

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 290 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, 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, WATSON AND F. KELLER, JANUARY 27, 2011

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 5, 2011

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," in preliminary
5 provisions, providing for adjustments based on Consumer Price
6 Index relating to contracts and purchases; in contracts,
7 further regulating contracts and purchases; and, in grounds,
8 property and buildings, further providing for competition in
9 award of contracts.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

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

15 Section 112. Adjustments Based on Change in Consumer Price

16 Index.--(a) ~~Annually, beginning with the year in which this~~



~~subsection becomes applicable to contracts and purchases, the Department of Labor and Industry shall calculate the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the United States city average for all items as published by the United States Department of Labor, Bureau of Labor Statistics, for the twelve month average ending in September of the prior year.~~

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

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

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

~~(e) The Department of Labor and Industry shall give notice in the Pennsylvania Bulletin prior to January 1 of each calendar year of the annual percentage change determined in accordance with subsection (a) and the amounts, whether adjusted or unadjusted in accordance with subsection (b), at which~~

~~competitive bidding, separate bids and written or telephonic~~
~~price quotations are required under this act for the calendar~~
~~year beginning the first day of January after publication of the~~
~~notice.~~ ADJUSTMENTS TO THE BASE AMOUNTS SPECIFIED UNDER SECTIONS
2001(A) AND (D), 2517(A) AND 2511-A(A), (B), (B.1) AND (H) SHALL
BE MADE AS FOLLOWS:

(1) THE DEPARTMENT OF LABOR AND INDUSTRY SHALL DETERMINE THE
PERCENTAGE CHANGE IN THE ALL ITEMS CONSUMER PRICE INDEX FOR ALL
URBAN CONSUMERS (CPI-U) FOR THE UNITED STATES CITY AVERAGE AS
PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF
LABOR STATISTICS FOR THE TWELVE-MONTH PERIOD ENDING SEPTEMBER 30
OF THE CALENDAR YEAR IN WHICH THIS SUBSECTION BECOMES EFFECTIVE,
AND FOR EACH SUCCESSIVE TWELVE-MONTH PERIOD THEREAFTER.

(2) IF THE DEPARTMENT DETERMINES THAT THERE IS NO POSITIVE
PERCENTAGE CHANGE, THEN NO ADJUSTMENT TO THE BASE AMOUNTS SHALL
OCCUR FOR THE RELEVANT TIME PERIOD PROVIDED FOR IN THIS
SUBSECTION.

(3) (I) IF THE DEPARTMENT DETERMINES THAT THERE IS A
POSITIVE PERCENTAGE CHANGE IN THE FIRST YEAR THAT THE
DETERMINATION IS MADE UNDER PARAGRAPH (1), THE POSITIVE
PERCENTAGE CHANGE SHALL BE MULTIPLIED BY EACH BASE AMOUNT AND
THE PRODUCTS SHALL BE ADDED TO THE BASE AMOUNTS, RESPECTIVELY,
AND THE SUMS SHALL BE PRELIMINARY ADJUSTED AMOUNTS.

(II) THE PRELIMINARY ADJUSTED AMOUNTS SHALL BE ROUNDED TO
THE NEAREST ONE THOUSAND DOLLARS (\$1,000), TO DETERMINE THE
FINAL ADJUSTED BASE AMOUNTS FOR PURPOSES OF SECTIONS 2001(A) AND
(D), 2517(A) AND 2511-A(A), (B), (B.1) AND (H).

(4) IN EACH SUCCESSIVE YEAR IN WHICH THERE IS A POSITIVE
PERCENTAGE CHANGE IN THE CPI-U FOR THE UNITED STATES CITY
AVERAGE, THE POSITIVE PERCENTAGE CHANGE SHALL BE MULTIPLIED BY

1 THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS AND THE PRODUCTS
2 SHALL BE ADDED TO THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS,
3 RESPECTIVELY. THE SUMS THEREOF SHALL BE ROUNDED TO THE NEAREST
4 ONE THOUSAND DOLLARS (\$1,000) TO DETERMINE THE NEW FINAL
5 ADJUSTED BASE AMOUNTS FOR PURPOSES OF SECTIONS 2001(A) AND (D),
6 2517(A) AND 2511-A(A), (B), (B.1) AND (H).

7 (5) THE DETERMINATIONS AND ADJUSTMENTS REQUIRED UNDER THIS
8 SUBSECTION SHALL BE MADE IN THE PERIOD BETWEEN OCTOBER 1 AND
9 NOVEMBER 15 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS
10 SUBSECTION, AND ANNUALLY BETWEEN OCTOBER 1 AND NOVEMBER 15 OF
11 EACH YEAR THEREAFTER.

12 (6) THE FINAL ADJUSTED BASE AMOUNTS AND NEW FINAL ADJUSTED
13 BASE AMOUNTS OBTAINED UNDER PARAGRAPHS (3) AND (4) SHALL BECOME
14 EFFECTIVE JANUARY 1 FOR THE CALENDAR YEAR FOLLOWING THE YEAR IN
15 WHICH THE DETERMINATION REQUIRED UNDER PARAGRAPH (1) IS MADE.

16 (7) THE DEPARTMENT SHALL PUBLISH NOTICE IN THE PENNSYLVANIA
17 BULLETIN PRIOR TO JANUARY 1 OF EACH CALENDAR YEAR OF THE ANNUAL
18 PERCENTAGE CHANGE DETERMINED UNDER PARAGRAPH (1) AND THE
19 UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS DETERMINED UNDER
20 PARAGRAPHS (3) AND (4) FOR PURPOSES OF SECTIONS 2001(A) AND (D),
21 2517(A) AND 2511-A(A), (B), (B.1) AND (H), RESPECTIVELY, FOR THE
22 CALENDAR YEAR BEGINNING THE FIRST DAY OF JANUARY AFTER
23 PUBLICATION OF THE NOTICE. THE NOTICE SHALL INCLUDE A WRITTEN
24 AND ILLUSTRATIVE EXPLANATION OF THE CALCULATIONS PERFORMED BY
25 THE DEPARTMENT IN ESTABLISHING THE UNADJUSTED OR FINAL ADJUSTED
26 BASE AMOUNTS UNDER THIS SUBSECTION FOR THE ENSUING CALENDAR
27 YEAR.

28 (B) (RESERVED).

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)] THE BASE ←
7 AMOUNT OF twenty-five thousand dollars (\$25,000), subject to
8 annual adjustment under section 112, shall be in writing and,
9 except those hereinafter mentioned and except as provided by the
10 act of October 27, 1979 (P.L.241, No.78), entitled "An act
11 authorizing 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)] IN THE EXCESS OF THE BASE AMOUNT OF twenty-five ←
29 thousand dollars (\$25,000), subject to annual adjustment under
30 section 112, which shall not require advertising or bidding as

1 hereinbefore provided are as follows:

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

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

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

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

29 (5) Those involving personal or professional services,
30 including, but not limited to, services of members of the

1 medical or legal profession, registered architects, engineers,
2 certified public accountants or other personal services
3 involving professional expertise.

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

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

15 (7) Those involving the purchase of milk.

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

25 (i) the Federal Government;

26 (ii) the Commonwealth of Pennsylvania;

27 (iii) any other state;

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

1 (v) an agency of the Federal Government, the Commonwealth or
2 any other state.

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

5 (10) Those involving computer software.

6 * * *

7 Section 3. Section 2517(a) of the act, amended December 9,
8 2002 (P.L.1383, No.170), is amended to read:

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

21 * * *

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

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

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

27 (b) All supplies and materials costing [ten thousand dollars
28 (\$10,000)] THE BASE AMOUNT OF twenty-five thousand dollars
29 (\$25,000), subject to annual adjustment under section 112, or
30 more shall be purchased only after due advertisement as



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

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

* * *

(h) An Authority shall not evade the provisions of this section as to advertising for bids or purchasing materials or contracting for services piecemeal for the purpose of obtaining prices under [ten thousand dollars (\$10,000)] THE BASE AMOUNT OF twenty-five thousand dollars (\$25,000), subject to annual

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

12 * * *

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

16 Section 6. This act shall take effect immediately.