

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 289** Session of
2011

INTRODUCED BY FERLO, EICHELBERGER, KASUNIC, FOLMER, GORDNER,
BOSCOLA, ORIE, RAFFERTY, YAW, M. WHITE, D. WHITE, ERICKSON,
BAKER, ALLOWAY, BRUBAKER, GREENLEAF, SMUCKER, 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 August 6, 1936 (Sp.Sess., P.L.95, No.38
2 1/2), entitled "An act to authorize and empower cities,
3 boroughs, towns, and townships, separately or jointly, to
4 provide for protection against floods by erecting and
5 constructing certain works and improvements, located within
6 or without their territorial limits, and within or without
7 the county in which situate; and to expend moneys and incur
8 indebtedness; to assess benefits against property benefited;
9 to issue improvement bonds imposing no municipal liability;
10 and to acquire, take, injure or destroy property for such
11 purposes," further providing for competitive bidding of
12 contracts.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Section 3 of the act of August 6, 1936 (Sp.Sess.,
16 P.L.95, No.38 1/2), entitled "An act to authorize and empower
17 cities, boroughs, towns, and townships, separately or jointly,
18 to provide for protection against floods by erecting and
19 constructing certain works and improvements, located within or
20 without their territorial limits, and within or without the
21 county in which situate; and to expend moneys and incur

1 indebtedness; to assess benefits against property benefited; to
2 issue improvement bonds imposing no municipal liability; and to
3 acquire, take, injure or destroy property for such purposes,"
4 amended July 10, 1990 (P.L.402, No.97), is amended to read:

5 Section 3. (a) No such works or improvements, involving
6 [an] expenditure by any municipality or municipalities of more
7 than [ten thousand dollars (\$10,000)] the base amount of
8 eighteen thousand five hundred dollars (\$18,500), subject to
9 adjustment under subsection (b.1), shall be erected, constructed
10 or provided, except by contract let to the lowest responsible
11 bidder after due advertisement, once a week for two successive
12 weeks in at least one newspaper of general circulation:
13 Provided, however, That no contract shall be required to be let
14 for the performance of the work on any such work or improvement
15 where the cost of the labor shall be paid by the Federal
16 Government, or any agency thereof, without cost to the
17 municipality or municipalities.

18 (b) Written or telephonic price quotations from at least
19 three qualified and responsible contractors shall be requested
20 for all contracts [that exceed four thousand dollars (\$4,000)]
21 in excess of the base amount of ten thousand dollars (\$10,000),
22 subject to adjustment under subsection (b.1), but are less than
23 the amount requiring advertisement and competitive bidding or,
24 in lieu of price quotations, a memorandum shall be kept on file
25 showing that fewer than three qualified contractors exist in the
26 market area within which it is practicable to obtain quotations.
27 A written record of telephonic price quotations shall be made
28 and shall contain at least the date of the quotation, the name
29 of the contractor and the contractor's representative, the
30 construction, reconstruction, repair, maintenance or work which

1 was the subject of the quotation and the price. Written price
2 quotations, written records of telephonic price quotations and
3 memoranda shall be retained for a period of three years.

4 (b.1) Adjustments to the base amounts specified under
5 subsections (a) and (b) shall be made as follows:

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

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

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 ~~thousand~~ HUNDRED dollars ~~(\$1,000)~~ (\$100), to
25 determine the final adjusted base amounts for purposes of
26 subsections (a) and (b).

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



1 shall be added to the preliminary adjusted amount of the prior
2 year to calculate the preliminary adjusted amounts for the
3 current year. The sums thereof shall be rounded to the nearest
4 one thousand HUNDRED dollars ~~(\$1,000)~~ (\$100) to determine the
5 new final adjusted base amounts for purposes of subsections (a)
6 and (b).



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

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

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

29 ~~(8) No adjustment to the base amounts specified under~~
30 ~~subsections (a) and (b) shall exceed three percent of the most~~





1 ~~recently adjusted base amount.~~ THE ANNUAL INCREASE IN THE
2 PRELIMINARY ADJUSTED BASE AMOUNTS OBTAINED UNDER PARAGRAPHS (3)
3 AND (4) SHALL NOT EXCEED THREE PER CENTUM.

4 (c) No municipality shall evade the provisions of this
5 section as to advertising for bids or purchasing materials or
6 contracting for services piecemeal for the purpose of obtaining
7 prices under [ten thousand dollars (\$10,000)] the amount
8 required by this section upon transactions which should, in the
9 exercise of reasonable discretion and prudence, be conducted as
10 one transaction amounting to more than [ten thousand dollars
11 (\$10,000)] the amount required by this section. This provision
12 is intended to make unlawful the practice of evading advertising
13 requirements by making a series of purchases or contracts each
14 for less than the advertising requirement price or by making
15 several simultaneous purchases or contracts each below said
16 price, when in either case the transaction involved should have
17 been made as one transaction for one price.

18 (d) Any member of a governing body of a municipality who
19 votes to unlawfully evade the provisions of this section and who
20 knows that the transaction upon which he so votes is or ought to
21 be a part of a larger transaction and that it is being divided
22 in order to evade the requirements as to advertising for bids
23 commits a misdemeanor of the third degree for each contract
24 entered into as a direct result of that vote.

25 (e) Every contract for the construction, reconstruction,
26 alteration, repair, improvement or maintenance of public works
27 shall comply with the provisions of the act of March 3, 1978
28 (P.L.6, No.3), known as the "Steel Products Procurement Act."

29 Section 2. The amendment of section 3 of the act shall apply
30 to contracts and purchases advertised after December 31 of the

1 year in which this section takes effect.

2 Section 3. This act shall take effect immediately.