

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 279 Session of
2011

INTRODUCED BY M. K. KELLER, AUMENT, BAKER, BEAR, BENNINGHOFF, BLOOM, BOBACK, BOYD, BROOKS, CAUSER, CHRISTIANA, CLYMER, COX, CREIGHTON, CUTLER, DELOZIER, DENLINGER, ELLIS, EVERETT, FARRY, FLECK, GABLER, GEIST, GILLESPIE, GINGRICH, GRELL, GROVE, HALUSKA, HARHART, HARPER, HARRIS, HELM, HENNESSEY, HESS, HICKERNELL, KAUFFMAN, KILLION, KNOWLES, MAJOR, MARSHALL, MARSICO, MASSER, METCALFE, MILLARD, MILLER, MOUL, OBERLANDER, O'NEILL, PAYNE, PEIFER, PERRY, PICKETT, PYLE, QUIGLEY, QUINN, RAPP, REED, REICHLEY, ROAE, ROCK, ROSS, SAYLOR, SCAVELLO, CULVER, SCHRODER, SIMMONS, SONNEY, STERN, STEVENSON, SWANGER, TALLMAN, TOBASH, TRUITT, TURZAI, VEREB, VULAKOVICH, WATSON AND F. KELLER, JANUARY 27, 2011

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 5, 2011

AN ACT

1 Amending the act of June 24, 1931 (P.L.1206, No.331), entitled
2 "An act concerning townships of the first class; amending,
3 revising, consolidating, and changing the law relating
4 thereto," in contracts, further providing for general
5 regulations concerning contracts ~~and~~, for evasion of
6 advertising requirements AND FOR SEPARATE SPECIFICATIONS FOR
7 BRANCHES OF WORK. ←

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 1802(a) ~~and (a.1)~~, (A.1) AND (D) (2) of ←
11 the act of June 24, 1931 (P.L.1206, No.331), known as The First
12 Class Township Code, reenacted and amended May 27, 1949
13 (P.L.1955, No.569) and amended or added July 10, 1990 (P.L.389,
14 No.92), DECEMBER 18, 1996 (P.L.1149, NO.173) and December 20, ←
15 1996 (P.L.1495, No.192), are amended and the section is amended

1 by adding a subsection to read:

2 Section 1802. General Regulations Concerning Contracts.--(a)

3 All contracts or purchases made by any township, involving the

4 expenditure [of over ~~ten~~ thousand dollars] IN EXCESS OF THE ←

5 BASE AMOUNT OF twenty-five thousand dollars subject to annual

6 adjustment under subsection (a.2), except those hereinafter

7 mentioned, shall not be made except with and from the lowest

8 responsible bidder, shall be in writing, and shall be made only

9 after notice by the secretary, published, in one newspaper of

10 general circulation, published or circulating in the county in

11 which the township is situated, at least two times at intervals

12 of not less than three days where daily newspapers of general

13 circulation are employed for such publication, or in case weekly

14 newspapers are employed then the notice shall be published once

15 a week for two successive weeks. The first advertisement shall

16 be published not more than forty-five days and the second

17 advertisement not less than ten days prior to the date fixed for

18 the opening of bids. Advertisements for contracts or purchases

19 shall also be posted in a conspicuous place within the township.

20 Advertisements for contracts or purchases shall contain the

21 date, time and location for opening of bids and shall state the

22 amount of the performance bond determined under subsection (c).

23 All plans and specifications shall be on file at least ten days

24 in advance of opening bids. The amount of the contract shall in

25 all cases, whether of straight sale price, conditional sale,

26 bailment lease, or otherwise, be the entire amount which the

27 township pays to the successful bidder or his assigns in order

28 to obtain the services or property, or both, and shall not be

29 construed to mean only the amount which is paid to acquire title

30 or to receive any other particular benefit or benefits of the

1 whole bargain.

2 (a.1) Written or telephonic price quotations from at least
3 three qualified and responsible contractors shall be requested
4 for all contracts that [exceed {four thousand dollars}] ARE IN
5 EXCESS OF THE BASE AMOUNT OF ten thousand dollars subject to
6 annual adjustment under subsection (a.2) but are less than the
7 amount requiring advertisement and competitive bidding or, in
8 lieu of price quotations, a memorandum shall be kept on file
9 showing that fewer than three qualified contractors exist in the
10 market area within which it is practicable to obtain quotations.
11 A written record of telephonic price quotations shall be made
12 and shall contain at least the date of the quotation, the name
13 of the contractor and the contractor's representative, the
14 construction, reconstruction, repair, maintenance or work which
15 was the subject of the quotation and the price. Written price
16 quotations, written records of telephonic price quotations and
17 memoranda shall be retained for a period of three years.

18 ~~(a.2) (1) The Department of Labor and Industry shall~~
19 ~~determine the percentage change in the Consumer Price Index for~~
20 ~~All Urban Consumers for the twelve month period ending September~~
21 ~~30 of the calendar year in which this subsection becomes~~
22 ~~effective, and for each successive twelve month period~~
23 ~~thereafter.~~

24 ~~(2) The amount at which competitive bidding is required~~
25 ~~under subsection (a) and the amount at which written or~~
26 ~~telephonic price quotations are required under subsection (a.1)~~
27 ~~shall be adjusted annually as follows:~~

28 ~~(i) In the case of competitive bidding, the positive~~
29 ~~percentage change, as determined in accordance with clause (1),~~
30 ~~shall be multiplied by the amount applicable under subsection~~

~~(a) for the current year and the product thereof shall be added to the amount applicable under subsection (a) for the current year, with the result rounded to the nearest multiple of ten dollars.~~

~~(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 (a.1) for the current year and the product thereof shall be added to the amount applicable under subsection (a.1) for the current year, with the result rounded to the nearest multiple of ten dollars.~~

~~(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 year.~~

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

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



(A.2) ADJUSTMENTS TO THE BASE AMOUNTS SPECIFIED UNDER
SUBSECTIONS (A), (A.1) AND (D) (2) AND SECTIONS 1802.1(A) AND
1805 SHALL BE MADE AS FOLLOWS:

(1) THE DEPARTMENT OF LABOR AND INDUSTRY SHALL DETERMINE THE
PERCENTAGE CHANGE IN THE ALL ITEMS CONSUMER PRICE INDEX FOR ALL
URBAN CONSUMERS (CPI-U) FOR THE UNITED STATES CITY AVERAGE AS
PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF
LABOR STATISTICS 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) IF THE DEPARTMENT DETERMINES THAT THERE IS NO POSITIVE
PERCENTAGE CHANGE, THEN NO ADJUSTMENT TO THE BASE AMOUNTS SHALL
OCCUR FOR THE RELEVANT TIME PERIOD PROVIDED FOR IN THIS
SUBSECTION.

(3) (I) IF THE DEPARTMENT DETERMINES THAT THERE IS A
POSITIVE PERCENTAGE CHANGE IN THE FIRST YEAR THAT THE
DETERMINATION IS MADE UNDER PARAGRAPH (1), THE POSITIVE
PERCENTAGE CHANGE SHALL BE MULTIPLIED BY EACH BASE AMOUNT AND
THE PRODUCTS SHALL BE ADDED TO THE BASE AMOUNTS, RESPECTIVELY,
AND THE SUMS SHALL BE PRELIMINARY ADJUSTED AMOUNTS.

(II) THE PRELIMINARY ADJUSTED AMOUNTS SHALL BE ROUNDED TO
THE NEAREST ONE THOUSAND DOLLARS TO DETERMINE THE FINAL ADJUSTED
BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS (A), (A.1) AND (D) (2)
AND SECTIONS 1802.1(A) AND 1805.

(4) IN EACH SUCCESSIVE YEAR IN WHICH THERE IS A POSITIVE
PERCENTAGE CHANGE IN THE CPI-U FOR THE UNITED STATES CITY
AVERAGE, THE POSITIVE PERCENTAGE CHANGE SHALL BE MULTIPLIED BY
THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS AND THE PRODUCTS
SHALL BE ADDED TO THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS,
RESPECTIVELY. THE SUMS THEREOF SHALL BE ROUNDED TO THE NEAREST

1 ONE THOUSAND DOLLARS TO DETERMINE THE NEW FINAL ADJUSTED BASE
2 AMOUNTS FOR PURPOSES OF SUBSECTIONS (A), (A.1) AND (D) (2) AND
3 SECTIONS 1802.1(A) AND 1805.

4 (5) THE DETERMINATIONS AND ADJUSTMENTS REQUIRED UNDER THIS
5 SUBSECTION SHALL BE MADE IN THE PERIOD BETWEEN OCTOBER 1 AND
6 NOVEMBER 15 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS
7 SUBSECTION, AND ANNUALLY BETWEEN OCTOBER 1 AND NOVEMBER 15 OF
8 EACH YEAR THEREAFTER.

9 (6) THE FINAL ADJUSTED BASE AMOUNTS AND NEW FINAL ADJUSTED
10 BASE AMOUNTS OBTAINED UNDER PARAGRAPHS (3) AND (4) SHALL BECOME
11 EFFECTIVE JANUARY 1 FOR THE CALENDAR YEAR FOLLOWING THE YEAR IN
12 WHICH THE DETERMINATION REQUIRED UNDER PARAGRAPH (1) IS MADE.

13 (7) THE DEPARTMENT SHALL PUBLISH NOTICE IN THE PENNSYLVANIA
14 BULLETIN PRIOR TO JANUARY 1 OF EACH CALENDAR YEAR OF THE ANNUAL
15 PERCENTAGE CHANGE DETERMINED UNDER PARAGRAPH (1) AND THE
16 UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS DETERMINED UNDER
17 PARAGRAPHS (3) AND (4) FOR PURPOSES OF SUBSECTIONS (A), (A.1)
18 AND (D) (2) AND SECTIONS 1802.1(A) AND 1805, RESPECTIVELY, FOR
19 THE CALENDAR YEAR BEGINNING THE FIRST DAY OF JANUARY AFTER
20 PUBLICATION OF THE NOTICE. THE NOTICE SHALL INCLUDE A WRITTEN
21 AND ILLUSTRATIVE EXPLANATION OF THE CALCULATIONS PERFORMED BY
22 THE DEPARTMENT IN ESTABLISHING THE UNADJUSTED OR FINAL ADJUSTED
23 BASE AMOUNTS UNDER THIS SUBSECTION FOR THE ENSUING CALENDAR
24 YEAR.

25 * * *

26 (D) THE CONTRACTS OR PURCHASES MADE BY THE COMMISSIONERS
27 WHICH SHALL NOT REQUIRE ADVERTISING, BIDDING OR PRICE
28 QUOTATIONS, AS HEREINBEFORE PROVIDED, ARE AS FOLLOWS:

29 * * *

30 (2) THOSE MADE FOR IMPROVEMENTS, REPAIRS AND MAINTENANCE OF



1 ANY KIND MADE OR PROVIDED BY ANY TOWNSHIP THROUGH ITS OWN
2 EMPLOYES: PROVIDED, HOWEVER, THAT ALL MATERIALS USED FOR STREET
3 IMPROVEMENT, MAINTENANCE, AND/OR CONSTRUCTION IN EXCESS OF
4 [FOUR] THE BASE AMOUNT OF TEN THOUSAND DOLLARS BE SUBJECT TO THE
5 RELEVANT PRICE QUOTATION OR ADVERTISING REQUIREMENTS AS
6 CONTAINED HEREIN AND TO ANNUAL ADJUSTMENT UNDER SUBSECTION
7 (A.2).

8 * * *

9 Section 2. ~~Section 1802.1~~ SECTIONS 1802.1 AND 1805 of the
10 act, amended July 10, 1990 (P.L.389, No.92), ~~is~~ ARE amended to
11 read:

12 Section 1802.1. Evasion of Advertising Requirements.--(a)
13 No commissioner or commissioners shall evade the provisions of
14 section one thousand eight hundred two as to advertising for
15 bids, by purchasing or contracting for services and personal
16 properties piecemeal for the purpose of obtaining prices under
17 [ten thousand dollars] THE BASE AMOUNT OF twenty-five thousand
18 dollars subject to annual adjustment under section 1802(a.2)
19 upon transactions, which transactions should, in the exercise of
20 reasonable discretion and prudence, be conducted as one
21 transaction amounting to more than [ten thousand dollars] THE
22 BASE AMOUNT OF twenty-five thousand dollars subject to annual
23 adjustment under section 1802(a.2). This provision is intended
24 to make unlawful the evading of advertising requirements by
25 making a series of purchases or contracts each for less than the
26 advertising requirement price, or by making several simultaneous
27 purchases or contracts, each below said price, when in either
28 case, the transactions involved should have been made as one
29 transaction for one price. Any commissioners who so vote in
30 violation of this provision, and who know that the transaction

1 upon which they so vote is or ought to be a part of a larger
2 transaction, and that it is being divided in order to evade the
3 requirements as to advertising for bids, shall be jointly and
4 severally subject to surcharge for ten per centum of the full
5 amount of the contract or purchase. Whenever it shall appear
6 that a commissioner may have voted in violation of this section,
7 but the purchase or contract on which he so voted was not
8 approved by the board of commissioners, this section shall be
9 inapplicable.

10 (b) Any commissioner who votes to unlawfully evade the
11 provisions of section one thousand eight hundred two and who
12 knows that the transaction upon which he so votes is or ought to
13 be a part of a larger transaction and that it is being divided
14 in order to evade the requirements as to advertising for bids
15 commits a misdemeanor of the third degree for each contract
16 entered into as a direct result of that vote. This penalty shall
17 be in addition to any surcharge which may be assessed pursuant
18 to subsection (a).

19 SECTION 1805. SEPARATE SPECIFICATIONS FOR BRANCHES OF
20 WORK.--IN THE PREPARATION OF SPECIFICATIONS FOR THE ERECTION OR
21 ALTERATION OF ANY PUBLIC BUILDING, WHEN THE ENTIRE COST OF SUCH
22 WORK EXCEEDS [TEN] TWENTY-FIVE THOUSAND DOLLARS, SUBJECT TO
23 ANNUAL ADJUSTMENT UNDER SECTION 1802(A.2), THE ARCHITECT,
24 ENGINEER, OR PERSON PREPARING SUCH SPECIFICATIONS SHALL PREPARE
25 SEPARATE SPECIFICATIONS FOR THE PLUMBING, HEATING, VENTILATING,
26 AND ELECTRICAL WORK, AND THE TOWNSHIP SHALL RECEIVE SEPARATE
27 BIDS UPON EACH OF SUCH BRANCHES OF WORK, AND AWARD THE CONTRACT
28 FOR THE SAME TO THE LOWEST RESPONSIBLE BIDDER.

29 Section 3. This act shall apply to contracts and purchases
30 advertised on or after January 1 of the year following the

1 effective date of this section.

2 Section 4. This act shall take effect immediately.