

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 176 Session of 2019

INTRODUCED BY BROWNE, FOLMER, K. WARD, KILLION, PHILLIPS-HILL AND YUDICHAK, FEBRUARY 1, 2019

REFERRED TO STATE GOVERNMENT, FEBRUARY 1, 2019

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
 2 Statutes, in source selection and contract formation, further
 3 providing for sole source procurement and for competitive
 4 selection procedures for certain services.

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

7 Section 1. Section 515 of Title 62 of the Pennsylvania
 8 Consolidated Statutes is amended by adding subsections to read:
 9 § 515. Sole source procurement.

10 * * *

11 (d) Legal services contract.--The following shall apply in
 12 the case of legal services procured under subsection (a) (5),
 13 where the attorneys or litigation consultants will be
 14 compensated on a contingent fee basis:

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

17 (2) By February 1 of each year, the head of any
 18 purchasing agency that is party to a contract in which the
 19 method of compensation is on a contingent fee basis shall

1 submit a report to the chairperson and minority chairperson
2 of the State Government Committee of the Senate and the
3 chairperson and the minority chairperson of the State
4 Government Committee of the House of Representatives. The
5 report shall list for each contingent fee contract the
6 parties to the contract, the nature of the contract, the date
7 the contract was entered into, the date of termination, if
8 any, and the rate of compensation.

9 (3) In addition to the requirements of paragraphs (1)
10 and (2), each contract for legal services shall include the
11 following provisions:

12 (i) Commonwealth attorneys designated by the head of
13 the purchasing agency shall retain control over the
14 course and conduct of any legal action, retain the
15 ability to have direct contact with any party to the
16 action and participate in any conference call, hearing,
17 trial or settlement conference.

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

20 (iii) Notwithstanding the provisions of
21 subparagraphs (i) and (ii), Commonwealth attorneys shall
22 be subject to the Rules of Professional Conduct as set
23 forth by the Supreme Court in accordance with section
24 10(c) of Article V of the Constitution of Pennsylvania.

25 (e) Definition.--As used in this section, the term
26 "Commonwealth attorney" means an attorney employed by the
27 purchasing agency who is eligible to participate in the
28 retirement system established under 71 Pa.C.S. Pt. XXV (relating
29 to retirement for State employees and officers).

30 Section 2. Section 518 of Title 62 is amended to read:

1 § 518. Competitive selection procedures for certain services.

2 (a) Conditions for use.--The services of accountants,
3 clergy, physicians, lawyers, dentists and other professional
4 services which are not performed by other Commonwealth employees
5 shall be procured in accordance with this section except as
6 authorized under section 514 (relating to small procurements),
7 515 (relating to sole source procurement) or 516 (relating to
8 emergency procurement).

9 (b) Statement of qualifications.--Persons engaged in
10 providing the types of services specified in subsection (a) may
11 submit statements of qualifications and expressions of interest
12 in providing these services. The contracting officer may specify
13 a uniform format for statements of qualifications. Persons may
14 amend these statements at any time by filing a new statement.

15 (c) Request for proposals.--[Adequate notice of] When the
16 need for the services specified in subsection (a) [shall be
17 given by] exists, the purchasing agency shall solicit the
18 services through a request for proposals. The request for
19 proposals shall describe the services required, list the type of
20 information required of each offeror [and], state the relative
21 importance of the particular information and disclose the method
22 of compensation.

23 (c.1) Method of compensation.--If the head of the purchasing
24 agency determines in writing that it is in the best interests of
25 the Commonwealth for the services to be provided on a contingent
26 fee basis, the head of the purchasing agency shall disclose in
27 the request for proposals required by subsection (c) that the
28 method of compensation for the procurement shall be on a
29 contingent fee basis.

30 (c.2) Evaluation.--The relative importance of the evaluation

1 factors shall be fixed prior to opening the proposals.

2 (d) Discussions.--The contracting officer may conduct
3 discussions with any responsible offeror to determine the
4 offeror's qualifications for further consideration. Discussions
5 shall not disclose any information derived from proposals
6 submitted by other offerors.

7 (e) [Award.--Award shall be made to the] Selection for
8 negotiation.--The responsible offeror determined in writing by
9 the contracting officer to be best qualified based on the
10 evaluation factors set forth in the request for proposals[.
11 Fair] shall be selected for contract negotiations.

12 (f) Fee-for-services compensation.--If the offeror is to be
13 compensated on a fee-for-services basis, fair and reasonable
14 compensation shall be determined through negotiation. If
15 compensation cannot be agreed upon with the best qualified
16 responsible offeror, then negotiations will be formally
17 terminated with the offeror. If proposals were submitted by one
18 or more other responsible offerors, negotiations may be
19 conducted with the other responsible offeror or responsible
20 offerors in the order of their respective qualification ranking.
21 [The contract may be awarded to the responsible offeror then
22 ranked as best qualified if the amount of compensation is
23 determined to be fair and reasonable.]

24 (g) Contingent fee compensation.--If the offeror is to be
25 compensated on a contingent fee basis, fair and reasonable
26 compensation shall be determined through negotiation.
27 Compensation shall not exceed 20% of a portion of an award or
28 settlement. If compensation cannot be agreed upon with the best
29 qualified responsible offeror, 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 respective qualification ranking. By
4 February 1 of each year, the head of any purchasing agency that
5 is party to contract in which the method of compensation is on a
6 contingent fee basis shall submit a report to the chairperson
7 and minority chairperson of the State Government Committee of
8 the Senate and the chairperson and minority chairperson of the
9 State Government Committee of the House of Representatives. The
10 report shall list for each contingent fee contract the parties
11 to the contract, the nature of the contract, the date the
12 contract was entered into, the date of termination, if any, and
13 the rate of compensation.

14 (h) Contracts.--If an agreement was reached during
15 negotiations, a contract may be entered into between the
16 purchasing agency and the offeror. All contracts procuring
17 services under this section shall be in writing and posted in
18 accordance with Chapter 17 of the act of February 14, 2008
19 (P.L.6, No.3), known as the Right-to-Know Law.

20 (i) Legal services contracts.--If the procurement is for
21 legal services, in addition to the requirements of subsection
22 (h), each contract for legal services shall include the
23 following provisions:

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

30 (2) The purchasing agency shall maintain the exclusive

1 power to accept a settlement.

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

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

12 Section 3. The amendment or addition of 62 Pa.C.S. §§ 515(d)
13 and (e) and 518 shall apply to contracts solicited or entered
14 into on or after the effective date of this section.

15 Section 4. This act shall take effect in 60 days.