

No. 1990-93

AN ACT

SB 746

Amending the act of May 27, 1953 (P.L.244, No.34), entitled "An act relating to and regulating the contracts of incorporated towns and providing penalties," further regulating contracts; further providing for advertising requirements; and providing a penalty.

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

Section 1. Sections 2(a) and (d), 3, 3.1 and 5 of the act of May 27, 1953 (P.L.244, No.34), entitled "An act relating to and regulating the contracts of incorporated towns and providing penalties," amended December 22, 1981 (P.L.542, No.157), are amended to read:

Section 2. Regulation of Contracts.—(a) All contracts or purchases of incorporated towns in excess of **[four thousand dollars] *ten thousand dollars***, 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 published or circulated in the county in which the town is situated at least three times at intervals of not less than three days where daily newspapers of general circulation are available for such publication, and in case of weekly newspapers shall be published once a week for two successive weeks. The first advertisement shall be published not less than ten days prior to the date fixed for the opening of bids. 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 town 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.

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

(1) Those for maintenance, repairs or replacements for water, sewer, electric light or other public works of the incorporated town, 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 incorporated town through its own employes: Provided, That all materials used for street improvement, maintenance and/or construction in excess of **[four thousand dollars] *ten thousand dollars*** be subject to the 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.

(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 material by the Commonwealth or the Federal Government or their agencies. But 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.

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Section 3. Evasion of Advertising Requirements.—(a) No member or members of council shall evade the provisions of Section two hereof by purchasing or contracting for services and personal properties piecemeal for the purpose of obtaining prices under **[four thousand dollars] ten thousand dollars** upon transactions which transaction should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than **[four thousand dollars] ten thousand dollars**. 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 of 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 per centum of the full amount of the contract or purchase.

(b) 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.

(c) *Any council member who votes to unlawfully evade the provisions of section 2 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 3.1. Contracts between Seven Hundred Fifty Dollars and **[Four Thousand Dollars] Ten thousand Dollars**; Written Bids.—(a) In all cases of contracts or purchases, other than the kinds mentioned in clauses (1) to (5) inclusive of subsection (d) of section 2 of this act, from seven hundred fifty dollars to **[four thousand dollars] ten thousand dollars** inclusive, whether made by the town council or by an officer or appointee of the town, written

bids shall be solicited therefor; and no such contract or purchase shall be made for the town except upon at least three such written bids. The specifications upon which bids are solicited shall be uniform in so far as possible to afford equal opportunity for bidding. Catalogues and circulars of firm prices shall be acceptable as bids upon the contracts or purchases herein regulated. All such bids shall be retained in the proper department or office for a period of at least two months, and shall be reported monthly to the person designated by the town council, who shall make a consolidated monthly report thereof to council. The town council and the person designated by the town council shall have access to the bids in all departments and offices of the town for the enforcement of this provision. Any official or appointee of the town contracting or purchasing in violation of the provision of this section shall be liable upon his bond, if any, or personally, in the full amount of the purchase or contract so made, and the town council may avoid any such purchase or contract.

(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 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.

Section 5. Separate Bids for Plumbing, Heating, Ventilating and Electrical Work.—In the preparation for the erection, construction and alteration of any public building of an incorporated town, when the entire cost of such work shall exceed **[four thousand dollars] ten thousand dollars**, the architect, engineer or other person preparing such specifications shall 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 shall receive separate bids upon each of the said branches of work and award the contract for the same to the lowest responsible bidder for each of said branches.

Section 2. This act shall take effect in 60 days.

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

ROBERT P. CASEY