

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2159 Session of 2021

INTRODUCED BY ORTITAY AND SCHLEGEL CULVER, DECEMBER 13, 2021

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 26, 2022

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

1 equipment, purchase of supplies and materials and expenditures  
2 of public funds.

3 \* \* \*

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

6 § 106.1. Public access to procurement records.

7 \* \* \*

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

13 \* \* \*

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

19 (7) A contract resulting from a procurement under this  
20 part or, in the case of section 516(e), an invoice THAT IS <--  
21 NOT REQUIRED TO BE FILED WITH THE TREASURY DEPARTMENT UNDER  
22 SECTION 1701(A) OF THE RIGHT-TO-KNOW LAW, shall be posted as  
23 soon as practicable upon its full execution by the  
24 Commonwealth.

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

1 independent purchasing agency, the signed and written  
2 determination required under section 515(b) or [516] 516(f)  
3 shall be posted.

4 \* \* \*

5 § 516. Emergency procurement.

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

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

21 (b) Requests by Commonwealth agencies.--For an emergency  
22 procurement in which the department acts as the agent for a  
23 Commonwealth agency, the Secretary of General Services may only  
24 make an emergency procurement upon the written request of the  
25 head of the Commonwealth agency- OR A SINGLE DEPUTY OF THE HEAD <--  
26 OF THE COMMONWEALTH AGENCY DESIGNATED IN WRITING TO ACT ON  
27 BEHALF OF THE HEAD OF THE COMMONWEALTH AGENCY.

28 (c) Emergencies.--The head of a purchasing agency may only  
29 make an emergency procurement when all of the following occur:

30 (1) There exists a threat to public health, welfare or <--

1 safety.

2 ~~(2) There exist circumstances outside the control of the~~  
3 ~~purchasing agency.~~

4 ~~(3) The circumstances under paragraph (2)~~

5 (1) THE FOLLOWING:

<--

6 (I) THERE EXISTS A THREAT TO THE SAFETY, HEALTH OR  
7 WELFARE OF THIS COMMONWEALTH; OR

8 (II) THERE EXIST CIRCUMSTANCES OUTSIDE THE CONTROL  
9 OF THE PURCHASING AGENCY THAT THREATEN SUBSTANTIAL HARM  
10 TO THE OPERATIONS OF THE COMMONWEALTH.

11 (2) THE THREAT OR CIRCUMSTANCES UNDER PARAGRAPH (1)  
12 create an urgency of need which does not permit the delay  
13 involved in using an alternate and otherwise applicable  
14 competitive method.

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

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

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

1        (1) The basis for the emergency under subsection (c). A <--  
2        declaration of disaster emergency under 35 Pa.C.S. § 7301(c)  
3        (relating to general authority of Governor) may not serve as  
4        the written determination of the basis for the emergency.

5        (2) IF THE EMERGENCY PROCUREMENT RELATES TO A DISASTER <--  
6        EMERGENCY SUBJECT TO A DECLARATION OF DISASTER EMERGENCY  
7        UNDER 35 PA.C.S. § 7301(C) (RELATING TO GENERAL AUTHORITY OF  
8        GOVERNOR) IN EFFECT AT THE TIME THE HEAD OF THE PURCHASING  
9        AGENCY MAKES THE WRITTEN DETERMINATIONS UNDER THIS  
10       SUBSECTION, WHICH DECLARATION OF DISASTER EMERGENCY IS  
11       APPLICABLE AND HOW THE DISASTER EMERGENCY REQUIRES THE USE OF  
12       THE EMERGENCY PROCUREMENT.

13       ~~(2)~~ (3) How the emergency identified under paragraph (1) <--  
14       creates an urgency of need which does not permit the delay  
15       involved in using an alternate and otherwise applicable  
16       competitive method.

17       ~~(3)~~ (4) The basis for the selection of the contractor. <--

18       ~~(4)~~ (5) If applicable, a written determination under <--  
19       subsection (d).

20       ~~(5)~~ (6) If applicable, a written determination under <--  
21       subsection (e).

22       (G) DESIGNEE.--THE HEAD OF A PURCHASING AGENCY MAY DESIGNATE <--  
23       IN WRITING A SINGLE DEPUTY TO ACT ON BEHALF OF THE HEAD OF THE  
24       PURCHASING AGENCY UNDER THIS SECTION.

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