

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 288 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 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 and counties in which a city of the second
 6 class A is located, singly or jointly; prescribing the
 7 rights, powers and duties of such Authorities; authorizing
 8 such Authorities to acquire, construct, improve, maintain and
 9 operate public auditoriums; to borrow money and issue bonds
 10 therefor; providing for the payment of such bonds and
 11 prescribing the rights of the holders thereof; conferring the
 12 right of eminent domain on such Authorities; empowering such
 13 Authorities to enter into contracts, leases and licenses with
 14 and to accept grants from private sources, the Federal
 15 Government, State, political subdivisions of the State or any
 16 agency thereof; authorizing the making of said grants from
 17 bond funds or current revenues; authorizing Authorities to
 18 collect rentals, admissions, license fees for the use of the
 19 project; exempting the property and securities of such Public
 20 Auditorium Authorities from taxation," increasing the dollar
 21 amount of supplies and materials which may be purchased
 22 without advertising.

23 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Section 11 of the act of July 29, 1953 (P.L.1034,
3 No.270), known as the Public Auditorium Authorities Law, amended
4 July 10, 1990 (P.L.376, No.88), is amended to read:

5 Section 11. Competition in Award of Contracts.

6 A. All construction, reconstruction, repairs or work of any
7 nature made by any Authority, where the entire cost, value or
8 amount of such construction, reconstruction, repairs or work,
9 including labor and materials, shall exceed [ten thousand
10 dollars (\$10,000)] twenty-five thousand dollars (\$25,000),
11 subject to annual adjustment under subsection I, except
12 construction, reconstruction, repairs or work done by employes
13 of said Authority or by labor supplied under agreement with any
14 Federal or State agency with supplies and materials purchased,
15 as hereinafter provided, shall be done only under contract or
16 contracts to be entered into by the Authority with the lowest
17 responsible bidder upon proper terms, after due public notice
18 has been given asking for competitive bids hereinafter provided.
19 No contract shall be entered into for construction or
20 improvement or repair of any project or portion thereof unless
21 the contractor shall give an undertaking, with a sufficient
22 surety or sureties approved by the Authority and in an amount
23 fixed by the Authority, for the faithful performance of the
24 contract. All such contracts shall provide, among other things,
25 that the person or corporation entering into such contract with
26 the Authority will pay for all materials furnished and services
27 rendered for the performance of the contract and that any person
28 or corporation furnishing such materials or rendering such
29 services may maintain an action to recover for the same against
30 the obligor in the undertaking as though such person or

1 corporation was named therein, provided the action is brought
2 within one year after the time the cause of action accrued.
3 Nothing in this section shall be construed to limit the power of
4 the Authority to construct, repair or improve any project or
5 portion thereof or any addition, betterment or extension thereto
6 directly by the officers, agents and employes of the Authority
7 or otherwise than by contract.

8 B. All supplies and materials costing [ten thousand dollars
9 (\$10,000)], subject to annual adjustment under subsection I,
10 twenty-five thousand dollars (\$25,000) or more shall be
11 purchased only after due advertisement as hereinafter provided.
12 The Authority shall accept the lowest bid or bids, kinds,
13 quality and material being equal, but the Authority shall have
14 the right to reject any or all bids or select a single item from
15 any bid. The provisions as to bidding shall not apply to the
16 purchase of patented and manufactured products offered for sale
17 in a non-competitive market or solely by a manufacturer's
18 authorized dealer.

19 B.1. Written or telephonic price quotations from at least
20 three (3) qualified and responsible contractors shall be
21 requested for all contracts that exceed [four thousand dollars
22 (\$4,000)] ten thousand dollars (\$10,000), subject to annual
23 adjustment under subsection I, but are less than the amount
24 requiring advertisement and competitive bidding or, in lieu of
25 price quotations, a memorandum shall be kept on file showing
26 that fewer than three (3) qualified contractors exist in the
27 market area within which it is practicable to obtain quotations.
28 A written record of telephonic price quotations shall be made
29 and shall contain at least the date of the quotation, the name
30 of the contractor and the contractor's representative, the

1 construction, reconstruction, repair, maintenance or work which
2 was the subject of the quotation and the price. Written price
3 quotations, written records of telephonic price quotations and
4 memoranda shall be retained for a period of three (3) years.

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

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

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

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

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

13 G. An Authority shall not evade the provisions of this
14 section as to advertising for bids or purchasing materials or
15 contracting for services piecemeal for the purpose of obtaining
16 prices under [ten thousand dollars (\$10,000)] twenty-five
17 thousand dollars (\$25,000), subject to annual adjustment under
18 subsection I, upon transactions which should, in the exercise of
19 reasonable discretion and prudence, be conducted as one
20 transaction amounting to more than [ten thousand dollars
21 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to
22 annual adjustment under subsection I. This provision is intended
23 to make unlawful the practice of evading advertising
24 requirements by making a series of purchases or contracts each
25 for less than the advertising requirement price or by making
26 several simultaneous purchases or contracts each below said
27 price, when in either case the transaction involved should have
28 been made as one transaction for one price.

29 H. Any member of the Authority who votes to unlawfully evade
30 the provisions of this section and who knows that the

1 transaction upon which he so votes is or ought to be a part of a
2 larger transaction and that it is being divided in order to
3 evade the requirements as to advertising for bids commits a
4 misdemeanor of the third degree for each contract entered into
5 as a direct result of that vote.

6 I. (1) The Department of Labor and Industry shall determine
7 the percentage change in the Consumer Price Index for All Urban
8 Consumers for the twelve-month period ending September 30 of the
9 calendar year in which this subsection becomes effective, and
10 for each successive twelve-month period thereafter.

11 (2) The amounts at which competitive bidding and written or
12 telephonic price quotations are required under this section
13 shall be adjusted annually as follows:

14 (i) In the case of competitive bidding, the positive
15 percentage change, as determined in accordance with clause (1),
16 shall be multiplied by the amount applicable under subsection A,
17 B or G for the current year and the product thereof shall be
18 added to the amount applicable under subsection A, B or G for
19 the current year, with the result rounded to the nearest
20 multiple of ten dollars (\$10).

21 (ii) In the case of written or telephonic price quotations,
22 the positive percentage change, as determined in accordance with
23 clause (1), shall be multiplied by the amount applicable under
24 subsection B.1 for the current year and the product thereof
25 shall be added to the amount applicable under subsection B.1 for
26 the current year, with the result rounded to the nearest
27 multiple of ten dollars (\$10).

28 (3) The annual determination required under clause (1) and
29 the calculation of the adjustments required under clause (2)
30 shall be made in the period between October 1 and November 15 of

1 the year following the effective date of this subsection, and
2 annually between October 1 and November 15 of each successive
3 year.

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

8 (5) The Department of Labor and Industry shall give notice
9 in the Pennsylvania Bulletin prior to January 1 of each calendar
10 year of the annual percentage change determined in accordance
11 with clause (1) and the amounts, whether adjusted or unadjusted
12 in accordance with clause (2), at which competitive bidding is
13 required and written or telephonic price quotations are required
14 for the calendar year beginning the first day of January after
15 publication of the notice.

16 Section 2. This act shall apply to contracts and purchases
17 advertised on or after January 1 of the year following the
18 effective date of this section.

19 Section 3. This act shall take effect in 60 days.