

[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

MADAME JUSTICE BALDWIN

DECIDED: October 17, 2007

I respectfully disagree with the majority’s conclusion that the language of section 513 of the Procurement Code (62 Pa.C.S. § 513) clearly and unambiguously encompasses construction contracts.

Section 103 of the Procurement Code defines the term “contract” 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. § 103. However, while section 103 includes contracts for construction in the definition of the term “contract,” within the Procurement Code the term “contract” does not always include construction contracts.

Within the Procurement Code, where the Legislature intends the statute to apply to construction contracts, the statutory language frequently indicates with specificity that the

statute extends to contracts for construction. For example, section 517 governing the award of multiple contracts explicitly encompasses contracts for construction in its grant of authority. See also 62 Pa.C.S. § 515 (“A contract may be awarded for a supply, service or construction item without competition if the contracting officer first determines in writing that one of the following conditions exists . . .”) (emphasis added); 62 Pa.C.S. § 514, governing the allocation of small procurements for projects that do not exceed \$10,000 distinguishes between supply, service, and construction contracts as follows: (“The head of the purchasing agency may authorize procurement of the supply or service on a no-bid basis for procurements which do not exceed the amount established by the head of the purchasing agency for small no-bid procurements. The head of the purchasing agency may authorize procurement on a no-bid basis for construction projects that do not exceed a total construction cost of \$10,000.”) (emphasis added). Every word, sentence, or provision of a statute is intended for some purpose so that the statute must be construed so as to give effect to every word. Commonwealth v. Lobiondo, 501 Pa. 599, 604, 462 A.2d 662, 664 (1983). While the Procurement Code in many instances specifies which of its sections are to apply to contracts for construction, the Legislature failed to expressly indicate that section 513 was applicable to construction contracts.

It is axiomatic that in determining legislative intent, all sections of a statute must be read together and in conjunction with each other, and construed with reference to the entire statute. Hous. Auth. of Cty of Chester v. Pennsylvania State Civil Serv. Comm’n, 556 Pa. 621, 641, 730 A.2d 935, 946 (1999). Reading all sections of the Procurement Code in conjunction with each other, it is clear that the term “contract” does not have a consistent, explicit meaning as used within the Code, and that the term does not necessarily include construction contracts in all instances. Where the Legislature includes specific language in one section of a statute and excludes it from another, that language should not be implied where excluded. Fonner v. Shandon, Inc., 555 Pa. 370, 379, 724 A.2d 903, 907 (1999).

Because within the Procurement Code the term “contract” does not always extend to construction contracts and the language of section 513 does not specifically include construction contracts, I would not read section 513 to unambiguously encompass such contracts.

The majority finds that section 513 and section 322(6) of the Procurement Code are clearly in conflict. When engaging in statutory interpretation however, “[a] conflict between various statutes or parts thereof is to be avoided and, if possible, the apparently conflicting provisions must be construed together with the more specific provisions prevailing over the general ones.” Hous. Auth. of Cty of Chester, 556 Pa. at 641, 730 A.2d at 946. Reading Section 513 of the Procurement Code as the majority does to unambiguously include contracts for construction creates an unavoidable conflict with those provisions of the Procurement Code which expressly incorporate the Separations Act. In keeping with the principle of statutory construction that any conflicts within and between statutes are to be avoided, I would decline to hold that the Legislature intended to permit the solicitation of competitive sealed proposals for construction contracts, or that the Separations Act, which requires contracts to be solicited through the competitive bidding process, irreconcilably conflicts with the Procurement Code, rendering the Separations Act ineffective.

In the absence of a manifestly contrary intention on the part of the Legislature, a construction of two statutes which allows both to operate is mandatory. Appeal of Yerger, 460 Pa. 537, 543, 333 A.2d 902, 905 (1975). The two statutes at issue, the Separations Act and the Procurement Code, are capable of a construction which allows both to remain effective by limiting the scope of section 513 to exclude construction contracts, leaving such contracts to be governed by the bidding process as specified in the Separations Act. Accordingly, the determination of the Commonwealth Court that the General Assembly did not intend to allow construction contracts to be let by a proposal process should be affirmed.