

2009D03456BTW

No. SB102

AN ACT

LEGISLATIVE REFERENCE BUREAU

Amending Title 62 (Procurement) of the Pennsylvania Consolidated Statutes, providing for review of contracts; further providing for sole source procurement; and providing for procurement of professional services and for disclosure.

INTRODUCED _____, 20____

By	<u>Orie</u>	District	
	<u>Pileggi</u>	NO.	<u>40</u>
	<u>Rafferty</u>		<u>9</u>
By	<u>Folmer</u>	District	<u>44</u>
	<u>Robbins</u>	NO.	<u>48</u>
	<u>Vance</u>		<u>50</u>
By	<u>Earll</u>	District	<u>31</u>
	<u>Wargh</u>	NO.	<u>49</u>
	<u>Ferlo</u>		<u>28</u>
	<u>Baker</u>	District	<u>20</u>
By	<u>Alloway</u>	NO.	<u>33</u>
	<u>Eichelberger</u>		<u>30</u>
	<u>Erickson</u>		<u>26</u>
	<u>Tomlinson</u>		<u>6</u>
	<u>Ward</u>		<u>39</u>
	<u>Brown</u>		<u>16</u>
	<u>Smucker</u>		<u>13</u>
	<u>Yaw</u>		<u>23</u>
	<u>Brubaker</u>		<u>36</u>
	<u>Vogel</u>		<u>47</u>

Referred to Committee on	
Date _____	<u>20</u>
Reported _____	<u>20</u>
As Committed-Amended	
By Hon. _____	

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, providing for review of contracts; further
3 providing for sole source procurement; and providing for
4 procurement of professional services and for disclosure.

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

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

9 § 313. Review of contracts.

10 (a) Delegation prohibited.--Notwithstanding any other
11 provision of law, the Attorney General may not delegate his
12 responsibility to review each contract for form and legality
13 under section 204 of the act of October 15, 1980 (P.L.950, No.
14 164), known as the Commonwealth Attorneys Act, including
15 contracts under section 515.1 (relating to procurement of
16 professional services). No contract shall be approved or deemed
17 approved absent review under this section.

18 (b) Review.--The Attorney General shall review each contract

1 for legality under the act of July 19, 1957 (P.L.1017, No.451),
2 known as the State Adverse Interest Act.

3 Section 2. Section 515 of Title 62 is amended to read:

4 § 515. Sole source procurement.

5 A contract may be awarded for a supply, service or
6 construction item without competition if the contracting officer
7 first determines in writing that the contract is in the best
8 interest of the Commonwealth and that one of the following
9 conditions exists:

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

12 (2) A Federal or State statute or Federal regulation
13 exempts the supply, service or construction from the
14 competitive procedure.

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

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

21 (5) The services are to be provided by attorneys or
22 litigation consultants selected by the Office of General
23 Counsel, the Office of Attorney General, the Department of
24 the Auditor General or the Treasury Department that are
25 directly related to pending litigation or other matters
26 before a court.

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

28 (7) The services involve the repair, modification or
29 calibration of equipment and they are to be performed by the
30 manufacturer of the equipment or by the manufacturer's

1 authorized dealer, provided the contracting officer
2 determines that bidding is not appropriate under the
3 circumstances.

4 [(8) The contract is for investment advisors or managers
5 selected by the Public School Employees' Retirement System,
6 the State Employees' Retirement System or a State-affiliated
7 entity.

8 (9) The contract is for financial or investment experts
9 to be used and selected by the Treasury Department or
10 financial or investment experts selected by the Secretary of
11 the Budget.

12 (10) The contract for supplies or services is in the
13 best interest of the Commonwealth.]

14 The written determination authorizing sole source procurement
15 shall be included in the contract file and shall be available
16 for public inspection. With the exception of small procurements
17 under section 514 and emergency procurements under section 516
18 (relating to emergency procurement), if the sole source
19 procurement is for a supply, except for computer software
20 updates under \$50,000, for which the department acts as
21 purchasing agency, it must be approved by the Board of
22 Commissioners of Public Grounds and Buildings prior to the award
23 of a contract.

24 Section 3. Title 62 is amended by adding sections to read:
25 § 515.1. Procurement of professional services.

26 (a) Procedures.--The department shall develop procedures to
27 select the most qualified bidder for professional service
28 contracts with a State agency within the executive branch. The
29 Senate, the House of Representatives and the Administrative
30 Office of Pennsylvania Courts shall adopt procedures to select

1 the most qualified bidder for professional service contracts for
2 their respective agency. The procedures shall ensure that the
3 availability of a contract for professional services is
4 advertised to potential bidders in a timely and efficient
5 manner. Procedures shall include applications and disclosure
6 forms to be used to submit a proposal for review to receive the
7 award of a professional services contract.

8 (b) Advertisement.--An advertisement for proposals under
9 this section shall set forth the following:

10 (1) The State agency seeking to enter into the contract.

11 (2) The services that are the subject of the contract
12 and specifications relating to the services.

13 (3) Procedures and requirements to be followed.

14 (4) The factors that will be used in scoring.

15 (c) Qualified evaluation committee.--Prior to the receipt of
16 an application for a professional services contract, the State
17 agency shall establish a qualified evaluation committee
18 comprised of Commonwealth employees to score the proposals
19 submitted. The committee may include individuals with expertise
20 from other State agencies within the executive branch.

21 (d) Conflict of interest regulations.--The department, the
22 Senate, the House of Representatives and the Administrative
23 Office of Pennsylvania Courts shall each promulgate regulations
24 relating to potential conflicts of interest in the review of
25 proposals or negotiation of contracts under this section. The
26 regulations shall include restrictions on the participation by a
27 former employee of a contractor in the review of a proposal or
28 negotiation of a contract with that contractor.

29 (e) Public information.--Following the award of a contract
30 under this section, all applications and disclosure forms shall

1 be public except for proprietary information or other
2 information protected by law.

3 (f) Increase.--A professional services contract shall not be
4 amended to increase the cost by more than 10% or \$10,000,
5 whichever is greater, unless the increase and a justification
6 statement is posted on the State agency's Internet website at
7 least ten days prior to the amendment of the contract.

8 (g) Award of contract to most qualified bidder.--A contract
9 under this section shall be awarded on the basis of multiple
10 factors which shall be scored by the qualified evaluation
11 committee. The State agency shall review the scoring system and
12 ensure that the scoring system will not improperly steer a
13 contract to a particular firm. Factors used by an agency in the
14 scoring process shall include the following:

15 (1) The background, qualifications and skills of the
16 firm and its staff.

17 (2) The firm's degree of expertise concerning the
18 subject of the proposed contract.

19 (3) The experience of the firm.

20 (4) The rate or price to be charged.

21 (5) The experience of the contractor with government
22 agencies, including agencies in other jurisdictions.

23 (6) The firm's proposed approach to the issues raised in
24 the advertisement and all specifications and requirements.

25 (7) The firm's ability to meet the requirements of the
26 project at issue to include experience and qualifications on
27 projects of similar size and complexity.

28 (8) References.

29 (9) Interviews with firm members.

30 (10) A review of the applicant's criminal history

1 record.

2 (11) Geographic location of the firm's offices.

3 (h) Notice and summary.--The relevant factors that resulted
4 in the award of the contract shall be summarized in a written
5 statement to be included in the award of the contract. Within
6 ten days of the award of the contract, the application, a
7 summary of the basis for the award and all required disclosures
8 shall be transmitted to all unsuccessful applicants and shall be
9 posted on the agency's Internet website for at least ten days
10 prior to the execution of the contract.

11 (i) Negotiations.--A State agency may engage in negotiations
12 with one or more applicants relating to terms and price of a
13 contract prior to the final award of the contract.

14 (j) Registry.--A State agency shall maintain a registry of
15 qualified individuals or firms to provide professional services
16 for contracts that do not exceed \$25,000 in value if similar
17 professional services are expected to be required on numerous
18 occasions over a period of time. The agency shall develop and
19 publish the minimum educational experience and related
20 qualifications which must be met in order to be considered a
21 qualified bidder under this subsection.

22 (k) Void.--A contract for professional services that was not
23 applied for, reviewed and executed in accordance with this
24 section shall be void.

25 (l) Definitions.--For purposes of this section, the
26 following words and phrases shall have the meanings given to
27 them in this subsection unless the context clearly indicates
28 otherwise:

29 "Professional service." A service involving professional or
30 expert advice, opinion or examination to include:

1 (1) Management consulting services designed to improve
2 the effectiveness of management, management strategies,
3 processes or operations.

4 (2) All legal services except those directly related to
5 pending litigation.

6 (3) Services provided by financial or investment
7 managers, experts or advisors.

8 (4) Services of experts to provide advice, information
9 or recommendations relating to a policy or practice being
10 implemented or being reviewed by an agency for potential
11 adoption or enactment.

12 "State agency." A Commonwealth agency, the General Assembly
13 and the judiciary. The term shall not include the judiciary if
14 the courts have adopted a rule to provide for a similar review
15 of proposed contracts with a judicial agency.

16 § 2304. Disclosure.

17 (a) Contractors.--A person and any affiliated entity that
18 has one or more contracts with one or more Commonwealth
19 agencies, the General Assembly or the judiciary with an annual
20 total of \$25,000 or more in the aggregate shall disclose all
21 contributions to any political committee or candidate for
22 Statewide office or for the General Assembly, or to a political
23 action committee that makes contributions to a candidate for
24 Statewide office or for the General Assembly, made within the
25 last five years by an officer, director, owner of 5% or more or
26 executive-level employee of the person or affiliated entity.

27 (b) Bidders.--The provisions of subsection (a) shall apply
28 to a person and any affiliated entity that has submitted a bid,
29 responded to a request for proposal or otherwise solicited a
30 contract with a Commonwealth agency, the General Assembly or the

1 judiciary.

2 (c) Professional and sole source contracts.--This section
3 shall include all contracts under this title.

4 (d) Forms.--Disclosure shall be made on a form prepared by
5 the department, the Senate, the House of Representatives or the
6 Administrative Office of Pennsylvania Courts and shall be
7 attached to the contract. The form shall be posted with the
8 contract on the Internet website maintained by the Treasury
9 Department if the contract is required to be posted under the
10 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-
11 Know Law.

12 (e) Update of information.--During the term of the contract,
13 an updated form shall be filed annually to reflect additional
14 contributions to a political committee or candidate for
15 Statewide office or for the General Assembly or political
16 committee that makes contributions to a political candidate for
17 Statewide office or a member of the General Assembly.

18 (f) Penalties.--A person who knowingly makes a material
19 misstatement or omission in a disclosure form under this section
20 shall be subject to a civil penalty of up to \$10,000 per
21 violation and shall be prohibited from entering into a contract
22 for a period of up to three years. An intentional violation
23 shall result in the contract being void. All other violations
24 shall make the contract voidable. If a contractor or person who
25 has submitted a bid violates this section three or more times
26 within a 36-month period, all contracts between any Commonwealth
27 agency, the General Assembly or the judiciary and the contractor
28 shall be void and the contractor or person who has submitted a
29 bid shall be debarred for a period of three years from the date
30 of the last violation.

1 (g) Definitions.--For purposes of this section, the
2 following words and phrases shall have the meanings given to
3 them in this subsection unless the context clearly indicates
4 otherwise:

5 "Affiliated entity." Any of the following:

6 (1) A subsidiary or holding company of a business
7 entity.

8 (2) An organization recognized by the Internal Revenue
9 Service as a tax-exempt organization under section 501(c) of
10 the Internal Revenue Code of 1986 (Public Law 99-514, 26
11 U.S.C. § 501(c)) established by a business entity.

12 (3) A person or the person's spouse or minor child with:

13 (i) Financial interest of more than 5% of a business
14 entity or its subsidiary, holding company or organization
15 under paragraph (2).

16 (ii) A distributive share of 5% or more of a
17 business entity or its subsidiary, holding company or
18 organization under paragraph (2).

19 "Executive-level employee." An employee of a person or its
20 affiliated entity required to disclose contributions under
21 subsection (a) who can affect or influence the person's or
22 affiliated entity's actions, policies or decisions relating to
23 contracts and procurement.

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