

## 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

AS AMENDED ON THIRD CONSIDERATION, SEPTEMBER 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)] the  
17 base amount of eighteen thousand five hundred dollars (\$18,500)

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

11 Advertisements for contracts or purchases shall also be posted  
12 in a conspicuous place within the borough. Advertisements for  
13 contracts and purchases shall contain the date, time and  
14 location for opening of bids and shall state the amount of the  
15 performance bond determined under subsection (c). The amount of  
16 the contract shall in all cases, whether of straight sale price,  
17 conditional sale, bailment lease, or otherwise, be the entire  
18 amount which the borough pays to the successful bidder or his  
19 assigns in order to obtain the services or property, or both,  
20 and shall not be construed to mean only the amount which is paid  
21 to acquire title or to receive any other particular benefit or  
22 benefits of the whole bargain. In awarding contracts, council  
23 shall have the right to take into consideration such other  
24 factors as the availability, 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 in excess of the base amount of ten thousand dollars (\$10,000)  
29 subject to adjustment under subsection (a.2) but are less than  
30 the amount requiring advertisement and competitive bidding or,

1 in lieu of price quotations, a memorandum shall be kept on file  
2 showing that fewer than three qualified contractors exist in the  
3 market area within which it is practicable to obtain quotations.  
4 A written record of telephonic price quotations shall be made  
5 and shall contain at least the date of the quotation, the name  
6 of the 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) Adjustments to the base amounts specified under  
12 subsections (a) and (a.1) shall be made as follows:

13 (1) The Department of Labor and Industry shall determine the  
14 percentage change in the All Items Consumer Price Index for All  
15 Urban Consumers (CPI-U) for the United States City Average as  
16 published by the United States Department of Labor, Bureau of  
17 Labor Statistics for the twelve-month period ending September  
18 30, 2012, and for each successive twelve-month period  
19 thereafter.

20 (2) If the department determines that there is no positive  
21 percentage change, then no adjustment to the base amounts shall  
22 occur for the relevant time period provided for in this  
23 subsection.

24 (3) (i) If the department determines that there is a  
25 positive percentage change in the first year that the  
26 determination is made under paragraph (1), the positive  
27 percentage change shall be multiplied by each base amount and  
28 the products shall be added to the base amounts, respectively,  
29 and the sums shall be preliminary adjusted amounts.

30 (ii) The preliminary adjusted amounts shall be rounded to

1 the nearest one thousand dollars (\$1,000) HUNDRED DOLLARS  
2 (\$100), to determine the final adjusted base amounts for  
3 purposes of subsections (a) and (a.1).



4 (4) In each successive year in which there is a positive  
5 percentage change in the CPI-U for the United States City  
6 Average, the positive percentage change shall be multiplied by  
7 the most recent preliminary adjusted amounts and the products  
8 shall be added to the preliminary adjusted amount of the prior  
9 year to calculate the preliminary adjusted amounts for the  
10 current year. The sums thereof shall be rounded to the nearest  
11 one thousand dollars (\$1,000) HUNDRED DOLLARS (\$100) to  
12 determine the new final adjusted base amounts for purposes of  
13 subsections (a) and (a.1).



14 (5) The determinations and adjustments required under this  
15 subsection shall be made in the period between October 1 and  
16 November 15 of the year following the effective date of this  
17 subsection, and annually between October 1 and November 15 of  
18 each year thereafter.

19 (6) The final adjusted base amounts and new final adjusted  
20 base amounts obtained under paragraphs (3) and (4) shall become  
21 effective January 1 for the calendar year following the year in  
22 which the determination required under paragraph (1) is made.

23 (7) The department shall publish notice in the Pennsylvania  
24 Bulletin prior to January 1 of each calendar year of the annual  
25 percentage change determined under paragraph (1) and the  
26 unadjusted or final adjusted base amounts determined under  
27 paragraphs (3) and (4) at which competitive bidding is required  
28 under subsection (a) and written or telephonic price quotations  
29 are required under subsection (a.1), respectively, for the  
30 calendar year beginning the first day of January after

1 publication of the notice. The notice shall include a written  
2 and illustrative explanation of the calculations performed by  
3 the department in establishing the unadjusted or final adjusted  
4 base amounts under this subsection for the ensuing calendar  
5 year.

6 ~~(8) No adjustment to the base amounts specified under~~ ←  
7 ~~subsections (a) and (a.1) shall exceed three percent of the most~~  
8 ~~recently adjusted base amount~~ THE ANNUAL INCREASE IN THE ←  
9 PRELIMINARY ADJUSTED BASE AMOUNTS OBTAINED UNDER PARAGRAPHS (3)  
10 AND (4) SHALL NOT EXCEED THREE PERCENT.

11 \* \* \*

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

15 (1) Those for maintenance, repairs or replacements for  
16 water, electric light or public works of the borough, provided  
17 they do not constitute new additions, extensions or enlargements  
18 of existing facilities and equipment, but a bond may be required  
19 by council, as in other cases of work done;

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

27 (3) Those where particular types, models or pieces of new  
28 equipment, articles, apparatus, appliances, vehicles or parts  
29 thereof are desired by council, which are patented and  
30 manufactured or copyrighted products;

1 (3.1) Those for used equipment, articles, apparatus,  
2 appliances, vehicles or parts thereof being purchased from a  
3 public utility.

4 (4) Those involving any policies of insurance or surety  
5 company bonds; those made for public utility service under  
6 tariffs on file with the Pennsylvania Public Utility Commission;  
7 those made with another political subdivision, or a county, the  
8 Commonwealth of Pennsylvania, the Federal Government, any agency  
9 of the Commonwealth or the Federal Government, or any municipal  
10 authority, including the sale, leasing or loan of any supplies  
11 or materials by the Commonwealth or the Federal Government or  
12 their agencies. The price thereof shall not be in excess of that  
13 fixed by the Commonwealth, the Federal Government, or their  
14 agencies;

15 (5) Those involving personal or professional services.

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

20 (i) A political subdivision.

21 (ii) Another state.

22 (iii) The Commonwealth or an agency thereof.

23 (iv) The Federal Government.

24 (v) A private corporation.

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

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

30 (A) consists solely of Pennsylvania boroughs, such as a

1 consortium, buying group or municipal power agency under section  
2 2471.2; or

3 (B) consists of Pennsylvania boroughs and political  
4 subdivisions of another state or states.

5 (viii) An electric cooperative of another state.

6 Nothing in this clause shall prohibit council from engaging in  
7 advertising, bidding or price quotations if the council  
8 determines that the advertising, bidding or price quotations are  
9 in the public interest.

10 \* \* \*

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

13 Section 1403. Evasion of Advertising Requirements.--(a) No  
14 member or members of council shall evade the provisions of  
15 section 1402 hereof as to advertising for bids, by purchasing or  
16 contracting for services and personal properties piecemeal for  
17 the purpose of obtaining prices under [ten thousand dollars  
18 (\$10,000)] the amount specified or adjusted under section  
19 1402(a) upon transactions, which transactions should, in the  
20 exercise of reasonable discretion and prudence, be conducted as  
21 one transaction amounting to more than [ten thousand dollars  
22 (\$10,000)] the amount specified or adjusted under section  
23 1402(a). This provision is intended to make unlawful the evading  
24 of advertising requirements by making a series of purchases or  
25 contracts, each for less than the advertising requirement price,  
26 or by making several simultaneous purchases or contracts, each  
27 below said price, when, in either case, the transactions  
28 involved should have been made as one transaction for one price.  
29 Any members of council who so vote in violation of this  
30 provision and who know that the transaction upon which they so

1 vote is or ought to be a part of a larger transaction and that  
2 it is being divided in order to evade the requirements as to  
3 advertising for bids, shall be jointly and severally subject to  
4 surcharge for ten percent of the full amount of the contract or  
5 purchase. Whenever it shall appear that a member of council may  
6 have voted in violation of this section but the purchase or  
7 contract on which he so voted was not approved by council, this  
8 section shall be inapplicable.

9 \* \* \*

10 Section 1405. Separate Bids for Plumbing, Heating,  
11 Ventilating and Electrical Work.--In the preparation for the  
12 erection, construction and alteration of any public building,  
13 when the entire cost of such work shall exceed [ten thousand  
14 dollars (\$10,000)] the amount specified or adjusted under  
15 section 1402(a), the architect, engineer, or other person  
16 preparing such specifications may, if so requested by the  
17 borough council, prepare separate specifications for the  
18 plumbing, heating, ventilating and electrical work. The person  
19 or persons authorized to enter into contracts for the erection,  
20 construction or alteration of such public buildings may, if such  
21 separate specifications shall have been proposed, receive  
22 separate bids upon each of the said branches of work and shall  
23 thereupon award the contract for the same to the lowest  
24 responsible bidder for each of said branches.

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

28 Section 4. This act shall take effect immediately.