

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1383 Session of 2012

INTRODUCED BY EICHELBERGER, EARLL, PILEGGI, ROBBINS, ORIE,
 FOLMER, GORDNER, D. WHITE, ALLOWAY, GREENLEAF, SCHWANK,
 M. WHITE, BRUBAKER AND SCARNATI, JANUARY 17, 2012

REFERRED TO LOCAL GOVERNMENT, JANUARY 17, 2012

AN ACT

1 Amending the act of August 23, 1967 (P.L.251, No.102), entitled,
 2 as amended, "An act providing for the incorporation as public
 3 instrumentalities of the Commonwealth and as bodies corporate
 4 and politic of industrial and commercial development
 5 authorities for municipalities, counties and townships;
 6 prescribing the rights, powers and duties of such authorities
 7 hereafter incorporated; authorizing such authorities to
 8 acquire, by gift or purchase, to construct, improve and
 9 maintain industrial, specialized, or commercial development
 10 projects including projects for the elimination or prevention
 11 of blight and the control of air and water pollution, and to
 12 borrow money and issue bonds therefor; providing for the
 13 payment of such bonds and giving security therefor, and
 14 prescribing the rights of the holders of such bonds;
 15 authorizing the lease or sale of industrial, specialized, or
 16 commercial development projects to industrial, specialized,
 17 or commercial enterprises; authorizing any county,
 18 municipality or township to transfer or convey to such
 19 authorities, any facilities or property available for
 20 industrial, specialized, or commercial development projects;
 21 exempting the property and securities of such authorities
 22 from taxation; authorizing such authorities to enter into
 23 contracts with and to accept grants from the Federal
 24 Government or any agency thereof; and providing for approval
 25 by the Secretary of Commerce of the proceedings relating to
 26 industrial, specialized, or commercial development projects
 27 of such authorities," further providing for competition in
 28 award of contracts.

29 The General Assembly of the Commonwealth of Pennsylvania
 30 hereby enacts as follows:

1 Section 1. Section 12 of the act of August 23, 1967
2 (P.L.251, No.102), known as the Economic Development Financing
3 Law, amended December 17, 1993 (P.L.490, No.74), is amended to
4 read:

5 Section 12. Competition in Award of Contracts.--(a) All
6 construction, reconstruction, repairs or work of any nature made
7 directly by any authority where the entire cost, value or amount
8 of such construction, reconstruction, repairs or work, including
9 labor and materials, shall exceed [ten thousand dollars
10 (\$10,000)] the base amount of eighteen thousand five hundred
11 dollars (\$18,500), subject to adjustment under subsection (b.1),
12 except construction, reconstruction, repairs or work done by
13 employes of said authority, or by labor supplied under agreement
14 with any Federal or State agency, with supplies and materials
15 purchased as hereinafter provided, shall be done only under
16 contract or contracts to be entered into by the authority with
17 the lowest responsible bidder upon proper terms, after due
18 public notice has been given asking for competitive bids as
19 hereinafter provided: Provided, however, That where the
20 authority is the legal title holder to the project, and there
21 exists an agreement whereby a project user or project applicant
22 will or can acquire legal title to the said project under the
23 then certain terms and conditions, contracts for construction,
24 reconstruction, repair, or work of any nature, or purchase of
25 machinery and equipment, may be awarded by the project user or
26 project applicant without regard to the limitations of this
27 section 12: And provided further, however, That for the purposes
28 of this section 12, "construction" or "acquisition" shall not
29 include acquisition of property for project purposes. No
30 contract shall be entered into between an authority and a

1 contractor for construction of any project or portion thereof,
2 unless the contractor shall give an undertaking with a
3 sufficient surety or sureties approved by the authority, and in
4 an amount fixed by the authority, for the faithful performance
5 of the contract. All contracts of surety shall provide among
6 other things that the contractor entering into a contract with
7 the authority will pay for all materials furnished and services
8 rendered for the performance of the contract, and that any
9 person or corporation furnishing such materials or rendering
10 such services may maintain an action to recover for the same
11 against the obligor in the undertaking, as though such person or
12 corporation was named therein, provided the action is brought
13 within one year after the time the cause of action accrued.

14 (b) All supplies and materials costing [ten thousand dollars
15 (\$10,000) or more] the base amount of eighteen thousand five
16 hundred dollars (\$18,500), subject to adjustment under
17 subsection (b.1) to be purchased directly by an authority shall
18 be purchased only after due advertisement as hereinafter
19 provided. The authority shall accept the lowest bid or bids,
20 kind, quality and material being equal, but the authority shall
21 have the right to reject any or all bids or select a single item
22 from any bid. The provisions as to bidding shall not apply to
23 the purchase of patented and manufactured products offered for
24 sale in a noncompetitive market or solely by a manufacturer's
25 authorized dealer.

26 (b.1) Adjustments to the base amounts specified under
27 subsections (a), (b) and (g) shall be made as follows:

28 (1) The Department of Labor and Industry shall determine the
29 percentage change in the All Items Consumer Price Index for All
30 Urban Consumers (CPI-U) for the United States City Average as

1 published by the United States Department of Labor, Bureau of
2 Labor Statistics for the twelve-month period ending September
3 30, 2012, and for each successive twelve-month period
4 thereafter.

5 (2) If the department determines that there is no positive
6 percentage change, then no adjustment to the base amounts shall
7 occur for the relevant time period provided for in this
8 subsection.

9 (3) (i) If the department determines that there is a
10 positive percentage change in the first year that the
11 determination is made under paragraph (1), the positive
12 percentage change shall be multiplied by each base amount and
13 the products shall be added to the base amounts, respectively,
14 and the sums shall be preliminary adjusted amounts.

15 (ii) The preliminary adjusted amounts shall be rounded to
16 the nearest one hundred dollars (\$100), to determine the final
17 adjusted base amounts for purposes of subsections (a), (b) and
18 (g).

19 (4) In each successive year in which there is a positive
20 percentage change in the CPI-U for the United States City
21 Average, the positive percentage change shall be multiplied by
22 the most recent preliminary adjusted amounts and the products
23 shall be added to the preliminary adjusted amount of the prior
24 year to calculate the preliminary adjusted amounts for the
25 current year. The sums thereof shall be rounded to the nearest
26 one hundred dollars (\$100) to determine the new final adjusted
27 base amounts for purposes of subsections (a), (b) and (g).

28 (5) The determinations and adjustments required under this
29 subsection shall be made in the period between October 1 and
30 November 15 of the year following the effective date of this

1 subsection, and annually between October 1 and November 15 of
2 each year thereafter.

3 (6) The final adjusted base amounts and new final adjusted
4 base amounts obtained under paragraphs (3) and (4) shall become
5 effective January 1 for the calendar year following the year in
6 which the determination required under paragraph (1) is made.

7 (7) The department shall publish notice in the Pennsylvania
8 Bulletin prior to January 1 of each calendar year of the annual
9 percentage change determined under paragraph (1) and the
10 unadjusted or final adjusted base amounts determined under
11 paragraphs (3) and (4) at which competitive bidding is required
12 under subsection (a) or (g) and advertisement is required under
13 subsection (b), respectively, for the calendar year beginning
14 the first day of January after publication of the notice. The
15 notice shall include a written and illustrative explanation of
16 the calculations performed by the department in establishing the
17 unadjusted or final adjusted base amounts under this subsection
18 for the ensuing calendar year.

19 (8) The annual increase in the preliminary adjusted base
20 amounts obtained under paragraphs (3) and (4) shall not exceed
21 three percent.

22 (c) The terms "advertisement" or "due public notice"
23 wherever used in this section, shall mean a notice published at
24 least ten days before the award of any contract, in a newspaper
25 of general circulation published in the municipality where the
26 authority has its principal office, and if no newspaper is
27 published therein then by publication in a newspaper in the
28 county where the authority has its principal office: Provided,
29 That such notice may be waived where the authority determines an
30 emergency exists, and such supplies and materials must be

1 immediately purchased by the said authority.

2 (d) No member of the authority or officer or employe thereof
3 shall, either directly or indirectly, be a party to or be in any
4 manner interested in any contract or agreement with the
5 authority for any matter, cause or thing whatsoever by reason
6 whereof any liability or indebtedness shall in any way be
7 created against such authority. If any contract or agreement
8 shall be made in violation of the provisions of this section the
9 same shall be null and void and no action shall be maintained
10 thereon against such authority.

11 (e) Subject to the aforesaid, any authority may (but without
12 intending by this provision to limit any powers of such
13 authority) enter into and carry out such contracts, or establish
14 or comply with such rules and regulations concerning labor and
15 materials and other related matters in connection with any
16 project or portion thereof, as the authority may deem desirable,
17 or as may be requested by any Federal agency that may assist in
18 the financing of such project or any part thereof.

19 (f) The provisions of this section 12 shall not apply in
20 respect of the construction of any project or the purchase of
21 any equipment, materials or supplies which the authority may
22 have had transferred to it upon completion, by purchase or
23 otherwise, by a project applicant or project user or any other
24 person or corporation.

25 (g) Notwithstanding any of the foregoing, all construction,
26 reconstruction, repairs or work of any nature with regard to
27 publicly owned infrastructure facilities, where the entire cost,
28 value or amount of such construction, reconstruction, repairs or
29 work, including labor and materials, shall exceed [ten thousand
30 dollars (\$10,000)] the base amount of eighteen thousand five

1 hundred dollars (\$18,500), subject to adjustment under
2 subsection (b.1), shall be done only under contract or contracts
3 to be entered into by the authority or the owner of the
4 infrastructure facility, with the lowest responsible bidder upon
5 proper terms, after due public notice has been given asking for
6 competitive bids as set forth in this section or other
7 applicable law.

8 Section 2. This act shall take effect immediately.