

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 291 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, PICCOLA, WARD AND BROWNE,
JANUARY 26, 2011

AS AMENDED ON THIRD CONSIDERATION, SEPTEMBER 26, 2011

AN ACT

1 Amending the act of July 29, 1953 (P.L.1034, No.270), entitled,
2 as amended, "An act creating as bodies corporate and politic
3 "Public Auditorium Authorities" in counties of the second
4 class and in cities of the second class and in cities of the
5 second class A and counties in which a city of the second
6 class A is located, singly or jointly; prescribing the
7 rights, powers and duties of such Authorities; authorizing
8 such Authorities to acquire, construct, improve, maintain and
9 operate public auditoriums; to borrow money and issue bonds
10 therefor; providing for the payment of such bonds and
11 prescribing the rights of the holders thereof; conferring the
12 right of eminent domain on such Authorities; empowering such
13 Authorities to enter into contracts, leases and licenses with
14 and to accept grants from private sources, the Federal
15 Government, State, political subdivisions of the State or any
16 agency thereof; authorizing the making of said grants from
17 bond funds or current revenues; authorizing Authorities to
18 collect rentals, admissions, license fees for the use of the
19 project; exempting the property and securities of such Public
20 Auditorium Authorities from taxation," increasing the dollar
21 amount of supplies and materials which may be purchased
22 without advertising.

23 The General Assembly of the Commonwealth of Pennsylvania
24 hereby enacts as follows:

25 Section 1. Section 11 of the act of July 29, 1953 (P.L.1034,
26 No.270), known as the Public Auditorium Authorities Law, amended

1 July 10, 1990 (P.L.376, No.88), is amended to read:

2 Section 11. Competition in Award of Contracts.

3 A. All construction, reconstruction, repairs or work of any
4 nature made by any Authority, where the entire cost, value or
5 amount of such construction, reconstruction, repairs or work,
6 including labor and materials, shall exceed [ten thousand
7 dollars (\$10,000)] the base amount of eighteen thousand five
8 hundred dollars (\$18,500), subject to adjustment under
9 subsection I, except construction, reconstruction, repairs or
10 work done by employees of said Authority or by labor supplied
11 under agreement with any Federal or State agency with supplies
12 and materials purchased, as hereinafter provided, shall be done
13 only under contract or contracts to be entered into by the
14 Authority with the lowest responsible bidder upon proper terms,
15 after due public notice has been given asking for competitive
16 bids hereinafter provided. No contract shall be entered into for
17 construction or improvement or repair of any project or portion
18 thereof unless the contractor shall give an undertaking, with a
19 sufficient surety or sureties approved by the Authority and in
20 an amount fixed by the Authority, for the faithful performance
21 of the contract. All such contracts shall provide, among other
22 things, that the person or corporation entering into such
23 contract with the Authority will pay for all materials furnished
24 and services rendered for the performance of the contract and
25 that any person or corporation furnishing such materials or
26 rendering such services may maintain an action to recover for
27 the same against the obligor in the undertaking as though such
28 person or corporation was named therein, provided the action is
29 brought within one year after the time the cause of action
30 accrued. Nothing in this section shall be construed to limit the

1 power of the Authority to construct, repair or improve any
2 project or portion thereof or any addition, betterment or
3 extension thereto directly by the officers, agents and employees
4 of the Authority or otherwise than by contract.

5 B. All supplies and materials costing [ten thousand dollars
6 (\$10,000)], subject to adjustment under subsection I, in excess
7 of the base amount of eighteen thousand five hundred dollars
8 (\$18,500) or more shall be purchased only after due
9 advertisement as hereinafter provided. The Authority shall
10 accept the lowest bid or bids, kinds, quality and material being
11 equal, but the Authority shall have the right to reject any or
12 all bids or select a single item from any bid. The provisions as
13 to bidding shall not apply to the purchase of patented and
14 manufactured products offered for sale in a non-competitive
15 market or solely by a manufacturer's authorized dealer.

16 B.1. Written or telephonic price quotations from at least
17 three (3) qualified and responsible contractors shall be
18 requested for all contracts that exceed [four thousand dollars
19 (\$4,000)] the base amount of ten thousand dollars (\$10,000),
20 subject to adjustment under subsection I, but are less than the
21 amount requiring advertisement and competitive bidding or, in
22 lieu of price quotations, a memorandum shall be kept on file
23 showing that fewer than three (3) qualified contractors exist in
24 the market area within which it is practicable to obtain
25 quotations. A written record of telephonic price quotations
26 shall be made and shall contain at least the date of the
27 quotation, the name of the contractor and the contractor's
28 representative, the construction, reconstruction, repair,
29 maintenance or work which was the subject of the quotation and
30 the price. Written price quotations, written records of

1 telephonic price quotations and memoranda shall be retained for
2 a period of three (3) years.

3 C. The terms, advertisement or due public notice, wherever
4 used in this section, shall mean a notice published at least ten
5 (10) days before the award on any contract in a newspaper of
6 general circulation published in the municipality where the
7 Authority has its principal office, and if no newspaper is
8 published therein then by publication in a newspaper in the
9 county where the Authority has its principal office: Provided,
10 That such notice may be waived where the Authority determines an
11 emergency exists and such supplies and materials must be
12 immediately purchased by the said Authority.

13 D. No member of the Authority or officer or employe thereof
14 shall, either directly or indirectly, be a party to or be in any
15 manner interested in any contract or agreement with the
16 Authority for any matter, cause or thing whatsoever, by reason
17 whereof any liability or indebtedness shall in any way be
18 created against such Authority. If any contract or agreement
19 shall be made in violation of the provision of this section, the
20 same shall be null and void and no action shall be maintained
21 thereon against such Authority.

22 E. Subject to the aforesaid, any Authority may (but without
23 intending by this provision to limit any powers of such
24 Authority) enter into and carry out such contracts or establish
25 or comply with such rules and regulations concerning labor and
26 materials and other related matters, in connection with any
27 project or portion thereof, as the Authority may deem desirable,
28 or as may be requested by any Federal agency that may assist in
29 the financing of such project or any part thereof: Provided,
30 however, That the provisions of this section shall not apply to

1 any case in which the Authority has taken over by transfer or
2 assignment any contract authorized to be assigned to it under
3 the provisions of section ten of this act, nor to any contract
4 in connection with the construction of any project which the
5 Authority may have had transferred to it by any person or
6 private corporation.

7 F. Every contract for the construction, reconstruction,
8 alteration, repair, improvement or maintenance of public works
9 shall comply with the provisions of the act of March 3, 1978
10 (P.L.6, No.3), known as the "Steel Products Procurement Act."

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

28 H. Any member of the Authority who votes to unlawfully evade
29 the provisions of this section and who knows that the
30 transaction upon which he so votes is or ought to be a part of a

larger transaction and that it is being divided in order to evade the requirements as to advertising for bids commits a misdemeanor of the third degree for each contract entered into as a direct result of that vote.

I. Adjustments to the base amounts specified under subsections A, B, B.1 and G shall be made as follows:

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

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

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

(ii) The preliminary adjusted amounts shall be rounded to the nearest one thousand HUNDRED dollars ~~(\$1,000)~~ (\$100), to determine the final adjusted base amounts for purposes of subsections A, B, B.1 and G.

(4) In each successive year in which there is a positive percentage change in the CPI-U for the United States City Average, the positive percentage change shall be multiplied by



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

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

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

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

29 ~~(8) No adjustment to the base amounts specified under~~
30 ~~subsections A, B, B.1 and G shall exceed three percent of the~~



1 ~~most 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 Section 2. This act shall apply to contracts and purchases
5 advertised on or after January 1 of the year following the
6 effective date of this section.

7 Section 3. This act shall take effect in 60 days.