

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 288 Session of 2011

INTRODUCED BY RAFFERTY, EICHELBERGER, KASUNIC, FOLMER, GORDNER, BOSCOLA, ORIE, YAW, M. WHITE, D. WHITE, ERICKSON, BAKER, ALLOWAY, BRUBAKER, GREENLEAF, SMUCKER, FERLO, ROBBINS, VANCE, EARLL, SCARNATI, McILHINNEY, PICCOLA, WARD, MENSCH AND BROWNE, JANUARY 26, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, SEPTEMBER 20, 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," further regulating
5 contracts and purchases.

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

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

11 Section 112. Adjustments Based on Consumer Price Index.--(a)

12 ~~Every five years, beginning with the year in which this~~
13 ~~subsection becomes applicable to contracts and purchases, the~~
14 ~~Department of Labor and Industry shall calculate the average~~
15 ~~percentage change in the Consumer Price Index for All Urban~~
16 ~~Consumers (CPI U) for the United States city average for all~~
17 ~~items as published by the United States Department of Labor,~~



1 ~~Bureau of Labor Statistics, for the preceding five year period.~~

2 ~~(b) The amounts at which competitive bidding, separate bids~~
3 ~~and written or telephonic price quotations are required under~~
4 ~~this act shall be adjusted every five years. The positive~~
5 ~~percentage change, as determined in accordance with subsection~~
6 ~~(a), shall be multiplied by the applicable amount for the~~
7 ~~current five year period and the product thereof shall be added~~
8 ~~to the applicable amount for the current five year period, with~~
9 ~~the result rounded to the nearest multiple of one hundred~~
10 ~~dollars (\$100).~~

11 ~~(c) The determination required under subsection (a) and the~~
12 ~~calculation of the adjustments required under subsection (b)~~
13 ~~shall be made in the period between October 1 and November 15 of~~
14 ~~the year following the effective date of this section, and~~
15 ~~between October 1 and November 15 of each successive year.~~

16 ~~(d) The adjusted amounts obtained in accordance with~~
17 ~~subsection (b) shall become effective January 1 for the five~~
18 ~~year period following the year in which the determination~~
19 ~~required under subsection (a) is made.~~

20 ~~(e) The Department of Labor and Industry shall give notice~~
21 ~~in the Pennsylvania Bulletin prior to January 1 of each calendar~~
22 ~~year in which the percentage change determined in accordance~~
23 ~~with subsection (a) and the amounts, whether adjusted or~~
24 ~~unadjusted in accordance with subsection (b), at which~~
25 ~~competitive bidding, separate bids and written or telephonic~~
26 ~~price quotations are required under this act for the five year~~
27 ~~period beginning the first day of January after publication of~~
28 ~~the notice. ADJUSTMENTS TO THE BASE AMOUNTS SHALL BE MADE AS~~
29 ~~FOLLOWS:~~

30 ~~(1) THE DEPARTMENT OF LABOR AND INDUSTRY SHALL DETERMINE THE~~



1 PERCENTAGE CHANGE IN THE ALL ITEMS CONSUMER PRICE INDEX FOR ALL
2 URBAN CONSUMERS (CPI-U) FOR THE UNITED STATES CITY AVERAGE AS
3 PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF
4 LABOR STATISTICS FOR THE TWELVE-MONTH PERIOD ENDING SEPTEMBER
5 30, 2012, AND FOR EACH SUCCESSIVE TWELVE-MONTH PERIOD
6 THEREAFTER.

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

11 (3) (I) IF THE DEPARTMENT DETERMINES THAT THERE IS A
12 POSITIVE PERCENTAGE CHANGE IN THE FIRST YEAR THAT THE
13 DETERMINATION IS MADE UNDER PARAGRAPH (1), THE POSITIVE
14 PERCENTAGE CHANGE SHALL BE MULTIPLIED BY EACH BASE AMOUNT AND
15 THE PRODUCTS SHALL BE ADDED TO THE BASE AMOUNTS, RESPECTIVELY,
16 AND THE SUMS SHALL BE PRELIMINARY ADJUSTED AMOUNTS.

17 (II) THE PRELIMINARY ADJUSTED AMOUNTS SHALL BE ROUNDED TO
18 THE NEAREST ONE THOUSAND DOLLARS (\$1,000), TO DETERMINE THE
19 FINAL ADJUSTED BASE AMOUNTS.

20 (4) IN EACH SUCCESSIVE YEAR IN WHICH THERE IS A POSITIVE
21 PERCENTAGE CHANGE IN THE CPI-U FOR THE UNITED STATES CITY
22 AVERAGE, THE POSITIVE PERCENTAGE CHANGE SHALL BE MULTIPLIED BY
23 THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS AND THE PRODUCTS
24 SHALL BE ADDED TO THE PRELIMINARY ADJUSTED AMOUNT OF THE PRIOR
25 YEAR TO CALCULATE THE PRELIMINARY ADJUSTED AMOUNTS FOR THE
26 CURRENT YEAR. THE SUMS THEREOF SHALL BE ROUNDED TO THE NEAREST
27 ONE THOUSAND DOLLARS (\$1,000) TO DETERMINE THE NEW FINAL
28 ADJUSTED BASE AMOUNTS.

29 (5) THE DETERMINATIONS AND ADJUSTMENTS REQUIRED UNDER THIS
30 SUBSECTION SHALL BE MADE IN THE PERIOD BETWEEN OCTOBER 1 AND

1 NOVEMBER 15 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS
2 SUBSECTION, AND ANNUALLY BETWEEN OCTOBER 1 AND NOVEMBER 15 OF
3 EACH YEAR THEREAFTER.

4 (6) THE FINAL ADJUSTED BASE AMOUNTS AND NEW FINAL ADJUSTED
5 BASE AMOUNTS OBTAINED UNDER PARAGRAPHS (3) AND (4) SHALL BECOME
6 EFFECTIVE JANUARY 1 FOR THE CALENDAR YEAR FOLLOWING THE YEAR IN
7 WHICH THE DETERMINATION REQUIRED UNDER PARAGRAPH (1) IS MADE.

8 (7) THE DEPARTMENT SHALL PUBLISH NOTICE IN THE PENNSYLVANIA
9 BULLETIN PRIOR TO JANUARY 1 OF EACH CALENDAR YEAR OF THE ANNUAL
10 PERCENTAGE CHANGE DETERMINED UNDER PARAGRAPH (1) AND THE
11 UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS DETERMINED UNDER
12 PARAGRAPHS (3) AND (4) AT WHICH COMPETITIVE BIDDING OR WRITTEN
13 OR TELEPHONIC PRICE QUOTATIONS ARE REQUIRED FOR THE CALENDAR
14 YEAR BEGINNING THE FIRST DAY OF JANUARY AFTER PUBLICATION OF THE
15 NOTICE. THE NOTICE SHALL INCLUDE A WRITTEN AND ILLUSTRATIVE
16 EXPLANATION OF THE CALCULATIONS PERFORMED BY THE DEPARTMENT IN
17 ESTABLISHING THE UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS UNDER
18 THIS SUBSECTION FOR THE ENSUING CALENDAR YEAR.

19 (8) NO ADJUSTMENT TO THE BASE AMOUNTS SHALL EXCEED THREE
20 PERCENT OF THE MOST RECENTLY ADJUSTED BASE AMOUNT.

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

23 Section 2001. County Commissioners to Make Contracts.--The
24 County Commissioners may make contracts for lawful purposes and
25 for the purposes of carrying into execution the provisions of
26 this section and the laws of the Commonwealth.

27 (a) Except as provided in subsection (a.1), all contracts or
28 purchases in excess of [ten thousand dollars (\$10,000)] ~~twenty~~ ←
29 ~~five thousand dollars (\$25,000)~~ THE BASE AMOUNT OF EIGHTEEN ←
30 THOUSAND FIVE HUNDRED DOLLARS (\$18,500), subject to adjustment

1 under section 112, shall be in writing and, except those
2 hereinafter mentioned and except as provided by the act of
3 October 27, 1979 (P.L.241, No.78), entitled "An act authorizing
4 political subdivisions, municipality authorities and
5 transportation authorities to enter into contracts for the
6 purchase of goods and the sale of real and personal property
7 where no bids are received," shall not be made except with and
8 from the lowest responsible and responsive bidder meeting
9 specifications, after due notice in at least one newspaper of
10 general circulation, published or circulating in the county at
11 least two (2) times, at intervals of not less than three (3)
12 days where daily newspapers of general circulation are employed
13 for such publication, or in case weekly newspapers are employed,
14 then the notice shall be published once a week for two (2)
15 successive weeks. The first advertisement shall be published not
16 less than ten (10) days prior to the date fixed for the opening
17 of bids.

18 * * *

19 (d) The contracts or purchases made by the commissioners
20 involving an expenditure of over [ten thousand dollars
21 (\$10,000)] ~~twenty five thousand dollars (\$25,000)~~ THE BASE ←
22 AMOUNT OF EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500),
23 subject to adjustment under section 112, which shall not require
24 advertising or bidding as hereinbefore provided are as follows:

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

30 (2) Those made for improvements, repairs and maintenance of

1 any kind made or provided by the county through its own
2 employes. This paragraph shall not apply to construction
3 materials used in a street improvement.

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

8 (4) Those involving any policies of insurance or surety
9 company bonds, those made for public utility service and
10 electricity, natural gas or telecommunication services:
11 Provided, That, in the case of utilities not under tariffs on
12 file with the Pennsylvania Public Utility Commission, contracts
13 made without advertising and bidding shall be made only after
14 receiving written or telephonic price quotations from at least
15 three (3) qualified and responsible contractors, or in lieu of
16 price quotations a memorandum shall be kept on file showing that
17 fewer than three (3) qualified contractors exist in the market
18 area within which it is practicable to obtain quotations. A
19 written record of telephonic price quotations shall be made and
20 contain at least the date of the quotation, the name of the
21 contractor and the contractor's representative.

22 (5) Those involving personal or professional services,
23 including, but not limited to, services of members of the
24 medical or legal profession, registered architects, engineers,
25 certified public accountants or other personal services
26 involving professional expertise.

27 (6) Those involving tangible client services provided by
28 nonprofit agencies. For the purposes of this clause, the term
29 "tangible client services" shall mean congregate meals, home-
30 delivered meals, transportation and chore services provided

1 through area agencies on aging.

2 (6.1) Those involving contracts entered into by nonprofit
3 cooperative hospital service associations for hospitals and
4 nursing homes which are part of the institutional district or
5 which are owned by the county, operated by the county or
6 affiliated with the county by the purchasing of or participating
7 in contracts for materials, supplies and equipment.

8 (7) Those involving the purchase of milk.

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

18 (i) the Federal Government;

19 (ii) the Commonwealth of Pennsylvania;

20 (iii) any other state;

21 (iv) a political subdivision, local or municipal authority
22 or other similar local entity of the Commonwealth or any other
23 state; or

24 (v) an agency of the Federal Government, the Commonwealth or
25 any other state.

26 (9) Those exclusively involving construction management
27 services.

28 (10) Those involving computer software.

29 * * *

30 Section 3. Section 2517(a) of the act, amended December 9,

1 2002 (P.L.1383, No.170), is amended to read:

2 Section 2517. Separate Specifications and Contracts for
3 Certain Items.--(a) In the preparation of specifications for
4 the erection, construction and alteration of any public
5 building, when the entire cost of such work shall exceed [ten
6 thousand dollars (\$10,000)] ~~twenty five thousand dollars~~ ←
7 ~~(\$25,000)~~ THE BASE AMOUNT OF EIGHTEEN THOUSAND FIVE HUNDRED ←
8 DOLLARS (\$18,500), subject to adjustment under section 112, the
9 architect, engineer or other person preparing such
10 specifications shall prepare separate specifications for the
11 plumbing, heating, ventilating and electrical work. The board of
12 commissioners shall receive separate bids upon each of the said
13 branches of work and award the contract for the same to the
14 lowest responsible bidder for each of said branches.

15 * * *

16 Section 4. Section 2511-A(a), (b), (b.1) and (h) of the act,
17 added October 30, 2000 (P.L.616, No.85), are amended to read:

18 Section 2511-A. Competition in Award of Contracts.--(a) All
19 construction, reconstruction, repairs or work of any nature made
20 by any Authority, where the entire cost, value or amount of such
21 construction, reconstruction, repairs or work, including labor
22 and materials, shall exceed [ten thousand dollars (\$10,000)]
23 ~~twenty five thousand dollars (\$25,000)~~ THE BASE AMOUNT OF ←
24 EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500), subject to
25 adjustment under section 112, except construction,
26 reconstruction, repairs or work done by employes of said
27 Authority or by labor supplied under agreement with any Federal
28 or State agency with supplies and materials purchased, as
29 hereinafter provided, shall be done only under contract or
30 contracts to be entered into by the Authority with the lowest

1 responsible bidder upon proper terms, after due public notice
2 has been given asking for competitive bids hereinafter provided.
3 No contract shall be entered into for construction or
4 improvement or repair of any project or portion thereof unless
5 the contractor shall give an undertaking, with a sufficient
6 surety or sureties approved by the Authority and in an amount
7 fixed by the Authority, for the faithful performance of the
8 contract. All such contracts shall provide, among other things,
9 that the person or corporation entering into such contract with
10 the Authority will pay for all materials furnished and services
11 rendered for the performance of the contract and that any person
12 or corporation furnishing such materials or rendering such
13 services may maintain an action to recover for the same against
14 the obligor in the undertaking as though such person or
15 corporation was named therein, provided the action is brought
16 within one (1) year after the time the cause of action accrued.
17 Nothing in this section shall be construed to limit the power of
18 the Authority to construct, repair or improve any project or
19 portion thereof or any addition, betterment or extension thereto
20 directly by the officers, agents and employes of the Authority
21 or otherwise than by contract.

22 (b) All supplies and materials costing [ten thousand dollars
23 (\$10,000)] ~~twenty five thousand dollars (\$25,000)~~ THE BASE ←
24 AMOUNT OF EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500),
25 subject to adjustment under section 112, or more shall be
26 purchased only after due advertisement as hereinafter provided.
27 The Authority shall accept the lowest bid or bids, kinds,
28 quality and material being equal, but the Authority shall have
29 the right to reject any or all bids or select a single item from
30 any bid. The provisions as to bidding shall not apply to the

1 purchase of patented and manufactured products offered for sale
2 in a non-competitive market or solely by a manufacturer's
3 authorized dealer.

4 (b.1) Written or telephonic price quotations from at least
5 three (3) qualified and responsible contractors shall be
6 requested for all contracts that exceed [four thousand dollars
7 (\$4,000)] ~~seven thousand dollars (\$7,000)~~ THE BASE AMOUNT OF TEN ←
8 THOUSAND DOLLARS (\$10,000), subject to adjustment under section
9 112, but are less than the amount requiring advertisement and
10 competitive bidding, or, in lieu of price quotations, a
11 memorandum shall be kept on file showing that fewer than three
12 (3) qualified contractors exist in the market area within which
13 it is practicable to obtain quotations. A written record of
14 telephonic price quotations shall be made and shall contain at
15 least the date of the quotation, the name of the contractor and
16 the contractor's representative, the construction,
17 reconstruction, repair, maintenance or work which was the
18 subject of the quotation and the price. Written price
19 quotations, written records of telephonic price quotations and
20 memoranda shall be retained for a period of three (3) years.

21 * * *

22 (h) An Authority shall not evade the provisions of this
23 section as to advertising for bids or purchasing materials or
24 contracting for services piecemeal for the purpose of obtaining
25 prices under [ten thousand dollars (\$10,000)] ~~twenty five~~ ←
26 ~~thousand dollars (\$25,000)~~ THE BASE AMOUNT OF EIGHTEEN THOUSAND ←
27 FIVE HUNDRED DOLLARS (\$18,500), subject to adjustment under
28 section 112, upon transactions which should, in the exercise of
29 reasonable discretion and prudence, be conducted as one
30 transaction amounting to more than [ten thousand dollars



1 (\$10,000)] ~~twenty five thousand dollars (\$25,000)~~ THE BASE
2 AMOUNT OF EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500),
3 subject to adjustment under section 112. This provision is
4 intended to make unlawful the practice of evading advertising
5 requirements by making a series of purchases or contracts each
6 for less than the advertising requirement price or by making
7 several simultaneous purchases or contracts each below said
8 price when in either case the transaction involved should have
9 been made as one transaction for one price.

10 * * *

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

14 Section 6. This act shall take effect immediately.