

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 285** Session of
2011

INTRODUCED BY FOLMER, EICHELBERGER, KASUNIC, GORDNER, BOSCOLA,
ORIE, RAFFERTY, YAW, M. WHITE, D. WHITE, ERICKSON, BAKER,
BRUBAKER, GREENLEAF, SMUCKER, EARLL, WAUGH, FERLO, ROBBINS,
VANCE, ALLOWAY, SCARNATI, McILHINNEY AND PICCOLA,
JANUARY 26, 2011

REFERRED TO LOCAL GOVERNMENT, JANUARY 26, 2011

AN ACT

1 Amending the act of February 1, 1966 (1965 P.L.1656, No.581),
2 entitled "An act concerning boroughs, and revising, amending
3 and consolidating the law relating to boroughs," further
4 providing for regulation of contracts, for evasion of
5 advertising requirements and certain purchase contracts.

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

8 Section 1. Section 1402(a), (a.1) and (d) of the act of
9 February 1, 1966 (1965 P.L.1656, No.581), known as The Borough
10 Code, amended or added July 10, 1990 (P.L.383, No.90), December
11 18, 1996 (P.L.1141, No.171), December 18, 1996 (P.L.1156, No.
12 176), December 20, 1996 (P.L.1497, No.193) and October 27, 2010
13 (P.L. , No.87), are amended and the section is amended by
14 adding a subsection to read:

15 Section 1402. Regulation of Contracts.--(a) All contracts
16 or purchases in excess of [ten thousand dollars (\$10,000)]
17 twenty-five thousand dollars (\$25,000) subject to adjustment

1 under subsection (a.2), except those hereinafter mentioned,
2 shall not be made except with and from the lowest responsible
3 bidder after due notice in one newspaper of general circulation
4 in the borough, at least two times at intervals of not less than
5 three days where daily newspapers of general circulation are
6 available for such publication, in case of weekly newspapers,
7 such notice once a week for two successive weeks. The first
8 advertisement shall be published not more than forty-five days
9 and the second advertisement not less than ten days prior to the
10 date fixed for the opening of bids. Advertisements for contracts
11 or purchases shall also be posted in a conspicuous place within
12 the borough. Advertisements for contracts and purchases shall
13 contain the date, time and location for opening of bids and
14 shall state the amount of the performance bond determined under
15 subsection (c). The amount of the contract shall in all cases,
16 whether of straight sale price, conditional sale, bailment
17 lease, or otherwise, be the entire amount which the borough pays
18 to the successful bidder or his assigns in order to obtain the
19 services or property, or both, and shall not be construed to
20 mean only the amount which is paid to acquire title or to
21 receive any other particular benefit or benefits of the whole
22 bargain. In awarding contracts, council shall have the right to
23 take into consideration such other factors as the availability,
24 cost and quality of service.

25 (a.1) Written or telephonic price quotations from at least
26 three qualified and responsible contractors shall be requested
27 for all contracts that exceed [four thousand dollars (\$4,000)]
28 seven thousand dollars (\$7,000) subject to adjustment under
29 subsection (a.2) but are less than the amount requiring
30 advertisement and competitive bidding or, in lieu of price

1 quotations, a memorandum shall be kept on file showing that
2 fewer than three qualified contractors exist in the market area
3 within which it is practicable to obtain quotations. A written
4 record of telephonic price quotations shall be made and shall
5 contain at least the date of the quotation, the name of the
6 contractor and the contractor's representative, the
7 construction, reconstruction, repair, maintenance or work which
8 was the subject of the quotation and the price. Written price
9 quotations, written records of telephonic price quotations and
10 memoranda shall be retained for a period of three years.

11 (a.2) (1) Every five years, beginning with the year in
12 which this subsection becomes applicable to contracts and
13 purchases, the Department of Labor and Industry shall calculate
14 the average percentage change in the Consumer Price Index for
15 All Urban Consumers (CPI-U) for the United States city average
16 for all items as published by the United States Department of
17 Labor, Bureau of Labor Statistics, for the preceding five-year
18 period.

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

23 (i) In the case of competitive bidding, the positive
24 percentage change, as determined in accordance with clause (1),
25 shall be multiplied by the amount applicable under subsection
26 (a) for the current five-year period and the product thereof
27 shall be added to the amount applicable under subsection (a) for
28 the current five-year period, with the result rounded to the
29 nearest multiple of one hundred dollars (\$100).

30 (ii) In the case of written or telephonic price quotations,

1 the positive percentage change, as determined in accordance with
2 clause (1), shall be multiplied by the amount applicable under
3 subsection (a.1) for the current five-year period and the
4 product thereof shall be added to the amount applicable under
5 subsection (a.1) for the current five-year period, with the
6 result rounded to the nearest multiple of one hundred dollars
7 (\$100).

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

13 (4) The adjusted amounts obtained in accordance with clause
14 (2) shall become effective January 1 for the five-year period
15 following the year in which the determination required under
16 clause (1) is made.

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

26 * * *

27 (d) The contracts or purchases made by council, which shall
28 not require advertising, bidding or price quotations as
29 hereinbefore provided, are as follows:

30 (1) Those for maintenance, repairs or replacements for

1 water, electric light or public works of the borough, provided
2 they do not constitute new additions, extensions or enlargements
3 of existing facilities and equipment, but a bond may be required
4 by council, as in other cases of work done;

5 (2) Those made for improvements, repairs and maintenance of
6 any kind, made or provided by any borough, through its own
7 employes: Provided, That all materials used for street
8 improvement, maintenance and/or construction in excess of [four
9 thousand dollars (\$4,000)] the amount specified or adjusted
10 under subsection (a.1) be subject to the relevant price
11 quotation or advertising requirements contained herein;

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

16 (3.1) Those for used equipment, articles, apparatus,
17 appliances, vehicles or parts thereof being purchased from a
18 public utility.

19 (4) Those involving any policies of insurance or surety
20 company bonds; those made for public utility service under
21 tariffs on file with the Pennsylvania Public Utility Commission;
22 those made with another political subdivision, or a county, the
23 Commonwealth of Pennsylvania, the Federal Government, any agency
24 of the Commonwealth or the Federal Government, or any municipal
25 authority, including the sale, leasing or loan of any supplies
26 or materials by the Commonwealth or the Federal Government or
27 their agencies. The price thereof shall not be in excess of that
28 fixed by the Commonwealth, the Federal Government, or their
29 agencies;

30 (5) Those involving personal or professional services.

1 (6) Those made relating to the purchase of electricity and
2 associated energy and related services by a borough owning or
3 operating electric generation or distribution facilities on the
4 effective date of this section with any of the following:

5 (i) A political subdivision.

6 (ii) Another state.

7 (iii) The Commonwealth or an agency thereof.

8 (iv) The Federal Government.

9 (v) A private corporation.

10 (vi) An electric cooperative corporation under 15 Pa.C.S.
11 Ch. 73 (relating to electric cooperative corporations).

12 (vii) A non-profit membership corporation. As used in this
13 subclause, the term "non-profit membership corporation" means an
14 entity, the membership of which:

15 (A) consists solely of Pennsylvania boroughs, such as a
16 consortium, buying group or municipal power agency under section
17 2471.2; or

18 (B) consists of Pennsylvania boroughs and political
19 subdivisions of another state or states.

20 (viii) An electric cooperative of another state.

21 Nothing in this clause shall prohibit council from engaging in
22 advertising, bidding or price quotations if the council
23 determines that the advertising, bidding or price quotations are
24 in the public interest.

25 * * *

26 Section 2. Sections 1403(a) and 1405 of the act, amended
27 July 10, 1990 (P.L.383, No.90), are amended to read:

28 Section 1403. Evasion of Advertising Requirements.--(a) No
29 member or members of council shall evade the provisions of
30 section 1402 hereof as to advertising for bids, by purchasing or

1 contracting for services and personal properties piecemeal for
2 the purpose of obtaining prices under [ten thousand dollars
3 (\$10,000)] the amount specified or adjusted under section
4 1402(a) upon transactions, which transactions should, in the
5 exercise of reasonable discretion and prudence, be conducted as
6 one transaction amounting to more than [ten thousand dollars
7 (\$10,000)] the amount specified or adjusted under section
8 1402(a). This provision is intended to make unlawful the evading
9 of advertising requirements by making a series of purchases or
10 contracts, each for less than the advertising requirement price,
11 or by making several simultaneous purchases or contracts, each
12 below said price, when, in either case, the transactions
13 involved should have been made as one transaction for one price.
14 Any members of council who so vote in violation of this
15 provision and who know that the transaction upon which they so
16 vote is or ought to be a part of a larger transaction and that
17 it is being divided in order to evade the requirements as to
18 advertising for bids, shall be jointly and severally subject to
19 surcharge for ten percent of the full amount of the contract or
20 purchase. Whenever it shall appear that a member of council may
21 have voted in violation of this section but the purchase or
22 contract on which he so voted was not approved by council, this
23 section shall be inapplicable.

24 * * *

25 Section 1405. Separate Bids for Plumbing, Heating,
26 Ventilating and Electrical Work.--In the preparation for the
27 erection, construction and alteration of any public building,
28 when the entire cost of such work shall exceed [ten thousand
29 dollars (\$10,000)] the amount specified or adjusted under
30 section 1402(a), the architect, engineer, or other person

1 preparing such specifications may, if so requested by the
2 borough council, prepare separate specifications for the
3 plumbing, heating, ventilating and electrical work. The person
4 or persons authorized to enter into contracts for the erection,
5 construction or alteration of such public buildings may, if such
6 separate specifications shall have been proposed, receive
7 separate bids upon each of the said branches of work and shall
8 thereupon award the contract for the same to the lowest
9 responsible bidder for each of said branches.

10 Section 3. This act shall apply to contracts and purchases
11 advertised after December 31 of the year in which this section
12 takes effect.

13 Section 4. This act shall take effect immediately.