

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1075 Session of
2007

INTRODUCED BY CORMAN, REGOLA, FERLO, ARMSTRONG, BAKER, BROWNE,
BRUBAKER, COSTA, EICHELBERGER, ERICKSON, FOLMER, FONTANA,
GORDNER, GREENLEAF, KASUNIC, LAVALLE, ORIE, PILEGGI, PIPPY,
PUNT, ROBBINS, SCARNATI, STOUT, TOMLINSON, VANCE, WAUGH AND
WONDERLING, SEPTEMBER 21, 2007

REFERRED TO LOCAL GOVERNMENT, SEPTEMBER 21, 2007

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," further
4 providing for regulation of contracts, for evasion of
5 advertising requirements and for certain purchase contracts.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Section 1402(a), (a.1) and (d) of the act of
9 February 1, 1966 (1965 P.L.1656, No.581), known as The Borough
10 Code, amended or added July 10, 1990 (P.L.383, No.90), December
11 18, 1996 (P.L.1141, No.171), December 18, 1996 (P.L.1156,
12 No.176) and December 20, 1996 (P.L.1497, No.193), are amended
13 and the section is amended by adding a subsection to read:

14 Section 1402. Regulation of Contracts.--(a) All contracts
15 or purchases in excess of [ten thousand dollars (\$10,000)]
16 twenty-five thousand dollars (\$25,000) subject to annual
17 adjustment under subsection (a.2), except those hereinafter
18 mentioned, shall not be made except with and from the lowest

1 responsible bidder after due notice in one newspaper of general
2 circulation in the borough, at least two times at intervals of
3 not less than three days where daily newspapers of general
4 circulation are available for such publication, in case of
5 weekly newspapers, such notice once a week for two successive
6 weeks. The first advertisement shall be published not more than
7 forty-five days and the second advertisement not less than ten
8 days prior to the date fixed for the opening of bids.
9 Advertisements for contracts or purchases shall also be posted
10 in a conspicuous place within the borough. Advertisements for
11 contracts and purchases shall contain the date, time and
12 location for opening of bids and shall state the amount of the
13 performance bond determined under subsection (c). The amount of
14 the contract shall in all cases, whether of straight sale price,
15 conditional sale, bailment lease, or otherwise, be the entire
16 amount which the borough pays to the successful bidder or his
17 assigns in order to obtain the services or property, or both,
18 and shall not be construed to mean only the amount which is paid
19 to acquire title or to receive any other particular benefit or
20 benefits of the whole bargain. In awarding contracts, council
21 shall have the right to take into consideration such other
22 factors as the availability, cost and quality of service.

23 (a.1) Written or telephonic price quotations from at least
24 three qualified and responsible contractors shall be requested
25 for all contracts that exceed [four thousand dollars (\$4,000)]
26 seven thousand dollars (\$7,000) subject to annual adjustment
27 under subsection (a.2) but are less than the amount requiring
28 advertisement and competitive bidding or, in lieu of price
29 quotations, a memorandum shall be kept on file showing that
30 fewer than three qualified contractors exist in the market area

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

9 (a.2) (1) Annually, beginning with the year in which this
10 subsection becomes applicable to contracts and purchases, the
11 Department of Labor and Industry shall calculate the percentage
12 change in the Consumer Price Index for All Urban Consumers (CPI-
13 U) for the United States city average for all items as published
14 by the United States Department of Labor, Bureau of Labor
15 Statistics, for the twelve-month average ending in September of
16 the prior year.

17 (2) The amount at which competitive bidding is required
18 under subsection (a) and the amount at which written or
19 telephonic price quotations are required under subsection (a.1)
20 shall be adjusted annually as follows:

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

28 (ii) In the case of written or telephonic price quotations,
29 the positive percentage change, as determined in accordance with
30 clause (1), shall be multiplied by the amount applicable under

1 subsection (a.1) for the current year and the product thereof
2 shall be added to the amount applicable under subsection (a.1)
3 for the current year, with the result rounded to the nearest
4 multiple of ten dollars (\$10).

5 (3) The annual determination required under clause (1) and
6 the calculation of the adjustments required under clause (2)
7 shall be made in the period between October 1 and November 15 of
8 the year following the effective date of this subsection, and
9 annually between October 1 and November 15 of each successive
10 year.

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

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

24 * * *

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

28 (1) Those for maintenance, repairs or replacements for
29 water, electric light or public works of the borough, provided
30 they do not constitute new additions, extensions or enlargements

1 of existing facilities and equipment, but a bond may be required
2 by council, as in other cases of work done;

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

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

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

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

28 (5) Those involving personal or professional services.

29 * * *

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

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

2 Section 1403. Evasion of Advertising Requirements.--(a) No
3 member or members of council shall evade the provisions of
4 section 1402 hereof as to advertising for bids, by purchasing or
5 contracting for services and personal properties piecemeal for
6 the purpose of obtaining prices under [ten thousand dollars
7 (\$10,000)] the amount specified or adjusted under section
8 1402(a) upon transactions, which transactions should, in the
9 exercise of reasonable discretion and prudence, be conducted as
10 one transaction amounting to more than [ten thousand dollars
11 (\$10,000)] the amount specified or adjusted under section
12 1402(a). This provision is intended to make unlawful the evading
13 of advertising requirements by making a series of purchases or
14 contracts, each for less than the advertising requirement price,
15 or by making several simultaneous purchases or contracts, each
16 below said price, when, in either case, the transactions
17 involved should have been made as one transaction for one price.
18 Any members of council who so vote in violation of this
19 provision and who know that the transaction upon which they so
20 vote is or ought to be a part of a larger transaction and that
21 it is being divided in order to evade the requirements as to
22 advertising for bids, shall be jointly and severally subject to
23 surcharge for ten percent of the full amount of the contract or
24 purchase. Whenever it shall appear that a member of council may
25 have voted in violation of this section but the purchase or
26 contract on which he so voted was not approved by council, this
27 section shall be inapplicable.

28 * * *

29 Section 1405. Separate Bids for Plumbing, Heating,
30 Ventilating and Electrical Work.--In the preparation for the

1 erection, construction and alteration of any public building,
2 when the entire cost of such work shall exceed [ten thousand
3 dollars (\$10,000)] the amount specified or adjusted under
4 section 1402(a), the architect, engineer, or other person
5 preparing such specifications may, if so requested by the
6 borough council, prepare separate specifications for the
7 plumbing, heating, ventilating and electrical work. The person
8 or persons authorized to enter into contracts for the erection,
9 construction or alteration of such public buildings may, if such
10 separate specifications shall have been proposed, receive
11 separate bids upon each of the said branches of work and shall
12 thereupon award the contract for the same to the lowest
13 responsible bidder for each of said branches.

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

17 Section 4. This act shall take effect immediately.