

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 289 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 August 6, 1936 (Sp.Sess., P.L.95, No.38
2 1/2), entitled "An act to authorize and empower cities,
3 boroughs, towns, and townships, separately or jointly, to
4 provide for protection against floods by erecting and
5 constructing certain works and improvements, located within
6 or without their territorial limits, and within or without
7 the county in which situate; and to expend moneys and incur
8 indebtedness; to assess benefits against property benefited;
9 to issue improvement bonds imposing no municipal liability;
10 and to acquire, take, injure or destroy property for such
11 purposes," further providing for competitive bidding of
12 contracts.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Section 3 of the act of August 6, 1936 (Sp.Sess.,
16 P.L.95, No.38 1/2), entitled "An act to authorize and empower
17 cities, boroughs, towns, and townships, separately or jointly,

1 to provide for protection against floods by erecting and
2 constructing certain works and improvements, located within or
3 without their territorial limits, and within or without the
4 county in which situate; and to expend moneys and incur
5 indebtedness; to assess benefits against property benefited; to
6 issue improvement bonds imposing no municipal liability; and to
7 acquire, take, injure or destroy property for such purposes,"
8 amended July 10, 1990 (P.L.402, No.97), is amended to read:

9 Section 3. (a) No such works or improvements, involving an
10 expenditure by any municipality or municipalities of more than
11 [ten thousand dollars (\$10,000)] THE BASE AMOUNT OF twenty-five ←
12 thousand dollars (\$25,000), subject to adjustment under
13 subsection (b.1), shall be erected, constructed or provided,
14 except by contract let to the lowest responsible bidder after
15 due advertisement, once a week for two successive weeks in at
16 least one newspaper of general circulation: Provided, however,
17 That no contract shall be required to be let for the performance
18 of the work on any such work or improvement where the cost of
19 the labor shall be paid by the Federal Government, or any agency
20 thereof, without cost to the municipality or municipalities.

21 (b) Written or telephonic price quotations from at least
22 three qualified and responsible contractors shall be requested
23 for all contracts that exceed [four thousand dollars (\$4,000)]
24 THE BASE AMOUNT OF ten thousand dollars (\$10,000), subject to ←
25 adjustment under subsection (b.1), but are less than the amount
26 requiring advertisement and competitive bidding or, in lieu of
27 price quotations, a memorandum shall be kept on file showing
28 that fewer than three qualified contractors exist in the market
29 area within which it is practicable to obtain quotations. A
30 written record of telephonic price quotations shall be made and

1 shall contain at least the date of the quotation, the name of
2 the contractor and the contractor's representative, the
3 construction, reconstruction, repair, maintenance or work which
4 was the subject of the quotation and the price. Written price
5 quotations, written records of telephonic price quotations and
6 memoranda shall be retained for a period of three years.

7 ~~(b.1) Adjustments shall be made as follows:~~



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

13 ~~(2) The amount at which competitive bidding is required~~
14 ~~under subsection (a) and the amount at which written or~~
15 ~~telephonic price quotations are required under subsection (b)~~
16 ~~shall be adjusted annually as follows:~~

17 ~~(i) In the case of competitive bidding, the positive~~
18 ~~percentage change, as determined in accordance with paragraph~~
19 ~~(1), shall be multiplied by the amount applicable under~~
20 ~~subsection (a) for the current year and the product thereof~~
21 ~~shall be added to the amount applicable under subsection (a) for~~
22 ~~the current year, with the result rounded to the nearest~~
23 ~~multiple of ten dollars (\$10).~~

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

~~(3) The annual determination required under paragraph (1) and the calculation of the adjustments required under paragraph (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 paragraph (2) shall become effective January 1 for the calendar year following the year in which the determination required under paragraph (1) is made.~~

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

(B.1) ADJUSTMENTS TO THE BASE AMOUNTS SPECIFIED UNDER SUBSECTIONS (A) AND (B) 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

1 OCCUR FOR THE RELEVANT TIME PERIOD PROVIDED FOR IN THIS
2 SUBSECTION.

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

9 (II) THE PRELIMINARY ADJUSTED AMOUNTS SHALL BE ROUNDED TO
10 THE NEAREST ONE THOUSAND DOLLARS (\$1,000), TO DETERMINE THE
11 FINAL ADJUSTED BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS (A) AND
12 (B).

13 (4) IN EACH SUCCESSIVE YEAR IN WHICH THERE IS A POSITIVE
14 PERCENTAGE CHANGE IN THE CPI-U FOR THE UNITED STATES CITY
15 AVERAGE, THE POSITIVE PERCENTAGE CHANGE SHALL BE MULTIPLIED BY
16 THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS AND THE PRODUCTS
17 SHALL BE ADDED TO THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS,
18 RESPECTIVELY. THE SUMS THEREOF SHALL BE ROUNDED TO THE NEAREST
19 ONE THOUSAND DOLLARS (\$1,000) TO DETERMINE THE NEW FINAL
20 ADJUSTED BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS (A) AND (B).

21 (5) THE DETERMINATIONS AND ADJUSTMENTS REQUIRED UNDER THIS
22 SUBSECTION SHALL BE MADE IN THE PERIOD BETWEEN OCTOBER 1 AND
23 NOVEMBER 15 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS
24 SUBSECTION, AND ANNUALLY BETWEEN OCTOBER 1 AND NOVEMBER 15 OF
25 EACH YEAR THEREAFTER.

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

30 (7) THE DEPARTMENT SHALL PUBLISH NOTICE IN THE PENNSYLVANIA

BULLETIN PRIOR TO JANUARY 1 OF EACH CALENDAR YEAR OF THE ANNUAL
PERCENTAGE CHANGE DETERMINED UNDER PARAGRAPH (1) AND THE
UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS DETERMINED UNDER
PARAGRAPHS (3) AND (4) AT WHICH COMPETITIVE BIDDING IS REQUIRED
UNDER SUBSECTION (A) AND WRITTEN OR TELEPHONIC PRICE QUOTATIONS
ARE REQUIRED UNDER SUBSECTION (B), RESPECTIVELY, FOR THE
CALENDAR YEAR BEGINNING THE FIRST DAY OF JANUARY AFTER
PUBLICATION OF THE NOTICE. THE NOTICE SHALL INCLUDE A WRITTEN
AND ILLUSTRATIVE EXPLANATION OF THE CALCULATIONS PERFORMED BY
THE DEPARTMENT IN ESTABLISHING THE UNADJUSTED OR FINAL ADJUSTED
BASE AMOUNTS UNDER THIS SUBSECTION FOR THE ENSUING CALENDAR
YEAR.

(c) No municipality shall evade the provisions of this section as to advertising for bids or purchasing materials or contracting for services piecemeal for the purpose of obtaining prices under [ten thousand dollars (\$10,000)] the amount required by this section upon transactions which should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than [ten thousand dollars (\$10,000)] the amount required by this section. This provision is intended to make unlawful the practice of evading advertising requirements by making a series of purchases or contracts each for less than the advertising requirement price or by making several simultaneous purchases or contracts each below said price, when in either case the transaction involved should have been made as one transaction for one price.

(d) Any member of a governing body of a municipality who votes to unlawfully evade the provisions of this section and who knows that the transaction upon which he so votes is or ought to be a part of a larger transaction and that it is being divided

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

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

8 Section 2. The amendment of section 3 of the act shall apply
9 to contracts and purchases advertised after December 31 of the
10 year in which this section takes effect.

11 Section 3. This act shall take effect immediately.