

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 REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 4, 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 1. SECTION 2(A) AND (D)(2) OF THE ACT OF MAY 27, ←
15 1953 (P.L.244, NO.34), ENTITLED "AN ACT RELATING TO AND
16 REGULATING THE CONTRACTS OF INCORPORATED TOWNS AND PROVIDING
17 PENALTIES," AMENDED JULY 10, 1990 (P.L.392, NO.93) AND DECEMBER
18 18, 1996 (P.L.1140, NO.170), ARE AMENDED TO READ:

1 Section 2. Regulation of Contracts.--(a) All contracts or
2 purchases of incorporated towns in excess of [ten thousand
3 dollars] the base amount of eighteen thousand five hundred
4 dollars subject to adjustment under section 2.1, except those
5 hereinafter mentioned, shall not be made except with and from
6 the lowest responsible bidder, after due notice in one newspaper
7 of general circulation published or circulated in the county in
8 which the town is situated at least three times at intervals of
9 not less than three days where daily newspapers of general
10 circulation are available for such publication, and in case of
11 weekly newspapers shall be published once a week for two
12 successive weeks. The first advertisement shall be published not
13 less than ten days prior to the date fixed for the opening of
14 bids. The amount of the contract shall in all cases, whether of
15 straight sale price, conditional sale, bailment lease or
16 otherwise, be the entire amount which the town pays to the
17 successful bidder or his assigns in order to obtain the services
18 or property or both, and shall not be construed to mean only the
19 amount which is paid to acquire title or to receive any other
20 particular benefit or benefits of the whole bargain.

21 * * *

22 (D) THE CONTRACTS OR PURCHASES MADE BY COUNCIL, WHICH SHALL ←
23 NOT REQUIRE ADVERTISING, BIDDING OR PRICE QUOTATIONS AS
24 HEREINBEFORE PROVIDED, ARE AS FOLLOWS:

25 * * *

26 (2) THOSE MADE FOR IMPROVEMENTS, REPAIRS AND MAINTENANCE OF
27 ANY KIND MADE OR PROVIDED BY ANY INCORPORATED TOWN THROUGH ITS
28 OWN EMPLOYEES: PROVIDED, THAT ALL MATERIALS USED FOR STREET
29 IMPROVEMENT, MAINTENANCE AND/OR CONSTRUCTION IN EXCESS OF [FOUR]
30 THE BASE AMOUNT OF TEN THOUSAND DOLLARS BE SUBJECT TO THE

1 RELEVANT PRICE QUOTATION OR ADVERTISING REQUIREMENTS CONTAINED
2 HEREIN AND TO ADJUSTMENT UNDER SECTION 2.1.

3 * * *

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

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

7 (1) The Department of Labor and Industry shall determine the
8 percentage change in the All Items Consumer Price Index for All
9 Urban Consumers (CPI-U) for the United States City Average as
10 published by the United States Department of Labor, Bureau of
11 Labor Statistics for the twelve-month period ending September
12 30, 2012, and for each successive twelve-month period
13 thereafter.

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

17 (3) (i) If the department determines that there is a
18 positive percentage change in the first year that the
19 determination is made under paragraph (1), the positive
20 percentage change shall be multiplied by each base amount and
21 the products shall be added to the base amounts, respectively,
22 and the sums shall be preliminary adjusted amounts.

23 (ii) The preliminary adjusted amounts shall be rounded to
24 the nearest one hundred dollars, to determine the final adjusted
25 base amounts for purposes of section 2.

26 (4) In each successive year in which there is a positive
27 percentage change in the CPI-U for the United States City
28 Average, the positive percentage change shall be multiplied by
29 the most recent preliminary adjusted amounts and the products
30 shall be added to the preliminary adjusted amount of the prior

1 year to calculate the preliminary adjusted amounts for the
2 current year. The sums thereof shall be rounded to the nearest
3 one hundred dollars to determine the new final adjusted base
4 amounts for purposes of section 2.

5 (5) The determinations and adjustments required under this
6 section shall be made in the period between October 1 and
7 November 15 of the year following the effective date of this
8 section, and annually between October 1 and November 15 of each
9 year thereafter.

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

14 (7) The department shall publish notice in the Pennsylvania
15 Bulletin prior to January 1 of each calendar year of the annual
16 percentage change determined under paragraph (1) and the
17 unadjusted or final adjusted base amounts determined under
18 paragraphs (3) and (4) at which competitive bidding and written
19 or telephonic price quotations are required under section 2,
20 respectively, for the calendar year beginning the first day of
21 January after publication of the notice. The notice shall
22 include a written and illustrative explanation of the
23 calculations performed by the department in establishing the
24 unadjusted or final adjusted base amounts under this section for
25 the ensuing calendar year.

26 (8) The annual increase in the preliminary adjusted base
27 amounts obtained under paragraphs (3) and (4) shall not exceed
28 three per centum.

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

1 Section 3. Evasion of Advertising Requirements.--(a) No
2 member or members of council shall evade the provisions of
3 [Section two hereof] section 2 by purchasing or contracting for
4 services and personal properties piecemeal for the purpose of
5 obtaining prices under [ten thousand dollars] the base amount of
6 eighteen thousand five hundred dollars subject to adjustment
7 under section 2.1 upon transactions which transaction should, in
8 the exercise of reasonable discretion and prudence, be conducted
9 as one transaction amounting to ~~a~~ THE base amount of more than ←
10 [ten thousand dollars] eighteen thousand five hundred dollars
11 subject to adjustment under section 2.1. This provision is
12 intended to make unlawful the evading of advertising
13 requirements by making a series of purchases or contracts each
14 for less than the advertising requirement of price, or by making
15 several simultaneous purchases or contracts each below said
16 price, when, in either case, the transactions involved should
17 have been made as one transaction for one price. Any members of
18 council who so vote in violation of this provision and who know
19 that the transaction upon which they so vote is or ought to be a
20 part of a larger transaction and that it is being divided in
21 order to evade the requirements as to advertising for bids shall
22 be jointly and severally subject to surcharge for ten per centum
23 of 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 Dollars; Written Bids.--] Written or Telephonic
11 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] in excess
15 of the base amount of ten thousand dollars subject to adjustment
16 under section 2.1 but are less than the amount requiring
17 advertisement and competitive bidding or, in lieu of price
18 quotations, a memorandum shall be kept on file showing that
19 fewer than three qualified contractors exist in the market area
20 within which it is practicable to obtain quotations. A written
21 record of telephonic price quotations shall be made and shall
22 contain at least the date of the quotation, the name of the
23 contractor and the contractor's representative, the
24 construction, reconstruction, repair, maintenance or work which
25 was the subject of the quotation and the price. Written price
26 quotations, written records of telephonic price quotations and
27 memoranda shall be retained for a period of three years.

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

30 Section 5. Separate Bids for Plumbing, Heating, Ventilating

1 and Electrical Work.--In the preparation for the erection,
2 construction and alteration of any public building of an
3 incorporated town, when the entire cost of such work shall
4 exceed [ten thousand dollars] a THE base amount of eighteen ←
5 thousand five hundred dollars subject to adjustment under
6 section 2.1, the architect, engineer or other person preparing
7 such specifications shall prepare separate specifications for
8 the plumbing, heating, ventilating and electrical work. The
9 person or persons authorized to enter into contracts for the
10 erection, construction or alteration of such public buildings
11 shall receive separate bids upon each of the said branches of
12 work and award the contract for the same to the lowest
13 responsible bidder for each of said branches.

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

17 Section 7. This act shall take effect immediately.