

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 290 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 July 28, 1953 (P.L.723, No.230), entitled,  
2 as amended, "An act relating to counties of the second class  
3 and second class A; amending, revising, consolidating and  
4 changing the laws relating thereto," in preliminary  
5 provisions, providing for adjustments based on Consumer Price  
6 Index relating to contracts and purchases; in contracts,  
7 further regulating contracts and purchases; and, in grounds,  
8 property and buildings, further providing for competition in  
9 award of contracts.

10 The General Assembly of the Commonwealth of Pennsylvania  
11 hereby enacts as follows:

12 Section 1. The act of July 28, 1953 (P.L.723, No.230), known  
13 as the Second Class County Code, is amended by adding a section  
14 to read:

15 Section 112. Adjustments Based on Change in Consumer Price  
16 Index.--(a) Annually, beginning with the year in which this

1 subsection becomes applicable to contracts and purchases, the  
2 Department of Labor and Industry shall calculate the percentage  
3 change in the Consumer Price Index for All Urban Consumers (CPI-  
4 U) for the United States city average for all items as published  
5 by the United States Department of Labor, Bureau of Labor  
6 Statistics, for the twelve-month average ending in September of  
7 the prior year.

8 (b) The amounts at which competitive bidding, separate bids  
9 and written or telephonic price quotations are required under  
10 this act shall be adjusted annually. The positive percentage  
11 change, as determined in accordance with subsection (a), shall  
12 be multiplied by the applicable amount for the current year and  
13 the product thereof shall be added to the applicable amount for  
14 the current year, with the result rounded to the nearest  
15 multiple of ten dollars (\$10).

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

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

26 (e) The Department of Labor and Industry shall give notice  
27 in the Pennsylvania Bulletin prior to January 1 of each calendar  
28 year of the annual percentage change determined in accordance  
29 with subsection (a) and the amounts, whether adjusted or  
30 unadjusted in accordance with subsection (b), at which

1 competitive bidding, separate bids and written or telephonic  
2 price quotations are required under this act for the calendar  
3 year beginning the first day of January after publication of the  
4 notice.

5 Section 2. Section 2001(a) and (d) of the act, amended  
6 November 30, 2004 (P.L.1439, No.186), are amended to read:

7 Section 2001. County Commissioners to Make Contracts.--The  
8 County Commissioners may make contracts for lawful purposes and  
9 for the purposes of carrying into execution the provisions of  
10 this section and the laws of the Commonwealth.

11 (a) Except as provided in subsection (a.1), all contracts or  
12 purchases in excess of [ten thousand dollars (\$10,000)] twenty-  
13 five thousand dollars (\$25,000), subject to annual adjustment  
14 under section 112, shall be in writing and, except those  
15 hereinafter mentioned and except as provided by the act of  
16 October 27, 1979 (P.L.241, No.78), entitled "An act authorizing  
17 political subdivisions, municipality authorities and  
18 transportation authorities to enter into contracts for the  
19 purchase of goods and the sale of real and personal property  
20 where no bids are received," shall not be made except with and  
21 from the lowest responsible and responsive bidder meeting  
22 specifications, after due notice in at least one newspaper of  
23 general circulation, published or circulating in the county at  
24 least two (2) times, at intervals of not less than three (3)  
25 days where daily newspapers of general circulation are employed  
26 for such publication, or in case weekly newspapers are employed,  
27 then the notice shall be published once a week for two (2)  
28 successive weeks. The first advertisement shall be published not  
29 less than ten (10) days prior to the date fixed for the opening  
30 of bids.

1       \* \* \*

2       (d) The contracts or purchases made by the commissioners  
3 involving an expenditure of over [ten thousand dollars  
4 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to  
5 annual adjustment under section 112, which shall not require  
6 advertising or bidding as hereinbefore provided are as follows:

7       (1) Those for maintenance, repairs or replacements for  
8 water, electric light, or other public works: Provided, That  
9 they do not constitute new additions, extensions or enlargements  
10 of existing facilities and equipment. Security may be required  
11 by the county commissioners as in other cases of work done.

12       (2) Those made for improvements, repairs and maintenance of  
13 any kind made or provided by the county through its own  
14 employes. This paragraph shall not apply to construction  
15 materials used in a street improvement.

16       (3) Those where particular types, models or pieces of new  
17 equipment, articles, apparatus, appliances, vehicles or parts  
18 thereof are desired by the county commissioners, which are  
19 patented and manufactured products or copyrighted products.

20       (4) Those involving any policies of insurance or surety  
21 company bonds, those made for public utility service and  
22 electricity, natural gas or telecommunication services:  
23 Provided, That, in the case of utilities not under tariffs on  
24 file with the Pennsylvania Public Utility Commission, contracts  
25 made without advertising and bidding shall be made only after  
26 receiving written or telephonic price quotations from at least  
27 three (3) qualified and responsible contractors, or in lieu of  
28 price quotations a memorandum shall be kept on file showing that  
29 fewer than three (3) qualified contractors exist in the market  
30 area within which it is practicable to obtain quotations. A

1 written record of telephonic price quotations shall be made and  
2 contain at least the date of the quotation, the name of the  
3 contractor and the contractor's representative.

4 (5) Those involving personal or professional services,  
5 including, but not limited to, services of members of the  
6 medical or legal profession, registered architects, engineers,  
7 certified public accountants or other personal services  
8 involving professional expertise.

9 (6) Those involving tangible client services provided by  
10 nonprofit agencies. For the purposes of this clause, the term  
11 "tangible client services" shall mean congregate meals, home-  
12 delivered meals, transportation and chore services provided  
13 through area agencies on aging.

14 (6.1) Those involving contracts entered into by nonprofit  
15 cooperative hospital service associations for hospitals and  
16 nursing homes which are part of the institutional district or  
17 which are owned by the county, operated by the county or  
18 affiliated with the county by the purchasing of or participating  
19 in contracts for materials, supplies and equipment.

20 (7) Those involving the purchase of milk.

21 (8) Those made with any public body, including, but not  
22 limited to, the sale, lease or loan of any supplies or materials  
23 to the county by a public body, provided that the price thereof  
24 shall not be in excess of that fixed by the public body. The  
25 requirements of 53 Pa.C.S. Ch. 23 Subch. A (relating to  
26 intergovernmental cooperation) shall not apply when a county  
27 purchases cooperatively with another public body which has  
28 entered into a contract for supplies or materials. As used in  
29 this paragraph, "public body" shall mean any of the following:

30 (i) the Federal Government;

- (ii) the Commonwealth of Pennsylvania;
- (iii) any other state;
- (iv) a political subdivision, local or municipal authority or other similar local entity of the Commonwealth or any other state; or
- (v) an agency of the Federal Government, the Commonwealth or any other state.

(9) Those exclusively involving construction management services.

(10) Those involving computer software.

\* \* \*

Section 3. Section 2517(a) of the act, amended December 9, 2002 (P.L.1383, No.170), is amended to read:

Section 2517. Separate Specifications and Contracts for Certain Items.--(a) In the preparation of specifications for the erection, construction and alteration of any public building, when the entire cost of such work shall exceed [ten thousand dollars (\$10,000)] twenty-five thousand dollars (\$25,000), subject to annual adjustment under section 112, the architect, engineer or other person preparing such specifications shall prepare separate specifications for the plumbing, heating, ventilating and electrical work. The board of commissioners 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 4. Section 2511-A(a), (b), (b.1) and (h) of the act, added October 30, 2000 (P.L.616, No.85), are amended to read:

Section 2511-A. Competition in Award of Contracts.--(a) All construction, reconstruction, repairs or work of any nature made

1 by any Authority, where the entire cost, value or amount of such  
2 construction, reconstruction, repairs or work, including labor  
3 and materials, shall exceed [ten thousand dollars (\$10,000)]  
4 twenty-five thousand dollars (\$25,000), subject to annual  
5 adjustment under section 112, except construction,  
6 reconstruction, repairs or work done by employees of said  
7 Authority or by labor supplied under agreement with any Federal  
8 or State agency with supplies and materials purchased, as  
9 hereinafter provided, shall be done only under contract or  
10 contracts to be entered into by the Authority with the lowest  
11 responsible bidder upon proper terms, after due public notice  
12 has been given asking for competitive bids hereinafter provided.  
13 No contract shall be entered into for construction or  
14 improvement or repair of any project or portion thereof unless  
15 the contractor shall give an undertaking, with a sufficient  
16 surety or sureties approved by the Authority and in an amount  
17 fixed by the Authority, for the faithful performance of the  
18 contract. All such contracts shall provide, among other things,  
19 that the person or corporation entering into such contract with  
20 the Authority will pay for all materials furnished and services  
21 rendered for the performance of the contract and that any person  
22 or corporation furnishing such materials or rendering such  
23 services may maintain an action to recover for the same against  
24 the obligor in the undertaking as though such person or  
25 corporation was named therein, provided the action is brought  
26 within one (1) year after the time the cause of action accrued.  
27 Nothing in this section shall be construed to limit the power of  
28 the Authority to construct, repair or improve any project or  
29 portion thereof or any addition, betterment or extension thereto  
30 directly by the officers, agents and employees of the Authority

1 or otherwise than by contract.

2 (b) All supplies and materials costing [ten thousand dollars  
3 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to  
4 annual adjustment under section 112, or more shall be purchased  
5 only after due advertisement as hereinafter provided. The  
6 Authority shall accept the lowest bid or bids, kinds, quality  
7 and material being equal, but the Authority shall have the right  
8 to reject any or all bids or select a single item from any bid.  
9 The provisions as to bidding shall not apply to the purchase of  
10 patented and manufactured products offered for sale in a non-  
11 competitive market or solely by a manufacturer's authorized  
12 dealer.

13 (b.1) Written or telephonic price quotations from at least  
14 three (3) qualified and responsible contractors shall be  
15 requested for all contracts that exceed [four thousand dollars  
16 (\$4,000)] ten thousand dollars (\$10,000), subject to annual  
17 adjustment under section 112, but are less than the amount  
18 requiring advertisement and competitive bidding, or, in lieu of  
19 price quotations, a memorandum shall be kept on file showing  
20 that fewer than three (3) qualified contractors exist in the  
21 market area within which it is practicable to obtain quotations.  
22 A written record of telephonic price quotations shall be made  
23 and shall contain at least the date of the quotation, the name  
24 of the contractor and the contractor's representative, the  
25 construction, reconstruction, repair, maintenance or work which  
26 was the subject of the quotation and the price. Written price  
27 quotations, written records of telephonic price quotations and  
28 memoranda shall be retained for a period of three (3) years.

29 \* \* \*

30 (h) An Authority shall not evade the provisions of this



1 section as to advertising for bids or purchasing materials or  
2 contracting for services piecemeal for the purpose of obtaining  
3 prices under [ten thousand dollars (\$10,000)] twenty-five  
4 thousand dollars (\$25,000), subject to annual adjustment under  
5 section 112, upon transactions which should, in the exercise of  
6 reasonable discretion and prudence, be conducted as one  
7 transaction amounting to more than [ten thousand dollars  
8 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to  
9 annual adjustment under section 112. This provision is intended  
10 to make unlawful the practice of evading advertising  
11 requirements by making a series of purchases or contracts each  
12 for less than the advertising requirement price or by making  
13 several simultaneous purchases or contracts each below said  
14 price when in either case the transaction involved should have  
15 been made as one transaction for one price.

16 \* \* \*

17 Section 5. This act shall apply to contracts and purchases  
18 advertised on or after January 1 of the year following the  
19 effective date of this section.

20 Section 6. This act shall take effect immediately.