

No. 2011-92

## AN ACT

SB 285

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 regulation of contracts, for evasion of advertising requirements and certain purchase contracts.

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

Section 1. Section 1402(a), (a.1) and (d) of the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, amended or added July 10, 1990 (P.L.383, No.90), December 18, 1996 (P.L.1141, No.171), December 18, 1996 (P.L.1156, No.176), December 20, 1996 (P.L.1497, No.193) and October 27, 2010 (P.L.862, No.87), are amended and the section is amended by adding a subsection to read:

Section 1402. Regulation of Contracts.—(a) All contracts or purchases in excess of [**ten thousand dollars (\$10,000)**] *the base amount of eighteen thousand five hundred dollars (\$18,500)*, *subject to adjustment under subsection (a.2)*, 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 and shall state the amount of the performance bond determined under subsection (c). 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 contracts, council shall have the right to take into consideration such other factors as the availability, cost and quality of service.

(a.1) 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 (a.2)*, 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.

*(a.2) Adjustments to the base amounts specified under subsections (a) and (a.1) 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 (a.1).*

*(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 (a.1).*

*(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 (a.1), 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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(d) The contracts or purchases made by council, which shall not require advertising, bidding or price quotations as hereinbefore provided, are as follows:

(1) Those for maintenance, repairs or replacements for water, electric light or public works of the borough, provided they do not constitute new additions, extensions or enlargements of existing facilities and equipment, but a bond may be required by council, as in other cases of work done;

(2) Those made for improvements, repairs and maintenance of any kind, made or provided by any borough, through its own employes: Provided, That all materials used for street improvement, maintenance and/or construction in excess of **[four thousand dollars (\$4,000)]** *the amount specified or adjusted under subsection (a.1)* be subject to the relevant price quotation or advertising requirements contained herein;

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

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

(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, or a county, 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. The price thereof shall not be in excess of that fixed by the Commonwealth, the Federal Government, or their agencies;

(5) Those involving personal or professional services.

(6) Those made relating to the purchase of electricity and associated energy and related services by a borough owning or operating electric generation or distribution facilities on the effective date of this section with any of the following:

(i) A political subdivision.

(ii) Another state.

(iii) The Commonwealth or an agency thereof.

(iv) The Federal Government.

(v) A private corporation.

(vi) An electric cooperative corporation under 15 Pa.C.S. Ch. 73 (relating to electric cooperative corporations).

(vii) A non-profit membership corporation. As used in this subclause, the term "non-profit membership corporation" means an entity, the membership of which:

(A) consists solely of Pennsylvania boroughs, such as a consortium, buying group or municipal power agency under section 2471.2; or

(B) consists of Pennsylvania boroughs and political subdivisions of another state or states.

(viii) An electric cooperative of another state.

Nothing in this clause shall prohibit council from engaging in advertising, bidding or price quotations if the council determines that the advertising, bidding or price quotations are in the public interest.

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Section 2. Sections 1403(a) and 1405 of the act, amended July 10, 1990 (P.L.383, No.90), are amended to read:

Section 1403. Evasion of Advertising Requirements.—(a) No member or members of council shall evade the provisions of section 1402 hereof as to advertising for bids, by purchasing or contracting for services and personal properties piecemeal for the purpose of obtaining prices under **[ten thousand dollars (\$10,000)] *the amount specified or adjusted under section 1402(a)*** upon transactions, which transactions should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than **[ten thousand dollars (\$10,000)] *the amount specified or adjusted under section 1402(a)***. This provision is intended to make unlawful the evading of 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 transactions involved should have been made as one transaction for one price. Any members of council 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 ten percent of the full amount of the contract or purchase. Whenever it shall appear that a member of council may have voted in violation of this section but the purchase or contract on which he so voted was not approved by council, this section shall be inapplicable.

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Section 1405. Separate Bids for Plumbing, Heating, Ventilating and Electrical Work.—In the preparation for the erection, construction and alteration of any public building, when the entire cost of such work shall exceed **[ten thousand dollars (\$10,000)] *the amount specified or adjusted under section 1402(a)***, the architect, engineer, or other person preparing such specifications may, if so requested by the borough council, prepare separate specifications for the plumbing, heating, ventilating and electrical work. The person or persons authorized to enter into contracts for the erection, construction or alteration of such public buildings may, if such separate specifications shall have been proposed, receive separate bids upon each of the said branches of work and shall thereupon award the contract for the same to the lowest responsible bidder for each of said branches.

Section 3. This act shall apply to contracts and purchases advertised after December 31 of the year in which this section takes effect.

Section 4. This act shall take effect immediately.

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

TOM CORBETT