

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 743 Session of 1989

INTRODUCED BY STOUT, CORMAN, STEWART, BRIGHTBILL, PUNT, LEMMOND, PORTERFIELD, WENGER, MADIGAN, AFFLERBACH, REIBMAN AND PETERSON, MARCH 23, 1989

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 30, 1990

AN ACT

1 Amending the act of February 1, 1966 (1965 P.L.1656, No.581),
2 entitled "An act concerning boroughs, and revising, amending
3 and consolidating the law relating to boroughs," further
4 providing for the awarding of contracts.

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

7 Section 1. Subsection (a) and the first paragraph and clause
8 (2) of subsection (d) of section 1402, ~~and sections 1403 and~~ <—
9 ~~1405,~~ of the act of February 1, 1966 (1965 P.L.1656, No.581),
10 known as The Borough Code, amended December 22, 1981 (P.L.537,
11 No.155), ~~are amended~~ AND FEBRUARY 14, 1990 (P.L.60, NO.10), ARE <—
12 AMENDED AND THE SECTION IS AMENDED BY ADDING SUBSECTIONS to
13 read:

14 ~~Section 1402. Regulation of Contracts. (a) All contracts~~ <—
15 ~~or purchases in excess of [four thousand dollars (\$4,000)] ten~~
16 ~~thousand dollars (\$10,000), except those hereinafter mentioned,~~
17 ~~shall not be made except with and from the lowest responsible~~

~~1 bidder after due notice in one newspaper of general circulation
2 in the borough, at least three times at intervals of not less
3 than three days where daily newspapers of general circulation
4 are available for such publication, in case of weekly
5 newspapers, such notice once a week for two successive weeks.
6 The first advertisement shall be published not less than ten
7 days prior to the date fixed for the opening of bids. The amount
8 of the contract shall in all cases, whether of straight sale
9 price, conditional sale, bailment lease, or otherwise, be the
10 entire amount which the borough pays to the successful bidder or
11 his assigns in order to obtain the services or property, or
12 both, and shall not be construed to mean only the amount which
13 is paid to acquire title or to receive any other particular
14 benefit or benefits of the whole bargain. In awarding bids,
15 council shall have the right to take into consideration such
16 other factors as the availability, cost and quality of service.~~

17 SECTION 1402. REGULATION OF CONTRACTS.--(A) ALL CONTRACTS <—
18 OR PURCHASES IN EXCESS OF [FOUR THOUSAND DOLLARS (\$4,000)] THE
19 MONETARY THRESHOLD LEVEL FOR THE BOROUGH, EXCEPT THOSE
20 HEREINAFTER MENTIONED, SHALL NOT BE MADE EXCEPT WITH AND FROM
21 THE LOWEST RESPONSIBLE BIDDER AFTER DUE NOTICE IN ONE NEWSPAPER
22 OF GENERAL CIRCULATION IN THE BOROUGH, AT LEAST TWO TIMES AT
23 INTERVALS OF NOT LESS THAN THREE DAYS WHERE DAILY NEWSPAPERS OF
24 GENERAL CIRCULATION ARE AVAILABLE FOR SUCH PUBLICATION, IN CASE
25 OF WEEKLY NEWSPAPERS, SUCH NOTICE ONCE A WEEK FOR TWO SUCCESSIVE
26 WEEKS. THE FIRST ADVERTISEMENT SHALL BE PUBLISHED NOT MORE THAN
27 FORTY-FIVE DAYS AND THE SECOND ADVERTISEMENT NOT LESS THAN TEN
28 DAYS PRIOR TO THE DATE FIXED FOR THE OPENING OF BIDS.
29 ADVERTISEMENTS FOR CONTRACTS OR PURCHASES SHALL ALSO BE POSTED
30 IN A CONSPICUOUS PLACE WITHIN THE BOROUGH. THE AMOUNT OF THE

1 CONTRACT SHALL IN ALL CASES, WHETHER OF STRAIGHT SALE PRICE,
2 CONDITIONAL SALE, BAILMENT LEASE, OR OTHERWISE, BE THE ENTIRE
3 AMOUNT WHICH THE BOROUGH PAYS TO THE SUCCESSFUL BIDDER OR HIS
4 ASSIGNS IN ORDER TO OBTAIN THE SERVICES OR PROPERTY, OR BOTH,
5 AND SHALL NOT BE CONSTRUED TO MEAN ONLY THE AMOUNT WHICH IS PAID
6 TO ACQUIRE TITLE OR TO RECEIVE ANY OTHER PARTICULAR BENEFIT OR
7 BENEFITS OF THE WHOLE BARGAIN. IN AWARDING BIDS, COUNCIL SHALL
8 HAVE THE RIGHT TO TAKE INTO CONSIDERATION SUCH OTHER FACTORS AS
9 THE AVAILABILITY, COST AND QUALITY OF SERVICE.

10 (A.1) THE MONETARY THRESHOLD LEVEL ABOVE WHICH COMPETITIVE
11 BIDDING SHALL BE REQUIRED SHALL BE ONE PER CENTUM (1%) OF THE
12 TOTAL OF ALL BUDGETS ADMINISTERED BY THE BOROUGH, BUT IN NO CASE
13 SHALL THE MONETARY THRESHOLD BE LESS THAN FOUR THOUSAND DOLLARS
14 (\$4,000), NOR MORE THAN TEN THOUSAND DOLLARS (\$10,000).

15 (A.2) WRITTEN OR TELEPHONIC PRICE QUOTATIONS FROM AT LEAST
16 THREE QUALIFIED AND RESPONSIBLE CONTRACTORS SHALL BE REQUESTED
17 FOR ALL CONTRACTS THAT EXCEED FOUR THOUSAND DOLLARS (\$4,000) BUT
18 ARE LESS THAN THE AMOUNT REQUIRING ADVERTISEMENT AND COMPETITIVE
19 BIDDING OR, IN LIEU OF PRICE QUOTATIONS, A MEMORANDUM SHALL BE
20 KEPT ON FILE SHOWING THAT FEWER THAN THREE QUALIFIED CONTRACTORS
21 EXIST IN THE MARKET AREA WITHIN WHICH IT IS PRACTICABLE TO
22 OBTAIN QUOTATIONS. A WRITTEN RECORD OF TELEPHONIC PRICE
23 QUOTATIONS SHALL BE MADE AND SHALL CONTAIN AT LEAST THE DATE OF
24 THE QUOTATION, THE NAME OF THE CONTRACTOR AND THE CONTRACTOR'S
25 REPRESENTATIVE, THE CONSTRUCTION, RECONSTRUCTION, REPAIR,
26 MAINTENANCE OR WORK WHICH WAS THE SUBJECT OF THE QUOTATION AND
27 THE PRICE. WRITTEN PRICE QUOTATIONS, WRITTEN RECORDS OF
28 TELEPHONIC PRICE QUOTATIONS AND MEMORANDA SHALL BE RETAINED FOR
29 A PERIOD OF THREE YEARS.

30 * * *

1 (d) The contracts or purchases made by council, involving an
2 expenditure of over [four thousand dollars (\$4,000)] ~~ten~~ ←
3 ~~thousand dollars (\$10,000)~~ THE MONETARY THRESHOLD LEVEL FOR THE ←
4 BOROUGH, which shall not require advertising or bidding as
5 hereinbefore provided, are as follows:

6 * * *

7 (2) Those made for improvements, repairs and maintenance of
8 any kind, made or provided by any borough, through its own
9 employes: Provided, That all materials used for street
10 improvement, maintenance and/or construction in excess of [four
11 thousand dollars (\$4,000)] ~~ten thousand dollars (\$10,000)~~ ←
12 MONETARY THRESHOLD LEVEL FOR THE BOROUGH be subject to the
13 advertising requirements contained herein;

14 * * *

15 SECTION 2. SECTIONS 1403 AND 1405 OF THE ACT, AMENDED ←
16 DECEMBER 22, 1981 (P.L.537, NO.155), ARE AMENDED TO READ:

17 Section 1403. Evasion of Advertising Requirements.--No
18 member or members of council shall evade the provisions of
19 section 1402 hereof as to advertising for bids, by purchasing or
20 contracting for services and personal properties piecemeal for
21 the purpose of obtaining prices under [four thousand dollars
22 (\$4,000)] ~~ten thousand dollars (\$10,000)~~ ←
23 LEVEL FOR THE BOROUGH upon transactions, which transactions
24 should, in the exercise of reasonable discretion and prudence,
25 be conducted as one transaction amounting to more than [four
26 thousand dollars (\$4,000)] ~~ten thousand dollars (\$10,000)~~ ←
27 MONETARY THRESHOLD LEVEL FOR THE BOROUGH. This provision is
28 intended to make unlawful the evading of advertising
29 requirements by making a series of purchases or contracts, each
30 for less than the advertising requirement price, or by making

1 several simultaneous purchases or contracts, each below said
2 price, when, in either case, the transactions involved should
3 have been made as one transaction for one price. Any members of
4 council who so vote in violation of this provision and who know
5 that the transaction upon which they so vote is or ought to be a
6 part of a larger transaction and that it is being divided in
7 order to evade the requirements as to advertising for bids,
8 shall be jointly and severally subject to surcharge for ten
9 percent of the full amount of the contract or purchase. Whenever
10 it shall appear that a member of council may have voted in
11 violation of this section but the purchase or contract on which
12 he so voted was not approved by council, this section shall be
13 inapplicable.

14 Section 1405. Separate Bids for Plumbing, Heating,
15 Ventilating and Electrical Work.--In the preparation for the
16 erection, construction and alteration of any public building,
17 when the entire cost of such work shall exceed [four thousand
18 dollars (\$4,000)] ~~ten thousand dollars (\$10,000)~~ THE MONETARY ←
19 THRESHOLD LEVEL FOR THE BOROUGH, the architect, engineer, or
20 other person preparing such specifications may, if so requested
21 by the borough council, prepare separate specifications for the
22 plumbing, heating, ventilating and electrical work. The person
23 or persons authorized to enter into contracts for the erection,
24 construction or alteration of such public buildings may, if such
25 separate specifications shall have been proposed, receive
26 separate bids upon each of the said branches of work and shall
27 thereupon award the contract for the same to the lowest
28 responsible bidder for each of said branches.

29 Section 2 3. This act shall take effect in 60 days. ←