

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 279 Session of 2011

INTRODUCED BY M.K. KELLER, AUMENT, BAKER, BEAR, BENNINGHOFF, BLOOM, BOBACK, BOYD, BROOKS, CAUSER, CHRISTIANA, CLYMER, COX, CREIGHTON, CUTLER, DELOZIER, DENLINGER, ELLIS, EVERETT, FARRY, FLECK, GABLER, GEIST, GERBER, GILLESPIE, GINGRICH, GRELL, GROVE, HALUSKA, HARHART, HARPER, HARRIS, HELM, HENNESSEY, HESS, HICKERNELL, KAUFFMAN, KILLION, KNOWLES, MAJOR, MARSHALL, MARSICO, MASSER, METCALFE, MILLARD, MILLER, MOUL, OBERLANDER, O'NEILL, PAYNE, PEIFER, PERRY, PICKETT, PYLE, QUIGLEY, QUINN, RAPP, REED, REICHLEY, ROAE, ROCK, ROSS, SAYLOR, SCAVELLO, CULVER, SCHRODER, SIMMONS, SONNEY, STERN, STEVENSON, SWANGER, TALLMAN, TOBASH, TRUITT, TURZAI, VEREB, VULAKOVICH AND WATSON, JANUARY 27, 2011

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JANUARY 27, 2011

AN ACT

1 Amending the act of June 24, 1931 (P.L.1206, No.331), entitled
2 "An act concerning townships of the first class; amending,
3 revising, consolidating, and changing the law relating
4 thereto," in contracts, further providing for general
5 regulations concerning contracts and for evasion of
6 advertising requirements.

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

9 Section 1. Section 1802(a) and (a.1) of the act of June 24,
10 1931 (P.L.1206, No.331), known as The First Class Township Code,
11 reenacted and amended May 27, 1949 (P.L.1955, No.569) and
12 amended or added July 10, 1990 (P.L.389, No.92) and December 20,
13 1996 (P.L.1495, No.192), are amended and the section is amended
14 by adding a subsection to read:

15 Section 1802. General Regulations Concerning Contracts.--(a)

1 All contracts or purchases made by any township, involving the
2 expenditure of over [ten thousand dollars] twenty-five thousand
3 dollars subject to annual adjustment under subsection (a.2),
4 except those hereinafter mentioned, shall not be made except
5 with and from the lowest responsible bidder, shall be in
6 writing, and shall be made only after notice by the secretary,
7 published, in one newspaper of general circulation, published or
8 circulating in the county in which the township is situated, at
9 least two times at intervals of not less than three days where
10 daily newspapers of general circulation are employed for such
11 publication, or in case weekly newspapers are employed then the
12 notice shall be published once a week for two successive weeks.
13 The first advertisement shall be published not more than forty-
14 five days and the second advertisement not less than ten days
15 prior to the date fixed for the opening of bids. Advertisements
16 for contracts or purchases shall also be posted in a conspicuous
17 place within the township. Advertisements for contracts or
18 purchases shall contain the date, time and location for opening
19 of bids and shall state the amount of the performance bond
20 determined under subsection (c). All plans and specifications
21 shall be on file at least ten days in advance of opening bids.
22 The amount of the contract shall in all cases, whether of
23 straight sale price, conditional sale, bailment lease, or
24 otherwise, be the entire amount which the township pays to the
25 successful bidder or his assigns in order to obtain the services
26 or property, or both, and shall not be construed to mean only
27 the amount which is paid to acquire title or to receive any
28 other particular benefit or benefits of the whole bargain.

29 (a.1) Written or telephonic price quotations from at least
30 three qualified and responsible contractors shall be requested

1 for all contracts that exceed [four thousand dollars] ten
2 thousand dollars subject to annual adjustment under subsection
3 (a.2) but are less than the amount requiring advertisement and
4 competitive bidding or, in lieu of price quotations, a
5 memorandum shall be kept on file showing that fewer than three
6 qualified contractors exist in the market area within which it
7 is practicable to obtain quotations. A written record of
8 telephonic price quotations shall be made and shall contain at
9 least the date of the quotation, the name of the contractor and
10 the contractor's representative, the construction,
11 reconstruction, repair, maintenance or work which was the
12 subject of the quotation and the price. Written price
13 quotations, written records of telephonic price quotations and
14 memoranda shall be retained for a period of three years.

15 (a.2) (1) The Department of Labor and Industry shall
16 determine the percentage change in the Consumer Price Index for
17 All Urban Consumers for the twelve-month period ending September
18 30 of the calendar year in which this subsection becomes
19 effective, and for each successive twelve-month period
20 thereafter.

21 (2) The amount at which competitive bidding is required
22 under subsection (a) and the amount at which written or
23 telephonic price quotations are required under subsection (a.1)
24 shall be adjusted annually as follows:

25 (i) In the case of competitive bidding, the positive
26 percentage change, as determined in accordance with clause (1),
27 shall be multiplied by the amount applicable under subsection
28 (a) for the current year and the product thereof shall be added
29 to the amount applicable under subsection (a) for the current
30 year, with the result rounded to the nearest multiple of ten

1 dollars.

2 (ii) In the case of written or telephonic price quotations,
3 the positive percentage change, as determined in accordance with
4 clause (1), shall be multiplied by the amount applicable under
5 subsection (a.1) for the current year and the product thereof
6 shall be added to the amount applicable under subsection (a.1)
7 for the current year, with the result rounded to the nearest
8 multiple of ten dollars.

9 (3) The annual determination required under clause (1) and
10 the calculation of the adjustments required under clause (2)
11 shall be made in the period between October 1 and November 15 of
12 the year following the effective date of this subsection, and
13 annually between October 1 and November 15 of each successive
14 year.

15 (4) The adjusted amounts obtained in accordance with clause
16 (2) shall become effective January 1 for the calendar year
17 following the year in which the determination required under
18 clause (1) is made.

19 (5) The Department of Labor and Industry shall give notice
20 in the Pennsylvania Bulletin prior to January 1 of each calendar
21 year of the annual percentage change determined in accordance
22 with clause (1) and the amounts, whether adjusted or unadjusted
23 in accordance with clause (2), at which competitive bidding is
24 required under subsection (a) and written or telephonic price
25 quotations are required under subsection (a.1) for the calendar
26 year beginning the first day of January after publication of the
27 notice.

28 * * *

29 Section 2. Section 1802.1 of the act, amended July 10, 1990
30 (P.L.389, No.92), is amended to read:

1 Section 1802.1. Evasion of Advertising Requirements.--(a)

2 No commissioner or commissioners shall evade the provisions of
3 section one thousand eight hundred two as to advertising for
4 bids, by purchasing or contracting for services and personal
5 properties piecemeal for the purpose of obtaining prices under
6 [ten thousand dollars] twenty-five thousand dollars subject to
7 annual adjustment under section 1802(a.2) upon transactions,
8 which transactions should, in the exercise of reasonable
9 discretion and prudence, be conducted as one transaction
10 amounting to more than [ten thousand dollars] twenty-five
11 thousand dollars subject to annual adjustment under section
12 1802(a.2). This provision is intended to make unlawful the
13 evading of advertising requirements by making a series of
14 purchases or contracts each for less than the advertising
15 requirement price, or by making several simultaneous purchases
16 or contracts, each below said price, when in either case, the
17 transactions involved should have been made as one transaction
18 for one price. Any commissioners who so vote in violation of
19 this provision, and who know that the transaction upon which
20 they so vote is or ought to be a part of a larger transaction,
21 and that it is being divided in order to evade the requirements
22 as to advertising for bids, shall be jointly and severally
23 subject to surcharge for ten per centum of the full amount of
24 the contract or purchase. Whenever it shall appear that a
25 commissioner may have voted in violation of this section, but
26 the purchase or contract on which he so voted was not approved
27 by the board of commissioners, this section shall be
28 inapplicable.

29 (b) Any commissioner who votes to unlawfully evade the
30 provisions of section one thousand eight hundred two and who

1 knows that the transaction upon which he so votes is or ought to
2 be a part of a larger transaction and that it is being divided
3 in order to evade the requirements as to advertising for bids
4 commits a misdemeanor of the third degree for each contract
5 entered into as a direct result of that vote. This penalty shall
6 be in addition to any surcharge which may be assessed pursuant
7 to subsection (a).

8 Section 3. This act shall apply to contracts and purchases
9 advertised on or after January 1 of the year following the
10 effective date of this section.

11 Section 4. This act shall take effect immediately.