

## No. 2011-85

## AN ACT

## HB 279

Amending the act of June 24, 1931 (P.L.1206, No.331), entitled "An act concerning townships of the first class; amending, revising, consolidating, and changing the law relating thereto," in contracts, further providing for general regulations concerning contracts, for evasion of advertising requirements and for separate specifications for branches of work.

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

Section 1. Section 1802(a), (a.1) and (d)(2) of the act of June 24, 1931 (P.L.1206, No.331), known as The First Class Township Code, reenacted and amended May 27, 1949 (P.L.1955, No.569) and amended or added July 10, 1990 (P.L.389, No.92), December 18, 1996 (P.L.1149, No.173) and December 20, 1996 (P.L.1495, No.192), are amended and the section is amended by adding a subsection to read:

Section 1802. General Regulations Concerning Contracts.—(a) All contracts or purchases made by any township, involving the expenditure of over **[ten thousand dollars]** *the base amount of eighteen thousand five hundred dollars, subject to adjustment under subsection (a.2)*, except those hereinafter mentioned, shall not be made except with and from the lowest responsible bidder, shall be in writing, and shall be made only after notice by the secretary, published, in one newspaper of general circulation, published or circulating in the county in which the township is situated, at least two times at intervals of not less than three days where daily newspapers of general circulation are employed for such publication, or in case weekly newspapers are employed then the notice shall be published 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 township. Advertisements for contracts or purchases shall contain the date, time and location for opening of bids and shall state the amount of the performance bond determined under subsection (c). All plans and specifications shall be on file at least ten days in advance of opening 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 township 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.

(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]** *in excess of the base amount of ten thousand dollars, subject to adjustment under subsection (a.2)* 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.

*(a.2) 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 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 subsection.*

*(3) (i) If the department determines that there is a positive percentage change in the first year that the determination is made under clause (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 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 one hundred dollars 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 clauses (3) and (4) shall become effective January 1 for the calendar year following the year in which the determination required under clause (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 clause (1) and the unadjusted or final adjusted base amounts determined under clauses (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 clauses (3) and (4) shall not exceed three per centum.*

\* \* \*

(d) The contracts or purchases made by the commissioners 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 township through its own employes: Provided, however, 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 as contained herein *and to adjustment under subsection (a.2).*

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Section 2. Sections 1802.1 and 1805 of the act, amended July 10, 1990 (P.L.389, No.92), are amended to read:

Section 1802.1. Evasion of Advertising Requirements.—(a) No commissioner or commissioners shall evade the provisions of section one thousand eight hundred two as to advertising for bids, by purchasing or contracting for services and personal properties piecemeal for the purpose of obtaining prices under **[ten thousand dollars] eighteen thousand five hundred dollars, subject to adjustment under section 1802(a.2)**, upon transactions, which transactions should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than **[ten thousand dollars] eighteen thousand five hundred dollars, subject to adjustment under section 1802(a.2)**. 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 commissioners 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. Whenever it shall appear that a commissioner may have voted in violation of this section, but the purchase or contract on which he so voted was not approved by the board of commissioners, this section shall be inapplicable.

(b) Any commissioner who votes to unlawfully evade the provisions of section one thousand eight hundred two 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 1805. *Separate Specifications for Branches of Work.*—In the preparation of specifications for the erection or alteration of any public building, when the entire cost of such work exceeds **[ten thousand]** *the base amount of eighteen thousand five hundred* dollars, *subject to annual adjustment under section 1802(a.2)*, the architect, engineer, or person preparing such specifications shall prepare separate specifications for the plumbing, heating, ventilating, and electrical work, and the township shall receive separate bids upon each of such branches of work, and award the contract for the same to the lowest responsible bidder.

Section 3. 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 4. This act shall take effect immediately.

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

TOM CORBETT