

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, PICCOLA, WARD AND
BROWNE, JANUARY 26, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
SEPTEMBER 20, 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)~~ THE BASE AMOUNT OF



1 EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500) subject to
2 adjustment under subsection (a.2), except those hereinafter
3 mentioned, shall not be made except with and from the lowest
4 responsible bidder after due notice in one newspaper of general
5 circulation in the borough, at least two times at intervals of
6 not less than three days where daily newspapers of general
7 circulation are available for such publication, in case of
8 weekly newspapers, such notice once a week for two successive
9 weeks. The first advertisement shall be published not more than
10 forty-five days and the second advertisement not less than ten
11 days prior to the date fixed for the opening of bids.

12 Advertisements for contracts or purchases shall also be posted
13 in a conspicuous place within the borough. Advertisements for
14 contracts and purchases shall contain the date, time and
15 location for opening of bids and shall state the amount of the
16 performance bond determined under subsection (c). The amount of
17 the contract shall in all cases, whether of straight sale price,
18 conditional sale, bailment lease, or otherwise, be the entire
19 amount which the borough pays to the successful bidder or his
20 assigns in order to obtain the services or property, or both,
21 and shall not be construed to mean only the amount which is paid
22 to acquire title or to receive any other particular benefit or
23 benefits of the whole bargain. In awarding contracts, council
24 shall have the right to take into consideration such other
25 factors as the availability, cost and quality of service.

26 (a.1) Written or telephonic price quotations from at least
27 three qualified and responsible contractors shall be requested
28 for all contracts [that exceed ~~four thousand dollars (\$4,000)~~ ←
29 ~~seven thousand dollars (\$7,000)~~ IN EXCESS OF THE BASE AMOUNT OF ←
30 TEN THOUSAND DOLLARS (\$10,000) subject to adjustment under

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

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

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 every five years 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 five year period and the product thereof~~
29 ~~shall be added to the amount applicable under subsection (a) for~~
30 ~~the current five year period, with the result rounded to the~~

1 ~~nearest multiple of one hundred dollars (\$100).~~

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 five year period and the~~
6 ~~product thereof shall be added to the amount applicable under~~
7 ~~subsection (a.1) for the current five year period, with the~~
8 ~~result rounded to the nearest multiple of one hundred dollars~~
9 ~~(\$100).~~

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

15 ~~(4) The adjusted amounts obtained in accordance with clause~~
16 ~~(2) shall become effective January 1 for the five year period~~
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 in which the 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 five year~~
26 ~~period beginning the first day of January after publication of~~
27 ~~the notice.~~

28 (A.2) ADJUSTMENTS TO THE BASE AMOUNTS SPECIFIED UNDER
29 SUBSECTIONS (A) AND (A.1) SHALL BE MADE AS FOLLOWS:

30 (1) THE DEPARTMENT OF LABOR AND INDUSTRY SHALL DETERMINE THE



1 PERCENTAGE CHANGE IN THE ALL ITEMS CONSUMER PRICE INDEX FOR ALL
2 URBAN CONSUMERS (CPI-U) FOR THE UNITED STATES CITY AVERAGE AS
3 PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF
4 LABOR STATISTICS FOR THE TWELVE-MONTH PERIOD ENDING SEPTEMBER
5 30, 2012, AND FOR EACH SUCCESSIVE TWELVE-MONTH PERIOD
6 THEREAFTER.

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

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

17 (II) THE PRELIMINARY ADJUSTED AMOUNTS SHALL BE ROUNDED TO
18 THE NEAREST ONE THOUSAND DOLLARS (\$1,000), TO DETERMINE THE
19 FINAL ADJUSTED BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS (A) AND
20 (A.1).

21 (4) IN EACH SUCCESSIVE YEAR IN WHICH THERE IS A POSITIVE
22 PERCENTAGE CHANGE IN THE CPI-U FOR THE UNITED STATES CITY
23 AVERAGE, THE POSITIVE PERCENTAGE CHANGE SHALL BE MULTIPLIED BY
24 THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS AND THE PRODUCTS
25 SHALL BE ADDED TO THE PRELIMINARY ADJUSTED AMOUNT OF THE PRIOR
26 YEAR TO CALCULATE THE PRELIMINARY ADJUSTED AMOUNTS FOR THE
27 CURRENT YEAR. THE SUMS THEREOF SHALL BE ROUNDED TO THE NEAREST
28 ONE THOUSAND DOLLARS (\$1,000) TO DETERMINE THE NEW FINAL
29 ADJUSTED BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS (A) AND (A.1).

30 (5) THE DETERMINATIONS AND ADJUSTMENTS REQUIRED UNDER THIS

1 SUBSECTION SHALL BE MADE IN THE PERIOD BETWEEN OCTOBER 1 AND
2 NOVEMBER 15 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS
3 SUBSECTION, AND ANNUALLY BETWEEN OCTOBER 1 AND NOVEMBER 15 OF
4 EACH YEAR THEREAFTER.

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

9 (7) THE DEPARTMENT SHALL PUBLISH NOTICE IN THE PENNSYLVANIA
10 BULLETIN PRIOR TO JANUARY 1 OF EACH CALENDAR YEAR OF THE ANNUAL
11 PERCENTAGE CHANGE DETERMINED UNDER PARAGRAPH (1) AND THE
12 UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS DETERMINED UNDER
13 PARAGRAPHS (3) AND (4) AT WHICH COMPETITIVE BIDDING IS REQUIRED
14 UNDER SUBSECTION (A) AND WRITTEN OR TELEPHONIC PRICE QUOTATIONS
15 ARE REQUIRED UNDER SUBSECTION (A.1), RESPECTIVELY, FOR THE
16 CALENDAR YEAR BEGINNING THE FIRST DAY OF JANUARY AFTER
17 PUBLICATION OF THE NOTICE. THE NOTICE SHALL INCLUDE A WRITTEN
18 AND ILLUSTRATIVE EXPLANATION OF THE CALCULATIONS PERFORMED BY
19 THE DEPARTMENT IN ESTABLISHING THE UNADJUSTED OR FINAL ADJUSTED
20 BASE AMOUNTS UNDER THIS SUBSECTION FOR THE ENSUING CALENDAR
21 YEAR.

22 (8) NO ADJUSTMENT TO THE BASE AMOUNTS SPECIFIED UNDER
23 SUBSECTIONS (A) AND (A.1) SHALL EXCEED THREE PERCENT OF THE MOST
24 RECENTLY ADJUSTED BASE AMOUNT.

25 * * *

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

29 (1) Those for maintenance, repairs or replacements for
30 water, electric light or public works of the borough, provided

1 they do not constitute new additions, extensions or enlargements
2 of existing facilities and equipment, but a bond may be required
3 by council, as in other cases of work done;

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

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

15 (3.1) Those for used equipment, articles, apparatus,
16 appliances, vehicles or parts thereof being purchased from a
17 public utility.

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

29 (5) Those involving personal or professional services.

30 (6) Those made relating to the purchase of electricity and

1 associated energy and related services by a borough owning or
2 operating electric generation or distribution facilities on the
3 effective date of this section with any of the following:

- 4 (i) A political subdivision.
- 5 (ii) Another state.
- 6 (iii) The Commonwealth or an agency thereof.
- 7 (iv) The Federal Government.
- 8 (v) A private corporation.
- 9 (vi) An electric cooperative corporation under 15 Pa.C.S.
10 Ch. 73 (relating to electric cooperative corporations).

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

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

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

19 (viii) An electric cooperative of another state.

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

24 * * *

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

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

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

23 * * *

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

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

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

12 Section 4. This act shall take effect immediately.