

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 163 Session of 2019

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

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 19, 2019

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 REPEALING THE ACT OF MAY 1, 1913 (P.L.155, NO.104), ENTITLED "AN <--  
10 ACT REGULATING THE LETTING OF CERTAIN CONTRACTS FOR THE  
11 ERECTION, CONSTRUCTION, AND ALTERATION OF PUBLIC BUILDINGS,"  
12 AND MAKING RELATED REPEALS.  
13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:  
15 Section 1. ~~The definition of "design/build contract" in <--~~  
16 ~~section 103 of Title 62 of the Pennsylvania Consolidated~~  
17 ~~Statutes is amended and the section is amended by adding a~~  
18 ~~definition to read:~~  
19 ~~§ 103. Definitions.~~  
20 Subject to additional definitions contained in subsequent  
21 provisions of this part which are applicable to specific

1 ~~provisions of this part, the following words and phrases when~~  
2 ~~used in this part shall have the meanings given to them in this~~  
3 ~~section unless the context clearly indicates otherwise:~~

4 \* \* \*

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

9 \* \* \*

10 ~~"Project delivery method." As defined in section 3201-~~  
11 ~~(relating to definitions).~~

12 \* \* \*

13 ~~Section 2. Sections 322(2) and (6) and 905(a) of Title 62-~~  
14 ~~are amended to read:~~

15 ~~§ 322. Specific construction powers, duties and procedures.~~

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

22 \* \* \*

23 ~~(2) Promptly after the notice in such cases or promptly~~  
24 ~~after any appropriation made to it becomes available, the~~  
25 ~~department shall, if necessary, select an architect and/or an~~  
26 ~~engineer in accordance with the selection procedures of~~  
27 ~~section 905 (relating to procurement of design professional~~  
28 ~~services) to design the work and prepare the specifications~~  
29 ~~therefor. [The department may, as an alternative, enter into~~  
30 ~~a design/build contract in accordance with section 511-~~

1 ~~(relating to methods of source selection). Such design/build~~  
2 ~~contracts shall be subject to the requirements of this act~~  
3 ~~and the provisions of the act of August 15, 1961 (P.L.987,~~  
4 ~~No.442), known as the Pennsylvania Prevailing Wage Act.~~  
5 ~~Design/build contracts shall also be subject to the act of~~  
6 ~~May 1, 1913 (P.L.155, No.104), entitled "An act regulating~~  
7 ~~the letting of certain contracts for the erection,~~  
8 ~~construction, and alteration of public buildings," to the~~  
9 ~~extent provided in paragraph (6).] The department may, as an~~  
10 ~~alternative, enter into a project delivery method in~~  
11 ~~accordance with section 511 (relating to methods of source~~  
12 ~~selection). The project delivery method shall be subject to~~  
13 ~~all of the following:~~

14 ~~(i) The requirements of this part.~~

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

17 ~~(iii) Chapter 32 (relating to project delivery~~  
18 ~~methods) to the extent provided in paragraph (6).~~

19 \* \* \*

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

1 ~~buildings." Chapter 32. Whenever the department enters into~~  
2 ~~a single contract for a project, in the absence of good and~~  
3 ~~sufficient reasons the contractor shall pay each~~  
4 ~~subcontractor, within 15 days of receipt of payment from the~~  
5 ~~department, an amount equal to the percentage of completion~~  
6 ~~allowed to the contractor on the account of the~~  
7 ~~subcontractor's work. The contractor shall also require the~~  
8 ~~subcontractor to make similar payments to his subcontractors.~~

9 \* \* \*

10 ~~§ 905. Procurement of design professional services.~~

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

17 \* \* \*

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

19 ~~CHAPTER 32~~

20 ~~PROJECT DELIVERY METHODS~~

21 ~~Sec.~~

22 ~~3201. Definitions.~~

23 ~~3202. Utilization.~~

24 ~~§ 3201. Definitions.~~

25 ~~The following words and phrases when used in this chapter~~  
26 ~~shall have the meanings given to them in this section unless the~~  
27 ~~context clearly indicates otherwise:~~

28 ~~"Construction management at risk." A project delivery method~~  
29 ~~by which a person provides construction management services~~  
30 ~~throughout the preconstruction and construction phases and which~~

1 ~~guarantees the cost of the project.~~

2 ~~"Design bid build with multiple prime contractors." A~~  
3 ~~project delivery method by which a government agency or a State~~  
4 ~~related institution contracts for architectural and engineering~~  
5 ~~design professional services and construction services under~~  
6 ~~separate agreements.~~

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

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

17 ~~"Project delivery method." Any of the following:~~

- 18 ~~(1) Construction management at risk.~~  
19 ~~(2) Design bid build with multiple prime contractors.~~  
20 ~~(3) Design bid build with single prime contractor.~~  
21 ~~(4) Design build.~~

22 ~~§ 3202. Utilization.~~

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

29 ~~(b) Steel Products Procurement Act. A contract awarded~~  
30 ~~under this section shall comply with the act of March 3, 1978~~

1 ~~(P.L.6, No.3), known as the Steel Products Procurement Act.~~

2 ~~Section 4. Repeals are as follows:~~

3 ~~(1) The General Assembly declares that the repeal under~~  
4 ~~paragraph (2) is necessary to effectuate the amendment or~~  
5 ~~addition of 62 Pa.C.S. §§ 322(2) and (6) and 3202.~~

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

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

21 ~~Section 6. This act shall take effect in 60 days.~~

22 SECTION 1. THE ACT OF MAY 1, 1913 (P.L.155, NO.104),

<--

23 REFERRED TO AS THE SEPARATIONS ACT, IS REPEALED:

24 [AN ACT  
25 REGULATING THE LETTING OF CERTAIN CONTRACTS FOR THE ERECTION,  
26 CONSTRUCTION, AND ALTERATION OF PUBLIC BUILDINGS.  
27 SECTION 1. BE IT ENACTED, &C., THAT HEREAFTER IN THE  
28 PREPARATION OF SPECIFICATIONS FOR THE ERECTION, CONSTRUCTION,  
29 AND ALTERATION OF ANY PUBLIC BUILDING, WHEN THE ENTIRE COST OF  
30 SUCH WORK SHALL EXCEED FOUR THOUSAND DOLLARS, IT SHALL BE THE

1 DUTY OF THE ARCHITECT, ENGINEER, OR OTHER PERSON PREPARING SUCH  
2 SPECIFICATIONS, TO PREPARE SEPARATE SPECIFICATIONS FOR THE  
3 PLUMBING, HEATING, VENTILATING, AND ELECTRICAL WORK; AND IT  
4 SHALL BE THE DUTY OF THE PERSON OR PERSONS AUTHORIZED TO ENTER  
5 INTO CONTRACTS FOR THE ERECTION, CONSTRUCTION, OR ALTERATION OF  
6 SUCH PUBLIC BUILDINGS TO RECEIVE SEPARATE BIDS UPON EACH OF THE  
7 SAID BRANCHES OF WORK, AND TO AWARD THE CONTRACT FOR THE SAME TO  
8 THE LOWEST RESPONSIBLE BIDDER FOR EACH OF SAID BRANCHES.

9 EVERY CONTRACT FOR THE CONSTRUCTION, RECONSTRUCTION,  
10 ALTERATION, REPAIR, IMPROVEMENT OR MAINTENANCE OF PUBLIC WORKS  
11 SHALL COMPLY WITH THE PROVISIONS OF THE ACT OF MARCH 3, 1978  
12 (P.L.6, NO.3), KNOWN AS THE "STEEL PRODUCTS PROCUREMENT ACT."

13 SECTION 2. ALL ACTS OR PARTS OF ACTS INCONSISTENT HEREWITH  
14 ARE HEREBY REPEALED.]

15 SECTION 2. THE FOLLOWING ACTS AND PARTS OF ACTS ARE  
16 REPEALED:

17 (1) SECTION 1805 OF THE ACT OF JUNE 24, 1931 (P.L.1206,  
18 NO.331), KNOWN AS THE FIRST CLASS TOWNSHIP CODE.

19 (2) SECTION 3107 OF THE ACT OF MAY 1, 1933 (P.L.103,  
20 NO.69), KNOWN AS THE SECOND CLASS TOWNSHIP CODE.

21 (3) SECTION 751 OF THE ACT OF MARCH 10, 1949 (P.L.30,  
22 NO.14), KNOWN AS THE PUBLIC SCHOOL CODE OF 1949.

23 (4) SECTION 5 OF THE ACT OF MAY 27, 1953 (P.L.244,  
24 NO.34), ENTITLED "AN ACT RELATING TO AND REGULATING THE  
25 CONTRACTS OF INCORPORATED TOWNS AND PROVIDING PENALTIES."

26 (5) SECTION 2517 OF THE ACT OF JULY 28, 1953 (P.L.723,  
27 NO.230), KNOWN AS THE SECOND CLASS COUNTY CODE.

28 (6) SECTION 2317 OF THE ACT OF AUGUST 9, 1955 (P.L.323,  
29 NO.130), KNOWN AS THE COUNTY CODE.

30 (7) THE PROVISIONS OF 8 PA.C.S. § 1405.

1           (8) THE PROVISIONS OF 11 PA.C.S. § 11909.  
2           SECTION 3. CONTRACTS, OBLIGATIONS AND COLLECTIVE BARGAINING  
3 AGREEMENTS ENTERED INTO UNDER THE SEPARATIONS ACT ARE NOT  
4 AFFECTED NOR IMPAIRED BY THE REPEAL OF THE ACT OF MAY 1, 1913  
5 (P.L.155, NO.104), REFERRED TO AS THE SEPARATIONS ACT.  
6           SECTION 4. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.