

No. 2011-93

AN ACT

SB 286

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 providing for regulation of contracts; providing for adjustment; further providing for evasion of advertising requirements, for contracts between \$750 and \$10,000 and for separate bids for plumbing, heating, ventilating and electrical work.

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

Section 1. Section 2(a) and (d)(2) 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 July 10, 1990 (P.L.392, No.93) and December 18, 1996 (P.L.1140, No.170), are amended to read:

Section 2. Regulation of Contracts.—(a) All contracts or purchases of incorporated towns in excess of **[ten thousand dollars]** *the base amount of eighteen thousand five hundred dollars, subject to adjustment under section 2.1*, 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.

* * *

(d) The contracts or purchases made by council, which shall not require advertising, bidding or price quotations as hereinbefore provided, are as follows:

* * *

(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]** *the base amount of ten thousand dollars* be subject to the relevant price quotation or advertising requirements contained herein *and to adjustment under section 2.1*.

* * *

Section 2. The act is amended by adding a section to read:

Section 2.1. Adjustment.—*Adjustments to the base amounts specified under section 2 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 section.*

(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, to determine the final adjusted base amounts for purposes of section 2.*

(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 to determine the new final adjusted base amounts for purposes of section 2.*

(5) *The determinations and adjustments required under this section shall be made in the period between October 1 and November 15 of the year following the effective date of this section 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 and written or telephonic price quotations are required under section 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 section for the ensuing calendar year.*

(8) *The annual increase in the preliminary adjusted base amounts obtained under paragraphs (3) and (4) shall not exceed three per centum.*

Section 3. Section 3 of the act, amended July 10, 1990 (P.L.392, No.93), is amended to read:

Section 3. Evasion of Advertising Requirements.—(a) No member or members of council shall evade the provisions of **[Section two hereof] section 2** by purchasing or contracting for services and personal properties piecemeal for the purpose of obtaining prices under **[ten thousand dollars] the base amount of eighteen thousand five hundred dollars, subject to adjustment under section 2.1**, upon transactions which transaction should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to **the base amount of more than [ten thousand dollars] eighteen thousand five hundred dollars, subject to adjustment under section 2.1**. 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 4. Section 3.1 of the act, amended July 10, 1990 (P.L.392, No.93) and repealed in part December 18, 1996 (P.L.1140, No.170), is amended to read:

Section 3.1. **[Contracts between Seven Hundred Fifty Dollars and Ten thousand Dollars; Written Bids.—] *Written or Telephonic Price Quotations.*—**

(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] in excess of the base amount of ten thousand dollars, subject to adjustment under section 2.1**, 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. Section 5 of the act, amended July 10, 1990 (P.L. 392, No.93), is amended to read:

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 [ten thousand dollars] *the base amount of eighteen thousand five hundred dollars, subject to adjustment under section 2.1*, 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 6. 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 7. This act shall take effect immediately.

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

TOM CORBETT