

[J-173-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PENNSYLVANIA ASSOCIATED BUILDERS AND CONTRACTORS, INC.,	:	No. 71 MAP 2006
	:	
Appellee	:	Appeal from the Order of the Commonwealth Court dated May 18, 2006 at No. 526 M.D. 2005
	:	
v.	:	899 A.2d 389 (Pa. Cmwlth. 2006)
	:	
	:	ARGUED: December 4, 2006
COMMONWEALTH DEPARTMENT OF GENERAL SERVICES,	:	
	:	
Appellant	:	

DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: October 17, 2007

In the face of the patent conflict between Sections 513 and 322(6) of the Commonwealth Procurement Code, the majority's resolution of this appeal turns on its application of Section 1933 of the Statutory Construction Act, which provides, as a general rule, that where two provisions a statute are in irreconcilable conflict, the special provisions shall prevail and be construed as an exception to the general provision. See Majority Opinion, slip op. at 14-16 (citing 1 Pa.C.S. §1933). The majority reasons that Section 322(6) is the general provision, because it applies to all construction contracts, and Section 513 is the special provision, because it applies only to certain construction contracts in specified exceptional circumstances. See id. at 15.

It seems to me, however, that the better view is that Section 513 is the general provision, because on its terms it extends to the broader category of “contracts” (defined as “[a] type of written agreement, regardless of what it may be called, for the procurement or disposal of supplies, services or construction . . .,” 62 Pa.C.S. §102); whereas, Section 322(6) is the special provision, because its requirement to adhere to the Separations Act applies only to “construction contracts,” and even then to a limited subset of those (namely, construction contracts that exceed \$25,000 in cost), 62 Pa.C.S. §322(6). Thus, while I agree with the majority that Section 1933 of the Statutory Construction Act is dispositive, in my view, its application yields the conclusion that construction contracts exceeding \$25,000 are governed by the Separations Act.

To the extent that there are two plausible perspectives concerning which of Sections 513 or 322(6) should be regarded as the special provision, the Commonwealth Court should not be faulted for its review of the Procurement Code’s contemporaneous legislative history, as this is an appropriate tool of statutory construction in the face of such an ambiguity. See 1 Pa.C.S. §1921(c)(7). Thus, it is significant to me that such review supports the position that Section 322(6) functions as a special provision, in that a prime sponsor of the underlying bill offered members of the General Assembly assurances consistent with this conclusion. See *Pennsylvania Associated Builders and Contractors, Inc. v. Commonwealth, DGS*, 899 A.2d 389, 395-96 (Pa. Cmwlth. 2006) (citing Legislative Journal - Senate, at 1475 (Feb. 10, 1998) (reflecting the query to the Honorable Robert J. Thompson, “I just want to make sure it is always the lowest responsible contractor in any major contract that would receive that bid,” and Senator

Thompson's response, "'Mr. President, the lowest responsible proposal at this time, yes.').¹

For these reasons, I would affirm the Commonwealth Court's order.

¹ Although the senator raising the question did not expressly couch his concern in terms of "construction" contracts, the context indicates that this was the relevant concern, as the questioning was posed in terms of assuring the award of contracts to the lowest responsible bidder "whether it be union or nonunion," and Senator Thompson's response distinguished between small and larger contracts, consistent with Section 322(6). See id.