

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 741 Session of
1989

INTRODUCED BY STOUT, CORMAN, STEWART, BRIGHTBILL, PUNT, LEMMOND,
PORTERFIELD, MADIGAN, AFFLERBACH, REIBMAN AND PETERSON,
MARCH 21, 1989

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 26, 1990

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 to borrow money and issue bonds therefor;
6 providing for the payment of such bonds and prescribing the
7 rights of the holders thereof; conferring the right of
8 eminent domain on such Authorities; empowering such
9 Authorities to enter into contracts, leases and licenses with
10 and to accept grants from private sources, the Federal
11 Government, State, political subdivisions of the State or any
12 agency thereof; authorizing the making of said grants from
13 bond funds or current revenues; authorizing Authorities to
14 collect rentals, admissions, license fees for the use of the
15 project; exempting the property and securities of such Public
16 Auditorium Authorities from taxation," increasing the amount
17 of contracts that may be awarded without competitive bids;
18 ~~and~~ further providing for the purchase of supplies and <—
19 materials; AND PROVIDING PENALTIES. <—

20 The General Assembly of the Commonwealth of Pennsylvania

21 hereby enacts as follows:

22 Section 1. Section 11 of the act of July 29, 1953 (P.L.1034,
23 No.270), known as the Public Auditorium Authorities Law, amended
24 or added October 4, 1978 (P.L.1055, No.244) and December 22,
25 1981 (P.L.549, No.161), 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 [four thousand dollars (\$4,000.00)] ~~ten thousand dollars (\$10,000) THE MONETARY~~ ~~THRESHOLD LEVEL FOR THE AUTHORITY TEN THOUSAND DOLLARS~~ ~~(\$10,000)~~, 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.

~~A.1. THE MONETARY THRESHOLD LEVEL ABOVE WHICH COMPETITIVE BIDDING SHALL BE REQUIRED SHALL BE ONE PER CENTUM (1%) OF THE TOTAL OF ALL BUDGETS ADMINISTERED BY THE AUTHORITY, BUT IN NO CASE SHALL THE MONETARY THRESHOLD BE LESS THAN FOUR THOUSAND DOLLARS (\$4,000), NOR MORE THAN TEN THOUSAND DOLLARS (\$10,000).~~

B. All supplies and materials ~~costing [four thousand dollars (\$4,000.00)] ten thousand dollars (\$10,000)]~~ TEN THOUSAND DOLLARS (\$10,000) or more ~~WHICH COST OR EXCEED THE MONETARY THRESHOLD LEVEL FOR THE AUTHORITY~~ 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 QUALIFIED AND RESPONSIBLE CONTRACTORS SHALL BE REQUESTED FOR ALL CONTRACTS THAT EXCEED FOUR THOUSAND DOLLARS (\$4,000) 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~~

1 REPRESENTATIVE, THE CONSTRUCTION, RECONSTRUCTION, REPAIR,
2 MAINTENANCE OR WORK WHICH WAS THE SUBJECT OF THE QUOTATION AND
3 THE PRICE. WRITTEN PRICE QUOTATIONS, WRITTEN RECORDS OF
4 TELEPHONIC PRICE QUOTATIONS AND MEMORANDA SHALL BE RETAINED FOR
5 A PERIOD OF THREE YEARS.

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

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

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

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

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

14 G. An Authority shall not evade the provisions of this
15 section as to advertising for bids or purchasing materials or
16 contracting for services piece-meal, for the purpose of
17 obtaining prices under ten thousand dollars (\$10,000) THE <—
18 MONETARY THRESHOLD LEVEL FOR THE AUTHORITY TEN THOUSAND DOLLARS
19 (\$10,000) 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) THE MONETARY THRESHOLD LEVEL FOR THE AUTHORITY TEN <—
23 THOUSAND DOLLARS (\$10,000). This provision is intended to make
24 unlawful the practice of evading advertising requirements by
25 making a series of purchases or contracts each for less than the
26 advertising requirement price, or by making several simultaneous
27 purchases or contracts each below said price, when in either
28 case the transaction involved should have been made as one
29 transaction for one price.

30 H. ANY MEMBER OF THE AUTHORITY WHO VOTES TO UNLAWFULLY EVADE <—

1 THE PROVISIONS OF THIS SECTION AND WHO KNOWS THAT THE
2 TRANSACTION UPON WHICH HE SO VOTES IS OR OUGHT TO BE A PART OF A
3 LARGER TRANSACTION AND THAT IT IS BEING DIVIDED IN ORDER TO
4 EVADE THE REQUIREMENTS AS TO ADVERTISING FOR BIDS, COMMITS A
5 MISDEMEANOR OF THE THIRD DEGREE FOR EACH CONTRACT ENTERED INTO
6 AS A DIRECT RESULT OF THAT VOTE.

7 Section 2. This act shall take effect in 60 days.