

also include, if a determination can be made at that time, the recommendations of the Governor for any necessary reprogramming, appropriations, or any other statutory changes which the Governor deems advisable to deal with the emergency or to adjust the fiscal position of the government subsequent to the emergency. If this determination cannot be made at that time, the recommendation shall be transmitted to the legislature as soon as practical. A state of emergency shall automatically terminate within 60 days of its proclamation; unless the Governor shall, prior to the end of the 60 day period, notify the presiding officers of the legislature that the state of emergency has been extended, for a like term, and giving the reason for extending the state of emergency.

(b) If the legislature is not in session when the Governor prepares the report required by subsection (a) of this section, the Governor shall call the legislature into special session for the purpose of receiving the report, and of taking other action as may be necessary under the circumstances, as soon as it is physically prudent to hold a special session.

Source: PL 3-68, § 403.

#### § 7404. Bidding Preference.

(a) The requirements in this section are in addition to any other applicable requirements provided by law.

(b) The preference in this section shall not be utilized in combination with any other preference otherwise available to a bidder under Commonwealth or federal law.

(c) In contracting for capital improvements, public works, or procurement of goods or services, a Commonwealth agency shall give preference for award to a bidder or proposer who is otherwise qualified for award under the particular solicitation and who for three successive years prior to submitting the bid or proposal has:

(1) Continuously possessed a valid Commonwealth business license; and

(2) Filed all required Commonwealth employment, excise tax, business gross revenue tax, and income tax returns and paid all amounts owing on such returns;

Provided, that the bid or proposal is \$5,000,000 or less and is not more than 15 percent higher than the amount bid or proposed by any competing contractor not so qualified.

(d) In contracting for capital improvements, public works, or procurement of goods or services involving a contract amount of more than \$5,000,000, a Commonwealth agency shall give preference for award to a bidder or proposer who is otherwise qualified for award under the particular solicitation and who for five successive years prior to submitting the bid or proposal has:

(1) Continuously possessed a valid Commonwealth business license; and

(2) Filed all required Commonwealth employment, excise tax, business gross revenue tax, and income tax returns and paid all amounts owing on such returns;

Provided, that the bid or proposal is not more than 15 percent higher than the amount bid or proposed by any competing contractor not so qualified.

(e) Contractors desiring a Commonwealth contractor preference under subsections (c) or (d) of this section who are involved in a joint venture with any contractor not qualifying for the Commonwealth contractor preference must submit certification and evidence that at least 51 percent of the contract will be performed by the local contractor or contractors meeting the criteria set forth in subsections (c) and (d) of this section. Such a preference shall not be granted unless it is determined that at least 51 percent of the contract will in fact be so performed. Determination of whether a contractor will be involved in a joint venture and whether the 51 percent requirement will be met is committed to the reasonable judgment of the contracting authority subject to review by the Attorney General.

(1) Relevant information in determining satisfaction of the requirement of this subsection includes the amount of revenue to be received by each of the parties, the amount of profit expected to accrue to each of the parties, subcontracting plans or arrangements, and other factors.

(2) Prior to granting a Commonwealth contractor preference, the contracting authority shall make an assessment of whether the contractor will be involved in a joint venture, and any significant difference in the manner in which a bidder or proposer anticipates performing the requirements of the contract, which difference involves a business that would not qualify under either subsection (c) or (d) of this section, is a basis for a finding that a bidder or proposer intends to be involved in a joint venture.

(f) If two or more contractors qualifying under subsection (c) or (d) of this section submit bids or proposals, the contract shall be awarded to the lowest responsible bidder/proposer qualifying for the Commonwealth contractor preference.

(g) If any bidder or proposer selects and qualifies for a Commonwealth contractor preference, the Commonwealth agency shall, for evaluation purposes only, adjust the original amounts bid or proposed by bidders not selecting or not qualifying for the Commonwealth contractor preference upward by 15 percent, but the final contract award shall be based on the actual amount bid or proposed.

Source: PL 4-64, § 206; amended by PL 5-31, § 404; PL 6-5, § 303; repealed and reenacted by PL 11-87, § 2.