

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 282 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, GERBER, 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 AND WATSON, JANUARY 27, 2011

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JANUARY 27, 2011

AN ACT

1 Amending the act of May 27, 1953 (P.L.244, No.34), entitled "An
2 act relating to and regulating the contracts of incorporated
3 towns and providing penalties," further providing for
4 regulation of contracts; providing for annual adjustment;
5 further providing for evasion of advertising requirements,
6 for contracts between \$750 and \$10,000 and for separate bids
7 for plumbing, heating, ventilating and electrical work.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 2(a) of the act of May 27, 1953 (P.L.244,
11 No.34), entitled "An act relating to and regulating the
12 contracts of incorporated towns and providing penalties,"
13 amended July 10, 1990 (P.L.392, No.93), is amended to read:

14 Section 2. Regulation of Contracts.--(a) All contracts or
15 purchases of incorporated towns in excess of [ten thousand

1 dollars] twenty-five thousand dollars subject to annual
2 adjustment under section 2.1, except those hereinafter
3 mentioned, shall not be made except with and from the lowest
4 responsible bidder, after due notice in one newspaper of general
5 circulation published or circulated in the county in which the
6 town is situated at least three times at intervals of not less
7 than three days where daily newspapers of general circulation
8 are available for such publication, and in case of weekly
9 newspapers shall be published once a week for two successive
10 weeks. The first advertisement shall be published not less than
11 ten days prior to the date fixed for the opening of bids. The
12 amount of the contract shall in all cases, whether of straight
13 sale price, conditional sale, bailment lease or otherwise, be
14 the entire amount which the town pays to the successful bidder
15 or his assigns in order to obtain the services or property or
16 both, and shall not be construed to mean only the amount which
17 is paid to acquire title or to receive any other particular
18 benefit or benefits of the whole bargain.

19 * * *

20 Section 2. The act is amended by adding a section to read:

21 Section 2.1. Annual Adjustment.--(a) The Department of
22 Labor and Industry shall determine the percentage change in the
23 Consumer Price Index for All Urban Consumers for the twelve-
24 month period ending September 30 of the calendar year in which
25 this section becomes effective, and for each successive twelve-
26 month period thereafter.

27 (b) The amount at which competitive bidding is required
28 under section 2(a) and the amount at which written or telephonic
29 price quotations are required under section 3.1 shall be
30 adjusted annually as follows:

1 (1) In the case of competitive bidding, the positive
2 percentage change, as determined in accordance with subsection
3 (a), shall be multiplied by the amount applicable under section
4 2 for the current year and the product thereof shall be added to
5 the amount applicable under section 2 for the current year, with
6 the result rounded to the nearest multiple of ten dollars.

7 (2) In the case of written or telephonic price quotations,
8 the positive percentage change, as determined in accordance with
9 subsection (a), shall be multiplied by the amount applicable
10 under section 3.1 for the current year and the product thereof
11 shall be added to the amount applicable under section 3.1 for
12 the current year, with the result rounded to the nearest
13 multiple of ten dollars.

14 (c) The annual determination required under subsection (a)
15 and the calculation of the adjustments required under subsection
16 (b) shall be made in the period between October 1 and November
17 15 of the year following the effective date of this section, and
18 annually between October 1 and November 15 of each successive
19 year.

20 (d) The adjusted amounts obtained in accordance with
21 subsection (b) shall become effective January 1 for the calendar
22 year following the year in which the determination required
23 under subsection (a) is made.

24 (e) The Department of Labor and Industry shall give notice
25 in the Pennsylvania Bulletin prior to January 1 of each calendar
26 year of the annual percentage change determined in accordance
27 with subsection (a), and the amounts, whether adjusted or
28 unadjusted in accordance with subsection (b), at which
29 competitive bidding is required under section 2 and written or
30 telephonic price quotations are required under section 3.1 for

1 the calendar year beginning the first day of January after
2 publication of the notice.

3 Section 3. Section 3 of the act, amended July 10, 1990
4 (P.L.392, No.93), is amended to read:

5 Section 3. Evasion of Advertising Requirements.--(a) No
6 member or members of council shall evade the provisions of
7 Section two hereof by purchasing or contracting for services and
8 personal properties piecemeal for the purpose of obtaining
9 prices under [ten thousand dollars] twenty-five thousand dollars
10 subject to annual adjustment under section 2.1 upon transactions
11 which transaction should, in the exercise of reasonable
12 discretion and prudence, be conducted as one transaction
13 amounting to more than [ten thousand dollars] twenty-five
14 thousand dollars subject to annual adjustment under section 2.1.
15 This provision is intended to make unlawful the evading of
16 advertising requirements by making a series of purchases or
17 contracts each for less than the advertising requirement of
18 price, or by making several simultaneous purchases or contracts
19 each below said price, when, in either case, the transactions
20 involved should have been made as one transaction for one price.
21 Any members of council who so vote in violation of this
22 provision and who know that the transaction upon which they so
23 vote is or ought to be a part of a larger transaction and that
24 it is being divided in order to evade the requirements as to
25 advertising for bids shall be jointly and severally subject to
26 surcharge for ten per centum of the full amount of the contract
27 or purchase.

28 (b) Whenever it shall appear that a member of council may
29 have voted in violation of this section but the purchase or
30 contract on which he so voted was not approved by council, this

1 section shall be inapplicable.

2 (c) Any council member who votes to unlawfully evade the
3 provisions of section 2 and who knows that the transaction upon
4 which he so votes is or ought to be a part of a larger
5 transaction and that it is being divided in order to evade the
6 requirements as to advertising for bids commits a misdemeanor of
7 the third degree for each contract entered into as a direct
8 result of that vote. This penalty shall be in addition to any
9 surcharge which may be assessed pursuant to subsection (a).

10 Section 4. Section 3.1 of the act, amended July 10, 1990
11 (P.L.392, No.93) and repealed in part December 18, 1996
12 (P.L.1140, No.170), is amended to read:

13 Section 3.1. Contracts between Seven Hundred Fifty Dollars
14 and [Ten thousand] Twenty-five Thousand Dollars; Written Bids.--

15 (b) Written or telephonic price quotations from at least
16 three qualified and responsible contractors shall be requested
17 for all contracts that exceed [four thousand dollars] ten
18 thousand dollars subject to annual adjustment under section 2.1
19 but are less than the amount requiring advertisement and
20 competitive bidding or, in lieu of price quotations, a
21 memorandum shall be kept on file showing that fewer than three
22 qualified contractors exist in the market area within which it
23 is practicable to obtain quotations. A written record of
24 telephonic price quotations shall be made and shall contain at
25 least the date of the quotation, the name of the contractor and
26 the contractor's representative, the construction,
27 reconstruction, repair, maintenance or work which was the
28 subject of the quotation and the price. Written price
29 quotations, written records of telephonic price quotations and
30 memoranda shall be retained for a period of three years.

Section 5. Section 5 of the act, amended July 10, 1990
(P.L.392, No.93), is amended to read:

Section 5. Separate Bids for Plumbing, Heating, Ventilating
and Electrical Work.--In the preparation for the erection,
construction and alteration of any public building of an
incorporated town, when the entire cost of such work shall
exceed [ten thousand dollars] twenty-five thousand dollars
subject to annual adjustment under section 2.1, the architect,
engineer or other person preparing such specifications shall
prepare separate specifications for the plumbing, heating,
ventilating and electrical work. The person or persons
authorized to enter into contracts for the erection,
construction or alteration of such public buildings shall
receive separate bids upon each of the said branches of work and
award the contract for the same to the lowest responsible bidder
for each of said branches.

Section 6. This act shall apply to contracts and purchases
advertised on or after January 1 of the year following the
effective date of this section.

Section 7. This act shall take effect immediately.