

No. 1995-12

AN ACT

HB 435

Amending the act of February 1, 1966 (1965 P.L.1656, No.581), entitled "An act concerning boroughs, and revising, amending and consolidating the law relating to boroughs," further providing for the disposal of personal property and for regulation of contracts.

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

Section 1. Section 1201(4) of the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, amended December 14, 1989 (P.L.626, No.73), is amended to read:

Section 1201. General Powers.—A borough may:

* * *

(4) Purchase, acquire by gift, or otherwise, hold, lease, let and convey, by sale or lease, such real and personal property as shall be deemed to be to the best interest of the borough: Provided, That no real estate owned by the borough shall be sold for a consideration in excess of fifteen hundred dollars (\$1500), except to the highest bidder after due notice by advertisement for bids or advertisement of a public auction in one newspaper of general circulation in the borough. Such advertisement shall be published once not less than ten days prior to the date fixed for the opening of bids or public auction, and such date for opening bids or public auction shall be announced in such advertisement. The [acceptance] *award* of [bids] *contracts* shall be made only by public announcement at a regular or special meeting of council or at the public auction. All bids shall be accepted on the condition that payment of the purchase price in full shall be made within sixty days of the acceptance of bids. The borough council shall have the authority to reject all bids if such bids are deemed to be less than the fair market value of the real property. In the case of a public auction, the borough council may establish a minimum bid based on the fair market value of the real property. Real estate owned by a borough may be sold at a consideration of fifteen hundred dollars (\$1500) or less without advertisement or competitive bidding only after council estimates the value thereof upon receipt of an appraisal by a qualified real estate appraiser.

Except as otherwise hereinafter provided in the case of personal property of an estimated [sale] *fair market* value of less than [two hundred dollars (\$200)] *one thousand dollars (\$1,000)*, no borough personal property shall be disposed of, by sale or otherwise, except upon approval of council, by ordinance or resolution. In cases where council shall approve a sale of such property, it shall estimate the [sale] *fair market* value of the entire lot to be disposed of. If council shall estimate the [sale] *fair market* value to be [two

hundred dollars (\$200)] one thousand dollars (\$1,000) or more, the entire lot shall be advertised for sale once, in at least one newspaper of general circulation in the borough, not less than ten days prior to the date fixed for the opening of bids or public auction, and such date of opening of bids or public auction, shall be announced in such advertisement, and sale of the property so advertised shall be made to the best responsible bidder. *Council may reject any bids received if the bids are believed to be less than the fair market value of the property.* Council shall [have authority], by resolution, [to] adopt a procedure for the sale of surplus personal property, *either individual items or lots of items*, of an estimated [sale] *fair market value* of less than **[two hundred dollars (\$200)] one thousand dollars (\$1,000)** and the approval of council shall not be required for any individual sale that shall be made in conformity to such procedure.

The provisions of this clause shall not be mandatory where borough property is to be traded in or exchanged for new borough property.

The provisions of this clause requiring advertising for bids or sale at public auction and sale to the highest bidder shall not apply where borough real or personal property is to be sold to a county, city, borough, town, township, institution district, school district, volunteer fire company, volunteer ambulance service or volunteer rescue squad located within the borough, or municipal authority pursuant to the Municipality Authorities Act of 1945, is to be sold to a non-profit corporation engaged in community industrial development or where real property is to be sold to a person for his exclusive use in an industrial development program or where real property is to be sold to a non-profit corporation organized as a public library for its exclusive use as a library, or where real property is to be sold to a non-profit medical service corporation as authorized by clause (76) of section 1202 or where real property is to be sold to a non-profit housing corporation as authorized by clause (77) of section 1202 or where real property is to be sold to the Commonwealth or to the Federal Government. When real property is to be sold to a non-profit corporation organized as a public library for its exclusive use as a library or to a non-profit medical service corporation or to a non-profit housing corporation, council may elect to accept such nominal consideration for such sale as it shall deem appropriate. Real property sold pursuant to this clause to a volunteer fire company, volunteer ambulance service or volunteer rescue squad, non-profit medical service corporation or to a non-profit housing corporation shall be subject to the condition that when the property is not used for the purposes of the company, service, squad or the corporation the property shall revert to the borough.

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Section 2. Section 1402(a) and (b) of the act, amended February 14, 1990 (P.L.60, No.10) and July 10, 1990 (P.L.383, No.90), are amended to read:

Section 1402. Regulation of Contracts.—(a) All contracts or purchases in excess of 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 in the borough, at least two times at intervals of not less than three days where daily newspapers of general circulation are available for such publication, in case of weekly newspapers, such notice once a week for two successive weeks. The first advertisement shall be published not more than forty-five days and the second advertisement not less than ten days prior to the date fixed for the opening of bids. Advertisements for contracts or purchases shall also be posted in a conspicuous place within the borough. *Advertisements for contracts and purchases shall contain the date, time and location for opening of bids.* The amount of the contract shall in all cases, whether of straight sale price, conditional sale, bailment lease, or otherwise, be the entire amount which the borough pays to the successful bidder or his assigns in order to obtain the services or property, or both, and shall not be construed to mean only the amount which is paid to acquire title or to receive any other particular benefit or benefits of the whole bargain. In awarding **[bids] contracts**, council shall have the right to take into consideration such other factors as the availability, cost and quality of service.

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(b) (1) The **[acceptance] award** of **[bids] contracts** shall only be made by public announcement at the meeting at which bids are received, or at a subsequent meeting, the time and place of which shall be publicly announced when bids are received. If for any reason one or both of the above meetings shall not be held, the same business may be transacted at any subsequent meeting if at least five days' notice thereof shall be published in the newspaper aforesaid. At council's request, all bids advertised for shall be accompanied by cash, money order, a certified or cashier's good faith check, or a bond with corporate surety in such amount as council shall determine, and, when requested, no bid shall be considered unless so accompanied.

(2) *Notwithstanding clause (1), council may direct that a committee of council, a member of council or a member of the borough staff receive, open and review bids during normal business hours and forward the information to council for subsequent award at a public meeting. Bidders shall be notified and other interested parties, upon request, shall be notified of the date, time and location of the opening of bids and may be present when the bids are opened.*

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

APPROVED—The 26th day of June, A.D. 1995.

THOMAS J. RIDGE