

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 369 Session of 2013

INTRODUCED BY FOLMER, WASHINGTON, FARNESE, YUDICHAK, VOGEL,
TARTAGLIONE, STACK, RAFFERTY, BROWNE, ERICKSON, MENSCH,
VULAKOVICH, FERLO, GORDNER, PILEGGI, WARD, VANCE, ALLOWAY,
WHITE, BAKER, WAUGH, EICHELBERGER, COSTA AND TEPLITZ,
JANUARY 31, 2013

REFERRED TO STATE GOVERNMENT, JANUARY 31, 2013

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. Title 62 of the Pennsylvania Consolidated
8 Statutes is amended by adding a section to read:

9 § 106.1. Public access to procurement records.

10 (a) General rule.--Records concerning a procurement shall be
11 made public, consistent with the act of February 14, 2008
12 (P.L.6, No.3), known as the Right-to-Know Law.

13 (b) Public posting and availability of procurement
14 information.--The purchasing agency shall post the following
15 procurement documents on the department's, or in the case of an
16 independent agency, its own publicly accessible Internet website
17 or otherwise make available in the manner indicated below:

1 (1) Public notice of an invitation for bids or request
2 for proposals may be given in accordance with section 512(c)
3 (1) (relating to competitive sealed bidding) or 513(b)
4 (relating to competitive sealed proposals) by posting the
5 invitation for bids or request for proposals, including if
6 applicable, the written determination required by section
7 513(a), on the date issued and until the closing date for
8 receipt of bids or proposals.

9 (2) Bid tabulations recording the name of each bidder
10 and bid amount in accordance with section 512(d) shall be
11 posted as soon as practicable after bid opening, unless the
12 purchasing agency elects to cancel the invitation for bids.

13 (3) Notices of award pursuant to an invitation for bids
14 shall be posted as soon as practicable after the purchasing
15 agency elects to make an award in accordance with section
16 512(g).

17 (4) The written determination required by section 513(g)
18 shall be posted upon receipt of the final negotiated contract
19 signed by the selected offeror. Subject to proper redaction
20 under the Right-to-Know Law, responsive proposals received by
21 the purchasing agency and until fully executed, the final
22 negotiated contract, are not required to be posted but shall
23 be made available to the public upon request.

24 (5) Requests to award a contract pursuant to section
25 515(a) (1), (2), (4) and (10) (relating to sole source
26 procurement) shall be posted for seven calendar days for
27 public comment prior to approval of the request by the
28 department or independent purchasing agency. Upon approval of
29 a request by the department or independent purchasing agency,
30 the signed and written determination required under section

1 515(b) shall be posted.

2 (6) The written determinations required by section 516
3 (relating to emergency procurement) shall be posted in
4 advance, if feasible, but no later than seven calendar days
5 after authorization by the department or independent
6 purchasing agency.

7 (7) A contract resulting from a procurement under this
8 part shall be posted as soon as practicable upon its full
9 execution by the Commonwealth.

10 (8) Requests pursuant to section 515 or 516 to extend a
11 contract for which no further options, renewals or extensions
12 are available in the contract shall be posted for seven
13 calendar days for public comment prior to approval of the
14 request by the department or independent purchasing agency.
15 Upon approval of a request by the department or an
16 independent purchasing agency, the signed and written
17 determination required under section 515(b) or 516 shall be
18 posted.

19 (c) Access and retention.--Procurement documents specified
20 under subsection (b) must be accessible on the Internet website
21 for a minimum of 30 days from posting and further retained in
22 accordance with section 563 (relating to retention of
23 procurement records) and applicable agency record retention
24 policies.

25 Section 2. Sections 513(e), 515 and 516 of Title 62 are
26 amended to read:

27 § 513. Competitive sealed proposals.

28 * * *

29 (e) Evaluation.--The relative importance of the evaluation
30 factors shall be fixed prior to opening the proposals. A

1 Commonwealth agency is required to invite its comptroller to
2 participate in the evaluation as a nonvoting member of any
3 evaluation committee. No individual who has been employed by an
4 offeror within the last two years may participate in the
5 evaluation of proposals.

6 * * *

7 § 515. Sole source procurement.

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

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

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

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

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

23 (5) The services are to be provided by attorneys or
24 litigation consultants selected by the Office of General
25 Counsel, the Office of Attorney General, the Department of
26 the Auditor General or the Treasury Department.

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

28 (7) The services involve the repair, modification or
29 calibration of equipment and they are to be performed by the
30 manufacturer of the equipment or by the manufacturer's

1 authorized dealer, provided the contracting officer
2 determines that bidding is not appropriate under the
3 circumstances.

4 (8) The contract is for investment advisors or managers
5 selected by the Public School Employees' Retirement System,
6 the State Employees' Retirement System or a State-affiliated
7 entity.

8 (9) The contract is for financial or investment experts
9 to be used and selected by the Treasury Department or
10 financial or investment experts selected by the Secretary of
11 the Budget.

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

14 (b) Written determination.--The written determination
15 authorizing sole source procurement shall be included in the
16 contract file. For procurements over \$250,000 made under
17 subsection (a)(10), the determination shall be signed by the
18 head of the purchasing agency.

19 (c) Approval required by board of commissioners of public
20 grounds and buildings.--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 § 516. Emergency procurement.

29 The head of a purchasing agency may make or authorize others
30 to make an emergency procurement when there exists a threat to

1 public health, welfare or safety or circumstances outside the
2 control of the agency create an urgency of need which does not
3 permit the delay involved in using more formal competitive
4 methods. Whenever practical, in the case of a procurement of a
5 supply, at least two [bids] quotes shall be solicited. A written
6 determination of the basis for the emergency and for the
7 selection of the particular contractor shall be included in the
8 [contract file.] procurement file. No written contract may be
9 required. The supplier of the supply, service or construction
10 may be paid based on the emergency approval and approved
11 invoice.

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