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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1996

Session of  
2003

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INTRODUCED BY ADOLPH, BAKER, BARRAR, CAPPELLI, BARD, CIVERA,  
CRAHALLA, DAILEY, DENLINGER, GEORGE, GRUCELA, HARPER,  
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GEIST, GINGRICH, J. EVANS, S. MILLER, ARMSTRONG AND O'NEILL,  
SEPTEMBER 18, 2003

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AMENDMENTS TO SENATE AMENDMENTS, HOUSE OF REPRESENTATIVES,  
JULY 2, 2004

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AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, ~~adding provisions relating to commodity sector~~ <—  
3 ~~bundling; and~~ further providing FOR COOPERATIVE PURCHASING, <—  
4 FOR LEGISLATIVE REPORTS AND for guaranteed energy savings and  
5 contracts.

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

8 ~~Section 1. Section 103 of Title 62 of the Pennsylvania~~ <—  
9 ~~Consolidated Statutes is amended by adding a definition to read:~~  
10 ~~§ 103. Definitions.~~

11 ~~Subject to additional definitions contained in subsequent~~  
12 ~~provisions of this part which are applicable to specific~~  
13 ~~provisions of this part, the following words and phrases when~~  
14 ~~used in this part shall have the meanings given to them in this~~  
15 ~~section unless the context clearly indicates otherwise:~~

~~\* \* \*~~

~~"Bundling a commodity sector." Consolidating two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a request for proposal for a single contract that is likely to be unsuitable for award to a small business due to any of the following:~~

~~(1) The diversity, size or specialized nature of the elements of the performance specified.~~

~~(2) The aggregate dollar value of the anticipated award.~~

~~(3) The geographical dispersion of the contract performance sites.~~

~~(4) Any combination of the factors described in paragraphs (1), (2) and (3).~~

~~\* \* \*~~

~~Section 2. Title 62 is amended by adding a section to read:~~  
~~§ 109. Commodity sector bundling.~~

~~(a) Notice of intent to bundle commodity sector. Whenever the department prepares to issue a request for proposal that would have the effect of bundling a commodity sector, the department shall notify all vendors by first class mail and publish the notification in the Pennsylvania Bulletin of its intent to bundle the commodity sector at least 120 days prior to the issuance of the request for proposal. The notification shall also include the draft request for proposal and a solicitation for comments on the proposal. Such comments shall be accepted up to 60 days after the notice is mailed or published, whichever is later.~~

~~(b) Summary of comments. After receiving comments as a result of the notification under subsection (a), the department~~

~~shall prepare a detailed summary of the comments and make the summary available for public inspection, including posting the summary on the department's publicly accessible World Wide Web site. The summary shall be made available no later than 30 days after the comment deadline in subsection (a).~~

~~(c) Finalized request. No sooner than 30 days after the summary is made available to the public, the department shall publish a finalized request for proposal in the Pennsylvania Bulletin.~~

~~(d) Time to submit proposals. Notwithstanding any other provision of this part, on a request for proposal that would have the effect of bundling a commodity sector, the department shall provide at least 90 days from issuance of the request for proposals to be submitted.~~

~~Section 3. Sections 3752, 3753 and 3754 of Title 62 are amended to read:~~

SECTION 1. SECTIONS 1902, 2107, 3752, 3753 AND 3754 OF TITLE 62 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ: <—

§ 1902. COOPERATIVE PURCHASING AUTHORIZED.

A PUBLIC PROCUREMENT UNIT MAY EITHER PARTICIPATE IN, SPONSOR, CONDUCT OR ADMINISTER A COOPERATIVE PURCHASING AGREEMENT FOR THE PROCUREMENT OF ANY SUPPLIES, SERVICES OR CONSTRUCTION WITH ONE OR MORE PUBLIC PROCUREMENT UNITS OR EXTERNAL PROCUREMENT ACTIVITIES IN ACCORDANCE WITH AN AGREEMENT ENTERED INTO BETWEEN THE PARTICIPANTS. THE DEPARTMENT OF GENERAL SERVICES IS AUTHORIZED TO ENTER INTO COOPERATIVE PURCHASING CONTRACTS SOLELY FOR THE USE OF LOCAL PUBLIC PROCUREMENT UNITS OR STATE-AFFILIATED ENTITIES. THE DEPARTMENT SHALL ENTER INTO COOPERATIVE PURCHASING CONTRACTS FOR THE USE OF LOCAL PUBLIC PROCUREMENT

1 UNITS OR STATE-AFFILIATED ENTITIES IF THE NUMBER OF CONTRACTORS  
2 UNDER A PREVIOUSLY EXISTING CONTRACT FOR THE SAME SUPPLY OR  
3 SERVICE IS REDUCED TO A SINGLE CONTRACTOR OR REDUCED BY MORE  
4 THAN 50% OF THE NUMBER EXISTING ON SEPTEMBER 30, 2003, AND SHALL  
5 AWARD SUCH CONTRACTS PURSUANT TO SECTION 517 (RELATING TO  
6 MULTIPLE AWARDS) USING AN INVITATION FOR BIDS. NOTHING IN THIS  
7 SECTION SHALL PROHIBIT A LOCAL PUBLIC PROCUREMENT UNIT OR STATE-  
8 AFFILIATED ENTITY FROM PARTICIPATING IN OR PROCURING FROM OTHER  
9 COOPERATIVE PURCHASING AGREEMENTS AWARDED BY THE DEPARTMENT.  
10 COOPERATIVE PURCHASING MAY INCLUDE, BUT IS NOT LIMITED TO, JOINT  
11 OR MULTIPARTY CONTRACTS BETWEEN PUBLIC PROCUREMENT UNITS AND  
12 OPEN-ENDED PURCHASING AGENCY CONTRACTS WHICH ARE MADE AVAILABLE  
13 TO LOCAL PUBLIC PROCUREMENT UNITS.

14 § 2107. REPORT TO GENERAL ASSEMBLY.

15 THE DEPARTMENT SHALL ANNUALLY, BEFORE OCTOBER 1, REPORT IN  
16 WRITING TO THE GENERAL ASSEMBLY CONCERNING THE AWARDING OF  
17 CONTRACTS TO SMALL AND DISADVANTAGED BUSINESSES DURING THE  
18 PRECEDING FISCAL YEAR. THE REPORT SHALL INCLUDE A LIST OF ALL  
19 SMALL AND DISADVANTAGED BUSINESSES THAT PARTICIPATED AS  
20 CONTRACTORS, SUBCONTRACTORS OR SUPPLIERS DURING THE PRECEDING  
21 FISCAL YEAR FOR CONTRACTS IF THE NUMBER OF CONTRACTORS UNDER A  
22 PREVIOUSLY EXISTING CONTRACT FOR THE SAME SUPPLY OR SERVICE IS  
23 REDUCED TO A SINGLE CONTRACTOR OR REDUCED BY MORE THAN 50% OF  
24 THE NUMBER EXISTING ON SEPTEMBER 30, 2003. IN PREPARING THE  
25 REPORT, THE DEPARTMENT SHALL VERIFY WHETHER COMMITMENTS MADE TO  
26 SMALL AND DISADVANTAGED BUSINESSES IN THE COURSE OF AWARDING  
27 THESE CONTRACTS HAVE BEEN MAINTAINED.

28 § 3752. Definitions.

29 The following words and phrases when used in this subchapter  
30 shall have the meanings given to them in this section unless the

context clearly indicates otherwise:

"Allowable costs." Equipment and project costs that:

(1) the governmental unit reasonably believes will be incurred during the term of the guaranteed energy savings contract; and

(2) are documented by industry engineering standards.

"Energy conservation measure." A [training] program or facility alteration designed to reduce energy consumption or operating costs. The term may include, without limitation:

(1) Insulation of the building structure or systems within the building.

(2) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption.

(3) Automated or computerized energy control systems.

(4) Heating, ventilating or air conditioning system modifications or replacements.

(5) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to applicable State or local building codes for the lighting system after the proposed modifications are made.

(6) Energy recovery systems.

(7) Systems that produce steam or forms of energy such as heat as well as electricity for use within a building or complex of buildings.

(8) Energy conservation measures that provide operating

cost reductions based on life cycle cost analysis.

(9) A training program or facility alteration that reduces energy consumption or reduces operating costs, including allowable costs, based on future reductions in labor costs or costs for contracted services.

(10) A facility alteration which includes expenditures that are required to properly implement other energy conservation measures.

(11) A program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, and/or use of alternative energy suppliers, such as, but not limited to:

(i) changes to more favorable rate schedules;

(ii) negotiation of lower rates, same supplier or new suppliers, where applicable; and

(iii) auditing of energy service billing and meters.

(12) The installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources, and manage energy-using equipment.

(13) Indoor air quality improvements.

(14) Daylighting systems.

(15) Renewable and/or on-site distributed power generation systems.

"Guaranteed energy savings contract." A contract for the evaluation and recommendation of energy conservation measures and for implementation of one or more such measures.

"Governmental unit." Any officer, employee, authority, board, bureau, commission, department, agency or institution of a government agency, including, but not limited to, any Commonwealth agency, State-aided institution or any county, city, district, municipal corporation, municipality, municipal

1 authority, political subdivision, school district, educational  
2 institution, borough, incorporated town, township, poor  
3 district, county institution district, other incorporated  
4 district or other public instrumentality which has the authority  
5 to contract for the construction, reconstruction, alteration or  
6 repair of any public building or other public work or public  
7 improvement, including, but not limited to, highway work.

8 "Industry engineering standards." Industry engineering  
9 standards may include the following:

10 (1) Life cycle costing.

11 (2) The R.S. Means estimated method developed by the  
12 R.S. Means Company.

13 (3) Historical data.

14 (4) Manufacturer's data.

15 (5) American Standard Heating Refrigeration Air-  
16 Conditioning Engineers (ASHRAE) standards.

17 "Qualified provider." A person or business which is  
18 responsible and capable of evaluating, recommending, designing,  
19 implementing and installing energy conservation measures as  
20 determined by the governmental unit.

21 § 3753. Contracting procedures.

22 (a) General rule.--Notwithstanding any other contrary or  
23 inconsistent provision of law, a governmental unit may enter  
24 into a guaranteed energy savings contract with a qualified  
25 provider in accordance with the provisions of this subchapter or  
26 in accordance with another statutorily authorized procurement  
27 process.

28 (b) Guaranteed energy savings contract.--If in accordance  
29 with applicable law the award of a contract by a governmental  
30 unit requires action at a public meeting, a governmental unit

1 may award a guaranteed energy savings contract at a public  
2 meeting if it has provided public notice in the manner  
3 prescribed [by the act of July 3, 1986 (P.L.388, No.84), known  
4 as the Sunshine Act,] under 65 Pa.C.S. Ch. 7 (relating to open  
5 meetings) the notice including the names of the parties to the  
6 contract and the purpose of the contract. For governmental units  
7 that are not required to take actions on contracts at public  
8 meetings, the governmental unit may award a guaranteed energy  
9 savings contract in accordance with the procedures adopted by  
10 the governmental unit and the requirements of all applicable  
11 laws.

12 (c) Competitive sealed proposals.--For the purpose of  
13 entering into a guaranteed energy savings contract, all  
14 governmental units are authorized to utilize the competitive  
15 sealed proposal method of procurement. The governmental unit  
16 shall evaluate any proposal that meets the requirements of the  
17 governmental unit and is timely submitted by a qualified  
18 provider. The request for proposals shall be announced through a  
19 public notice from the governmental unit which will administer  
20 the program. The request for proposals shall provide all  
21 interested parties with sufficient information necessary to  
22 submit a timely and responsive proposal.

23 (d) Selection and notice.--The governmental unit shall  
24 select the qualified provider that best meets the needs of the  
25 governmental unit in accordance with criteria established by the  
26 governmental unit. For governmental units that are not required  
27 to take actions on contracts at public meetings, the  
28 governmental unit shall provide public notice of the award of  
29 the guaranteed energy savings contract within 30 days in the  
30 Pennsylvania Bulletin. The notice shall include the names of the



1 parties to the contract and the purpose of the contract. For  
2 governmental units that are required to take actions on  
3 contracts at public meetings, the public notice shall be made at  
4 least ten days prior to the meeting. After reviewing the  
5 proposals pursuant to subsection (e), a governmental unit may  
6 enter into a guaranteed energy savings contract with a qualified  
7 provider if it finds that the amount it would spend on the  
8 energy conservation measures recommended in the proposal would  
9 not exceed the amount to be saved in both energy and operational  
10 costs within a [ten-year] 15-year period from the date of  
11 installation if the recommendations in the proposal were  
12 followed and the qualified provider provides a written guarantee  
13 that the energy or operating cost savings will meet or exceed  
14 the cost of the contract.

15 (e) Report.--

16 (1) Before the award of a guaranteed energy savings  
17 contract, the qualified provider shall provide a report as  
18 part of its proposal which shall be available for public  
19 inspection, summarizing estimates of all costs of  
20 installation, maintenance, repairs and debt service and  
21 estimates of the amounts by which energy or operating costs  
22 will be reduced.

23 (2) The report shall contain a listing of contractors  
24 and subcontractors to be used by the qualified provider with  
25 respect to the energy conservation measures.

26 (f) Bond.--A qualified provider to whom a contract is  
27 awarded shall give a sufficient bond to the governmental unit  
28 for its faithful performance. Commonwealth agencies shall obtain  
29 such bonds in accordance with the provisions of section 533  
30 (relating to security and performance bonds). All other

1 governmental units shall obtain such bonds in accordance with  
2 the act of December 20, 1967 (P.L.869, No.385), known as the  
3 Public Works Contractors' Bond Law of 1967.

4 (g) Award of contract.--Notwithstanding any other provision  
5 of law governing the letting of public contracts, a governmental  
6 unit may enter into a single guaranteed energy savings contract  
7 with each responsible provider selected in accordance with the  
8 provisions of this subchapter.

9 § 3754. Contract provisions.

10 (a) General rule.--A guaranteed energy savings contract may  
11 provide that all payments, except obligations on termination of  
12 the contract before its scheduled expiration, shall be made over  
13 a period of time. Every guaranteed energy savings contract shall  
14 provide that the savings in any year are guaranteed to the  
15 extent necessary to make payments under the contract during that  
16 year.

17 (b) Written guarantee.--A guaranteed energy savings contract  
18 shall include a written guarantee that savings will meet or  
19 exceed the cost of the energy conservation measures to be  
20 evaluated, recommended, designed, implemented or installed under  
21 the contract.

22 (c) Payments.--A guaranteed energy savings contract may  
23 provide for payments over a period of time not to exceed [ten]  
24 15 years and for the evaluation, recommendation, design,  
25 implementation and installation of energy conservation measures  
26 on an installment payment or lease purchase basis.

27 (d) Improvements not causally connected to an energy  
28 conservation measure.--An improvement that is not causally  
29 connected to an energy conservation measure may be included in a  
30 guaranteed energy savings contract if:

1       (1) the total value of the improvement does not exceed  
2       15% of the total value of the guaranteed energy savings  
3       contract; and

4       (2) either:

5           (i) the improvement is necessary to conform to a  
6           law, a rule or an ordinance; or

7           (ii) an analysis within the guaranteed energy  
8           savings contract demonstrates that there is an economic  
9           advantage to the governmental unit implementing an  
10          improvement as part of the guaranteed energy savings  
11          contract;

12       and the savings justification for the improvement is documented  
13       by industry engineering standards.

14       (e) Other expenditures.--A facility alteration which  
15       includes expenditures that are required to properly implement  
16       other energy conservation measures may be included as part of a  
17       guaranteed energy savings contract. In such case,  
18       notwithstanding any other provision of law, the installation of  
19       these additional measures may be supervised by the contractor  
20       performing the guaranteed energy savings contract.

21       Section 4 2. Title 62 is amended by adding a section to       <—  
22       read:

23       § 3758. Review of proposed capital improvement projects.

24       Prior to entering into a guaranteed energy savings contract  
25       every governmental unit shall review all proposed capital  
26       improvement projects for potential applicability of this  
27       subchapter, and shall consider proceeding with a guaranteed  
28       energy savings contract under this subchapter where appropriate.

29       ~~Section 5. The addition of 62 Pa.C.S. § 109 shall apply to~~       <—  
30       ~~any proposal for procurement of goods or services which would~~

1 ~~have the effect of "bundling a commodity sector," as defined in~~  
2 ~~62 Pa.C.S. § 103, and pursuant to which, on the effective date~~  
3 ~~of this section, a contract has not been finally executed.~~

4 ~~Section 6. This act shall take effect as follows:~~

5 ~~(1) The amendment or addition of 62 Pa.C.S. §§ 3752,~~  
6 ~~3753, 3754 and 3758 shall take effect in 60 days.~~

7 ~~(2) The remainder of this act shall take effect~~  
8 ~~immediately.~~

9 SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.

<—