
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 102 Session of
2011

INTRODUCED BY ORIE, PILEGGI, ROBBINS, BROWNE, ERICKSON, VOGEL,
PICCOLA, ARGALL, YAW, FOLMER, RAFFERTY, SMUCKER,
EICHELBERGER, FARNESE, TOMLINSON, KASUNIC, BAKER, ALLOWAY,
WILLIAMS, WASHINGTON, BRUBAKER, PIPPY, VANCE, WAUGH, MENSCH,
EARLL, WARD, WOZNIAK AND KITCHEN, FEBRUARY 14, 2011

REFERRED TO STATE GOVERNMENT, FEBRUARY 14, 2011

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, in procurement organization, providing for review
3 of contracts; in source selection and contract formation,
4 further providing for sole source procurement; providing for
5 procurement of professional services; and, in ethics in
6 public contracting, providing for disclosure.

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

9 Section 1. Title 62 of the Pennsylvania Consolidated
10 Statutes is amended by adding a section to read:

11 § 313. Review of contracts.

12 (a) Delegation prohibited.--

13 (1) Notwithstanding any other provision of law, the
14 Attorney General may not delegate his responsibility to
15 review each contract for form and legality under section 204
16 of the act of October 15, 1980 (P.L.950, No.164), known as
17 the Commonwealth Attorneys Act, including contracts under
18 section 515.1 (relating to procurement of professional

1 services).

2 (2) No contract shall be approved or deemed approved
3 absent review under this section.

4 (b) Review.--The Attorney General shall review each contract
5 for legality under the act of July 19, 1957 (P.L.1017, No.451),
6 known as the State Adverse Interest Act.

7 Section 2. Section 515 of Title 62 is amended to read:

8 § 515. Sole source procurement.

9 A contract may be awarded for a supply, service or
10 construction item without competition if the contracting officer
11 first determines in writing that the contract is in the best
12 interest of the Commonwealth and that one of the following
13 conditions exists:

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

16 (2) A Federal or State statute or Federal regulation
17 exempts the supply, service or construction from the
18 competitive procedure.

19 (3) The total cost of the supply, service or
20 construction is less than the amount established by the
21 department for small, no-bid procurements under section 514
22 (relating to small procurements).

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

25 (5) The services are to be provided by attorneys or
26 litigation consultants selected by the Office of General
27 Counsel, the Office of Attorney General, the Department of
28 the Auditor General or the Treasury Department that are
29 directly related to pending litigation or other matters
30 before a court.

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

2 (7) The services involve the repair, modification or
3 calibration of equipment and they are to be performed by the
4 manufacturer of the equipment or by the manufacturer's
5 authorized dealer, provided the contracting officer
6 determines that bidding is not appropriate under the
7 circumstances.

8 [(8) The contract is for investment advisors or managers
9 selected by the Public School Employees' Retirement System,
10 the State Employees' Retirement System or a State-affiliated
11 entity.

12 (9) The contract is for financial or investment experts
13 to be used and selected by the Treasury Department or
14 financial or investment experts selected by the Secretary of
15 the Budget.

16 (10) The contract for supplies or services is in the
17 best interest of the Commonwealth.]

18 The written determination authorizing sole source procurement
19 shall be included in the contract file and shall be available
20 for public inspection. With the exception of small procurements
21 under section 514 and emergency procurements under section 516
22 (relating to emergency procurement), if the sole source
23 procurement is for a supply, except for computer software
24 updates under \$50,000, for which the department acts as
25 purchasing agency, it must be approved by the Board of
26 Commissioners of Public Grounds and Buildings prior to the award
27 of a contract.

28 Section 3. Title 62 is amended by adding sections to read:
29 § 515.1. Procurement of professional services.

30 (a) Procedures.--

1 (1) The department shall develop procedures to select
2 the most qualified bidder for professional service contracts
3 with a State agency within the executive branch.

4 (2) The Senate, the House of Representatives and the
5 Administrative Office of Pennsylvania Courts shall adopt
6 procedures to select the most qualified bidder for
7 professional service contracts for their respective agency.

8 (3) The procedures shall ensure that the availability of
9 a contract for professional services is advertised to
10 potential bidders in a timely and efficient manner.
11 Procedures shall include applications and disclosure forms to
12 be used to submit a proposal for review to receive the award
13 of a professional services contract.

14 (b) Advertisement.--An advertisement for proposals under
15 this section shall set forth the following:

16 (1) The State agency seeking to enter into the contract.

17 (2) The services that are the subject of the contract
18 and specifications relating to the services.

19 (3) Procedures and requirements to be followed.

20 (4) The factors that will be used in scoring.

21 (c) Qualified evaluation committee.--Prior to the receipt of
22 an application for a professional services contract, the State
23 agency shall establish a qualified evaluation committee
24 comprised of Commonwealth employees to score the proposals
25 submitted. The committee may include individuals with expertise
26 from other State agencies within the executive branch.

27 (d) Conflict of interest regulations.--The department, the
28 Senate, the House of Representatives and the Administrative
29 Office of Pennsylvania Courts shall each promulgate regulations
30 relating to potential conflicts of interest in the review of

1 proposals or negotiation of contracts under this section. The
2 regulations shall include restrictions on the participation by a
3 former employee of a contractor in the review of a proposal or
4 negotiation of a contract with that contractor.

5 (e) Public information.--Following the award of a contract
6 under this section, all applications and disclosure forms shall
7 be public except for proprietary information or other
8 information protected by law.

9 (f) Increase.--A professional services contract shall not be
10 amended to increase the cost by more than 10% or \$10,000,
11 whichever is greater, unless the increase and a justification
12 statement is posted on the State agency's Internet website at
13 least ten days prior to the amendment of the contract.

14 (g) Award of contract to most qualified bidder.--

15 (1) A contract under this section shall be awarded on
16 the basis of multiple factors which shall be scored by the
17 qualified evaluation committee. The State agency shall review
18 the scoring system and ensure that the scoring system will
19 not improperly steer a contract to a particular firm.

20 (2) Factors used by an agency in the scoring process
21 shall include the following:

22 (i) The background, qualifications and skills of the
23 firm and its staff.

24 (ii) The firm's degree of expertise concerning the
25 subject of the proposed contract.

26 (iii) The experience of the firm.

27 (iv) The rate or price to be charged.

28 (v) The experience of the contractor with government
29 agencies, including agencies in other jurisdictions.

30 (vi) The firm's proposed approach to the issues

1 raised in the advertisement and all specifications and
2 requirements.

3 (vii) The firm's ability to meet the requirements of
4 the project at issue to include experience and
5 qualifications on projects of similar size and
6 complexity.

7 (viii) References.

8 (ix) Interviews with firm members.

9 (x) A review of the applicant's criminal history
10 record.

11 (xi) Geographic location of the firm's offices.

12 (h) Notice and summary.--

13 (1) The relevant factors that resulted in the award of
14 the contract shall be summarized in a written statement to be
15 included in the award of the contract.

16 (2) Within ten days of the award of the contract, the
17 application, a summary of the basis for the award and all
18 required disclosures shall be transmitted to all unsuccessful
19 applicants and shall be posted on the State agency's Internet
20 website for at least ten days prior to the execution of the
21 contract.

22 (i) Negotiations.--A State agency may engage in negotiations
23 with one or more applicants relating to terms and price of a
24 contract prior to the final award of the contract.

25 (j) Registry.--

26 (1) A State agency shall maintain a registry of
27 qualified individuals or firms to provide professional
28 services for contracts that do not exceed \$25,000 in value if
29 similar professional services are expected to be required on
30 numerous occasions over a period of time.

1 (2) The State agency shall develop and publish the
2 minimum educational experience and related qualifications
3 which must be met in order to be considered a qualified
4 bidder under this subsection.

5 (k) Void.--A contract for professional services that is not
6 applied for, reviewed and executed in accordance with this
7 section shall be void.

8 (l) Definitions.--For purposes of this section, the
9 following words and phrases shall have the meanings given to
10 them in this subsection unless the context clearly indicates
11 otherwise:

12 "Professional service." A service involving professional or
13 expert advice, opinion or examination to include:

14 (1) Management consulting services designed to improve
15 the effectiveness of management, management strategies,
16 processes or operations.

17 (2) All legal services except those directly related to
18 pending litigation.

19 (3) Services provided by financial or investment
20 managers, experts or advisors.

21 (4) Services of experts to provide advice, information
22 or recommendations relating to a policy or practice being
23 implemented or being reviewed by an agency for potential
24 adoption or enactment.

25 "State agency." A Commonwealth agency, the General Assembly
26 and the judiciary. The term shall not include the judiciary if
27 the courts have adopted a rule to provide for a similar review
28 of proposed contracts with a judicial agency.

29 § 2304. Disclosure.

30 (a) Contractors.--A person and any affiliated entity that

1 has one or more contracts with one or more Commonwealth
2 agencies, the General Assembly or the judiciary with an annual
3 total of \$25,000 or more in the aggregate shall disclose all
4 contributions to any political committee or candidate for
5 Statewide office or for the General Assembly, or to a political
6 action committee that makes contributions to a candidate for
7 Statewide office or for the General Assembly, made within the
8 last five years by an officer, director, owner of 5% or more or
9 executive-level employee of the person or affiliated entity.

10 (b) Bidders.--The provisions of subsection (a) shall apply
11 to a person and any affiliated entity that has submitted a bid,
12 responded to a request for proposal or otherwise solicited a
13 contract with a Commonwealth agency, the General Assembly or the
14 judiciary.

15 (c) Professional and sole source contracts.--This section
16 shall include all contracts under this title.

17 (d) Forms.--Disclosure shall be made on a form prepared by
18 the department, the Senate, the House of Representatives or the
19 Administrative Office of Pennsylvania Courts and shall be
20 attached to the contract. The form shall be posted with the
21 contract on the Internet website maintained by the Treasury
22 Department if the contract is required to be posted under the
23 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-
24 Know Law.

25 (e) Update of information.--During the term of the contract,
26 an updated form shall be filed annually to reflect additional
27 contributions to a political committee or candidate for
28 Statewide office or for the General Assembly or political
29 committee that makes contributions to a political candidate for
30 Statewide office or a member of the General Assembly.

1 (f) Penalties.--

2 (1) A person who knowingly makes a material misstatement
3 or omission in a disclosure form under this section shall be
4 subject to a civil penalty of up to \$10,000 per violation and
5 shall be prohibited from entering into a contract for a
6 period of up to three years.

7 (2) (i) An intentional violation shall result in the
8 contract being void.

9 (ii) All other violations shall make the contract
10 voidable.

11 (3) If a contractor or person who has submitted a bid
12 violates this section three or more times within a 36-month
13 period, all contracts between any Commonwealth agency, the
14 General Assembly or the judiciary and the contractor shall be
15 void and the contractor or person who has submitted a bid
16 shall be debarred for a period of three years from the date
17 of the last violation.

18 (g) Definitions.--For purposes of this section, the
19 following words and phrases shall have the meanings given to
20 them in this subsection unless the context clearly indicates
21 otherwise:

22 "Affiliated entity." Any of the following:

23 (1) A subsidiary or holding company of a business
24 entity.

25 (2) An organization recognized by the Internal Revenue
26 Service as a tax-exempt organization under section 501(c) of
27 the Internal Revenue Code of 1986 (Public Law 99-514, 26
28 U.S.C. § 501(c)) established by a business entity.

29 (3) A person or the person's spouse or minor child with:

30 (i) Financial interest of more than 5% of a business

1 entity or its subsidiary, holding company or organization
2 under paragraph (2).

3 (ii) A distributive share of 5% or more of a
4 business entity or its subsidiary, holding company or
5 organization under paragraph (2).

6 "Executive-level employee." An employee of a person or its
7 affiliated entity required to disclose contributions under
8 subsection (a) who can affect or influence the person's or
9 affiliated entity's actions, policies or decisions relating to
10 contracts and procurement.

11 Section 4. This act shall take effect in 60 days.