

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 287 Session of 2011

INTRODUCED BY FERLO, EICHELBERGER, KASUNIC, FOLMER, GORDNER, BOSCOLA, ORIE, RAFFERTY, YAW, M. WHITE, D. WHITE, ERICKSON, BAKER, ALLOWAY, BRUBAKER, GREENLEAF, SMUCKER, WAUGH, ROBBINS, VANCE, EARLL, SCARNATI, McILHINNEY AND PICCOLA, JANUARY 26, 2011

REFERRED TO LOCAL GOVERNMENT, JANUARY 26, 2011

AN ACT

1 Amending Titles 53 (Municipalities Generally) and 74
 2 (Transportation) of the Pennsylvania Consolidated Statutes,
 3 further providing for competitive bidding of contracts by
 4 intergovernmental units, by parking authorities, by municipal
 5 authorities and by metropolitan transportation authorities.

6 The General Assembly of the Commonwealth of Pennsylvania
 7 hereby enacts as follows:

8 Section 1. Section 2308 of Title 53 of the Pennsylvania
 9 Consolidated Statutes is amended to read:

10 § 2308. Bids for certain joint purchases.

11 (a) Notice.--All joint purchases involving an expenditure of
 12 more than [\$10,000] \$25,000, subject to adjustment under
 13 subsection (b), shall be made by contract, in writing, only
 14 after notice for bids once a week for two weeks in at least one
 15 and not more than two newspapers of general circulation in the
 16 joining local governments. All contracts shall be let to the
 17 lowest responsible bidder. Every contract for the construction,
 18 reconstruction, alteration, repair, improvement or maintenance

1 of public works shall comply with the provisions of the act of
2 March 3, 1978 (P.L.6, No.3), known as the Steel Products
3 Procurement Act.

4 (b) Adjustment.--

5 (1) Every five years, beginning with the year in which
6 this subsection becomes applicable to contracts and
7 purchases, the Department of Labor and Industry shall
8 calculate the average percentage change in the Consumer Price
9 Index for All Urban Consumers (CPI-U) for the United States
10 city average for all items as published by the United States
11 Department of Labor, Bureau of Labor Statistics, for the
12 preceding five-year period.

13 (2) The amount at which competitive bidding is required
14 under subsection (a) shall be adjusted every five years. The
15 positive percentage change, as determined in accordance with
16 paragraph (1), shall be multiplied by the amount applicable
17 under subsection (a) for the current five-year period, and
18 the product thereof shall be added to the amount applicable
19 under subsection (a) for the current five-year period with
20 the result rounded to the nearest multiple of \$100.

21 (3) The determination required under paragraph (1) and
22 the calculation of the adjustments required under paragraph
23 (2) shall be made in the period between October 1 and
24 November 15 of the year following the effective date of this
25 subsection and between October 1 and November 15 of each
26 successive year.

27 (4) The adjusted amounts obtained in accordance with
28 paragraph (2) shall become effective January 1 for the five-
29 year period following the year in which the determination
30 required under paragraph (1) is made.

1 (5) The Department of Labor and Industry shall give
2 notice in the Pennsylvania Bulletin prior to January 1 of
3 each calendar year in which the percentage change determined
4 in accordance with paragraph (1) and the amounts, whether
5 adjusted or unadjusted in accordance with paragraph (2), at
6 which competitive bidding is required under subsection (a)
7 for the five-year period beginning the first day of January
8 after publication of the notice.

9 Section 2. Sections 5511(c) and (h) (1) and 5614(a) (1), (b),
10 (c) and (h) (1) of Title 53 are amended and the sections are
11 amended by adding subsections to read:

12 § 5511. Competition in award of contracts.

13 * * *

14 (c) Quotations.--Written or telephonic price quotations from
15 at least three qualified and responsible contractors shall be
16 requested for a contract which exceeds [~~\$4,000~~] \$7,000, subject
17 to adjustment under subsection (c.1), but is less than the
18 amount requiring advertisement and competitive bidding. In lieu
19 of price quotations, a memorandum shall be kept on file showing
20 that fewer than three qualified contractors exist in the market
21 area within which it is practicable to obtain quotations. A
22 written record of telephonic price quotations shall be made and
23 shall contain at least the date of the quotation; the name of
24 the contractor and the contractor's representative; the
25 construction, reconstruction, repair, maintenance or work which
26 was the 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 (c.1) Adjustments.--

30 (1) Every five years, beginning with the year in which

1 this subsection becomes applicable to contracts and
2 purchases, the Department of Labor and Industry shall
3 calculate the average percentage change in the Consumer Price
4 Index for All Urban Consumers (CPI-U) for the United States
5 city average for all items as published by the United States
6 Department of Labor, Bureau of Labor Statistics, for the
7 preceding five-year period.

8 (2) The amount at which competitive bidding is required
9 under subsection (a) or (b) and the amount at which written
10 or telephonic price quotations are required under subsection
11 (c) shall be adjusted every five years as follows:

12 (i) For subsections (a) and (b):

13 (A) Multiply the positive percentage change
14 under paragraph (1) by the amount applicable under
15 subsection (a) or (b) for the current five-year
16 period.

17 (B) Add the product under clause (A) to the
18 amount applicable under subsection (a) or (b) for the
19 current five-year period.

20 (C) Round the sum under clause (B) to the
21 nearest multiple of \$100.

22 (ii) For subsection (c):

23 (A) Multiply the positive percentage change, as
24 determined under paragraph (1) by the amount
25 applicable under subsection (c) for the current five-
26 year period.

27 (B) Add the product under clause (A) to the
28 amount applicable under subsection (c) for the
29 current five-year period.

30 (C) Round the sum under clause (B) to the

1 nearest multiple of \$100.

2 (3) The determination required under paragraph (1) and
3 the calculation of the adjustments required under paragraph
4 (2) shall be made in the period between October 1 and
5 November 15 of the year following the effective date of this
6 subsection and between October 1 and November 15 of each
7 successive year.

8 (4) The adjusted amounts obtained under paragraph (2)
9 shall become effective January 1 for the five-year period
10 following the year in which the determination required under
11 paragraph (1) is made.

12 (5) The department shall give notice in the Pennsylvania
13 Bulletin prior to January 1 of each calendar year in which
14 the percentage change determined in accordance with paragraph
15 (1) and the amounts, whether adjusted or unadjusted in
16 accordance with paragraph (2), at which competitive bidding
17 is required under subsection (a) or (b) and written or
18 telephonic price quotations are required under subsection (c)
19 for the five-year period beginning the first day of January
20 after publication of the notice.

21 * * *

22 (h) Evasion.--

23 (1) An authority may not evade the provisions of this
24 section as to bids or purchasing materials or contracting for
25 services piecemeal for the purpose of obtaining prices under
26 [\$25,000] the amount required by this section upon
27 transactions which should, in the exercise of reasonable
28 discretion and prudence, be conducted as one transaction
29 amounting to more than [\$25,000] the amount required by this
30 section.

1 * * *

2 § 5614. Competition in award of contracts.

3 (a) Services.--

4 (1) Except as set forth in paragraph (2), all
5 construction, reconstruction, repair or work of any nature
6 made by an authority if the entire cost, value or amount,
7 including labor and materials, exceeds [\$10,000] \$25,000,
8 subject to adjustment under subsection (c.1), shall be done
9 only under contract to be entered into by the authority with
10 the lowest responsible bidder upon proper terms after public
11 notice asking for competitive bids as provided in this
12 section.

13 * * *

14 (b) Supplies and materials.--All supplies and materials
15 costing at least [\$10,000] \$25,000, subject to adjustment under
16 subsection (c.1), shall be purchased only after advertisement as
17 provided in this section. The authority shall accept the lowest
18 bid, kind, quality and material being equal, but the authority
19 shall have the right to reject any or all bids or select a
20 single item from any bid. The provisions as to bidding shall not
21 apply to the purchase of patented and manufactured products
22 offered for sale in a noncompetitive market or solely by a
23 manufacturer's authorized dealer.

24 (c) Quotations.--Written or telephonic price quotations from
25 at least three qualified and responsible contractors shall be
26 requested for a contract which exceeds [\$4,000] \$7,000, subject
27 to adjustment under subsection (c.1), but is less than the
28 amount requiring advertisement and competitive bidding. In lieu
29 of price quotations, a memorandum shall be kept on file showing
30 that fewer than three qualified contractors exist in the market

1 area within which it is practicable to obtain quotations. A
2 written record of telephonic price quotations shall be made and
3 shall contain at least the date of the quotation; the name of
4 the contractor and the contractor's representative; the
5 construction, reconstruction, repair, maintenance or work which
6 was the subject of the quotation; and the price. Written price
7 quotations, written records of telephonic price quotations and
8 memoranda shall be retained for a period of three years.

9 (c.1) Adjustments.--

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

18 (2) The amount at which competitive bidding is required
19 under subsection (a)(1) or (b) and the amount at which
20 written or telephonic price quotations are required under
21 subsection (c) shall be adjusted every five years as follows:

22 (i) For subsections (a)(1) and (b):

23 (A) Multiply the positive percentage change
24 under paragraph (1) by the amount applicable under
25 subsection (a) or (b) for the current five-year
26 period.

27 (B) Add the product under clause (A) to the
28 amount applicable under subsection (a)(1) or (b) for
29 the current five-year period.

30 (C) Round the sum under clause (B) to the

1 nearest multiple of \$100.

2 (ii) For subsection (c):

3 (A) Multiply the positive percentage change, as
4 determined under paragraph (1) by the amount
5 applicable under subsection (c) for the five-year
6 period.

7 (B) Add the product under clause (A) to the
8 amount applicable under subsection (c) for the
9 current five-year period.

10 (C) Round the sum under clause (B) to the
11 nearest multiple of \$100.

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

18 (4) The adjusted amounts obtained under paragraph (2)
19 shall become effective January 1 for the five-year period
20 following the year in which the determination required under
21 paragraph (1) is made.

22 (5) The department shall give notice in the Pennsylvania
23 Bulletin prior to January 1 of each calendar year in which
24 the percentage change determined in accordance with paragraph
25 (1) and the amounts, whether adjusted or unadjusted in
26 accordance with paragraph (2), at which competitive bidding
27 is required under subsection (a)(1) or (b) and written or
28 telephonic price quotations are required under subsection (c)
29 for the five-year period beginning the first day of January
30 after publication of the notice.

1 * * *

2 (h) Evasion.--

3 (1) An authority may not evade the provisions of this
4 section as to bids or purchasing materials or contracting for
5 services piecemeal for the purpose of obtaining prices under
6 [\$10,000] the amount required by this section upon
7 transactions which should, in the exercise of reasonable
8 discretion and prudence, be conducted as one transaction
9 amounting to more than [\$10,000] the amount required by this
10 section.

11 * * *

12 Section 3. Section 1750 of Title 74 is amended to read:

13 § 1750. Contracts, procurement and sale of property.

14 (a) Competitive bids.--Except in the purchase of unique
15 articles or articles which, for any other reason, cannot be
16 obtained in the open market and except as provided in section
17 1741 (relating to general powers) and as provided in this
18 chapter, competitive bids shall be secured before any purchase
19 or sale, by contract or otherwise, is made or before any
20 contract is awarded for construction, alterations, supplies,
21 equipment, repairs or maintenance or for rendering any services
22 to the authority other than professional services. Purchases
23 shall be made from or the contract shall be awarded to the
24 lowest responsive, responsible bidder. Sales shall be made to
25 the highest responsive, responsible bidder. No purchase of any
26 unique article or other articles which cannot be obtained in the
27 open market shall be made without express approval of the board
28 where the amount involved is in excess of \$25,000. The authority
29 shall not be subject to [the act of November 26, 1978 (P.L.1309,
30 No.317), referred to as the Public Works Contract Regulation

1 Law.] 62 Pa.C.S. Ch. 39 (relating to contracts for public
2 works). Nothing in this section or any other law of this
3 Commonwealth shall require the authority to competitively bid
4 architectural design, engineering, construction management or
5 other professional services required by the authority.

6 (b) Procedure.--All purchases and sales in excess of \$25,000
7 shall be awarded after advertising in a local newspaper of
8 general circulation in the metropolitan area at least two weeks
9 prior to the bid opening. Bids shall be publicly opened and read
10 aloud at a date, time and place designated in the invitation to
11 bid. Invitations to bid shall be sent at least one week prior to
12 the bid opening to at least three potential bidders who are
13 qualified technically and financially to submit bids, or, in
14 lieu thereof, a memorandum shall be kept on file showing that
15 less than three potential bidders so qualified exist in the
16 market area within which it is practicable to obtain bids.

17 [(c) Qualified vendors.--Written price quotations from at
18 least three qualified and responsible vendors shall be solicited
19 for all purchases and sales under \$25,000 and over \$10,000, or,
20 in lieu thereof, a memorandum approved by the general manager
21 shall be kept on file showing that less than three vendors so
22 qualified exist in the market area within which it is
23 practicable to obtain quotations, except as provided in this
24 chapter.]

25 (d) Small purchases.--[Purchases] Except as set forth in 62
26 Pa.C.S. § 3742 (relating to procurement limits for mass
27 transportation authorities), purchases or sales under [\$10,000]
28 \$25,000, subject to adjustment under subsection (1), may be
29 negotiated with or without competitive bidding under sound
30 procurement procedures as promulgated and established by the

1 general manager.

2 (e) Waiver.--Competitive bidding requirements may be waived
3 if it is determined by the general manager, or in such other
4 manner as the board may provide, that an emergency directly and
5 immediately affecting customer service or public health, safety
6 or welfare requires immediate delivery of supplies, materials,
7 equipment or services. A record of circumstances explaining the
8 emergency shall be submitted to the board at its next regular
9 meeting and thereafter kept on file.

10 (f) Sale or lease of real property.--Contracts for the sale
11 or lease of real property owned by the authority shall be
12 awarded after competitive bidding as shown in subsection (b),
13 except as provided in section 1741(a)(22) where the contract is
14 entered into with the Commonwealth or any government agency or
15 with the United States government or any agency or
16 instrumentality thereof or as provided in section 1741(a)(24).

17 (g) Property management contracts.--Contracts for the
18 management of authority-owned property, such as bus routes or
19 subway systems, may be negotiated and awarded by an affirmative
20 vote of one more than a majority of all members of the board.

21 (h) Avoidance prohibited.--Requirements shall not be split
22 into parts for the purpose of avoiding the provisions of this
23 section.

24 (i) Rejection of bids.--The authority shall have the right
25 to reject any or all bids or parts of any or all bids, whenever,
26 in the opinion of the board, rejection is necessary for the
27 protection of the interests of the authority. In every case, a
28 record shall be made setting forth the reason for the rejection,
29 which record shall thereafter be kept on file.

30 (j) Rules and regulations.--The board may by resolution

1 adopt policies to effectuate the provisions of this section.

2 (k) Concessions.--All concessions granted by the authority
3 for the sale of products or the rendition of services for a
4 consideration on authority property shall be awarded only under
5 written specifications after competitive bidding and to the
6 highest responsive, responsible bidder in a manner similar to
7 that required by subsection (b) [or (c) as appropriate]. This
8 requirement for competitive bidding shall not apply to any
9 concession which has been granted by a transportation system
10 acquired by the authority and which by the terms of the
11 agreement granting it will terminate within one year from date
12 of the acquisition of the transportation system by the authority
13 nor to any concession involving the estimated receipt by the
14 authority of less than [~~\$10,000~~] \$25,000, subject to adjustment
15 under subsection (l), over the period for which the concession
16 is granted.

17 (l) Consumer Price Index adjustments.--

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

26 (2) The amount at which competitive bidding is required
27 under subsection (b) or (k) and the amount at which
28 competitive bidding may apply to purchases and sales under
29 subsection (d) shall be adjusted every five years as follows:

30 (i) For subsections (b) and (k):

1 (A) Multiply the positive percentage change
2 under paragraph (1) by the amount applicable under
3 subsection (b) or (k) for the current five-year
4 period.

5 (B) Add the product under clause (A) to the
6 amount applicable under subsection (b) or (k) for the
7 current five-year period.

8 (C) Round the sum under clause (B) to the
9 nearest multiple of \$100.

10 (ii) For subsection (d):

11 (A) Multiply the positive percentage change, as
12 determined under paragraph (1) by the amount
13 applicable under subsection (d) for the current five-
14 year period.

15 (B) Add the product under clause (A) to the
16 amount applicable under subsection (d) for the
17 current five-year period.

18 (C) Round the sum under clause (B) to the
19 nearest multiple of \$100.

20 (3) The determination required under paragraph (1) and
21 the calculation of the adjustments required under paragraph
22 (2) shall be made in the period between October 1 and
23 November 15 of the year following the effective date of this
24 subsection and between October 1 and November 15 of each
25 successive year.

26 (4) The adjusted amounts obtained in accordance with
27 paragraph (2) shall become effective January 1 for the five-
28 year period following the year in which the determination
29 required under paragraph (1) is made.

30 (5) The Department of Labor and Industry shall give

1 notice in the Pennsylvania Bulletin prior to January 1 of
2 each calendar year in which the percentage change determined
3 in accordance with paragraph (1) and the amounts, whether
4 adjusted or unadjusted in accordance with paragraph (2), at
5 which competitive bidding is required under subsection (b) or
6 (k) and the amount at which competitive bidding may apply to
7 purchases and sales under subsection (d) for the five-year
8 period beginning the first day of January after publication
9 of the notice.

10 Section 4. This act shall apply to contracts and purchases
11 advertised after December 31 of the year in which this section
12 takes effect.

13 Section 5. This act shall take effect immediately.