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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 823 Session of  
2019

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INTRODUCED BY DiSANTO, FOLMER, MARTIN, ARGALL, PHILLIPS-HILL AND  
REGAN, AUGUST 15, 2019

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REFERRED TO LABOR AND INDUSTRY, AUGUST 15, 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:

21 \* \* \*

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

5 \* \* \*

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

8 \* \* \*

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

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

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

18 \* \* \*

19 (2) Promptly after the notice in such cases or promptly  
20 after any appropriation made to it becomes available, the  
21 department shall, if necessary, select an architect and/or an  
22 engineer in accordance with the selection procedures of  
23 section 905 (relating to procurement of design professional  
24 services) to design the work and prepare the specifications  
25 therefor. [The department may, as an alternative, enter into  
26 a design/build contract in accordance with section 511  
27 (relating to methods of source selection). Such design/build  
28 contracts shall be subject to the requirements of this act  
29 and the provisions of the act of August 15, 1961 (P.L.987,  
30 No.442), known as the Pennsylvania Prevailing Wage Act.

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

10 (i) The requirements of this part.

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

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

15 \* \* \*

16 (6) For construction contracts where the total  
17 construction costs are less than \$25,000, the department  
18 shall not be required to comply with [the act of May 1, 1913  
19 (P.L.155, No.104), entitled "An act regulating the letting of  
20 certain contracts for the erection, construction, and  
21 alteration of public buildings,"] Chapter 32 and the  
22 department may award such contracts in accordance with  
23 section 511. All projects equal to or exceeding \$25,000 shall  
24 be subject to [the act of May 1, 1913 (P.L.155, No.104),  
25 entitled "An act regulating the letting of certain contracts  
26 for the erection, construction, and alteration of public  
27 buildings."] Chapter 32. Whenever the department enters into  
28 a single contract for a project, in the absence of good and  
29 sufficient reasons the contractor shall pay each  
30 subcontractor, within 15 days of receipt of payment from the

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

5 \* \* \*

6 § 905. Procurement of design professional services.

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

13 \* \* \*

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

15 CHAPTER 32  
16 PROJECT DELIVERY METHODS

17 Sec.

18 3201. Definitions.

19 3202. Utilization.

20 § 3201. Definitions.

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

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

28 "Design-bid-build with multiple prime contractors." A  
29 project delivery method by which a government agency or a State-  
30 related institution contracts for architectural and engineering

1 design professional services and construction services under  
2 separate agreements.

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

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

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

14 (1) Construction management at-risk.

15 (2) Design-bid-build with multiple prime contractors.

16 (3) Design-bid-build with single prime contractor.

17 (4) Design-build.

18 § 3202. Utilization.

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

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

28 Section 4. Repeals are as follows:

29 (1) The General Assembly declares that the repeal under  
30 paragraph (2) is necessary to effectuate the amendment or

1 addition of 62 Pa.C.S. §§ 322(2) and (6) and 3202.

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

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

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