

No. 1986-146

AN ACT

SB 384

Authorizing the imposition of preferential bidding limitations against nonresident bidders or suppliers of goods when the state of such nonresident imposes or applies preferential bidding limitations on Pennsylvania bidders or suppliers of goods.

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

Section 1. Short title.

This act shall be known and cited as the Reciprocal Limitations Act.

Section 2. Legislative findings.

It is hereby determined and declared as a matter of legislative findings that:

(1) The award of contracts to the lowest responsible bidder generally provides for the most economical procurement of goods, supplies, equipment, materials, printing and construction.

(2) In some cases, award to the lowest responsible bidder may not be the most economical and practicable when the best interests of the Commonwealth are concerned.

(3) Some states apply a preference favoring in-state goods, supplies, equipment, materials, printing or bidders, or they apply a prohibition against the use of out-of-state goods, supplies, equipment, materials, printing or bidders.

(4) The application of this preference or prohibition by other states diminishes or eliminates opportunities for bidders and manufacturers who reside in Pennsylvania to obtain construction or printing contracts from or to sell goods, supplies, equipment and materials to states that have such a preference, thereby resulting in the loss of business for resident bidders and manufacturers. Therefore, in order to offset or counteract the discriminatory practices of other states, discourage other states from applying a preference and ultimately to aid employment, help business and industry located in Pennsylvania, attract new business and industry to Pennsylvania and provide additional tax revenue both from those receiving contracts and those employed by contractors, the General Assembly hereby declares that it is the policy of the Commonwealth to respond in like manner against those states that apply preferences or prohibitions by giving a similar offsetting preference to residents in Pennsylvania and bidders offering goods manufactured in Pennsylvania, and by prohibiting the purchase or use of certain goods, supplies, equipment, printing or materials in accordance with the provisions of this act.

Section 3. Preference for goods.

All departments, boards, commissions, State authorities or agencies of the Commonwealth shall, in all purchases of goods, supplies, equipment, materials and printing exceeding the amount of \$1,500, give preference to those bidders offering goods, supplies, equipment, materials or printing produced, manufactured, mined, grown or performed in Pennsylvania as against those bidders offering goods, supplies, equipment, materials or printing produced, manufactured, mined, grown or performed in any state that gives or requires a preference to goods, supplies, equipment, materials or printing produced, manufactured, mined, grown or performed in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular good, supply, equipment, material or printing.

Section 4. Preference for bidders.

(a) **General rule.**—When a public contract, exceeding the amount of \$1,500, is to be awarded to the lowest responsible bidder, a resident bidder shall be granted a preference as against a nonresident bidder from any state that gives or requires a preference to bidders from that state. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident bidder.

(b) **Definitions.**—As used in this section the following words and phrases shall have the meanings given to them in this subsection:

“**Public contract.**” A contract for the erection, construction, alteration, improvement or repair of any public building or other public work, erected, constructed, altered, improved or repaired at the expense of the Commonwealth or any authority or instrumentality thereof, or the purchase or lease of any goods, supplies, equipment, printing or materials by any department, board, commission, State authority or agency of the Commonwealth.

“**Resident bidder.**” A person, partnership, corporation or other business entity authorized to transact business in Pennsylvania and having a bona fide establishment for transacting business within Pennsylvania at which it was transacting business on the date when bids for the public contract were first solicited.

Section 5. Prohibition.

In the erection, construction, alteration, improvement or repair of any public building or other public work at the expense of the Commonwealth or any authority or instrumentality thereof, the following prohibition shall be recognized and applied. No department, board, commission, state authority or agency of the Commonwealth shall specify for, use, or purchase any goods, supplies, equipment, printing or materials which are produced, manufactured, mined, grown or performed in any state that prohibits the specification for, use, or purchase of such items in or on its public buildings or other works, when such items are not produced, manufactured, mined, grown or performed in such state.

Section 6. Federal funds.

The provisions of this act shall not be applicable when application of the act may jeopardize the receipt of Federal funds.

Section 7. Listing discriminating states.

(a) Preparation.—The Department of General Services shall prepare a list of the states which apply a preference favoring in-state goods, supplies, equipment, materials, printing or bidders or prohibiting the use of out-of-state goods, supplies, equipment, materials, printing or bidders and shall publish the list in the Pennsylvania Bulletin. When a state applies a new preference or prohibition, the Department of General Services shall publish that information in the Pennsylvania Bulletin as an addition to the original list.

(b) Inclusion in bid invitations.—Every department, board, commission, State authority or agency of the Commonwealth shall include in all its invitations to bid for the purchase of goods, supplies, equipment, materials and printing exceeding the amount of \$1,500, a list of all the states that have been found by the Department of General Services to have applied a preference and the amount of the preference. All invitations to bid and notices issued for the purpose of securing bids for public contracts, as defined in section 4(b), as issued by any department, board, commission, State authority or agency of the Commonwealth in an amount exceeding \$1,500, shall include a list of all states that apply a prohibition against certain items and shall inform potential bidders that they are prohibited from using goods, supplies, equipment, materials or printing from those states. If a bid discloses that the bidder is offering goods, supplies, equipment, materials or printing from a state which prohibits the use of out-of-state goods, supplies, equipment, materials or printing, the bid shall be rejected.

Section 8. Waiver.

The provisions of this act may be waived when the head of the department, board, commission, State authority or agency of the Commonwealth determines in writing that it is in the best interests of the Commonwealth.

Section 9. Repeals.

(a) Specific repeal.—Section 523 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

(b) General repeal.—All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 10. Effective date.

This act shall take effect in 90 days.

APPROVED—The 28th day of November, A. D. 1986.

DICK THORNBURGH