
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2159 Session of
2021

INTRODUCED BY ORTITAY AND SCHLEGEL CULVER, DECEMBER 13, 2021

REFERRED TO COMMITTEE ON STATE GOVERNMENT, DECEMBER 13, 2021

AN ACT

1 Amending Titles 35 (Health and Safety) and 62 (Procurement) of
2 the Pennsylvania Consolidated Statutes, in Commonwealth
3 services, further providing for laws suspended during
4 emergency assignments; in general provisions, further
5 providing for public access to procurement records; and, in
6 source selection and contract formation, further providing
7 for emergency procurement.

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

10 Section 1. Section 7308(a) of Title 35 of the Pennsylvania
11 Consolidated Statutes is amended to read:

12 § 7308. Laws suspended during emergency assignments.

13 (a) Commonwealth agencies.--In the case of a declaration of
14 a state of emergency by the Governor, Commonwealth agencies may
15 implement their emergency assignments without regard to
16 procedures required by other laws (except mandatory
17 constitutional requirements and the requirements under 62
18 Pa.C.S. (relating to procurement)) pertaining to the performance
19 of public work, entering into contracts, incurring of
20 obligations, employment of temporary workers, rental of
21 equipment, purchase of supplies and materials and expenditures

1 of public funds.

2 * * *

3 Section 2. Sections 106.1(b)(6), (7) and (8) and 516 of
4 Title 62 are amended to read:

5 § 106.1. Public access to procurement records.

6 * * *

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

12 * * *

13 (6) The written determinations required by section [516]
14 516(g) (relating to emergency procurement) shall be posted in
15 advance, if feasible, but no later than seven calendar days
16 after authorization by the department or independent
17 purchasing agency.

18 (7) A contract resulting from a procurement under this
19 part or, in the case of section 516(f), an invoice, shall be
20 posted as soon as practicable upon its full execution by the
21 Commonwealth.

22 (8) Requests under section 515 or 516 to extend a
23 contract for which no further options, renewals or extensions
24 are available in the contract shall be posted for seven
25 calendar days for public comment prior to approval of the
26 request by the department or independent purchasing agency.
27 Upon approval of a request by the department or an
28 independent purchasing agency, the signed and written
29 determination required under section 515(b) or [516] 516(g)
30 shall be posted.

1 * * *

2 § 516. Emergency procurement.

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

15 (a) Authorization.--The head of a purchasing agency may make
16 an emergency procurement for supply, service or construction
17 under this section.

18 (b) Requests by Commonwealth agencies.--For an emergency
19 procurement in which the department acts as the agent for a
20 Commonwealth agency, the Secretary of General Services may only
21 make an emergency procurement upon the written request of the
22 head of the Commonwealth agency.

23 (c) Approval by committee.--If an emergency procurement is
24 valued at more than \$1,000,000, the head of a purchasing agency
25 may only make an emergency procurement upon approval by the
26 Emergency Procurement Approval Committee established under
27 subsection (h). Upon receipt of a request for an emergency
28 procurement from the head of a purchasing agency, including a
29 copy of all written determinations under subsection (g) and any
30 other information requested by the committee, the committee

1 shall approve the request if the request meets the requirements
2 under this section.

3 (d) Emergencies.--The head of a purchasing agency may only
4 make an emergency procurement when all of the following occur:

5 (1) There exists a threat to public health, welfare or
6 safety.

7 (2) There exist circumstances outside the control of the
8 purchasing agency.

9 (3) The circumstances under paragraph (2) create an
10 urgency of need which does not permit the delay involved in
11 using an alternate and otherwise applicable competitive
12 method.

13 (e) Quotes.--The head of a purchasing agency shall solicit
14 no fewer than two quotes for an emergency procurement, unless
15 the head of the purchasing agency determines, in writing, that
16 the circumstances of the emergency specified under subsection
17 (d) make the solicitation of no fewer than two quotes
18 impractical.

19 (f) Invoices.--The head of a purchasing agency may authorize
20 the payment of the consideration for the supply, service or
21 construction for an emergency procurement based on an approved
22 invoice if the head of the purchasing agency determines, in
23 writing, that the circumstances of the emergency under
24 subsection (d) make the use of a contract impractical.

25 (g) Written determinations.--In making an emergency
26 procurement, the head of a purchasing agency shall make the
27 following written determinations and shall include the written
28 determinations in the procurement file:

29 (1) The basis for the emergency under subsection (d). A
30 declaration of disaster emergency under 35 Pa.C.S. § 7301(c)

1 (relating to general authority of Governor) may not serve as
2 the written determination of the basis for the emergency.

3 (2) How the emergency identified under paragraph (1)
4 creates an urgency of need which does not permit the delay
5 involved in using an alternate and otherwise applicable
6 competitive method.

7 (3) The basis for the selection of the contractor.

8 (4) If applicable, a written determination under
9 subsection (e).

10 (5) If applicable, a written determination under
11 subsection (f).

12 (h) Emergency Procurement Approval Committee.--

13 (1) The Emergency Procurement Approval Committee is
14 established within the department. The committee shall be
15 comprised of the following members:

16 (i) One individual appointed by the Governor.

17 (ii) One individual appointed by the President pro
18 tempore of the Senate.

19 (iii) One individual appointed by the Majority
20 Leader of the Senate.

21 (iv) One individual appointed by the Minority Leader
22 of the Senate.

23 (v) One individual appointed by the Speaker of the
24 House.

25 (vi) One individual appointed by the Majority Leader
26 of the House of Representatives.

27 (vii) One individual appointed by the Minority
28 Leader of the House of Representatives.

29 (2) Members of the committee shall serve at the pleasure
30 of the appointing authority under paragraph (1).

1 (3) The member appointed under paragraph (1)(i) shall
2 serve as chair.

3 (4) A meeting of the committee shall be called by the
4 chair or upon the request of at least two members of the
5 committee.

6 (5) The consent of at least four members of the
7 committee shall be required for an approval under subsection
8 (c). If the committee does not vote to approve a request
9 within 48 hours of the committee receiving a copy of all
10 written determinations under subsection (g), the request
11 shall be deemed disapproved.

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