

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 286 Session of
2011

INTRODUCED BY GORDNER, EICHELBERGER, KASUNIC, FOLMER, BOSCOLA,
ORIE, RAFFERTY, YAW, M. WHITE, D. WHITE, ERICKSON, BAKER,
ALLOWAY, BRUBAKER, GREENLEAF, SMUCKER, FERLO, ROBBINS, VANCE,
EARLL, 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 May 27, 1953 (P.L.244, No.34), entitled "An
2 act relating to and regulating the contracts of incorporated
3 towns and providing penalties," further providing for
4 regulation of contracts; providing for adjustment; further
5 providing for evasion of advertising requirements, for
6 contracts between \$750 and \$10,000 and for separate bids for
7 plumbing, heating, ventilating and electrical work.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 2(a) of the act of May 27, 1953 (P.L.244,
11 No.34), entitled "An act relating to and regulating the
12 contracts of incorporated towns and providing penalties,"
13 amended July 10, 1990 (P.L.392, No.93), is amended to read:

14 Section 2. Regulation of Contracts.--(a) All contracts or
15 purchases of incorporated towns in excess of [ten thousand
16 dollars] ~~twenty five thousand~~ THE BASE AMOUNT OF EIGHTEEN
17 THOUSAND FIVE HUNDRED dollars subject to adjustment under
18 section 2.1, except those hereinafter mentioned, shall not be



1 made except with and from the lowest responsible bidder, after
2 due notice in one newspaper of general circulation published or
3 circulated in the county in which the town is situated at least
4 three times at intervals of not less than three days where daily
5 newspapers of general circulation are available for such
6 publication, and in case of weekly newspapers shall be published
7 once a week for two successive weeks. The first advertisement
8 shall be published not less than ten days prior to the date
9 fixed for the opening of bids. The amount of the contract shall
10 in all cases, whether of straight sale price, conditional sale,
11 bailment lease or otherwise, be the entire amount which the town
12 pays to the successful bidder or his assigns in order to obtain
13 the services or property or both, and shall not be construed to
14 mean only the amount which is paid to acquire title or to
15 receive any other particular benefit or benefits of the whole
16 bargain.

17 * * *

18 Section 2. The act is amended by adding a section to read:

19 ~~Section 2.1. Adjustment. (a) Every five years, beginning~~ ←
20 ~~with the year in which this subsection becomes applicable to~~
21 ~~contracts and purchases, the Department of Labor and Industry~~
22 ~~shall calculate the average percentage change in the Consumer~~
23 ~~Price Index for All Urban Consumers (CPI U) for the United~~
24 ~~States city average for all items as published by the United~~
25 ~~States Department of Labor, Bureau of Labor Statistics, for the~~
26 ~~preceding five year period.~~

27 ~~(b) The amount at which competitive bidding is required~~
28 ~~under section 2(a) and the amount at which written or telephonic~~
29 ~~price quotations are required under section 3.1 shall be~~
30 ~~adjusted every five years as follows:~~

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

8 ~~(2) In the case of written or telephonic price quotations,~~
9 ~~the positive percentage change, as determined in accordance with~~
10 ~~subsection (a), shall be multiplied by the amount applicable~~
11 ~~under section 3.1 for the current five year period and the~~
12 ~~product thereof shall be added to the amount applicable under~~
13 ~~section 3.1 for the current five year period, with the result~~
14 ~~rounded to the nearest multiple of one hundred dollars.~~

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

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

24 ~~(e) The Department of Labor and Industry shall give notice~~
25 ~~in the Pennsylvania Bulletin prior to January 1 of each calendar~~
26 ~~year in which the percentage change determined in accordance~~
27 ~~with subsection (a), and the amounts, whether adjusted or~~
28 ~~unadjusted in accordance with subsection (b), at which~~
29 ~~competitive bidding is required under section 2 and written or~~
30 ~~telephonic price quotations are required under section 3.1 for~~

1 ~~the five year period beginning the first day of January after~~
2 ~~publication of the notice.~~

3 SECTION 2.1. ADJUSTMENT.--ADJUSTMENTS TO THE BASE AMOUNTS
4 SPECIFIED UNDER SECTION 2 SHALL BE MADE AS FOLLOWS:

5 (1) THE DEPARTMENT OF LABOR AND INDUSTRY SHALL DETERMINE THE
6 PERCENTAGE CHANGE IN THE ALL ITEMS CONSUMER PRICE INDEX FOR ALL
7 URBAN CONSUMERS (CPI-U) FOR THE UNITED STATES CITY AVERAGE AS
8 PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF
9 LABOR STATISTICS FOR THE TWELVE-MONTH PERIOD ENDING SEPTEMBER
10 30, 2012, AND FOR EACH SUCCESSIVE TWELVE-MONTH PERIOD
11 THEREAFTER.

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

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

21 (II) THE PRELIMINARY ADJUSTED AMOUNTS SHALL BE ROUNDED TO
22 THE NEAREST ONE THOUSAND DOLLARS, TO DETERMINE THE FINAL
23 ADJUSTED BASE AMOUNTS FOR PURPOSES OF SECTION 2.

24 (4) IN EACH SUCCESSIVE YEAR IN WHICH THERE IS A POSITIVE
25 PERCENTAGE CHANGE IN THE CPI-U FOR THE UNITED STATES CITY
26 AVERAGE, THE POSITIVE PERCENTAGE CHANGE SHALL BE MULTIPLIED BY
27 THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS AND THE PRODUCTS
28 SHALL BE ADDED TO THE PRELIMINARY ADJUSTED AMOUNT OF THE PRIOR
29 YEAR TO CALCULATE THE PRELIMINARY ADJUSTED AMOUNTS FOR THE
30 CURRENT YEAR. THE SUMS THEREOF SHALL BE ROUNDED TO THE NEAREST

1 ONE THOUSAND DOLLARS TO DETERMINE THE NEW FINAL ADJUSTED BASE
2 AMOUNTS FOR PURPOSES OF SECTION 2.

3 (5) THE DETERMINATIONS AND ADJUSTMENTS REQUIRED UNDER THIS
4 SECTION SHALL BE MADE IN THE PERIOD BETWEEN OCTOBER 1 AND
5 NOVEMBER 15 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS
6 SECTION, AND ANNUALLY BETWEEN OCTOBER 1 AND NOVEMBER 15 OF EACH
7 YEAR THEREAFTER.

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

12 (7) THE DEPARTMENT SHALL PUBLISH NOTICE IN THE PENNSYLVANIA
13 BULLETIN PRIOR TO JANUARY 1 OF EACH CALENDAR YEAR OF THE ANNUAL
14 PERCENTAGE CHANGE DETERMINED UNDER PARAGRAPH (1) AND THE
15 UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS DETERMINED UNDER
16 PARAGRAPHS (3) AND (4) AT WHICH COMPETITIVE BIDDING AND WRITTEN
17 OR TELEPHONIC PRICE QUOTATIONS ARE REQUIRED UNDER SECTION 2,
18 RESPECTIVELY, FOR THE CALENDAR YEAR BEGINNING THE FIRST DAY OF
19 JANUARY AFTER PUBLICATION OF THE NOTICE. THE NOTICE SHALL
20 INCLUDE A WRITTEN AND ILLUSTRATIVE EXPLANATION OF THE
21 CALCULATIONS PERFORMED BY THE DEPARTMENT IN ESTABLISHING THE
22 UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS UNDER THIS SECTION FOR
23 THE ENSUING CALENDAR YEAR.

24 (8) NO ADJUSTMENT TO THE BASE AMOUNTS SPECIFIED UNDER
25 SECTION 2 SHALL EXCEED THREE PERCENT OF THE MOST RECENTLY
26 ADJUSTED BASE AMOUNT.

27 Section 3. Section 3 of the act, amended July 10, 1990
28 (P.L.392, No.93), is amended to read:

29 Section 3. Evasion of Advertising Requirements.--(a) No
30 member or members of council shall evade the provisions of

1 ~~[Section two hereof]~~ SECTION 2 by purchasing or contracting for ←
2 services and personal properties piecemeal for the purpose of
3 obtaining prices under [ten thousand dollars] ~~twenty five~~ ←
4 ~~thousand~~ THE BASE AMOUNT OF EIGHTEEN THOUSAND FIVE HUNDRED ←
5 dollars subject to adjustment under section 2.1 upon
6 transactions which transaction should, in the exercise of
7 reasonable discretion and prudence, be conducted as one
8 transaction amounting to ~~more than [ten thousand dollars]~~ ←
9 ~~twenty five thousand~~ A BASE AMOUNT OF MORE THAN [TEN THOUSAND ←
10 DOLLARS] EIGHTEEN THOUSAND FIVE HUNDRED dollars subject to
11 adjustment under section 2.1. This provision is intended to make
12 unlawful the evading of advertising requirements by making a
13 series of purchases or contracts each for less than the
14 advertising requirement of price, or by making several
15 simultaneous purchases or contracts each below said price, when,
16 in either case, the transactions involved should have been made
17 as one transaction for one price. Any members of council who so
18 vote in violation of this provision and who know that the
19 transaction upon which they so vote is or ought to be a part of
20 a larger transaction and that it is being divided in order to
21 evade the requirements as to advertising for bids shall be
22 jointly and severally subject to surcharge for ten per centum of
23 the full amount of the contract or purchase.

24 (b) Whenever it shall appear that a member of council may
25 have voted in violation of this section but the purchase or
26 contract on which he so voted was not approved by council, this
27 section shall be inapplicable.

28 (c) Any council member who votes to unlawfully evade the
29 provisions of section 2 and who knows that the transaction upon
30 which he so votes is or ought to be a part of a larger

1 transaction and that it is being divided in order to evade the
2 requirements as to advertising for bids commits a misdemeanor of
3 the third degree for each contract entered into as a direct
4 result of that vote. This penalty shall be in addition to any
5 surcharge which may be assessed pursuant to subsection (a).

6 Section 4. Section 3.1 of the act, amended July 10, 1990
7 (P.L.392, No.93) and repealed in part December 18, 1996 (P.L.
8 1140, No.170), is amended to read:

9 Section 3.1. [Contracts between Seven Hundred Fifty Dollars ←
10 and ~~ten thousand~~ ~~Twenty five Thousand~~ Dollars; Written ←
11 Bids.--] WRITTEN OR TELEPHONIC PRICE QUOTATIONS.-- ←

12 (b) Written or telephonic price quotations from at least
13 three qualified and responsible contractors shall be requested
14 for all contracts ~~that exceed [four thousand dollars]~~ ~~seven~~ ←
15 [THAT EXCEED FOUR THOUSAND DOLLARS] IN EXCESS OF THE BASE AMOUNT ←
16 OF TEN thousand dollars subject to adjustment under section 2.1
17 but are less than the amount requiring advertisement and
18 competitive bidding or, in lieu of price quotations, a
19 memorandum shall be kept on file showing that fewer than three
20 qualified contractors exist in the market area within which it
21 is practicable to obtain quotations. A written record of
22 telephonic price quotations shall be made and shall contain at
23 least the date of the quotation, the name of the contractor and
24 the contractor's representative, the construction,
25 reconstruction, repair, maintenance or work which was the
26 subject of the quotation and the price. Written price
27 quotations, written records of telephonic price quotations and
28 memoranda shall be retained for a period of three years.

29 Section 5. Section 5 of the act, amended July 10, 1990 (P.L.
30 392, No.93), is amended to read:

1 Section 5. Separate Bids for Plumbing, Heating, Ventilating
2 and Electrical Work.--In the preparation for the erection,
3 construction and alteration of any public building of an
4 incorporated town, when the entire cost of such work shall
5 exceed [ten thousand dollars] ~~twenty five thousand~~ A BASE AMOUNT ←
6 OF EIGHTEEN THOUSAND FIVE HUNDRED dollars subject to adjustment
7 under section 2.1, the architect, engineer or other person
8 preparing such specifications shall prepare separate
9 specifications for the plumbing, heating, ventilating and
10 electrical work. The person or persons authorized to enter into
11 contracts for the erection, construction or alteration of such
12 public buildings shall receive separate bids upon each of the
13 said branches of work and award the contract for the same to the
14 lowest responsible bidder for each of said branches.

15 Section 6. This act shall apply to contracts and purchases
16 advertised on or after January 1 of the year following the
17 effective date of this section.

18 Section 7. This act shall take effect immediately.