

ECONOMIC DEVELOPMENT FINANCING LAW - COMPETITION IN AWARD OF  
CONTRACTS

Act of Jul. 2, 2013, P.L. 251, No. 44

Cl. 64

Session of 2013

No. 2013-44

SB 583

AN ACT

Amending the act of August 23, 1967 (P.L.251, No.102), entitled, as amended, "An act providing for the incorporation as public instrumentalities of the Commonwealth and as bodies corporate and politic of industrial and commercial development authorities for municipalities, counties and townships; prescribing the rights, powers and duties of such authorities hereafter incorporated; authorizing such authorities to acquire, by gift or purchase, to construct, improve and maintain industrial, specialized, or commercial development projects including projects for the elimination or prevention of blight and the control of air and water pollution, and to borrow money and issue bonds therefor; providing for the payment of such bonds and giving security therefor, and prescribing the rights of the holders of such bonds; authorizing the lease or sale of industrial, specialized, or commercial development projects to industrial, specialized, or commercial enterprises; authorizing any county, municipality or township to transfer or convey to such authorities, any facilities or property available for industrial, specialized, or commercial development projects; exempting the property and securities of such authorities from taxation; authorizing such authorities to enter into contracts with and to accept grants from the Federal Government or any agency thereof; and providing for approval by the Secretary of Commerce of the proceedings relating to industrial, specialized, or commercial development projects of such authorities," further providing for competition in award of contracts.

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

Section 1. Section 12 of the act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law, amended December 17, 1993 (P.L.490, No.74), is amended to read:

Section 12. Competition in Award of Contracts.--(a) All construction, reconstruction, repairs or work of any nature made directly by any authority where the entire cost, value or amount of such construction, reconstruction, repairs or work, including labor and materials, shall exceed [ten thousand dollars (\$10,000)] **the base amount and subsequent adjustments established pursuant to 53 Pa.C.S. § 5614(a)(1), (b) and (c.1) (relating to competition in award of contracts)**, 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 as

hereinafter provided: Provided, however, That where the authority is the legal title holder to the project, and there exists an agreement whereby a project user or project applicant will or can acquire legal title to the said project under the then certain terms and conditions, contracts for construction, reconstruction, repair, or work of any nature, or purchase of machinery and equipment, may be awarded by the project user or project applicant without regard to the limitations of this section 12: And provided further, however, That for the purposes of this section 12, "construction" or "acquisition" shall not include acquisition of property for project purposes. No contract shall be entered into between an authority and a contractor for construction 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 contracts of surety shall provide among other things that the contractor entering into a 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.

(b) All supplies and materials costing [ten thousand dollars (\$10,000) or more] **in excess of the base amount and subsequent adjustments established pursuant to 53 Pa.C.S. § 5614(a)(1), (b) and (c.1)** to be purchased directly by an authority shall be purchased only after due advertisement as hereinafter provided. The authority shall accept the lowest bid or bids, kind, 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 noncompetitive market or solely by a manufacturer's authorized dealer.

(c) The terms "advertisement" or "due public notice" wherever used in this section, shall mean a notice published at least ten days before the award of 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 provisions 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.

(f) The provisions of this section 12 shall not apply in respect of the construction of any project or the purchase of any equipment, materials or supplies which the authority may have had transferred to it upon completion, by purchase or otherwise, by a project applicant or project user or any other person or corporation.

(g) Notwithstanding any of the foregoing, all construction, reconstruction, repairs or work of any nature with regard to publicly owned infrastructure facilities, where the entire cost, value or amount of such construction, reconstruction, repairs or work, including labor and materials, shall exceed [ten thousand dollars (\$10,000)] **the base amount and subsequent adjustments established pursuant to 53 Pa.C.S. § 5614(a)(1), (b) and (c.1)**, shall be done only under contract or contracts to be entered into by the authority or the owner of the infrastructure facility, with the lowest responsible bidder upon proper terms, after due public notice has been given asking for competitive bids as set forth in this section or other applicable law.

Section 2. This act shall take effect immediately.

APPROVED--The 2nd day of July, A.D. 2013.

TOM CORBETT