

INCORPORATED TOWNS CONTRACTS REGULATED
Act of May 27, 1953, P.L. 244, No. 34
AN ACT

CL. 08

Relating to and regulating the contracts of incorporated towns and providing penalties.

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

Section 1. Power to Make Contracts.--Each incorporated town may make contracts for lawful purposes and for the purposes of carrying into execution the provisions of this and other laws of the Commonwealth.

Section 1.1. Power to Convey.--(a) Each incorporated town may purchase, acquire by gift or otherwise, hold, lease, let and convey, by sale or lease, such real and personal property as shall be deemed to be in the best interest of the town: Provided, That no real estate owned by the town shall be sold for a consideration in excess of six thousand dollars except to the highest bidder after due notice by advertisement for bids in one newspaper of general circulation in the town. The advertisement shall be published once, not less than ten days prior to the date fixed for the opening of bids, and the date for opening bids shall be announced in the advertisement. The acceptance of bids shall be made only by public announcement at a regular or special meeting of council. All bids shall be accepted on the condition that payment of the purchase price in full shall be made within sixty days of the acceptance of bids. Council may reject all bids if the bids are deemed to be less than the fair market value of the real property. In the case of public auction, the council may establish a minimum bid based on the fair market value of the real property. Real estate owned by a town may be sold at a consideration of six thousand dollars or less without advertisement of competitive bidding only after council estimates the value thereof upon receipt of an appraisal by a qualified real estate appraiser. Prior to selling real estate valued at six thousand dollars or less without advertisement or competitive bidding, council shall make a public announcement of council's intention to sell the real estate at a regular or special meeting of council at least thirty days prior to the sale. ((a) amended Feb. 5, 2020, P.L.4, No.2)

(b) Except as otherwise hereinafter provided in the case of personal property of an estimated sale value of less than two thousand dollars, no town personal property shall be disposed of, by sale or otherwise, except upon approval of council, by ordinance or resolution. In cases where council shall approve a sale of such property, it shall estimate the sale value of the entire lot to be disposed of. If council shall estimate the sale value to be two thousand dollars or more, the entire lot shall be advertised for sale once, in at least one newspaper of general circulation in the town, not less than ten days prior to the date fixed for the opening of bids or public auction, and such date of opening of bids or public auction shall be announced in such advertisement, and sale of the property so advertised shall be made to the best responsible bidder. The advertisement for electronic auction sales authorized in subsection (c.1) shall include the Internet address or means of accessing the electronic auction and the date, time and duration of the electronic auction. Council shall have authority, by resolution, to adopt a procedure for the sale of surplus personal property of an estimated sale value

of less than two thousand dollars, and the approval of council shall not be required for any individual sale that shall be made in conformity to such procedure. ((b) amended Oct. 24, 2018, P.L.924, No.152)

(c) The provisions of this section shall not be mandatory where town property is to be traded in or exchanged for new town property.

(c.1) A public auction of personal property may be conducted by means of an online or electronic auction sale. During an electronic auction sale, bids shall be accepted electronically at the time and in the manner designated in the advertisement. During the electronic auction, each bidder shall have the capability to view the bidder's bid rank or the high bid price. Bidders may increase their bid prices during the electronic auction. The record of the electronic auction shall be accessible for public inspection. The purchase price shall be paid by the high bidder immediately or at a reasonable time after the conclusion of the electronic auction as determined by council. In the event that shipping costs are incurred, they shall be paid by the high bidder.

(c.2) A town that has complied with the advertising requirements of subsection (b) may provide additional public notice of the sale by bids or public auction in any manner deemed appropriate by council.

(c.3) Council may reject any bids received if the bids are believed to be less than the fair market value of the property.

(d) The provisions of this section requiring advertising for bids and sale to the highest bidder shall not apply where town real or personal property is to be sold to a county, city, borough, town, township, institution district, school district, volunteer fire company, volunteer ambulance service or volunteer rescue squad located within the town, or an authority as defined in 53 Pa.C.S. § 5602 (relating to definitions), or is to be sold to a non-profit corporation engaged in community industrial development or where real property is to be sold to a person for his exclusive use in an industrial development program, or where real property is to be sold to a non-profit corporation organized as a public library for its exclusive use as a library, or where real property is to be sold to a non-profit medical service corporation or to a non-profit housing corporation. When real property is to be sold to a non-profit corporation organized as a public library for its exclusive use as a library or to a non-profit medical service corporation or to a non-profit housing corporation, council may elect to accept such nominal consideration for such sale as it shall deem appropriate. Real property sold pursuant to this section to a volunteer fire company, volunteer ambulance service or volunteer rescue squad, non-profit medical service corporation or to a non-profit housing corporation shall be subject to the condition that, when the property is not used for the purposes of the company, service, squad or the corporation, the property shall revert to the town.

(1.1 amended June 28, 2011, P.L.69, No.13)

Section 2. Regulation of Contracts.--(a) All contracts or purchases of incorporated towns in excess of the base amount of eighteen thousand five hundred dollars, subject to adjustment under section 2.1, except those hereinafter mentioned, shall not be made except with and from the lowest responsible bidder, after due notice in one newspaper of general circulation published or circulated in the county in which the town is situated at least three times at intervals of not less than three days where daily newspapers of general circulation are

available for such publication, and in case of weekly newspapers shall be published once a week for two successive weeks. The first advertisement shall be published not less than ten days prior to the date fixed for the opening of bids. The amount of the contract shall in all cases, whether of straight sale price, conditional sale, bailment lease or otherwise, be the entire amount which the town pays to the successful bidder or his assigns in order to obtain the services or property or both, and shall not be construed to mean only the amount which is paid to acquire title or to receive any other particular benefit or benefits of the whole bargain. ((a) amended Nov. 3, 2011, P.L.386, No.93)

(b) The acceptance of bids shall only be made by public announcement at the meeting at which bids are received or at a subsequent meeting, the time and place of which shall be publicly announced when bids are received. If for any reason one or both of the above meetings shall not be held, the same business may be transacted at any subsequent meeting if at least five days notice thereof shall be published in the newspaper aforesaid.

(c) The successful bidder, when advertising is required herein, shall be required to furnish a bond, with suitable reasonable requirements guaranteeing the work to be done with sufficient surety in the amount of fifty per centum of the amount of the liability under the contract, within twenty days after the contract has been awarded, unless council shall prescribe a shorter period of not less than ten days, and upon failure to furnish such bond within such time the previous award shall be void. Deliveries, accomplishment and guarantees may be required in all cases of expenditures, including the exceptions herein.

(d) The contracts or purchases made by council, which shall not require advertising, bidding or price quotations as hereinbefore provided, are as follows: (Intro. par. amended Dec. 18, 1996, P.L.1140, No.170)

(1) Those for maintenance, repairs or replacements for water, sewer, electric light or other public works of the incorporated town, provided they do not constitute new additions, extensions or enlargements of existing facilities and equipment, but a bond may be required by council as in other cases of work done.

(2) Those made for improvements, repairs and maintenance of any kind made or provided by any incorporated town through its own employees: Provided, That all materials used for street improvement, maintenance and/or construction in excess of the base amount of ten thousand dollars be subject to the relevant price quotation or advertising requirements contained herein and to adjustment under section 2.1. ((2) amended Nov. 3, 2011, P.L.386, No.93)

(3) Those where particular types, models or pieces of new equipment, articles, apparatus, appliances, vehicles or parts thereof are desired by council, which are patented and manufactured or copyrighted products.

(3.1) Those for used personal property, such as equipment, articles, apparatus, appliances, vehicles or parts thereof being purchased from a public utility, volunteer fire company, volunteer ambulance service or volunteer rescue squad. ((3.1) amended Oct. 24, 2018, P.L.888, No.143)

(4) Those involving any policies of insurance or surety company bonds; those made for public utility service under tariffs on file with the Pennsylvania Public Utility Commission; those made with another political subdivision, or a county, the

Commonwealth of Pennsylvania, the Federal Government, any agency of the Commonwealth or the Federal Government, or any municipal authority, including the sale, leasing or loan of any supplies or material by the Commonwealth or the Federal Government or their agencies. But the price thereof shall not be in excess of that fixed by the Commonwealth, the Federal Government, or their agencies.

(5) Those involving personal or professional services.

((d) amended July 10, 1990, P.L.392, No.93)

(e) Every contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works shall comply with the provisions of the act of March 3, 1978 (P.L.6, No.3), known as the "Steel Products Procurement Act."
((e) added Oct. 4, 1978, P.L.1048, No.241)

Compiler's Note: Section 6 of Act 93 of 2011, which amended subsecs. (a) and (d)(2), provided that Act 93 shall apply to contracts and purchases advertised on or after January 1 of the year following the effective date of section 6.

Section 2.1. Adjustment.--Adjustments to the base amounts specified under section 2 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 provided for in this section.

(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, to determine the final adjusted base amounts for purposes of section 2.

(4) In each successive year in which there is a positive percentage change in the CPI-U for the United States City Average, the positive percentage change shall be multiplied by the most recent preliminary adjusted amounts, and the products shall be added to the preliminary adjusted amount of the prior year to calculate the preliminary adjusted amounts for the current year. The sums thereof shall be rounded to the nearest one hundred dollars to determine the new final adjusted base amounts for purposes of section 2.

(5) The determinations and adjustments required under this section shall be made in the period between October 1 and November 15 of the year following the effective date of this section and annually between October 1 and November 15 of each year thereafter.

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

(7) The department shall publish notice in the Pennsylvania Bulletin prior to January 1 of each calendar year of the annual percentage change determined under paragraph (1) and the unadjusted or final adjusted base amounts determined under

paragraphs (3) and (4) at which competitive bidding and written or telephonic price quotations are required under section 2, respectively, for the calendar year beginning the first day of January after publication of the notice. The notice shall include a written and illustrative explanation of the calculations performed by the department in establishing the unadjusted or final adjusted base amounts under this section for the ensuing calendar year.

(8) The annual increase in the preliminary adjusted base amounts obtained under paragraphs (3) and (4) shall not exceed three per centum.

(2.1 added Nov. 3, 2011, P.L.386, No.93)

Compiler's Note: Section 6 of Act 93 of 2011, which added section 2.1, provided that Act 93 shall apply to contracts and purchases advertised on or after January 1 of the year following the effective date of section 6.

Section 3. Evasion of Advertising Requirements.--(a) No member or members of council shall evade the provisions of section 2 by purchasing or contracting for services and personal properties piecemeal for the purpose of obtaining prices under the base amount of eighteen thousand five hundred dollars, subject to adjustment under section 2.1, upon transactions which transaction should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to the base amount of more than e ighteen thousand five hundred dollars, subject to adjustment under section 2.1. This provision is intended to make unlawful the evading of advertising requirements by making a series of purchases or contracts each for less than the advertising requirement of price, or by making several simultaneous purchases or contracts each below said price, when, in either case, the transactions involved should have been made as one transaction for one price. Any members of council who so vote in violation of this provision and who know that the transaction upon which they so vote is or ought to be a part of a larger transaction and that it is being divided in order to evade the requirements as to advertising for bids shall be jointly and severally subject to surcharge for ten per centum of the full amount of the contract or purchase.

(b) Whenever it shall appear that a member of council may have voted in violation of this section but the purchase or contract on which he so voted was not approved by council, this section shall be inapplicable.

(c) Any council member who votes to unlawfully evade the provisions of section 2 and who knows that the transaction upon which he so votes is or ought to be a part of a larger transaction and that it is being divided in order to evade the requirements as to advertising for bids commits a misdemeanor of the third degree for each contract entered into as a direct result of that vote. This penalty shall be in addition to any surcharge which may be assessed pursuant to subsection (a).

(3 amended Nov. 3, 2011, P.L.386, No.93)

Compiler's Note: Section 6 of Act 93 of 2011, which amended section 3, provided that Act 93 shall apply to contracts and purchases advertised on or after January 1 of the year following the effective date of section 6.

Section 3.1. Written or Telephonic Price Quotations.--(a)

((a) repealed Dec. 18, 1996, P.L.1140, No.170)

(b) Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested

for all contracts in excess of the base amount of ten thousand dollars, subject to adjustment under section 2.1, but are less than the amount requiring advertisement and competitive bidding or, in lieu of price quotations, a memorandum shall be kept on file showing that fewer than three qualified contractors exist in the market area within which it is practicable to obtain quotations. A written record of telephonic price quotations shall be made and shall contain at least the date of the quotation, the name of the contractor and the contractor's representative, the construction, reconstruction, repair, maintenance or work which was the subject of the quotation and the price. Written price quotations, written records of telephonic price quotations and memoranda shall be retained for a period of three years.

(3.1 amended Nov. 3, 2011, P.L.386, No.93)

Compiler's Note: Section 6 of Act 93 of 2011, which amended section 3.1, provided that Act 93 shall apply to contracts and purchases advertised on or after January 1 of the year following the effective date of section 6.

Section 4. Penalty for Interests in Contracts.--Except as otherwise provided in this act, no official of any incorporated town, either elected or appointed, who knows or who by the exercise of reasonable diligence could know, shall be interested to any appreciable degree, either directly or indirectly, in any contract for the sale or furnishing of any supplies or materials for the use of the incorporated town or for any work to be done for such incorporated town involving the expenditure by the incorporated town of more than five hundred dollars in any year; but this limitation shall not apply to cases where such officer or appointee of the incorporated town is an employee of the person, firm or corporation to which the money is to be paid in a capacity with no possible influence on the transaction and in which he cannot be possibly benefited thereby, either financially or otherwise. But in the case of a councilman or president of a town council, if he knows that he is within the exception just mentioned, he shall so inform council and shall refrain from voting on the expenditure or any ordinance relating thereto and shall in no manner participate therein. Any official or appointee who shall knowingly violate the provisions of this section shall be subject to surcharge to the extent of the damage shown to be thereby sustained by the town, to ouster from office, and shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars.

Section 5. Separate Bids for Plumbing, Heating, Ventilating and Electrical Work.--In the preparation for the erection, construction and alteration of any public building of an incorporated town, when the entire cost of such work shall exceed the base amount of eighteen thousand five hundred dollars, subject to adjustment under section 2.1, the architect, engineer or other person preparing such specifications shall prepare separate specifications for the plumbing, heating, ventilating and electrical work. The person or persons authorized to enter into contracts for the erection, construction or alteration of such public buildings shall receive separate bids upon each of the said branches of work and award the contract for the same to the lowest responsible bidder for each of said branches.

(5 amended Nov. 3, 2011, P.L.386, No.93)

Compiler's Note: Section 6 of Act 93 of 2011, which amended section 5, provided that Act 93 shall apply to contracts and purchases advertised on or after January 1 of the year following the effective date of section 6.

Section 6. Bonds for the Protection of Labor and Materialmen.--It shall be the duty of every incorporated town to require any person, copartnership, association or corporation entering into a contract with such incorporated town for the construction, erection, installation, completion, alteration, repair of or addition to any public work or improvement of any kind whatsoever, where the amount of such contract is in excess of one thousand five hundred dollars, before commencing work under such contract, to execute and deliver to such incorporated town, in addition to any other bond which may now or hereafter be required by law to be given in connection with such contract, an additional bond for the use of any and every person, copartnership, association or corporation interested in a sum not less than fifty per centum and not more than one hundred per centum of the contract price, as such incorporated town may prescribe, having as surety thereon one or more surety companies legally authorized to do business in this Commonwealth, conditioned for the prompt payment of all material furnished and labor supplied or performed in the prosecution of the work, whether or not the said material or labor enter into and become component parts of the work or improvement contemplated. Such additional bond shall be deposited with and held by the incorporated town for the use of any party interested therein. Every such additional bond shall provide that every person, copartnership, association, or corporation who, whether as subcontractor or otherwise, has furnished material or supplied or performed labor in the prosecution of the work as above provided and who has not been paid therefor may sue in assumpsit on said additional bond, in the name of the incorporated town, for his, their or its use, and prosecute the same to final judgment for such sum or sums as may be justly due him, them or it, and have execution thereof. An incorporated town shall not be liable for the payment of any costs or expense of any such suit.

(6 amended June 25, 1968, P.L.253, No.120)

Compiler's Note: Section 10(13) of Act 385 of 1967 provided that section 6 is repealed insofar as it is inconsistent with Act 385.

Section 7. Publication of Contract Notices in Trade Journals.--Any incorporated town whose duty it is by law to advertise for bids for public works, contracts, supplies or equipment may, at its discretion, legally authorize the publication of such advertising, in addition to the newspapers specified by law, also in any publication or journal devoted to the dissemination of information about construction work, published at least once a week and circulating among contractors, manufacturers and dealers doing business in the community in which such public works are to be constructed or supplies or equipment purchased. No such advertisement for bids shall be inserted in any such publication or journal devoted to the dissemination of information about construction work which has not been established and regularly issued from a printing office and publication house in this Commonwealth for a period of at least eighteen months. Such publication and journal shall be entered or entitled to be entered for admission to the United States mails as second class matter, and shall have a bona fide income from subscribers within the Commonwealth

of Pennsylvania of not less than fifteen thousand dollars per annum, duly certified by a public accountant. The rates and charges for such advertising shall not be in excess of those of newspapers of general circulation as defined by the act known as the Newspaper Advertising Act.

Section 8. Acceptance by Contractor of Workmen's Compensation Act.--All contracts executed by any incorporated town or any officer thereof which involve the construction or doing of any work involving the employment of labor shall contain a provision that the contractor shall accept, insofar as the work covered by any such contract is concerned, the provisions of the Workmen's Compensation Act of 1915 and the supplements and amendments thereto, and that the said contractor will insure his liability thereunder or file with the incorporated town with whom the contract is made a certificate of exemption from insurance from the Bureau of Workmen's Compensation of the Department of Labor and Industry.

Every officer of any incorporated town who shall sign on behalf of the incorporated town any contract requiring in its performance the employment of labor shall require, before the said contract shall be signed, proof that the said contractor with whom the contract is made shall have accepted the Workmen's Compensation Act of 1915 and any supplements or amendments thereto, and proof that the said contractor has insured his liability thereunder in accordance with the terms of said act or that the said contractor has had issued to him a certificate of exemption from insurance from the Bureau of Workmen's Compensation of the Department of Labor and Industry.

Any contract executed in violation of this section shall be null and void.

Section 9. Architects and Engineers Employed Prohibited from Bidding on Public Works; Penalty.--It is unlawful for any architect or engineer in the employ of any incorporated town and engaged in the preparation of plans, specifications or estimates to bid on any public work at any letting of such work in this Commonwealth.

It is unlawful for the officers of any incorporated town charged with the duty of letting any public work to award a contract to any such architect or engineer in the employ of the Commonwealth or of any county, city, borough, incorporated town, township, or other political subdivision of the Commonwealth.

It is unlawful for any architect or engineer in the employ of the Commonwealth or of any county, city, borough, incorporated town, township, or other political subdivision of the Commonwealth to be in anywise interested in any contract for public work for the incorporated town or receive any remuneration or gratuity from any person interested in such contract.

Any person violating any of the provisions of this section shall forfeit his office and shall be guilty of a misdemeanor, and, on conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars or to undergo imprisonment for not more than six months, or both.

Section 10. All acts or parts of acts are hereby repealed in so far as they are inconsistent with the provisions of this act.

Section 11. The provisions of this act shall become effective immediately upon final enactment.