

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 291 Session of 2011

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

REFERRED TO LOCAL GOVERNMENT, JANUARY 26, 2011

AN ACT

1 Amending the act of July 29, 1953 (P.L.1034, No.270), entitled,
2 as amended, "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," increasing the dollar
21 amount of supplies and materials which may be purchased
22 without advertising.

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

25 Section 1. Section 11 of the act of July 29, 1953 (P.L.1034,
26 No.270), known as the Public Auditorium Authorities Law, amended

1 July 10, 1990 (P.L.376, No.88), is amended to read:

2 Section 11. Competition in Award of Contracts.

3 A. All construction, reconstruction, repairs or work of any
4 nature made by any Authority, where the entire cost, value or
5 amount of such construction, reconstruction, repairs or work,
6 including labor and materials, shall exceed [ten thousand
7 dollars (\$10,000)] twenty-five thousand dollars (\$25,000),
8 subject to adjustment under subsection I, except construction,
9 reconstruction, repairs or work done by employees of said
10 Authority or by labor supplied under agreement with any Federal
11 or State agency with supplies and materials purchased, as
12 hereinafter provided, shall be done only under contract or
13 contracts to be entered into by the Authority with the lowest
14 responsible bidder upon proper terms, after due public notice
15 has been given asking for competitive bids hereinafter provided.
16 No contract shall be entered into for construction or
17 improvement or repair of any project or portion thereof unless
18 the contractor shall give an undertaking, with a sufficient
19 surety or sureties approved by the Authority and in an amount
20 fixed by the Authority, for the faithful performance of the
21 contract. All such contracts shall provide, among other things,
22 that the person or corporation entering into such contract with
23 the Authority will pay for all materials furnished and services
24 rendered for the performance of the contract and that any person
25 or corporation furnishing such materials or rendering such
26 services may maintain an action to recover for the same against
27 the obligor in the undertaking as though such person or
28 corporation was named therein, provided the action is brought
29 within one year after the time the cause of action accrued.
30 Nothing in this section shall be construed to limit the power of

1 the Authority to construct, repair or improve any project or
2 portion thereof or any addition, betterment or extension thereto
3 directly by the officers, agents and employes of the Authority
4 or otherwise than by contract.

5 B. All supplies and materials costing [ten thousand dollars
6 (\$10,000)], subject to adjustment under subsection I, twenty-
7 five thousand dollars (\$25,000) or more shall be purchased only
8 after due advertisement as hereinafter provided. The Authority
9 shall accept the lowest bid or bids, kinds, quality and material
10 being equal, but the Authority shall have the right to reject
11 any or all bids or select a single item from any bid. The
12 provisions as to bidding shall not apply to the purchase of
13 patented and manufactured products offered for sale in a non-
14 competitive market or solely by a manufacturer's authorized
15 dealer.

16 B.1. Written or telephonic price quotations from at least
17 three (3) qualified and responsible contractors shall be
18 requested for all contracts that exceed [four thousand dollars
19 (\$4,000)] seven thousand dollars (\$7,000), subject to adjustment
20 under subsection I, but are less than the amount requiring
21 advertisement and competitive bidding or, in lieu of price
22 quotations, a memorandum shall be kept on file showing that
23 fewer than three (3) qualified contractors exist in the market
24 area within which it is practicable to obtain quotations. A
25 written record of telephonic price quotations shall be made and
26 shall contain at least the date of the quotation, the name of
27 the contractor and the contractor's representative, the
28 construction, reconstruction, repair, maintenance or work which
29 was the subject of the quotation and the price. Written price
30 quotations, written records of telephonic price quotations and

1 memoranda shall be retained for a period of three (3) years.

2 C. The terms, advertisement or due public notice, wherever
3 used in this section, shall mean a notice published at least ten
4 (10) days before the award on any contract in a newspaper of
5 general circulation published in the municipality where the
6 Authority has its principal office, and if no newspaper is
7 published therein then by publication in a newspaper in the
8 county where the Authority has its principal office: Provided,
9 That such notice may be waived where the Authority determines an
10 emergency exists and such supplies and materials must be
11 immediately purchased by the said Authority.

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

21 E. Subject to the aforesaid, any Authority may (but without
22 intending by this provision to limit any powers of such
23 Authority) enter into and carry out such contracts or establish
24 or comply with such rules and regulations concerning labor and
25 materials and other related matters, in connection with any
26 project or portion thereof, as the Authority may deem desirable,
27 or as may be requested by any Federal agency that may assist in
28 the financing of such project or any part thereof: Provided,
29 however, That the provisions of this section shall not apply to
30 any case in which the Authority has taken over by transfer or

1 assignment any contract authorized to be assigned to it under
2 the provisions of section ten of this act, nor to any contract
3 in connection with the construction of any project which the
4 Authority may have had transferred to it by any person or
5 private corporation.

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

10 G. An Authority shall not evade the provisions of this
11 section as to advertising for bids or purchasing materials or
12 contracting for services piecemeal for the purpose of obtaining
13 prices under [ten thousand dollars (\$10,000)] twenty-five
14 thousand dollars (\$25,000), subject to adjustment under
15 subsection I, upon transactions which should, in the exercise of
16 reasonable discretion and prudence, be conducted as one
17 transaction amounting to more than [ten thousand dollars
18 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to
19 adjustment under subsection I. This provision is intended to
20 make unlawful the practice of evading advertising requirements
21 by making a series of purchases or contracts each for less than
22 the advertising requirement price or by making several
23 simultaneous purchases or contracts each below said price, when
24 in either case the transaction involved should have been made as
25 one transaction for one price.

26 H. Any member of the Authority who votes to unlawfully evade
27 the provisions of this section and who knows that the
28 transaction upon which he so votes is or ought to be a part of a
29 larger transaction and that it is being divided in order to
30 evade the requirements as to advertising for bids commits a

1 misdemeanor of the third degree for each contract entered into
2 as a direct result of that vote.

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

11 (2) The amounts at which competitive bidding and written or
12 telephonic price quotations are required under this section
13 shall be adjusted every five years as follows:

14 (i) In the case of competitive bidding, the positive
15 percentage change, as determined in accordance with clause (1),
16 shall be multiplied by the amount applicable under subsection A,
17 B or G for the current five-year period and the product thereof
18 shall be added to the amount applicable under subsection A, B or
19 G for the current five-year period, with the result rounded to
20 the nearest multiple of one hundred dollars (\$100).

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

28 (3) The determination required under clause (1) and the
29 calculation of the adjustments required under clause (2) shall
30 be made in the period between October 1 and November 15 of the

1 year following the effective date of this subsection, and
2 annually between October 1 and November 15 of each successive
3 year.

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

8 (5) The Department of Labor and Industry shall give notice
9 in the Pennsylvania Bulletin prior to January 1 of each calendar
10 year in which the percentage change determined in accordance
11 with clause (1) and the amounts, whether adjusted or unadjusted
12 in accordance with clause (2), at which competitive bidding is
13 required and written or telephonic price quotations are required
14 for the five-year period beginning the first day of January
15 after publication of the notice.

16 Section 2. This act shall apply to contracts and purchases
17 advertised on or after January 1 of the year following the
18 effective date of this section.

19 Section 3. This act shall take effect in 60 days.