

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2326 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 August 23, 1967 (P.L.251, No.102), entitled,  
 2 as amended, "An act providing for the incorporation as public  
 3 instrumentalities of the Commonwealth and as bodies corporate  
 4 and politic of industrial and commercial development  
 5 authorities for municipalities, counties and townships;  
 6 prescribing the rights, powers and duties of such authorities  
 7 hereafter incorporated; authorizing such authorities to  
 8 acquire, by gift or purchase, to construct, improve and  
 9 maintain industrial, specialized, or commercial development  
 10 projects including projects for the elimination or prevention  
 11 of blight and the control of air and water pollution, and to  
 12 borrow money and issue bonds therefor; providing for the  
 13 payment of such bonds and giving security therefor, and  
 14 prescribing the rights of the holders of such bonds;  
 15 authorizing the lease or sale of industrial, specialized, or  
 16 commercial development projects to industrial, specialized,  
 17 or commercial enterprises; authorizing any county,  
 18 municipality or township to transfer or convey to such  
 19 authorities, any facilities or property available for  
 20 industrial, specialized, or commercial development projects;  
 21 exempting the property and securities of such authorities  
 22 from taxation; authorizing such authorities to enter into  
 23 contracts with and to accept grants from the Federal  
 24 Government or any agency thereof; and providing for approval  
 25 by the Secretary of Commerce of the proceedings relating to  
 26 industrial, specialized, or commercial development projects  
 27 of such authorities," further providing for competition in  
 28 award of contracts.

29 The General Assembly of the Commonwealth of Pennsylvania  
 30 hereby enacts as follows:

31 Section 1. Section 12 of the act of August 23, 1967

(P.L.251, No.102), known as the Economic Development Financing Law, amended December 17, 1993 (P.L.490, No.74), is amended to read:

Section 12. Competition in Award of Contracts.--(a) All construction, reconstruction, repairs or work of any nature made directly by any authority where the entire cost, value or amount of such construction, reconstruction, repairs or work, including labor and materials, shall exceed [ten thousand dollars (\$10,000)] eighteen thousand five hundred dollars (\$18,500), subject to adjustment under subsection (h), except construction, reconstruction, repairs or work done by employees of said authority, or by labor supplied under agreement with any Federal or State agency, with supplies and materials purchased as hereinafter provided, shall be done only under contract or contracts to be entered into by the authority with the lowest responsible bidder upon proper terms, after due public notice has been given asking for competitive bids as hereinafter provided: Provided, however, That where the authority is the legal title holder to the project, and there exists an agreement whereby a project user or project applicant will or can acquire legal title to the said project under the then certain terms and conditions, contracts for construction, reconstruction, repair, or work of any nature, or purchase of machinery and equipment, may be awarded by the project user or project applicant without regard to the limitations of this section 12: And provided further, however, That for the purposes of this section 12, "construction" or "acquisition" shall not include acquisition of property for project purposes. No contract shall be entered into between an authority and a contractor for construction of any project or portion thereof, unless the contractor shall give an

1 undertaking with a sufficient surety or sureties approved by the  
2 authority, and in an amount fixed by the authority, for the  
3 faithful performance of the contract. All contracts of surety  
4 shall provide among other things that the contractor entering  
5 into a contract with the authority will pay for all materials  
6 furnished and services rendered for the performance of the  
7 contract, and that any person or corporation furnishing such  
8 materials or rendering such services may maintain an action to  
9 recover for the same against the obligor in the undertaking, as  
10 though such person or corporation was named therein, provided  
11 the action is brought within one year after the time the cause  
12 of action accrued.

13 (b) All supplies and materials costing [ten thousand dollars  
14 (\$10,000)], subject to adjustment under subsection (h), eighteen  
15 thousand five hundred dollars (\$18,500) or more to be purchased  
16 directly by an authority shall be purchased only after due  
17 advertisement as hereinafter provided. The authority shall  
18 accept the lowest bid or bids, kind, quality and material being  
19 equal, but the authority shall have the right to reject any or  
20 all bids or select a single item from any bid. The provisions as  
21 to bidding shall not apply to the purchase of patented and  
22 manufactured products offered for sale in a noncompetitive  
23 market or solely by a manufacturer's authorized dealer.

24 (c) The terms "advertisement" or "due public notice"  
25 wherever used in this section, shall mean a notice published at  
26 least ten days before the award of any contract, in a newspaper  
27 of general circulation published in the municipality where the  
28 authority has its principal office, and if no newspaper is  
29 published therein then by publication in a newspaper in the  
30 county where the authority has its principal office: Provided,

1 That such notice may be waived where the authority determines an  
2 emergency exists, and such supplies and materials must be  
3 immediately purchased by the said authority.

4 (d) No member of the authority or officer or employe thereof  
5 shall, either directly or indirectly, be a party to or be in any  
6 manner interested in any contract or agreement with the  
7 authority for any matter, cause or thing whatsoever by reason  
8 whereof any liability or indebtedness shall in any way be  
9 created against such authority. If any contract or agreement  
10 shall be made in violation of the provisions of this section the  
11 same shall be null and void and no action shall be maintained  
12 thereon against such authority.

13 (e) Subject to the aforesaid, any authority may (but without  
14 intending by this provision to limit any powers of such  
15 authority) enter into and carry out such contracts, or establish  
16 or comply with such rules and regulations concerning labor and  
17 materials and other related matters in connection with any  
18 project or portion thereof, as the authority may deem desirable,  
19 or as may be requested by any Federal agency that may assist in  
20 the financing of such project or any part thereof.

21 (f) The provisions of this section 12 shall not apply in  
22 respect of the construction of any project or the purchase of  
23 any equipment, materials or supplies which the authority may  
24 have had transferred to it upon completion, by purchase or  
25 otherwise, by a project applicant or project user or any other  
26 person or corporation.

27 (g) Notwithstanding any of the foregoing, all construction,  
28 reconstruction, repairs or work of any nature with regard to  
29 publicly owned infrastructure facilities, where the entire cost,  
30 value or amount of such construction, reconstruction, repairs or

work, including labor and materials, shall exceed [ten thousand dollars (\$10,000)] eighteen thousand five hundred dollars (\$18,500), subject to adjustment under subsection (h), shall be done only under contract or contracts to be entered into by the authority or the owner of the infrastructure facility, with the lowest responsible bidder upon proper terms, after due public notice has been given asking for competitive bids as set forth in this section or other applicable law.

(h) Adjustments to the base amounts shall be made as follows:

(1) The Department of Labor and Industry shall determine the 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.

(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 one hundred dollars (\$100) to determine the final adjusted base amounts.

(4) In each successive year in which there is a positive

1 percentage change in the CPI-U for the United States City  
2 Average, the positive percentage change shall be multiplied by  
3 the most recent preliminary adjusted amounts, and the products  
4 shall be added to the preliminary adjusted amount of the prior  
5 year to calculate the preliminary adjusted amounts for the  
6 current year. The sums thereof shall be rounded to the nearest  
7 one hundred dollars (\$100) to determine the new final adjusted  
8 base amounts.

9 (5) The determinations and adjustments required under this  
10 subsection shall be made in the period between October 1 and  
11 November 15, 2012, and annually between October 1 and November  
12 15 of each year thereafter.

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

17 (7) The department shall publish notice in the Pennsylvania  
18 Bulletin prior to January 1 of each calendar year of the annual  
19 percentage change determined under paragraph (1) and the  
20 unadjusted or final adjusted base amounts determined under  
21 paragraphs (3) and (4) at which competitive bidding is required  
22 for the calendar year beginning the first day of January after  
23 publication of the notice. The notice shall include a written  
24 and illustrative explanation of the calculations performed by  
25 the department in establishing the unadjusted or final adjusted  
26 base amounts under this subsection for the ensuing calendar  
27 year.

28 (8) The annual increase in the preliminary adjusted base  
29 amounts obtained under paragraphs (3) and (4) shall not exceed  
30 three percent.

1       Section 2.   This act shall apply to contracts and purchases  
2   advertised on or after the effective date of this section.  
3       Section 3.   This act shall take effect immediately.