

No. 1990-90

AN ACT

SB 743

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 display of flags; further providing for the awarding of contracts; and providing a penalty.

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

Section 1. Section 1202(42) of the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, is amended to read:

Section 1202. Specific Powers.—The powers of the borough shall be vested in the corporate authorities. Among the specific powers of the borough shall be the following, and in the exercise of any of such powers involving the enactment of any ordinance or the making of any regulation, restriction or prohibition, the borough may provide for the enforcement thereof and may prescribe penalties for the violation thereof or for the failure to conform thereto:

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(42) Flags. To display the flag of the United States of America, of the Commonwealth of Pennsylvania, *the official POW/MLA flag* or *the flag* of any county, city, borough or other municipality in the State, on the public buildings *or grounds* and in public places of the borough.

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Section 2. Subsection (a) and the first paragraph and clause (2) of subsection (d) of section 1402 of the act, amended December 22, 1981 (P.L.537, No.155) and February 14, 1990 (P.L.60, No.10), 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 [four thousand dollars (\$4,000)] *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. 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, 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) 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.

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(d) The contracts or purchases made by council, involving an expenditure of over **[four thousand dollars (\$4,000)] ten thousand dollars (\$10,000)**, which shall not require advertising or bidding as hereinbefore provided, are as follows:

* * *

(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)] ten thousand dollars (\$10,000)** be subject to the advertising requirements contained herein;

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Section 3. Sections 1403 and 1405 of the act, amended December 22, 1981 (P.L.537, No.155), 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 **[four thousand dollars (\$4,000)] ten thousand dollars (\$10,000)** upon transactions, which transactions should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than **[four thousand dollars (\$4,000)] ten thousand dollars (\$10,000)**. 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.

(b) Any council member who votes to unlawfully evade the provisions of section 1402 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. This penalty shall be in addition to any surcharge which may be assessed pursuant to subsection (a).

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 ~~[four thousand dollars (\$4,000)]~~ *ten thousand dollars (\$10,000)*, 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 4. This act shall take effect in 60 days.

APPROVED—The 10th day of July, A. D. 1990.

ROBERT P. CASEY