

**[16 Pa. Cons. Stat. § 1802.]**

§ 1802. Contract procedures; terms and bonds; advertising for bids: The County Code

(a) All contracts for services and personal property where the base amount thereof exceeds the sum of eighteen thousand five hundred dollars (\$18,500), subject to adjustment under section 1801(b.1), shall be written and shall, except as otherwise hereinafter specified, be made by advertising for bids.

(b) Contracts or purchases in excess of the base amount of eighteen thousand five hundred dollars (\$18,500), subject to adjustment under section 1801(b.1), except those [hereinafter mentioned] specified in subsection (h) and except as provided by the act of October 27, 1979 (P.L.241, No.78), entitled "An act authorizing political subdivisions, municipality authorities and transportation authorities to enter into contracts for the purchase of goods and the sale of real and personal property where no bids are received," shall not be made except with and from the lowest responsible and responsive bidder submitting a bid in conformity with the specifications approved by the board of commissioners for the contract or purchase, after due notice in one newspaper of general circulation, published or circulating in the county, 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 less than ten days prior to the date fixed for the opening of bids. The requirements of this subsection need not be followed in cases of emergency, but in such cases the actual emergency shall be declared and stated by resolution of the commissioners.

(c) All bids shall be received by the controller, or, in the case of a county of the third, fourth, fifth, sixth, seventh or eighth class, if there be no controller, then by the chief clerk of the [county] commissioners, in sealed envelopes. [Bids]

(1) In the case of a county of the second class A, bids shall be opened publicly at a time and place to be designated in the advertisement for bids. All the figures shall be announced publicly by the chief clerk or the chief clerk's designee and referred to the appropriate departments for tabulation without the presence of the commissioners.

(2) In the case of a county of the third, fourth, fifth, sixth, seventh or eighth class, bids shall be opened publicly at a time and place specified in the advertisement for bids, in the presence of the controller, or chief clerk as the case may be, by the commissioners or their designee. The controller, or the chief clerk as the case may be, shall keep a record of all such bids [and awards, and the controller shall certify no checks for contracts not made agreeably thereto].

(d) The amount or price of the contract shall, in all cases whether of straight sale price, conditional sale, lease, lease purchase or otherwise, be the entire amount which the county pays to the successful bidder, or his assigns, less the value of personal property transferred from the county to the bidder, or his assigns, at any time during the duration of the contract, 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. The value of personal property transferred to the bidder or his assigns upon execution of the contract shall be specified in the bid. The method of determining the value of personal

property transferred to the bidder or his assigns at a time during the duration of the contract shall be specified in the bid and shall be determined using generally accepted valuation methods.

(e) The acceptance of bids by advertising required herein shall be made by the [commissioners] controller, in the case of a county of the second class A, or by the commissioners, in the case of a county of the third, fourth, fifth, sixth, seventh or eighth class, and shall only be made by public announcement at the meeting at which bids are opened, or at a subsequent meeting, the time and place of which shall be publicly announced when bids are so opened. If for any reason the award is not made at either of the above meetings, the same business may be transacted at any subsequent meeting, the time and place of which shall have been announced at the previous meeting held for such award. The contract shall be awarded, or all bids shall be rejected, within thirty days of the opening of the bids, except for bids subject to 62 Pa.C.S. (relating to procurement). Thirty-day extensions of the date for the award may be made by the mutual written consent of the commissioners and any bidder who wishes to remain under consideration for award. The commissioners shall excuse from consideration any bidder not wishing to agree to a request for extension of the date for the award and shall release such bidder from any bid bond or similar bid security furnished under subsection (f). All contracts shall be filed with the controller, or with the chief clerk as the case may be, immediately after their execution.

(f) The commissioners may require, as a necessary condition of considering a bid, that any bids advertised be accompanied by [cash, by a certified check,] a cashier's check[, bank good faith check] or other irrevocable letter of credit in a reasonable amount drawn upon a bank authorized to do business in this Commonwealth or by a bond with corporate surety in a reasonable amount. [Whenever it is required that a bid be accompanied by cash, certified check, cashier's check, bank good faith check or other irrevocable letter of credit or bond, no bid shall be considered unless so accompanied.] In the event any bidder shall, upon award of the contract to [him] the bidder, fail to comply with the requirements [hereinafter stated] of subsection (g) as to security guaranteeing the performance of the contract, the security furnished under this subsection shall be forfeited to the county as liquidated damages.

(g) [The] Whenever a formal bid is required by this article, the successful bidder[, when a formal bid is required herein,] may be required to furnish a bond or irrevocable letter of credit or other security in an amount sufficient to the commissioners guaranteeing performance of the contract within thirty days after the contract has been awarded, unless the commissioners shall prescribe a shorter period. The successful bidder for a contract which involves the construction, erection, installation, completion, alteration, repair of or addition to any public work or improvement of any kind shall furnish security as provided in section 2318 of this act. Performance security for services and contracts for labor and materials delivered on a periodic basis, including, but not limited to, food service contracts, home health services and janitorial services and supplies, may be computed on the expected average value for one or more months at the discretion of the commissioners. Upon failure to furnish such security within the time fixed, the previous awards shall be void. Deliveries, performances and guarantees may be required in all cases of expenditures, including the exceptions [herein] as under subsection (h).

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

(1) Those for maintenance, repairs or replacements for water, electric light, or other public works of the county where they do not constitute new additions, extensions or enlargements of existing facilities and equipment. Security may be required by the commissioners as in other cases for work done.

- (2) Those made for improvements, repairs and maintenance of any kind, made or provided by the county through its own employees. 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 the commissioners, 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 and electricity, natural gas or telecommunication services, provided that, in the case of utilities not under tariff with the Pennsylvania Public Utility Commission, contracts made without advertising and bidding shall be made only after receiving written or telephonic price quotations in accordance with the procedures specified in section 1801(b) of this article.
- (5) Those involving services of members of the medical or legal profession, registered architects, engineers, certified public accountants or other personal services involving professional expertise.
- (6) Those involving contracts entered into by nonprofit cooperative hospital service associations for hospitals and nursing homes which are part of the institutional district or which are owned by the county, operated by the county or affiliated with the county by the purchasing of, or participating in contracts for, materials, supplies and equipment.
- (6.1) Those involving tangible client services provided by nonprofit agencies. For the purposes of this clause, the term "tangible client services" shall mean congregate meals, home-delivered meals, transportation or chore services provided through area agencies on aging.
- (7) Those made with any public body, including, but not limited to, the sale, lease or loan of any supplies or materials to the county by a public body, provided that the price thereof shall not be in excess of that fixed by the public body. The requirements of 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation) shall not apply when a county purchases cooperatively with another public body which has entered into a contract for supplies or materials. As used in this paragraph, "public body" shall mean any of the following:
- (i) the Federal Government;
  - (ii) the Commonwealth of Pennsylvania;
  - (iii) any other state;
  - (iv) a political subdivision, local or municipal authority, council of government, entity created in accordance with 53 Pa.C.S. Ch. 23 Subch. A or other similar local entity of the Commonwealth or any other state; or
  - (v) an agency of the Federal Government, the Commonwealth or any other state.
- (7.1) In the case of counties of the second class A, those involving the purchase of milk.
- (8) Those exclusively involving construction management services.
- (9) Those involving computer software.
- (i) Notwithstanding the provisions of this article to the contrary, the [county] commissioners shall have authority to enter into contracts for equipment and services related to technology and information systems on the basis of best value procurement. Contracts under best value procurement shall be made only after the county has solicited proposals based on performance and outcome specifications developed by the county and describing at minimum the objectives to be met by the system, the tasks to be performed by the system,

the users of the system, system security issues, the time frame for system implementation, potential operating technologies, compatibility with existing systems, training and maintenance and shall indicate the process by which the contract shall be awarded. Best value procurement shall not require a sealed bid process and shall permit the commissioners to negotiate the terms of the agreement with any responsive and responsible vendor.

(j) Every contract subject to this article shall comply, as applicable, with the provisions of [the]:

(1) The act of August 15, 1961 (P.L.987, No.442), known as the "Pennsylvania Prevailing Wage Act."

(2) The act of December 20, 1967 (P.L.869, No.385), known as the "Public Works Contractors' Bond Law of 1967."

(3) The act of January 23, 1974 (P.L.9, No.4), referred to as the Public Contract Bid Withdrawal Law.

(4) The act of March 3, 1978 (P.L.6, No.3), known as the "Steel Products Procurement Act[," the act of October 28, 1983 (P.L.176, No.45), known as the "Antibid-Rigging Act," the act of December 20, 1967 (P.L.869, No.385), known as the "Public Works Contractors' Bond Law of 1967," the act of August 15, 1961 (P.L.987, No.442), known as the "Pennsylvania Prevailing Wage Act," the act of November 26, 1978 (P.L.1309, No.317), known as the "Public Works Contract Regulation Law," the act of February 17, 1994 (P.L.73, No.7), known as the "Contractor and Subcontractor Payment Act," the act of January 23, 1974 (P.L.9, No.4), referred to as the Public Contract Bid Withdrawal Law, and the act of April 4, 1984 (P.L.193, No.40), known as the "Motor Vehicle Procurement Act]."

(5) The act of February 17, 1994 (P.L.73, No.7), known as the "Contractor and Subcontractor Payment Act."

(6) 62 Pa.C.S. Chs. 37 Subch. B. (relating to motor vehicles), 39 (relating to contracts for public works) and 45 (relating to antibid-rigging).

(k) No person, consultant, firm or corporation contracting with a county for purposes of rendering personal or professional services to the county shall share with any county officer or employe and no county officer or employe shall accept any portion of the compensation or fees paid by the county for the contracted services provided to the county except under the following terms or conditions:

(1) Full disclosure of all relevant information regarding the sharing of the compensation or fees shall be made to the board of commissioners.

(2) The board of commissioners must approve the sharing of any fee or compensation for personal or professional services prior to the performance of said services.

(3) No fee or compensation for personal or professional services may be shared except for work actually performed.

(4) No shared fee or compensation for personal or professional services may be paid at a rate in excess of that commensurate for similar personal or professional services.