

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1021 Session of 2011

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, SONNEY AND MURT, MARCH 14, 2011

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, MAY 3, 2011

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, further providing for SOLE SOURCE PROCUREMENT AND
3 FOR competitive selection 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 SECTION 1. SECTIONS 515 AND 518 OF TITLE 62 OF THE ←
9 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

10 § 515. SOLE SOURCE PROCUREMENT.

11 (A) DETERMINATION.--A CONTRACT MAY BE AWARDED FOR A SUPPLY,
12 SERVICE OR CONSTRUCTION ITEM WITHOUT COMPETITION IF THE
13 CONTRACTING OFFICER FIRST DETERMINES IN WRITING THAT ONE OF THE
14 FOLLOWING CONDITIONS EXISTS:

15 (1) ONLY A SINGLE CONTRACTOR IS CAPABLE OF PROVIDING THE

1 SUPPLY, SERVICE OR CONSTRUCTION.

2 (2) A FEDERAL OR STATE STATUTE OR FEDERAL REGULATION
3 EXEMPTS THE SUPPLY, SERVICE OR CONSTRUCTION FROM THE
4 COMPETITIVE PROCEDURE.

5 (3) THE TOTAL COST OF THE SUPPLY, SERVICE OR
6 CONSTRUCTION IS LESS THAN THE AMOUNT ESTABLISHED BY THE
7 DEPARTMENT FOR SMALL, NO-BID PROCUREMENTS UNDER SECTION 514
8 (RELATING TO SMALL PROCUREMENTS).

9 (4) IT IS CLEARLY NOT FEASIBLE TO AWARD THE CONTRACT FOR
10 SUPPLIES OR SERVICES ON A COMPETITIVE BASIS.

11 (5) THE SERVICES ARE TO BE PROVIDED BY ATTORNEYS OR
12 LITIGATION CONSULTANTS SELECTED BY THE OFFICE OF GENERAL
13 COUNSEL, THE OFFICE OF ATTORNEY GENERAL, THE DEPARTMENT OF
14 THE AUDITOR GENERAL OR THE TREASURY DEPARTMENT.

15 (6) THE SERVICES ARE TO BE PROVIDED BY EXPERT WITNESSES.

16 (7) THE SERVICES INVOLVE THE REPAIR, MODIFICATION OR
17 CALIBRATION OF EQUIPMENT AND THEY ARE TO BE PERFORMED BY THE
18 MANUFACTURER OF THE EQUIPMENT OR BY THE MANUFACTURER'S
19 AUTHORIZED DEALER, PROVIDED THE CONTRACTING OFFICER
20 DETERMINES THAT BIDDING IS NOT APPROPRIATE UNDER THE
21 CIRCUMSTANCES.

22 (8) THE CONTRACT IS FOR INVESTMENT ADVISORS OR MANAGERS
23 SELECTED BY THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM,
24 THE STATE EMPLOYEES' RETIREMENT SYSTEM OR A STATE-AFFILIATED
25 ENTITY.

26 (9) THE CONTRACT IS FOR FINANCIAL OR INVESTMENT EXPERTS
27 TO BE USED AND SELECTED BY THE TREASURY DEPARTMENT OR
28 FINANCIAL OR INVESTMENT EXPERTS SELECTED BY THE SECRETARY OF
29 THE BUDGET.

30 (10) THE CONTRACT FOR SUPPLIES OR SERVICES IS IN THE

1 BEST INTEREST OF THE COMMONWEALTH.
2 THE WRITTEN DETERMINATION AUTHORIZING SOLE SOURCE PROCUREMENT
3 SHALL BE INCLUDED IN THE CONTRACT FILE. WITH THE EXCEPTION OF
4 SMALL PROCUREMENTS UNDER SECTION 514 AND EMERGENCY PROCUREMENTS
5 UNDER SECTION 516 (RELATING TO EMERGENCY PROCUREMENT), IF THE
6 SOLE SOURCE PROCUREMENT IS FOR A SUPPLY, EXCEPT FOR COMPUTER
7 SOFTWARE UPDATES UNDER \$50,000, FOR WHICH THE DEPARTMENT ACTS AS
8 PURCHASING AGENCY, IT MUST BE APPROVED BY THE BOARD OF
9 COMMISSIONERS OF PUBLIC GROUNDS AND BUILDINGS PRIOR TO THE AWARD
10 OF A CONTRACT.

11 (B) LEGAL SERVICES CONTRACT.--THE FOLLOWING SHALL APPLY IN
12 THE CASE OF LEGAL SERVICES PROCURED UNDER SUBSECTION (A) (5), IN
13 WHICH THE ATTORNEYS OR LITIGATION CONSULTANTS WILL BE
14 COMPENSATED ON A CONTINGENT FEE BASIS:

15 (1) COMPENSATION SHALL NOT EXCEED 20% OF A PORTION OF AN
16 AWARD OR SETTLEMENT.

17 (2) BY FEBRUARY 1 OF EACH YEAR, THE HEAD OF ANY
18 PURCHASING AGENCY THAT IS PARTY TO A CONTRACT IN WHICH THE
19 METHOD OF COMPENSATION IS ON A CONTINGENT FEE BASIS SHALL
20 SUBMIT A REPORT TO THE CHAIRMAN AND MINORITY CHAIRMAN OF THE
21 STATE GOVERNMENT COMMITTEE OF THE SENATE AND THE CHAIRMAN AND
22 THE MINORITY CHAIRMAN OF THE STATE GOVERNMENT COMMITTEE OF
23 THE HOUSE OF REPRESENTATIVES. THE REPORT SHALL LIST FOR EACH
24 CONTINGENT FEE CONTRACT THE PARTIES TO THE CONTRACT, THE
25 NATURE OF THE CONTRACT, THE DATE THE CONTRACT WAS ENTERED
26 INTO, THE DATE OF TERMINATION, IF ANY, AND THE RATE OF
27 COMPENSATION.

28 (3) IN ADDITION TO THE REQUIREMENTS OF PARAGRAPHS (1)
29 AND (2) EACH CONTRACT FOR LEGAL SERVICES SHALL INCLUDE THE
30 FOLLOWING PROVISIONS:

1 (I) COMMONWEALTH ATTORNEYS DESIGNATED BY THE HEAD OF
2 THE PURCHASING AGENCY SHALL RETAIN CONTROL OVER THE
3 COURSE AND CONDUCT OF ANY LEGAL ACTION, RETAIN THE
4 ABILITY TO HAVE DIRECT CONTACT WITH ANY PARTY TO THE
5 ACTION AND PARTICIPATE IN ANY CONFERENCE CALL, HEARING,
6 TRIAL OR SETTLEMENT CONFERENCE.

7 (II) THE PURCHASING AGENCY SHALL MAINTAIN THE
8 EXCLUSIVE POWER TO ACCEPT A SETTLEMENT.

9 (III) NOTWITHSTANDING THE PROVISIONS OF
10 SUBPARAGRAPHS (I) AND (II), COMMONWEALTH ATTORNEYS SHALL
11 BE SUBJECT TO THE RULES OF PROFESSIONAL CONDUCT AS SET
12 FORTH BY THE SUPREME COURT IN ACCORDANCE WITH SECTION
13 10(C) OF ARTICLE V OF THE CONSTITUTION OF PENNSYLVANIA.

14 (C) DEFINITION.--AS USED IN THIS SECTION, THE TERM
15 "COMMONWEALTH ATTORNEY" MEANS AN ATTORNEY EMPLOYED BY THE
16 PURCHASING AGENCY WHO IS ELIGIBLE TO PARTICIPATE IN THE
17 RETIREMENT SYSTEM ESTABLISHED UNDER 71 PA.C.S. PT. XXV (RELATING
18 TO RETIREMENT FOR STATE EMPLOYEES AND OFFICERS).

19 § 518. Competitive selection procedures for certain services.

20 (a) Conditions for use.--The services of accountants,
21 clergy, physicians, lawyers, dentists and other professional
22 services which are not performed by other Commonwealth employees
23 shall be procured in accordance with this section except as
24 authorized under section 514 (relating to small procurements)†, ←
25 515 (relating to sole source procurement)† or 516 (relating to ←
26 emergency procurement).

27 (b) Statement of qualifications.--Persons engaged in
28 providing the types of services specified in subsection (a) may
29 submit statements of qualifications and expressions of interest
30 in providing these services. The contracting officer may specify

1 a uniform format for statements of qualifications. Persons may
2 amend these statements at any time by filing a new statement.

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

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

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

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

25 (e) [Award.--Award shall be made to the] Selection for
26 negotiation.--The responsible offeror determined in writing by
27 the contracting officer to be best qualified based on the
28 evaluation factors set forth in the request for proposals[.
29 Fair] shall be selected for contract negotiations.

30 (f) Fee for services compensation.--If the offeror is to be

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

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

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

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

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

16 (1) Commonwealth attorneys DESIGNATED BY THE HEAD OF THE
17 PURCHASING AGENCY shall retain control over the course and
18 conduct of any legal action, retain the ability to have
19 direct contact with any party to the action and participate
20 in any conference call, hearing, trial or settlement
21 conference.

22 (2) The contracting agency maintains PURCHASING AGENCY
23 SHALL MAINTAIN the exclusive power to accept a settlement.

24 (3) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (1) AND
25 (2), COMMONWEALTH ATTORNEYS SHALL BE SUBJECT TO THE RULES OF
26 PROFESSIONAL CONDUCT AS SET FORTH BY THE SUPREME COURT IN
27 ACCORDANCE WITH SECTION 10(C) OF ARTICLE V OF THE
28 CONSTITUTION OF PENNSYLVANIA.

29 (j) Definition.--As used in this section, the term
30 "commonwealth attorney" means an attorney employed by the

1 contracting agency who is eligible to participate in the
2 retirement system established by 71 Pa.C.S. Pt. XXV (relating to
3 retirement for State employees and officers).

4 SECTION 2. THE AMENDMENT OF 62 PA.C.S. §§ 515 AND 518 SHALL ←
5 APPLY TO CONTRACTS SOLICITED OR ENTERED INTO ON OR AFTER THE
6 EFFECTIVE DATE OF THIS SECTION.

7 Section 2 3. This act shall take effect in 60 days. ←