

## No. 2011-91

## AN ACT

## SB 282

Amending the act of June 23, 1931 (P.L.932, No.317), entitled "An act relating to cities of the third class; and amending, revising, and consolidating the law relating thereto," further regulating contracts as to purchasing and advertising requirements.

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

Section 1. Section 1901(a), (b) and (d) of the act of June 23, 1931 (P.L.932, No.317), known as The Third Class City Code, reenacted and amended June 28, 1951 (P.L.662, No.164), amended March 25, 1988 (P.L.289, No.32) and July 11, 1996 (P.L.647, No.109), is amended to read:

Section 1901. Power to Make Contracts; Regulations Concerning Contracts.—(a) Each city may make contracts for carrying into execution the provisions of this act and the laws of the Commonwealth. The council shall, by ordinance, provide for and regulate the award of all contracts. All contracts or purchases not in excess of [ten] *the base amount of eighteen thousand five hundred dollars, subject to adjustment under section one thousand nine hundred and three point one of this act*, shall be by note or memorandum in writing, signed by the officer or employe making the purchase or contract.

(b) All services and personal properties required by any city, or any department thereof, where the *base* amount exceeds the sum of [ten] *eighteen thousand five hundred dollars, subject to adjustment under section one thousand nine hundred and three point one of this act*, shall be furnished and performed under written contract, and the contract shall be awarded and given to the lowest responsible bidder, after advertising two times, each publication on a different day, in not more than two newspapers, in accord with the provisions of section one hundred and nine of this act, and the bids shall not be opened until at least ten days have elapsed after the first advertisement. A notice of the advertisement for contracts or purchases shall also be posted at the city hall.

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(d) The contracts or purchases made by council involving an expenditure [of over ten] *in excess of the base amount of eighteen thousand five hundred dollars, subject to adjustment under section one thousand nine hundred and three point one of this act*, which shall not require advertising or bidding, as hereinbefore provided are as follows:

(1) Those for maintenance, repairs or replacements for water, electric light or other public works of the city, 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 city through its own employes: Provided, however,

That this shall not apply to construction materials used in a street improvement.

(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 materials 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.

(6) Those made during a state of emergency declared by the mayor or chief executive in accord with section one thousand two hundred and three of this act.

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Section 2. Section 1902 of the act, amended March 25, 1988 (P.L.289, No.32), is amended to read:

Section 1902. Evasion of Advertising Requirements.—No member or members of council shall evade the provisions of the preceding section as to advertising for bids by purchasing or contracting for services and personal properties piecemeal for the purpose of obtaining prices under **[ten] the base amount of eighteen thousand five hundred dollars, subject to adjustment under section one thousand nine hundred and three point one of this act**, upon transactions which should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than **[ten] the base amount of eighteen thousand five hundred dollars, subject to adjustment under section one thousand nine hundred and three point one of this act**. 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 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. Wherever 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.

Section 3. The act is amended by adding a section to read:

**Section 1903.1. Adjustments to Base Amount Based on Consumer Price Index for All Urban Consumers.—**

**(a) Adjustments to the base amounts specified under sections 1901, 1902 and 1909 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 (\$100) to determine the final adjusted base amounts for purposes of sections 1901 and 1902.*

*(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 (\$100) to determine the new final adjusted base amounts for purposes of sections 1901 and 1902.*

*(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 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 section 1901 and advertising is required under section 1902 or separate bids are required under section 1909 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 percent.*

Section 4. Section 1909 of the act, amended March 25, 1988 (P.L.289, No.32), is amended to read:

Section 1909. Separate Bids for Plumbing, Heating, Ventilating and Electrical Work, Elevators and Moving Stairs.—In the preparation of specifications for the erection, construction, and alteration of any public building, when the entire cost of such work shall exceed **[ten thousand]** *the base amount of eighteen thousand five hundred* dollars, *subject to adjustment under section one thousand nine hundred and three point one of this act*, the architect, engineer, or other person preparing such specifications, shall prepare only the following separate specifications; (1) plumbing, (2) heating, (3) ventilating, (4) electrical work, (5) elevators and moving stairs, and (6) one complete set of specifications for all the other work to be done in such erection, construction and alteration. 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, including the balance of the work in addition to the plumbing, heating, ventilating and electrical work and elevators and moving stairs. Where it is desired to install an air conditioning unit, the heating and ventilating so involved may be regarded as one branch of work having only one set of specifications, and bids may be received and a contract awarded thereon as hereinbefore provided.

Section 5. 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 6. This act shall take effect immediately.

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

TOM CORBETT