
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 AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 26, 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 DISPLAY OF FLAGS; further providing for the
5 awarding of contracts; AND PROVIDING A PENALTY. <—

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

8 SECTION 1. SECTION 1202(42) OF THE ACT OF FEBRUARY 1, 1966 <—
9 (1965 P.L.1656, NO.581), KNOWN AS THE BOROUGH CODE, IS AMENDED
10 TO READ:

11 SECTION 1202. SPECIFIC POWERS.--THE POWERS OF THE BOROUGH
12 SHALL BE VESTED IN THE CORPORATE AUTHORITIES. AMONG THE SPECIFIC
13 POWERS OF THE BOROUGH SHALL BE THE FOLLOWING, AND IN THE
14 EXERCISE OF ANY OF SUCH POWERS INVOLVING THE ENACTMENT OF ANY
15 ORDINANCE OR THE MAKING OF ANY REGULATION, RESTRICTION OR
16 PROHIBITION, THE BOROUGH MAY PROVIDE FOR THE ENFORCEMENT THEREOF
17 AND MAY PRESCRIBE PENALTIES FOR THE VIOLATION THEREOF OR FOR THE
18 FAILURE TO CONFORM THERETO:

1 * * *

2 (42) FLAGS. TO DISPLAY THE FLAG OF THE UNITED STATES OF
3 AMERICA, OF THE COMMONWEALTH OF PENNSYLVANIA, THE OFFICIAL
4 POW/MIA FLAG OR THE FLAG OF ANY COUNTY, CITY, BOROUGH OR OTHER
5 MUNICIPALITY IN THE STATE, ON THE PUBLIC BUILDINGS OR GROUNDS
6 AND IN PUBLIC PLACES OF THE BOROUGH.

7 * * *

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

15 ~~Section 1402. Regulation of Contracts. (a) All contracts~~ <—
16 ~~or purchases in excess of [four thousand dollars (\$4,000)] ten~~
17 ~~thousand dollars (\$10,000), except those hereinafter mentioned,~~
18 ~~shall not be made except with and from the lowest responsible~~
19 ~~bidder after due notice in one newspaper of general circulation~~
20 ~~in the borough, at least three times at intervals of not less~~
21 ~~than three days where daily newspapers of general circulation~~
22 ~~are available for such publication, in case of weekly~~
23 ~~newspapers, such notice once a week for two successive weeks.~~
24 ~~The first advertisement shall be published not less than ten~~
25 ~~days prior to the date fixed for the opening of bids. The amount~~
26 ~~of the contract shall in all cases, whether of straight sale~~
27 ~~price, conditional sale, bailment lease, or otherwise, be the~~
28 ~~entire amount which the borough pays to the successful bidder or~~
29 ~~his assigns in order to obtain the services or property, or~~
30 ~~both, and shall not be construed to mean only the amount which~~

1 ~~is paid to acquire title or to receive any other particular~~
2 ~~benefit or benefits of the whole bargain. In awarding bids,~~
3 ~~council shall have the right to take into consideration such~~
4 ~~other factors as the availability, cost and quality of service.~~

5 SECTION 1402. REGULATION OF CONTRACTS.--(A) ALL CONTRACTS <—
6 OR PURCHASES IN EXCESS OF [FOUR THOUSAND DOLLARS (\$4,000)] ~~THE~~ <—
7 ~~MONETARY THRESHOLD LEVEL FOR THE BOROUGH TEN THOUSAND DOLLARS~~
8 ~~(\$10,000)~~, EXCEPT THOSE HEREINAFTER MENTIONED, SHALL NOT BE MADE
9 EXCEPT WITH AND FROM THE LOWEST RESPONSIBLE BIDDER AFTER DUE
10 NOTICE IN ONE NEWSPAPER OF GENERAL CIRCULATION IN THE BOROUGH,
11 AT LEAST TWO TIMES AT INTERVALS OF NOT LESS THAN THREE DAYS
12 WHERE DAILY NEWSPAPERS OF GENERAL CIRCULATION ARE AVAILABLE FOR
13 SUCH PUBLICATION, IN CASE OF WEEKLY NEWSPAPERS, SUCH NOTICE ONCE
14 A WEEK FOR TWO SUCCESSIVE WEEKS. THE FIRST ADVERTISEMENT SHALL
15 BE PUBLISHED NOT MORE THAN FORTY-FIVE DAYS AND THE SECOND
16 ADVERTISEMENT NOT LESS THAN TEN DAYS PRIOR TO THE DATE FIXED FOR
17 THE OPENING OF BIDS. ADVERTISEMENTS FOR CONTRACTS OR PURCHASES
18 SHALL ALSO BE POSTED IN A CONSPICUOUS PLACE WITHIN THE BOROUGH.
19 THE AMOUNT OF THE CONTRACT SHALL IN ALL CASES, WHETHER OF
20 STRAIGHT SALE PRICE, CONDITIONAL SALE, BAILMENT LEASE, OR
21 OTHERWISE, BE THE ENTIRE AMOUNT WHICH THE BOROUGH PAYS TO THE
22 SUCCESSFUL BIDDER OR HIS ASSIGNS IN ORDER TO OBTAIN THE SERVICES
23 OR PROPERTY, OR BOTH, AND SHALL NOT BE CONSTRUED TO MEAN ONLY
24 THE AMOUNT WHICH IS PAID TO ACQUIRE TITLE OR TO RECEIVE ANY
25 OTHER PARTICULAR BENEFIT OR BENEFITS OF THE WHOLE BARGAIN. IN
26 AWARDING BIDS, COUNCIL SHALL HAVE THE RIGHT TO TAKE INTO
27 CONSIDERATION SUCH OTHER FACTORS AS THE AVAILABILITY, COST AND
28 QUALITY OF SERVICE.

29 ~~(A.1) THE MONETARY THRESHOLD LEVEL ABOVE WHICH COMPETITIVE~~ <—
30 ~~BIDDING SHALL BE REQUIRED SHALL BE ONE PER CENTUM (1%) OF THE~~

1 ~~TOTAL OF ALL BUDGETS ADMINISTERED BY THE BOROUGH, BUT IN NO CASE~~
2 ~~SHALL THE MONETARY THRESHOLD BE LESS THAN FOUR THOUSAND DOLLARS~~
3 ~~(\$4,000), NOR MORE THAN TEN THOUSAND DOLLARS (\$10,000).~~

4 ~~(A.2)~~ (A.1) WRITTEN OR TELEPHONIC PRICE QUOTATIONS FROM AT
5 LEAST THREE QUALIFIED AND RESPONSIBLE CONTRACTORS SHALL BE
6 REQUESTED FOR ALL CONTRACTS THAT EXCEED FOUR THOUSAND DOLLARS
7 (\$4,000) BUT ARE LESS THAN THE AMOUNT REQUIRING ADVERTISEMENT
8 AND COMPETITIVE BIDDING OR, IN LIEU OF PRICE QUOTATIONS, A
9 MEMORANDUM SHALL BE KEPT ON FILE SHOWING THAT FEWER THAN THREE
10 QUALIFIED CONTRACTORS EXIST IN THE MARKET AREA WITHIN WHICH IT
11 IS PRACTICABLE TO OBTAIN QUOTATIONS. A WRITTEN RECORD OF
12 TELEPHONIC PRICE QUOTATIONS SHALL BE MADE AND SHALL CONTAIN AT
13 LEAST THE DATE OF THE QUOTATION, THE NAME OF THE CONTRACTOR AND
14 THE CONTRACTOR'S REPRESENTATIVE, THE CONSTRUCTION,
15 RECONSTRUCTION, REPAIR, MAINTENANCE OR WORK WHICH WAS THE
16 SUBJECT OF THE QUOTATION AND THE PRICE. WRITTEN PRICE
17 QUOTATIONS, WRITTEN RECORDS OF TELEPHONIC PRICE QUOTATIONS AND
18 MEMORANDA SHALL BE RETAINED FOR A PERIOD OF THREE YEARS.

19 * * *

20 (d) The contracts or purchases made by council, involving an
21 expenditure of over [four thousand dollars (\$4,000)] ~~ten~~ <—
22 ~~thousand dollars (\$10,000) THE MONETARY THRESHOLD LEVEL FOR THE~~ <—
23 ~~BOROUGH TEN THOUSAND DOLLARS (\$10,000),~~ which shall not require
24 advertising or bidding as hereinbefore provided, are as follows:

25 * * *

26 (2) Those made for improvements, repairs and maintenance of
27 any kind, made or provided by any borough, through its own
28 employes: Provided, That all materials used for street
29 improvement, maintenance and/or construction in excess of [four
30 thousand dollars (\$4,000)] ~~ten thousand dollars (\$10,000) THE~~ <—

1 ~~MONETARY THRESHOLD LEVEL FOR THE BOROUGH TEN THOUSAND DOLLARS~~
2 ~~(\$10,000)~~ be subject to the advertising requirements contained
3 herein;

4 * * *

5 SECTION ~~2~~ 3. SECTIONS 1403 AND 1405 OF THE ACT, AMENDED ←
6 DECEMBER 22, 1981 (P.L.537, NO.155), ARE AMENDED TO READ:

7 Section 1403. Evasion of Advertising Requirements.--~~(A)~~ No ←
8 member or members of council shall evade the provisions of
9 section 1402 hereof as to advertising for bids, by purchasing or
10 contracting for services and personal properties piecemeal for
11 the purpose of obtaining prices under [four thousand dollars
12 (\$4,000)] ~~ten thousand dollars (\$10,000) THE MONETARY THRESHOLD~~ ←
13 ~~LEVEL FOR THE BOROUGH TEN THOUSAND DOLLARS (\$10,000)~~ upon
14 transactions, which transactions should, in the exercise of
15 reasonable discretion and prudence, be conducted as one
16 transaction amounting to more than [four thousand dollars
17 (\$4,000)] ~~ten thousand dollars (\$10,000) THE MONETARY THRESHOLD~~ ←
18 ~~LEVEL FOR THE BOROUGH TEN THOUSAND DOLLARS (\$10,000)~~. This
19 provision is intended to make unlawful the evading of
20 advertising requirements by making a series of purchases or
21 contracts, each for less than the advertising requirement price,
22 or by making several simultaneous purchases or contracts, each
23 below said price, when, in either case, the transactions
24 involved should have been made as one transaction for one price.
25 Any members of council who so vote in violation of this
26 provision and who know that the transaction upon which they so
27 vote is or ought to be a part of a larger transaction and that
28 it is being divided in order to evade the requirements as to
29 advertising for bids, shall be jointly and severally subject to
30 surcharge for ten percent of the full amount of the contract or

1 purchase. Whenever it shall appear that a member of council may
2 have voted in violation of this section but the purchase or
3 contract on which he so voted was not approved by council, this
4 section shall be inapplicable.

5 (B) ANY COUNCIL MEMBER WHO VOTES TO UNLAWFULLY EVADE THE <—
6 PROVISIONS OF SECTION 1402 AND WHO KNOWS THAT THE TRANSACTION
7 UPON WHICH HE SO VOTES IS OR OUGHT TO BE A PART OF A LARGER
8 TRANSACTION AND THAT IT IS BEING DIVIDED IN ORDER TO EVADE THE
9 REQUIREMENTS AS TO ADVERTISING FOR BIDS, COMMITS A MISDEMEANOR
10 OF THE THIRD DEGREE FOR EACH CONTRACT ENTERED INTO AS A DIRECT
11 RESULT OF THAT VOTE. THIS PENALTY SHALL BE IN ADDITION TO ANY
12 SURCHARGE WHICH MAY BE ASSESSED PURSUANT TO SUBSECTION (A).

13 Section 1405. Separate Bids for Plumbing, Heating,
14 Ventilating and Electrical Work.--In the preparation for the
15 erection, construction and alteration of any public building,
16 when the entire cost of such work shall exceed [four thousand
17 dollars (\$4,000)] ~~ten thousand dollars (\$10,000)~~ THE MONETARY <—
18 ~~THRESHOLD LEVEL FOR THE BOROUGH~~ TEN THOUSAND DOLLARS (\$10,000),
19 the architect, engineer, or other person preparing such
20 specifications may, if so requested by the borough council,
21 prepare separate specifications for the plumbing, heating,
22 ventilating and electrical work. The person or persons
23 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~~ 4. This act shall take effect in 60 days. <—