

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 289 Session of
2011

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

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
SEPTEMBER 20, 2011

AN ACT

1 Amending the act of August 6, 1936 (Sp.Sess., P.L.95, No.38
2 1/2), entitled "An act to authorize and empower cities,
3 boroughs, towns, and townships, separately or jointly, to
4 provide for protection against floods by erecting and
5 constructing certain works and improvements, located within
6 or without their territorial limits, and within or without
7 the county in which situate; and to expend moneys and incur
8 indebtedness; to assess benefits against property benefited;
9 to issue improvement bonds imposing no municipal liability;
10 and to acquire, take, injure or destroy property for such
11 purposes," further providing for competitive bidding of
12 contracts.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Section 3 of the act of August 6, 1936 (Sp.Sess.,
16 P.L.95, No.38 1/2), entitled "An act to authorize and empower
17 cities, boroughs, towns, and townships, separately or jointly,
18 to provide for protection against floods by erecting and
19 constructing certain works and improvements, located within or
20 without their territorial limits, and within or without the
21 county in which situate; and to expend moneys and incur

1 indebtedness; to assess benefits against property benefited; to
2 issue improvement bonds imposing no municipal liability; and to
3 acquire, take, injure or destroy property for such purposes,"
4 amended July 10, 1990 (P.L.402, No.97), is amended to read:

5 Section 3. (a) No such works or improvements, involving
6 [an] expenditure by any municipality or municipalities of more
7 than [ten thousand dollars (\$10,000)] ~~twenty five thousand~~ THE
8 BASE AMOUNT OF EIGHTEEN THOUSAND FIVE HUNDRED dollars (\$25,000)
9 (\$18,500), subject to adjustment under subsection (b.1), shall
10 be erected, constructed or provided, except by contract let to
11 the lowest responsible bidder after due advertisement, once a
12 week for two successive weeks in at least one newspaper of
13 general circulation: Provided, however, That no contract shall
14 be required to be let for the performance of the work on any
15 such work or improvement where the cost of the labor shall be
16 paid by the Federal Government, or any agency thereof, without
17 cost to the municipality or municipalities.

18 (b) Written or telephonic price quotations from at least
19 three qualified and responsible contractors shall be requested
20 for all contracts [that exceed ~~four thousand dollars (\$4,000)]~~
21 seven IN EXCESS OF THE BASE AMOUNT OF TEN thousand dollars
22 ~~(\$7,000)~~ (\$10,000), subject to adjustment under subsection
23 (b.1), but are less than the amount requiring advertisement and
24 competitive bidding or, in lieu of price quotations, a
25 memorandum shall be kept on file showing that fewer than three
26 qualified contractors exist in the market area within which it
27 is practicable to obtain quotations. A written record of
28 telephonic price quotations shall be made and shall contain at
29 least the date of the quotation, the name of the contractor and
30 the contractor's representative, the construction,

1 reconstruction, repair, maintenance or work which was the
2 subject of the quotation and the price. Written price
3 quotations, written records of telephonic price quotations and
4 memoranda shall be retained for a period of three years.

5 ~~(b.1) Adjustments shall be made as follows:~~

6 ~~(1) Every five years, beginning with the year in which this~~
7 ~~subsection becomes applicable to contracts and purchases, the~~
8 ~~Department of Labor and Industry shall calculate the average~~
9 ~~percentage change in the Consumer Price Index for All Urban~~
10 ~~Consumers (CPI-U) for the United States city average for all~~
11 ~~items as published by the United States Department of Labor,~~
12 ~~Bureau of Labor Statistics, for the preceding five year period.~~

13 ~~(2) The amount at which competitive bidding is required~~
14 ~~under subsection (a) and the amount at which written or~~
15 ~~telephonic price quotations are required under subsection (b)~~
16 ~~shall be adjusted every five years as follows:~~

17 ~~(i) In the case of competitive bidding, the positive~~
18 ~~percentage change, as determined in accordance with paragraph~~
19 ~~(1), shall be multiplied by the amount applicable under~~
20 ~~subsection (a) for the current five year period and the product~~
21 ~~thereof shall be added to the amount applicable under subsection~~
22 ~~(a) for the current five year period, with the result rounded to~~
23 ~~the nearest multiple of one hundred dollars (\$100).~~

24 ~~(ii) In the case of written or telephonic price quotations,~~
25 ~~the positive percentage change, as determined in accordance with~~
26 ~~paragraph (1), shall be multiplied by the amount applicable~~
27 ~~under subsection (b) for the current five year period and the~~
28 ~~product thereof shall be added to the amount applicable under~~
29 ~~subsection (b) for the current five year period, with the result~~
30 ~~rounded to the nearest multiple of one hundred dollars (\$100).~~

~~(3) The determination required under paragraph (1) and the calculation of the adjustments required under paragraph (2) shall be made in the period between October 1 and November 15 of the year following the effective date of this subsection, and between October 1 and November 15 of each successive year.~~

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

~~(5) The department shall give notice in the Pennsylvania Bulletin prior to January 1 of each calendar year in which the 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) and written or telephonic price quotations are required under subsection (b) for the five year period beginning the first day of January after publication of the notice.~~

(B.1) ADJUSTMENTS TO THE BASE AMOUNTS SPECIFIED UNDER SUBSECTIONS (A) AND (B) 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 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

1 SUBSECTION.

2 (3) (I) IF THE DEPARTMENT DETERMINES THAT THERE IS A
3 POSITIVE PERCENTAGE CHANGE IN THE FIRST YEAR THAT THE
4 DETERMINATION IS MADE UNDER PARAGRAPH (1), THE POSITIVE
5 PERCENTAGE CHANGE SHALL BE MULTIPLIED BY EACH BASE AMOUNT AND
6 THE PRODUCTS SHALL BE ADDED TO THE BASE AMOUNTS, RESPECTIVELY,
7 AND THE SUMS SHALL BE PRELIMINARY ADJUSTED AMOUNTS.

8 (II) THE PRELIMINARY ADJUSTED AMOUNTS SHALL BE ROUNDED TO
9 THE NEAREST ONE THOUSAND DOLLARS (\$1,000), TO DETERMINE THE
10 FINAL ADJUSTED BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS (A) AND
11 (B).

12 (4) IN EACH SUCCESSIVE YEAR IN WHICH THERE IS A POSITIVE
13 PERCENTAGE CHANGE IN THE CPI-U FOR THE UNITED STATES CITY
14 AVERAGE, THE POSITIVE PERCENTAGE CHANGE SHALL BE MULTIPLIED BY
15 THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS AND THE PRODUCTS
16 SHALL BE ADDED TO THE PRELIMINARY ADJUSTED AMOUNT OF THE PRIOR
17 YEAR TO CALCULATE THE PRELIMINARY ADJUSTED AMOUNTS FOR THE
18 CURRENT YEAR. THE SUMS THEREOF SHALL BE ROUNDED TO THE NEAREST
19 ONE THOUSAND DOLLARS (\$1,000) TO DETERMINE THE NEW FINAL
20 ADJUSTED BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS (A) AND (B).

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

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

30 (7) THE DEPARTMENT SHALL PUBLISH NOTICE IN THE PENNSYLVANIA

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

13 (8) NO ADJUSTMENT TO THE BASE AMOUNTS SPECIFIED UNDER
14 SUBSECTIONS (A) AND (B) SHALL EXCEED THREE PERCENT OF THE MOST
15 RECENTLY ADJUSTED BASE AMOUNT.

16 (c) No municipality shall evade the provisions of this
17 section as to advertising for bids or purchasing materials or
18 contracting for services piecemeal for the purpose of obtaining
19 prices under [ten thousand dollars (\$10,000)] the amount
20 required by this section upon transactions which should, in the
21 exercise of reasonable discretion and prudence, be conducted as
22 one transaction amounting to more than [ten thousand dollars
23 (\$10,000)] the amount required by this section. This provision
24 is intended to make unlawful the practice of evading advertising
25 requirements by making a series of purchases or contracts each
26 for less than the advertising requirement price or by making
27 several simultaneous purchases or contracts each below said
28 price, when in either case the transaction involved should have
29 been made as one transaction for one price.

30 (d) Any member of a governing body of a municipality who

1 votes to unlawfully evade the provisions of this section and who
2 knows that the transaction upon which he so votes is or ought to
3 be a part of a larger transaction and that it is being divided
4 in order to evade the requirements as to advertising for bids
5 commits a misdemeanor of the third degree for each contract
6 entered into as a direct result of that vote.

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

11 Section 2. The amendment of section 3 of the act shall apply
12 to contracts and purchases advertised after December 31 of the
13 year in which this section takes effect.

14 Section 3. This act shall take effect immediately.