

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 291 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, 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, WATSON AND F. KELLER, JANUARY 27, 2011

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 5, 2011

AN ACT

1 Amending Title 53 (Municipalities Generally) of the Pennsylvania
2 Consolidated Statutes, IN INTERGOVERNMENTAL COOPERATION, ←
3 further providing for competitive bidding of contracts
4 ~~relating to intergovernmental cooperation~~, FOR WRITTEN OR ←
5 TELEPHONIC PRICE QUOTATIONS REQUIRED AND FOR DIVISION OF
6 TRANSACTIONS PROVIDED.

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

9 ~~Section 1. Section 2308 of Title 53 of the Pennsylvania~~ ←
10 ~~Consolidated Statutes is amended to read:~~

11 SECTION 1. SECTIONS 2308, 2311 AND 2312 OF TITLE 53 OF THE ←
12 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

13 § 2308. Bids for certain joint purchases.

14 (a) Notice.--All joint purchases involving an expenditure of

1 more than [\$10,000] THE BASE AMOUNT OF \$25,000 subject to annual ←
2 adjustment under subsection (b) shall be made by contract, in
3 writing, only after notice for bids once a week for two weeks in
4 at least one and not more than two newspapers of general
5 circulation in the joining local governments. All contracts
6 shall be let to the lowest responsible bidder. Every contract
7 for the construction, reconstruction, alteration, repair,
8 improvement or maintenance of public works shall comply with the
9 provisions of the act of March 3, 1978 (P.L.6, No.3), known as
10 the Steel Products Procurement Act.

11 (b) Annual adjustment.--

12 ~~(1) The Department of Labor and Industry shall determine~~ ←
13 ~~the percentage change in the Consumer Price Index for All~~
14 ~~Urban Consumers for the 12 month period ending September 30~~
15 ~~of the calendar year in which this subsection becomes~~
16 ~~effective and for each successive 12 month period thereafter.~~

17 ~~(2) The amount at which competitive bidding is required~~
18 ~~under subsection (a) shall be adjusted annually. The positive~~
19 ~~percentage change, as determined in accordance with paragraph~~
20 ~~(1), shall be multiplied by the amount applicable under~~
21 ~~subsection (a) for the current year, and the product thereof~~
22 ~~shall be added to the amount applicable under subsection (a)~~
23 ~~for the current year with the result rounded to the nearest~~
24 ~~multiple of \$10.~~

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

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

~~(5) The Department of Labor and Industry shall give notice in the Pennsylvania Bulletin prior to January 1 of each calendar year of the annual percentage change determined in accordance with paragraph (1) and the amounts, whether adjusted or unadjusted in accordance with paragraph (2), at which competitive bidding is required under subsection (a) for the calendar year beginning the first day of January after publication of the notice.~~

ADJUSTMENTS TO THE BASE AMOUNT SPECIFIED UNDER SUBSECTION (A) AND SECTIONS 2311 (RELATING TO WRITTEN OR TELEPHONIC PRICE QUOTATIONS REQUIRED) AND 2312 (RELATING TO DIVISION OF TRANSACTIONS PROVIDED) SHALL BE MADE AS FOLLOWS:

(1) THE DEPARTMENT OF LABOR AND INDUSTRY SHALL DETERMINE THE PERCENTAGE CHANGE IN THE ALL ITEMS CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U) FOR THE UNITED STATES CITY AVERAGE AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS FOR THE 12-MONTH PERIOD ENDING SEPTEMBER 30 OF THE CALENDAR YEAR IN WHICH THIS SUBSECTION BECOMES EFFECTIVE, AND FOR EACH SUCCESSIVE 12-MONTH PERIOD THEREAFTER.

(2) IF THE DEPARTMENT DETERMINES THAT THERE IS NO POSITIVE PERCENTAGE CHANGE, THEN NO ADJUSTMENT TO THE BASE AMOUNT SHALL OCCUR FOR THE RELEVANT TIME PERIOD PROVIDED FOR IN THIS SUBSECTION.

(3) (I) IF THE DEPARTMENT DETERMINES THAT THERE IS A POSITIVE PERCENTAGE CHANGE IN THE FIRST YEAR THAT THE

1 DETERMINATION IS MADE UNDER PARAGRAPH (1), THE POSITIVE
2 PERCENTAGE CHANGE SHALL BE MULTIPLIED BY THE BASE AMOUNT
3 AND THE PRODUCT SHALL BE ADDED TO THE BASE AMOUNT AND THE
4 SUMS SHALL BE A PRELIMINARY ADJUSTED AMOUNT.

5 (II) THE PRELIMINARY ADJUSTED AMOUNT SHALL BE
6 ROUNDED TO THE NEAREST \$1,000, TO DETERMINE THE FINAL
7 ADJUSTED BASE AMOUNT FOR PURPOSES OF SUBSECTION (A) AND
8 SECTIONS 2311 AND 2312.

9 (4) IN EACH SUCCESSIVE YEAR IN WHICH THERE IS A POSITIVE
10 PERCENTAGE CHANGE IN THE CPI-U FOR THE UNITED STATES CITY
11 AVERAGE, THE POSITIVE PERCENTAGE CHANGE SHALL BE MULTIPLIED
12 BY THE MOST RECENT PRELIMINARY ADJUSTED AMOUNT AND THE
13 PRODUCT SHALL BE ADDED TO THE MOST RECENT PRELIMINARY
14 ADJUSTED AMOUNT. THE SUM THEREOF SHALL BE ROUNDED TO THE
15 NEAREST \$1,000 TO DETERMINE THE NEW FINAL ADJUSTED BASE
16 AMOUNT FOR PURPOSES OF SUBSECTION (A) AND SECTIONS 2311 AND
17 2312.

18 (5) THE DETERMINATIONS AND ADJUSTMENTS REQUIRED UNDER
19 THIS SUBSECTION SHALL BE MADE IN THE PERIOD BETWEEN OCTOBER 1
20 AND NOVEMBER 15 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF
21 THIS SUBSECTION, AND ANNUALLY BETWEEN OCTOBER 1 AND NOVEMBER
22 15 OF EACH YEAR THEREAFTER.

23 (6) THE FINAL ADJUSTED BASE AMOUNT AND NEW FINAL
24 ADJUSTED BASE AMOUNT OBTAINED UNDER PARAGRAPHS (3) AND (4)
25 SHALL BECOME EFFECTIVE JANUARY 1 FOR THE CALENDAR YEAR
26 FOLLOWING THE YEAR IN WHICH THE DETERMINATION REQUIRED UNDER
27 PARAGRAPH (1) IS MADE.

28 (7) THE DEPARTMENT SHALL PUBLISH NOTICE IN THE
29 PENNSYLVANIA BULLETIN PRIOR TO JANUARY 1 OF EACH CALENDAR
30 YEAR OF THE ANNUAL PERCENTAGE CHANGE DETERMINED UNDER

1 PARAGRAPH (1) AND THE UNADJUSTED OR FINAL ADJUSTED BASE
2 AMOUNT DETERMINED UNDER PARAGRAPHS (3) AND (4) FOR PURPOSES
3 OF SUBSECTION (A) AND SECTIONS 2311 AND 2312 FOR THE CALENDAR
4 YEAR BEGINNING THE FIRST DAY OF JANUARY AFTER PUBLICATION OF
5 THE NOTICE. THE NOTICE SHALL INCLUDE A WRITTEN AND
6 ILLUSTRATIVE EXPLANATION OF THE CALCULATIONS PERFORMED BY THE
7 DEPARTMENT IN ESTABLISHING THE UNADJUSTED OR FINAL ADJUSTED
8 BASE AMOUNT UNDER THIS SUBSECTION FOR THE ENSUING CALENDAR
9 YEAR.

10 § 2311. WRITTEN OR TELEPHONIC PRICE QUOTATIONS REQUIRED.

11 WRITTEN OR TELEPHONIC PRICE QUOTATIONS FROM AT LEAST THREE
12 QUALIFIED AND RESPONSIBLE CONTRACTORS SHALL BE REQUESTED FOR ALL
13 CONTRACTS THAT EXCEED [\$4,000] THE BASE AMOUNT OF \$10,000
14 SUBJECT TO ANNUAL ADJUSTMENT UNDER SECTION 2308(B) (RELATING TO
15 BIDS FOR CERTAIN JOINT PURCHASES) BUT ARE LESS THAN THE AMOUNT
16 REQUIRING ADVERTISEMENT AND COMPETITIVE BIDDING, OR, IN LIEU OF
17 PRICE QUOTATIONS, A MEMORANDUM SHALL BE KEPT ON FILE SHOWING
18 THAT FEWER THAN THREE QUALIFIED CONTRACTORS EXIST IN THE MARKET
19 AREA WITHIN WHICH IT IS PRACTICABLE TO OBTAIN QUOTATIONS. A
20 WRITTEN RECORD OF TELEPHONIC PRICE QUOTATIONS SHALL BE MADE AND
21 SHALL CONTAIN AT LEAST THE DATE OF THE QUOTATION, THE NAME OF
22 THE CONTRACTOR AND THE CONTRACTOR'S REPRESENTATIVE, THE
23 CONSTRUCTION, RECONSTRUCTION, REPAIR, MAINTENANCE OR WORK WHICH
24 WAS THE SUBJECT OF THE QUOTATION AND THE PRICE, WRITTEN PRICE
25 QUOTATIONS, WRITTEN RECORDS OF TELEPHONIC PRICE QUOTATIONS, AND
26 MEMORANDA SHALL BE RETAINED FOR A PERIOD OF THREE YEARS.

27 § 2312. DIVISION OF TRANSACTIONS PROVIDED.

28 NO LOCAL GOVERNMENT SHALL EVADE THE PROVISIONS OF SECTION
29 2308 (RELATING TO BIDS FOR CERTAIN JOINT PURCHASES) AS TO
30 ADVERTISING FOR BIDS OR PURCHASING MATERIALS OR CONTRACTING FOR

1 SERVICES PIECEMEAL FOR THE PURPOSE OF OBTAINING PRICES UNDER
2 [\$10,000] \$25,000 SUBJECT TO ANNUAL ADJUSTMENT UNDER SECTION
3 2308(B) (RELATING TO BIDS FOR CERTAIN JOINT PURCHASES) UPON
4 TRANSACTIONS WHICH SHOULD IN THE EXERCISE OF REASONABLE
5 DISCRETION AND PRUDENCE BE CONDUCTED AS ONE TRANSACTION
6 AMOUNTING TO MORE THAN [\$10,000] \$25,000 SUBJECT TO ANNUAL
7 ADJUSTMENT UNDER SECTION 2308(B). THIS PROVISION IS INTENDED TO
8 MAKE UNLAWFUL THE PRACTICE OF EVADING ADVERTISING REQUIREMENTS
9 BY MAKING A SERIES OF PURCHASES OR CONTRACTS EACH FOR LESS THAN
10 THE ADVERTISING REQUIREMENT PRICE OR BY MAKING SEVERAL
11 SIMULTANEOUS PURCHASES OR CONTRACTS EACH BELOW SUCH PRICE WHEN
12 IN EITHER CASE THE TRANSACTION INVOLVED SHOULD HAVE BEEN MADE AS
13 ONE TRANSACTION FOR ONE PRICE.

14 Section 2. 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 3. This act shall take effect immediately.