

No. 2011-90

AN ACT

HB 291

Amending Titles 53 (Municipalities Generally) and 74 (Transportation) of the Pennsylvania Consolidated Statutes, further providing for competitive bidding of contracts by intergovernmental units, by parking authorities, by municipal authorities and by metropolitan transportation authorities and for division of transactions.

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

Section 1. Sections 2308, 2311 and 2312 of Title 53 of the Pennsylvania Consolidated Statutes are amended to read:

§ 2308. Bids for certain joint purchases.

(a) Notice.—All joint purchases involving an expenditure of more than **[\$10,000] a base amount of \$18,500, subject to adjustment under subsection (b)**, shall be made by contract, in writing, only after notice for bids once a week for two weeks in at least one and not more than two newspapers of general circulation in the joining local governments. All contracts shall be let to the lowest responsible bidder. Every contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works shall comply with the provisions of the act of March 3, 1978 (P.L.6, No.3), known as the Steel Products Procurement Act.

(b) Adjustments.—*Adjustments to the base amounts specified under subsection (a) 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 12-month period ending September 30, 2012, and for each successive 12-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 \$100 to determine the final adjusted base amounts for purposes of subsection (a).

(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 \$100 to determine the new final adjusted base amounts for purposes of subsection (a).

(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) 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 3%.

§ 2311. Written or telephonic price quotations required.

(a) Amount.—Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested for all contracts [that exceed \$4,000] in excess of the base amount of \$10,000, subject to adjustment under subsection (b), 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) Adjustments.—Adjustments to the base amounts specified under subsection (a) 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 12-month period ending September 30, 2012, and for each successive 12-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 \$100 to determine the final adjusted base amounts for purposes of subsection (a).

(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 \$100 to determine the new final adjusted base amounts for purposes of subsection (a).

(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 written or telephonic price quotations are required under subsection (a), 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 3%.

§ 2312. Division of transactions provided.

No local government shall evade the provisions of section 2308 (relating to bids for certain joint purchases) as to advertising for bids or purchasing materials or contracting for services piecemeal for the purpose of obtaining prices under **[\$10,000] a base amount of \$18,500, subject to adjustment under section 2308(b)**, upon transactions which should in the exercise of reasonable discretion and prudence be conducted as one transaction amounting to more than **[\$10,000] a base amount of \$18,500, subject to**

adjustment under section 2308(b). 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 such price when in either case the transaction involved should have been made as one transaction for one price.

Section 2. Sections 5511(c) and (h)(1) and 5614(a)(1), (b), (c) and (h)(1) of Title 53 are amended and the sections are amended by adding subsections to read:

§ 5511. Competition in award of contracts.

* * *

(c) Quotations.—Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested for a contract [which exceeds \$4,000] *in excess of the base amount of \$10,000, subject to adjustment under subsection (c.1)*, but is less than the amount requiring advertisement and competitive bidding. 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.

(c.1) Adjustments.—Adjustments to the base amounts specified under subsections (a), (b) and (c) 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 12-month period ending September 30, 2012, and for each successive 12-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 \$100 to determine the final adjusted base amounts for purposes of subsections (a), (b) and (c).

(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 \$100 to determine the new final adjusted base amounts for purposes of subsections (a), (b) and (c).

(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) or (b) and written or telephonic price quotations are required under subsection (c), 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 3%.

* * *

(h) Evasion.—

(1) An authority may not evade the provisions of this section as to bids or purchasing materials or contracting for services piecemeal for the purpose of obtaining prices under **[\$25,000] the amount required by this section** upon transactions which should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than **[\$25,000] the amount required by this section**.

* * *

§ 5614. Competition in award of contracts.

(a) Services.—

(1) Except as set forth in paragraph (2), all construction, reconstruction, repair or work of any nature made by an authority if the entire cost, value or amount, including labor and materials, exceeds **[\$10,000] a base amount of \$18,500, subject to adjustment under subsection (c.1)**, shall be done only under contract to be entered into by the authority with the lowest responsible bidder upon proper terms after public notice asking for competitive bids as provided in this section.

* * *

(b) Supplies and materials.—All supplies and materials *with a base price* costing at least **[\$10,000] \$18,500, subject to adjustment under subsection (c.1)**, shall be purchased only after advertisement as provided in this section. The authority shall accept the lowest bid, kind, quality and material being equal, but the authority shall have the right to reject any or all bids or select a

single item from any bid. The provisions as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a noncompetitive market or solely by a manufacturer's authorized dealer.

(c) Quotations.—Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested for a contract [which exceeds \$4,000] *in excess of the base amount of \$10,000, subject to adjustment under subsection (c.1)*, but is less than the amount requiring advertisement and competitive bidding. 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.

(c.1) Adjustments.—Adjustments to the base amounts specified under subsections (a)(1), (b) and (c) 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 12-month period ending September 30, 2012, and for each successive 12-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 \$100 to determine the final adjusted base amounts for purposes of subsections (a)(1), (b) and (c).

(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 \$100 to determine the new final adjusted base amounts for purposes of subsections (a)(1), (b) and (c).

(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)(1) and (b) and written or telephonic price quotations are required under subsection (c), 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 3%.

* * *

(h) Evasion.—

(1) An authority may not evade the provisions of this section as to bids or purchasing materials or contracting for services piecemeal for the purpose of obtaining prices under **[\$10,000] the amount required by this section** upon transactions which should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than **[\$10,000] the amount required by this section**.

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Section 3. Section 1750 of Title 74 is amended to read:

§ 1750. Contracts, procurement and sale of property.

(a) Competitive bids.—Except in the purchase of unique articles or articles which, for any other reason, cannot be obtained in the open market and except as provided in section 1741 (relating to general powers) and as provided in this chapter, competitive bids shall be secured before any purchase or sale, by contract or otherwise, is made or before any contract is awarded for construction, alterations, supplies, equipment, repairs or maintenance or for rendering any services to the authority other than professional services. Purchases shall be made from or the contract shall be awarded to the lowest responsive, responsible bidder. Sales shall be made to the highest responsive, responsible bidder. No purchase of any unique article or other articles which cannot be obtained in the open market shall be made without express approval of the board where the amount involved is in excess of \$25,000. The authority shall not be subject to **[the act of November 26, 1978 (P.L.1309, No.317), referred to as the Public Works Contract Regulation Law.] 62 Pa.C.S. Ch. 39 (relating to contracts for public works)**. Nothing in this section or any other law of this Commonwealth shall require the authority to competitively bid architectural design, engineering, construction management or other professional services required by the authority.

(b) Procedure.—All purchases and sales in excess of \$25,000 shall be awarded after advertising in a local newspaper of general circulation in the

metropolitan area at least two weeks prior to the bid opening. Bids shall be publicly opened and read aloud at a date, time and place designated in the invitation to bid. Invitations to bid shall be sent at least one week prior to the bid opening to at least three potential bidders who are qualified technically and financially to submit bids, or, in lieu thereof, a memorandum shall be kept on file showing that less than three potential bidders so qualified exist in the market area within which it is practicable to obtain bids.

(c) Qualified vendors.—Written price quotations from at least three qualified and responsible vendors shall be solicited for all purchases and sales under \$25,000 and over \$10,000, or, in lieu thereof, a memorandum approved by the general manager shall be kept on file showing that less than three vendors so qualified exist in the market area within which it is practicable to obtain quotations, except as provided in this chapter.]

(d) Small purchases.—[Purchases] *Except as set forth in 62 Pa.C.S. § 3742 (relating to procurement limits for mass transportation authorities), purchases or sales with a base price under [\$10,000] \$18,500, subject to adjustment under subsection (l),* may be negotiated with or without competitive bidding under sound procurement procedures as promulgated and established by the general manager.

(e) Waiver.—Competitive bidding requirements may be waived if it is determined by the general manager, or in such other manner as the board may provide, that an emergency directly and immediately affecting customer service or public health, safety or welfare requires immediate delivery of supplies, materials, equipment or services. A record of circumstances explaining the emergency shall be submitted to the board at its next regular meeting and thereafter kept on file.

(f) Sale or lease of real property.—Contracts for the sale or lease of real property owned by the authority shall be awarded after competitive bidding as shown in subsection (b), except as provided in section 1741(a)(22) where the contract is entered into with the Commonwealth or any government agency or with the United States government or any agency or instrumentality thereof or as provided in section 1741(a)(24).

(g) Property management contracts.—Contracts for the management of authority-owned property, such as bus routes or subway systems, may be negotiated and awarded by an affirmative vote of one more than a majority of all members of the board.

(h) Avoidance prohibited.—Requirements shall not be split into parts for the purpose of avoiding the provisions of this section.

(i) Rejection of bids.—The authority shall have the right to reject any or all bids or parts of any or all bids, whenever, in the opinion of the board, rejection is necessary for the protection of the interests of the authority. In every case, a record shall be made setting forth the reason for the rejection, which record shall thereafter be kept on file.

(j) Rules and regulations.—The board may by resolution adopt policies to effectuate the provisions of this section.

(k) Concessions.—All concessions granted by the authority for the sale of products or the rendition of services for a consideration on authority property shall be awarded only under written specifications after competitive

bidding and to the highest responsive, responsible bidder in a manner similar to that required by subsection (b) [or (c) as appropriate]. This requirement for competitive bidding shall not apply to any concession which has been granted by a transportation system acquired by the authority and which by the terms of the agreement granting it will terminate within one year from date of the acquisition of the transportation system by the authority nor to any concession involving the estimated receipt by the authority of less than [\$10,000] the base amount of \$18,500, subject to adjustment under subsection (l), over the period for which the concession is granted.

(l) Adjustments.—Adjustments to the base amounts specified under subsections (b), (d) and (k) 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 12-month period ending September 30, 2012, and for each successive 12-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 \$100 to determine the final adjusted base amounts for purposes of subsections (b), (d) and (k).

(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 \$100 to determine the new final adjusted base amounts for purposes of subsections (b), (d) and (k).

(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 (b) or (k) and the amount at which competitive bidding may apply to purchase sales under subsection (d), 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 3%.

Section 4. 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 5. This act shall take effect immediately.

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

TOM CORBETT