

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

AS AMENDED ON THIRD CONSIDERATION, SEPTEMBER 26, 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] the base amount of eighteen thousand five hundred
17 dollars subject to adjustment under section 2.1, except those
18 hereinafter mentioned, shall not be made except with and from
19 the lowest responsible bidder, after due notice in one newspaper

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

15 * * *

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

17 Section 2.1. Adjustment.--Adjustments to the base amounts
18 specified under section 2 shall be made as follows:

19 (1) The Department of Labor and Industry shall determine the
20 percentage change in the All Items Consumer Price Index for All
21 Urban Consumers (CPI-U) for the United States City Average as
22 published by the United States Department of Labor, Bureau of
23 Labor Statistics for the twelve-month period ending September
24 30, 2012, and for each successive twelve-month period
25 thereafter.

26 (2) If the department determines that there is no positive
27 percentage change, then no adjustment to the base amounts shall
28 occur for the relevant time period provided for in this section.

29 (3) (i) If the department determines that there is a
30 positive percentage change in the first year that the

1 determination is made under paragraph (1), the positive
2 percentage change shall be multiplied by each base amount and
3 the products shall be added to the base amounts, respectively,
4 and the sums shall be preliminary adjusted amounts.

5 (ii) The preliminary adjusted amounts shall be rounded to
6 the nearest one ~~thousand~~ HUNDRED dollars, to determine the final ←
7 adjusted base amounts for purposes of section 2.

8 (4) In each successive year in which there is a positive
9 percentage change in the CPI-U for the United States City
10 Average, the positive percentage change shall be multiplied by
11 the most recent preliminary adjusted amounts and the products
12 shall be added to the preliminary adjusted amount of the prior
13 year to calculate the preliminary adjusted amounts for the
14 current year. The sums thereof shall be rounded to the nearest
15 one ~~thousand~~ HUNDRED dollars to determine the new final adjusted ←
16 base amounts for purposes of section 2.

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

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

26 (7) The department shall publish notice in the Pennsylvania
27 Bulletin prior to January 1 of each calendar year of the annual
28 percentage change determined under paragraph (1) and the
29 unadjusted or final adjusted base amounts determined under
30 paragraphs (3) and (4) at which competitive bidding and written

1 or telephonic price quotations are required under section 2,
2 respectively, for the calendar year beginning the first day of
3 January after publication of the notice. The notice shall
4 include a written and illustrative explanation of the
5 calculations performed by the department in establishing the
6 unadjusted or final adjusted base amounts under this section for
7 the ensuing calendar year.

8 ~~(8) No adjustment to the base amounts specified under~~ ←
9 ~~section 2 shall exceed three percent of the most recently~~
10 ~~adjusted base amount~~ THE ANNUAL INCREASE IN THE PRELIMINARY ←
11 ~~ADJUSTED BASE AMOUNTS OBTAINED UNDER PARAGRAPHS (3) AND (4)~~
12 ~~SHALL NOT EXCEED THREE PER CENTUM.~~

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

15 Section 3. Evasion of Advertising Requirements.--(a) No
16 member or members of council shall evade the provisions of
17 [Section two hereof] section 2 by purchasing or contracting for
18 services and personal properties piecemeal for the purpose of
19 obtaining prices under [ten thousand dollars] the base amount of
20 eighteen thousand five hundred dollars subject to adjustment
21 under section 2.1 upon transactions which transaction should, in
22 the exercise of reasonable discretion and prudence, be conducted
23 as one transaction amounting to a base amount of more than [ten
24 thousand dollars] eighteen thousand five hundred dollars subject
25 to adjustment under section 2.1. This provision is intended to
26 make unlawful the evading of advertising requirements by making
27 a series of purchases or contracts each for less than the
28 advertising requirement of price, or by making several
29 simultaneous purchases or contracts each below said price, when,
30 in either case, the transactions involved should have been made

1 as one transaction for one price. Any members of council who so
2 vote in violation of this provision and who know that the
3 transaction upon which they so vote is or ought to be a part of
4 a larger transaction and that it is being divided in order to
5 evade the requirements as to advertising for bids shall be
6 jointly and severally subject to surcharge for ten per centum of
7 the full amount of the contract or purchase.

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

12 (c) Any council member who votes to unlawfully evade the
13 provisions of section 2 and who knows that the transaction upon
14 which he so votes is or ought to be a part of a larger
15 transaction and that it is being divided in order to evade the
16 requirements as to advertising for bids commits a misdemeanor of
17 the third degree for each contract entered into as a direct
18 result of that vote. This penalty shall be in addition to any
19 surcharge which may be assessed pursuant to subsection (a).

20 Section 4. Section 3.1 of the act, amended July 10, 1990
21 (P.L.392, No.93) and repealed in part December 18, 1996 (P.L.
22 1140, No.170), is amended to read:

23 Section 3.1. [Contracts between Seven Hundred Fifty Dollars
24 and Ten thousand Dollars; Written Bids.--] Written or Telephonic
25 Price Quotations.--

26 (b) 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] in excess
29 of the base amount of ten thousand dollars subject to adjustment
30 under section 2.1 but are less than the amount requiring

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

12 Section 5. Section 5 of the act, amended July 10, 1990 (P.L.
13 392, No.93), is amended to read:

14 Section 5. Separate Bids for Plumbing, Heating, Ventilating
15 and Electrical Work.--In the preparation for the erection,
16 construction and alteration of any public building of an
17 incorporated town, when the entire cost of such work shall
18 exceed [ten thousand dollars] a base amount of eighteen thousand
19 five hundred dollars subject to adjustment under section 2.1,
20 the architect, engineer or other person preparing such
21 specifications shall prepare separate specifications for the
22 plumbing, heating, ventilating and electrical work. The person
23 or persons authorized to enter into contracts for the erection,
24 construction or alteration of such public buildings shall
25 receive separate bids upon each of the said branches of work and
26 award the contract for the same to the lowest responsible bidder
27 for each of said branches.

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

1 Section 7. This act shall take effect immediately.