

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1170 Session of
2011

INTRODUCED BY BROWNE, RAFFERTY, BAKER, ORIE, ERICKSON, FOLMER,
PIPPY, MENSCH, FARNESE, BLAKE, SCHWANK AND YUDICHAK,
JUNE 21, 2011

REFERRED TO STATE GOVERNMENT, JUNE 21, 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. Sections 515 and 518 of Title 62 of the
7 Pennsylvania Consolidated Statutes are amended to read:

8 § 515. Sole source procurement.

9 (a) Determination.--A contract may be awarded for a supply,
10 service or construction item without competition if the
11 contracting officer first determines in writing that one of the
12 following conditions exists:

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

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

18 (3) The total cost of the supply, service or

1 construction is less than the amount established by the
2 department for small, no-bid procurements under section 514
3 (relating to small procurements).

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

6 (5) The services are to be provided by attorneys or
7 litigation consultants selected by the Office of General
8 Counsel, the Office of Attorney General, the Department of
9 the Auditor General or the Treasury Department.

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

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

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

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

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

27 The written determination authorizing sole source procurement
28 shall be included in the contract file. With the exception of
29 small procurements under section 514 and emergency procurements
30 under section 516 (relating to emergency procurement), if the

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

6 (b) Legal services contract.--The following shall apply in
7 the case of legal services procured under subsection (a) (5), in
8 which the attorneys or litigation consultants will be
9 compensated on a contingent fee basis:

10 (1) Compensation shall not exceed 20% of a portion of an
11 award or settlement.

12 (2) By February 1 of each year, the head of any
13 purchasing agency that is party to a contract in which the
14 method of compensation is on a contingent fee basis shall
15 submit a report to the chairman and minority chairman of the
16 State Government Committee of the Senate and the chairman and
17 the minority chairman of the State Government Committee of
18 the House of Representatives. The report shall list for each
19 contingent fee contract the parties to the contract, the
20 nature of the contract, the date the contract was entered
21 into, the date of termination, if any, and the rate of
22 compensation.

23 (3) In addition to the requirements of paragraphs (1)
24 and (2) each contract for legal services shall include the
25 following provisions:

26 (i) Commonwealth attorneys designated by the head of
27 the purchasing agency shall retain control over the
28 course and conduct of any legal action, retain the
29 ability to have direct contact with any party to the
30 action and participate in any conference call, hearing,

1 trial or settlement conference.

2 (ii) The purchasing agency shall maintain the
3 exclusive power to accept a settlement.

4 (iii) Notwithstanding the provisions of
5 subparagraphs (i) and (ii), Commonwealth attorneys shall
6 be subject to the Rules of Professional Conduct as set
7 forth by the Supreme Court in accordance with section
8 10(c) of Article V of the Constitution of Pennsylvania.

9 (c) Definition.--As used in this section, the term
10 "Commonwealth attorney" means an attorney employed by the
11 purchasing agency who is eligible to participate in the
12 retirement system established under 71 Pa.C.S. Pt. XXV (relating
13 to retirement for State employees and officers).

14 § 518. Competitive selection procedures for certain services.

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

22 (b) Statement of qualifications.--Persons engaged in
23 providing the types of services specified in subsection (a) may
24 submit statements of qualifications and expressions of interest
25 in providing these services. The contracting officer may specify
26 a uniform format for statements of qualifications. Persons may
27 amend these statements at any time by filing a new statement.

28 (c) Request for proposals.--[Adequate notice of] When the
29 need for the services specified in subsection (a) [shall be
30 given by] exists, the purchasing agency shall solicit the

1 services through a request for proposals. The request for
2 proposals shall describe the services required, list the type of
3 information required of each offeror [and], state the relative
4 importance of the particular information and disclose the method
5 of compensation.

6 (c.1) Method of compensation.--If the head of the purchasing
7 agency determines in writing that it is in the best interests of
8 the Commonwealth for the services to be provided on a contingent
9 fee basis, the head of the purchasing agency shall disclose in
10 the request for proposals required by subsection (c) that the
11 method of compensation for the procurement shall be on a
12 contingent fee basis.

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

15 (d) Discussions.--The contracting officer may conduct
16 discussions with any responsible offeror to determine the
17 offeror's qualifications for further consideration. Discussions
18 shall not disclose any information derived from proposals
19 submitted by other offerors.

20 (e) [Award.--Award shall be made to the] Selection for
21 negotiation.--The responsible offeror determined in writing by
22 the contracting officer to be best qualified based on the
23 evaluation factors set forth in the request for proposals[.
24 Fair] shall be selected for contract negotiations.

25 (f) Fee for services compensation.--If the offeror is to be
26 compensated on a fee for services basis, fair and reasonable
27 compensation shall be determined through negotiation. If
28 compensation cannot be agreed upon with the best qualified
29 responsible offeror, then negotiations will be formally
30 terminated with the offeror. If proposals were submitted by one

1 or more other responsible offerors, negotiations may be
2 conducted with the other responsible offeror or responsible
3 offerors in the order of their respective qualification ranking.
4 [The contract may be awarded to the responsible offeror then
5 ranked as best qualified if the amount of compensation is
6 determined to be fair and reasonable.]

7 (g) Contingent fee compensation.--If the offeror is to be
8 compensated on a contingent fee basis, fair and reasonable
9 compensation shall be determined through negotiation.
10 Compensation shall not exceed 20% of a portion of an award or
11 settlement. If compensation cannot be agreed upon with the best
12 qualified responsible offeror, then negotiations will be
13 formally terminated with the offeror. If proposals were
14 submitted by one or more other responsible offerors,
15 negotiations may be conducted with the other responsible offeror
16 or responsible offerors in the order of their respective
17 qualification ranking. By February 1 of each year, the head of
18 any purchasing agency that is party to contract in which the
19 method of compensation is on a contingent fee basis shall submit
20 a report to the chairman and minority chairman of the State
21 Government Committee of the Senate and the chairman and minority
22 chairman of the State Government Committee of the House of
23 Representatives. The report shall list for each contingent fee
24 contract the parties to the contract, the nature of the
25 contract, the date the contract was entered into, the date of
26 termination, if any, and the rate of compensation.

27 (h) Contracts.--If an agreement was reached during
28 negotiations, a contract may be entered into between the
29 purchasing agency and the offeror. All contracts procuring
30 services under this section shall be in writing and posted in

1 accordance with Chapter 17 of the act of February 14, 2008
2 (P.L.6, No.3), known as the Right-to-Know Law.

3 (i) Legal services contracts.--If the procurement is for
4 legal services, in addition to the requirements of subsection
5 (h), each contract for legal services shall include the
6 following provisions:

7 (1) Commonwealth attorneys designated by the head of the
8 purchasing agency shall retain control over the course and
9 conduct of any legal action, retain the ability to have
10 direct contact with any party to the action and participate
11 in any conference call, hearing, trial or settlement
12 conference.

13 (2) The purchasing agency shall maintain the exclusive
14 power to accept a settlement.

15 (3) Notwithstanding the provisions of paragraphs (1) and
16 (2), Commonwealth attorneys shall be subject to the Rules of
17 Professional Conduct as set forth by the Supreme Court in
18 accordance with section 10(c) of Article V of the
19 Constitution of Pennsylvania.

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

25 Section 2. The amendment of 62 Pa.C.S. §§ 515 and 518 shall
26 apply to contracts solicited or entered into on or after the
27 effective date of this section.

28 Section 3. This act shall take effect in 60 days.