

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 288 Session of 2011

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

REFERRED TO LOCAL GOVERNMENT, JANUARY 26, 2011

AN ACT

1 Amending the act of July 28, 1953 (P.L.723, No.230), entitled,  
2 as amended, "An act relating to counties of the second class  
3 and second class A; amending, revising, consolidating and  
4 changing the laws relating thereto," further regulating  
5 contracts and purchases.

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

8 Section 1. The act of July 28, 1953 (P.L.723, No.230), known  
9 as the Second Class County Code, is amended by adding a section  
10 to read:

11 Section 112. Adjustments Based on Consumer Price Index.--(a)  
12 Every five years, beginning with the year in which this  
13 subsection becomes applicable to contracts and purchases, the  
14 Department of Labor and Industry shall calculate the average  
15 percentage change in the Consumer Price Index for All Urban  
16 Consumers (CPI-U) for the United States city average for all  
17 items as published by the United States Department of Labor,  
18 Bureau of Labor Statistics, for the preceding five-year period.

1     (b) The amounts at which competitive bidding, separate bids  
2 and written or telephonic price quotations are required under  
3 this act shall be adjusted every five years. The positive  
4 percentage change, as determined in accordance with subsection  
5 (a), shall be multiplied by the applicable amount for the  
6 current five-year period and the product thereof shall be added  
7 to the applicable amount for the current five-year period, with  
8 the result rounded to the nearest multiple of one hundred  
9 dollars (\$100).

10     (c) The determination required under subsection (a) and the  
11 calculation of the adjustments required under subsection (b)  
12 shall be made in the period between October 1 and November 15 of  
13 the year following the effective date of this section, and  
14 between October 1 and November 15 of each successive year.

15     (d) The adjusted amounts obtained in accordance with  
16 subsection (b) shall become effective January 1 for the five-  
17 year period following the year in which the determination  
18 required under subsection (a) is made.

19     (e) The Department of Labor and Industry shall give notice  
20 in the Pennsylvania Bulletin prior to January 1 of each calendar  
21 year in which the percentage change determined in accordance  
22 with subsection (a) and the amounts, whether adjusted or  
23 unadjusted in accordance with subsection (b), at which  
24 competitive bidding, separate bids and written or telephonic  
25 price quotations are required under this act for the five-year  
26 period beginning the first day of January after publication of  
27 the notice.

28     Section 2. Section 2001(a) and (d) of the act, amended  
29 November 30, 2004 (P.L.1439, No.186), are amended to read:

30     Section 2001. County Commissioners to Make Contracts.--The

1 County Commissioners may make contracts for lawful purposes and  
2 for the purposes of carrying into execution the provisions of  
3 this section and the laws of the Commonwealth.

4 (a) Except as provided in subsection (a.1), all contracts or  
5 purchases in excess of [ten thousand dollars (\$10,000)] twenty-  
6 five thousand dollars (\$25,000), subject to adjustment under  
7 section 112, shall be in writing and, except those hereinafter  
8 mentioned and except as provided by the act of October 27, 1979  
9 (P.L.241, No.78), entitled "An act authorizing political  
10 subdivisions, municipality authorities and transportation  
11 authorities to enter into contracts for the purchase of goods  
12 and the sale of real and personal property where no bids are  
13 received," shall not be made except with and from the lowest  
14 responsible and responsive bidder meeting specifications, after  
15 due notice in at least one newspaper of general circulation,  
16 published or circulating in the county at least two (2) times,  
17 at intervals of not less than three (3) days where daily  
18 newspapers of general circulation are employed for such  
19 publication, or in case weekly newspapers are employed, then the  
20 notice shall be published once a week for two (2) successive  
21 weeks. The first advertisement shall be published not less than  
22 ten (10) days prior to the date fixed for the opening of bids.

23 \* \* \*

24 (d) The contracts or purchases made by the commissioners  
25 involving an expenditure of over [ten thousand dollars  
26 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to  
27 adjustment under section 112, which shall not require  
28 advertising or bidding as hereinbefore provided are as follows:

29 (1) Those for maintenance, repairs or replacements for  
30 water, electric light, or other public works: Provided, That

1 they do not constitute new additions, extensions or enlargements  
2 of existing facilities and equipment. Security may be required  
3 by the county commissioners as in other cases of work done.

4 (2) Those made for improvements, repairs and maintenance of  
5 any kind made or provided by the county through its own  
6 employes. This paragraph shall not apply to construction  
7 materials used in a street improvement.

8 (3) Those where particular types, models or pieces of new  
9 equipment, articles, apparatus, appliances, vehicles or parts  
10 thereof are desired by the county commissioners, which are  
11 patented and manufactured products or copyrighted products.

12 (4) Those involving any policies of insurance or surety  
13 company bonds, those made for public utility service and  
14 electricity, natural gas or telecommunication services:

15 Provided, That, in the case of utilities not under tariffs on  
16 file with the Pennsylvania Public Utility Commission, contracts  
17 made without advertising and bidding shall be made only after  
18 receiving written or telephonic price quotations from at least  
19 three (3) qualified and responsible contractors, or in lieu of  
20 price quotations a memorandum shall be kept on file showing that  
21 fewer than three (3) qualified contractors exist in the market  
22 area within which it is practicable to obtain quotations. A  
23 written record of telephonic price quotations shall be made and  
24 contain at least the date of the quotation, the name of the  
25 contractor and the contractor's representative.

26 (5) Those involving personal or professional services,  
27 including, but not limited to, services of members of the  
28 medical or legal profession, registered architects, engineers,  
29 certified public accountants or other personal services  
30 involving professional expertise.

1 (6) Those involving tangible client services provided by  
2 nonprofit agencies. For the purposes of this clause, the term  
3 "tangible client services" shall mean congregate meals, home-  
4 delivered meals, transportation and chore services provided  
5 through area agencies on aging.

6 (6.1) Those involving contracts entered into by nonprofit  
7 cooperative hospital service associations for hospitals and  
8 nursing homes which are part of the institutional district or  
9 which are owned by the county, operated by the county or  
10 affiliated with the county by the purchasing of or participating  
11 in contracts for materials, supplies and equipment.

12 (7) Those involving the purchase of milk.

13 (8) Those made with any public body, including, but not  
14 limited to, the sale, lease or loan of any supplies or materials  
15 to the county by a public body, provided that the price thereof  
16 shall not be in excess of that fixed by the public body. The  
17 requirements of 53 Pa.C.S. Ch. 23 Subch. A (relating to  
18 intergovernmental cooperation) shall not apply when a county  
19 purchases cooperatively with another public body which has  
20 entered into a contract for supplies or materials. As used in  
21 this paragraph, "public body" shall mean any of the following:

22 (i) the Federal Government;

23 (ii) the Commonwealth of Pennsylvania;

24 (iii) any other state;

25 (iv) a political subdivision, local or municipal authority  
26 or other similar local entity of the Commonwealth or any other  
27 state; or

28 (v) an agency of the Federal Government, the Commonwealth or  
29 any other state.

30 (9) Those exclusively involving construction management

1 services.

2 (10) Those involving computer software.

3 \* \* \*

4 Section 3. Section 2517(a) of the act, amended December 9,  
5 2002 (P.L.1383, No.170), is amended to read:

6 Section 2517. Separate Specifications and Contracts for  
7 Certain Items.--(a) In the preparation of specifications for  
8 the erection, construction and alteration of any public  
9 building, when the entire cost of such work shall exceed [ten  
10 thousand dollars (\$10,000)] twenty-five thousand dollars  
11 (\$25,000), subject to adjustment under section 112, the  
12 architect, engineer or other person preparing such  
13 specifications shall prepare separate specifications for the  
14 plumbing, heating, ventilating and electrical work. The board of  
15 commissioners shall receive separate bids upon each of the said  
16 branches of work and award the contract for the same to the  
17 lowest responsible bidder for each of said branches.

18 \* \* \*

19 Section 4. Section 2511-A(a), (b), (b.1) and (h) of the act,  
20 added October 30, 2000 (P.L.616, No.85), are amended to read:

21 Section 2511-A. Competition in Award of Contracts.--(a) All  
22 construction, reconstruction, repairs or work of any nature made  
23 by any Authority, where the entire cost, value or amount of such  
24 construction, reconstruction, repairs or work, including labor  
25 and materials, shall exceed [ten thousand dollars (\$10,000)]  
26 twenty-five thousand dollars (\$25,000), subject to adjustment  
27 under section 112, except construction, reconstruction, repairs  
28 or work done by employes of said Authority or by labor supplied  
29 under agreement with any Federal or State agency with supplies  
30 and materials purchased, as hereinafter provided, shall be done

1 only under contract or contracts to be entered into by the  
2 Authority with the lowest responsible bidder upon proper terms,  
3 after due public notice has been given asking for competitive  
4 bids hereinafter provided. No contract shall be entered into for  
5 construction or improvement or repair of any project or portion  
6 thereof unless the contractor shall give an undertaking, with a  
7 sufficient surety or sureties approved by the Authority and in  
8 an amount fixed by the Authority, for the faithful performance  
9 of the contract. All such contracts shall provide, among other  
10 things, that the person or corporation entering into such  
11 contract with the Authority will pay for all materials furnished  
12 and services rendered for the performance of the contract and  
13 that any person or corporation furnishing such materials or  
14 rendering such services may maintain an action to recover for  
15 the same against the obligor in the undertaking as though such  
16 person or corporation was named therein, provided the action is  
17 brought within one (1) year after the time the cause of action  
18 accrued. Nothing in this section shall be construed to limit the  
19 power of the Authority to construct, repair or improve any  
20 project or portion thereof or any addition, betterment or  
21 extension thereto directly by the officers, agents and employes  
22 of the Authority or otherwise than by contract.

23 (b) All supplies and materials costing [ten thousand dollars  
24 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to  
25 adjustment under section 112, or more shall be purchased only  
26 after due advertisement as hereinafter provided. The Authority  
27 shall accept the lowest bid or bids, kinds, quality and material  
28 being equal, but the Authority shall have the right to reject  
29 any or all bids or select a single item from any bid. The  
30 provisions as to bidding shall not apply to the purchase of

1 patented and manufactured products offered for sale in a non-  
2 competitive market or solely by a manufacturer's authorized  
3 dealer.

4 (b.1) Written or telephonic price quotations from at least  
5 three (3) qualified and responsible contractors shall be  
6 requested for all contracts that exceed [four thousand dollars  
7 (\$4,000)] seven thousand dollars (\$7,000), subject to adjustment  
8 under section 112, but are less than the amount requiring  
9 advertisement and competitive bidding, or, in lieu of price  
10 quotations, a memorandum shall be kept on file showing that  
11 fewer than three (3) qualified contractors exist in the market  
12 area within which it is practicable to obtain quotations. A  
13 written record of telephonic price quotations shall be made and  
14 shall contain at least the date of the quotation, the name of  
15 the contractor and the contractor's representative, the  
16 construction, reconstruction, repair, maintenance or work which  
17 was the subject of the quotation and the price. Written price  
18 quotations, written records of telephonic price quotations and  
19 memoranda shall be retained for a period of three (3) years.

20 \* \* \*

21 (h) An Authority shall not evade the provisions of this  
22 section as to advertising for bids or purchasing materials or  
23 contracting for services piecemeal for the purpose of obtaining  
24 prices under [ten thousand dollars (\$10,000)] twenty-five  
25 thousand dollars (\$25,000), subject to adjustment under section  
26 112, upon transactions which should, in the exercise of  
27 reasonable discretion and prudence, be conducted as one  
28 transaction amounting to more than [ten thousand dollars  
29 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to  
30 adjustment under section 112. This provision is intended to make



1 unlawful the practice of evading advertising requirements by  
2 making a series of purchases or contracts each for less than the  
3 advertising requirement price or by making several simultaneous  
4 purchases or contracts each below said price when in either case  
5 the transaction involved should have been made as one  
6 transaction for one price.

7 \* \* \*

8 Section 5. This act shall apply to contracts and purchases  
9 advertised on or after January 1 of the year following the  
10 effective date of this section.

11 Section 6. This act shall take effect immediately.