

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1871 Session of  
2005

INTRODUCED BY PETRI, HERMAN, LESCOVITZ, HANNA, M. KELLER,  
HARHAI, O'NEILL, KAUFFMAN, ROSS, HARPER, HICKERNELL,  
T. STEVENSON, McNAUGHTON, GINGRICH, HENNESSEY, BIANCUCCI,  
ARMSTRONG, BALDWIN, BOYD, CAPPELLI, DALLY, DENLINGER,  
DeWEESE, FRANKEL, GEIST, HARRIS, HERSHEY, McILHATTAN,  
PHILLIPS, SCAVELLO AND WATSON, JULY 3, 2005

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JULY 3, 2005

AN ACT

1 Amending the act of July 29, 1953 (P.L.1034, No.270), entitled,  
2 as amended, "An act creating as bodies corporate and politic  
3 "Public Auditorium Authorities" in counties of the second  
4 class and in cities of the second class and in cities of the  
5 second class A and counties in which a city of the second  
6 class A is located, singly or jointly; prescribing the  
7 rights, powers and duties of such Authorities; authorizing  
8 such Authorities to acquire, construct, improve, maintain and  
9 operate public auditoriums; to borrow money and issue bonds  
10 therefor; providing for the payment of such bonds and  
11 prescribing the rights of the holders thereof; conferring the  
12 right of eminent domain on such Authorities; empowering such  
13 Authorities to enter into contracts, leases and licenses with  
14 and to accept grants from private sources, the Federal  
15 Government, State, political subdivisions of the State or any  
16 agency thereof; authorizing the making of said grants from  
17 bond funds or current revenues; authorizing Authorities to  
18 collect rentals, admissions, license fees for the use of the  
19 project; exempting the property and securities of such Public  
20 Auditorium Authorities from taxation," increasing the dollar  
21 amount of supplies and materials which may be purchased  
22 without advertising.

23 The General Assembly of the Commonwealth of Pennsylvania  
24 hereby enacts as follows:

25 Section 1. Section 11 of the act of July 29, 1953 (P.L.1034,  
26 No.270), known as the Public Auditorium Authorities Law, amended

1 July 10, 1990 (P.L.376, No.88), is amended to read:

2 Section 11. Competition in Award of Contracts.

3 A. All construction, reconstruction, repairs or work of any  
4 nature made by any Authority, where the entire cost, value or  
5 amount of such construction, reconstruction, repairs or work,  
6 including labor and materials, shall exceed [ten thousand  
7 dollars (\$10,000)] twenty-five thousand dollars (\$25,000),  
8 subject to annual adjustment under subsection I, except  
9 construction, reconstruction, repairs or work done by employees  
10 of said Authority or by labor supplied under agreement with any  
11 Federal or State agency with supplies and materials purchased,  
12 as hereinafter provided, shall be done only under contract or  
13 contracts to be entered into by the Authority with the lowest  
14 responsible bidder upon proper terms, after due public notice  
15 has been given asking for competitive bids hereinafter provided.  
16 No contract shall be entered into for construction or  
17 improvement or repair of any project or portion thereof unless  
18 the contractor shall give an undertaking, with a sufficient  
19 surety or sureties approved by the Authority and in an amount  
20 fixed by the Authority, for the faithful performance of the  
21 contract. All such contracts shall provide, among other things,  
22 that the person or corporation entering into such contract with  
23 the Authority will pay for all materials furnished and services  
24 rendered for the performance of the contract and that any person  
25 or corporation furnishing such materials or rendering such  
26 services may maintain an action to recover for the same against  
27 the obligor in the undertaking as though such person or  
28 corporation was named therein, provided the action is brought  
29 within one year after the time the cause of action accrued.

30 Nothing in this section shall be construed to limit the power of

1 the Authority to construct, repair or improve any project or  
2 portion thereof or any addition, betterment or extension thereto  
3 directly by the officers, agents and employes of the Authority  
4 or otherwise than by contract.

5 B. All supplies and materials costing [ten thousand dollars  
6 (\$10,000)], subject to annual adjustment under subsection I,  
7 twenty-five thousand dollars (\$25,000) or more shall be  
8 purchased only after due advertisement as hereinafter provided.  
9 The Authority shall accept the lowest bid or bids, kinds,  
10 quality and material being equal, but the Authority shall have  
11 the right to reject any or all bids or select a single item from  
12 any bid. The provisions as to bidding shall not apply to the  
13 purchase of patented and manufactured products offered for sale  
14 in a non-competitive market or solely by a manufacturer's  
15 authorized dealer.

16 B.1. Written or telephonic price quotations from at least  
17 three (3) qualified and responsible contractors shall be  
18 requested for all contracts that exceed [four thousand dollars  
19 (\$4,000)] ten thousand dollars (\$10,000), subject to annual  
20 adjustment under subsection I, but are less than the amount  
21 requiring advertisement and competitive bidding or, in lieu of  
22 price quotations, a memorandum shall be kept on file showing  
23 that fewer than three (3) qualified contractors exist in the  
24 market area within which it is practicable to obtain quotations.  
25 A written record of telephonic price quotations shall be made  
26 and shall contain at least the date of the quotation, the name  
27 of the contractor and the contractor's representative, the  
28 construction, reconstruction, repair, maintenance or work which  
29 was the subject of the quotation and the price. Written price  
30 quotations, written records of telephonic price quotations and

1 memoranda shall be retained for a period of three (3) years.

2 C. The terms, advertisement or due public notice, wherever  
3 used in this section, shall mean a notice published at least ten  
4 (10) days before the award on any contract in a newspaper of  
5 general circulation published in the municipality where the  
6 Authority has its principal office, and if no newspaper is  
7 published therein then by publication in a newspaper in the  
8 county where the Authority has its principal office: Provided,  
9 That such notice may be waived where the Authority determines an  
10 emergency exists and such supplies and materials must be  
11 immediately purchased by the said Authority.

12 D. No member of the Authority or officer or employe thereof  
13 shall, either directly or indirectly, be a party to or be in any  
14 manner interested in any contract or agreement with the  
15 Authority for any matter, cause or thing whatsoever, by reason  
16 whereof any liability or indebtedness shall in any way be  
17 created against such Authority. If any contract or agreement  
18 shall be made in violation of the provision of this section, the  
19 same shall be null and void and no action shall be maintained  
20 thereon against such Authority.

21 E. Subject to the aforesaid, any Authority may (but without  
22 intending by this provision to limit any powers of such  
23 Authority) enter into and carry out such contracts or establish  
24 or comply with such rules and regulations concerning labor and  
25 materials and other related matters, in connection with any  
26 project or portion thereof, as the Authority may deem desirable,  
27 or as may be requested by any Federal agency that may assist in  
28 the financing of such project or any part thereof: Provided,  
29 however, That the provisions of this section shall not apply to  
30 any case in which the Authority has taken over by transfer or

1 assignment any contract authorized to be assigned to it under  
2 the provisions of section ten of this act, nor to any contract  
3 in connection with the construction of any project which the  
4 Authority may have had transferred to it by any person or  
5 private corporation.

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

10 G. An Authority shall not evade the provisions of this  
11 section as to advertising for bids or purchasing materials or  
12 contracting for services piecemeal for the purpose of obtaining  
13 prices under [ten thousand dollars (\$10,000)] twenty-five  
14 thousand dollars (\$25,000), subject to annual adjustment under  
15 subsection I, upon transactions which should, in the exercise of  
16 reasonable discretion and prudence, be conducted as one  
17 transaction amounting to more than [ten thousand dollars  
18 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to  
19 annual adjustment under subsection I. This provision is intended  
20 to make unlawful the practice of evading advertising  
21 requirements by making a series of purchases or contracts each  
22 for less than the advertising requirement price or by making  
23 several simultaneous purchases or contracts each below said  
24 price, when in either case the transaction involved should have  
25 been made as one transaction for one price.

26 H. Any member of the Authority who votes to unlawfully evade  
27 the provisions of this section and who knows that the  
28 transaction upon which he so votes is or ought to be a part of a  
29 larger transaction and that it is being divided in order to  
30 evade the requirements as to advertising for bids commits a

1 misdemeanor of the third degree for each contract entered into  
2 as a direct result of that vote.

3 I. (1) The Department of Labor and Industry shall determine  
4 the percentage change in the Consumer Price Index for All Urban  
5 Consumers for the twelve-month period ending September 30 of the  
6 calendar year in which this subsection becomes effective, and  
7 for each successive twelve-month period thereafter.

8 (2) The amounts at which competitive bidding and written or  
9 telephonic price quotations are required under this section  
10 shall be adjusted annually as follows:

11 (i) In the case of competitive bidding, the positive  
12 percentage change, as determined in accordance with clause (1),  
13 shall be multiplied by the amount applicable under subsection A,  
14 B or G for the current year and the product thereof shall be  
15 added to the amount applicable under subsection A, B or G for  
16 the current year, with the result rounded to the nearest  
17 multiple of ten dollars (\$10).

18 (ii) In the case of written or telephonic price quotations,  
19 the positive percentage change, as determined in accordance with  
20 clause (1), shall be multiplied by the amount applicable under  
21 subsection B.1 for the current year and the product thereof  
22 shall be added to the amount applicable under subsection B.1 for  
23 the current year, with the result rounded to the nearest  
24 multiple of ten dollars (\$10).

25 (3) The annual determination required under clause (1) and  
26 the calculation of the adjustments required under clause (2)  
27 shall be made in the period between October 1 and November 15 of  
28 the year following the effective date of this subsection, and  
29 annually between October 1 and November 15 of each successive  
30 year.

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

5     (5) The Department of Labor and Industry shall give notice  
6     in the Pennsylvania Bulletin prior to January 1 of each calendar  
7     year of the annual percentage change determined in accordance  
8     with clause (1) and the amounts, whether adjusted or unadjusted  
9     in accordance with clause (2), at which competitive bidding is  
10    required and written or telephonic price quotations are required  
11    for the calendar year beginning the first day of January after  
12    publication of the notice.

13     Section 2. This act shall apply to contracts and purchases  
14     advertised on or after January 1 of the year following the  
15     effective date of this section.

16     Section 3. This act shall take effect in 60 days.