

## 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~~

1 ~~year, with the result rounded to the nearest multiple of ten~~  
2 ~~dollars (\$10).~~

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

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

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

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

29 (A.2) ADJUSTMENTS TO THE BASE AMOUNTS SPECIFIED UNDER  
30 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 employes: 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:

- 1 (i) A political subdivision.
- 2 (ii) Another state.
- 3 (iii) The Commonwealth or an agency thereof.
- 4 (iv) The Federal Government.
- 5 (v) A private corporation.
- 6 (vi) An electric cooperative corporation under 15 Pa.C.S.
- 7 Ch. 73 (relating to electric cooperative corporations).
- 8 (vii) A non-profit membership corporation. As used in this
- 9 subclause, the term "non-profit membership corporation" means an
- 10 entity, the membership of which:
- 11 (A) consists solely of Pennsylvania boroughs, such as a
- 12 consortium, buying group or municipal power agency under section
- 13 2471.2; or
- 14 (B) consists of Pennsylvania boroughs and political
- 15 subdivisions of another state or states.
- 16 (viii) An electric cooperative of another state.
- 17 Nothing in this clause shall prohibit council from engaging
- 18 in advertising, bidding or price quotations if the council
- 19 determines that the advertising, bidding or price quotations are
- 20 in the public interest.

21 \* \* \*

22 Section 2. Sections 1403(a) and 1405 of the act, amended

23 July 10, 1990 (P.L.383, No.90), are amended to read:

24 Section 1403. Evasion of Advertising Requirements.--(a) No

25 member or members of council shall evade the provisions of

26 section 1402 hereof as to advertising for bids, by purchasing or

27 contracting for services and personal properties piecemeal for

28 the purpose of obtaining prices under [ten thousand dollars

29 (\$10,000)] the amount specified or adjusted under section

30 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.