
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1501 Session of
2007

INTRODUCED BY M. O'BRIEN, McCALL, BELFANTI, BENNINGTON,
BLACKWELL, BRENNAN, BUXTON, DeWEESE, EACHUS, FABRIZIO,
FRANKEL, FREEMAN, GEORGE, GIBBONS, GOODMAN, GRUCELA, HARKINS,
JAMES, JOSEPHS, KIRKLAND, KORTZ, KULA, MAHONEY, MARKOSEK,
MELIO, MOUL, MUNDY, MYERS, PASHINSKI, PETRONE, SANTONI, SEIP,
SIPTROTH, K. SMITH, SOLOBAY, SURRA, THOMAS, WALKO AND
YUDICHAK, JUNE 13, 2007

REFERRED TO COMMITTEE ON LABOR RELATIONS, JUNE 13, 2007

AN ACT

1 Providing for disclosure and monitoring of public service
2 contracts.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the Public
7 Services Disclosure Act.

8 Section 2. Declaration of policy.

9 The General Assembly finds and declares that using private
10 contractors to provide public services formerly provided by
11 public employees does not always promote the public interest. To
12 ensure that residents of this Commonwealth receive high-quality
13 public services at low costs, with due regard for the taxpayers
14 of this Commonwealth, the service recipients and the needs of
15 public and private workers, the General Assembly finds it

1 necessary to regulate privatization contracts.

2 Section 3. Definitions.

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

6 "Agency." Includes an executive office, department,
7 division, board, commission or other office or officer in the
8 executive branch of the government.

9 "Employee of a private contractor." Includes a worker
10 directly employed by a private contractor as well as an employee
11 of a subcontractor or an independent contractor that provides
12 supplies or services to a private contractor. The term includes
13 former employees of a private contractor or subcontractor and
14 former independent contractors.

15 "Person." Includes an individual, institution, Federal,
16 State or local governmental entity or any other public or
17 private entity.

18 "Private contractor." Any entity which enters into a
19 privatization contract.

20 "Privatization contract." An agreement or combination or
21 series of agreements by which a nongovernmental person or entity
22 agrees with an agency to provide services, valued at \$100,000 or
23 more, which are substantially similar to and in lieu of services
24 previously provided or that could have been provided in whole or
25 in part by regular employees of an agency.

26 "Public record." A public record as defined in section 1 of
27 the act of June 21, 1957 (P.L.390, No.212), referred to as the
28 Right-to-Know Law. The term includes any document relating to
29 the privatization contract or performance under the contract,
30 prepared, received or retained by a contractor or subcontractor

1 whether the document be handwritten, typed, tape-recorded,
2 printed, photocopied, photographed or recorded by any other
3 method.

4 "Services." Includes, with respect to a private contractor,
5 all aspects of the provision of services provided by a private
6 contractor pursuant to a privatization contract or any services
7 provided by a subcontractor of a private contractor.

8 "Subcontractor." A subcontractor of a private contractor for
9 work under a privatization contract or an amendment to a
10 privatization contract.

11 Section 4. Privatization contracts and requirements.

12 (a) General rule.--No agency shall make any privatization
13 contract and no privatization contract shall be valid unless the
14 agency and the contractor comply with each of the requirements
15 in this section and sections 5 through 6 and includes the
16 specified provisions in the privatization contract.

17 (b) Statement of services and analysis of bids for
18 privatization contract.--The agency shall prepare a specific
19 written statement of the services proposed to be the subject of
20 the privatization contract, including the specific quality and
21 standard of quality of the subject services. The agency shall
22 solicit competitive sealed bids for the privatization contracts
23 based upon this statement. The day designated by the agency upon
24 which it will accept these sealed bids shall be the same for any
25 and all parties. This statement shall be a public record, shall
26 be filed in the agency and shall be published in the
27 Pennsylvania Bulletin not later than 30 business days prior to
28 the date on which bids are due.

29 (c) Disclosure.--Every bid shall detail:

30 (1) The length of continuous employment of current

1 employees with the contractor by job classification without
2 identifying employee names. In addition, the contractor may
3 submit information detailing the relevant prior experience of
4 employees within each job classification. If the positions
5 identified by the bidder shall be newly created, the bid
6 shall identify the minimum requirements for prospective
7 applicants for each position.

8 (2) The annual rate of current staff turnover.

9 (3) The number of hours of training planned for each
10 employee in subject matters directly related to providing
11 services to residents of this Commonwealth and clients.

12 (4) Any legal complaints issued by an enforcement agency
13 for alleged violations of applicable Federal, State or local
14 rules, regulations or laws, including laws governing employee
15 safety and health, labor relations and other employment
16 requirements, and any citations, court findings or
17 administrative findings for violations of Federal, State or
18 local rules, regulations or laws. The information must
19 include the date, enforcement agency, the rule, law or
20 regulation involved and any additional information the
21 contractor may wish to submit.

22 (5) Any collective bargaining agreements or personnel
23 policies covering the employees to provide services to the
24 Commonwealth.

25 (6) Political contributions made by the bidder or any
26 employee in a management position with the bidding company,
27 to any elected officer of the State or member of the General
28 Assembly, during the four years prior to the due date of the
29 bid.

30 Section 5. Review of contract costs.

1 (a) Estimate of costs.--Any agency considering whether to
2 enter into a privatization contract shall prepare a
3 comprehensive written estimate of the costs of regular agency
4 employees' providing the subject services in the most cost-
5 efficient manner. The estimate shall include all direct and
6 indirect costs of regular agency employees providing the subject
7 services, including, but not limited to, pension, insurance and
8 other employee benefit costs. For the purpose of this estimate,
9 any employee organization may, at any time before the final day
10 for the agency to receive sealed bids pursuant to section 4(b),
11 propose amendments to any relevant collective bargaining
12 agreement to which it is a party. Any amendments shall take
13 effect only if necessary to reduce the cost estimate pursuant to
14 this paragraph below the contract cost. The estimate shall
15 remain confidential until after the final day for the agency to
16 receive sealed bids for the privatization contract at which time
17 the estimate shall become a public record, shall be filed in the
18 agency and shall be published in the Pennsylvania Bulletin.

19 (b) Evaluation of contractor performance and costs.--After
20 soliciting and receiving bids, the agency shall publicly
21 designate the bidder to which it proposes to award the
22 privatization contract. In selecting a contractor, the agency
23 shall consider the contractor's past performance and its record
24 of compliance with Federal, State and local laws, including the
25 disclosures as required in section 4(c). The agency shall
26 prepare a comprehensive written analysis of the contract cost
27 based upon the designated bid, specifically including the costs
28 of transition from public to private operation, of additional
29 unemployment and retirement benefits, if any, and of monitoring
30 and otherwise administering contract performance. If the

1 designated bidder proposes to perform any or all of the contract
2 outside the boundaries of this Commonwealth, the contract shall
3 be increased by the amount of income tax revenue, if any, which
4 will be lost to the Commonwealth by the corresponding
5 elimination of agency employees, as determined by the Department
6 of Revenue to the extent that it is able to do so.

7 (c) Agency certification.--The head of the agency shall
8 certify in writing that:

9 (1) The agency has complied with all provisions of this
10 section and of all other applicable laws.

11 (2) The quality of the services to be provided by the
12 designated bidder is likely to satisfy the quality
13 requirements of the statement prepared pursuant to section
14 4(b) and to equal or exceed the quality of services which
15 could be provided by regular agency employees.

16 (3) The contract cost will be at least 10% less than the
17 estimated cost pursuant to subsection (a), taking into
18 account all comparable types of costs and all the additional
19 costs of the contract as specified in subsection (b).

20 (4) The proposed privatization contract is in the public
21 interest, in that it meets the applicable quality and fiscal
22 standards set forth in this act.

23 Any privatization contract entered into by an agency and the
24 agency certification described in this subsection shall be
25 public records subject to disclosure pursuant to the act of June
26 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know
27 Law.

28 Section 6. Monitoring and enforcement of privatization
29 contracts.

30 (a) Subcontracts and amendments to privatization

1 contracts.--

2 (1) No contractor shall award a subcontract for work
3 under a contract or for work under an amendment to a contract
4 without the agency's approval of:

5 (i) The selection of the subcontractor.

6 (ii) The provisions of the subcontract.

7 (2) Each contractor shall file a copy of each executed
8 subcontract or amendment to the subcontract with the agency,
9 which shall maintain the subcontract or amendment as a public
10 record, as defined under the act of June 21, 1957 (P.L.390,
11 No.212), referred to as the Right-to-Know Law.

12 (b) Submission of audits.--Any private contractor awarded a
13 privatization contract and any subcontractor to a private
14 contractor subject to these provisions shall file with the
15 agency copies of financial audits of the private contractor
16 prepared at least annually during the course of the contract
17 term.

18 (c) Access.--All privatization contracts shall include a
19 contract provision specifying that in order to determine
20 compliance with these principles as well as the contract, the
21 private contractor shall be required to provide the Commonwealth
22 or its agents, except where prohibited by Federal or State laws,
23 regulations or rules, reasonable access through representatives
24 of the private contractor, to facilities, records and employees
25 that are used in conjunction with the provision of contract
26 services.

27 (d) Performance standards.--The private contractor shall
28 submit a report, not less than annually during the term of the
29 privatization contract, detailing the extent to which the
30 contractor has achieved the specific quantity and standard of

1 quality of the subject services as specified by the agency
2 pursuant to section 4(b) and its compliance with all Federal,
3 State and local laws, including any complaints, citations or
4 findings issued by administrative agencies or courts.

5 (e) Enforcement.--The agency may seek contractual remedies
6 for any violation of a privatization contract. In addition, if a
7 contractor fails to comply with section 4(d), (f) or (g), any
8 person or entity aggrieved by the violation may bring a claim
9 for equitable and other relief, including back pay. In such a
10 suit, an aggrieved person or entity shall be entitled to costs
11 and attorney fees.

12 Section 19. Nonpreemption.

13 Nothing in this act preempts any other law and nothing in
14 this act shall be construed or interpreted to impair or diminish
15 in any way the authority of any locality, municipality or
16 subdivision to enact and enforce any law which provides
17 equivalent or greater protection for its employees.

18 Section 20. Applicability.

19 This act shall apply to any privatization contract entered
20 into after the effective date of this act.

21 Section 21. Effective date.

22 This act shall take effect in 60 days.