

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2107 Session of
2015

INTRODUCED BY BAKER, MILLARD, SCHLOSSBERG, TOEPEL, PICKETT,
CUTLER, MURT, DeLUCA, WHEELAND, ZIMMERMAN, PHILLIPS-HILL,
WATSON, EVERETT, GROVE, PETRI, RAPP, FRANKEL, GILLEN, MOUL,
BENNINGHOFF, KLUNK, KAUFER, SAYLOR, MACKENZIE, DUSH,
SANTARSIERO AND MICCARELLI, MAY 27, 2016

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, OCTOBER 24, 2016

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, in general provisions, providing for public access
3 to procurement records; in source selection and contract
4 formation, further providing for sole source procurement and
5 for emergency procurement; and providing for prohibited
6 contracts.

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

9 Section 1. Title 62 of the Pennsylvania Consolidated
10 Statutes is amended by adding a section to read:

11 § 106.1. Public access to procurement records.

12 (a) General rule.--Records concerning a procurement shall be
13 made public, consistent with the act of February 14, 2008
14 (P.L.6, No.3), known as the Right-to-Know Law.

15 (b) Public posting and availability of procurement
16 information.--The purchasing agency shall post the following
17 procurement documents on the department's, or, in the case of an
18 independent agency, its own publicly accessible Internet website

1 or otherwise make available in the manner indicated below:

2 (1) Public notice of an invitation for bids or request
3 for proposals may be given in accordance with section 512(c)
4 (1) (relating to competitive sealed bidding) or 513(b)
5 (relating to competitive sealed proposals) by posting the
6 invitation for bids or request for proposals, including, if
7 applicable, the written determination required by section
8 513(a), on the date issued and until the closing date for
9 receipt of bids or proposals.

10 (2) Bid tabulations recording the name of each bidder
11 and bid amount in accordance with section 512(d) shall be
12 posted as soon as practicable after bid opening, unless the
13 purchasing agency elects to cancel the invitation for bids.

14 (3) Notices of award pursuant to an invitation for bids
15 shall be posted as soon as practicable after the purchasing
16 agency elects to make an award in accordance with section
17 512(g).

18 (4) The written determination required by section 513(g)
19 shall be posted upon receipt of the final negotiated contract
20 signed by the selected offeror. Subject to proper redaction
21 under the Right-to-Know Law, responsive proposals received by
22 the purchasing agency and, until fully executed, the final
23 negotiated contract are not required to be posted but shall
24 be made available to the public upon request.

25 (5) Requests to award a contract pursuant to section
26 515(a) (1), (2), (4) and (10) (relating to sole source
27 procurement) shall be posted for seven calendar days for
28 public comment prior to approval of the request by the
29 department or independent purchasing agency. Upon approval of
30 a request by the department or independent purchasing agency,

1 the signed and written determination required under section
2 515(b) shall be posted.

3 (6) The written determinations required by section 516
4 (relating to emergency procurement) shall be posted in
5 advance, if feasible, but no later than seven calendar days
6 after authorization by the department or independent
7 purchasing agency.

8 (7) A contract resulting from a procurement under this
9 part shall be posted as soon as practicable upon its full
10 execution by the Commonwealth.

11 (8) Requests under section 515 or 516 to extend a
12 contract for which no further options, renewals or extensions
13 are available in the contract shall be posted for seven
14 calendar days for public comment prior to approval of the
15 request by the department or independent purchasing agency.
16 Upon approval of a request by the department or an
17 independent purchasing agency, the signed and written
18 determination required under section 515(b) or 516 shall be
19 posted.

20 (c) Access and retention.--Procurement documents specified
21 under subsection (b) must be accessible on the Internet website
22 for a minimum of 30 days from posting and further retained in
23 accordance with section 563 (relating to retention of
24 procurement records) and applicable agency record retention
25 policies.

26 Section 2. Sections 515 and 516 of Title 62 are amended to
27 read:

28 § 515. Sole source procurement.

29 (a) General rule.--A contract may be awarded for a supply,
30 service or construction item without competition if the

1 contracting officer first determines in writing that one of the
2 following conditions exists:

3 (1) Only a single contractor is capable of providing the
4 supply, service or construction.

5 (2) A Federal or State statute or Federal regulation
6 exempts the supply, service or construction from the
7 competitive procedure.

8 (3) The total cost of the supply, service or
9 construction is less than the amount established by the
10 department for small, no-bid procurements under section 514
11 (relating to small procurements).

12 (4) It is clearly not feasible to award the contract for
13 supplies or services on a competitive basis.

14 (5) The services are to be provided by attorneys or
15 litigation consultants selected by the Office of General
16 Counsel, the Office of Attorney General, the Department of
17 the Auditor General or the Treasury Department.

18 (6) The services are to be provided by expert witnesses.

19 (7) The services involve the repair, modification or
20 calibration of equipment and they are to be performed by the
21 manufacturer of the equipment or by the manufacturer's
22 authorized dealer, provided the contracting officer
23 determines that bidding is not appropriate under the
24 circumstances.

25 (8) The contract is for investment advisors or managers
26 selected by the Public School Employees' Retirement System,
27 the State Employees' Retirement System or a State-affiliated
28 entity.

29 (9) The contract is for financial or investment experts
30 to be used and selected by the Treasury Department or

1 financial or investment experts selected by the Secretary of
2 the Budget.

3 (10) The contract for supplies or services is in the
4 best interest of the Commonwealth.

5 (b) Written determination.--The written determination
6 authorizing sole source procurement shall be included in the
7 contract file. For procurements over \$250,000 made under
8 subsection (a) (10), the determination shall be signed by the
9 head of the purchasing agency.

10 (c) Approval required by board of commissioners of public
11 grounds and buildings.--With the exception of small procurements
12 under section 514 and emergency procurements under section 516
13 (relating to emergency procurement), if the sole source
14 procurement is for a supply, except for computer software
15 updates under \$50,000, for which the department acts as
16 purchasing agency, it must be approved by the Board of
17 Commissioners of Public Grounds and Buildings prior to the award
18 of a contract.

19 § 516. Emergency procurement.

20 The head of a purchasing agency may make or authorize others
21 to make an emergency procurement when there exists a threat to
22 public health, welfare or safety or circumstances outside the
23 control of the agency create an urgency of need which does not
24 permit the delay involved in using more formal competitive
25 methods. Whenever practical, in the case of a procurement of a
26 supply, at least two [bids] quotes shall be solicited. A written
27 determination of the basis for the emergency and for the
28 selection of the particular contractor shall be included in the
29 [contract file.] procurement file. No written contract may be
30 required. The supplier of the supply, service or construction

1 may be paid based on the emergency approval and approved
2 invoice.

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

4 CHAPTER 36

5 PROHIBITED CONTRACTS

6 Sec.

7 3601. Short title of chapter.

8 3602. Declaration of purpose.

9 3603. Definitions.

10 3604. Prohibition.

11 3605. Certification.

12 3606. Penalties for false certification.

13 § 3601. Short title of chapter.

14 This chapter shall be known and may be cited as the
15 Prohibited Contracts Act.

16 § 3602. Declaration of purpose.

17 The General Assembly finds and declares as follows:

18 (1) Pennsylvania is privileged to engage in
19 international trade and commercial activities.

20 (2) Israel is America's dependable, democratic ally in
21 the Middle East, an area of paramount strategic importance to
22 the United States.

23 (3) It is in the interest of the United States and the
24 Commonwealth to stand with Israel and other countries by
25 promoting trade and commercial activities and to discourage
26 policies that disregard that interest.

27 § 3603. Definitions.

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

1 "Boycott." To blacklist, divest from or otherwise refuse to
2 deal with a person or firm when the action is based on race,
3 color, religion, gender or national affiliation or origin of the
4 targeted person or entity.

5 "Company." Any sole proprietorship, organization,
6 association, corporation, partnership, joint venture, limited
7 partnership, limited liability company or other entity or
8 business association qualified to do business in this
9 Commonwealth.

10 § 3604. Prohibition.

11 Notwithstanding any other provision of law, ~~the department~~ <--
12 AND, EXCEPT AS PROVIDED UNDER SECTION 516 (RELATING TO EMERGENCY <--
13 PROCUREMENT), A PURCHASING AGENCY may not contract with a
14 company to acquire or dispose of supplies, services or
15 construction THAT EXCEED THE APPLICABLE SMALL PURCHASE THRESHOLD <--
16 unless the company certifies that:

17 (1) the company is not currently engaged in a boycott of
18 a person or an entity based in or doing business with a
19 jurisdiction which the Commonwealth is not prohibited by
20 Congressional statute from engaging in trade or commerce; and

21 (2) the company will not during the duration of the
22 contract engage in a boycott of a person or an entity based
23 in or doing business with a jurisdiction where the
24 Commonwealth is not prohibited by Congressional statute from
25 engaging in trade or commerce.

26 § 3605. Certification.

27 The department shall make available a certification form
28 indicating that a company is eligible to contract with the
29 department under section 3604 (relating to prohibition). The
30 company shall provide a certification form to the department

1 ~~prior to entering into a contract~~ WHEN REGISTERING TO DO
2 BUSINESS AS A VENDOR WITH THE COMMONWEALTH.
3 § 3606. Penalties for false certification.

4 (a) Penalties.--A company shall pay a civil penalty in the
5 amount of \$250,000 or twice the amount of the contract,
6 whichever is greater, if the department determines that the
7 company provided a false certification form to the department
8 under section 3604 (relating to prohibition).

9 (b) Report of false certification.--The department shall
10 report to the Attorney General the name of the company that
11 submitted the false certification and the pertinent information
12 that led to the department's determination. No later than three
13 years after the department makes a determination under
14 subsection (a), the Attorney General shall determine whether to
15 bring a civil action against the company to collect the penalty
16 described in subsection (a). If a court determines the company
17 submitted a false certification, the company shall pay all
18 reasonable costs and fees incurred in the civil action.
19 Reasonable costs shall include the reasonable costs incurred by
20 the Commonwealth entity in investigating the authenticity of the
21 certification. Only one civil action against the company may be
22 brought for a false certification on a contract.

23 (c) No private right of action.--Nothing in this section may
24 be construed to create or authorize a private right of action.

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