

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 281 Session of 2011

INTRODUCED BY M.K. KELLER, GINGRICH, AUMENT, BAKER, BEAR, BENNINGHOFF, BLOOM, BOBACK, BOYD, BROOKS, CAUSER, CHRISTIANA, CLYMER, COX, CREIGHTON, CUTLER, DELOZIER, DENLINGER, ELLIS, EVERETT, FARRY, FLECK, GABLER, GEIST, GERBER, GILLESPIE, 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 AND WATSON, JANUARY 27, 2011

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JANUARY 27, 2011

AN ACT

1 Amending the act of February 1, 1966 (1965 P.L.1656, No.581),  
2 entitled "An act concerning boroughs, and revising, amending  
3 and consolidating the law relating to boroughs," in  
4 contracts, further providing for regulation of contracts, for  
5 evasion of advertising requirements and for certain purchase  
6 contracts.

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

9 Section 1. Section 1402(a), (a.1) and (d) of the act of  
10 February 1, 1966 (1965 P.L.1656, No.581), known as The Borough  
11 Code, amended or added July 10, 1990 (P.L.383, No.90), December  
12 18, 1996 (P.L.1141, No.171), December 18, 1996 (P.L.1156,  
13 No.176), December 20, 1996 (P.L.1497, No.193) and October 27,  
14 2010 (P.L. , No.87), are amended and the section is amended  
15 by adding a subsection to read:

1       Section 1402. Regulation of Contracts.--(a) All contracts  
2 or purchases in excess of [ten thousand dollars (\$10,000)]  
3 twenty-five thousand dollars (\$25,000) subject to annual  
4 adjustment under subsection (a.2), except those hereinafter  
5 mentioned, shall not be made except with and from the lowest  
6 responsible bidder after due notice in one newspaper of general  
7 circulation in the borough, at least two times at intervals of  
8 not less than three days where daily newspapers of general  
9 circulation are available for such publication, in case of  
10 weekly newspapers, such notice once a week for two successive  
11 weeks. The first advertisement shall be published not more than  
12 forty-five days and the second advertisement not less than ten  
13 days prior to the date fixed for the opening of bids.  
14 Advertisements for contracts or purchases shall also be posted  
15 in a conspicuous place within the borough. Advertisements for  
16 contracts and purchases shall contain the date, time and  
17 location for opening of bids and shall state the amount of the  
18 performance bond determined under subsection (c). The amount of  
19 the contract shall in all cases, whether of straight sale price,  
20 conditional sale, bailment lease, or otherwise, be the entire  
21 amount which the borough pays to the successful bidder or his  
22 assigns in order to obtain the services or property, or both,  
23 and shall not be construed to mean only the amount which is paid  
24 to acquire title or to receive any other particular benefit or  
25 benefits of the whole bargain. In awarding contracts, council  
26 shall have the right to take into consideration such other  
27 factors as the availability, cost and quality of service.

28       (a.1) Written or telephonic price quotations from at least  
29 three qualified and responsible contractors shall be requested  
30 for all contracts that exceed [four thousand dollars (\$4,000)]

ten thousand dollars (\$10,000) subject to annual adjustment  
under subsection (a.2) but are less than the amount requiring  
advertisement and competitive bidding or, in lieu of price  
quotations, a memorandum shall be kept on file showing that  
fewer than three qualified contractors exist in the market area  
within which it is practicable to obtain quotations. A written  
record of telephonic price quotations shall be made and shall  
contain at least the date of the quotation, the name of the  
contractor and the contractor's representative, the  
construction, reconstruction, repair, maintenance or work which  
was the subject of the quotation and the price. Written price  
quotations, written records of telephonic price quotations and  
memoranda shall be retained for a period of three years.

(a.2) (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 amount at which competitive bidding is required  
under subsection (a) and the amount at which written or  
telephonic price quotations are required under subsection (a.1)  
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) 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 (\$10).

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

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

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

18     (5) 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 clause (1) and the amounts, whether adjusted or unadjusted  
22 in accordance with clause (2), at which competitive bidding is  
23 required under subsection (a) and written or telephonic price  
24 quotations are required under subsection (a.1) for the calendar  
25 year beginning the first day of January after publication of the  
26 notice.

27     \* \* \*

28     (d) The contracts or purchases made by council, which shall  
29 not require advertising, bidding or price quotations as  
30 hereinbefore provided, are as follows:

1 (1) Those for maintenance, repairs or replacements for  
2 water, electric light or public works of the borough, provided  
3 they do not constitute new additions, extensions or enlargements  
4 of existing facilities and equipment, but a bond may be required  
5 by council, as in other cases of work done;

6 (2) Those made for improvements, repairs and maintenance of  
7 any kind, made or provided by any borough, through its own  
8 employes: Provided, That all materials used for street  
9 improvement, maintenance and/or construction in excess of [four  
10 thousand dollars (\$4,000)] the amount specified or adjusted  
11 under subsection (a.1) be subject to the relevant price  
12 quotation or advertising requirements contained herein;

13 (3) Those where particular types, models or pieces of new  
14 equipment, articles, apparatus, appliances, vehicles or parts  
15 thereof are desired by council, which are patented and  
16 manufactured or copyrighted products;

17 (3.1) Those for used equipment, articles, apparatus,  
18 appliances, vehicles or parts thereof being purchased from a  
19 public utility.

20 (4) Those involving any policies of insurance or surety  
21 company bonds; those made for public utility service under  
22 tariffs on file with the Pennsylvania Public Utility Commission;  
23 those made with another political subdivision, or a county, the  
24 Commonwealth of Pennsylvania, the Federal Government, any agency  
25 of the Commonwealth or the Federal Government, or any municipal  
26 authority, including the sale, leasing or loan of any supplies  
27 or materials by the Commonwealth or the Federal Government or  
28 their agencies. The price thereof shall not be in excess of that  
29 fixed by the Commonwealth, the Federal Government, or their  
30 agencies;

(5) Those involving personal or professional services.

(6) Those made relating to the purchase of electricity and associated energy and related services by a borough owning or operating electric generation or distribution facilities on the effective date of this section with any of the following:

(i) A political subdivision.

(ii) Another state.

(iii) The Commonwealth or an agency thereof.

(iv) The Federal Government.

(v) A private corporation.

(vi) An electric cooperative corporation under 15 Pa.C.S. Ch. 73 (relating to electric cooperative corporations).

(vii) A non-profit membership corporation. As used in this subclause, the term "non-profit membership corporation" means an entity, the membership of which:

(A) consists solely of Pennsylvania boroughs, such as a consortium, buying group or municipal power agency under section 2471.2; or

(B) consists of Pennsylvania boroughs and political subdivisions of another state or states.

(viii) An electric cooperative of another state.

Nothing in this clause shall prohibit council from engaging in advertising, bidding or price quotations if the council determines that the advertising, bidding or price quotations are in the public interest.

\* \* \*

Section 2. Sections 1403(a) and 1405 of the act, amended July 10, 1990 (P.L.383, No.90), are amended to read:

Section 1403. Evasion of Advertising Requirements.--(a) No member or members of council shall evade the provisions of

1 section 1402 hereof as to advertising for bids, by purchasing or  
2 contracting for services and personal properties piecemeal for  
3 the purpose of obtaining prices under [ten thousand dollars  
4 (\$10,000)] the amount specified or adjusted under section  
5 1402(a) upon transactions, which transactions should, in the  
6 exercise of reasonable discretion and prudence, be conducted as  
7 one transaction amounting to more than [ten thousand dollars  
8 (\$10,000)] the amount specified or adjusted under section  
9 1402(a). This provision is intended to make unlawful the evading  
10 of advertising requirements by making a series of purchases or  
11 contracts, each for less than the advertising requirement price,  
12 or by making several simultaneous purchases or contracts, each  
13 below said price, when, in either case, the transactions  
14 involved should have been made as one transaction for one price.  
15 Any members of council who so vote in violation of this  
16 provision and who know that the transaction upon which they so  
17 vote is or ought to be a part of a larger transaction and that  
18 it is being divided in order to evade the requirements as to  
19 advertising for bids, shall be jointly and severally subject to  
20 surcharge for ten percent of the full amount of the contract or  
21 purchase. Whenever it shall appear that a member of council may  
22 have voted in violation of this section but the purchase or  
23 contract on which he so voted was not approved by council, this  
24 section shall be inapplicable.

25 \* \* \*

26 Section 1405. Separate Bids for Plumbing, Heating,  
27 Ventilating and Electrical Work.--In the preparation for the  
28 erection, construction and alteration of any public building,  
29 when the entire cost of such work shall exceed [ten thousand  
30 dollars (\$10,000)] the amount specified or adjusted under

1 section 1402(a), the architect, engineer, or other person  
2 preparing such specifications may, if so requested by the  
3 borough council, prepare separate specifications for the  
4 plumbing, heating, ventilating and electrical work. The person  
5 or persons authorized to enter into contracts for the erection,  
6 construction or alteration of such public buildings may, if such  
7 separate specifications shall have been proposed, receive  
8 separate bids upon each of the said branches of work and shall  
9 thereupon award the contract for the same to the lowest  
10 responsible bidder for each of said branches.

11       Section 3. This act shall apply to contracts and purchases  
12 advertised after December 31 of the year in which this section  
13 takes effect.

14       Section 4. This act shall take effect immediately.