

**PUBLIC AUDITORIUM AUTHORITIES LAW - COMPETITION IN AWARD OF
CONTRACTS**

Act of Oct. 24, 2012, P.L. 1326, No. 168

Cl. 64

Session of 2012

No. 2012-168

HB 2324

AN ACT

Amending the act of July 29, 1953 (P.L.1034, No.270), entitled "An act creating as bodies corporate and politic 'Public Auditorium Authorities' in counties of the second class and in cities of the second class and in cities of the second class A and counties in which a city of the second class A is located, singly or jointly; prescribing the rights, powers and duties of such Authorities; authorizing such Authorities to acquire, construct, improve, maintain and operate public auditoriums; to borrow money and issue bonds therefor; providing for the payment of such bonds and prescribing the rights of the holders thereof; conferring the right of eminent domain on such Authorities; empowering such Authorities to enter into contracts, leases and licenses with and to accept grants from private sources, the Federal Government, State, political subdivisions of the State or any agency thereof; authorizing the making of said grants from bond funds or current revenues; authorizing Authorities to collect rentals, admissions, license fees for the use of the project; exempting the property and securities of such Public Auditorium Authorities from taxation," further providing for competition in award of contracts.

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

Section 1. Section 11 of the act of July 29, 1953 (P.L.1034, No.270), known as the Public Auditorium Authorities Law, amended November 3, 2011 (P.L.353, No.87), is amended to read:

Section 11. Competition in Award of Contracts.

A. All construction, reconstruction, repairs or work of any nature made by any Authority, where the entire cost, value or amount of such construction, reconstruction, repairs or work, including labor and materials, shall exceed the base amount of \$18,500, subject to adjustment under subsection J, except construction, reconstruction, repairs or work done by employees of said Authority or by labor supplied under agreement with any Federal or State agency with supplies and materials purchased, as hereinafter provided, shall be done only under contract or contracts to be entered into by the Authority with the lowest responsible bidder upon proper terms, after due public notice has been given asking for competitive bids hereinafter provided. No contract shall be entered into for construction or improvement or repair of any project or portion thereof unless the contractor shall give an undertaking, with a sufficient surety or sureties approved by the Authority and in an amount fixed by the Authority, for the faithful performance of the contract. All such contracts shall provide, among other things, that the person or corporation entering into such contract with the Authority will pay for all materials furnished and services rendered for the performance of the contract and that any person or corporation furnishing such materials or rendering such

services may maintain an action to recover for the same against the obligor in the undertaking as though such person or corporation was named therein, provided the action is brought within one year after the time the cause of action accrued. Nothing in this section shall be construed to limit the power of the Authority to construct, repair or improve any project or portion thereof or any addition, betterment or extension thereto directly by the officers, agents and employees of the Authority or otherwise than by contract.

B. All supplies and materials costing, subject to adjustment under subsection J, in excess of the base amount of \$18,500 or more shall be purchased only after due advertisement as hereinafter provided. The Authority shall accept the lowest bid or bids, kinds, quality and material being equal, but the Authority shall have the right to reject any or all bids or select a single item from any bid. The provisions as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a non-competitive market or solely by a manufacturer's authorized dealer.

B.1. Written or telephonic price quotations from at least three (3) qualified and responsible contractors shall be requested for all contracts that exceed the base amount of \$10,000, subject to adjustment under subsection J, 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 (3) 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 (3) years.

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

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

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

however, That the provisions of this section shall not apply to any case in which the Authority has taken over by transfer or assignment any contract authorized to be assigned to it under the provisions of section ten of this act, nor to any contract in connection with the construction of any project which the Authority may have had transferred to it by any person or private corporation.

F. 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."

G. An Authority shall not 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 the base amount of \$18,500, subject to adjustment under subsection J, upon transactions which should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than the base amount of \$18,500, subject to adjustment under subsection J. 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.

H. Any member of the Authority 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.

J. 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 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 \$100 to determine the final adjusted base amounts for purposes of subsections A, B, B.1 and G.

(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

\$100 to determine the new final adjusted base amounts for purposes of subsections A, B, B.1 and G.

(5) The determinations and adjustments required under this subsection shall be made in the period between October 1 and November 15, 2012, 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 subsections A, B and G and written or telephonic price quotations are required under subsection B.1, 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.

Section 2. Notwithstanding the provisions of section 2 of the act of November 3, 2011 (P.L.353, No.87), entitled "An act amending the act of July 29, 1953 (P.L.1034, No.270) , entitled, as amended, 'An act creating as bodies corporate and politic "Public Auditorium Authorities" in counties of the second class and in cities of the second class and in cities of the second class A and counties in which a city of the second class A is located, singly or jointly; prescribing the rights, powers and duties of such Authorities; authorizing such Authorities to acquire, construct, improve, maintain and operate public auditoriums; to borrow money and issue bonds therefor; providing for the payment of such bonds and prescribing the rights of the holders thereof; conferring the right of eminent domain on such Authorities; empowering such Authorities to enter into contracts, leases and licenses with and to accept grants from private sources, the Federal Government, State, political subdivisions of the State or any agency thereof; authorizing the making of said grants from bond funds or current revenues; authorizing Authorities to collect rentals, admissions, license fees for the use of the project; exempting the property and securities of such Public Auditorium Authorities from taxation,' increasing the dollar amount of supplies and materials which may be purchased without advertising," the base amount of \$18,500 or \$10,000 as specified in section 11A, B, B.1 and G of the act shall apply to contracts and purchases advertised on or after the effective date of this section.

Section 3. This act shall take effect immediately.

APPROVED--The 24th day of October, A.D. 2012.

TOM CORBETT