

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, 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, 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 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.———, (P.L.862, No.87),~~ are amended and the section is ←

1 amended by adding a subsection to read:

2 Section 1402. Regulation of Contracts.--(a) All contracts
3 or purchases in excess of [ten thousand dollars (\$10,000)] THE ←
4 BASE AMOUNT OF twenty-five thousand dollars (\$25,000) subject to
5 annual adjustment under subsection (a.2), except those
6 hereinafter mentioned, shall not be made except with and from
7 the lowest responsible bidder after due notice in one newspaper
8 of general circulation in the borough, at least two times at
9 intervals of not less than three days where daily newspapers of
10 general circulation are available for such publication, in case
11 of weekly newspapers, such notice once a week for two successive
12 weeks. The first advertisement shall be published not more than
13 forty-five days and the second advertisement not less than ten
14 days prior to the date fixed for the opening of bids.

15 Advertisements for contracts or purchases shall also be posted
16 in a conspicuous place within the borough. Advertisements for
17 contracts and purchases shall contain the date, time and
18 location for opening of bids and shall state the amount of the
19 performance bond determined under subsection (c). The amount of
20 the contract shall in all cases, whether of straight sale price,
21 conditional sale, bailment lease, or otherwise, be the entire
22 amount which the borough pays to the successful bidder or his
23 assigns in order to obtain the services or property, or both,
24 and shall not be construed to mean only the amount which is paid
25 to acquire title or to receive any other particular benefit or
26 benefits of the whole bargain. In awarding contracts, council
27 shall have the right to take into consideration such other
28 factors as the availability, cost and quality of service.

29 (a.1) Written or telephonic price quotations from at least
30 three qualified and responsible contractors shall be requested

1 for all contracts that [exceed ~~four~~ thousand dollars (\$4,000)] ←
2 ARE IN EXCESS OF THE BASE AMOUNT OF ten thousand dollars ←
3 (\$10,000) subject to annual adjustment under subsection (a.2)
4 but are less than the amount requiring advertisement and
5 competitive bidding or, in lieu of price quotations, a
6 memorandum shall be kept on file showing that fewer than three
7 qualified contractors exist in the market area within which it
8 is practicable to obtain quotations. A written record of
9 telephonic price quotations shall be made and shall contain at
10 least the date of the quotation, the name of the contractor and
11 the contractor's representative, the construction,
12 reconstruction, repair, maintenance or work which was the
13 subject of the quotation and the price. Written price
14 quotations, written records of telephonic price quotations and
15 memoranda shall be retained for a period of three years.

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

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

26 ~~(i) In the case of competitive bidding, the positive~~
27 ~~percentage change, as determined in accordance with clause (1),~~
28 ~~shall be multiplied by the amount applicable under subsection~~
29 ~~(a) for the current year and the product thereof shall be added~~
30 ~~to the amount applicable under subsection (a) 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 (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 (\$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 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) AND (A.1) SHALL BE MADE AS FOLLOWS:~~



1 (1) THE DEPARTMENT OF LABOR AND INDUSTRY SHALL DETERMINE THE
2 PERCENTAGE CHANGE IN THE ALL ITEMS CONSUMER PRICE INDEX FOR ALL
3 URBAN CONSUMERS (CPI-U) FOR THE UNITED STATES CITY AVERAGE AS
4 PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF
5 LABOR STATISTICS FOR THE TWELVE-MONTH PERIOD ENDING SEPTEMBER 30
6 OF THE CALENDAR YEAR IN WHICH THIS SUBSECTION BECOMES EFFECTIVE,
7 AND FOR EACH SUCCESSIVE TWELVE-MONTH PERIOD THEREAFTER.

8 (2) IF THE DEPARTMENT DETERMINES THAT THERE IS NO POSITIVE
9 PERCENTAGE CHANGE, THEN NO ADJUSTMENT TO THE BASE AMOUNTS SHALL
10 OCCUR FOR THE RELEVANT TIME PERIOD PROVIDED FOR IN THIS
11 SUBSECTION.

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

18 (II) THE PRELIMINARY ADJUSTED AMOUNTS SHALL BE ROUNDED TO
19 THE NEAREST ONE THOUSAND DOLLARS (\$1,000), TO DETERMINE THE
20 FINAL ADJUSTED BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS (A) AND
21 (A.1).

22 (4) IN EACH SUCCESSIVE YEAR IN WHICH THERE IS A POSITIVE
23 PERCENTAGE CHANGE IN THE CPI-U FOR THE UNITED STATES CITY
24 AVERAGE, THE POSITIVE PERCENTAGE CHANGE SHALL BE MULTIPLIED BY
25 THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS AND THE PRODUCTS
26 SHALL BE ADDED TO THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS,
27 RESPECTIVELY. THE SUMS THEREOF SHALL BE ROUNDED TO THE NEAREST
28 ONE THOUSAND DOLLARS (\$1,000) TO DETERMINE THE NEW FINAL
29 ADJUSTED BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS (A) AND (A.1).

30 (5) THE DETERMINATIONS AND ADJUSTMENTS REQUIRED UNDER THIS

1 SUBSECTION SHALL BE MADE IN THE PERIOD BETWEEN OCTOBER 1 AND
2 NOVEMBER 15 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS
3 SUBSECTION, AND ANNUALLY BETWEEN OCTOBER 1 AND NOVEMBER 15 OF
4 EACH YEAR THEREAFTER.

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

9 (7) THE DEPARTMENT SHALL PUBLISH NOTICE IN THE PENNSYLVANIA
10 BULLETIN PRIOR TO JANUARY 1 OF EACH CALENDAR YEAR OF THE ANNUAL
11 PERCENTAGE CHANGE DETERMINED UNDER PARAGRAPH (1) AND THE
12 UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS DETERMINED UNDER
13 PARAGRAPHS (3) AND (4) AT WHICH COMPETITIVE BIDDING IS REQUIRED
14 UNDER SUBSECTION (A) AND WRITTEN OR TELEPHONIC PRICE QUOTATIONS
15 ARE REQUIRED UNDER SUBSECTION (A.1), RESPECTIVELY, FOR THE
16 CALENDAR YEAR BEGINNING THE FIRST DAY OF JANUARY AFTER
17 PUBLICATION OF THE NOTICE. THE NOTICE SHALL INCLUDE A WRITTEN
18 AND ILLUSTRATIVE EXPLANATION OF THE CALCULATIONS PERFORMED BY
19 THE DEPARTMENT IN ESTABLISHING THE UNADJUSTED OR FINAL ADJUSTED
20 BASE AMOUNTS UNDER THIS SUBSECTION FOR THE ENSUING CALENDAR
21 YEAR.

22 * * *

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

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

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

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

12 (3.1) Those for used equipment, articles, apparatus,
13 appliances, vehicles or parts thereof being purchased from a
14 public utility.

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

26 (5) Those involving personal or professional services.

27 (6) Those made relating to the purchase of electricity and
28 associated energy and related services by a borough owning or
29 operating electric generation or distribution facilities on the
30 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 section 1402 hereof as to advertising for bids, by purchasing or contracting for services and personal properties piecemeal for the purpose of obtaining prices under [ten thousand dollars (\$10,000)] the amount specified or adjusted under section 1402(a) upon transactions, which transactions should, in the

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

20 * * *

21 Section 1405. Separate Bids for Plumbing, Heating,
22 Ventilating and Electrical Work.--In the preparation for the
23 erection, construction and alteration of any public building,
24 when the entire cost of such work shall exceed [ten thousand
25 dollars (\$10,000)] the amount specified or adjusted under
26 section 1402(a), the architect, engineer, or other person
27 preparing such specifications may, if so requested by the
28 borough council, prepare separate specifications for the
29 plumbing, heating, ventilating and electrical work. The person
30 or persons authorized to enter into contracts for the erection,

1 construction or alteration of such public buildings may, if such
2 separate specifications shall have been proposed, receive
3 separate bids upon each of the said branches of work and shall
4 thereupon award the contract for the same to the lowest
5 responsible bidder for each of said branches.

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

9 Section 4. This act shall take effect immediately.