

No. 1990-89

AN ACT

SB 742

Amending the act of August 9, 1955 (P.L.323, No.130), entitled "An act relating to counties of the third, fourth, fifth, sixth, seventh and eighth classes; amending, revising, consolidating and changing the laws relating thereto," further regulating contracts and purchases as to bids and advertising; further providing for the display of flags; and providing a penalty.

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

Section 1. Sections 1801, 1802(a), (b) and (h) and 1803 of the act of August 9, 1955 (P.L.323, No.130), known as The County Code, amended December 22, 1981 (P.L.580, No.167), are amended to read:

Section 1801. Commissioners Sole Contractors for County.—(a) The county commissioners shall contract for and purchase all services referred to in section five hundred eight and personal property for county officers and agencies. All contracts and purchases not in excess of **[four thousand dollars (\$4,000)] ten thousand dollars (\$10,000)** shall be by note or memorandum, in writing, signed by the county commissioners, or their agent. A copy of all such notes and memorandums and all written contracts shall be filed in the office of the controller, if any, and, if not, then with the chief clerk of the commissioners.

(b) Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested for all contracts that exceed four thousand dollars (\$4,000) but are less than the amount requiring advertisement and competitive bidding or, in lieu of price quotations, a memorandum shall be kept on file showing that fewer than three qualified contractors exist in the market area within which it is practicable to obtain quotations. A written record of telephonic price quotations shall be made and shall contain at least the date of the quotation, the name of the contractor and the contractor's representative, the construction, reconstruction, repair, maintenance or work which was the subject of the quotation and the price. Written price quotations, written records of telephonic price quotations and memoranda shall be retained for a period of three years.

(c) The commissioners shall, where possible, anticipate the needs of the various officers and agencies of the county and endeavor to purchase in wholesale quantities, where practicable and where savings could be achieved thereby. The commissioners may make contracts and purchases for all purposes expressly or impliedly authorized by law.

Section 1802. Contract Procedures; Terms and Bonds; Advertising for Bids.—(a) All contracts for services and personal property where the amount thereof exceeds the sum of **[four thousand dollars (\$4,000)] ten thousand dollars (\$10,000)**, shall be written and shall, except as otherwise hereinafter specified, be made by advertising for bids.

(b) Contracts or purchases in excess of **[four thousand dollars (\$4,000)] ten thousand dollars (\$10,000)**, except those hereinafter mentioned, shall not be made except with and from the lowest responsible bidder, after due notice in one newspaper of general circulation, published or circulating in the county, at least three times at intervals of not less than three days where daily newspapers of general circulation are employed for such publication, or in case weekly newspapers are employed then the notice shall be published once a week for two successive weeks. The first advertisement shall be published not less than ten days prior to the date fixed for the opening of bids. The requirements of this subsection need not be followed in cases of emergency, but in such cases the actual emergency shall be declared and stated by resolution of the commissioners.

* * *

(h) The contracts or purchases made by the commissioners involving an expenditure of over **[four thousand dollars (\$4,000)] ten thousand dollars (\$10,000)** which shall not require advertising or bidding, as hereinbefore provided, are as follows:

(1) Those for maintenance, repairs or replacements for water, electric light, or other public works of the county where they do not constitute new additions, extensions or enlargements of existing facilities and equipment. A bond may be required by the commissioners as in other cases for work done.

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

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

(4) Those involving any policies of insurance or surety company bonds, those made for public utility service under tariffs on file with the Pennsylvania Public Utility Commission, those made with another political subdivision, the Commonwealth of Pennsylvania, the Federal Government, any agency of the Commonwealth or the Federal Government or any municipal authority, including the sale, leasing or loan of any supplies or materials by the Commonwealth or the Federal Government or their agencies, but the price thereof shall not be in excess of that fixed by the Commonwealth, or the Federal Government, or their respective agencies.

(5) Those involving services of members of the medical or legal profession, registered architects, engineers, certified public accountants or other personal services involving professional expert advice.

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

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Section 1803. Evasion of Advertising Requirements.—(a) No commissioner or commissioners shall evade the provisions of section one thousand eight hundred two of this act, as to advertising for bids or purchasing or contracting for services and personal properties piece-meal, for the purpose of obtaining prices under **[four thousand dollars (\$4,000)] ten thousand dollars (\$10,000)** upon transactions which should in the exercise of reasonable discretion and prudence be conducted as one transaction amounting to more than **[four thousand dollars (\$4,000)] ten thousand dollars (\$10,000)**. This provision is intended to make unlawful the practice of evading advertising requirements by making a series of purchases or contracts each for less than the advertising requirement price, or by making several simultaneous purchases or contracts each below said price, when in either case the transaction involved should have been made as one transaction for one price. Any county commissioners who so vote in violation of this provision and who know that the transaction upon which they so vote 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 shall be, jointly and severally, subject to surcharge for any loss sustained. Wherever it shall appear that a commissioner may have voted in violation of this section, but the purchase or contract on which he so voted was not approved by the board of county commissioners, this section shall be inapplicable.

(b) *Any county commissioner who votes to unlawfully evade the provisions of section one thousand eight hundred two of this act and who knows that the 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. This penalty shall be in addition to any surcharge which may be assessed pursuant to subsection (a).*

Section 2. Section 2317 of the act, amended December 22, 1981 (P.L.580, No.167), is amended to read:

Section 2317. Separate Bids for Plumbing, Heating, Ventilating, Electrical Work, Elevators and Moving Stairs.—In the preparation of specifications for the erection, construction and alteration of any public building, when the entire cost of such work shall exceed **[four thousand dollars (\$4000)] ten thousand dollars (\$10,000)** the architect, engineer or other person preparing such specifications shall prepare only the following separate specifications: (1) plumbing, (2) heating, (3) ventilating, (4) electrical work, (5) elevators and moving stairs, and (6) one complete set of specifications for all the other work to be done in such erection, construction and alteration. The board of commissioners shall receive separate bids upon each of the said branches of work and award the contract for the same to the lowest responsible bidder for each of said branches, including the balance of the work in addition to the plumbing, heating, ventilating and electrical work, and elevators and moving stairs. Where it is desired to install an air conditioning unit, the heating and ventilating so involved may be regarded as one branch of work having only one set of specifications, and bids may be received and a contract awarded thereon, as hereinbefore provided.

Section 3. Section 2327 of the act is amended to read:

Section 2327. Display of Municipal Flags on County Buildings Authorized.—It shall be lawful to display the flag of any county, city, borough or other municipality in the Commonwealth *or the official POW/MLA flag* on the public buildings *or grounds* of any county.

Section 4. Section 2670 of the act, amended December 22, 1981 (P.L.580, No.167), is amended to read:

Section 2670. Building or Repair of Bridges.—In addition to the provisions of Articles XVIII and XXIII of this act relating to contracting for services and personal property, whenever the county commissioners propose to build or repair a bridge at a cost in excess of **[four thousand dollars (\$4000)]** *ten thousand dollars (\$10,000)* their advertisements for bids shall contain the description of the repairs, or designs of the kind of bridge, required. When the contract is for the building of a bridge, the designs and specifications therefor, or a copy thereof, shall be kept in the office of the county commissioners, open to the inspection of all intending bidders during such advertising and the time specified therein for the reception of bids. In the case of a bridge to be erected over a stream upon the line between two adjoining counties, the advertising shall be done in each of said counties, and a copy of the plans and specifications shall be kept in the commissioners' office of each county. The time of filing bids and the person's name with whom filed must be marked on the outside of said bids.

Section 5. This act shall take effect in 60 days.

APPROVED—The 10th day of July, A. D. 1990.

ROBERT P. CASEY