

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 289 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 August 6, 1936 (Sp.Sess., P.L.95, No.38
2 1/2), entitled "An act to authorize and empower cities,
3 boroughs, towns, and townships, separately or jointly, to
4 provide for protection against floods by erecting and
5 constructing certain works and improvements, located within
6 or without their territorial limits, and within or without
7 the county in which situate; and to expend moneys and incur
8 indebtedness; to assess benefits against property benefited;
9 to issue improvement bonds imposing no municipal liability;
10 and to acquire, take, injure or destroy property for such
11 purposes," further providing for competitive bidding of
12 contracts.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Section 3 of the act of August 6, 1936 (Sp.Sess.,
16 P.L.95, No.38 1/2), entitled "An act to authorize and empower
17 cities, boroughs, towns, and townships, separately or jointly,
18 to provide for protection against floods by erecting and

1 constructing certain works and improvements, located within or
2 without their territorial limits, and within or without the
3 county in which situate; and to expend moneys and incur
4 indebtedness; to assess benefits against property benefited; to
5 issue improvement bonds imposing no municipal liability; and to
6 acquire, take, injure or destroy property for such purposes,"
7 amended July 10, 1990 (P.L.402, No.97), is amended to read:

8 Section 3. (a) No such works or improvements, involving an
9 expenditure by any municipality or municipalities of more than
10 [ten thousand dollars (\$10,000)] twenty-five thousand dollars
11 (\$25,000), subject to adjustment under subsection (b.1), shall
12 be erected, constructed or provided, except by contract let to
13 the lowest responsible bidder after due advertisement, once a
14 week for two successive weeks in at least one newspaper of
15 general circulation: Provided, however, That no contract shall
16 be required to be let for the performance of the work on any
17 such work or improvement where the cost of the labor shall be
18 paid by the Federal Government, or any agency thereof, without
19 cost to the municipality or municipalities.

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

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

6 (b.1) Adjustments shall be made as follows:

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

12 (2) The amount at which competitive bidding is required
13 under subsection (a) and the amount at which written or
14 telephonic price quotations are required under subsection (b)
15 shall be adjusted annually as follows:

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

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

30 (3) The annual determination required under paragraph (1)

1 and the calculation of the adjustments required under paragraph
2 (2) shall be made in the period between October 1 and November
3 15 of the year following the effective date of this subsection,
4 and annually between October 1 and November 15 of each
5 successive year.

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

10 (5) The department shall give notice in the Pennsylvania
11 Bulletin prior to January 1 of each calendar year of the annual
12 percentage change determined in accordance with paragraph (1)
13 and the amounts, whether adjusted or unadjusted in accordance
14 with paragraph (2), at which competitive bidding is required
15 under subsection (a) and written or telephonic price quotations
16 are required under subsection (b) for the calendar year
17 beginning the first day of January after publication of the
18 notice.

19 (c) No municipality shall evade the provisions of this
20 section as to advertising for bids or purchasing materials or
21 contracting for services piecemeal for the purpose of obtaining
22 prices under [ten thousand dollars (\$10,000)] the amount
23 required by this section upon transactions which should, in the
24 exercise of reasonable discretion and prudence, be conducted as
25 one transaction amounting to more than [ten thousand dollars
26 (\$10,000)] the amount required by this section. This provision
27 is intended to make unlawful the practice of evading advertising
28 requirements by making a series of purchases or contracts each
29 for less than the advertising requirement price or by making
30 several simultaneous purchases or contracts each below said

1 price, when in either case the transaction involved should have
2 been made as one transaction for one price.

3 (d) Any member of a governing body of a municipality who
4 votes to unlawfully evade the provisions of this section and who
5 knows that the transaction upon which he so votes is or ought to
6 be a part of a larger transaction and that it is being divided
7 in order to evade the requirements as to advertising for bids
8 commits a misdemeanor of the third degree for each contract
9 entered into as a direct result of that vote.

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

14 Section 2. The amendment of section 3 of the act shall apply
15 to contracts and purchases advertised after December 31 of the
16 year in which this section takes effect.

17 Section 3. This act shall take effect immediately.