

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1872 Session of
2005

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DeWEESE, FRANKEL, GEIST, HARRIS, HERSHEY, McILHATTAN,
PHILLIPS, SCAVELLO AND WATSON, JULY 3, 2005

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JULY 3, 2005

AN ACT

1 Amending the act of July 28, 1953 (P.L.723, No.230), entitled,
2 as amended, "An act relating to counties of the second class
3 and second class A; amending, revising, consolidating and
4 changing the laws relating thereto," further regulating
5 contracts and purchases.

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

8 Section 1. The act of July 28, 1953 (P.L.723, No.230), known
9 as the Second Class County Code, is amended by adding a section
10 to read:

11 Section 112. Adjustments Based on Consumer Price Index.--(a)
12 The Department of Labor and Industry shall determine the
13 percentage change in the Consumer Price Index for All Urban
14 Consumers for the twelve-month period ending September 30 of the
15 calendar year in which this section becomes effective, and for
16 each successive twelve-month period thereafter.

17 (b) The amounts at which competitive bidding, separate bids

1 and written or telephonic price quotations are required under
2 this act shall be adjusted annually. The positive percentage
3 change, as determined in accordance with subsection (a), shall
4 be multiplied by the applicable amount for the current year and
5 the product thereof shall be added to the applicable amount for
6 the current year, with the result rounded to the nearest
7 multiple of ten dollars (\$10).

8 (c) The annual determination required under subsection (a)
9 and the calculation of the adjustments required under subsection
10 (b) shall be made in the period between October 1 and November
11 15 of the year following the effective date of this section, and
12 annually between October 1 and November 15 of each successive
13 year.

14 (d) The adjusted amounts obtained in accordance with
15 subsection (b) shall become effective January 1 for the calendar
16 year following the year in which the determination required
17 under subsection (a) is made.

18 (e) The Department of Labor and Industry shall give notice
19 in the Pennsylvania Bulletin prior to January 1 of each calendar
20 year of the annual percentage change determined in accordance
21 with subsection (a) and the amounts, whether adjusted or
22 unadjusted in accordance with subsection (b), at which
23 competitive bidding, separate bids and written or telephonic
24 price quotations are required under this act for the calendar
25 year beginning the first day of January after publication of the
26 notice.

27 Section 2. Section 2001(a) and (d) of the act, amended
28 November 30, 2004 (P.L.1439, No.186), are amended to read:

29 Section 2001. County Commissioners to Make Contracts.--The
30 County Commissioners may make contracts for lawful purposes and

1 for the purposes of carrying into execution the provisions of
2 this section and the laws of the Commonwealth.

3 (a) Except as provided in subsection (a.1), all contracts or
4 purchases in excess of [ten thousand dollars (\$10,000)] twenty-
5 five thousand dollars (\$25,000), subject to annual adjustment
6 under section 112, shall be in writing and, except those
7 hereinafter mentioned and except as provided by the act of
8 October 27, 1979 (P.L.241, No.78), entitled "An act authorizing
9 political subdivisions, municipality authorities and
10 transportation authorities to enter into contracts for the
11 purchase of goods and the sale of real and personal property
12 where no bids are received," shall not be made except with and
13 from the lowest responsible and responsive bidder meeting
14 specifications, after due notice in at least one newspaper of
15 general circulation, published or circulating in the county at
16 least two (2) times, at intervals of not less than three (3)
17 days where daily newspapers of general circulation are employed
18 for such publication, or in case weekly newspapers are employed,
19 then the notice shall be published once a week for two (2)
20 successive weeks. The first advertisement shall be published not
21 less than ten (10) days prior to the date fixed for the opening
22 of bids.

23 * * *

24 (d) The contracts or purchases made by the commissioners
25 involving an expenditure of over [ten thousand dollars
26 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to
27 annual adjustment under section 112, which shall not require
28 advertising or bidding as hereinbefore provided are as follows:

29 (1) Those for maintenance, repairs or replacements for
30 water, electric light, or other public works: Provided, That

1 they do not constitute new additions, extensions or enlargements
2 of existing facilities and equipment. Security may be required
3 by the county commissioners as in other cases of work done.

4 (2) Those made for improvements, repairs and maintenance of
5 any kind made or provided by the county through its own
6 employes. This paragraph shall not apply to construction
7 materials used in a street improvement.

8 (3) Those where particular types, models or pieces of new
9 equipment, articles, apparatus, appliances, vehicles or parts
10 thereof are desired by the county commissioners, which are
11 patented and manufactured products or copyrighted products.

12 (4) Those involving any policies of insurance or surety
13 company bonds, those made for public utility service and
14 electricity, natural gas or telecommunication services:

15 Provided, That, in the case of utilities not under tariffs on
16 file with the Pennsylvania Public Utility Commission, contracts
17 made without advertising and bidding shall be made only after
18 receiving written or telephonic price quotations from at least
19 three (3) qualified and responsible contractors, or in lieu of
20 price quotations a memorandum shall be kept on file showing that
21 fewer than three (3) qualified contractors exist in the market
22 area within which it is practicable to obtain quotations. A
23 written record of telephonic price quotations shall be made and
24 contain at least the date of the quotation, the name of the
25 contractor and the contractor's representative.

26 (5) Those involving personal or professional services,
27 including, but not limited to, services of members of the
28 medical or legal profession, registered architects, engineers,
29 certified public accountants or other personal services
30 involving professional expertise.

1 (6) Those involving tangible client services provided by
2 nonprofit agencies. For the purposes of this clause, the term
3 "tangible client services" shall mean congregate meals, home-
4 delivered meals, transportation and chore services provided
5 through area agencies on aging.

6 (6.1) Those involving contracts entered into by nonprofit
7 cooperative hospital service associations for hospitals and
8 nursing homes which are part of the institutional district or
9 which are owned by the county, operated by the county or
10 affiliated with the county by the purchasing of or participating
11 in contracts for materials, supplies and equipment.

12 (7) Those involving the purchase of milk.

13 (8) Those made with any public body, including, but not
14 limited to, the sale, lease or loan of any supplies or materials
15 to the county by a public body, provided that the price thereof
16 shall not be in excess of that fixed by the public body. The
17 requirements of 53 Pa.C.S. Ch. 23 Subch. A (relating to
18 intergovernmental cooperation) shall not apply when a county
19 purchases cooperatively with another public body which has
20 entered into a contract for supplies or materials. As used in
21 this paragraph, "public body" shall mean any of the following:

22 (i) the Federal Government;

23 (ii) the Commonwealth of Pennsylvania;

24 (iii) any other state;

25 (iv) a political subdivision, local or municipal authority
26 or other similar local entity of the Commonwealth or any other
27 state; or

28 (v) an agency of the Federal Government, the Commonwealth or
29 any other state.

30 (9) Those exclusively involving construction management

1 services.

2 (10) Those involving computer software.

3 * * *

4 Section 3. Section 2517(a) of the act, amended December 9,
5 2002 (P.L.1383, No.170), is amended to read:

6 Section 2517. Separate Specifications and Contracts for
7 Certain Items.--(a) In the preparation of specifications for
8 the erection, construction and alteration of any public
9 building, when the entire cost of such work shall exceed [ten
10 thousand dollars (\$10,000)] twenty-five thousand dollars
11 (\$25,000), subject to annual adjustment under section 112, the
12 architect, engineer or other person preparing such
13 specifications shall prepare separate specifications for the
14 plumbing, heating, ventilating and electrical work. The board of
15 commissioners shall receive separate bids upon each of the said
16 branches of work and award the contract for the same to the
17 lowest responsible bidder for each of said branches.

18 * * *

19 Section 4. Section 2511-A(a), (b), (b.1) and (h) of the act,
20 added October 30, 2000 (P.L.616, No.85), are amended to read:

21 Section 2511-A. Competition in Award of Contracts.--(a) All
22 construction, reconstruction, repairs or work of any nature made
23 by any Authority, where the entire cost, value or amount of such
24 construction, reconstruction, repairs or work, including labor
25 and materials, shall exceed [ten thousand dollars (\$10,000)]
26 twenty-five thousand dollars (\$25,000), subject to annual
27 adjustment under section 112, except construction,
28 reconstruction, repairs or work done by employees of said
29 Authority or by labor supplied under agreement with any Federal
30 or State agency with supplies and materials purchased, as

1 hereinafter provided, shall be done only under contract or
2 contracts to be entered into by the Authority with the lowest
3 responsible bidder upon proper terms, after due public notice
4 has been given asking for competitive bids hereinafter provided.
5 No contract shall be entered into for construction or
6 improvement or repair of any project or portion thereof unless
7 the contractor shall give an undertaking, with a sufficient
8 surety or sureties approved by the Authority and in an amount
9 fixed by the Authority, for the faithful performance of the
10 contract. All such contracts shall provide, among other things,
11 that the person or corporation entering into such contract with
12 the Authority will pay for all materials furnished and services
13 rendered for the performance of the contract and that any person
14 or corporation furnishing such materials or rendering such
15 services may maintain an action to recover for the same against
16 the obligor in the undertaking as though such person or
17 corporation was named therein, provided the action is brought
18 within one (1) year after the time the cause of action accrued.
19 Nothing in this section shall be construed to limit the power of
20 the Authority to construct, repair or improve any project or
21 portion thereof or any addition, betterment or extension thereto
22 directly by the officers, agents and employes of the Authority
23 or otherwise than by contract.

24 (b) All supplies and materials costing [ten thousand dollars
25 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to
26 annual adjustment under section 112, or more shall be purchased
27 only after due advertisement as hereinafter provided. The
28 Authority shall accept the lowest bid or bids, kinds, quality
29 and material being equal, but the Authority shall have the right
30 to reject any or all bids or select a single item from any bid.

1 The provisions as to bidding shall not apply to the purchase of
2 patented and manufactured products offered for sale in a non-
3 competitive market or solely by a manufacturer's authorized
4 dealer.

5 (b.1) Written or telephonic price quotations from at least
6 three (3) qualified and responsible contractors shall be
7 requested for all contracts that exceed [four thousand dollars
8 (\$4,000)] ten thousand dollars (\$10,000), subject to annual
9 adjustment under section 112, but are less than the amount
10 requiring advertisement and competitive bidding, or, in lieu of
11 price quotations, a memorandum shall be kept on file showing
12 that fewer than three (3) qualified contractors exist in the
13 market area within which it is practicable to obtain quotations.
14 A written record of telephonic price quotations shall be made
15 and shall contain at least the date of the quotation, the name
16 of the contractor and the contractor's representative, the
17 construction, reconstruction, repair, maintenance or work which
18 was the subject of the quotation and the price. Written price
19 quotations, written records of telephonic price quotations and
20 memoranda shall be retained for a period of three (3) years.

21 * * *

22 (h) An Authority shall not evade the provisions of this
23 section as to advertising for bids or purchasing materials or
24 contracting for services piecemeal for the purpose of obtaining
25 prices under [ten thousand dollars (\$10,000)] twenty-five
26 thousand dollars (\$25,000), subject to annual adjustment under
27 section 112, upon transactions which should, in the exercise of
28 reasonable discretion and prudence, be conducted as one
29 transaction amounting to more than [ten thousand dollars
30 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to

1 annual adjustment under section 112. This provision is intended
2 to make unlawful the practice of evading advertising
3 requirements by making a series of purchases or contracts each
4 for less than the advertising requirement price or by making
5 several simultaneous purchases or contracts each below said
6 price when in either case the transaction involved should have
7 been made as one transaction for one price.

8 * * *

9 Section 5. This act shall apply to contracts and purchases
10 advertised on or after January 1 of the year following the
11 effective date of this section.

12 Section 6. This act shall take effect immediately.