

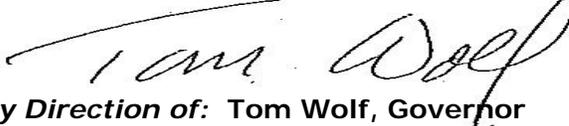
Executive Order

Commonwealth of Pennsylvania

Governor's Office

Subject:
Competitive Process for Procurement
of Legal Services

Number:
2015-02


By Direction of: Tom Wolf, Governor

Date: January 20, 2015

WHEREAS, Section 515 of the Commonwealth's Procurement Code exempts various categories of "Sole Source" contracts from the requirement of competitive bidding, including when services are to be provided by attorneys or litigation consultants selected by the Office of General Counsel, the Office of Attorney General, the Department of the Auditor General or the Treasury Department; and

WHEREAS, the Office of General Counsel has, in reliance on Section 515 and with the approval of the Governor, engaged private counsel to represent the Commonwealth or its employees in civil or criminal matters without utilizing a competitive bidding process; and

WHEREAS, competitive bidding for legal services should be used to the maximum extent feasible prior to engaging private counsel to represent the Commonwealth or its employees in civil or criminal matters; and

WHEREAS, Section 512.1 of the Procurement Code includes an alternate process for obtaining services through the use of "competitive electronic auction bidding;" and

WHEREAS, Section 518 of the Procurement Code includes an alternative process for lawyers and other professionals under the heading "Competitive Selection Procedures for Certain Services;" and

WHEREAS, in many cases, the need to retain private counsel can be predicted and planned for sufficiently in advance to engage in competitive bidding; and

WHEREAS, procuring legal services through a competitive procurement process wherever possible will provide greater assurance that legal expenditures are efficiently utilized, will result in a more transparent selection process, and will enhance public perception that the process is fair and not influenced by political or other improper considerations.

NOW, THEREFORE, I Thomas W. Wolf, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby direct as follows:

1. Except as set forth below, the awarding of all contracts for legal services or legal consultants by the Office of General Counsel or any executive department shall be conducted on the basis of the competitive bidding procedures in § 518 or § 512.1 of the Procurement Code.
2. Legal service or legal consultant contracts shall be awarded on a sole source basis only when it is clearly not feasible to utilize competitive bidding because of an urgency of need or other documented circumstances.
3. Where an executive department determines that the paid services of outside counsel are required, it shall submit to the Office of General Counsel a request for authorization to proceed. The request for authorization shall succinctly state: (i) a written justification that the department does not have the legal or financial resources to pursue the action on its own; (ii) a detailed estimate of the time and labor that will be required; (iii) a description of the specific legal expertise needed; and (iv) a determination that the need for this legal support is both cost-effective and in the public's best interest.
4. Upon receipt of written authorization to proceed from the General Counsel, the department may issue a request for proposals pursuant to § 518 of the Procurement Code or an invitation for bids pursuant to § 512.1 of the Procurement Code.
5. The General Counsel shall, as soon as practicable: (i) identify categories of legal services or types of cases that may be supplied by outside lawyers and/or law firms; (ii) develop a competitively bid list of pre-approved outside counsel for emergency situations; (iii) identify the circumstances in which the awarding of legal services on a sole source basis is justified based on the criteria set forth in section 2, above, and those that must be subject to competitive bidding under either § 518 or § 512.1 of the Procurement Code; and (iv) implement a system to award those contracts in accordance with those provisions.
6. This Executive Order shall be effective immediately.