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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 903**      Session of  
2007

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INTRODUCED BY ORIE, FOLMER, WAUGH, RAFFERTY, ARMSTRONG, EARLL,  
ROBBINS AND REGOLA, JUNE 1, 2007

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SENATOR ARMSTRONG, APPROPRIATIONS, RE-REPORTED AS AMENDED,  
JUNE 26, 2008

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AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, further providing for contracts relating to  
3 consulting; AND MAKING A REPEAL RELATED TO FORM AND LEGALITY      <—  
4 REVIEW OF CONSULTING CONTRACTS.

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

7       Section 1. Sections 511 and 515 of Title 62 of the  
8 Pennsylvania Consolidated Statutes are amended to read:

9       § 511. Methods of source selection.

10       Unless otherwise authorized by law, all Commonwealth agency  
11 contracts shall be awarded by competitive sealed bidding under  
12 section 512 (relating to competitive sealed bidding) except as  
13 provided in:

14           Section 512.1 (relating to competitive electronic auction  
15 bidding).

16           Section 513 (relating to competitive sealed proposals).

17           Section 514 (relating to small procurements).

18           Section 515 (relating to sole source procurement).

1 Section 516 (relating to emergency procurement).

2 Section 517 (relating to multiple awards).

3 Section 518 (relating to competitive selection procedures  
4 for certain services).

5 Section 519 (relating to selection procedure for  
6 insurance and notary bonds).

7 Section 520 (relating to supplies manufactured and  
8 services performed by persons with disabilities).

9 Section 905 (relating to procurement of design  
10 professional services).

11 ~~Section 1105 (relating to consulting contracts under~~ <—  
12 ~~\$25,000 in value).~~

13 CHAPTER 11 (RELATING TO LEGAL BOND OR MANAGEMENT <—  
14 CONSULTING CONTRACTS).

15 § 515. Sole source procurement.

16 A contract may be awarded for a supply, service or  
17 construction item without competition if the contracting officer  
18 first determines in writing that one of the following conditions  
19 exists:

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

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

25 (3) The total cost of the supply, service, other than  
26 services under Chapter 11 (relating to legal, bond or  
27 management consulting contracts), or construction is less  
28 than the amount established by the department for small, no-  
29 bid procurements under section 514 (relating to small  
30 procurements).

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

3 (5) The services are to be provided by attorneys or  
4 litigation consultants selected by the Office of General  
5 Counsel, the Office of Attorney General, the Department of  
6 the Auditor General or the Treasury Department in connection  
7 with pending litigation against the Commonwealth.

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

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

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

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

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

25 The written determination authorizing sole source procurement  
26 shall be included in the contract file and shall be available  
27 for public inspection. With the exception of small procurements  
28 under section 514 and emergency procurements under section 516  
29 (relating to emergency procurement), if the sole source  
30 procurement is for a supply, except for computer software

1 updates under \$50,000, for which the department acts as  
2 purchasing agency, it must be approved by the Board of  
3 Commissioners of Public Grounds and Buildings prior to the award  
4 of a contract.

5 ~~Section 2. Title 62 is amended by adding a chapter to read:~~ <—

6 CHAPTER 11

7 SECTION 2. CHAPTER 11 HEADING OF TITLE 62 IS AMENDED AND THE <—  
8 CHAPTER IS AMENDED BY ADDING SECTIONS TO READ:

9 CHAPTER 11

10 [RESERVED)

11 LEGAL, BOND OR MANAGEMENT CONSULTING CONTRACTS

12 Sec.

13 1101. Short title of chapter.

14 1102. Definitions.

15 1103. Contract prohibitions.

16 1104. Qualifications, criteria and procedure.

17 1105. Consulting contracts under \$25,000 in value.

18 1106. Consulting contracts over \$25,000 in value.

19 1107. Campaign contributions.

20 1108. Public inspection.

21 § 1101. Short title of chapter.

22 This chapter shall be known and may be cited as the Openness  
23 in Consulting Contracts Act.

24 § 1102. Definitions.

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

28 "Business." Any corporation, partnership, sole  
29 proprietorship, firm, enterprise, franchise, association,  
30 organization, self-employed individual, holding company, joint

1 stock company, receivership, trust or any legal entity organized  
2 for profit.

3 "Consulting services." The provision, by independent  
4 contractors who receive a fee or compensation, of professional  
5 or expert advice, opinion or other advisory examination which  
6 involves the delivery of an end product consisting primarily of  
7 correspondence, graphs, drawings or other oral or written  
8 reports. The term shall include:

9 (1) Management consulting contracts designed to improve  
10 the effectiveness of management strategies, processes or  
11 operations by assessing needs, functions, plans and operating  
12 procedures.

13 (2) Legal consulting services that provide legal  
14 opinions, strategies or assessments of agency conduct, other  
15 than those related to pending litigation.

16 (3) Provision of legal services in connection with the  
17 sale or issuance of bonds authorized by law.

18 § 1103. Contract prohibitions.

19 ~~No Commonwealth agency, State affiliated entity or State~~ <—  
20 ~~related institution~~ NO EXECUTIVE OR INDEPENDENT AGENCY OF THE <—  
21 COMMONWEALTH may contract with any individual or business who is  
22 not an employee of such entity to provide legal, bond or  
23 management consulting services, unless such contracting meets  
24 the disclosure and other requirements of this chapter or is  
25 opened up to competitive bidding pursuant to this chapter TITLE. <—

26 ~~§ 1104. Qualifications, criteria and procedure.~~ <—

27 ~~If a Commonwealth agency, State affiliated entity or State~~  
28 ~~related institution has a need or anticipates a future need for~~  
29 ~~consulting services as defined by this chapter, the agency shall~~  
30 ~~promulgate and publish the minimum educational, experience and~~

~~1 other qualifications and criteria which must be met by any  
2 individual or business that desires to provide such services to  
3 the agency, entity or institution. The agency, entity or  
4 institution shall also promulgate and publish the procedure that  
5 must be followed by an individual or firm desiring to provide  
6 such services.~~

~~7 § 1105. Consulting contracts under \$25,000 in value.~~

~~8 Each Commonwealth agency, State affiliated entity or State  
9 related institution shall maintain a public registry for all  
10 individuals or businesses who have applied and meet the  
11 qualifications and criteria to provide legal, bond or management  
12 consulting contracts pursuant to this chapter. Contracts which  
13 will not exceed \$25,000 in value shall be assigned on an equal,  
14 rotating basis to the consultants on that registry.~~

~~15 § 1106. Consulting contracts over \$25,000 in value.~~

~~16 Consulting contracts for which the value may exceed \$25,000  
17 shall be awarded by competitive sealed bidding under section 512  
18 (relating to competitive sealed bidding).~~

~~19 § 1104. FORM AND LEGALITY REVIEW OF CONSULTING CONTRACTS.~~ ←

~~20 NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY,  
21 THE ATTORNEY GENERAL SHALL NOT DELEGATE ITS RESPONSIBILITY FOR  
22 FORM AND LEGALITY REVIEW PURSUANT TO THE ACT OF OCTOBER 15, 1980  
23 (P.L.950, NO.164), KNOWN AS THE COMMONWEALTH ATTORNEYS ACT, WITH  
24 REGARD TO CONTRACTS INVOLVING CONSULTING SERVICES. CONTRACTS  
25 INVOLVING CONSULTING SERVICES SHALL NOT BE APPROVED OR DEEMED  
26 APPROVED ABSENT REVIEW BY THE ATTORNEY GENERAL FOR FORM AND  
27 LEGALITY UNDER SECTION 204 OF THE COMMONWEALTH ATTORNEYS ACT.  
28 THE REVIEW UNDER THIS SECTION SHALL INCLUDE A REVIEW UNDER THE  
29 ACT OF JULY 19, 1957 (P.L.1017, NO.451), KNOWN AS THE STATE  
30 ADVERSE INTEREST ACT, AND 65 PA.C.S. PT. II (RELATING TO~~

1 ACCOUNTABILITY).

2 § ~~1107~~ 1105. Campaign contributions. <—

3 All individuals and businesses who perform work for State  
4 government under this chapter shall be required to report their  
5 campaign contributions as one condition of receiving future  
6 consulting contracts.

7 § ~~1108~~ 1106. Public inspection. <—

8 All information as to criteria, contracts awarded and  
9 contributions shall be made available for public inspection on  
10 the Internet.

11 SECTION 3. REPEALS ARE AS FOLLOWS: <—

12 (1) THE GENERAL ASSEMBLY DECLARES THAT THE REPEAL UNDER  
13 PARAGRAPH (2) IS NECESSARY TO EFFECTUATE THE ADDITION OF 62  
14 PA.C.S. § 1104.

15 (2) THE ACT OF OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN  
16 AS THE COMMONWEALTH ATTORNEYS ACT, IS REPEALED INsofar AS IT  
17 IS INCONSISTENT WITH THE PROVISIONS OF 62 PA.C.S. § 1104.

18 Section ~~3~~ 4. This act shall take effect in 60 days. <—