

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2324 Session of 2012

INTRODUCED BY M. K. KELLER, APRIL 25, 2012

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, APRIL 25, 2012

AN ACT

1 Amending the act of act of July 29, 1953 (P.L.1034, No.270),
 2 entitled "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," further providing for
 21 competition in award of contracts.

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

24 Section 1. Section 11 of the act of July 29, 1953 (P.L.1034,
 25 No.270), known as the Public Auditorium Authorities Law, amended
 26 November 3, 2011 (P.L.353, No.87), is amended to read:

27 Section 11. Competition in Award of Contracts.

28 A. All construction, reconstruction, repairs or work of any

1 nature made by any Authority, where the entire cost, value or
2 amount of such construction, reconstruction, repairs or work,
3 including labor and materials, shall exceed the base amount of
4 [eighteen thousand five hundred dollars (\$18,500)] \$18,500,
5 subject to adjustment under subsection [I] J, except
6 construction, reconstruction, repairs or work done by employees
7 of said Authority or by labor supplied under agreement with any
8 Federal or State agency with supplies and materials purchased,
9 as 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 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 employes of the Authority

1 or otherwise than by contract.

2 B. All supplies and materials costing, subject to adjustment
3 under subsection [I] J, in excess of the base amount of
4 [eighteen thousand five hundred dollars (\$18,500)] \$18,500 or
5 more shall be purchased only after due advertisement as
6 hereinafter provided. The Authority shall accept the lowest bid
7 or bids, kinds, quality and material being equal, but the
8 Authority shall have the right to reject any or all bids or
9 select a single item from any bid. The provisions as to bidding
10 shall not apply to the purchase of patented and manufactured
11 products offered for sale in a non-competitive market or solely
12 by a manufacturer's authorized 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 the base amount of [ten
16 thousand dollars (\$10,000)] \$10,000, subject to adjustment under
17 subsection [I] J, but are less than the amount requiring
18 advertisement and competitive bidding or, in lieu of price
19 quotations, a memorandum shall be kept on file showing that
20 fewer than three (3) qualified contractors exist in the market
21 area within which it is practicable to obtain quotations. A
22 written record of telephonic price quotations shall be made and
23 shall contain at least the date of the quotation, the name of
24 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 C. The terms, advertisement or due public notice, wherever
30 used in this section, shall mean a notice published at least ten

1 (10) days before the award on any contract in a newspaper of
2 general circulation published in the municipality where the
3 Authority has its principal office, and if no newspaper is
4 published therein then by publication in a newspaper in the
5 county where the Authority has its principal office: Provided,
6 That such notice may be waived where the Authority determines an
7 emergency exists and such supplies and materials must be
8 immediately purchased by the said Authority.

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

18 E. Subject to the aforesaid, any Authority may (but without
19 intending by this provision to limit any powers of such
20 Authority) enter into and carry out such contracts or establish
21 or comply with such rules and regulations concerning labor and
22 materials and other related matters, in connection with any
23 project or portion thereof, as the Authority may deem desirable,
24 or as may be requested by any Federal agency that may assist in
25 the financing of such project or any part thereof: Provided,
26 however, That the provisions of this section shall not apply to
27 any case in which the Authority has taken over by transfer or
28 assignment any contract authorized to be assigned to it under
29 the provisions of section ten of this act, nor to any contract
30 in connection with the construction of any project which the

1 Authority may have had transferred to it by any person or
2 private corporation.

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

7 G. An Authority shall not evade the provisions of this
8 section as to advertising for bids or purchasing materials or
9 contracting for services piecemeal for the purpose of obtaining
10 prices under the base amount of [eighteen thousand five hundred
11 dollars (\$18,500)] \$18,500, subject to adjustment under
12 subsection [I] J, upon transactions which should, in the
13 exercise of reasonable discretion and prudence, be conducted as
14 one transaction amounting to more than the base amount of
15 [eighteen thousand five hundred dollars (\$18,500)] \$18,500,
16 subject to adjustment under subsection [I] J. This provision is
17 intended to make unlawful the practice of evading advertising
18 requirements by making a series of purchases or contracts each
19 for less than the advertising requirement price or by making
20 several simultaneous purchases or contracts each below said
21 price, when in either case the transaction involved should have
22 been made as one transaction for one price.

23 H. Any member of the Authority who votes to unlawfully evade
24 the provisions of this section and who knows that the
25 transaction upon which he so votes is or ought to be a part of a
26 larger transaction and that it is being divided in order to
27 evade the requirements as to advertising for bids commits a
28 misdemeanor of the third degree for each contract entered into
29 as a direct result of that vote.

30 [I. Adjustments to the base amounts specified under

1 subsections A, B, B.1 and G shall be made as follows:

2 (1) The Department of Labor and Industry shall determine the
3 percentage change in the Consumer Price Index for All Urban
4 Consumers: All Items (CPI-U) for the United States City Average
5 as published by the United States Department of Labor, Bureau of
6 Labor Statistics, for the twelve-month period ending September
7 30, 2012, and for each successive twelve-month period
8 thereafter.

9 (2) If the department determines that there is no positive
10 percentage change, then no adjustment to the base amounts shall
11 occur for the relevant time period provided for in this
12 subsection.

13 (3) (i) If the department determines that there is a
14 positive percentage change in the first year that the
15 determination is made under paragraph (1), the positive
16 percentage change shall be multiplied by each base amount, and
17 the products shall be added to the base amounts, respectively,
18 and the sums shall be preliminary adjusted amounts.

19 (ii) The preliminary adjusted amounts shall be rounded to
20 the nearest one hundred dollars (\$100) to determine the final
21 adjusted base amounts for purposes of subsections A, B, B.1 and
22 G.

23 (4) In each successive year in which there is a positive
24 percentage change in the CPI-U for the United States City
25 Average, the positive percentage change shall be multiplied by
26 the most recent preliminary adjusted amounts, and the products
27 shall be added to the preliminary adjusted amount of the prior
28 year to calculate the preliminary adjusted amounts for the
29 current year. The sums thereof shall be rounded to the nearest
30 one hundred dollars (\$100) to determine the new final adjusted

1 base amounts for purposes of subsections A, B, B.1 and G.

2 (5) The determinations and adjustments required under this
3 subsection shall be made in the period between October 1 and
4 November 15 of the year following the effective date of this
5 subsection and annually between October 1 and November 15 of
6 each year thereafter.

7 (6) The final adjusted base amounts and new final adjusted
8 base amounts obtained under paragraphs (3) and (4) shall become
9 effective January 1 for the calendar year following the year in
10 which the determination required under paragraph (1) is made.

11 (7) The department shall publish notice in the Pennsylvania
12 Bulletin prior to January 1 of each calendar year of the annual
13 percentage change determined under paragraph (1) and the
14 unadjusted or final adjusted base amounts determined under
15 paragraphs (3) and (4) at which competitive bidding is required
16 under subsections A, B and G and written or telephonic price
17 quotations are required under subsection B.1, respectively, for
18 the calendar year beginning the first day of January after
19 publication of the notice. The notice shall include a written
20 and illustrative explanation of the calculations performed by
21 the department in establishing the unadjusted or final adjusted
22 base amounts under this subsection for the ensuing calendar
23 year.

24 (8) The annual increase in the preliminary adjusted base
25 amounts obtained under paragraphs (3) and (4) shall not exceed
26 three per centum.]

27 J. Adjustments to the base amounts specified under
28 subsections A, B, B.1 and G shall be made as follows:

29 (1) The Department of Labor and Industry shall determine the
30 percentage change in the Consumer Price Index for All Urban

Consumers: All Items (CPI-U) for the United States City Average as published by the United States Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending September 30, 2012, and for each successive twelve-month period thereafter.

(2) If the department determines that there is no positive percentage change, then no adjustment to the base amounts 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 determination is made under paragraph (1), the positive percentage change shall be multiplied by each base amount, and the products shall be added to the base amounts, respectively, and the sums shall be preliminary adjusted amounts.

(ii) The preliminary adjusted amounts shall be rounded to the nearest \$100 to determine the final adjusted base amounts for purposes of subsections A, B, B.1 and G.

(4) In each successive year in which there is a positive percentage change in the CPI-U for the United States City Average, the positive percentage change shall be multiplied by the most recent preliminary adjusted amounts, and the products shall be added to the preliminary adjusted amount of the prior year to calculate the preliminary adjusted amounts for the current year. The sums thereof shall be rounded to the nearest \$100 to determine the new final adjusted base amounts for purposes of subsections A, B, B.1 and G.

(5) The determinations and adjustments required under this subsection shall be made in the period between October 1 and November 15, 2012, and annually between October 1 and November

1 15 of each year thereafter.

2 (6) The final adjusted base amounts and new final adjusted
3 base amounts obtained under paragraphs (3) and (4) shall become
4 effective January 1 for the calendar year following the year in
5 which the determination required under paragraph (1) is made.

6 (7) The department shall publish notice in the Pennsylvania
7 Bulletin prior to January 1 of each calendar year of the annual
8 percentage change determined under paragraph (1) and the
9 unadjusted or final adjusted base amounts determined under
10 paragraphs (3) and (4) at which competitive bidding is required
11 under subsections A, B and G and written or telephonic price
12 quotations are required under subsection B.1, respectively, for
13 the calendar year beginning the first day of January after
14 publication of the notice. The notice shall include a written
15 and illustrative explanation of the calculations performed by
16 the department in establishing the unadjusted or final adjusted
17 base amounts under this subsection for the ensuing calendar
18 year.

19 (8) The annual increase in the preliminary adjusted base
20 amounts obtained under paragraphs (3) and (4) shall not exceed
21 three per centum.

22 Section 2. Notwithstanding the provisions of section 2 of
23 the act of November 3, 2011 (P.L.353, NO.87), entitled "An act
24 amending the act of July 29, 1953 (P.L.1034, No.270), entitled,
25 as amended, 'An act creating as bodies corporate and politic
26 "Public Auditorium Authorities" in counties of the second class
27 and in cities of the second class and in cities of the second
28 class A and counties in which a city of the second class A is
29 located, singly or jointly; prescribing the rights, powers and
30 duties of such Authorities; authorizing such Authorities to

1 acquire, construct, improve, maintain and operate public
2 auditoriums; to borrow money and issue bonds therefor; providing
3 for the payment of such bonds and prescribing the rights of the
4 holders thereof; conferring the right of eminent domain on such
5 Authorities; empowering such Authorities to enter into
6 contracts, leases and licenses with and to accept grants from
7 private sources, the Federal Government, State, political
8 subdivisions of the State or any agency thereof; authorizing the
9 making of said grants from bond funds or current revenues;
10 authorizing Authorities to collect rentals, admissions, license
11 fees for the use of the project; exempting the property and
12 securities of such Public Auditorium Authorities from taxation,'
13 increasing the dollar amount of supplies and materials which may
14 be purchased without advertising," the base amount of \$18,500
15 specified in section 11A, B, B.1 and G of the act shall apply to
16 contracts and purchases advertised on or after the effective
17 date of this section.

18 Section 3. This act shall take effect immediately.