

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, PICCOLA, WARD, MENSCH AND
BROWNE, JANUARY 26, 2011

AS AMENDED ON THIRD CONSIDERATION, SEPTEMBER 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 Adjustments to the base amounts shall be made as follows:

13 (1) The Department of Labor and Industry shall determine the
14 percentage change in the All Items Consumer Price Index for All
15 Urban Consumers (CPI-U) for the United States City Average as
16 published by the United States Department of Labor, Bureau of
17 Labor Statistics for the twelve-month period ending September
18 30, 2012, and for each successive twelve-month period

1 thereafter.

2 (2) If the department determines that there is no positive
3 percentage change, then no adjustment to the base amounts shall
4 occur for the relevant time period provided for in this
5 subsection.

6 (3) (i) If the department determines that there is a
7 positive percentage change in the first year that the
8 determination is made under paragraph (1), the positive
9 percentage change shall be multiplied by each base amount and
10 the products shall be added to the base amounts, respectively,
11 and the sums shall be preliminary adjusted amounts.

12 (ii) The preliminary adjusted amounts shall be rounded to
13 the nearest one thousand dollars (\$1,000) HUNDRED DOLLARS
14 (\$100), to determine the final adjusted base amounts.

15 (4) In each successive year in which there is a positive
16 percentage change in the CPI-U for the United States City
17 Average, the positive percentage change shall be multiplied by
18 the most recent preliminary adjusted amounts and the products
19 shall be added to the preliminary adjusted amount of the prior
20 year to calculate the preliminary adjusted amounts for the
21 current year. The sums thereof shall be rounded to the nearest
22 one thousand dollars (\$1,000) HUNDRED DOLLARS (\$100) to
23 determine the new final adjusted base amounts.

24 (5) The determinations and adjustments required under this
25 subsection shall be made in the period between October 1 and
26 November 15 of the year following the effective date of this
27 subsection, and annually between October 1 and November 15 of
28 each year thereafter.

29 (6) The final adjusted base amounts and new final adjusted
30 base amounts obtained under paragraphs (3) and (4) shall become

effective January 1 for the calendar year following the year in which the determination required under paragraph (1) is made.

(7) The department shall publish notice in the Pennsylvania Bulletin prior to January 1 of each calendar year of the annual percentage change determined under paragraph (1) and the unadjusted or final adjusted base amounts determined under paragraphs (3) and (4) at which competitive bidding or written or telephonic price quotations are required for the calendar year beginning the first day of January after publication of the notice. The notice shall include a written and illustrative explanation of the calculations performed by the department in establishing the unadjusted or final adjusted base amounts under this subsection for the ensuing calendar year.

~~(8) No adjustment to the base amounts shall exceed three percent of the most recently adjusted base amount.~~

(8) THE ANNUAL INCREASE IN THE PRELIMINARY ADJUSTED BASE AMOUNTS OBTAINED UNDER PARAGRAPHS (3) AND (4) SHALL NOT EXCEED THREE PER CENTUM.

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

Section 2001. County Commissioners to Make Contracts.--The County Commissioners may make contracts for lawful purposes and for the purposes of carrying into execution the provisions of this section and the laws of the Commonwealth.

(a) Except as provided in subsection (a.1), all contracts or purchases in excess of [ten thousand dollars (\$10,000)] the base amount of eighteen thousand five hundred dollars (\$18,500), subject to adjustment under section 112, shall be in writing and, except those hereinafter mentioned and except as provided by the act of October 27, 1979 (P.L.241, No.78), entitled "An

1 act authorizing political subdivisions, municipality authorities
2 and transportation authorities to enter into contracts for the
3 purchase of goods and the sale of real and personal property
4 where no bids are received," shall not be made except with and
5 from the lowest responsible and responsive bidder meeting
6 specifications, after due notice in at least one newspaper of
7 general circulation, published or circulating in the county at
8 least two (2) times, at intervals of not less than three (3)
9 days where daily newspapers of general circulation are employed
10 for such publication, or in case weekly newspapers are employed,
11 then the notice shall be published once a week for two (2)
12 successive weeks. The first advertisement shall be published not
13 less than ten (10) days prior to the date fixed for the opening
14 of bids.

15 * * *

16 (d) The contracts or purchases made by the commissioners
17 involving an expenditure of over [ten thousand dollars
18 (\$10,000)] the base amount of eighteen thousand five hundred
19 dollars (\$18,500), subject to adjustment under section 112,
20 which shall not require advertising or bidding as hereinbefore
21 provided are as follows:

22 (1) Those for maintenance, repairs or replacements for
23 water, electric light, or other public works: Provided, That
24 they do not constitute new additions, extensions or enlargements
25 of existing facilities and equipment. Security may be required
26 by the county commissioners as in other cases of work done.

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

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

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

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

19 (5) Those involving personal or professional services,
20 including, but not limited to, services of members of the
21 medical or legal profession, registered architects, engineers,
22 certified public accountants or other personal services
23 involving professional expertise.

24 (6) Those involving tangible client services provided by
25 nonprofit agencies. For the purposes of this clause, the term
26 "tangible client services" shall mean congregate meals, home-
27 delivered meals, transportation and chore services provided
28 through area agencies on aging.

29 (6.1) Those involving contracts entered into by nonprofit
30 cooperative hospital service associations for hospitals and

1 nursing homes which are part of the institutional district or
2 which are owned by the county, operated by the county or
3 affiliated with the county by the purchasing of or participating
4 in contracts for materials, supplies and equipment.

5 (7) Those involving the purchase of milk.

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

15 (i) the Federal Government;

16 (ii) the Commonwealth of Pennsylvania;

17 (iii) any other state;

18 (iv) a political subdivision, local or municipal authority
19 or other similar local entity of the Commonwealth or any other
20 state; or

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

23 (9) Those exclusively involving construction management
24 services.

25 (10) Those involving computer software.

26 * * *

27 Section 3. Section 2517(a) of the act, amended December 9,
28 2002 (P.L.1383, No.170), is amended to read:

29 Section 2517. Separate Specifications and Contracts for
30 Certain Items.--(a) In the preparation of specifications for

1 the erection, construction and alteration of any public
2 building, when the entire cost of such work shall exceed [ten
3 thousand dollars (\$10,000)] the base amount of eighteen thousand
4 five hundred dollars (\$18,500), subject to adjustment under
5 section 112, the architect, engineer or other person preparing
6 such specifications shall prepare separate specifications for
7 the plumbing, heating, ventilating and electrical work. The
8 board of commissioners shall receive separate bids upon each of
9 the said branches of work and award the contract for the same to
10 the lowest responsible bidder for each of said branches.

11 * * *

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

14 Section 2511-A. Competition in Award of Contracts.--(a) All
15 construction, reconstruction, repairs or work of any nature made
16 by any Authority, where the entire cost, value or amount of such
17 construction, reconstruction, repairs or work, including labor
18 and materials, shall exceed [ten thousand dollars (\$10,000)]
19 the base amount of eighteen thousand five hundred dollars
20 (\$18,500), subject to adjustment under section 112, except
21 construction, reconstruction, repairs or work done by employees
22 of said Authority or by labor supplied under agreement with any
23 Federal or State agency with supplies and materials purchased,
24 as hereinafter provided, shall be done only under contract or
25 contracts to be entered into by the Authority with the lowest
26 responsible bidder upon proper terms, after due public notice
27 has been given asking for competitive bids hereinafter provided.
28 No contract shall be entered into for construction or
29 improvement or repair of any project or portion thereof unless
30 the contractor shall give an undertaking, with a sufficient

1 surety or sureties approved by the Authority and in an amount
2 fixed by the Authority, for the faithful performance of the
3 contract. All such contracts shall provide, among other things,
4 that the person or corporation entering into such contract with
5 the Authority will pay for all materials furnished and services
6 rendered for the performance of the contract and that any person
7 or corporation furnishing such materials or rendering such
8 services may maintain an action to recover for the same against
9 the obligor in the undertaking as though such person or
10 corporation was named therein, provided the action is brought
11 within one (1) year after the time the cause of action accrued.
12 Nothing in this section shall be construed to limit the power of
13 the Authority to construct, repair or improve any project or
14 portion thereof or any addition, betterment or extension thereto
15 directly by the officers, agents and employes of the Authority
16 or otherwise than by contract.

17 (b) All supplies and materials costing [ten thousand dollars
18 (\$10,000)] the base amount of eighteen thousand five hundred
19 dollars (\$18,500), subject to adjustment under section 112, or
20 more shall be purchased only after due advertisement as
21 hereinafter provided. The Authority shall accept the lowest bid
22 or bids, kinds, quality and material being equal, but the
23 Authority shall have the right to reject any or all bids or
24 select a single item from any bid. The provisions as to bidding
25 shall not apply to the purchase of patented and manufactured
26 products offered for sale in a non-competitive market or solely
27 by a manufacturer's authorized dealer.

28 (b.1) Written or telephonic price quotations from at least
29 three (3) qualified and responsible contractors shall be
30 requested for all contracts that exceed [four thousand dollars

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

15 * * *

16 (h) An Authority shall not evade the provisions of this
17 section as to advertising for bids or purchasing materials or
18 contracting for services piecemeal for the purpose of obtaining
19 prices under [ten thousand dollars (\$10,000)] the base amount of
20 eighteen thousand five hundred dollars (\$18,500), subject to
21 adjustment under section 112, upon transactions which should, in
22 the exercise of reasonable discretion and prudence, be conducted
23 as one transaction amounting to more than [ten thousand dollars
24 (\$10,000)] the base amount of eighteen thousand five hundred
25 dollars (\$18,500), subject to adjustment under section 112. This
26 provision is intended to make unlawful the practice of evading
27 advertising requirements by making a series of purchases or
28 contracts each for less than the advertising requirement price
29 or by making several simultaneous purchases or contracts each
30 below said price when in either case the transaction involved

1 should have been made as one transaction for one price.

2 * * *

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

6 Section 6. This act shall take effect immediately.