

No. 2011-96

AN ACT

SB 295

Amending the act of May 28, 1937 (P.L.955, No.265), entitled, as amended, "An act to promote public health, safety, morals, and welfare by declaring the necessity of creating public bodies, corporate and politic, to be known as housing authorities to engage in slum clearance, and to undertake projects, to provide dwelling accommodations for persons of low income; providing for the organization of such housing authorities; defining their powers and duties; providing for the exercise of such powers, including the acquisition of property by purchase, gift or eminent domain, the renting and selling of property, and including borrowing money, issuing bonds, and other obligations, and giving security therefor; prescribing the remedies of obligees of housing authorities; authorizing housing authorities to enter into agreements, including agreements with the United States, the Commonwealth, and political subdivisions and municipalities thereof; defining the application of zoning, sanitary, and building laws and regulations to projects built or maintained by such housing authorities; exempting the property and securities of such housing authorities from taxation; and imposing duties and conferring powers upon the State Planning Board, and certain other State officers and departments," further providing for awards of contracts, completion bond, additional bond for protection of materialmen and others.

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

Section 1. Section 11 of the act of May 28, 1937 (P.L.955, No.265), known as the Housing Authorities Law, amended May 20, 1949 (P.L.1614, No.486), February 16, 1990 (P.L.67, No.13) and November 21, 1990 (P.L.569, No.143), is amended to read:

Section 11. Awards of Contracts; Completion Bond; Additional Bond for Protection of Materialmen and Others.—

(a) Whenever the estimated cost of any construction, erection, installation, completion, alteration, repair of, or addition to, any project subject to the control of any Authority shall exceed **[ten thousand (\$10,000) dollars] the base amount of eighteen thousand five hundred (\$18,500) dollars, subject to adjustment under subsection (b.3)**, it shall be the duty of said Authority to have such work performed pursuant to a contract awarded to the lowest responsible bidder, after advertisement for bids. Every such contract shall contain a provision obligating the contractor to the prompt payment of all material furnished, labor supplied or performed, rental for equipment employed, and services rendered by public utilities in or in connection with the prosecution of the work, whether or not the said material, labor, equipment or service enter into and become component parts of the work or improvement contemplated. Such provision shall be deemed to be included for the benefit of every person, copartnership, association or corporation who, as subcontractor or otherwise, has furnished material, supplied or performed labor, rented equipment or services in or in connection with the prosecution of the work as aforesaid, and the inclusion thereof in any contract shall preclude the filing by any such person,

copartnership, association or corporation of any mechanics' lien claim for such material, labor or rental of equipment.

(b) Whenever the estimated cost of any purchase of supplies, materials or equipment or the rental of any equipment, whether or not the same is to be used in connection with the construction, erection, installation, completion, alteration, repair of, or addition to, any project subject to the control of any Authority, shall exceed **[ten thousand (\$10,000) dollars] the base amount of eighteen thousand five hundred (\$18,500) dollars, subject to adjustment under subsection (b.3)**, it shall be the duty of such Authority to have such purchase or rental made pursuant to a contract awarded to the lowest responsible bidder, after advertisement for bids, such advertisement to be inserted in a newspaper of general circulation within the county in which the Authority operates.

(b.1) An authority shall not evade the provisions of subsection (a) or (b) as to advertising for bids by purchasing materials or contracting for services piecemeal for the purpose of obtaining prices under **[ten thousand (\$10,000) dollars] the base amount of eighteen thousand five hundred (\$18,500) dollars, subject to adjustment under subsection (b.3)**, upon transactions which should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than **[ten thousand (\$10,000) dollars] the base amount of eighteen thousand five hundred (\$18,500) dollars, subject to adjustment under subsection (b.3)**. 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 transactions involved should have been made as one transaction for one price.

(b.2) Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested for all contracts that exceed **[four thousand (\$4,000) dollars] the base amount of ten thousand (\$10,000) dollars, subject to adjustment under subsection (b.3)**, 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.3) 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.2), 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 subclauses (3) and (4) shall not exceed three per centum (3%).

(c) A housing authority shall require as a condition of the award of any contract, pursuant to subsection (a) or (b) of this section, that the contractor give to the Authority any bond (including bonds for the performance of the contract, and for the prompt payment by the contractor for material, supplies, labor, services and equipment) which are prescribed by law for contracts

awarded by cities or counties, as the case may be, of the same class as the city or county for which such Authority has been created.

(d) Notwithstanding anything to the contrary contained in this act or in any other provision of law, a housing authority may include, in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the Federal or State Government may have attached to its financial aid of the project.

(e) Every Authority awarding contracts or requiring the delivery of bonds pursuant to this section shall keep an exact copy of every contract awarded or bond delivered upon file at its principal office. Subject to regulations to be prescribed by the State Planning Board for their safe keeping such copies shall be opened to public inspection.

(f) Any authority member who votes to unlawfully evade the provisions of this section 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.

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