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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 163 Session of  
2019

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INTRODUCED BY EVERETT, DIAMOND, JAMES, RYAN, KAUFFMAN,  
BERNSTINE, MACKENZIE, KEEFER, OWLETT, IRVIN, ZIMMERMAN,  
F. KELLER, FRITZ, SAYLOR, RADER, ROTHMAN, COX AND WHEELAND,  
JANUARY 28, 2019

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 28, 2019

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AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, in general provisions, further providing for  
3 definitions; in procurement organization, further providing  
4 for specific construction powers, duties and procedures; in  
5 procurement of construction and design professional services,  
6 further providing for procurement of design professional  
7 services; providing for project delivery methods; and making  
8 a related repeal.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 Section 1. The definition of "design/build contract" in  
12 section 103 of Title 62 of the Pennsylvania Consolidated  
13 Statutes is amended and the section is amended by adding a  
14 definition to read:

15 § 103. Definitions.

16 Subject to additional definitions contained in subsequent  
17 provisions of this part which are applicable to specific  
18 provisions of this part, the following words and phrases when  
19 used in this part shall have the meanings given to them in this  
20 section unless the context clearly indicates otherwise:

1 \* \* \*

2 ["Design/build contract." A construction contract in which  
3 the contractor is responsible for both the design and  
4 construction of any public structure or building or other public  
5 improvements of any kind to any public real property.]

6 \* \* \*

7 "Project delivery method." As defined in section 3201  
8 (relating to definitions).

9 \* \* \*

10 Section 2. Sections 322(2) and (6) and 905(a) of Title 62  
11 are amended to read:

12 § 322. Specific construction powers, duties and procedures.

13 The following procedure shall apply to construction to be  
14 completed by the department which costs more than the amount  
15 established by the department under section 514 (relating to  
16 small procurements) for construction procurement unless the work  
17 is to be done by Commonwealth agency employees or by inmates or  
18 patients of a Commonwealth agency institution:

19 \* \* \*

20 (2) Promptly after the notice in such cases or promptly  
21 after any appropriation made to it becomes available, the  
22 department shall, if necessary, select an architect and/or an  
23 engineer in accordance with the selection procedures of  
24 section 905 (relating to procurement of design professional  
25 services) to design the work and prepare the specifications  
26 therefor. [The department may, as an alternative, enter into  
27 a design/build contract in accordance with section 511  
28 (relating to methods of source selection). Such design/build  
29 contracts shall be subject to the requirements of this act  
30 and the provisions of the act of August 15, 1961 (P.L.987,

1 No.442), known as the Pennsylvania Prevailing Wage Act.  
2 Design/build contracts shall also be subject to the act of  
3 May 1, 1913 (P.L.155, No.104), entitled "An act regulating  
4 the letting of certain contracts for the erection,  
5 construction, and alteration of public buildings," to the  
6 extent provided in paragraph (6).] The department may, as an  
7 alternative, enter into a project delivery method in  
8 accordance with section 511 (relating to methods of source  
9 selection). The project delivery method shall be subject to  
10 all of the following:

11 (i) The requirements of this part.

12 (ii) The act of August 15, 1961 (P.L.987, No.442),  
13 known as the Pennsylvania Prevailing Wage Act.

14 (iii) Chapter 32 (relating to project delivery  
15 methods) to the extent provided in paragraph (6).

16 \* \* \*

17 (6) For construction contracts where the total  
18 construction costs are less than \$25,000, the department  
19 shall not be required to comply with [the act of May 1, 1913  
20 (P.L.155, No.104), entitled "An act regulating the letting of  
21 certain contracts for the erection, construction, and  
22 alteration of public buildings,"] Chapter 32 and the  
23 department may award such contracts in accordance with  
24 section 511. All projects equal to or exceeding \$25,000 shall  
25 be subject to [the act of May 1, 1913 (P.L.155, No.104),  
26 entitled "An act regulating the letting of certain contracts  
27 for the erection, construction, and alteration of public  
28 buildings."] Chapter 32. Whenever the department enters into  
29 a single contract for a project, in the absence of good and  
30 sufficient reasons the contractor shall pay each

1 subcontractor, within 15 days of receipt of payment from the  
2 department, an amount equal to the percentage of completion  
3 allowed to the contractor on the account of the  
4 subcontractor's work. The contractor shall also require the  
5 subcontractor to make similar payments to his subcontractors.

6 \* \* \*

7 § 905. Procurement of design professional services.

8 (a) Applicability.--Design professional services shall be  
9 procured as provided in this section except as authorized by  
10 sections 514 (relating to small procurements), 515 (relating to  
11 sole source procurement) [and], 516 (relating to emergency  
12 procurement) and Chapter 32 (relating to project delivery  
13 methods).

14 \* \* \*

15 Section 3. Title 62 is amended by adding a chapter to read:

16 CHAPTER 32

17 PROJECT DELIVERY METHODS

18 Sec.

19 3201. Definitions.

20 3202. Utilization.

21 § 3201. Definitions.

22 The following words and phrases when used in this chapter  
23 shall have the meanings given to them in this section unless the  
24 context clearly indicates otherwise:

25 "Construction management at-risk." A project delivery method  
26 by which a person provides construction management services  
27 throughout the preconstruction and construction phases and which  
28 guarantees the cost of the project.

29 "Design-bid-build with multiple prime contractors." A  
30 project delivery method by which a government agency or a State-

1 related institution contracts for architectural and engineering  
2 design professional services and construction services under  
3 separate agreements.

4 "Design-bid-build with single prime contractor." A project  
5 delivery method by which a government agency or a State-related  
6 institution contracts for architectural and engineering design  
7 professional services and construction services under separate  
8 agreements, including preparation of a single agreement and  
9 specifications for construction services.

10 "Design-build." A project delivery method in which the  
11 contractor is responsible for both the design and construction  
12 of any public structure or building or other public improvements  
13 of any kind to any public real property.

14 "Project delivery method." Any of the following:

- 15 (1) Construction management at-risk.  
16 (2) Design-bid-build with multiple prime contractors.  
17 (3) Design-bid-build with single prime contractor.  
18 (4) Design-build.

19 § 3202. Utilization.

20 (a) Requirement.--Notwithstanding any other provision of  
21 law, a government agency or a State-related institution shall  
22 utilize a project delivery method for the procurement of  
23 construction services for the design, erection, construction and  
24 alteration of a public building in this Commonwealth if the  
25 total cost of the work exceeds \$4,000.

26 (b) Steel Products Procurement Act.--A contract awarded  
27 under this section shall comply with the act of March 3, 1978  
28 (P.L.6, No.3), known as the Steel Products Procurement Act.

29 Section 4. Repeals are as follows:

30 (1) The General Assembly declares that the repeal under

1 paragraph (2) is necessary to effectuate the amendment or  
2 addition of 62 Pa.C.S. §§ 322(2) and (6) and 3202.

3 (2) The act of May 1, 1913 (P.L.155, No.104), referred  
4 to as the Separations Act, is repealed.

5 Section 5. The addition of 62 Pa.C.S. § 3202 is a  
6 continuation of the act of May 1, 1913 (P.L.155, No.104),  
7 referred to as the Separations Act. Except as otherwise provided  
8 in 62 Pa.C.S. § 3202, all activities initiated under the  
9 Separations Act shall continue and remain in full force and  
10 effect and may be completed under 62 Pa.C.S. § 3202. Orders,  
11 regulations, rules and decisions which were made under the  
12 Separations Act and which are in effect on the effective date of  
13 this act shall remain in full force and effect until revoked,  
14 vacated or modified under 62 Pa.C.S. § 3202. Contracts,  
15 obligations and collective bargaining agreements entered into  
16 under the Separations Act are not affected nor impaired by the  
17 repeal of the Separations Act.

18 Section 6. This act shall take effect in 60 days.