

MUNICIPAL FLOOD CONTROL - COMPETITIVE BIDDING OF CONTRACTS

Act of Nov. 3, 2011, P.L. 357, No. 88

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Session of 2011

No. 2011-88

HB 289

AN ACT

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

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

Section 1. Section 3 of the act of August 6, 1936 (Sp.Sess., P.L.95, No.38 1/2), entitled "An act to authorize and empower cities, boroughs, towns, and townships, separately or jointly, to provide for protection against floods by erecting and constructing certain works and improvements, located within or without their territorial limits, and within or without the county in which situate; and to expend moneys and incur indebtedness; to assess benefits against property benefited; to issue improvement bonds imposing no municipal liability; and to acquire, take, injure or destroy property for such purposes," amended July 10, 1990 (P.L.402, No.97), is amended to read:

Section 3. (a) No such works or improvements, involving [an] expenditure by any municipality or municipalities of more than [ten thousand dollars (\$10,000)] **the base amount of eighteen thousand five hundred dollars (\$18,500)**, subject to adjustment under subsection (b.1), shall be erected, constructed or provided, except by contract let to the lowest responsible bidder after due advertisement, once a week for two successive weeks in at least one newspaper of general circulation: Provided, however, That no contract shall be required to be let for the performance of the work on any such work or improvement where the cost of the labor shall be paid by the Federal Government, or any agency thereof, without cost to the municipality or municipalities.

(b) Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested for all contracts [that exceed four thousand dollars (\$4,000)] **in excess of the base amount of ten thousand dollars (\$10,000)**, subject to adjustment under subsection (b.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.

(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 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 subsection.

(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 (\$100) to determine the final adjusted base amounts for purposes of subsections (a) and (b).

(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 (\$100) to determine the new final adjusted base amounts for purposes of subsections (a) and (b).

(5) The determinations and adjustments required under this subsection 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 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 is required under subsection (a) and written or telephonic price quotations are required under subsection (b), 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 subsection 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.

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

(d) Any member of a governing body of a municipality who votes to unlawfully evade the provisions of this section 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.

(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."

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

Section 3. This act shall take effect immediately.

APPROVED--The 3rd day of November, A.D. 2011.

TOM CORBETT