

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1022 Session of 2009

INTRODUCED BY M. KELLER, BAKER, BOBACK, BOYD, BOYLE, BRENNAN, CAUSER, CUTLER, FAIRCHILD, FLECK, GEIST, GINGRICH, GRELL, HALUSKA, HARHART, HARPER, HARRIS, HESS, HICKERNELL, KAUFFMAN, KORTZ, KOTIK, KULA, MARSICO, MENSCH, MILLARD, MILLER, MOUL, O'NEILL, PAYNE, PEIFER, PETRI, PHILLIPS, PICKETT, PYLE, REICHLEY, ROAE, ROCK, STERN, STEVENSON, SWANGER AND WATSON, MARCH 19, 2009

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, MARCH 19, 2009

AN ACT

1 Amending the act of July 29, 1953 (P.L.1034, No.270), entitled,
2 as amended, "An act creating as bodies corporate and politic
3 "Public Auditorium Authorities" in counties of the second
4 class and in cities of the second class and in cities of the
5 second class A and counties in which a city of the second
6 class A is located, singly or jointly; prescribing the
7 rights, powers and duties of such Authorities; authorizing
8 such Authorities to acquire, construct, improve, maintain and
9 operate public auditoriums; to borrow money and issue bonds
10 therefor; providing for the payment of such bonds and
11 prescribing the rights of the holders thereof; conferring the
12 right of eminent domain on such Authorities; empowering such
13 Authorities to enter into contracts, leases and licenses with
14 and to accept grants from private sources, the Federal
15 Government, State, political subdivisions of the State or any
16 agency thereof; authorizing the making of said grants from
17 bond funds or current revenues; authorizing Authorities to
18 collect rentals, admissions, license fees for the use of the
19 project; exempting the property and securities of such Public
20 Auditorium Authorities from taxation," increasing the dollar
21 amount of supplies and materials which may be purchased
22 without advertising.

23 The General Assembly of the Commonwealth of Pennsylvania
24 hereby enacts as follows:

25 Section 1. Section 11 of the act of July 29, 1953 (P.L.1034,

1 No.270), known as the Public Auditorium Authorities Law, amended
2 July 10, 1990 (P.L.376, No.88), is amended to read:

3 Section 11. Competition in Award of Contracts.

4 A. All construction, reconstruction, repairs or work of any
5 nature made by any Authority, where the entire cost, value or
6 amount of such construction, reconstruction, repairs or work,
7 including labor and materials, shall exceed [ten thousand
8 dollars (\$10,000)] twenty-five thousand dollars (\$25,000),
9 subject to annual adjustment under subsection I, except
10 construction, reconstruction, repairs or work done by employees
11 of said Authority or by labor supplied under agreement with any
12 Federal or State agency with supplies and materials purchased,
13 as hereinafter provided, shall be done only under contract or
14 contracts to be entered into by the Authority with the lowest
15 responsible bidder upon proper terms, after due public notice
16 has been given asking for competitive bids hereinafter provided.
17 No contract shall be entered into for construction or
18 improvement or repair of any project or portion thereof unless
19 the contractor shall give an undertaking, with a sufficient
20 surety or sureties approved by the Authority and in an amount
21 fixed by the Authority, for the faithful performance of the
22 contract. All such contracts shall provide, among other things,
23 that the person or corporation entering into such contract with
24 the Authority will pay for all materials furnished and services
25 rendered for the performance of the contract and that any person
26 or corporation furnishing such materials or rendering such
27 services may maintain an action to recover for the same against
28 the obligor in the undertaking as though such person or
29 corporation was named therein, provided the action is brought
30 within one year after the time the cause of action accrued.

1 Nothing in this section shall be construed to limit the power of
2 the Authority to construct, repair or improve any project or
3 portion thereof or any addition, betterment or extension thereto
4 directly by the officers, agents and employees of the Authority
5 or otherwise than by contract.

6 B. All supplies and materials costing [ten thousand dollars
7 (\$10,000)], subject to annual adjustment under subsection I,
8 twenty-five thousand dollars (\$25,000) or more shall be
9 purchased only after due advertisement as hereinafter provided.
10 The Authority shall accept the lowest bid or bids, kinds,
11 quality and material being equal, but the Authority shall have
12 the right to reject any or all bids or select a single item from
13 any bid. The provisions as to bidding shall not apply to the
14 purchase of patented and manufactured products offered for sale
15 in a non-competitive market or solely by a manufacturer's
16 authorized dealer.

17 B.1. Written or telephonic price quotations from at least
18 three (3) qualified and responsible contractors shall be
19 requested for all contracts that exceed [four thousand dollars
20 (\$4,000)] ten thousand dollars (\$10,000), subject to annual
21 adjustment under subsection I, but are less than the amount
22 requiring advertisement and competitive bidding or, in lieu of
23 price quotations, a memorandum shall be kept on file showing
24 that fewer than three (3) qualified contractors exist in the
25 market area within which it is practicable to obtain quotations.
26 A written record of telephonic price quotations shall be made
27 and shall contain at least the date of the quotation, the name
28 of the contractor and the contractor's representative, the
29 construction, reconstruction, repair, maintenance or work which
30 was the subject of the quotation and the price. Written price

1 quotations, written records of telephonic price quotations and
2 memoranda shall be retained for a period of three (3) years.

3 C. The terms, advertisement or due public notice, wherever
4 used in this section, shall mean a notice published at least ten
5 (10) days before the award on any contract in a newspaper of
6 general circulation published in the municipality where the
7 Authority has its principal office, and if no newspaper is
8 published therein then by publication in a newspaper in the
9 county where the Authority has its principal office: Provided,
10 That such notice may be waived where the Authority determines an
11 emergency exists and such supplies and materials must be
12 immediately purchased by the said Authority.

13 D. No member of the Authority or officer or employe thereof
14 shall, either directly or indirectly, be a party to or be in any
15 manner interested in any contract or agreement with the
16 Authority for any matter, cause or thing whatsoever, by reason
17 whereof any liability or indebtedness shall in any way be
18 created against such Authority. If any contract or agreement
19 shall be made in violation of the provision of this section, the
20 same shall be null and void and no action shall be maintained
21 thereon against such Authority.

22 E. Subject to the aforesaid, any Authority may (but without
23 intending by this provision to limit any powers of such
24 Authority) enter into and carry out such contracts or establish
25 or comply with such rules and regulations concerning labor and
26 materials and other related matters, in connection with any
27 project or portion thereof, as the Authority may deem desirable,
28 or as may be requested by any Federal agency that may assist in
29 the financing of such project or any part thereof: Provided,
30 however, That the provisions of this section shall not apply to

1 any case in which the Authority has taken over by transfer or
2 assignment any contract authorized to be assigned to it under
3 the provisions of section ten of this act, nor to any contract
4 in connection with the construction of any project which the
5 Authority may have had transferred to it by any person or
6 private corporation.

7 F. Every contract for the construction, reconstruction,
8 alteration, repair, improvement or maintenance of public works
9 shall comply with the provisions of the act of March 3, 1978
10 (P.L.6, No.3), known as the "Steel Products Procurement Act."

11 G. An Authority shall not evade the provisions of this
12 section as to advertising for bids or purchasing materials or
13 contracting for services piecemeal for the purpose of obtaining
14 prices under [ten thousand dollars (\$10,000)] twenty-five
15 thousand dollars (\$25,000), subject to annual adjustment under
16 subsection I, upon transactions which should, in the exercise of
17 reasonable discretion and prudence, be conducted as one
18 transaction amounting to more than [ten thousand dollars
19 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to
20 annual adjustment under subsection I. This provision is intended
21 to make unlawful the practice of evading advertising
22 requirements by making a series of purchases or contracts each
23 for less than the advertising requirement price or by making
24 several simultaneous purchases or contracts each below said
25 price, when in either case the transaction involved should have
26 been made as one transaction for one price.

27 H. Any member of the Authority who votes to unlawfully evade
28 the provisions of this section and who knows that the
29 transaction upon which he so votes is or ought to be a part of a
30 larger transaction and that it is being divided in order to

evade the requirements as to advertising for bids commits a misdemeanor of the third degree for each contract entered into as a direct result of that vote.

I. (1) The Department of Labor and Industry shall determine the percentage change in the Consumer Price Index for All Urban Consumers for the twelve-month period ending September 30 of the calendar year in which this subsection becomes effective, and for each successive twelve-month period thereafter.

(2) The amounts at which competitive bidding and written or telephonic price quotations are required under this section shall be adjusted annually as follows:

(i) In the case of competitive bidding, the positive percentage change, as determined in accordance with clause (1), shall be multiplied by the amount applicable under subsection A, B or G for the current year and the product thereof shall be added to the amount applicable under subsection A, B or G for the current year, with the result rounded to the nearest multiple of ten dollars (\$10).

(ii) In the case of written or telephonic price quotations, the positive percentage change, as determined in accordance with clause (1), shall be multiplied by the amount applicable under subsection B.1 for the current year and the product thereof shall be added to the amount applicable under subsection B.1 for the current year, with the result rounded to the nearest multiple of ten dollars (\$10).

(3) The annual determination required under clause (1) and the calculation of the adjustments required under clause (2) shall be made in the period between October 1 and November 15 of the year following the effective date of this subsection, and annually between October 1 and November 15 of each successive

1 year.

2 (4) The adjusted amounts obtained in accordance with clause
3 (2) shall become effective January 1 for the calendar year
4 following the year in which the determination required under
5 clause (1) is made.

6 (5) The Department of Labor and Industry shall give notice
7 in the Pennsylvania Bulletin prior to January 1 of each calendar
8 year of the annual percentage change determined in accordance
9 with clause (1) and the amounts, whether adjusted or unadjusted
10 in accordance with clause (2), at which competitive bidding is
11 required and written or telephonic price quotations are required
12 for the calendar year beginning the first day of January after
13 publication of the notice.

14 Section 2. This act shall apply to contracts and purchases
15 advertised on or after January 1 of the year following the
16 effective date of this section.

17 Section 3. This act shall take effect in 60 days.