~procurement from the head of a purchasing agency, including a~~
30 ~~copy of all written determinations under subsection (g) and any~~

1 ~~other information requested by the committee, the committee~~
2 ~~shall approve the request if the request meets the requirements~~
3 ~~under this section.~~

4 ~~(d)~~ (C) Emergencies.--The head of a purchasing agency may <--
5 only make an emergency procurement when all of the following
6 occur:

7 (1) There exists a threat to public health, welfare or
8 safety.

9 (2) There exist circumstances outside the control of the
10 purchasing agency.

11 (3) The circumstances under paragraph (2) create an
12 urgency of need which does not permit the delay involved in
13 using an alternate and otherwise applicable competitive
14 method.

15 ~~(e)~~ (D) Quotes.--The head of a purchasing agency shall <--
16 solicit no fewer than two quotes for an emergency procurement,
17 unless the head of the purchasing agency determines, in writing,
18 that the circumstances of the emergency specified under
19 subsection ~~(d)~~ (C) make the solicitation of no fewer than two <--
20 quotes impractical.

21 ~~(f)~~ (E) Invoices.--The head of a purchasing agency may <--
22 authorize the payment of the consideration for the supply,
23 service or construction for an emergency procurement based on an
24 approved invoice if the head of the purchasing agency
25 determines, in writing, that the circumstances of the emergency
26 under subsection ~~(d)~~ (C) make the use of a contract impractical. <--

27 ~~(g)~~ (F) Written determinations.--In making an emergency <--
28 procurement, the head of a purchasing agency shall make the
29 following written determinations and shall include the written
30 determinations in the procurement file:

1 ~~(1) The basis for the emergency under subsection (d)~~ <--
2 ~~(C). A declaration of disaster emergency under 35 Pa.C.S. §~~ <--
3 ~~7301(c) (relating to general authority of Governor) may not~~
4 ~~serve as the written determination of the basis for the~~
5 ~~emergency.~~

6 ~~(2) How the emergency identified under paragraph (1)~~
7 ~~creates an urgency of need which does not permit the delay~~
8 ~~involved in using an alternate and otherwise applicable~~
9 ~~competitive method.~~

10 ~~(3) The basis for the selection of the contractor.~~

11 ~~(4) If applicable, a written determination under~~
12 ~~subsection (e) (D).~~ <--

13 ~~(5) If applicable, a written determination under~~
14 ~~subsection (f) (E).~~ <--

15 ~~(h) Emergency Procurement Approval Committee.~~ <--

16 ~~(1) The Emergency Procurement Approval Committee is~~
17 ~~established within the department. The committee shall be~~
18 ~~comprised of the following members:~~

19 ~~(i) One individual appointed by the Governor.~~

20 ~~(ii) One individual appointed by the President pro~~
21 ~~tempore of the Senate.~~

22 ~~(iii) One individual appointed by the Majority~~
23 ~~Leader of the Senate.~~

24 ~~(iv) One individual appointed by the Minority Leader~~
25 ~~of the Senate.~~

26 ~~(v) One individual appointed by the Speaker of the~~
27 ~~House.~~

28 ~~(vi) One individual appointed by the Majority Leader~~
29 ~~of the House of Representatives.~~

30 ~~(vii) One individual appointed by the Minority~~

1 ~~Leader of the House of Representatives.~~

2 ~~(2) Members of the committee shall serve at the pleasure~~
3 ~~of the appointing authority under paragraph (1).~~

4 ~~(3) The member appointed under paragraph (1)(i) shall~~
5 ~~serve as chair.~~

6 ~~(4) A meeting of the committee shall be called by the~~
7 ~~chair or upon the request of at least two members of the~~
8 ~~committee.~~

9 ~~(5) The consent of at least four members of the~~
10 ~~committee shall be required for an approval under subsection~~
11 ~~(c). If the committee does not vote to approve a request~~
12 ~~within 48 hours of the committee receiving a copy of all~~
13 ~~written determinations under subsection (g), the request~~
14 ~~shall be deemed disapproved.~~

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