

No. 2011-84

AN ACT

HB 278

Amending the act of May 1, 1933 (P.L.103, No.69), entitled, as reenacted and amended, "An act concerning townships of the second class; and amending, revising, consolidating and changing the law relating thereto," in contracts, further providing for competitive bidding of contracts.

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

Section 1. Section 3102(a), (b) and (h) of the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, reenacted and amended November 9, 1995 (P.L.350, No.60) and amended December 18, 1996 (P.L.1142, No.172), December 19, 1996 (P.L.1412, No.181) and October 11, 2000 (P.L.535, No.70), are amended and the section is amended by adding a subsection to read:

Section 3102. Letting Contracts.—(a) All contracts or purchases in excess of the required advertising *base* amount of **[ten thousand dollars (\$10,000)]** *eighteen thousand five hundred dollars (\$18,500)*, *subject to adjustment under subsection (b.1)*, except those specifically excluded, shall not be made except with and from the lowest responsible bidder after due notice in one newspaper of general circulation in the township. The notice for bids shall be published at least two times at intervals of not less than three days in daily newspapers or once a week for two successive weeks in weekly newspapers. The first advertisement shall be published not more than forty-five days, and the second advertisement not less than ten days, before the date set for the opening of bids. Notice of proposed contracts or purchases shall also be posted where the board of supervisors normally meets or in a conspicuous place within the township. Any published notice for bids shall contain full plans and specifications, or refer to the places where copies thereof can be obtained, state the amount of the performance bond determined under subsection (g) and give the date, time and place of a meeting at which an individual or committee appointed by the board of supervisors or the board of supervisors will open and read the bids.

(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)]** *in excess of the base amount of ten thousand dollars (\$10,000)*, *subject to adjustment under subsection (b.1)*, 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.

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

(1) The Department of Labor and Industry shall determine the percentage change in the Consumer Price Index for All Urban Consumers: All Items (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 paragraph (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 hundred dollars (\$100) to determine the final adjusted base amounts for purposes of subsections (a) and (b).

(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 the most recent preliminary adjusted amounts, and the products shall be added to the preliminary adjusted amount of the prior year to calculate the preliminary adjusted amounts for the current year. The sums thereof shall be rounded to the nearest one hundred dollars (\$100) to determine the new final adjusted base amounts for purposes of subsections (a) and (b).

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

(6) The final adjusted base amounts and new final adjusted 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 is required under subsection (a) and written or telephonic price quotations are required under subsection (b), respectively, 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) The annual increase in the preliminary adjusted base amounts obtained under paragraphs (3) and (4) shall not exceed three percent.

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(h) The contracts or purchases made by the board of supervisors involving payments in excess of the required advertising amount, which do not require advertising, bidding or price quotations are as follows:

(1) Those made for emergency, or routine maintenance, repairs or replacements for water, electric light and other public works of the township if they do not constitute new additions, extensions or enlargements of existing facilities and equipment.

(2) Those made for improvements, repairs or maintenance of any kind made or provided by any township through its own employes. All contracts or purchases of materials used for improvement, maintenance or construction **[in excess of four thousand dollars (\$4,000) but less than the required advertising amount]** are subject to the provisions contained in **[subsection] subsections (a) and (b)], and those contracts or purchases in excess of the required advertising amount are subject to the advertising requirements contained in subsection (a)].**

(3) Those involving any policies of insurance or surety company bonds, those made for public utility service, those made for electricity, natural gas or telecommunications service either directly or with an association authorized under Article XIV in which the township is a member and those made with another municipal corporation, county, school district or municipality authority or Federal or State Government, including the sale, leasing or loan of any supplies or materials by the Federal or State Government or their agencies.

(4) Those involving personal or professional services.

(5) Those made for materials and supplies or equipment rental under emergency conditions under 35 Pa.C.S. Pt. V (relating to emergency management services).

(6) Those contracts involving equipment rental with operators if more than fifty percent of the total labor personnel hours required for the completion of the contract is supplied by the township through its own employes.

(7) Those contracts for the purchase of repair parts or materials for use in existing township equipment or facilities if the item or material to be purchased is the sole item of its kind on the market or is manufactured as a replacement for the original item or equipment being repaired.

(8) Those for used equipment, articles, apparatus, appliances, vehicles or parts thereof being purchased from a public utility.

(9) Those where particular types, models or pieces of equipment, articles, apparatus, appliances, vehicles or parts thereof which are patented and manufactured products.

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

Section 3. This act shall take effect immediately.

APPROVED—The 3rd day of November, A.D. 2011

TOM CORBETT