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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1021 Session of  
2011

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INTRODUCED BY KRIEGER, MARSICO, CALTAGIRONE, MAHONEY,  
VULAKOVICH, GINGRICH, HUTCHINSON, EVANKOVICH, REICHLEY,  
DUNBAR, REESE, TALLMAN, PETRARCA, HARRIS, MANN, ELLIS, BAKER,  
PICKETT, REED, EVERETT, GROVE, COHEN, METCALFE, METZGAR,  
GRELL, CREIGHTON, PYLE, ROAE, CUTLER, MUSTIO, SCHRODER,  
MILLER AND SONNEY, MARCH 14, 2011

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 14, 2011

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AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, further providing for competitive selection  
3 procedures for certain services.

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

6 Section 1. Section 518 of Title 62 of the Pennsylvania  
7 Consolidated Statutes is amended to read:

8 § 518. Competitive selection procedures for certain services.

9 (a) Conditions for use.--The services of accountants,  
10 clergy, physicians, lawyers, dentists and other professional  
11 services which are not performed by other Commonwealth employees  
12 shall be procured in accordance with this section except as  
13 authorized under section 514 (relating to small procurements)[,  
14 515 (relating to sole source procurement)] or 516 (relating to  
15 emergency procurement).

16 (b) Statement of qualifications.--Persons engaged in

1 providing the types of services specified in subsection (a) may  
2 submit statements of qualifications and expressions of interest  
3 in providing these services. The contracting officer may specify  
4 a uniform format for statements of qualifications. Persons may  
5 amend these statements at any time by filing a new statement.

6 (c) Request for proposals.--[Adequate notice of] When the  
7 need for the services specified in subsection (a) [shall be  
8 given by] exists, the purchasing agency shall solicit the  
9 services through a request for proposals. The request for  
10 proposals shall describe the services required, list the type of  
11 information required of each offeror [and], state the relative  
12 importance of the particular information and disclose the method  
13 of compensation.

14 (c.1) Method of compensation.--If the head of the  
15 contracting agency determines in writing that it is in the best  
16 interests of the Commonwealth for the services to be provided on  
17 a contingent fee basis, the head of the purchasing agency shall  
18 disclose in the request for proposals required by subsection (c)  
19 that the method of compensation for the procurement shall be on  
20 a contingent fee basis.

21 (c.2) Evaluation.--The relative importance of the evaluation  
22 factors shall be fixed prior to opening the proposals.

23 (d) Discussions.--The contracting officer may conduct  
24 discussions with any responsible offeror to determine the  
25 offeror's qualifications for further consideration. Discussions  
26 shall not disclose any information derived from proposals  
27 submitted by other offerors.

28 (e) [Award.--Award shall be made to the] Selection for  
29 negotiation.--The responsible offeror determined in writing by  
30 the contracting officer to be best qualified based on the

1 evaluation factors set forth in the request for proposals[.  
2 Fair] shall be selected for contract negotiations.

3 (f) Fee for services compensation.--If the offeror is to be  
4 compensated on a fee for services basis, fair and reasonable  
5 compensation shall be determined through negotiation. The rate  
6 of compensation shall not exceed the rate charged to other  
7 governmental entities. If compensation cannot be agreed upon  
8 with the best qualified responsible offeror, then negotiations  
9 will be formally terminated with the offeror. If proposals were  
10 submitted by one or more other responsible offerors,  
11 negotiations may be conducted with the other responsible offeror  
12 or responsible offerors in the order of their respective  
13 qualification ranking. [The contract may be awarded to the  
14 responsible offeror then ranked as best qualified if the amount  
15 of compensation is determined to be fair and reasonable.]

16 (g) Contingent fee compensation.--If the offeror is to be  
17 compensated on a contingent fee basis, fair and reasonable  
18 compensation shall be determined through negotiation.  
19 Compensation shall not exceed 20% of a portion of an award or  
20 settlement, or \$25,000,000, whichever is less. If compensation  
21 cannot be agreed upon with the best qualified responsible  
22 offeror, then negotiations will be formally terminated with the  
23 offeror. If proposals were submitted by one or more other  
24 responsible offerors, negotiations may be conducted with the  
25 other responsible offeror or responsible offerors in the order  
26 of their respective qualification ranking. By February 1 of each  
27 year, if a Commonwealth agency is party to contract in which the  
28 method of compensation is on a contingent fee basis, the head of  
29 that Commonwealth agency shall submit a report to the President  
30 Pro tempore of the Senate and the Speaker of the House of

1 Representatives. The report shall list for each contingent fee  
2 contract the parties to the contract, the nature of the  
3 contract, the date the contract was entered into, the date of  
4 termination, if any, and the rate of compensation.

5 (h) Contracts.--If an agreement was reached during  
6 negotiations, a contract may be entered into between the  
7 purchasing agency and the offeror. All contracts procuring  
8 services under this section shall be in writing and posted in  
9 accordance with Chapter 17 of the act of February 14, 2008  
10 (P.L.6, No.3) known as the Right-to-Know Law.

11 (i) Legal services contracts.--If the procurement is for  
12 legal services, in addition to the requirements of subsection  
13 (h), each contract for legal services shall do the following:

14 (1) Commonwealth attorneys shall retain control over the  
15 course and conduct of any legal action, retain the ability to  
16 have direct contact with any party to the action and  
17 participate in any conference call, hearing, trial or  
18 settlement conference.

19 (2) The contracting agency maintains the exclusive power  
20 to accept a settlement.

21 (j) Definition.--As used in this section, the term  
22 "commonwealth attorney" means an attorney employed by the  
23 contracting agency who is eligible to participate in the  
24 retirement system established by 71 Pa.C.S. Pt. XXV (relating to  
25 retirement for State employees and officers).

26 Section 2. This act shall take effect in 60 days.