

No. 2014-149

## AN ACT

HB 201

Amending Title 62 (Procurement) of the Pennsylvania Consolidated Statutes, in source selection and contract formation, further providing for competitive sealed proposals; providing for investment activities in Iran; and imposing civil penalties.

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

Section 1. Section 513(e) of Title 62 of the Pennsylvania Consolidated Statutes is amended to read:

§ 513. Competitive sealed proposals.

\* \* \*

(e) Evaluation.—The relative importance of the evaluation factors shall be fixed prior to opening the proposals. A Commonwealth agency [is required to] *shall* invite its comptroller to participate in the evaluation as a nonvoting member of any evaluation committee. *No individual who has been employed by an offeror within the preceding two years may participate in the evaluation of proposals.*

\* \* \*

Section 2. The heading of Chapter 35 of Title 62 is amended to read:

CHAPTER 35  
[(RESERVED)]  
*IRAN-FREE PROCUREMENT*

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

§ 3501. *Definitions.*

*"Department." The Department of General Services of the Commonwealth.*

*"Energy-related activities." The term includes all of the following:*

(1) *Development of petroleum, natural gas or nuclear energy resources. This paragraph does not include the mere sale of gasoline and related consumer products.*

(2) *Owning rights to oil or natural gas blocks or nuclear facilities.*

(3) *Exporting, extracting, producing, refining, processing, exploring for, transporting, selling or trading oil or natural gas or developing nuclear energy.*

(4) *Constructing, maintaining or operating any pipeline, refinery, liquefaction facility, nuclear reactor or other oil, natural gas or nuclear energy infrastructure.*

*"Financial institution." The term as defined in section 14 of the Iran Sanctions Act of 1996 (Public Law 104-172, 50 U.S.C. § 1701).*

*"Iran." The government of Iran or an agency or instrumentality of Iran.*

*"Person." An individual, organization, a financial institution, sole proprietorship, association, corporation, partnership, joint venture, limited*

*partnership, limited liability partnership, limited liability company or other entity or business association that exists for the purpose of making a profit or government entity that includes a multilateral development institution as defined in section 1701 of the International Financial Institutions Act (Public Law 95-118, 22 U.S.C. § 262r).*

§ 3502. *Engaging in investment activities.*

*A person or financial institution engages in an investment activity by doing any of the following:*

(1) *Providing goods or services worth at least \$20,000,000, including oil tankers or transporters and liquefied natural gas tankers or transporters, to the energy-related activities of Iran, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran.*

(2) *Extending at least \$20,000,000 in credit to a person for 45 days or more if all of the following apply:*

(i) *The person uses the credit to provide goods or services to the energy sector in Iran.*

(ii) *The person is, at the time the financial institution or person extends credit, identified on a list created under section 3503 (relating to list of persons engaged in investment activities).*

§ 3503. *List of persons engaged in investment activities.*

(a) *List.—The department shall develop a list of persons whom the department determines are engaged in investment activities in Iran as described in section 3502 (relating to engaging in investment activities). The department shall make its determination based on publicly available, credible information. The department shall update the list every 180 days. Ninety days prior to adding a person to the list, the department shall do all of the following:*

(1) *Provide notice to the person of the department's intention to add the person to the list. The notice shall inform the person that inclusion on the list makes the person ineligible to enter into a contract with a Commonwealth entity for goods or services worth at least \$1,000,000. The notice shall specify that if the person ceases to engage in investment activities in Iran, the person may regain eligibility upon removal from the list.*

(2) *Provide the person an opportunity to comment in writing to the department. The person shall maintain eligibility if the person demonstrates no engagement in investment activities in Iran.*

(b) *Ineligibility of persons on list.—A person identified on a list under subsection (a) shall be ineligible to enter into a contract with a Commonwealth entity to provide for goods or services worth at least \$1,000,000.*

(c) *List.—The department shall post the list on its publicly accessible Internet website. Upon request, the department shall provide the list free of charge to the General Assembly or a public entity.*

(d) *Investment service contracts.—Service contracts entered into by Commonwealth entities for the management and investment of a fund for which there is a fiduciary responsibility and for which compliance with the act of July 2, 2010 (P.L.266, No.44), known as the Protecting Pennsyl-*

*vania's Investments Act, is required, shall be exempt from the provisions of this chapter.*

*(e) Exception.—On a case-by-case basis, the department may permit a person engaging in investment activities in Iran to enter a contract with a Commonwealth entity for goods or services worth at least \$1,000,000 if any of the following apply:*

*(1) The investment activities in Iran were made before and were not expanded after July 1, 2015.*

*(2) The person refrains from entering into new agreements to engage in any future investment activities in Iran.*

*(3) The department determines that the Commonwealth entity has no other cost-effective method of obtaining the goods or services than entering into a contract with the person.*

**§ 3504. Certification.**

*(a) General rule.—The department shall make available a certification form indicating that a person is not on the list under section 3503(a) (relating to list of persons engaged in investment activities) and is eligible under this chapter to contract with the Commonwealth. Prior to entering into a contract with a Commonwealth entity, a person shall provide a certification form to the Commonwealth entity unless the person is exempt under section 3503(e).*

*(b) Right to cure.—*

*(1) If the department determines, using credible information available to the public, that a person has submitted a false certification under subsection (a), the person shall be provided with written notice and an opportunity to demonstrate to the department that the person has ceased its engagement in energy-related activities in Iran within 90 days of the notice.*

*(2) A person who reasonably demonstrates to the department that the person has ceased its engagement in energy-related activities in Iran within 90 days after the written notice shall not be subject to the penalties under section 3505 (relating to penalties for false certification).*

**§ 3505. Penalties for false certification.**

*(a) Penalties.—Subject to the provisions of section 3504(b) (relating to certification), if the department determines that a person has provided a false certification form to a Commonwealth entity under section 3504, the person shall be subject to the following:*

*(1) A civil penalty in the amount of \$250,000 or twice the amount of the contract, whichever is greater. Only one civil penalty may be imposed upon a person per investment.*

*(2) Suspension of the existing contract with the Commonwealth entity for a period of three years from the date of the determination that the person submitted the false certification. Following the three-year suspension period, the Commonwealth entity or the department may terminate the contract.*

*(b) Report of false certification.—The department shall report to the Attorney General the name of the person who submitted the false certification and the pertinent information that led to the department's*

*determination. No later than three years after the department makes a determination under subsection (a), the Attorney General shall determine whether to bring a civil action against the person to collect the penalty described in subsection (a). If a court determines the person submitted a false certification, the person shall pay all reasonable costs and fees incurred in the civil action. Reasonable costs shall include the reasonable costs incurred by the Commonwealth entity in investigating the authenticity of the certification. Only one civil action against the person may be brought for a false certification on a contract.*

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

**§ 3506. Expiration.**

*The department shall have no obligations under this chapter with respect to a company engaged in business activities in Iran upon the occurrence of any of the following:*

- (1) Iran does not appear on the List of State Sponsors of Terrorism.*
- (2) The President or Congress of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this chapter interferes with the conduct of United States foreign policy.*

Section 4. This act shall take effect as follows:

- (1) The amendment of 62 Pa.C.S. Ch. 35 shall take effect July 1, 2015.
- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED—The 21st day of October, A.D. 2014

TOM CORBETT