

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1200 Session of
2011

INTRODUCED BY FOLMER, VOGEL, RAFFERTY, ERICKSON, ORIE, SMUCKER,
FARNESE, PILEGGI, ALLOWAY, BROWNE, WAUGH, FERLO, YUDICHAK,
BOSCOLA, MENSCH AND PICCOLA, JULY 21, 2011

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF
REPRESENTATIVES, AS AMENDED, SEPTEMBER 25, 2012

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, PROVIDING FOR PUBLIC ACCESS TO PROCUREMENT RECORDS;
3 AND further providing for COMPETITIVE SEALED PROPOSALS, FOR
4 sole source procurement and for emergency procurement. ←

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

7 ~~Section 1. Sections 515 and 516 of Title 62 of the~~ ←
8 ~~Pennsylvania Consolidated Statutes are amended to read:~~

9 SECTION 1. TITLE 62 OF THE PENNSYLVANIA CONSOLIDATED ←
10 STATUTES IS AMENDED BY ADDING A SECTION TO READ:
11 § 106.1. PUBLIC ACCESS TO PROCUREMENT RECORDS.

12 (A) GENERAL RULE.--RECORDS CONCERNING A PROCUREMENT SHALL BE
13 MADE PUBLIC, CONSISTENT WITH THE ACT OF FEBRUARY 14, 2008
14 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW.

15 (B) ACCESS FOR NONCOMPETITIVE CONTRACTS.--IF A PROCUREMENT
16 IS TO BE MADE UNDER SECTION 513 (RELATING TO COMPETITIVE SEALED
17 PROPOSALS), 515 (RELATING TO SOLE SOURCE PROCUREMENT), 517

1 (RELATING TO MULTIPLE AWARDS), 518 (RELATING TO COMPETITIVE
2 SELECTION PROCEDURES FOR CERTAIN SERVICES), 519 (RELATING TO
3 SELECTION PROCEDURE FOR INSURANCE AND NOTARY BONDS) OR 905
4 (RELATING TO PROCUREMENT OF DESIGN PROFESSIONAL SERVICES), SEVEN
5 CALENDAR DAYS PRIOR TO EXECUTION BY THE CONTRACTING OFFICIAL THE
6 PURCHASING AGENCY SHALL POST THE PROPOSED CONTRACT AND ANY
7 WRITTEN DETERMINATION MADE BY THE CONTRACTING OFFICER WHICH IS
8 RELATED TO THE CONTRACT ON ITS PUBLICLY ACCESSIBLE INTERNET
9 WEBSITE.

10 SECTION 2. SECTIONS 513(E), 515 AND 516 OF TITLE 62 ARE
11 AMENDED TO READ:

12 § 513. COMPETITIVE SEALED PROPOSALS.

13 * * *

14 (E) EVALUATION.--THE RELATIVE IMPORTANCE OF THE EVALUATION
15 FACTORS SHALL BE FIXED PRIOR TO OPENING THE PROPOSALS. A
16 COMMONWEALTH AGENCY IS REQUIRED TO INVITE ITS COMPTROLLER TO
17 PARTICIPATE IN THE EVALUATION AS A NONVOTING MEMBER OF ANY
18 EVALUATION COMMITTEE. NO INDIVIDUAL WHO HAS BEEN EMPLOYED BY AN
19 OFFEROR WITHIN THE LAST TWO YEARS MAY PARTICIPATE IN THE
20 EVALUATION OF PROPOSALS.

21 * * *

22 § 515. Sole source procurement.

23 (a) General rule.--A contract may be awarded for a supply,
24 service or construction item without competition if the
25 contracting officer first determines in writing that one of the
26 following conditions exists:

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

29 (2) A Federal or State statute or Federal regulation
30 exempts the supply, service or construction from the

1 competitive procedure.

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

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

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

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

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

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

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

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

29 ~~(b) Posting of determination on Internet. For procurements~~ ←
30 ~~made under subsection (a) (1), (2), (4) and (10), a~~

1 ~~determination to support the finding that the condition exists~~
2 ~~shall be posted on the purchasing agency's publicly accessible~~
3 ~~Internet website for seven calendar days for public comment~~
4 ~~prior to Commonwealth execution of the contract.~~

5 ~~(e)~~ (B) Written determination.--The written determination ←
6 authorizing sole source procurement shall be included in the
7 contract file. For procurements over \$250,000 made under
8 subsection (a)(10), the determination shall be signed by the
9 head of the purchasing agency.

10 ~~(d)~~ (C) Approval required by board of commissioners of ←
11 public grounds and buildings.-- With the exception of small
12 procurements under section 514 and emergency procurements under
13 section 516 (relating to emergency procurement), if the sole
14 source procurement is for a supply, except for computer software
15 updates under \$50,000, for which the department acts as
16 purchasing agency, it must be approved by the Board of
17 Commissioners of Public Grounds and Buildings prior to the award
18 of a contract.

19 § 516. Emergency procurement.

20 The head of a purchasing agency may make or authorize others
21 to make an emergency procurement when there exists a threat to
22 public health, welfare or safety or circumstances outside the
23 control of the agency create an urgency of need which does not
24 permit the delay involved in using more formal competitive
25 methods. Whenever practical, in the case of a procurement of a
26 supply, at least two [bids] quotes shall be solicited. A written
27 determination of the basis for the emergency and for the
28 selection of the particular contractor shall be included in the
29 [contract file.] procurement file and shall be posted on the
30 purchasing agency's publicly accessible Internet website within

1 seven calendar days after the emergency procurement is
2 authorized and shall remain on the website for a minimum of 30
3 days. No written contract shall be required. The supplier of the
4 supply, service or construction may be paid based on the
5 emergency approval and approved invoice.

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

