

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, PICCOLA, WARD AND BROWNE,
JANUARY 26, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
SEPTEMBER 20, 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)~~ THE
8 BASE AMOUNT OF EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500),
9 subject to adjustment under subsection I, except construction,
10 reconstruction, repairs or work done by employees of said
11 Authority or by labor supplied under agreement with any Federal
12 or State agency with supplies and materials purchased, as
13 hereinafter provided, shall be done only under contract or
14 contracts to be entered into by the Authority with the lowest
15 responsible bidder upon proper terms, after due public notice
16 has been given asking for competitive bids hereinafter provided.
17 No contract shall be entered into for construction or
18 improvement or repair of any project or portion thereof unless
19 the contractor shall give an undertaking, with a sufficient
20 surety or sureties approved by the Authority and in an amount
21 fixed by the Authority, for the faithful performance of the
22 contract. All such contracts shall provide, among other things,
23 that the person or corporation entering into such contract with
24 the Authority will pay for all materials furnished and services
25 rendered for the performance of the contract and that any person
26 or corporation furnishing such materials or rendering such
27 services may maintain an action to recover for the same against
28 the obligor in the undertaking as though such person or
29 corporation was named therein, provided the action is brought
30 within one year after the time the cause of action accrued.



1 Nothing in this section shall be construed to limit the power of
2 the Authority to construct, repair or improve any project or
3 portion thereof or any addition, betterment or extension thereto
4 directly by the officers, agents and employees of the Authority
5 or otherwise than by contract.

6 B. All supplies and materials costing [ten thousand dollars
7 (\$10,000)], subject to adjustment under subsection I, ~~twenty~~ ←
8 ~~five thousand dollars (\$25,000)~~ IN EXCESS OF THE BASE AMOUNT OF ←
9 EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500) or more shall
10 be purchased only after due advertisement as hereinafter
11 provided. The Authority shall accept the lowest bid or bids,
12 kinds, quality and material being equal, but the Authority shall
13 have the right to reject any or all bids or select a single item
14 from any bid. The provisions as to bidding shall not apply to
15 the purchase of patented and manufactured products offered for
16 sale in a non-competitive market or solely by a manufacturer's
17 authorized dealer.

18 B.1. Written or telephonic price quotations from at least
19 three (3) qualified and responsible contractors shall be
20 requested for all contracts that exceed [four thousand dollars
21 (\$4,000)] ~~seven thousand dollars (\$7,000)~~ THE BASE AMOUNT OF TEN ←
22 THOUSAND DOLLARS (\$10,000), subject to adjustment under
23 subsection I, but are less than the amount requiring
24 advertisement and competitive bidding or, in lieu of price
25 quotations, a memorandum shall be kept on file showing that
26 fewer than three (3) qualified contractors exist in the market
27 area within which it is practicable to obtain quotations. A
28 written record of telephonic price quotations shall be made and
29 shall contain at least the date of the quotation, the name of
30 the contractor and the contractor's representative, the

1 construction, reconstruction, repair, maintenance or work which
2 was the 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 (3) years.

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

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

24 E. Subject to the aforesaid, any Authority may (but without
25 intending by this provision to limit any powers of such
26 Authority) enter into and carry out such contracts or establish
27 or comply with such rules and regulations concerning labor and
28 materials and other related matters, in connection with any
29 project or portion thereof, as the Authority may deem desirable,
30 or as may be requested by any Federal agency that may assist in

1 the financing of such project or any part thereof: Provided,
2 however, That the provisions of this section shall not apply to
3 any case in which the Authority has taken over by transfer or
4 assignment any contract authorized to be assigned to it under
5 the provisions of section ten of this act, nor to any contract
6 in connection with the construction of any project which the
7 Authority may have had transferred to it by any person or
8 private corporation.

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

13 G. An Authority shall not evade the provisions of this
14 section as to advertising for bids or purchasing materials or
15 contracting for services piecemeal for the purpose of obtaining
16 prices under [ten thousand dollars (\$10,000)] ~~twenty five~~ ←
17 ~~thousand dollars (\$25,000)~~ THE BASE AMOUNT OF EIGHTEEN THOUSAND ←
18 FIVE HUNDRED DOLLARS (\$18,500), subject to adjustment under
19 subsection I, upon transactions which should, in the exercise of
20 reasonable discretion and prudence, be conducted as one
21 transaction amounting to more than [ten thousand dollars
22 (\$10,000)] ~~twenty five thousand dollars (\$25,000)~~ ←
23 AMOUNT OF EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500),
24 subject to adjustment under subsection I. This provision is
25 intended to make unlawful the practice of evading advertising
26 requirements by making a series of purchases or contracts each
27 for less than the advertising requirement price or by making
28 several simultaneous purchases or contracts each below said
29 price, when in either case the transaction involved should have
30 been made as one transaction for one price.

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

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

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

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

26 ~~(ii) In the case of written or telephonic price quotations,~~
27 ~~the positive percentage change, as determined in accordance with~~
28 ~~clause (1), shall be multiplied by the amount applicable under~~
29 ~~subsection B.1 for the current five year period and the product~~
30 ~~thereof shall be added to the amount applicable under subsection~~

~~B.1 for the current five year period, with the result rounded to the nearest multiple of one hundred dollars (\$100).~~

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

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

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

I. ADJUSTMENTS TO THE BASE AMOUNTS SPECIFIED UNDER SUBSECTIONS A, B, B.1 AND G 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

1 PERCENTAGE CHANGE, THEN NO ADJUSTMENT TO THE BASE AMOUNTS SHALL
2 OCCUR FOR THE RELEVANT TIME PERIOD PROVIDED FOR IN THIS
3 SUBSECTION.

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

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

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

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

29 (6) THE FINAL ADJUSTED BASE AMOUNTS AND NEW FINAL ADJUSTED
30 BASE AMOUNTS OBTAINED UNDER CLAUSES (3) AND (4) SHALL BECOME

1 EFFECTIVE JANUARY 1 FOR THE CALENDAR YEAR FOLLOWING THE YEAR IN
2 WHICH THE DETERMINATION REQUIRED UNDER CLAUSE (1) IS MADE.

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

15 (8) NO ADJUSTMENT TO THE BASE AMOUNTS SPECIFIED UNDER
16 SUBSECTIONS A, B, B.1 AND G SHALL EXCEED THREE PERCENT OF THE
17 MOST RECENTLY ADJUSTED BASE AMOUNT.

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

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