

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1126 Session of
2007

INTRODUCED BY RAFFERTY, REGOLA, FERLO, ARMSTRONG, BAKER, BROWNE,
BRUBAKER, CORMAN, EICHELBERGER, ERICKSON, FOLMER, FONTANA,
GREENLEAF, KASUNIC, LAVALLE, McILHINNEY, PUNT, ROBBINS,
SCARNATI, STOUT, TOMLINSON, VANCE AND WONDERLING,
OCTOBER 15, 2007

REFERRED TO LOCAL GOVERNMENT, OCTOBER 15, 2007

AN ACT

1 Amending the act of July 28, 1953 (P.L.723, No.230), entitled,
2 as amended, "An act relating to counties of the second class
3 and second class A; amending, revising, consolidating and
4 changing the laws relating thereto," further regulating
5 contracts and purchases.

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

8 Section 1. The act of July 28, 1953 (P.L.723, No.230), known
9 as the Second Class County Code, is amended by adding a section
10 to read:

11 Section 112. Adjustments Based on Consumer Price Index.--(a)
12 Annually, beginning with the year in which this subsection
13 becomes applicable to contracts and purchases, the Department of
14 Labor and Industry shall calculate the percentage change in the
15 Consumer Price Index for All Urban Consumers (CPI-U) for the
16 United States city average for all items as published by the
17 United States Department of Labor, Bureau of Labor Statistics,
18 for the twelve-month average ending in September of the prior

1 year.

2 (b) The amounts at which competitive bidding, separate bids
3 and written or telephonic price quotations are required under
4 this act shall be adjusted annually. The positive percentage
5 change, as determined in accordance with subsection (a), shall
6 be multiplied by the applicable amount for the current year and
7 the product thereof shall be added to the applicable amount for
8 the current year, with the result rounded to the nearest
9 multiple of ten dollars (\$10).

10 (c) The annual determination required under subsection (a)
11 and the calculation of the adjustments required under subsection
12 (b) shall be made in the period between October 1 and November
13 15 of the year following the effective date of this section, and
14 annually between October 1 and November 15 of each successive
15 year.

16 (d) The adjusted amounts obtained in accordance with
17 subsection (b) shall become effective January 1 for the calendar
18 year following the year in which the determination required
19 under subsection (a) is made.

20 (e) The Department of Labor and Industry shall give notice
21 in the Pennsylvania Bulletin prior to January 1 of each calendar
22 year of the annual percentage change determined in accordance
23 with subsection (a) and the amounts, whether adjusted or
24 unadjusted in accordance with subsection (b), at which
25 competitive bidding, separate bids and written or telephonic
26 price quotations are required under this act for the calendar
27 year beginning the first day of January after publication of the
28 notice.

29 Section 2. Section 2001(a) and (d) of the act, amended
30 November 30, 2004 (P.L.1439, No.186), are amended to read:

1 Section 2001. County Commissioners to Make Contracts.--The
2 County Commissioners may make contracts for lawful purposes and
3 for the purposes of carrying into execution the provisions of
4 this section and the laws of the Commonwealth.

5 (a) Except as provided in subsection (a.1), all contracts or
6 purchases in excess of [ten thousand dollars (\$10,000)] twenty-
7 five thousand dollars (\$25,000), subject to annual adjustment
8 under section 112, shall be in writing and, except those
9 hereinafter mentioned and except as provided by the act of
10 October 27, 1979 (P.L.241, No.78), entitled "An act authorizing
11 political subdivisions, municipality authorities and
12 transportation authorities to enter into contracts for the
13 purchase of goods and the sale of real and personal property
14 where no bids are received," shall not be made except with and
15 from the lowest responsible and responsive bidder meeting
16 specifications, after due notice in at least one newspaper of
17 general circulation, published or circulating in the county at
18 least two (2) times, at intervals of not less than three (3)
19 days where daily newspapers of general circulation are employed
20 for such publication, or in case weekly newspapers are employed,
21 then the notice shall be published once a week for two (2)
22 successive weeks. The first advertisement shall be published not
23 less than ten (10) days prior to the date fixed for the opening
24 of bids.

25 * * *

26 (d) The contracts or purchases made by the commissioners
27 involving an expenditure of over [ten thousand dollars
28 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to
29 annual adjustment under section 112, which shall not require
30 advertising or bidding as hereinbefore provided are as follows:

1 (1) Those for maintenance, repairs or replacements for
2 water, electric light, or other public works: Provided, That
3 they do not constitute new additions, extensions or enlargements
4 of existing facilities and equipment. Security may be required
5 by the county commissioners as in other cases of work done.

6 (2) Those made for improvements, repairs and maintenance of
7 any kind made or provided by the county through its own
8 employes. This paragraph shall not apply to construction
9 materials used in a street improvement.

10 (3) Those where particular types, models or pieces of new
11 equipment, articles, apparatus, appliances, vehicles or parts
12 thereof are desired by the county commissioners, which are
13 patented and manufactured products or copyrighted products.

14 (4) Those involving any policies of insurance or surety
15 company bonds, those made for public utility service and
16 electricity, natural gas or telecommunication services:
17 Provided, That, in the case of utilities not under tariffs on
18 file with the Pennsylvania Public Utility Commission, contracts
19 made without advertising and bidding shall be made only after
20 receiving written or telephonic price quotations from at least
21 three (3) qualified and responsible contractors, or in lieu of
22 price quotations a memorandum shall be kept on file showing that
23 fewer than three (3) qualified contractors exist in the market
24 area within which it is practicable to obtain quotations. A
25 written record of telephonic price quotations shall be made and
26 contain at least the date of the quotation, the name of the
27 contractor and the contractor's representative.

28 (5) Those involving personal or professional services,
29 including, but not limited to, services of members of the
30 medical or legal profession, registered architects, engineers,

1 certified public accountants or other personal services
2 involving professional expertise.

3 (6) Those involving tangible client services provided by
4 nonprofit agencies. For the purposes of this clause, the term
5 "tangible client services" shall mean congregate meals, home-
6 delivered meals, transportation and chore services provided
7 through area agencies on aging.

8 (6.1) Those involving contracts entered into by nonprofit
9 cooperative hospital service associations for hospitals and
10 nursing homes which are part of the institutional district or
11 which are owned by the county, operated by the county or
12 affiliated with the county by the purchasing of or participating
13 in contracts for materials, supplies and equipment.

14 (7) Those involving the purchase of milk.

15 (8) Those made with any public body, including, but not
16 limited to, the sale, lease or loan of any supplies or materials
17 to the county by a public body, provided that the price thereof
18 shall not be in excess of that fixed by the public body. The
19 requirements of 53 Pa.C.S. Ch. 23 Subch. A (relating to
20 intergovernmental cooperation) shall not apply when a county
21 purchases cooperatively with another public body which has
22 entered into a contract for supplies or materials. As used in
23 this paragraph, "public body" shall mean any of the following:

24 (i) the Federal Government;

25 (ii) the Commonwealth of Pennsylvania;

26 (iii) any other state;

27 (iv) a political subdivision, local or municipal authority
28 or other similar local entity of the Commonwealth or any other
29 state; or

30 (v) an agency of the Federal Government, the Commonwealth or

1 any other state.

2 (9) Those exclusively involving construction management
3 services.

4 (10) Those involving computer software.

5 * * *

6 Section 3. Section 2517(a) of the act, amended December 9,
7 2002 (P.L.1383, No.170), is amended to read:

8 Section 2517. Separate Specifications and Contracts for
9 Certain Items.--(a) In the preparation of specifications for
10 the erection, construction and alteration of any public
11 building, when the entire cost of such work shall exceed [ten
12 thousand dollars (\$10,000)] twenty-five thousand dollars
13 (\$25,000), subject to annual adjustment under section 112, the
14 architect, engineer or other person preparing such
15 specifications shall prepare separate specifications for the
16 plumbing, heating, ventilating and electrical work. The board of
17 commissioners shall receive separate bids upon each of the said
18 branches of work and award the contract for the same to the
19 lowest responsible bidder for each of said branches.

20 * * *

21 Section 4. Section 2511-A(a), (b), (b.1) and (h) of the act,
22 added October 30, 2000 (P.L.616, No.85), are amended to read:

23 Section 2511-A. Competition in Award of Contracts.--(a) All
24 construction, reconstruction, repairs or work of any nature made
25 by any Authority, where the entire cost, value or amount of such
26 construction, reconstruction, repairs or work, including labor
27 and materials, shall exceed [ten thousand dollars (\$10,000)]
28 twenty-five thousand dollars (\$25,000), subject to annual
29 adjustment under section 112, except construction,
30 reconstruction, repairs or work done by employees of said

1 Authority or by labor supplied under agreement with any Federal
2 or State agency with supplies and materials purchased, as
3 hereinafter provided, shall be done only under contract or
4 contracts to be entered into by the Authority with the lowest
5 responsible bidder upon proper terms, after due public notice
6 has been given asking for competitive bids hereinafter provided.
7 No contract shall be entered into for construction or
8 improvement or repair of any project or portion thereof unless
9 the contractor shall give an undertaking, with a sufficient
10 surety or sureties approved by the Authority and in an amount
11 fixed by the Authority, for the faithful performance of the
12 contract. All such contracts shall provide, among other things,
13 that the person or corporation entering into such contract with
14 the Authority will pay for all materials furnished and services
15 rendered for the performance of the contract and that any person
16 or corporation furnishing such materials or rendering such
17 services may maintain an action to recover for the same against
18 the obligor in the undertaking as though such person or
19 corporation was named therein, provided the action is brought
20 within one (1) year after the time the cause of action accrued.
21 Nothing in this section shall be construed to limit the power of
22 the Authority to construct, repair or improve any project or
23 portion thereof or any addition, betterment or extension thereto
24 directly by the officers, agents and employes of the Authority
25 or otherwise than by contract.

26 (b) All supplies and materials costing [ten thousand dollars
27 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to
28 annual adjustment under section 112, or more shall be purchased
29 only after due advertisement as hereinafter provided. The
30 Authority shall accept the lowest bid or bids, kinds, quality

1 and material being equal, but the Authority shall have the right
2 to reject any or all bids or select a single item from any bid.
3 The provisions as to bidding shall not apply to the purchase of
4 patented and manufactured products offered for sale in a non-
5 competitive market or solely by a manufacturer's authorized
6 dealer.

7 (b.1) Written or telephonic price quotations from at least
8 three (3) qualified and responsible contractors shall be
9 requested for all contracts that exceed [four thousand dollars
10 (\$4,000)] seven thousand dollars (\$7,000), subject to annual
11 adjustment under section 112, but are less than the amount
12 requiring advertisement and competitive bidding, or, in lieu of
13 price quotations, a memorandum shall be kept on file showing
14 that fewer than three (3) qualified contractors exist in the
15 market area within which it is practicable to obtain quotations.
16 A written record of telephonic price quotations shall be made
17 and shall contain at least the date of the quotation, the name
18 of the contractor and the contractor's representative, the
19 construction, reconstruction, repair, maintenance or work which
20 was the subject of the quotation and the price. Written price
21 quotations, written records of telephonic price quotations and
22 memoranda shall be retained for a period of three (3) years.

23 * * *

24 (h) An Authority shall not evade the provisions of this
25 section as to advertising for bids or purchasing materials or
26 contracting for services piecemeal for the purpose of obtaining
27 prices under [ten thousand dollars (\$10,000)] twenty-five
28 thousand dollars (\$25,000), subject to annual adjustment under
29 section 112, upon transactions which should, in the exercise of
30 reasonable discretion and prudence, be conducted as one

1 transaction amounting to more than [ten thousand dollars
2 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to
3 annual adjustment under section 112. This provision is intended
4 to make unlawful the practice of evading advertising
5 requirements by making a series of purchases or contracts each
6 for less than the advertising requirement price or by making
7 several simultaneous purchases or contracts each below said
8 price when in either case the transaction involved should have
9 been made as one transaction for one price.

10 * * *

11 Section 5. This act shall apply to contracts and purchases
12 advertised on or after January 1 of the year following the
13 effective date of this section.

14 Section 6. This act shall take effect immediately.