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TITLE 62
PROCUREMENT

Part
I. Commonwealth Procurement Code
II. General Procurement Provisions

Enactment. Unless otherwise noted, the provisions of Title 62 were added May 15, 1998, P.L.358, No.57, effective in 180 days.

Special Provisions in Appendix. See sections 4, 5 and 7 of Act 57 of 1998 in the appendix to this title for special provisions relating to legislative intent, terms of office of present members and applicability to contracts.

PART I
COMMONWEALTH PROCUREMENT CODE

Chapter
1. General Provisions
3. Procurement Organization
5. Source Selection and Contract Formation
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23. Ethics in Public Contracting

Enactment. Part I was added May 15, 1998, P.L.358, No.57, effective in 180 days.

CHAPTER 1
GENERAL PROVISIONS

Sec.
101. Short title of part.
102. Application of part.
103. Definitions.
104. General principles of law otherwise applicable.
105. Determinations.
106. Public access to procurement information (Repealed).
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107. Reciprocal limitations.
108. Recycled materials.

Enactment. Chapter 1 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

§ 101. Short title of part.

This part shall be known and may be cited as the Commonwealth Procurement Code.

§ 102. Application of part.

(a) Application to Commonwealth procurement.--This part applies to every expenditure of funds, other than the investment of funds, by Commonwealth agencies under any contract, irrespective of their source, including Federal assistance moneys except as specified in section 2108 (relating to compliance with Federal requirements). This part does not apply to contracts between Commonwealth agencies or between the Commonwealth and its political subdivisions or other governments except as provided in Chapter 19 (relating to intergovernmental relations). Nothing in this part or in accompanying regulations shall prevent any Commonwealth agency or political subdivision from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

(b) Application to disposal of Commonwealth supplies.--This part applies to the disposal of supplies of Commonwealth agencies.

(c) Application to General Assembly and unified judicial system.--The General Assembly and its agencies and the unified judicial system and its agencies may use the department as its purchasing agency for the purchase of supplies under this part and may use the department to dispose of surplus supplies under Chapter 15 (relating to supply management).

(d) Application to certain entities.--Nothing in this part shall apply to the entity created by the act of August 7, 1963 (P.L.549, No.290), referred to as the Pennsylvania Higher Education Assistance Agency Act.

(e) Application to medical assistance provider agreements and participating provider agreements.--Nothing in this part shall apply to medical assistance provider agreements administered by the Department of Public Welfare or to participating provider agreements entered into by the Department of Health.

(f) Application to grants.--This part does not apply to grants. For the purpose of this part, a grant is the furnishing

of assistance by the Commonwealth or any person, whether financial or otherwise, to any person to support a program. The term does not include an award whose primary purpose is to procure construction for the grantor. Any contract resulting from such an award is not a grant but a procurement contract.

(f.1) Application to loans.--This part does not apply to loans. For the purpose of this part, a loan is the disbursement of funds by the Commonwealth to any person where the principal amount disbursed is required to be repaid to the Commonwealth, with or without interest, under an agreement.

(g) Impact on existing acts.--Nothing in this part shall affect the scope, effect or applicability of the act of August 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing Wage Act, the act of March 3, 1978 (P.L.6, No.3), known as the Steel Products Procurement Act, and the act of July 23, 1968 (P.L.686, No.226), entitled "An act equalizing trade practices in public works procurement; authorizing the purchase by the Commonwealth, its political subdivisions, and all public agencies, of aluminum and steel products produced in a foreign country, provided the foreign country does not prohibit or discriminate against the importation to, sale or use in the foreign country of supplies, material or equipment manufactured in this Commonwealth; establishing procedures for determining whether foreign countries discriminate against supplies, materials or equipment manufactured in this Commonwealth; and imposing penalties and providing for relief for violation of this act."

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended subsec. (e) and added subsec. (f.1).

References in Text. The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

§ 103. Definitions.

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Bidder." A person that submits a bid in response to an invitation for bids.

"Change order." A written order signed by the contracting officer directing the contractor to make changes which the changes clause of the contract authorizes the contracting officer to order. The change order may be either with the consent of the contractor or a unilateral order by the contracting officer.

"Commonwealth agency." An executive agency, an independent agency or a State-affiliated entity.

"Construction." The process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property. The term does not include the routine operation or maintenance of existing structures, buildings or real property.

"Contract." A type of written agreement, regardless of what it may be called, for the procurement or disposal of supplies, services or construction and executed by all parties in accordance with the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

"Contract modification." A written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.

"Contracting officer." A person authorized to enter into and administer contracts and make written determinations with respect to contracts.

"Contractor." A person that has entered into a contract with a Commonwealth agency.

"Department." The Department of General Services of the Commonwealth.

"Design/build contract." A construction contract in which the contractor is responsible for both the design and construction of any public structure or building or other public improvements of any kind to any public real property.

"Employee." An individual drawing a salary or wages from a Commonwealth agency, whether elected or not, and any noncompensated individual performing personal services for any Commonwealth agency.

"Executive agency." The Governor and the departments, boards, commissions, authorities and other officers and agencies of the Commonwealth. The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies or any independent agency or State-affiliated entity.

"Firm, fixed-price contract." A contract where the total amount to be paid to the contractor is fixed and is not subject to adjustment by reason of the cost experience of the contractor. The term includes contracts where the unit price is set but the total price varies because actual quantities purchased deviate from the quantities estimated to be purchased. The term also includes contracts where the price may be adjusted in accordance with a contractually established price adjustment provision which is not based upon the contractor's costs.

"Independent agency." Boards, commissions and other agencies and officers of the Commonwealth which are not subject to the policy supervision and control of the Governor. The term does not include any State-affiliated entity, any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, any State-related institution, political subdivision or any local, regional or metropolitan transportation authority.

"Invitation for bids." All documents, including those either attached or incorporated by reference, used for soliciting bids.

"Medical assistance provider agreement." A written agreement by a licensed or qualified provider of medically related services to participate in the medical assistance program administered by the Department of Public Welfare.

"Offeror." A person that submits a proposal in response to a request for proposals.

"Participating provider agreement." A written agreement between the Department of Health and a licensed or qualified provider of medically related services which was approved by the Office of the Budget and the Department of General Services and was awarded on a noncompetitive basis.

"Policy statement." Any document, except an adjudication, regulation or privileged communication prepared by a Commonwealth agency which sets forth substantive or procedural personal or property rights, privileges, immunities, duties, liabilities or obligations of the public or any person, including any document interpreting or implementing any statute enforced or administered by the agency.

"Procurement." Buying, purchasing, renting, leasing, licensing or otherwise acquiring any supplies, services or construction. The term also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

"Purchasing agency." A Commonwealth agency authorized by this part or by other law to enter into contracts for itself or as the agent of another Commonwealth agency. When purchasing for another Commonwealth agency, the purchasing agency acts on behalf of the principal which needs the supplies, services and construction and shall coordinate and cooperate with that agency.

"Regulation." A regulation as defined in 45 Pa.C.S. § 501 (relating to definitions). This term shall include the amendment, revision or otherwise alteration of the terms and provisions of a regulation.

"Request for proposals." All documents, including those either attached or incorporated by reference, used for soliciting proposals.

"Responsible bidder." A bidder that has submitted a responsive bid and that possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

"Responsible offeror." An offeror that has submitted a responsive proposal and that possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

"Responsive bid." A bid which conforms in all material respects to the requirements and criteria in the invitation for bids.

"Responsive proposal." A proposal which conforms in all material respects to the requirements and criteria in the request for proposals.

"Sealed bid." A bid whose contents are not disclosed until the bid opening time. Bids are typically submitted in sealed envelopes to meet this requirement, but electronic submission is not prohibited so long as the purchasing agency has the electronic capability to maintain the confidentiality of the bid until the bid opening time.

"Sealed proposal." A proposal whose contents are not disclosed until the proposal receipt date. Proposals are typically submitted in sealed envelopes to meet this requirement, but electronic submission is not prohibited so long as the purchasing agency has the electronic capability to maintain the confidentiality of the proposal until the proposal receipt date.

"Services." The furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than drawings, specifications or reports which are merely incidental to the required performance. The term shall include the routine operation or maintenance of existing structures, buildings or real property. The term does not include employment agreements or collective bargaining agreements. The term includes utility services and those services formerly provided by public utilities such as electrical, telephone, water and sewage service.

"Specification." A description of the physical or functional characteristics or the nature of a supply, service or construction item, including a description of any requirement

for inspecting, testing or preparing a supply, service or construction item for delivery.

"State-affiliated entity." A Commonwealth authority or a Commonwealth entity. The term includes the Pennsylvania Turnpike Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement System, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Higher Educational Facilities Authority and the State System of Higher Education. The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, any State-related institution, political subdivision or any local, regional or metropolitan transportation authority.

"State-related institution." The Pennsylvania State University, the University of Pittsburgh, Lincoln University or Temple University.

"Statewide requirements contract." A contract entered into by the Department of General Services as purchasing agency which covers the annual, semiannual or quarterly contract requirements of all Commonwealth agencies and allows the agencies to order needed supplies directly from the contractor.

"Supplies." Any property, including, but not limited to, equipment, materials, printing, insurance and leases of and installment purchases of tangible or intangible personal property. The term does not include real property, leases of real property or alcoholic beverages or liquor purchased for resale by the Pennsylvania Liquor Control Board.

"Using agency." A Commonwealth agency which utilizes any supplies, services or construction procured under this part. (Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended the def. of "contract" and added the defs. of "bidder," "contractor," "invitation for bids," "medical assistance provider agreement," "offeror," "participating provider agreement," "request for proposals," "responsible bidder," "responsible offeror," "responsive bid," "responsive proposal," "sealed bid" and "sealed proposal."

References in Text. The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Cross References. Section 103 is referred to in sections 520, 3102, 3902 of this title; section 3302 of Title 12 (Commerce and Trade); section 9601 of Title 51 (Military Affairs); section 13A03 of Title 65 (Public Officers); section 303, 9102 of Title 74 (Transportation).

§ 104. General principles of law otherwise applicable.

Unless displaced by the particular provisions of this part, existing Pennsylvania law, including Title 13 (relating to commercial code), shall supplement the provisions of this part.

§ 105. Determinations.

Written determinations required by this part shall be retained in the appropriate official contract file.

§ 106. Public access to procurement information (Repealed).

2008 Repeal. Section 106 was repealed February 14, 2008 (P.L.6, No.3), effective January 1, 2009. The subject matter is now contained in the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

§ 106.1. Public access to procurement records.

(a) General rule.--Records concerning a procurement shall be made public, consistent with the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(b) Public posting and availability of procurement information.--The purchasing agency shall post the following procurement documents on the department's or, in the case of an independent agency, its own publicly accessible Internet website or otherwise make available in the manner indicated below:

(1) Public notice of an invitation for bids or request for proposals may be given in accordance with section 512(c)(1) (relating to competitive sealed bidding) or 513(b) (relating to competitive sealed proposals) by posting the invitation for bids or request for proposals, including, if applicable, the written determination required by section 513(a), on the date issued and until the closing date for receipt of bids or proposals.

(2) Bid tabulations recording the name of each bidder and bid amount in accordance with section 512(d) shall be posted as soon as practicable after bid opening, unless the purchasing agency elects to cancel the invitation for bids.

(3) Notices of award pursuant to an invitation for bids shall be posted as soon as practicable after the purchasing agency elects to make an award in accordance with section 512(g).

(4) The written determination required by section 513(g) shall be posted upon receipt of the final negotiated contract signed by the selected offeror. Subject to proper redaction under the Right-to-Know Law, responsive proposals received by the purchasing agency and, until fully executed, the final negotiated contract are not required to be posted but shall be made available to the public upon request.

(5) Requests to award a contract pursuant to section 515(a)(1), (2), (4) and (10) (relating to sole source procurement) shall be posted for seven calendar days for public comment prior to approval of the request by the department or independent purchasing agency. Upon approval of a request by the department or independent purchasing agency, the signed and written determination required under section 515(b) shall be posted.

(6) The written determinations required by section 516 (relating to emergency procurement) shall be posted in advance, if feasible, but no later than seven calendar days after authorization by the department or independent purchasing agency.

(7) A contract resulting from a procurement under this part shall be posted as soon as practicable upon its full execution by the Commonwealth.

(8) Requests under section 515 or 516 to extend a contract for which no further options, renewals or extensions are available in the contract shall be posted for seven calendar days for public comment prior to approval of the request by the department or independent purchasing agency. Upon approval of a request by the department or an independent purchasing agency, the signed and written determination required under section 515(b) or 516 shall be posted.

(c) Access and retention.--Procurement documents specified under subsection (b) must be accessible on the Internet website for a minimum of 30 days from posting and further retained in accordance with section 563 (relating to retention of

procurement records) and applicable agency record retention policies.
(Nov. 4, 2016, P.L.1216, No.163, eff. 60 days)

2016 Amendment. Act 163 added section 106.1.

§ 107. Reciprocal limitations.

(a) Short title of section.--This section shall be known and may be cited as the Reciprocal Limitations Act.

(b) Legislative findings.--It is hereby determined by the General Assembly to reaffirm the legislative findings contained in the act of November 28, 1986 (P.L.1465, No.146), known as the Reciprocal Limitations Act, and codified in this section:

(1) The award of contracts to the lowest responsible bidder generally provides for the most economical procurement of supplies and construction.

(2) In some cases, award to the lowest responsible bidder may not be the most economical and practicable when the best interests of the Commonwealth are concerned.

(3) Some states apply a preference favoring in-state supplies or bidders or they apply a prohibition against the use of out-of-state supplies or bidders.

(4) The application of this preference or prohibition by other states diminishes or eliminates opportunities for bidders and manufacturers who reside in this Commonwealth to obtain construction contracts from or to sell supplies to states that have this preference, thereby resulting in the loss of business for resident bidders and manufacturers. Therefore, in order to offset or counteract the discriminatory practices of other states, discourage other states from applying a preference and ultimately to aid employment, help business and industry located in this Commonwealth, attract new business and industry to this Commonwealth and provide additional tax revenue both from those receiving contracts and those employed by contractors, the General Assembly hereby declares that it is the policy of this Commonwealth to respond in like manner against those states that apply preferences or prohibitions by giving a similar offsetting preference to residents in this Commonwealth and bidders offering supplies manufactured in this Commonwealth and by prohibiting the purchase or use of certain supplies, in accordance with the provisions of this section.

(c) Preference for supplies.--In all procurements of supplies exceeding the amount established by the department for small procurements under section 514 (relating to small procurements), all Commonwealth agencies shall give preference to those bidders or offerors offering supplies produced, manufactured, mined, grown or performed in this Commonwealth as against those bidders or offerors offering supplies produced, manufactured, mined, grown or performed in any state that gives or requires a preference to supplies produced, manufactured, mined, grown or performed in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular supply.

(d) Preference for resident bidders or offerors.--When a contract for construction or supplies exceeding the amount established by the department for small procurements under section 514 is to be awarded, a resident bidder or offeror shall be granted a preference as against a nonresident bidder or offeror from any state that gives or requires a preference to bidders or offerors from that state. The amount of the

preference shall be equal to the amount of the preference applied by the state of the nonresident bidder or offeror.

(e) Prohibition.--For all contracts for construction or supplies exceeding the amount established by the department for small procurements under section 514, no Commonwealth agency shall specify for, use or procure any supplies which are produced, manufactured, mined, grown or performed in any state that prohibits the specification for, use or procurement of these supplies in or on its public buildings or other works when these supplies are not produced, manufactured, mined, grown or performed in that state.

(f) Listing discriminating states.--The department shall prepare a list of the states which apply a preference favoring in-state supplies or bidders or offerors or a prohibition against the use of out-of-state supplies or bidders or offerors and shall publish the list in the Pennsylvania Bulletin. When a state applies a new preference or prohibition, the department shall publish that information in the Pennsylvania Bulletin as an addition to the original list.

(g) Inclusion in invitation for bids or request for proposals.--In all invitations for bids and requests for proposals for the procurement of supplies exceeding the amount established by the department for small procurements under section 514, all Commonwealth agencies shall include a list of all the states that have been found by the department to have applied a preference favoring in-state supplies, bidders or offerors and the amount of the preference. All invitations for bids, requests for proposals and notices issued for the purpose of securing bids or proposals for contracts for construction or supplies exceeding the amount established by the department for small procurements under section 514 shall include a list of all states that have been found by the department to have applied a preference for in-state bidders or offerors and the amount of the preference. All invitations for bids, requests for proposals and notices issued for the purpose of securing bids or proposals for contracts for construction or supplies exceeding the amount established by the purchasing agency for small procurements under section 514 shall also include a list of all states that apply a prohibition against certain supplies and shall inform potential bidders or offerors that they are prohibited from using supplies from those states. If a bid or proposal discloses that the bidder or offeror is offering supplies from a state which prohibits the use of out-of-state supplies, the bid or proposal shall be rejected.

(h) Federal funds.--The provisions of this section shall not be applicable when the application of this section may jeopardize the receipt of Federal funds.

(i) Waiver.--The provisions of this section may be waived when the head of the purchasing agency determines in writing that it is in the best interests of the Commonwealth.

(j) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Resident bidder or offeror." A person, partnership, corporation or other business entity authorized to transact business in this Commonwealth and having a bona fide establishment for transacting business in this Commonwealth at which it was transacting business on the date when bids or proposals for the public contract were first solicited.
(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended subsecs. (e) and (g).

References in Text. The act of November 28, 1986 (P.L.1465, No.146), known as the Reciprocal Limitations Act, referred to in subsec. (b), was repealed by the act of May, 15, 1998, (P.L.358, No.57). The subject matter is now contained in section 107.

Cross References. Section 107 is referred to in section 9119 of this title.

§ 108. Recycled materials.

(a) Commonwealth agency review.--All Commonwealth agencies shall review their procurement procedures and specifications in accordance with section 1504 of the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act.

(b) Preference for recycled content.--For contracts exceeding the amount established by the department for small procurements under section 514 (relating to small procurements), the contracting officer shall comply with section 1505 of the Municipal Waste Planning, Recycling and Waste Reduction Act regarding a preference for bids containing a minimum percentage of recycled content for the supply subject to the bid.

CHAPTER 3
PROCUREMENT ORGANIZATION

Subchapter

A. Organization of Public Procurement
B. Procurement Policy
C. Powers and Duties of Department
D. Powers and Duties of Board of Commissioners of Public Grounds and Buildings and Office of the Budget
E. Coordination, Training and Education

Enactment. Chapter 3 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

SUBCHAPTER A
ORGANIZATION OF PUBLIC PROCUREMENT

Sec.

301. Procurement responsibility.

§ 301. Procurement responsibility.

(a) General organization.--Formulation of procurement policy governing the procurement, management, control and disposal of supplies, services and construction for executive and independent agencies shall be the responsibility of the department as provided for in Subchapter B (relating to procurement policy). The procurement and supervision of the procurement of supplies, services and construction for executive agencies and those independent agencies for which the department acts as purchasing agency shall be the responsibility of the department as provided for in Subchapter C (relating to powers and duties of department).

(b) Application to independent agencies.--Except as otherwise specifically provided by law and this section, independent agencies shall use the department as their purchasing agency for the procurement of supplies or construction. Independent agencies shall have the authority to procure their own services. However, when any independent agency acts as its own purchasing agency, it shall use the procedures

provided in this part for any procurement of supplies, services or construction.

(c) Exceptions for executive and independent agencies.--The following supplies, services and construction need not be procured through the department, nor shall the procurement policy be established by the department, but shall nevertheless be procured by the appropriate purchasing agency, subject to the requirements of this part:

(1) Bridge, highway, dam, airport (except vertical construction), railroad or other heavy or specialized construction, including:

(i) The construction of facilities and improvements by the Department of Conservation and Natural Resources in State parks and State forests.

(ii) Construction activities, excluding buildings, solely within the expertise of the Department of Environmental Protection, including, but not limited to, mine reclamation, oil and gas well plugging, waste site remediation, flood control and stream rehabilitation.

(iii) Owner-controlled insurance programs for bridge, highway, dam, airport, railroad or other heavy or specialized construction.

(2) Works of art, historic objects and documents for acquisition and public exhibition.

(3) Published books, maps, periodicals, technical pamphlets, compact discs, video and audio reproductions, subscriptions and professional memberships.

(4) Perishable food stuffs.

(5) The procurement of services, the renting of machinery and equipment and the licensing of specialized computer software by the Office of Attorney General, the Department of the Auditor General and the Treasury Department.

(d) Application to State-affiliated entities.--State-affiliated entities may formulate their own procurement policy governing the procurement, management, control and disposal of supplies, services and construction and may act as their own purchasing agency for the procurement of supplies, services and construction, but they are required to use the procedures provided in this part for such procurement. (Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended subsec. (c).

Cross References. Section 301 is referred to in sections 312, 3902 of this title.

SUBCHAPTER B
PROCUREMENT POLICY

Sec.

311. Powers and duties.
312. Procurement regulations.

Cross References. Subchapter B is referred to in section 301 of this title.

§ 311. Powers and duties.

Except as otherwise provided in this part, the department may promulgate regulations governing the procurement, management, control and disposal of any and all supplies, services and construction to be procured by Commonwealth agencies. The department shall consider and decide matters of

policy within the provisions of this part. The department may audit and monitor the implementation of its regulations and the requirements of this part.

§ 312. Procurement regulations.

Regulations shall be promulgated by the department as provided in 45 Pa.C.S. Part II (relating to publication and effectiveness of Commonwealth documents) and by the appropriate purchasing agencies for those matters contained in section 301(c) (relating to procurement responsibility). The regulations shall be subject to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act. The department may not delegate its power to promulgate regulations. No regulation may change any commitment, right or obligation of any Commonwealth agency or of a contractor under a contract in existence on the effective date of the regulation.

SUBCHAPTER C
POWERS AND DUTIES OF DEPARTMENT

Sec.

321. Powers and duties.
322. Specific construction powers, duties and procedures.

Cross References. Subchapter C is referred to in section 301 of this title.

§ 321. Powers and duties.

Except as otherwise specifically provided in this part, the department shall have the following powers and duties:

(1) Procure or supervise the procurement of all supplies, services and construction needed by executive agencies and those independent agencies for which the department acts as purchasing agency. Procurement authority may be delegated in writing by the Secretary of General Services.

(2) Exercise general supervision and control over all inventories of supplies belonging to executive agencies.

(3) Sell, trade or otherwise dispose of surplus supplies belonging to executive or independent agencies.

(4) Coordinate programs of executive and independent agencies for the inspection, testing and acceptance of supplies and construction to ensure availability of facilities and to avoid a duplication of functions.

(5) Establish and maintain a central office where businesses operating in this Commonwealth may obtain information pertaining to the procurement needs of Commonwealth agencies.

(6) Participate in the management and maintenance of a contractor responsibility program in coordination with the Office of the Budget and other agencies as may be directed by the Governor.

§ 322. Specific construction powers, duties and procedures.

The following procedure shall apply to construction to be completed by the department which costs more than the amount established by the department under section 514 (relating to small procurements) for construction procurement unless the work is to be done by Commonwealth agency employees or by inmates or patients of a Commonwealth agency institution:

(1) The Commonwealth agency or State-related institution shall notify the department to have plans and specifications for the project.

(2) Promptly after the notice in such cases or promptly after any appropriation made to it becomes available, the department shall, if necessary, select an architect and/or an engineer in accordance with the selection procedures of section 905 (relating to procurement of design professional services) to design the work and prepare the specifications therefor. The department may, as an alternative, enter into a design/build contract in accordance with section 511 (relating to methods of source selection). Such design/build contracts shall be subject to the requirements of this act and the provisions of the act of August 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing Wage Act. Design/build contracts shall also be subject to the act of May 1, 1913 (P.L.155, No.104), entitled "An act regulating the letting of certain contracts for the erection, construction, and alteration of public buildings," to the extent provided in paragraph (6).

(3) The department shall enter into a contract with the architect or engineer which shall provide all of the following:

(i) A date for the completion of the plans and specifications.

(ii) That the plans and specifications must meet with the approval of the Commonwealth agency or State-related institution for which the building is being erected, altered or enlarged and, in the case of an administrative board or commission of the Commonwealth agency with which the board or commission is respectively connected, to the extent of the type and general character of the building, design of the floor layouts, medical equipment or other equipment of a nature peculiar to the building for which the plans and specifications are being prepared.

(iii) That the plans, drawings and specifications must be approved by the department.

(iv) That the plans and specifications must be approved by the Department of Labor and Industry, the Department of Health and the Department of Environmental Protection to the extent to which those Commonwealth agencies, respectively, have jurisdiction to require the submission to them for approval of certain features of the building.

The architect or engineer in preparing plans and specifications shall consult with the department, and the department shall insist upon the prompt completion of the plans and specifications within the time prescribed in the architect's or engineer's contracts unless it shall specifically agree in writing to an extension thereof.

(4) The enforcement of all contracts provided for by this section shall be under the control and supervision of the department. The department shall have the authority to engage the services of a construction management firm to coordinate the work of the total project. All questions or disputes arising between the department and any contractor with respect to any matter pertaining to a contract entered into with the department or any part thereto or any breach of contract arising thereunder shall be submitted to final and binding arbitration as provided by the terms of the contract, which finding shall be final and not subject to further appeal, or, if not so provided, shall be referred to the Board of Claims as set forth in the act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Claims

Act, whose decision and award shall be final and binding and conclusive upon all parties thereto except that either party shall have the right to appeal from the decision and award as provided by law.

(5) The department shall examine all bills on account of the contracts entered into under the provisions of this section, and, if they are correct, the department shall certify that the materials have been furnished or that the work or labor has been performed in a workmanlike manner and in accordance with the contract, approve the bills and issue its requisition therefor or forward its certificate to the proper Commonwealth agency or State-related institution as the case may be. Progress payments and final payments shall not estop the department from pursuing its lawful remedies for defects in workmanship or materials or both and other damages.

(6) For construction contracts where the total construction costs are less than $25,000, the department shall not be required to comply with the act of May 1, 1913 (P.L.155, No.104), entitled "An act regulating the letting of certain contracts for the erection, construction, and alteration of public buildings," and the department may award such contracts in accordance with section 511. All projects equal to or exceeding $25,000 shall be subject to the act of May 1, 1913 (P.L.155, No.104), entitled "An act regulating the letting of certain contracts for the erection, construction, and alteration of public buildings." Whenever the department enters into a single contract for a project, in the absence of good and sufficient reasons the contractor shall pay each subcontractor, within 15 days of receipt of payment from the department, an amount equal to the percentage of completion allowed to the contractor on the account of the subcontractor's work. The contractor shall also require the subcontractor to make similar payments to his subcontractors.

(7) The department shall have the right to engage the services of any architect or consulting or supervising engineer or engineers whom it may deem necessary for the proper designing of or inspection or supervision of projects constructed, altered or enlarged by the department under this section in accordance with the selection procedures of section 905.

(8) Changes in scope in the plans or specifications, or both, may be made after their approval only with the consent of the Governor and all of the Commonwealth agencies and State-related institutions whose approval of the original plans or specifications, or both, was necessary under this section.

(9) If the appropriation is to a Commonwealth agency, other than the department or State-related institution, the department shall award and enter into the contract as agent for the Commonwealth agency or State-related institution to which the appropriation was made.

References in Text. The act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Claims Act, referred to in par. (4), was repealed by the act of December 3, 2002 (P.L.1147, No.142). Section 22 of Act 142 provided that the repeal shall take effect upon publication in the Pennsylvania Bulletin of the standing order under 67 Pa.C.S. § 1102(g). The subject matter is now contained in Subchapter C of Chapter 17 of this title.

Cross References. Section 322 is referred to in section 901 of this title.

SUBCHAPTER D
POWERS AND DUTIES OF BOARD OF COMMISSIONERS OF PUBLIC GROUNDS AND BUILDINGS AND OFFICE OF THE BUDGET

Sec.
326. Board of Commissioners of Public Grounds and Buildings.
327. Office of the Budget.

§ 326. Board of Commissioners of Public Grounds and Buildings.

No lease of real estate for use by an executive or independent agency and no sole source procurement of supplies, except for computer software updates under $50,000, for an executive or independent agency for which the department acts as the purchasing agency shall be valid or effective unless, upon review, it is approved by the Board of Commissioners of Public Grounds and Buildings. Where the board is reviewing a proposed sole source lease or procurement being submitted pursuant to section 515 (relating to sole source procurement), approval of the lease or procurement shall require the unanimous vote of the board. Where the board is reviewing a proposed non-sole source lease, the lease shall be approved when one member of the board votes to approve the lease. All votes shall take place at a public meeting.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

§ 327. Office of the Budget.

(a) Encumbrance of funds.--For executive agencies and independent agencies and State-affiliated entities where the department is used as the purchasing agency, the Office of the Budget shall encumber sufficient funds for the payment of all invoices for the procurement of supplies, services and construction.

(b) Contractor responsibility program.--The Office of the Budget shall participate in the management and maintenance of a contractor responsibility program in coordination with the department and other agencies as may be directed by the Governor.

(c) Comptroller review of contracts for services.--

(1) Except for contracts awarded pursuant to section 514 (relating to small procurements), the comptroller authorized in paragraph (2) shall review and approve all contracts for services for:

(i) Fiscal responsibility and budgetary appropriateness.

(ii) Availability of funds.

(2) Where the service contract is for an executive agency, independent agency or State-affiliated entity for which the Office of the Budget acts as comptroller, the Office of the Budget shall review and approve the contract. Where the service contract is for an independent agency or State-affiliated entity for which the Office of the Budget does not act as comptroller, the fiscal office or comptroller of that agency or entity shall review and approve the contract.

(d) Agency comptrollers.--A Commonwealth agency comptroller may, at his option, serve as a nonvoting member of an evaluation committee for requests for proposals or a similar contract bidding or selection committee for the acquisition of services.

(e) Exceptions.--Notwithstanding the foregoing, subsections (a) and (c) shall not apply to procurements made by the Office of Attorney General, the Department of the Auditor General or the Treasury Department. However, where the department is used as the purchasing agency, the Office of Attorney General, the Department of the Auditor General and the Treasury Department shall certify to the department that they have encumbered sufficient funds for the procurement.

SUBCHAPTER E
COORDINATION, TRAINING AND EDUCATION

Sec.
331. Collection of data concerning public procurement.
332. Advisory groups.

§ 331. Collection of data concerning public procurement.

All executive and independent agencies shall furnish such reports as the department may require concerning usage, needs and stock on hand, and the department may prescribe the format and forms to be used by the agencies in requisitioning, ordering and reporting supplies, services and construction.

§ 332. Advisory groups.

(a) Procurement Advisory Council.--The department may establish a Procurement Advisory Council and allocate funds for it that may be available. If created, the council, upon adequate public notice, shall meet at least once a year for the discussion of problems and recommendations for improvement of the procurement process. When requested by the department, the council may conduct studies, research and analyses and make reports and recommendations with respect to subjects or matters within the jurisdiction of the department. The council may consist of any qualified persons the department deems appropriate.

(b) Other advisory groups.--The department may appoint advisory groups to assist with respect to specifications or procurement in specific areas and with respect to any other matters within the authority of the department.

(c) Reimbursement of expenses.--Members of the council and other advisory groups may be reimbursed for expenses incurred in the performance of their duties, subject to expenditure limitations prescribed by the department.

(d) Conflict of interest.--Members of the council and other advisory groups shall be considered State advisors under the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act, and, as such, shall be subject to the prohibitions for State advisors set forth in that act, provided that a member shall not be deemed to have an adverse interest by virtue of any action taken by the council or other advisory groups if the member discloses the conflict of interest and properly recuses himself from participating in any recommendation of the council or an advisory group.

CHAPTER 5
SOURCE SELECTION AND CONTRACT FORMATION

Subchapter
A. Definitions
B. Methods of Source Selection
C. Cancellation of Invitations for Bids or Requests for Proposals

D. Qualifications and Duties
E. Types of Contracts
F. Inspection of Plant and Audit of Records
G. Determinations and Reports

Enactment. Chapter 5 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

Cross References. Chapter 5 is referred to in sections 1903, 1904 of this title.

SUBCHAPTER A
DEFINITIONS

Sec.
501. Definitions.

§ 501. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Established catalog price." The price included in a catalog, price list, schedule or other form that:

(1) is regularly maintained by a manufacturer or contractor;

(2) is either published or otherwise available for inspection by customers; and

(3) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

"Invitation for bids." (Deleted by amendment).

"Life cycle cost." The total cost of the supply in terms of purchase cost, installation cost, maintenance cost, energy cost, supply cost and other costs.

"Procurement description." The words used in a solicitation to describe the supplies, services or construction to be procured. The term includes specifications attached to or made a part of the solicitation.

"Request for proposals." (Deleted by amendment).

"Responsible bidder or offeror." (Deleted by amendment).

"Responsive bidder or offeror." (Deleted by amendment).

"Sealed bid or proposal." (Deleted by amendment).

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

SUBCHAPTER B
METHODS OF SOURCE SELECTION

Sec.
511. Methods of source selection.
512. Competitive sealed bidding.
512.1. Competitive electronic auction bidding.
513. Competitive sealed proposals.
514. Small procurements.
515. Sole source procurement.
516. Emergency procurement.
517. Multiple awards.
518. Competitive selection procedures for certain services.
519. Selection procedure for insurance and notary bonds.
520. Supplies manufactured and services performed by persons with disabilities.

§ 511. Methods of source selection.

Unless otherwise authorized by law, all Commonwealth agency contracts shall be awarded by competitive sealed bidding under section 512 (relating to competitive sealed bidding) except as provided in:

Section 512.1 (relating to competitive electronic auction bidding).

Section 513 (relating to competitive sealed proposals).

Section 514 (relating to small procurements).

Section 515 (relating to sole source procurement).

Section 516 (relating to emergency procurement).

Section 517 (relating to multiple awards).

Section 518 (relating to competitive selection procedures for certain services).

Section 519 (relating to selection procedure for insurance and notary bonds).

Section 520 (relating to supplies manufactured and services performed by persons with disabilities).

Section 905 (relating to procurement of design professional services).

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

Cross References. Section 511 is referred to in sections 322, 512 of this title.

§ 512. Competitive sealed bidding.

(a) Conditions for use.--Contracts shall be awarded by competitive sealed bidding except as otherwise provided in section 511 (relating to methods of source selection).

(b) Invitation for bids.--An invitation for bids shall be issued and shall include a procurement description and all contractual terms, whenever practical, and conditions applicable to the procurement.

(c) Public notice.--Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set for the opening of bids. The purchasing agency shall establish written policies and may promulgate regulations regarding methods of public notice. The method of public notice may include any of the following:

(1) Electronic publication which is accessible to the general public.

(2) Advertisement as provided for in 45 Pa.C.S. § 306 (relating to use of trade publications).

(3) Issuance of invitations for bids to bidders on the solicitation mailing list of the purchasing agency.

(4) Publication in a newspaper of general circulation.

(5) Where prequalification is a requirement of submitting a bid, notification to all contractors who have been prequalified by the purchasing agency.

Copies of invitations to bid shall be made available to any interested person upon request to the purchasing agency. Purchasing agencies may establish procedures for the distribution of invitations to bid including the imposition of a fee to reimburse the agency for the costs of photocopying and mailing.

(d) Bid opening.--Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and any other relevant information as may be specified by regulation, together with the name of each bidder, shall be recorded. The record shall be open to public inspection.

(e) Bid acceptance and evaluation.--Bids shall be unconditionally accepted without alteration or modification except as authorized in this part or in the invitation for bids.

Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(f) Modification or withdrawal of bids.--

(1) Bids may be modified or withdrawn by written notice or in person by a bidder or its authorized representative if its identity is made known and a receipt for the bid is signed prior to the exact hour and date set for the opening of bids. Except as otherwise provided in this part, withdrawals and modifications of bids received after the exact hour and date specified for the opening of bids shall not be considered.

(2) Withdrawal of erroneous bids after bid opening but before award based on bid mistakes shall be permitted by the written determination of the contracting officer when the bidder requests relief and presents credible evidence that the reason for the lower bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the bid. The request for relief and the supporting evidence must be received by the contracting officer within a reasonable time period after the bid opening. The time period shall be specified by the department.

(3) The contracting officer shall not permit a withdrawal of a bid if the withdrawal of the bid would result in the awarding of the contract on another bid of the same bidder, its partner or a corporation or business venture owned by or in which the bidder has a substantial interest. No bidder who is permitted to withdraw a bid shall supply any material or labor to or perform any subcontract or other work agreement for any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted without the written approval of the contracting officer.

(g) Award.--The contract shall be awarded within 60 days of the bid opening by written notice to the lowest responsible bidder or all bids shall be rejected except as otherwise provided in this section. Extensions of the date for the award may be made by mutual written consent of the contracting officer and the lowest responsible bidder. Within 30 days of the bid opening the contracting officer shall, if bid security was required by the invitation for bids, return the bid security to all but the lowest and next-to-lowest responsible bidders then under consideration for contract award.

(h) Multistep sealed bidding.--When it is considered impractical to prepare initially a procurement description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced bids, to be followed by an invitation for bids requesting priced bids from responsible bidders of the first solicitation.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended subsecs. (g) and (h).

Cross References. Section 512 is referred to in sections 106, 106.1, 511, 512.1, 513, 517, 533, 561, 902 of this title.

§ 512.1. Competitive electronic auction bidding.

(a) Conditions for use.--If the purchasing agency determines in writing that use of competitive electronic auction bidding is in the best interests of the Commonwealth, a contract for supplies or services, but not construction, may be entered into by competitive electronic auction bidding.

(b) Invitation for bids.--An invitation for bids shall be issued and shall include a procurement description and all contractual terms, whenever practical, and conditions applicable to the procurement, including a notice that bids will be received in an electronic auction manner.

(c) Public notice.--Public notice of the invitation for bids shall be given in the same manner as provided in section 512(c) (relating to competitive sealed bidding).

(d) Auctions.--Bids shall be accepted electronically at the time and in the manner designated in the invitation for bids. During the auction a bidder's price shall be disclosed to other bidders. Bidders shall have the opportunity to reduce their bid prices during the auction. At the conclusion of the auction, the record of the bid prices received and the name of each bidder shall be open to public inspection.

(e) Withdrawal of bids.--After the auction period has terminated, withdrawal of bids shall be permitted as provided in section 512(f)(2).

(f) Award.--The contract shall be awarded within 60 days of the auction by written notice to the lowest responsible bidder, or all bids shall be rejected except as otherwise provided in this section. Extensions of the date for the award may be made by mutual written consent of the contracting officer and the lowest responsible bidder.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 added section 512.1.

Cross References. Section 512.1 is referred to in section 511 of this title.

§ 513. Competitive sealed proposals.

(a) Conditions for use.--When the contracting officer determines in writing that the use of competitive sealed bidding is either not practicable or advantageous to the Commonwealth, a contract may be entered into by competitive sealed proposals.

(b) Request for proposals.--Proposals shall be solicited through a request for proposals.

(c) Public notice.--Public notice of the request for proposals shall be given in the same manner as provided in section 512(c) (relating to competitive sealed bidding).

(d) Receipt of proposals.--Offerors shall submit their proposals to ensure that their proposals are received prior to the time and date established for receipt of the proposals. Proposals shall be submitted in the format required by the request for proposals. Proposals shall be opened so as to avoid disclosure of their contents to competing offerors.

(e) Evaluation.--The relative importance of the evaluation factors shall be fixed prior to opening the proposals. A Commonwealth agency shall invite its comptroller to participate in the evaluation as a nonvoting member of any evaluation committee. No individual who has been employed by an offeror within the preceding two years may participate in the evaluation of proposals.

(f) Discussion with responsible offerors and revision of proposals.--As provided in the request for proposals, discussions and negotiations may be conducted with responsible offerors for the purpose of clarification and of obtaining best and final offers. Responsible offers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(g) Selection for negotiation.--The responsible offeror whose proposal is determined in writing to be the most advantageous to the purchasing agency, taking into consideration price and all evaluation factors, shall be selected for contract negotiation.

(h) Contract negotiation.--(Deleted by amendment).

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.; Oct. 21, 2014, P.L.2517, No.149, eff. 60 days)

2014 Amendment. Act 149 amended subsec. (e).

2002 Amendment. Act 142 amended subsecs. (f) and (g) and deleted subsec. (h).

Cross References. Section 513 is referred to in sections 106.1, 511, 517, 534, 561, 3741 of this title; section 9604 of Title 51 (Military Affairs).

§ 514. Small procurements.

If the procurement is not the subject of a Statewide requirements contract between the purchasing agency and a contractor, the head of the purchasing agency may authorize in writing procurements without formal bid procedures, not exceeding the amount established by the purchasing agency. The head of the purchasing agency may authorize procurement of the supply or service on a no-bid basis for procurements which do not exceed the amount established by the head of the purchasing agency for small, no-bid procurements. The head of the purchasing agency may authorize procurement on a no-bid basis for construction projects that do not exceed a total construction cost of $10,000. The amount of $10,000 shall be adjusted annually by the department to reflect the annual percentage change in the Composite Construction Cost Index of the United States Department of Commerce occurring in the one-year period ending December 31 of each year. Procurement requirements shall not be artificially divided so as to constitute a small procurement under this section. Small procurements shall be made in accordance with the requirements of the written authorization and this section. Records of all small procurements shall be transmitted to the purchasing agency.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

Cross References. Section 514 is referred to in sections 107, 108, 322, 327, 511, 515, 518, 564, 905 of this title; section 13A06 of Title 65 (Public Officers).

§ 515. Sole source procurement.

(a) General rule.--A contract may be awarded for a supply, service or construction item without competition if the contracting officer first determines in writing that one of the following conditions exists:

(1) Only a single contractor is capable of providing the supply, service or construction.

(2) A Federal or State statute or Federal regulation exempts the supply, service or construction from the competitive procedure.

(3) The total cost of the supply, service or construction is less than the amount established by the department for small, no-bid procurements under section 514 (relating to small procurements).

(4) It is clearly not feasible to award the contract for supplies or services on a competitive basis.

(5) The services are to be provided by attorneys or litigation consultants selected by the Office of General Counsel, the Office of Attorney General, the Department of the Auditor General or the Treasury Department.

(6) The services are to be provided by expert witnesses.

(7) The services involve the repair, modification or calibration of equipment and they are to be performed by the manufacturer of the equipment or by the manufacturer's authorized dealer, provided the contracting officer determines that bidding is not appropriate under the circumstances.

(8) The contract is for investment advisors or managers selected by the Public School Employees' Retirement System, the State Employees' Retirement System or a State-affiliated entity.

(9) The contract is for financial or investment experts to be used and selected by the Treasury Department or financial or investment experts selected by the Secretary of the Budget.

(10) The contract for supplies or services is in the best interest of the Commonwealth.

(b) Written determination.--The written determination authorizing sole source procurement shall be included in the contract file. For procurements over $250,000 made under subsection (a)(10), the determination shall be signed by the head of the purchasing agency.

(c) Approval required by board of commissioners of public grounds and buildings.--With the exception of small procurements under section 514 and emergency procurements under section 516 (relating to emergency procurement), if the sole source procurement is for a supply, except for computer software updates under $50,000, for which the department acts as purchasing agency, it must be approved by the Board of Commissioners of Public Grounds and Buildings prior to the award of a contract.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.; Nov. 4, 2016, P.L.1216, No.163, eff. 60 days)

Cross References. Section 515 is referred to in sections 106.1, 326, 511, 518, 519, 534, 561, 564, 905 of this title.

§ 516. Emergency procurement.

The head of a purchasing agency may make or authorize others to make an emergency procurement when there exists a threat to public health, welfare or safety or circumstances outside the control of the agency create an urgency of need which does not permit the delay involved in using more formal competitive methods. Whenever practical, in the case of a procurement of a supply, at least two quotes shall be solicited. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the procurement file. No written contract may be required. The supplier of the supply, service or construction may be paid based on the emergency approval and approved invoice.

(Nov. 4, 2016, P.L.1216, No.163, eff. 60 days)

Cross References. Section 516 is referred to in sections 106.1, 511, 515, 518, 519, 541, 561, 564, 905, 3604 of this title; section 13A06 of Title 65 (Public Officers).

§ 517. Multiple awards.

(a) Conditions for use.--Contracts may be entered into on a multiple award basis when the head of the purchasing agency determines that one or more of the following criteria is applicable:

(1) It is administratively or economically impractical to develop or modify specifications for a myriad of related supplies because of rapid technological changes.

(2) The subjective nature in the use of certain supplies and the fact that recognizing this need creates a more efficient use of the item.

(3) It is administratively or economically impractical to develop or modify specifications because of the heterogeneous nature of the product lines.

(4) There is a need for compatibility with existing systems.

(5) The agency should select the contractor to furnish the supply, service or construction based upon best value or return on investment.

(b) Solicitation process.--Invitations to bid or requests for proposals shall be issued for the supplies, services or construction to be purchased.

(c) Public notice.--Public notice of the invitation for bids or request for proposals shall be given in the same manner as provided in section 512(c) (relating to competitive sealed bidding).

(d) Receipt of bids or proposals.--Bids shall be opened in the same manner as provided in section 512(d). Proposals shall be received in the same manner as provided in section 513(d) (relating to competitive sealed proposals).

(e) Award.--The invitation for bids or request for proposals shall describe the method for selection of the successful bidders or offerors. There are three options:

(1) Awards shall be made to the lowest responsible bidder or offeror for each designated manufacturer.

(2) Awards shall be made to the two or three lowest responsible bidders or offerors for each designated manufacturer.

(3) Awards shall be made to all responsible bidders or offerors.

(f) Selection.--A Commonwealth agency may select a contractor from the bidders or offerors awarded contracts under subsection (e) to furnish the supply, service or construction based upon best value or return on investment.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended subsecs. (c) and (e) and added subsec. (f).

Cross References. Section 517 is referred to in sections 511, 1902 of this title.

§ 518. Competitive selection procedures for certain services.

(a) Conditions for use.--The services of accountants, clergy, physicians, lawyers, dentists and other professional services which are not performed by other Commonwealth employees shall be procured in accordance with this section except as authorized under section 514 (relating to small procurements), 515 (relating to sole source procurement) or 516 (relating to emergency procurement).

(b) Statement of qualifications.--Persons engaged in providing the types of services specified in subsection (a) may submit statements of qualifications and expressions of interest in providing these services. The contracting officer may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

(c) Request for proposals.--Adequate notice of the need for the services specified in subsection (a) shall be given by the purchasing agency through a request for proposals. The request for proposals shall describe the services required, list the type of information required of each offeror and state the relative importance of the particular information.

(d) Discussions.--The contracting officer may conduct discussions with any responsible offeror to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(e) Award.--Award shall be made to the responsible offeror determined in writing by the contracting officer to be best qualified based on the evaluation factors set forth in the request for proposals. Fair and reasonable compensation shall be determined through negotiation. If compensation cannot be agreed upon with the best qualified responsible offeror, then negotiations will be formally terminated with the offeror. If proposals were submitted by one or more other responsible offerors, negotiations may be conducted with the other responsible offeror or responsible offerors in the order of their respective qualification ranking. The contract may be awarded to the responsible offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended subsecs. (a), (d) and (e).

Cross References. Section 518 is referred to in sections 511, 561 of this title; section 1555 of Title 64 (Public Authorities and Quasi-Public Corporations).

§ 519. Selection procedure for insurance and notary bonds.

(a) Conditions for use.--Insurance and notary bonds shall be procured by the department in accordance with this section except as authorized under section 515 (relating to sole source procurement) or 516 (relating to emergency procurement).

(b) Statement of qualifications.--Insurance and bond carriers may submit statements of qualifications and expressions of interest in providing insurance or notary bonds. The department may specify a uniform format for statements of qualifications.

(c) Request for proposals.--Adequate notice of the need for insurance or notary bond coverage shall be given by the purchasing agency through a request for proposals. The request for proposals shall describe the type of insurance or bond coverage required and list the type of information and data required of each offeror.

(d) Receipt of proposals.--Offerors shall submit their proposals prior to the time and date specified.

(e) Discussions with responsible offerors and revision to proposals.--Discussions and negotiations may be conducted with responsible offerors. Responsible offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion, negotiation and revision of proposals. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

(f) Award.--Award shall be made to the responsible offeror whose proposal is determined in writing by the department to be the most advantageous to the Commonwealth based on criteria determined by the department, including the coverage offered and the cost of the premium.
(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended subsecs. (e) and (f).

Cross References. Section 519 is referred to in sections 511, 561 of this title.

§ 520. Supplies manufactured and services performed by persons with disabilities.

(a) General rule.--

(1) Contracts for supplies manufactured by and services performed by persons with disabilities shall be entered into in accordance with this section without the requirement for competitive bidding. Persons with disabilities must make an appreciable contribution in manufacturing an item or performing a service.

(2) When the Commonwealth enters into a contract under this section with a cost exceeding $300,000 per year, the department, in cooperation with the purchasing agency, shall conduct an annual review to confirm compliance with the contract and the requirements of this section. The annual review shall include, but not be limited to, an assessment of all requirements related to appreciable contribution. If the department, in cooperation with the purchasing agency, determines that persons with disabilities are not making an appreciable contribution in the manufacturing of an item or the performance of a service or an agency for persons with disabilities is not in compliance with other requirements of this section, the department shall give an agency for persons with disabilities 45 days in which to remedy the deficiency. If the agency for persons with disabilities fails to remedy the deficiency within 45 days, the agency for persons with disabilities shall be deemed to be in noncompliance with the contract, and the purchasing agency may terminate the contract and seek to procure the item or service through a competitive bidding process. Nothing in this section shall preclude a purchasing agency from procuring an item or service through an emergency contract when an agency for persons with disabilities is deemed to be in noncompliance.

(b) Fair market price.--Upon request to the department and notice to the purchasing agency, the department shall determine the fair market price of any supply manufactured by or service performed by persons with disabilities and offered for sale to any Commonwealth agency by an agency for persons with disabilities. The department shall revise the prices in accordance with changing market conditions.

(c) Distribution.--At the request of the department, the Department of Public Welfare or a nonprofit agency with the approval of the Department of Public Welfare shall facilitate the distribution of orders for supplies manufactured by or services performed by persons with disabilities among agencies for persons with disabilities.

(d) Procurement of supplies manufactured and services performed by persons with disabilities.--Except as provided in subsection (e), all supplies manufactured by and services furnished by persons with disabilities shall be procured in accordance with applicable specifications of the department or other Commonwealth agencies from any agency for persons with

disabilities whenever the supplies and services are available at a price determined by the department to be the fair market price. The head of a purchasing agency shall annually discuss its needs for supplies or services with any agency for persons with disabilities.

(e) Procurement from Commonwealth agency.--If any supply manufactured by or any service performed by persons with disabilities and offered for sale is available for procurement from any Commonwealth agency and this part or any other statute requires the procurement of the supply or service from the Commonwealth agency, then the procurement of the supply or service shall be made in accordance with the other provisions.

(f) Exception.--Notwithstanding subsection (h), when the Commonwealth enters into a contract under this section for the operation of the Commonwealth's driver's license photo centers, at least 70% of the amount paid by the Commonwealth shall be used to cover payment of wages and salaries to persons with disabilities and to cover actual manufacturing costs, real estate lease costs, property insurance and other costs which are specifically required by contract.

(g) Application.--

(1) This section shall not supersede any contract currently in force between a Commonwealth agency and another party.

(2) Nothing in this section shall be construed as conferring upon any party any right or interest in any contract entered into with the Commonwealth.

(h) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Agency for persons with disabilities." Any charitable, nonprofit agency incorporated under the laws of this Commonwealth and approved by the department through which persons with disabilities manufacture supplies or perform services in this Commonwealth.

"Appreciable contribution."

(1) In addition to paragraph (2), the department shall determine whether the contribution by individuals with disabilities is appreciable. Persons with disabilities must make an appreciable contribution in manufacturing a supply or performing a service.

(2) At least 75% of the personnel either engaged in the direct labor of manufacturing of a supply or engaged in the direct labor in performing a service in this Commonwealth must be visually impaired, mentally retarded or physically disabled. In addition, at least 75% of the amount paid by the Commonwealth agency for the supply or the service shall be remitted to the agency for persons with disabilities to cover payment of wages and salaries to persons with disabilities and to cover other actual manufacturing costs incurred by the agency for persons with disabilities in manufacturing of a supply.

"Manufactured." The transformation of raw materials or the assembly of essential component parts or a combination of both in the production of a supply which is different in form, composition or character from the raw materials or the essential component parts. This definition applies only to the assembly of a supply.

"Mentally retarded." Subaverage general intellectual functioning which originates during the developmental period and is associated with the impairment of maturation, learning or social adjustment.

"Performed." Labor provided to do the work to fulfill the requirements of the contract.

"Persons with a disability." A person who is visually impaired, mentally retarded or physically disabled.

"Physically disabled." A limitation of most activities and functioning by virtue of a severe impairment of the various bodily systems which cannot be eliminated, modified or substantially reduced by the usual rehabilitation services and which precludes competitive employment.

"Services." While "services" is defined in section 103 (relating to definitions), for the purposes of this section, the term specifically includes such packaging or repackaging which, as determined by the department, provides a substantial and real benefit to the Commonwealth agency which needs the supplies to be packaged or repackaged. When packaging or repackaging services are to be provided to a Commonwealth agency by an agency for persons with disabilities, the Commonwealth agency shall make the arrangements for the procurement of the supplies to be packaged or repackaged. Packaging or repackaging shall not be considered "services" if the manufacturer usually packages or repackages the supplies in the quantity required by the agency as a part of its manufacturing and distribution process. This definition applies only to the packaging or repackaging of a supply.

"Supply manufactured by or service performed by person with disabilities." (Deleted by amendment).

"Visually impaired." A condition in which central visual acuity does not exceed 20/200 in the better eye with correcting lenses or in which the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(Dec. 9, 2002, P.L.1340, No.159, eff. 30 days)

References in Text. The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Cross References. Section 520 is referred to in section 511 of this title.

SUBCHAPTER C
CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS

Sec.

521. Cancellation of invitations for bids or requests for proposals.

§ 521. Cancellation of invitations for bids or requests for proposals.

An invitation for bids, a request for proposals or other solicitation may be canceled, or any or all bids or proposals may be rejected, at any time prior to the time a contract is executed by all parties when it is in the best interests of the Commonwealth. Bids may be rejected in part when specified in the solicitation. The reasons for the cancellation or rejection shall be made part of the contract file.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

Cross References. Section 521 is referred to in section 1711.1 of this title.

SUBCHAPTER D

Sec.
531. Debarment or suspension.
532. Prequalification of bidders and offerors.
533. Security and performance bonds.
534. Cost or pricing data.
535. Printing.

§ 531. Debarment or suspension.

(a) Authority.--After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the head of a purchasing agency, after consultation with the head of the using agency, shall have authority to debar a person from consideration for the award of contracts. The decision to debar shall be based upon substantial evidence that a cause for debarment or suspension under subsection (b) has occurred. In making the decision of whether to debar a person, the head of the purchasing agency shall take into consideration the seriousness of any violation and any mitigating factors. A debarment may be for a period of not more than three years. The head of the purchasing agency may suspend a person from consideration for an award of contracts for a period of up to three months if there is probable cause for debarment.

(b) Causes for debarment or suspension.--The causes for debarment or suspension include:

(1) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

(2) Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by a person associated with:

(i) obtaining;

(ii) attempting to obtain; or

(iii) performing a public contract or subcontract.

The person's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

(3) Violation of Federal or State antitrust statutes.

(4) Violation of any Federal or State law regulating campaign contributions.

(5) Violations of any Federal or State environmental law.

(6) Violation of any Federal or State law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.

(7) Violation of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act.

(7.1) Violation of 18 Pa.C.S. § 7314 (relating to fraudulent traffic in Supplemental Nutrition Assistance Program (SNAP) benefits).

(8) Violation of any Federal or State law prohibiting discrimination in employment.

(9) Debarment by any agency or department of the Federal Government or by any other state.

(10) Three or more occurrences where a person has been declared ineligible for a contract.

(11) Unsatisfactory performance, including, but not limited to, any of the following:

(i) Failure to comply with terms of a Commonwealth agency contract or subcontract, including, but not limited to: willful failure to perform in accordance

with the terms of one or more contracts, a history of failure to perform or unsatisfactory performance of one or more contracts.

(ii) Offering unbalanced bids.

(iii) Failure to complete the work in the time frame specified in the contract.

(iv) Being declared in default on prior work or project.

(v) Failure to submit documents, information or forms as required by contract.

(vi) Making false statements or failing to provide information or otherwise to cooperate with the contracting agency, the Office of State Inspector General or other Commonwealth authorities.

(vii) Discrimination in violation of laws or regulations in the conduct of business as a contractor.

(12) Any other act or omission indicating a lack of skill, ability, capacity, quality control, business integrity or business honesty that seriously and directly affects the present responsibility of a person as determined by the purchasing agency.

(c) Decision.--After the person has been given notice of the potential debarment and the opportunity to be heard, the head of a purchasing agency shall issue a written decision. The decision shall:

(1) State the reasons for the action taken.

(2) Inform the person involved of the right to judicial review as provided in subsection (e).

(d) Notice of decision.--A copy of the decision under subsection (c) shall be sent, with delivery confirmed, to the person, any other party intervening or any interested party that has provided written notice to the purchasing agency of that party's interest in the decision under subsection (c).

(e) Finality of decision and appeal.--A decision under subsection (c) shall be final and conclusive unless the person appeals to the Commonwealth Court under 42 Pa.C.S. § 763(a)(1) (relating to direct appeals from government agencies) within 30 days after receipt of the decision.

(f) Effect of suspension or debarment.--Suspension or debarment of a person shall automatically prohibit all Commonwealth agencies from awarding any contract to the person or renewing or extending any contract with the person unless the contracting officer determines that there are compelling reasons for the award, renewal or extension and the head of the purchasing agency approves the determination.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.; Oct. 24, 2018, P.L.1159, No.160, eff. 60 days)

2018 Amendment. Act 160 added subsec. (b)(7.1).

Cross References. Section 531 is referred to in sections 303, 9119 of Title 74 (Transportation).

§ 532. Prequalification of bidders and offerors.

Prospective bidders and offerors may be prequalified for particular types of supplies, services and construction.

§ 533. Security and performance bonds.

(a) Contract for supplies or services.--

(1) In the case of competitive sealed bidding or competitive sealed proposals for a contract for supplies or services, bidders or offerors may be required by the contracting officer to provide bid or proposal security. Bid or proposal security shall be in the form of a certified or bank check or a bond provided by a surety company authorized

to do business in this Commonwealth or another form of security as specified in the invitation for bids or request for proposals. Bid or proposal security shall be at least in the minimum amount or percentage of the amount of the bid as shall be specified in the advertisement, invitation for bids or request for proposals.

(2) When the invitation for bids or the request for proposals requires security, noncompliance by the bidder or offeror with the instructions in the invitation for bids or request for proposals requires that the bid or proposal be rejected unless it is determined that the bid or proposal fails to comply with the security requirements in a nonsubstantial manner.

(3) After the bids or proposals are opened, they shall be irrevocable for the period specified in the invitation for bids or the request for proposals except as provided in section 512(f) (relating to competitive sealed bidding). If a bidder or offeror is permitted to withdraw its bid or proposal before award, no action shall be had against the bidder or offeror or against the bid or proposal security.

(4) A contractor may be required by the contracting officer to provide a performance bond executed by a surety company authorized to do business in this Commonwealth. In lieu of a bond, a contractor may provide other security as permitted by the head of the purchasing agency. The performance bond or other required security shall be in an amount determined by the head of the purchasing agency, and it shall be conditioned upon the faithful performance of the contract.

(b) Contract for construction.--Bid security and performance bonds as required for contracts for construction are provided for in sections 902 (relating to bid or proposal security) and 903 (relating to contract performance security and payment bonds).

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended subsec. (a)(3).

Cross References. Section 533 is referred to in section 3753 of this title.

§ 534. Cost or pricing data.

(a) Submission by contractor.--A contractor shall, except as provided in subsection (c), submit cost or pricing data and shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually determined specified date prior to the date of:

(1) the award of any contract under section 513 (relating to competitive sealed proposals) or 515 (relating to sole source procurement) where, under either section, the total contract price is expected to exceed an amount established by the head of the purchasing agency; or

(2) the pricing of any change order or contract modification which is expected to exceed an amount established by the head of the purchasing agency.

(b) Price adjustment.--Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to the purchasing agency, including profit or fee, shall be adjusted to exclude any significant sums by which the purchasing agency finds that the price was increased because the cost or pricing data furnished by the contractor was inaccurate, incomplete or not current as of the date agreed upon between the parties.

(c) Cost or pricing data not required.--The requirements of this section need not be applied to contracts under any of the following circumstances:

(1) When responsive proposals are received from two or more offerors.

(2) When the contract price is based on established catalog prices or market prices.

(3) When contract prices are set by statute or regulation.

(4) When it is determined in writing by the contracting officer that the requirements of this section may be waived and the reasons for the waivers are stated in writing.

Cross References. Section 534 is referred to in sections 552, 561 of this title.

§ 535. Printing.

No contract for printing shall be entered into with any person until the purchasing agency is satisfied that the person is the owner or lessee of machinery and equipment necessary to properly and promptly perform any orders issued to the person under the proposed printing contract.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

SUBCHAPTER E
TYPES OF CONTRACTS

Sec.

541. Approval of accounting system.
542. Multiterm contracts.
543. Effective contracts.

§ 541. Approval of accounting system.

No contract type shall be used unless it has been determined in writing by the head of the purchasing agency that:

(1) The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated.

(2) The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

Notwithstanding the preceding, a contract may be used without a prior written determination where the contract is a firm, fixed-price contract or a contract awarded under section 516 (relating to emergency procurement).

Cross References. Section 541 is referred to in sections 561, 9119 of this title.

§ 542. Multiterm contracts.

(a) Specified period.--A contract for supplies, construction or services may be entered into for a period of time deemed to be in the best interests of the Commonwealth. The term of the contract and conditions of renewal or extension, if any, shall be included in the solicitation, and funds shall be available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

(b) Cancellation for unavailability of funds in succeeding fiscal periods.--When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled, and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price

of the supplies, services or construction delivered under the contract. Such reimbursement shall not include loss of anticipated profit, loss of use of money or administrative or overhead costs. The cost of cancellation may be paid from any appropriations available for that purpose. The contractor shall not be entitled to any reimbursement where the Commonwealth elects not to exercise a renewal or extension option provided for in the contract.

§ 543. Effective contracts.

(a) General rule.--Irrespective of the type of contract, no contract shall be effective until executed by all necessary Commonwealth officials as provided by law.

(b) Certain contracts.--Those Statewide requirements contracts where the total dollar purchasing amount, based upon estimated quantities, is in excess of $1,000,000 shall not be effective unless first approved by the State Treasurer. The $1,000,000 amount shall be adjusted each year by the department to reflect the annual percentage change in the Composite Construction Cost Index of the United States Department of Commerce occurring in the one-year period ending December 31 each year.

SUBCHAPTER F
INSPECTION OF PLANT AND AUDIT OF RECORDS

Sec.

551. Right to inspect plant.
552. Right to audit records.

§ 551. Right to inspect plant.

The purchasing agency may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the purchasing agency.

Cross References. Section 551 is referred to in sections 561, 9119 of this title.

§ 552. Right to audit records.

(a) Audit of cost or pricing data.--The purchasing agency or its designee may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data under section 534 (relating to cost or pricing data) to the extent that the books and records relate to the cost or pricing data. A person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the contract unless a shorter period is otherwise authorized by the purchasing agency in writing.

(b) Contract audit.--The purchasing agency may audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm, fixed-price contract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the prime contract unless a shorter period is otherwise authorized by the purchasing agency in writing.

Cross References. Section 552 is referred to in sections 561, 9119 of this title.

SUBCHAPTER G
DETERMINATIONS AND REPORTS

Sec.
561. Finality of determinations.
562. Anticompetitive practices.
563. Retention of procurement records.
564. Record of certain actions.

§ 561. Finality of determinations.

The determinations required by the following sections are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law:

Section 512(f) (relating to competitive sealed bidding).

Section 513(a) and (g) (relating to competitive sealed proposals).

Section 515 (relating to sole source procurement).

Section 516 (relating to emergency procurement).

Section 518(e) (relating to competitive selection procedures for certain services).

Section 519(f) (relating to selection procedure for insurance and notary bonds).

Section 534(c) (relating to cost or pricing data).

Section 541 (relating to approval of accounting system).

Cross References. Section 561 is referred to in section 563 of this title.

§ 562. Anticompetitive practices.

Collusion among bidders or offerors is unlawful. Every contract, combination or conspiracy which unreasonably restrains trade among bidders or offerors is unlawful. Contracts so arrived at may be declared void at the option of the Commonwealth. In addition to remedies available to the Commonwealth in the Federal courts, there shall be the same remedies in the courts of this Commonwealth. When any person has reason to believe collusion or other anticompetitive practices have occurred among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Attorney General, who shall investigate the reports.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

§ 563. Retention of procurement records.

All procurement records, including any written determinations issued in accordance with section 561 (relating to finality of determinations), shall be retained for a minimum of three years from the date of final payment under the contract and disposed of in accordance with records retention guidelines and schedules as provided by law. In accordance with applicable law, all retained documents shall be made available to the State Treasurer, Auditor General, General Counsel, Inspector General and Attorney General upon request.

Cross References. Section 563 is referred to in sections 106.1, 561, 9119 of this title.

§ 564. Record of certain actions.

The purchasing agency shall maintain a record listing all contracts made under sections 514 (relating to small procurements), 515 (relating to sole source procurement) and 516 (relating to emergency procurement) for a minimum of three

years from the date of final payment under the contract. The record shall contain:

(1) Each contractor's name.

(2) The amount and type of each contract.

(3) A listing of the supplies, services or construction procured under each contract.

CHAPTER 7
(Reserved)

Enactment. Chapter 7 (Reserved) was added May 15, 1998, P.L.358, No.57, effective in 180 days.

CHAPTER 9
PROCUREMENT OF CONSTRUCTION AND DESIGN PROFESSIONAL SERVICES

Sec.

901. Definitions.
902. Bid or proposal security.
903. Contract performance security and payment bonds.
904. Copies of bonds.
905. Procurement of design professional services.
906. Letters of intent.
907. Procurement of right-of-way acquisition assistance services.

Enactment. Chapter 9 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

§ 901. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Design professional services." Those professional services within the scope of the practice of architecture, geology, engineering, landscape architecture or land surveying, including studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual design, plans and specifications, value engineering, maintenance manuals and other related services associated with research, planning, development, design, construction, alteration or repair of real property. The term includes services provided under the supervision of a professional engineer to develop engineering software which will aid design professionals in performing their work. The term does not include those services which are not exclusively within the scope of architecture, geology, engineering or landscape architecture but which are related to capital improvements such as, but not limited to, environmental hygienics, construction management as described in section 322 (relating to specific construction powers, duties and procedures), exhibit design, fine arts or lesser arts and crafts, even though an architect, geologist, engineer or landscape architect may provide such services.

Cross References. Section 901 is referred to in section 3902 of this title; section 303 of Title 74 (Transportation).

§ 902. Bid or proposal security.

(a) Requirement for bid or proposal security.--Bidders or offerors may be required to provide bid or proposal security

for construction contracts. Bid or proposal security shall be in the form of a certified or bank check or a bond provided by a surety company authorized to do business in this Commonwealth or another form of security as specified in the invitation for bids or request for proposals.

(b) Amount of bid or proposal security.--Bid or proposal security shall be at least in the minimum amount or percentage of the amount of the bid or proposal as shall be specified in the advertisement, the invitation for bids or the request for proposals.

(c) Rejection of bids or proposals.--When the invitation for bids or the request for proposals requires security, noncompliance with the instructions in the invitation for bids or the request for proposals requires that the bid or proposal be rejected unless it is determined that the bid or proposal fails to comply with the security requirements in a nonsubstantial manner.

(d) Withdrawal of bids and proposals.--After the bids or proposals are opened, they shall be irrevocable for the period specified in the invitation or requests for proposals for bids except as provided in section 512(f) (relating to competitive sealed bidding). If a bidder or offeror is permitted to withdraw its bid or proposal before award, no action shall be had against the bidder or offeror or the bid or proposal security.
(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended subsecs. (a), (b) and (d).

Cross References. Section 902 is referred to in section 533 of this title.

§ 903. Contract performance security and payment bonds.

(a) When required and amounts.--For construction contracts awarded for amounts between $25,000 and $100,000, the purchasing agency shall require contract performance security, in an amount equal to at least 50% of the contract price, as the purchasing agency in its discretion determines necessary to protect the interests of the Commonwealth. When a construction contract is awarded in excess of $100,000, the following bonds shall be delivered to the purchasing agency and shall be binding on the parties upon the execution of the contract:

(1) A performance bond, executed by a surety company authorized to do business in this Commonwealth and made payable to the Commonwealth, in an amount equal to 100% of the price specified in the contract and conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract.

(2) A payment bond, executed by a surety company authorized to do business in this Commonwealth and made payable to the Commonwealth, in an amount equal to 100% of the price specified in the contract and conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the prosecution of the work. Labor or materials include public utility services and reasonable rentals of equipment for the periods when the equipment is actually used at the site.

(b) Protection.--A performance bond shall be solely for the protection of the purchasing agency which awarded the contract. A payment bond shall be solely for the protection of claimants supplying labor or materials to the prime contractor to whom the contract was awarded or to any of its subcontractors in the prosecution of the work provided for in the contract, whether or not the labor or materials constitute a component part of the construction.

(c) Authority to require additional bonds.--Nothing in this section shall be construed to limit the authority of the Commonwealth agency to require a performance bond, payment bond or other security in addition to those bonds or in circumstances other than specified in subsection (a).

(d) Actions on payment bonds.--

(1) Subject to paragraph (2), any claimant who has performed labor or furnished material in the prosecution of the work provided for in any contract for which a payment bond has been given under subsection (a) and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which it claims payments may bring an action on the payment bond in its own name, in assumpsit, to recover any amount due it for the labor or material and may prosecute the action to final judgment and have execution on the judgment.

(2) Any claimant who has a direct contractual relationship with any subcontractor of the prime contractor who gave the payment bond but has no contractual relationship, express or implied, with the prime contractor may bring an action on the payment bond only if it has given written notice to the contractor within 90 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which it claims payment, stating with substantial accuracy the amount and the name of the person for whom the work was performed or to whom the material was furnished.

(3) Notice shall be served by registered mail in an envelope addressed to the contractor at any place where its office is regularly maintained for the transaction of business or served in any manner in which legal process may be served in the manner provided by law for the service of a summons except that the service need not be made by a public officer.

(e) Adjustment of threshold amount.--The dollar thresholds set forth in subsection (a) shall be adjusted annually by the department to reflect the annual percentage change in the Composite Construction Cost Index of the United States Department of Commerce occurring in the one-year period ending on December 31 of each year.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended subsec. (e).

Cross References. Section 903 is referred to in section 533 of this title.

§ 904. Copies of bonds.

(a) Copies of bonds.--The purchasing agency shall furnish a copy of any payment bond and the contract for which the bond was given to any person who makes an application for the copy.

(b) Fee for copies.--Each applicant shall pay for each copy of any payment bond a fee fixed by the purchasing agency to cover the actual cost of the preparation of the copy.

(c) Evidence.--A copy of any payment bond and of the contract for which the bond was given constitutes prima facie evidence of the contents, execution and delivery of the original of the bond and contract.

§ 905. Procurement of design professional services.

(a) Applicability.--Design professional services shall be procured as provided in this section except as authorized by sections 514 (relating to small procurements), 515 (relating

to sole source procurement) and 516 (relating to emergency procurement).

(b) Policy.--It is the policy of this Commonwealth to publicly announce all requirements for design professional services and to award contracts for design professional services on the basis of demonstrated competence and qualification for the types of services required. There shall be a committee to review the qualifications, experience and work of design professionals seeking contracts with purchasing agencies.

(c) Selection committees for Department of Transportation, Department of Environmental Protection, Department of Conservation and Natural Resources and State-affiliated entities.--Where they are authorized by law to act as purchasing agency for design professional services, the Department of Transportation, the Department of Environmental Protection, the Department of Conservation and Natural Resources and State-affiliated entities shall each establish as many selection committees as the department deems appropriate and a procedure for the selection of committee members.

(d) Selection committee for all other Commonwealth agencies.--Except as provided for in subsection (c), all purchasing agencies shall use the selection committee appointed by the Governor which shall be composed of five members, none of whom shall be employees of the Commonwealth or hold any elective office or office in any political party. The members shall be architects, engineers or other persons knowledgeable in construction. The members shall serve for terms of two years and shall not be removed except for cause. Of the original members, three shall serve for terms of two years and two for terms of one year. Thereafter, all terms shall be for two years. Each member shall be reimbursed for reasonable travel and other expenses incurred incident to attendance at meetings and to assigned duties and also a per diem allowance in accordance with Commonwealth travel policies.

(e) Procedure for selection committees.--The selection committees shall use the procedure set forth in this subsection:

(1) The committee shall give public notice of projects requiring design services and publicly recommend to the purchasing agency three qualified design professionals for each project.

(2) If desired, the committee may conduct discussions with three or more professionals regarding anticipated design concepts and proposed methods of approach to the assignment. The committee shall select, based upon criteria established by the head of the purchasing agency, no less than three design professionals deemed to be the most highly qualified to provide the services required. In exercising its responsibility, the committee shall consider the following factors:

(i) An equitable distribution of contracts to design professionals.

(ii) Particular capability to perform the design or construction services for the contract being considered.

(iii) Geographic proximity of the design professional to the proposed facility.

(iv) The design professional selected has the necessary available personnel to perform the services required by the project.

(v) Any other relevant circumstances peculiar to the proposed contract.

(f) Design professionals.--Except as provided for in subsection (g), the head of the purchasing agency shall select design professionals as follows:

(1) Where the amount of the base construction allocation is less than $20,000,000, the head of the purchasing agency shall choose one of the three firms approved by the selection committee. The fee to be paid to the appointed design professional may be established by the selection committee or may be negotiated at the discretion of the head of the purchasing agency. The $20,000,000 threshold shall be adjusted by the department to reflect the annual percentage change in the Composite Construction Cost Index of the United States Department of Commerce occurring in the one-year period ending December 31 each year.

(2) Where the amount of base construction allocation is in excess of or equal to $20,000,000, as annually adjusted, the head of the purchasing agency shall choose one of the three firms approved by the selection committee to begin contract negotiations. The fee to be paid to the design professional and the terms of the contract between the design professional and the department shall be negotiated by the head of the purchasing agency. In negotiating the contract and the fee, the head of the purchasing agency shall take into account the estimated value, scope, complexity, uniqueness and the professional nature of the services to be rendered. In the event the head of the purchasing agency is unable to negotiate a satisfactory contract or fee with the appointed design professional, negotiations with that design professional shall be terminated, and the head of the purchasing agency shall commence negotiations with one of the other firms chosen by the selection committee. In the event the head of the purchasing agency is unable to negotiate a satisfactory contract or fee with the second firm, the head of the purchasing agency shall terminate negotiations with the second design professional and commence negotiation with the third firm. In the event the head of the purchasing agency is unable to negotiate a satisfactory contract with any of the selected firms, the selection committee shall choose additional qualified firms, and the head of the purchasing agency shall continue negotiations in accordance with this subsection until an agreement is reached.

(g) Selection method for Department of Transportation, Department of Conservation and Natural Resources, Department of Environmental Protection and State-affiliated entities.--In the event the Department of Transportation, the Department of Conservation and Natural Resources, the Department of Environmental Protection or a State-affiliated entity otherwise authorized by law to use its own selection committee requires the services of a design professional, the head of the purchasing agency or a State-affiliated entity shall choose one of the three firms approved by the selection committee. The head of the purchasing agency or a State-affiliated entity shall negotiate with the firm determined to be the highest qualified firm for design professional services at a fee which is determined to be fair and reasonable to the Commonwealth. In making this decision, the head of the purchasing agency shall take into account the estimated value, scope, complexity and professional nature of the services to be rendered. Should the head of the purchasing agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a fee he determines to be fair and reasonable to

the Commonwealth, negotiations with that firm shall be formally terminated. The head of the purchasing agency shall then undertake negotiations with the firm he determines to be the second highest qualified firm. Failing accord with the second most qualified firm, the head of the purchasing agency shall formally terminate negotiations and then undertake negotiations with the third highest qualified firm. Should the head of the purchasing agency be unable to negotiate a satisfactory contract with any of the selected firms, the committee shall select additional qualified firms, and the head of the purchasing agency shall continue negotiations in accordance with this section until an agreement is reached.

Cross References. Section 905 is referred to in sections 322, 511, 907, 3756 of this title.

§ 906. Letters of intent.

Before a contract for construction is effective, the head or a deputy of the purchasing agency may issue binding letters of intent to contract. A bidder or offeror receiving a letter of intent may rely on the letter to prepare to start work to the extent authorized by the letter and incur costs in preparation for performance of the contract. No work on the construction site shall be commenced and no payment shall be made to the bidder or offeror until the contract is fully executed. If the contract is not fully executed, the bidder or offeror shall be entitled to reimbursement for its actual expenses reasonably incurred pursuant to the letter prior to notification from the purchasing agency not to proceed. Reimbursement shall not include any loss of anticipated profit, loss of use of money or administrative or overhead costs.
(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 added section 906.

§ 907. Procurement of right-of-way acquisition assistance services.

Right-of-way acquisition assistance services to be provided in conjunction with the planning, development, design, construction, alteration or repair of bridges and highways by the Department of Transportation shall be procured in accordance with section 905 (relating to procurement of design professional services).
(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 added section 907.

CHAPTER 11
(Reserved)

Enactment. Chapter 11 (Reserved) was added May 15, 1998, P.L.358, No.57, effective in 180 days.

CHAPTER 13
(Reserved)

Enactment. Chapter 13 (Reserved) was added May 15, 1998, P.L.358, No.57, effective in 180 days.

CHAPTER 15
SUPPLY MANAGEMENT

Sec.
1501. Definitions.
1502. Supply management regulations.
1503. Proceeds from sale or disposal of surplus supplies.
1504. Exception.

Enactment. Chapter 15 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

Cross References. Chapter 15 is referred to in sections 102, 1903, 1904 of this title.

§ 1501. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Excess supplies." All nonexpendable supplies having a remaining useful life but which are no longer required by the using agency in possession of the supplies.

"Expendable supplies." All tangible supplies other than nonexpendable supplies.

"Nonexpendable supplies." All tangible supplies having an original acquisition cost of over $100 per unit and a probable useful life of more than one year.

"Supplies." Supplies owned by Commonwealth agencies.

"Surplus supplies." Nonexpendable supplies no longer having any use to any Commonwealth agency. The term includes obsolete supplies, scrap materials and nonexpendable supplies that have completed their useful life cycle. The term does not include road or bridge materials or equipment that have been declared surplus by the Department of Transportation under section 510 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

§ 1502. Supply management regulations.

For executive and independent agencies, the department shall establish policy and may promulgate regulations governing:

(1) The management of supplies during their entire life cycle.

(2) The sale, lease or disposal of surplus supplies by public auction, competitive sealed bidding or other appropriate method designated by the department. However, no employee of the owning or disposing agency shall be entitled to purchase any of these supplies except when the sale price of the surplus supply is less than the amount established by the department for permissible purchases by such employees.

(3) Transfer of excess supplies.

§ 1503. Proceeds from sale or disposal of surplus supplies.

The proceeds from the sale, lease or disposal of surplus supplies by an executive or independent agency shall be paid into the State Treasury and deposited in the fund out of which the supplies sold were originally purchased by the appropriate credit to the then-current appropriation. The costs incurred by the department in advertising or selling the supplies shall be deducted from the purchase price, and that amount shall be an executively authorized augmentation to the appropriation from which the costs were paid by the department.

§ 1504. Exception.

This chapter shall not apply to actions taken by the Office of Attorney General under 42 Pa.C.S. Ch. 68 (relating to controlled substances forfeitures).

CHAPTER 17
LEGAL AND CONTRACTUAL REMEDIES

Subchapter
A. General Provisions
B. Prelitigation Resolution of Controversies
C. Board of Claims
D. Solicitations or Awards in Violation of Law (Repealed)
E. Interest

Enactment. Chapter 17 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

Cross References. Chapter 17 is referred to in section 1910 of this title; sections 9109, 9117, 9119 of Title 74 (Transportation).

SUBCHAPTER A
GENERAL PROVISIONS

Sec.
1701. Definitions.
1702. Sovereign immunity.

§ 1701. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." The Board of Claims established in section 1721 (relating to Board of Claims).

"Claimant." A contractor or Commonwealth agency that files a claim with the board.

"Respondent." A contractor or Commonwealth agency against which a claim filed with the board is asserted.
(Dec. 3, 2002, P.L.1147, No.142)

2002 Amendment. Section 22(1)(i) of Act 142 provided that the amendment of section 1701 shall take effect upon publication in the Pennsylvania Bulletin of the standing order under section 1102(g) of Title 67 (Public Welfare). The standing order was published in the Pennsylvania Bulletin on June 28, 2003, at 33 Pa.B. 3053.

§ 1702. Sovereign immunity.

(a) General rule.--The General Assembly under section 11 of Article I of the Constitution of Pennsylvania reaffirms sovereign immunity, and, except as otherwise provided in this chapter, no provision of this part shall constitute a waiver of sovereign immunity for the purpose of 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed; specific waiver) or otherwise.

(b) Exception.--The General Assembly under section 11 of Article I of the Constitution of Pennsylvania does hereby waive sovereign immunity as a bar to claims against Commonwealth agencies brought in accordance with sections 1711.1 (relating to protests of solicitations or awards) and 1712.1 (relating to contract controversies) and Subchapter C (relating to Board of Claims) but only to the extent set forth in this chapter.
(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended subsec. (b).

SUBCHAPTER B
PRELITIGATION RESOLUTION OF CONTROVERSIES

Sec.
1711. Authority to resolve protests of solicitations or awards (Repealed).
1711.1. Protests of solicitations or awards.
1711.2. Solicitations or awards contrary to law.
1712. Authority to resolve contract and breach of contract controversies (Repealed).
1712.1. Contract controversies.

Cross References. Subchapter B is referred to in sections 1323, 3309 of Title 4 (Amusements).

§ 1711. Authority to resolve protests of solicitations or awards (Repealed).

2002 Repeal Note. Section 1711 was repealed December 3, 2002, P.L.1147, No.142, effective immediately.

§ 1711.1. Protests of solicitations or awards.

(a) Right to protest.--A bidder or offeror, a prospective bidder or offeror or a prospective contractor that is aggrieved in connection with the solicitation or award of a contract, except as provided in section 521 (relating to cancellation of invitations for bids or requests for proposals), may protest to the head of the purchasing agency in writing.

(b) Filing of protest.--If the protestant is a bidder or offeror or a prospective contractor, the protest shall be filed with the head of the purchasing agency within seven days after the aggrieved bidder or offeror or prospective contractor knew or should have known of the facts giving rise to the protest except that in no event may a protest be filed later than seven days after the date the contract was awarded. If the protestant is a prospective bidder or offeror, a protest shall be filed with the head of the purchasing agency prior to the bid opening time or the proposal receipt date. If a bidder or offeror, a prospective bidder or offeror or a prospective contractor fails to file a protest or files an untimely protest, the bidder or offeror, the prospective bidder or offeror or the prospective contractor shall be deemed to have waived its right to protest the solicitation or award of the contract in any forum. Untimely filed protests shall be disregarded by the purchasing agency.

(c) Contents of protest.--A protest shall state all grounds upon which the protestant asserts the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.

(d) Response and reply.--Within 15 days of receipt of a protest, the contracting officer may submit to the head of the purchasing agency and the protestant a response to the protest, including any documents or information he deems relevant to the protest. The protestant may file a reply to the response within ten days of the date of the response.

(e) Evaluation of protest.--The head of the purchasing agency or his designee shall review the protest and any response or reply and may request and review such additional documents or information he deems necessary to render a decision and may, at his sole discretion, conduct a hearing. The head of the purchasing agency or his designee shall provide to the protestant and the contracting officer a reasonable opportunity to review and address any additional documents or information

deemed necessary by the head of the purchasing agency or his designee to render a decision.

(f) Determination.--Upon completing an evaluation of the protest in accordance with subsection (e), the head of the purchasing agency or his designee shall issue a written determination stating the reasons for the decision. The determination shall be issued within 60 days of the receipt of the protest unless extended by consent of the head of the purchasing agency or his designee and the protestant. The determination shall be the final order of the purchasing agency. If the head of the purchasing agency or his designee determines that the solicitation or award of the contract was contrary to law, he may enter an order authorized by section 1711.2 (relating to solicitations or awards contrary to law).

(g) Appeal.--Within 15 days of the mailing date of a final determination denying a protest, a protestant may file an appeal with Commonwealth Court. Issues not raised by the protestant before the purchasing agency are deemed waived and may not be raised before the court.

(h) Record of determination.--The record of determination for review by the court shall consist of the solicitation or award; the contract, if any; the protest; any response or reply; any additional documents or information considered by the head of the purchasing agency or his designee; the hearing transcript and exhibits, if any; and the final determination.

(i) Standard of review.--The court shall hear the appeal, without a jury, on the record of determination certified by the purchasing agency. The court shall affirm the determination of the purchasing agency unless it finds from the record that the determination is arbitrary and capricious, an abuse of discretion or is contrary to law.

(j) Remedy.--If the determination is not affirmed, the court may enter any order authorized by 42 Pa.C.S. § 706 (relating to disposition of appeals), provided that, if the court determines that the solicitation or award of a contract is contrary to law, then the remedy the court shall order is limited to canceling the solicitation or award and declaring void any resulting contract.

(k) Stay of procurement during pendency of protest.--In the event a protest is filed timely under this section and until the time has elapsed for the protestant to file an appeal with Commonwealth Court, the purchasing agency shall not proceed further with the solicitation or with the award of the contract unless and until the head of the purchasing agency, after consultation with the head of the using agency, makes a written determination that the protest is clearly without merit or that award of the contract without delay is necessary to protect substantial interests of the Commonwealth.

(l) Applicability.--This section shall be the exclusive procedure for protesting a solicitation or award of a contract by a bidder or offeror, a prospective bidder or offeror or a prospective contractor that is aggrieved in connection with the solicitation or award of a contract. The provisions of 2 Pa.C.S. (relating to administrative law and procedure) shall not apply to this section.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 added section 1711.1.

Cross References. Section 1711.1 is referred to in section 1702 of this title.

§ 1711.2. Solicitations or awards contrary to law.

If the head of a purchasing agency or his designee determines that a solicitation or award of a contract is contrary to law, the following apply:

(1) If the determination is made prior to the execution of a contract, the remedies are limited to cancellation of the solicitation or proposed award or revision of the solicitation or proposed award to comply with the law.

(2) If the determination is made after the execution of a contract and the person awarded the contract has not acted fraudulently or in bad faith:

(i) the contract may be ratified and affirmed, provided it is determined by the head of the purchasing agency or his designee that doing so is in the best interest of the Commonwealth;

(ii) the contract, with the consent of all parties, may be modified to comply with the law; or

(iii) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to the termination. Such compensation shall not include loss of anticipated profit, loss of use of money or administrative or overhead costs.

(3) If the determination is made after the execution of a contract and the person awarded the contract has acted fraudulently or in bad faith:

(i) the contract may be ratified and affirmed, provided it is determined by the head of the purchasing agency or his designee that doing so is in the best interest of the Commonwealth and without prejudice to the right of the Commonwealth agency to damages as may be appropriate.

(ii) the contract, with the consent of all parties, may be modified to comply with the law; or

(iii) the contract may be declared void.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 added section 1711.2.

Cross References. Section 1711.2 is referred to in section 1711.1 of this title.

§ 1712. Authority to resolve contract and breach of contract controversies (Repealed).

2002 Repeal Note. Section 1712 was repealed December 3, 2002, P.L.1147, No.142, effective immediately.

§ 1712.1. Contract controversies.

(a) Right to claim.--A contractor may file a claim with the contracting officer in writing for controversies arising from a contract entered into by the Commonwealth.

(b) Filing of claim.--A claim shall be filed with the contracting officer within six months of the date it accrues. If a contractor fails to file a claim or files an untimely claim, the contractor is deemed to have waived its right to assert a claim in any forum. Untimely filed claims shall be disregarded by the contracting officer.

(c) Contents of claim.--A claim shall state all grounds upon which the contractor asserts a controversy exists.

(d) Determination.--The contracting officer shall review a claim and issue a final determination in writing regarding the claim within 120 days of the receipt of the claim unless extended by consent of the contracting officer and the contractor. If the contracting officer fails to issue a final determination within the 120 days unless extended by consent

of the parties, the claim shall be deemed denied. The determination of the contracting officer shall be the final order of the purchasing agency.

(e) Statement of claim.--Within 15 days of the mailing date of a final determination denying a claim or within 135 days of filing a claim if no extension is agreed to by the parties, whichever occurs first, the contractor may file a statement of claim with the board.

(f) Applicability.--The provisions of 2 Pa.C.S. (relating to administrative law and procedure) shall not apply to this section.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 added section 1712.1.

Cross References. Section 1712.1 is referred to in sections 1702, 1724 of this title.

SUBCHAPTER C
BOARD OF CLAIMS

Sec.

1721. Board of Claims.
1722. Powers and duties of board.
1723. Employees and hearing panel members.
1724. Jurisdiction.
1725. Procedure.
1726. Payment of awards and costs.

Enactment. Subchapter C was added December 3, 2002, P.L.1147, No.142, effective upon publication in the Pennsylvania Bulletin of the standing order under section 1102(g) of Title 67 (Public Welfare). The standing order was published in the Pennsylvania Bulletin on June 28, 2003, at 33 Pa.B. 3053.

Prior Provisions. Former Subchapter C, which related to the same subject matter, was added May 15, 1998, P.L.358, No.57, and repealed December 3, 2002, P.L.1147, No.142, effective upon publication in the Pennsylvania Bulletin of the standing order under section 1102(g) of Title 67 (Public Welfare). The standing order was published in the Pennsylvania Bulletin on June 28, 2003, at 33 Pa.B. 3053.

Claims Filed Under Prior Act. Section 21.2 of Act 142 of 2002 provided that any claim filed and not finally resolved under the act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Claims Act, prior to the effective date of Act 142 shall be disposed of in accordance with the Board of Claims Act.

Cross References. Subchapter C is referred to in section 1702 of this title.

§ 1721. Board of Claims.

(a) Establishment.--There is hereby established an independent administrative board to be known as the Board of Claims. Administrative services for the board shall be provided by the Department of the Auditor General.

(b) Composition.--The board shall consist of three members appointed by the Governor by and with the advice and consent of a majority of the elected members of the Senate. One member shall be an attorney and another shall be a registered civil engineer. The third member of the board shall be a citizen and resident of this Commonwealth. The attorney shall serve as chairman of the board.

(c) Term.--A member of the board shall be appointed for a term of eight years. In the event a vacancy shall occur during a term of office, the Governor shall appoint a successor who shall hold office for the remainder of the unexpired term. A member of the board may be removed by the Governor for inefficiency, neglect of duty or malfeasance in office.

(d) Compensation.--A member of the board shall receive an annual compensation as fixed by the Executive Board, subject to the annual cost-of-living adjustment provided for in section 3(e) of the act of September 30, 1983 (P.L.160, No.39), known as the Public Official Compensation Law. A member of the board shall be entitled to all necessary travel and other expenses incurred by him in the discharge of his official duties. A member shall hold no other public position to which a salary is attached.

Continuation of Existing Members. Section 21.1 of Act 142 of 2002 provided that a member of the Board of Claims as of the effective date of Act 142 shall continue to serve as a member of the board until the member's present term expires or until a successor has been appointed and qualified.

Cross References. Section 1721 is referred to in section 1701 of this title.

§ 1722. Powers and duties of board.

The board shall do all of the following:

(1) Employ administrative, professional, clerical and other personnel as is necessary for the orderly administration of the board.

(2) Make, execute and deliver contracts and other instruments as is necessary.

(3) Establish and maintain a principal office in Harrisburg and such other offices within this Commonwealth as are necessary.

(4) Adopt an official seal.

(5) Appoint three separate hearing panels consisting of two individuals. For each hearing panel, one individual shall be an attorney and the other shall be a licensed engineer. The attorney shall serve as chairperson.

(6) Establish, by regulation, rules governing practice before the board consistent, except as may be provided by this part, with the Pennsylvania Rules of Civil Procedure and the Pennsylvania Rules of Evidence.

(7) Arbitrate claims before it in accordance with this subchapter.

(8) Catalog and publish all opinions of the board.

Cross References. Section 1722 is referred to in section 1723 of this title.

§ 1723. Employees and hearing panel members.

(a) Employees.--Employees of the board shall, for the purposes of 71 Pa.C.S. Pt. XXV (relating to retirement for State employees and officers), be considered a State employee. Employees of the board shall be reimbursed for all necessary travel and other expenses incurred in the discharge of official duties.

(b) Hearing panel members.--Individuals appointed to hearing panels in accordance with section 1722 (relating to powers and duties of board) shall receive a per diem for the time actually devoted to the business of the board. The per diem rate shall be fixed by the Executive Board, but no panel member shall be paid more than $25,000 per diem compensation in any calendar year.

§ 1724. Jurisdiction.

(a) Exclusive jurisdiction.--The board shall have exclusive jurisdiction to arbitrate claims arising from all of the following:

(1) A contract entered into by a Commonwealth agency in accordance with this part and filed with the board in accordance with section 1712.1 (relating to contract controversies).

(2) A written agreement executed by a Commonwealth agency and the Office of Attorney General in which the parties expressly agree to utilize the board to arbitrate disputes arising from the agreement.

(3) Unless otherwise provided by law, a contract entered into by a Commonwealth agency involving real property interests in which the Commonwealth agency is the respondent.

(b) Concurrent jurisdiction.--The board shall have concurrent jurisdiction to arbitrate claims arising from all of the following:

(1) A contract entered into by a Commonwealth agency in accordance with this part in which the Commonwealth agency is the claimant.

(2) Unless otherwise provided by law, a contract entered into by a Commonwealth agency involving real property interests in which the Commonwealth agency is the claimant.

(c) Limitations.--The board shall have no power and exercise no jurisdiction over a claim asserted under subsection (a)(1) unless it is filed with the board in accordance with section 1712.1. The board shall have no power and exercise no jurisdiction over a claim asserted against a Commonwealth agency under subsection (a)(2) or (3) unless the claim was filed with the board within six months after it accrued. The board shall have no power and exercise no jurisdiction over claims for payment or damages to providers of medical assistance services arising out of the operation of the medical assistance program established by the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

(d) Nonmonetary relief.--Nothing in this section shall preclude a party from seeking nonmonetary relief in another forum as provided by law.

References in Text. The short title of the act of June 13, 1967, P.L.31, No.21, known as the Public Welfare Code, referred to in subsection (c), was amended by the act of December 28, 2015, P.L.500, No.92. The amended short title is now the Human Services Code.

Cross References. Section 1724 is referred to in section 1725 of this title.

§ 1725. Procedure.

(a) Statement of claim.--The board shall accept a statement of claim filed in accordance with section 1724 (relating to jurisdiction). The statement of claim shall be signed and verified. Prior to accepting a statement of claim, the board shall require a claimant to prove that the respondent was mailed a copy of the statement of claim. If the respondent is a Commonwealth agency, upon accepting a statement of claim the board shall deliver one copy to the Attorney General.

(b) Response.--Within 30 days of a statement of claim being filed, the respondent shall file with the board a response to the averments of the claimant's statement of claim. The response shall be signed and verified. Prior to accepting a response, the board shall require a respondent to prove that the claimant was mailed a copy of the response.

(c) Listing.--

(1) After the pleadings are complete, the board shall list the case for hearing before the board at the earliest available date, but not earlier than 30 days after the pleadings are complete. All cases shall, as far as practicable, be listed for hearing in the order of the date of the filing of the respective statements of claim. The board shall provide the parties with 30 days' written notice of the time and place of the hearing.

(2) If a decision by the board is unlikely to be made within 60 days from the date of the hearing, the board may refer the case, together with all pleadings, to the hearing panel where the non-Commonwealth party resides. The hearing panel shall list the case for hearing at the earliest available date after receipt of the case from the board. All cases shall, as far as practicable, be listed for hearing in the order of the date of the filing of the respective statements of claim. The hearing panel shall provide the parties with 30 days' written notice of the time and place of the hearing.

(d) Hearing.--

(1) The board shall hold the hearing at the place and time determined by the board. All hearings shall be public. All matters before the board shall be governed by rules established by the board. The board shall have power to issue subpoenas requiring the attendance and giving of testimony of witnesses or the production of any book, paper, documentary or other evidence and to order the interpleader or impleader of other parties whenever necessary for a complete determination of any claim or counterclaim.

(2) If the matter was referred to a hearing panel, the hearing panel shall hold the hearing at the place and time determined by the panel. All hearings shall be public. All matters before the hearing panel shall be governed by rules established by the board. The hearing panel shall have power to issue subpoenas requiring the attendance and giving of testimony of witnesses or the production of any book, paper, documentary or other evidence and to order the interpleader or impleader of other parties whenever necessary for a complete determination of any claim or counterclaim.

(e) Decision.--

(1) After considering the pleadings and the testimony given at the hearing before it, the board shall file a written opinion either dismissing the claim of the claimant or ordering an award in favor of the claimant. If the board orders an award, the board shall order an amount which the claimant is legally entitled to receive. The board in dismissing any claim or ordering any award shall dispose of all costs of the proceedings by providing for the payment of costs by the claimant or the respondent or by providing that the costs shall be shared by the parties in proportion as the board in its discretion shall direct. Costs shall include witness fees and expenses. The board shall, under the seal of the board, immediately notify the parties involved of the entry of a final order.

(2) If the hearing was before a hearing panel, the hearing panel shall make its recommendation or recommendations to the board within 30 days of the hearing. After considering the hearing panel's recommendation, the board shall file a written opinion either dismissing the claim of the claimant or ordering an award in favor of the claimant. If the board orders an award, the board shall order

an amount which the claimant is legally entitled to receive. The board in dismissing any claim or ordering any award shall dispose of all costs of the proceedings by providing for the payment of costs by the claimant or the respondent or by providing that the costs shall be shared by the parties in proportion as the board in its discretion shall direct. Costs shall include witness fees and expenses. The board shall, under the seal of the board, immediately notify the parties involved of the entry of a final order.

(f) Appeals.--Within 30 days of a final order being entered, a party may file an appeal with Commonwealth Court in accordance with 42 Pa.C.S. § 763 (relating to direct appeals from government agencies).

(g) Copies.--The board may not charge the Commonwealth for copies of documents filed with the board or for copies of transcripts and exhibits.

§ 1726. Payment of awards and costs.

If an award against the purchasing agency was ordered, the amount of the award shall be paid to the non-Commonwealth party by the purchasing agency from funds appropriated against the contract out of which the claim arose, and any costs assessed against the Commonwealth agency shall be paid by the purchasing agency from funds or appropriations to the agency. If an award against the non-Commonwealth party was ordered, the amount of the award shall be deducted from whatever balance may be due the party on the contract out of which the claim arose. An amount in excess of any deduction remaining unsatisfied shall be paid by the non-Commonwealth party to the purchasing agency.

SUBCHAPTER D
SOLICITATIONS OR AWARDS IN VIOLATION OF LAW
(Repealed)

2002 Repeal Note. Subchapter D (§§ 1741 - 1743) was added May 15, 1998, P.L.358, No.57, and repealed December 3, 2002, P.L.1147, No.142, effective immediately.

SUBCHAPTER E
INTEREST

Sec.
1751. Interest.

§ 1751. Interest.

Interest on amounts ultimately determined to be due shall be payable at the statutory rate applicable to judgments from the date the claim was filed with the contracting officer. Interest on claims arising out of the provisions of section 1507 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, shall be payable as provided therein.

CHAPTER 19
INTERGOVERNMENTAL RELATIONS

Sec.
1901. Definitions.
1902. Cooperative purchasing authorized.
1903. Sale, acquisition or use of supplies by a public procurement unit.
1904. Cooperative use of supplies or services.

1905. Joint use of facilities.
1906. Supply of personnel, information and technical services.
1907. Use of payments received by a supplying public procurement unit.
1908. Compliance of public procurement units.
1909. Review of procurement requirements.
1910. Contract controversies.
1911. Immunity.
1912. Investment management agreements.
1913. Cooperative purchase of fire, rescue and ambulance company supplies.

Enactment. Chapter 19 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

Cross References. Chapter 19 is referred to in section 102 of this title.

§ 1901. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Cooperative purchasing." Procurement conducted by or on behalf of more than one public procurement unit or by a public procurement unit with an external procurement activity.

"External procurement activity." A buying organization not located in this Commonwealth which if located in this Commonwealth would qualify as a public procurement unit. An agency of the United States is an external procurement activity.

"Local public procurement unit." A political subdivision, public authority, tax-exempt, nonprofit educational or public health institution or organization, nonprofit fire company, nonprofit rescue company, nonprofit ambulance company and, to the extent provided by law, any other entity, including a council of governments or an area government, which expends public funds for the procurement of supplies, services and construction.

"Public procurement unit." A local public procurement unit or a purchasing agency.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended the def. of "local public procurement unit."

§ 1902. Cooperative purchasing authorized.

A public procurement unit may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies, services or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. The Department of General Services is authorized to enter into cooperative purchasing contracts solely for the use of local public procurement units or State-affiliated entities. The department shall enter into cooperative purchasing contracts for the use of local public procurement units or State-affiliated entities if the number of contractors under a previously existing contract for the same supply or service is reduced to a single contractor or reduced by more than 50% of the number existing on September 30, 2003, and shall award such contracts pursuant to section 517 (relating to multiple awards) using an invitation for bids. Nothing in this section shall prohibit a local public procurement unit or State-affiliated entity from participating in or procuring from other cooperative purchasing agreements awarded by the department. Cooperative purchasing may include,

but is not limited to, joint or multiparty contracts between public procurement units and open-ended purchasing agency contracts which are made available to local public procurement units.
(July 15, 2004, P.L.703, No.77, eff. 60 days)

§ 1903. Sale, acquisition or use of supplies by a public procurement unit.

A public procurement unit may sell to, acquire from or use any supplies belonging to another public procurement unit or external procurement activity independent of the requirements of Chapters 5 (relating to source selection and contract formation) and 15 (relating to supply management).

§ 1904. Cooperative use of supplies or services.

A public procurement unit may enter into an agreement, independent of the requirements of Chapters 5 (relating to source selection and contract formation) and 15 (relating to supply management), with any other public procurement unit or external procurement activity for the cooperative use of supplies or services under the terms agreed upon between the parties.

§ 1905. Joint use of facilities.

Any public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment and other facilities with another public procurement unit or an external procurement activity under the terms agreed upon between the parties.

§ 1906. Supply of personnel, information and technical services.

(a) Supply of personnel.--Upon written request from another public procurement unit or external procurement activity, a public procurement unit may provide personnel to the requesting public procurement unit or external procurement activity. The public procurement unit or external procurement activity making the request shall compensate the public procurement unit providing the personnel the direct and indirect cost of furnishing the personnel in accordance with an agreement between the parties.

(b) Supply of services.--The informational, technical and other services of any public procurement unit may be made available to any other public procurement unit or external procurement activity. However, the requirements of the public procurement unit tendering the services shall have precedence over the requesting public procurement unit or external procurement activity. The requesting public procurement unit or external procurement activity shall compensate for the expenses of the services provided in accordance with an agreement between the parties.

(c) Information services.--Upon request, the department may make available to public procurement units or external procurement activities the following services, among others:

(1) Standard forms.
(2) Printed manuals.
(3) Product specifications and standards.
(4) Quality assurance testing services and methods.
(5) Qualified products lists.
(6) Source information.
(7) Common use commodities listings.
(8) Supplier prequalification information.
(9) Supplier performance ratings.
(10) Debarred and suspended bidders lists.

(11) Forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions and other contract forms.

(12) Contracts or published summaries of contracts, including price and time of delivery information.

(d) Technical services.--The department may provide the following technical services, among others:

(1) Development of products specifications.

(2) Development of quality assurance test methods, including receiving, inspection and acceptance procedures.

(3) Use of product testing and inspection facilities.

(4) Use of personnel training programs.

(e) Fees.--The department may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (c) and (d).

§ 1907. Use of payments received by a supplying public procurement unit.

All payments from any public procurement unit or external procurement activity received by a public procurement unit supplying personnel or services shall be available to the supplying public procurement unit.

§ 1908. Compliance of public procurement units.

Where the public procurement unit or external procurement activity administering a cooperative purchase complies with the requirements governing its procurement of supplies, services and construction, any public procurement unit participating in the purchase shall be deemed to have complied with the requirements governing its procurement of supplies, services and construction. Public procurement units may not enter into a cooperative purchasing agreement for the purpose of circumventing this part.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

§ 1909. Review of procurement requirements.

To the extent possible, the department may collect information concerning the type, cost, quality and quantity of commonly used supplies, services or construction being procured or used by Commonwealth agencies. The department may also collect this information from local procurement units. The department may make this information available to any public procurement unit upon request.

§ 1910. Contract controversies.

(a) Public procurement unit subject to certain legal and contractual remedies.--Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit subject to Chapter 17 (relating to legal and contractual remedies) and its bidders, offerors or contractors shall be resolved in accordance with Chapter 17.

(b) Local public procurement unit not subject to certain legal and contractual remedies.--Any local public procurement unit which is not subject to Chapter 17 is authorized to:

(1) Enter into an agreement with the Board of Claims to use the board to resolve controversies between the local public procurement unit and its contractors, whether or not the controversy arose from a cooperative purchasing agreement.

(2) Enter into an agreement with another local public procurement unit or external procurement activity to establish procedures or use existing procedures of the unit or activity to resolve controversies with contractors, whether or not the controversy arose under a cooperative purchasing agreement.

§ 1911. Immunity.

A public procurement unit which provides personnel, property, supplies or services to another public procurement unit shall be immune from liability for any damages which arise out of the use of such personnel, property, supplies or services provided under this chapter.

§ 1912. Investment management agreements.

This chapter shall not apply to any contract for investment management services or any proposed contract for such services between a local public procurement unit and the Treasury Department.

§ 1913. Cooperative purchase of fire, rescue and ambulance company supplies.

(a) Contract for supplies.--The department shall enter into and make available to local public emergency procurement units a contract or contracts for accessory equipment, apparatus equipment, communications equipment, protective equipment, rescue vehicles and utility or special vehicles, as these terms are defined in the act of July 15, 1976 (P.L.1036, No.208), known as the Volunteer Fire Company, Ambulance Service and Rescue Squad Assistance Act.

(b) Establishment of list.--No later than April 1 of each calendar year, the standing committee on Veterans Affairs and Emergency Preparedness of the Senate and the standing committee on Veterans Affairs and Emergency Preparedness of the House of Representatives shall prepare and transmit to the Secretary of General Services a suggested list of items used by local public emergency procurement units in the performance of their duties for department procurements under subsection (a).

(c) Definition.--As used in this section, the term "local public emergency procurement unit" means a local public procurement unit which is any of the following:

(1) A nonprofit, volunteer or municipal fire company.

(2) A nonprofit, volunteer or municipal rescue company.

(3) A nonprofit, volunteer or municipal ambulance company.

(4) A nonprofit Statewide, county or regional fire, ambulance or rescue support organization.

(Nov. 29, 2006, P.L.1417, No.153, eff. 60 days)

2006 Amendment. Act 153 added section 1913.

CHAPTER 21
SMALL AND DISADVANTAGED BUSINESSES

Sec.

2101. Policy.
2102. Definitions.
2103. Regulations.
2104. Duties of department.
2105. Bonding and progress payments.
2106. Business assistance offices.
2107. Report to General Assembly.
2108. Compliance with Federal requirements.

Enactment. Chapter 21 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

§ 2101. Policy.

The policy of this Commonwealth is to assist small and disadvantaged businesses in learning how to do business with Commonwealth agencies. The department shall implement this

policy in accordance with regulations promulgated by the department.

§ 2102. Definitions.

Subject to section 2103 (relating to regulations), the following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Disadvantaged business." A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

"Small business." A business in the United States which is independently owned, is not dominant in its field of operation and employs 100 or fewer employees.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended the def. of "small business."

Cross References. Section 2102 is referred to in section 2103 of this title; section 9601 of Title 51 (Military Affairs).

§ 2103. Regulations.

The department shall establish policy for executive and those independent agencies for which the department acts as purchasing agency and may promulgate regulations establishing detailed definitions of the words and phrases defined in section 2102 (relating to definitions) using, in addition to the criteria set forth in section 2102, other criteria as it deems appropriate, including the number of employees and the dollar volume of business. State-affiliated entities shall implement the policy for their procurement programs.

Cross References. Section 2103 is referred to in section 2102 of this title.

§ 2104. Duties of department.

The department shall have the following duties:

(1) Where feasible, provide appropriate staff who shall be responsible to the department and who shall serve within designated Commonwealth agencies to assist small and disadvantaged businesses in this Commonwealth in learning how to do business with Commonwealth agencies.

(2) Give special publicity to procurement procedures and issue special publications designed to assist small and disadvantaged businesses in learning how to do business with Commonwealth agencies.

(3) Compile, maintain and make available source lists of small and disadvantaged businesses for the purpose of encouraging procurement from small and disadvantaged businesses.

(4) Include small and disadvantaged businesses on solicitation mailing lists.

(5) Assure that small and disadvantaged businesses are solicited on each procurement for which the businesses may be suited.

(6) Develop special training programs to assist small and disadvantaged businesses in learning how to do business with Commonwealth agencies.

§ 2105. Bonding and progress payments.

(a) Bonding.--Notwithstanding other provisions of this part, a purchasing agency may reduce the level or change the types of bonding normally required or accept alternative forms of

security to the extent reasonably necessary to encourage procurement from small and disadvantaged businesses.

(b) Progress payments.--A purchasing agency may make special provisions for progress payments as it deems reasonably necessary to encourage procurement from small and disadvantaged businesses.

§ 2106. Business assistance offices.

The department shall establish, as it deems appropriate, business assistance offices throughout this Commonwealth to assist and carry out the provisions of this chapter.

§ 2107. Report to General Assembly.

The department shall annually, before October 1, report in writing to the General Assembly concerning the awarding of contracts to small and disadvantaged businesses during the preceding fiscal year. The report shall include a list of all small and disadvantaged businesses that participated as contractors, subcontractors or suppliers during the preceding fiscal year for contracts if the number of contractors under a previously existing contract for the same supply or service is reduced to a single contractor or reduced by more than 50% of the number existing on September 30, 2003. In preparing the report, the department shall verify whether commitments made to small and disadvantaged businesses in the course of awarding these contracts have been maintained.

(July 15, 2004, P.L.703, No.77, eff. 60 days)

§ 2108. Compliance with Federal requirements.

If a procurement involves the expenditure of Federal assistance or contract funds, the purchasing agency shall comply with Federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this part.

Cross References. Section 2108 is referred to in section 102 of this title; section 303 of Title 74 (Transportation).

CHAPTER 22
DIVERSE AND DISADVANTAGED BUSINESSES

Sec.

2201. Definitions.
2202. Woman-owned business, minority-owned business or veteran-owned business.

Enactment. Chapter 22 was added November 21, 2016, P.L.1507, No.171, effective in 120 days.

§ 2201. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Diverse and disadvantaged businesses." A woman-owned business, a minority-owned business or a veteran-owned business.

"Minority-owned business." A for-profit business which is at least 51% owned and controlled by one or more individuals who are African Americans, Hispanic Americans, Native Americans, Asian Americans, Alaskans or Pacific Islanders. The term includes a corporation in which at least 51% of the stock is owned by one or more individuals who are African Americans, Hispanic Americans, Native Americans, Asian Americans, Alaskans or Pacific Islanders.

"Veteran." Shall have the meaning given in 51 Pa.C.S. § 9601 (relating to definitions).

"Veteran-owned business." A for-profit business that is at least 51% owned and controlled by one or more veterans. The term includes a corporation in which at least 51% of the stock is owned by one or more veterans.

"Woman-owned business." A for-profit business which is at least 51% owned and controlled by one or more women. The term includes a corporation in which at least 51% of the stock is owned by one or more women.

§ 2202. Woman-owned business, minority-owned business or veteran-owned business.

(a) Department verification.--The following shall apply:

(1) The department shall establish a process to verify a diverse or disadvantaged business as Pennsylvania home state-certified for the purpose of other state or national disadvantaged business programs.

(2) The department shall verify a business that has been certified as a diverse or disadvantaged business by a third-party organization recognized by the department.

(b) Notice.--A business verified under subsection (a)(2) may request the department to provide notice of the business status under this chapter.

(c) Lists.--The department shall compile, maintain and make available source lists of businesses verified by the department as a diverse or disadvantaged business for the purpose of encouraging procurement from those businesses.

(d) Regulations.--The department may promulgate regulations to administer this section.

CHAPTER 23
ETHICS IN PUBLIC CONTRACTING

Subchapter

A. General Policy and Standards
B. Specific Standards

Enactment. Chapter 23 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

SUBCHAPTER A
GENERAL POLICY AND STANDARDS

Sec.

2301. Policy.
2302. General standards of ethical conduct.
2303. Reporting of breaches of ethical standards.

§ 2301. Policy.

Public employment is a public trust. It is the policy of this Commonwealth to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by this Commonwealth. Implementation of this policy requires that public employees discharge their duties impartially so as to assure fair competitive access to Commonwealth agency procurement by responsible contractors and that they conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth procurement process. It is also essential that those doing business with the Commonwealth agencies observe high standards of honesty and integrity.

§ 2302. General standards of ethical conduct.

(a) Employees.--Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the duties of the employee is a breach of a public trust. In order to fulfill this general, prescribed standard, employees must avoid any conflict of interest or improper use of confidential information.

(b) Nonemployees.--Any effort to influence any employee to breach the standards of ethical conduct set forth in this section is also a breach of ethical standards.

§ 2303. Reporting of breaches of ethical standards.

When any person has reason to believe that any breach of standards set forth in this chapter has occurred, that person shall report all relevant facts to the State Ethics Commission and to the Attorney General for any appropriate action.

SUBCHAPTER B
SPECIFIC STANDARDS

Sec.
2311. Bonds.

§ 2311. Bonds.

It is a breach of ethical standards and unlawful for any employee in issuing an invitation for bids or requests for proposals to require that any bond required by this part be furnished by a particular surety company or through a particular agent or broker. Any employee who violates this section commits a misdemeanor of the first degree.

PART II
GENERAL PROCUREMENT PROVISIONS

Chapter

31. General Provisions
33. Prevention of Environmental Pollution
35. (Reserved)
36. Prohibited Contracts
37. Contract Clauses and Preference Provisions
39. Contracts for Public Works
41. Purchase of Surplus Federal Property
43. Public Facilities Concessions
45. Antibid-Rigging
46. Electronic Bidding by Local Government Units

Enactment. Part II was added May 15, 1998, P.L.358, No.57, effective in 180 days.

CHAPTER 31
GENERAL PROVISIONS

Sec.

3101. Application of part.
3102. Definitions.

Enactment. Chapter 31 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

§ 3101. Application of part.

Except for Chapter 46 (relating to electronic bidding by local government units), which applies only to local government units, this part applies to government agencies. In the case

of Commonwealth agencies, this part shall be read in pari materia with Part I (relating to Commonwealth Procurement Code). (July 7, 2006, P.L.600, No.88, eff. 60 days)

§ 3102. Definitions.

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Commonwealth agency." A Commonwealth agency as defined in section 103 (relating to definitions).

"Government agency." Any Commonwealth agency, any transportation authority or agency created by statute or any political subdivision or municipal or other local authority, or agency of any political subdivision or local authority.

CHAPTER 33
PREVENTION OF ENVIRONMENTAL POLLUTION

Sec.

3301. Invitations for bids and requests for proposals.
3302. Additional work.

Enactment. Chapter 33 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

§ 3301. Invitations for bids and requests for proposals.

All invitations for bids and requests for proposals for construction projects issued by any government agency shall set forth any provision of Federal and State statutes, rules and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect the projects.

§ 3302. Additional work.

If the successful bidder or offeror must undertake additional work due to the enactment of new or the amendment of existing statutes, rules or regulations occurring after the submission of the successful bid or proposal, the government agency shall issue a change order setting forth the additional work that must be undertaken, which shall not invalidate the contract. The cost of a change order to the government agency shall be determined in accordance with the provisions of the contract for change orders or force accounts, or, if there is not a provision set forth in the contract, then the cost to the government agency shall be the costs to the contractor for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance and subcontracts attributable to the additional activity plus a reasonable sum for overhead and profit. Additional costs to undertake work not specified in the invitation for bids or requests for proposals shall not be approved unless written authorization is given the successful bidder or offeror prior to its undertaking the additional activity.

CHAPTER 35
IRAN-FREE PROCUREMENT

Sec.

3501. Definitions.
3502. Engaging in investment activities.
3503. List of persons engaged in investment activities.

3504. Certification.
3505. Penalties for false certification.
3506. Expiration.

Enactment. Chapter 35 (Reserved) was added May 15, 1998, P.L.358, No.57, effective in 180 days.

Chapter Heading. The heading of Chapter 35 was amended October 21, 2014, P.L.2517, No.149, effective July 1, 2015.

§ 3501. Definitions.

"Department." The Department of General Services of the Commonwealth.

"Energy-related activities." The term includes all of the following:

(1) Development of petroleum, natural gas or nuclear energy resources. This paragraph does not include the mere sale of gasoline and related consumer products.

(2) Owning rights to oil or natural gas blocks or nuclear facilities.

(3) Exporting, extracting, producing, refining, processing, exploring for, transporting, selling or trading oil or natural gas or developing nuclear energy.

(4) Constructing, maintaining or operating any pipeline, refinery, liquefaction facility, nuclear reactor or other oil, natural gas or nuclear energy infrastructure.

"Financial institution." The term as defined in section 14 of the Iran Sanctions Act of 1996 (Public Law 104-172, 50 U.S.C. § 1701).

"Iran." The government of Iran or an agency or instrumentality of Iran.

"Person." An individual, organization, a financial institution, sole proprietorship, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association that exists for the purpose of making a profit or government entity that includes a multilateral development institution as defined in section 1701 of the International Financial Institutions Act (Public Law 95-118, 22 U.S.C. § 262r).

(Oct. 21, 2014, P.L.2517, No.149, eff. July 1, 2015)

2014 Amendment. Act 149 added section 3501.

§ 3502. Engaging in investment activities.

A person or financial institution engages in an investment activity by doing any of the following:

(1) Providing goods or services worth at least $20,000,000, including oil tankers or transporters and liquefied natural gas tankers or transporters, to the energy-related activities of Iran, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran.

(2) Extending at least $20,000,000 in credit to a person for 45 days or more if all of the following apply:

(i) The person uses the credit to provide goods or services to the energy sector in Iran.

(ii) The person is, at the time the financial institution or person extends credit, identified on a list created under section 3503 (relating to list of persons engaged in investment activities).

(Oct. 21, 2014, P.L.2517, No.149, eff. July 1, 2015)

2014 Amendment. Act 149 added section 3502.

Cross References. Section 3502 is referred to in section 3503 of this title.

§ 3503. List of persons engaged in investment activities.

(a) List.--The department shall develop a list of persons whom the department determines are engaged in investment activities in Iran as described in section 3502 (relating to engaging in investment activities). The department shall make its determination based on publicly available, credible information. The department shall update the list every 180 days. Ninety days prior to adding a person to the list, the department shall do all of the following:

(1) Provide notice to the person of the department's intention to add the person to the list. The notice shall inform the person that inclusion on the list makes the person ineligible to enter into a contract with a Commonwealth entity for goods or services worth at least $1,000,000. The notice shall specify that if the person ceases to engage in investment activities in Iran, the person may regain eligibility upon removal from the list.

(2) Provide the person an opportunity to comment in writing to the department. The person shall maintain eligibility if the person demonstrates no engagement in investment activities in Iran.

(b) Ineligibility of persons on list.--A person identified on a list under subsection (a) shall be ineligible to enter into a contract with a Commonwealth entity to provide for goods or services worth at least $1,000,000.

(c) List.--The department shall post the list on its publicly accessible Internet website. Upon request, the department shall provide the list free of charge to the General Assembly or a public entity.

(d) Investment service contracts.--Service contracts entered into by Commonwealth entities for the management and investment of a fund for which there is a fiduciary responsibility and for which compliance with the act of July 2, 2010 (P.L.266, No.44), known as the Protecting Pennsylvania's Investments Act, is required, shall be exempt from the provisions of this chapter.

(e) Exception.--On a case-by-case basis, the department may permit a person engaging in investment activities in Iran to enter a contract with a Commonwealth entity for goods or services worth at least $1,000,000 if any of the following apply:

(1) The investment activities in Iran were made before and were not expanded after July 1, 2015.

(2) The person refrains from entering into new agreements to engage in any future investment activities in Iran.

(3) The department determines that the Commonwealth entity has no other cost-effective method of obtaining the goods or services than entering into a contract with the person.

(Oct. 21, 2014, P.L.2517, No.149, eff. July 1, 2015)

2014 Amendment. Act 149 added section 3503.

Cross References. Section 3503 is referred to in sections 3502, 3504 of this title.

§ 3504. Certification.

(a) General rule.--The department shall make available a certification form indicating that a person is not on the list under section 3503(a) (relating to list of persons engaged in investment activities) and is eligible under this chapter to contract with the Commonwealth. Prior to entering into a

contract with a Commonwealth entity, a person shall provide a certification form to the Commonwealth entity unless the person is exempt under section 3503(e).

(b) Right to cure.--

(1) If the department determines, using credible information available to the public, that a person has submitted a false certification under subsection (a), the person shall be provided with written notice and an opportunity to demonstrate to the department that the person has ceased its engagement in energy-related activities in Iran within 90 days of the notice.

(2) A person who reasonably demonstrates to the department that the person has ceased its engagement in energy-related activities in Iran within 90 days after the written notice shall not be subject to the penalties under section 3505 (relating to penalties for false certification).

(Oct. 21, 2014, P.L.2517, No.149, eff. July 1, 2015)

2014 Amendment. Act 149 added section 3504.

Cross References. Section 3504 is referred to in section 3505 of this title.

§ 3505. Penalties for false certification.

(a) Penalties.--Subject to the provisions of section 3504(b) (relating to certification), if the department determines that a person has provided a false certification form to a Commonwealth entity under section 3504, the person shall be subject to the following:

(1) A civil penalty in the amount of $250,000 or twice the amount of the contract, whichever is greater. Only one civil penalty may be imposed upon a person per investment.

(2) Suspension of the existing contract with the Commonwealth entity for a period of three years from the date of the determination that the person submitted the false certification. Following the three-year suspension period, the Commonwealth entity or the department may terminate the contract.

(b) Report of false certification.--The department shall report to the Attorney General the name of the person who submitted the false certification and the pertinent information that led to the department's determination. No later than three years after the department makes a determination under subsection (a), the Attorney General shall determine whether to bring a civil action against the person to collect the penalty described in subsection (a). If a court determines the person submitted a false certification, the person shall pay all reasonable costs and fees incurred in the civil action. Reasonable costs shall include the reasonable costs incurred by the Commonwealth entity in investigating the authenticity of the certification. Only one civil action against the person may be brought for a false certification on a contract.

(c) No private right of action.--Nothing in this section may be construed to create or authorize a private right of action.

(Oct. 21, 2014, P.L.2517, No.149, eff. July 1, 2015)

2014 Amendment. Act 149 added section 3505.

Cross References. Section 3505 is referred to in section 3504 of this title.

§ 3506. Expiration.

The department shall have no obligations under this chapter with respect to a company engaged in business activities in Iran upon the occurrence of any of the following:

(1) Iran does not appear on the List of State Sponsors of Terrorism.

(2) The President or Congress of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this chapter interferes with the conduct of United States foreign policy.

(Oct. 21, 2014, P.L.2517, No.149, eff. July 1, 2015)

2014 Amendment. Act 149 added section 3506.

CHAPTER 36
PROHIBITED CONTRACTS

Sec.

3601. Short title of chapter.
3602. Declaration of purpose.
3603. Definitions.
3604. Prohibition.
3605. Certification.
3606. Penalties for false certification.

Enactment. Chapter 36 was added November 4, 2016, P.L.1216, No.163, effective in 60 days.

§ 3601. Short title of chapter.

This chapter shall be known and may be cited as the Prohibited Contracts Act.

§ 3602. Declaration of purpose.

The General Assembly finds and declares as follows:

(1) Pennsylvania is privileged to engage in international trade and commercial activities.

(2) Israel is America's dependable, democratic ally in the Middle East, an area of paramount strategic importance to the United States.

(3) It is in the interest of the United States and the Commonwealth to stand with Israel and other countries by promoting trade and commercial activities and to discourage policies that disregard that interest.

§ 3603. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Boycott." To blacklist, divest from or otherwise refuse to deal with a person or firm when the action is based on race, color, religion, gender or national affiliation or origin of the targeted person or entity.

"Company." Any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability company or other entity or business association qualified to do business in this Commonwealth.

§ 3604. Prohibition.

Notwithstanding any other provision of law and except as provided under section 516 (relating to emergency procurement), a purchasing agency may not contract with a company to acquire or dispose of supplies, services or construction that exceed the applicable small purchase threshold unless the company certifies that:

(1) the company is not currently engaged in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by

Congressional statute from engaging in trade or commerce; and

(2) the company will not during the duration of the contract engage in a boycott of a person or an entity based in or doing business with a jurisdiction where the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

Cross References. Section 3604 is referred to in sections 3605, 3606 of this title.

§ 3605. Certification.

The department shall make available a certification form indicating that a company is eligible to contract with the department under section 3604 (relating to prohibition). The company shall provide a certification form to the department when registering to do business as a vendor with the Commonwealth.

§ 3606. Penalties for false certification.

(a) Penalties.--A company shall pay a civil penalty in the amount of $250,000 or twice the amount of the contract, whichever is greater, if the department determines that the company provided a false certification form to the department under section 3604 (relating to prohibition).

(b) Report of false certification.--The department shall report to the Attorney General the name of the company that submitted the false certification and the pertinent information that led to the department's determination. No later than three years after the department makes a determination under subsection (a), the Attorney General shall determine whether to bring a civil action against the company to collect the penalty described in subsection (a). If a court determines the company submitted a false certification, the company shall pay all reasonable costs and fees incurred in the civil action. Reasonable costs shall include the reasonable costs incurred by the Commonwealth entity in investigating the authenticity of the certification. Only one civil action against the company may be brought for a false certification on a contract.

(c) No private right of action.--Nothing in this section may be construed to create or authorize a private right of action.

CHAPTER 37
CONTRACT CLAUSES AND PREFERENCE PROVISIONS

Subchapter

A. Labor
B. Motor Vehicles
C. Mass Transportation
D. Used Oil Products
E. Guaranteed Energy Savings Contracts

Enactment. Chapter 37 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

SUBCHAPTER A
LABOR

Sec.

3701. Contract provisions prohibiting discrimination.

§ 3701. Contract provisions prohibiting discrimination.

Each contract entered into by a government agency for the construction, alteration or repair of any public building or public work shall contain the following provisions by which the contractor agrees that:

(1) In the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor or any person acting on behalf of the contractor or subcontractor shall by reason of gender, race, creed or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

(2) No contractor or subcontractor or any person on their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the contract on account of gender, race, creed or color.

(3) The contract may be canceled or terminated by the government agency, and all money due or to become due under the contract may be forfeited for a violation of the terms or conditions of that portion of the contract.

Cross References. Section 3701 is referred to in section 303 of Title 74 (Transportation).

SUBCHAPTER B
MOTOR VEHICLES

Sec.

3731. Short title of subchapter and general provisions.
3732. Definitions.
3733. Police power.
3734. Contract provisions.
3735. Payment under contract and action to recover unauthorized payments.
3736. Penalty.

Cross References. Subchapter B is referred to in section 11901.7 of Title 11 (Cities); section 6016 of Title 64 (Public Authorities and Quasi-Public Corporations).

§ 3731. Short title of subchapter and general provisions.

(a) Short title.--This subchapter shall be known and may be cited as the Motor Vehicle Procurement Act.

(b) Legislative findings.--It is hereby determined by the General Assembly to reaffirm the legislative findings contained in the act of April 4, 1984 (P.L.193, No.40), known as the Motor Vehicle Procurement Act, and codified in this chapter:

(1) The production of motor vehicles and component parts constitutes a major industry of this Commonwealth. It provides employment for and incomes of hundreds of thousands of the people of this Commonwealth and, in turn, millions of persons in the United States.

(2) The taxes paid to the Commonwealth and its political subdivisions by employers and employees engaged in the production and sale of motor vehicles is one of the largest single sources of public revenues in this Commonwealth.

(3) It has for many years been the policy of this Commonwealth to aid and support the development and expansion of industry here to foster the economic well-being of this Commonwealth and its people.

(4) The economy and general welfare of this Commonwealth and its citizens as well as the economy, general welfare and

national security of the United States are inseparably related in the preservation and development of the motor vehicle industry in this Commonwealth and in other states of the United States.

(5) The production of motor vehicles and motor vehicle components in Canada involves the use of a substantial amount of resources from the United States, including labor and materials. The General Assembly declares it to be the policy of the Commonwealth of Pennsylvania that public officers and agencies should aid and promote the development of the motor vehicle industry of North America to stimulate and improve the economic well-being of this Commonwealth and its citizens.

(c) Purpose of subchapter.--This subchapter is intended as remedial legislation designed to promote the general welfare and stimulate the economy of this Commonwealth and its people. Each provision shall receive a liberal construction to effectuate that intention. None of the provisions of this subchapter shall receive a strict or limited construction.

References in Text. The act of April 4, 1982 (P.L.193, No.403), known as the Motor Vehicle Procurement Act, referred to in subsec. (b), was repealed by the act of May 15, 1998 (P.L.358, No.57). The subject matter is now contained in Subchapter B of Chapter 17 of this title.

§ 3732. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Motor vehicle." A passenger car or a truck as those terms are defined under 75 Pa.C.S. § 102 (relating to definitions).

"North America." (Deleted by amendment).

"Procure." To acquire by purchase, lease or rent. The term does not include any rentals or leases where the term thereof is less than one month.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 amended the def. of "motor vehicle" and deleted the def. of "North America."

§ 3733. Police power.

This subchapter shall be deemed to be an exercise of the police power of this Commonwealth for the protection of the health, safety and general welfare of its citizens.

§ 3734. Contract provisions.

(a) Motor vehicles to be manufactured in North America.--All government agencies shall procure only motor vehicles which are manufactured in North America. A motor vehicle is manufactured in North America if a substantial majority of the principal components are assembled into the final product in an assembly plant in North America. Contract documents for the procurement of motor vehicles shall contain a provision that the vehicles procured by the government agency shall be manufactured in North America.

(b) Exception.--This section shall not apply where the head of the government agency states in writing that it is inconsistent with the public interest or that the cost is unreasonable.

Cross References. Section 3734 is referred to in section 3735 of this title.

§ 3735. Payment under contract and action to recover unauthorized payments.

A government agency shall not authorize, provide for or make a payment to a person under a contract containing the provision required by section 3734 (relating to contract provisions) unless the government agency is satisfied that the person has complied with the provision. The payment made to a person by a government agency which should not have been made shall be recoverable directly from the supplier of the motor vehicle who did not comply with section 3734 by the government agency or the Attorney General by appropriate legal action. Nothing in this section shall authorize any government agency to initiate a legal action independently of the Attorney General unless otherwise authorized under the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

§ 3736. Penalty.

In addition to the withholding of payments, any person who willfully violates any of the provisions of this subchapter may be prohibited by any government agency from participation in contracts awarded by the government agency for a period of five years from the date of the determination that a violation has occurred.

SUBCHAPTER C
MASS TRANSPORTATION

Sec.

3741. Procurement of mass transportation vehicles.
3742. Procurement limits for mass transportation authorities.

Subchapter Heading. The heading of Subchapter C was amended December 3, 2002, P.L.1147, No.142, effective immediately.

§ 3741. Procurement of mass transportation vehicles.

(a) General rule.--Notwithstanding any other provision of law to the contrary, whenever a local, regional or metropolitan transportation authority determines in writing that it is not practicable or advantageous to the authority to enter into a contract for the purchase of mass transportation or railway vehicles through competitive sealed bidding, the authority may utilize the competitive sealed proposal method of procurement in accordance with section 513 (relating to competitive sealed proposals).

(b) Definition.--As used in this section, the term "mass transportation or railway vehicles" includes buses, railcars, locomotives, trolley cars, ferry boats and other vehicles used to provide for the mass transit of people, as well as any replacement parts for the vehicles.

§ 3742. Procurement limits for mass transportation authorities.

(a) General rule.--Notwithstanding any other provision of law to the contrary and subject to the conditions in subsection (b), a local transportation organization as defined in 74 Pa.C.S. § 1301 (relating to definitions) which is a recipient of Federal funds for transportation purposes is permitted, at the option of its governing board, to use the "simplified acquisition procedures" of section 31 of the Office of Federal Procurement Policy Act (41 U.S.C. § 427) for procurement up to the "simplified acquisition threshold" as that term is defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. § 403).

(b) Conditions.--

(1) A proposed purchase of contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order

to use the simplified acquisition procedures permitted by subsection (a).

(2) In using simplified acquisition procedures, a local transportation organization shall promote competition to the maximum extent practicable.

(3) The simplified acquisition procedures used by a local transportation organization shall comply with the Federal Acquisition Regulations concerning simplified acquisition procedures described in 48 CFR Ch. 1 Pt. 13.

(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 added section 3742.

References in Text. Section 1301 of Title 74, referred to in subsec. (a), is repealed.

Cross References. Section 3742 is referred to in section 1750 of Title 74 (Transportation).

SUBCHAPTER D
USED OIL PRODUCTS

Sec.
3746. Preference.

§ 3746. Preference.

As provided for in the act of April 9, 1982 (P.L.314, No.89), known as the Pennsylvania Used Oil Recycling Act, government agencies and persons holding contracts with government agencies shall encourage and, to the extent possible, require the procurement and purchase of recycled oil products as substantially equivalent to products made from new oil.

SUBCHAPTER E
GUARANTEED ENERGY SAVINGS CONTRACTS

Sec.
3751. Short title of subchapter.
3752. Definitions.
3753. Contracting procedures.
3754. Contract provisions.
3755. Funding.
3756. Commonwealth contracts.
3757. Construction.
3758. Review of proposed capital improvement projects.

§ 3751. Short title of subchapter.

This subchapter shall be known and may be cited as the Guaranteed Energy Savings Act.

§ 3752. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Allowable costs." Equipment and project costs that:

(1) the governmental unit reasonably believes will be incurred during the term of the guaranteed energy savings contract; and

(2) are documented by industry engineering standards.

"Energy conservation measure." A program, facility alteration or technology upgrade designed to reduce energy, water, wastewater or other consumption or operating costs. The term may include, without limitation:

(1) Insulation of the building structure or systems within the building.

(2) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption.

(3) Automated or computerized energy control systems.

(4) Heating, ventilating or air conditioning system modifications, extension of systems to new or renovated areas or system replacements.

(5) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to applicable State or local building codes for the lighting system after the proposed modifications are made.

(6) Energy recovery systems.

(7) Systems that produce steam or forms of energy such as heat as well as electricity for use within a building or complex of buildings.

(8) Energy conservation measures that provide operating cost reductions based on life cycle cost analysis.

(9) A training program or facility alteration that reduces energy consumption or reduces operating costs, including allowable costs, based on future reductions in labor costs or costs for contracted services.

(10) A facility alteration which includes expenditures that are required to properly implement other energy conservation measures.

(11) A program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, and/or use of alternative energy suppliers, such as, but not limited to:

(i) changes to more favorable rate schedules;

(ii) negotiation of lower rates, same supplier or new suppliers, where applicable; and

(iii) auditing of energy service billing and meters.

(12) The installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources and manage energy-using equipment.

(13) Systems that provide indoor air quality improvements or improved climate control.

(14) Daylighting systems.

(15) Renewable and/or on-site distributed power generation systems.

(16) Water and sewer conservation measures, including, without limitation, plumbing fixtures and infrastructure.

(17) Equipment upgrades that improve accuracy of billable revenue generating systems.

(18) Automated, electronic or remotely controlled systems or measures that reduce operating costs.

(19) Other energy, water or wastewater measures as may provide measurable, long-term operating costs reductions or billable revenue increases.

"Energy-related cost savings." As follows:

(1) A cost saving, except for an energy saving, that results from the implementation of an energy conservation measure.

(2) Sources of energy-related cost savings shall include only the following:

(i) Avoided current or planned capital expense.

(ii) Avoided renovation, renewal or repair costs as a result of replacing old and unreliable equipment

and systems or thermal improvements to the building envelope.

"Energy services company." A qualified provider of energy solutions, including designs and implementation of energy savings projects, retrofitting, energy conservation, energy infrastructure outsourcing, power generation and energy supply and risk management.

"Guaranteed energy savings contract." A contract for the evaluation and recommendation of energy conservation measures and for implementation of one or more such measures.

"Governmental unit." Any officer, employee, authority, board, bureau, commission, department, agency or institution of a government agency, including, but not limited to, any Commonwealth agency, State-aided institution or any county, city, district, municipal corporation, municipality, municipal authority, political subdivision, school district, educational institution, borough, incorporated town, township, poor district, county institution district, other incorporated district or other public instrumentality which has the authority to contract for the construction, reconstruction, alteration or repair of any public building or other public work or public improvement, including, but not limited to, highway work.

"Industry engineering standards." Industry engineering standards may include the following:

(1) Life cycle costing.

(2) The R.S. Means-estimated method developed by the R.S. Means Company.

(3) Historical data.

(4) Manufacturer's data.

(5) American Standard Heating Refrigeration Air-Conditioning Engineers (ASHRAE) standards.

"Operating costs." As follows:

(1) Reductions in expenses, including energy-related cost savings, related to energy and water consuming equipment or the building envelope.

(2) The term includes:

(i) Operating and maintenance savings.

(ii) Capital funds budgeted for projects that, due to the energy services company project, will not be necessary.

"Qualified provider." A person or business which is responsible and capable of evaluating, recommending, designing, implementing and installing energy conservation measures as determined by the governmental unit.

(July 15, 2004, P.L.703, No.77, eff. 60 days; July 2, 2010, P.L.243, No.39, eff. 60 days; Nov. 4, 2016, P.L.1216, No.163, eff. 60 days)

2016 Amendment. Act 163 amended pars. (4) and (13) of the def. of "energy conservation measure" and added the defs. of "energy-related cost savings," "energy services company" and "operating costs."

2010 Amendment. Act 39 amended the def. of "energy conservation measure."

Cross References. Section 3752 is referred to in section 3753 of this title.

§ 3753. Contracting procedures.

(a) General rule.--Notwithstanding any other contrary or inconsistent provision of law, a governmental unit may enter into a guaranteed energy savings contract with a qualified provider in accordance with the provisions of this subchapter

or in accordance with another statutorily authorized procurement process.

(b) Guaranteed energy savings contract.--If in accordance with applicable law the award of a contract by a governmental unit requires action at a public meeting, a governmental unit may award a guaranteed energy savings contract at a public meeting if it has provided public notice in the manner prescribed under 65 Pa.C.S. Ch. 7 (relating to open meetings), the notice including the names of the parties to the contract and the purpose of the contract. For governmental units that are not required to take actions on contracts at public meetings, the governmental unit may award a guaranteed energy savings contract in accordance with the procedures adopted by the governmental unit and the requirements of all applicable laws.

(c) Competitive sealed proposals.--For the purpose of entering into a guaranteed energy savings contract, all governmental units are authorized to utilize the competitive sealed proposal method of procurement. The governmental unit shall evaluate any proposal that meets the requirements of the governmental unit and is timely submitted by a qualified provider. The request for proposals shall be announced through a public notice from the governmental unit which will administer the program. The request for proposals shall provide all interested parties with sufficient information necessary to submit a timely and responsive proposal.

(d) Selection and notice.--The governmental unit shall select the qualified provider that best meets the needs of the governmental unit in accordance with criteria established by the governmental unit. For governmental units that are not required to take actions on contracts at public meetings, the governmental unit shall provide public notice of the award of the guaranteed energy savings contract within 30 days in the Pennsylvania Bulletin. The notice shall include the names of the parties to the contract and the purpose of the contract. For governmental units that are required to take actions on contracts at public meetings, the public notice shall be made at least ten days prior to the meeting. After reviewing the proposals pursuant to subsection (e), a governmental unit may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount of energy, water or wastewater cost savings, operational cost savings or revenue increases resulting from the energy conservation measures within a period not to exceed 20 years from the date of final installation if the recommendations in the proposal were followed and the qualified provider provides a written guarantee that the energy, water or wastewater cost savings, or operational cost savings or revenue increases will meet or exceed the cost of the contract, provided, however, that, when determining the operational cost savings from any contract or project of the type defined in paragraphs (17), (18) and (19) of the definition of "energy conservation measure" in section 3752 (relating to definitions), the governmental unit shall not consider savings that result from reductions in the size of its work force if the reductions are related to or generated by outsourcing or using contract workers to perform tasks previously performed by employees of the governmental unit.

(e) Report.--

(1) Before the award of a guaranteed energy savings contract, the qualified provider shall provide a report as

part of its proposal which shall be available for public inspection, summarizing estimates of all costs of installation, maintenance, repairs and debt service and estimates of the amounts by which energy or operating costs will be reduced.

(2) The report shall contain a listing of contractors and subcontractors to be used by the qualified provider with respect to the energy conservation measures.

(f) Bond.--A qualified provider to whom a contract is awarded shall give a sufficient bond to the governmental unit for its faithful performance. Commonwealth agencies shall obtain such bonds in accordance with the provisions of section 533 (relating to security and performance bonds). All other governmental units shall obtain such bonds in accordance with the act of December 20, 1967 (P.L.869, No.385), known as the Public Works Contractors' Bond Law of 1967.

(g) Award of contract.--Notwithstanding any other provision of law governing the letting of public contracts, a governmental unit may enter into a single guaranteed energy savings contract with each responsible provider selected in accordance with the provisions of this subchapter.

(July 15, 2004, P.L.703, No.77, eff. 60 days; July 2, 2010, P.L.243, No.39, eff. 60 days)

2010 Amendment. Act 39 amended subsec. (d).

§ 3754. Contract provisions.

(a) General rule.--A guaranteed energy savings contract may provide that all payments, except obligations on termination of the contract before its scheduled expiration, shall be made over a period of time. Every guaranteed energy savings contract that requires payments over a period of time shall provide that, after the initial year of the contract, the savings in every subsequent year are guaranteed to the extent necessary to make payments under the contract during that year. A guaranteed energy savings contract, in addition to the quantification and guarantee of energy savings, shall expressly state, quantify and validate the budgetary sources of all energy-related cost savings and operating costs utilized to satisfy the financial obligations and performance during the term of the agreement.

(b) Written guarantee.--A guaranteed energy savings contract shall include a written guarantee that savings will meet or exceed the cost of the energy conservation measures to be evaluated, recommended, designed, implemented or installed under the contract.

(c) Payments.--A guaranteed energy savings contract may provide for payments over a period of time not to exceed 20 years and for the evaluation, recommendation, design, implementation and installation of energy conservation measures on an installment payment or lease purchase basis.

(d) Improvements not causally connected to an energy conservation measure.--An improvement that is not causally connected to an energy conservation measure may be included in a guaranteed energy savings contract if:

(1) the total value of the improvement does not exceed 15% of the total value of the guaranteed energy savings contract; and

(2) either:

(i) the improvement is necessary to conform to a law, a rule or an ordinance; or

(ii) an analysis within the guaranteed energy savings contract demonstrates that there is an economic advantage to the governmental unit implementing an

improvement as part of the guaranteed energy savings contract;

and the savings justification for the improvement is documented by industry engineering standards.

(e) Other expenditures.--A facility alteration which includes expenditures that are required to properly implement other energy conservation measures may be included as part of a guaranteed energy savings contract. In such case, notwithstanding any other provision of law, the installation of these additional measures may be supervised by the contractor performing the guaranteed energy savings contract.

(July 15, 2004, P.L.703, No.77, eff. 60 days; July 2, 2010, P.L.243, No.39, eff. 60 days; Nov. 4, 2016, P.L.1216, No.163, eff. 60 days)

2016 Amendment. Act 163 amended subsec. (a).

2010 Amendment. Act 39 amended subsecs. (a) and (c).

§ 3755. Funding.

(a) General rule.--Guaranteed energy savings contracts which have terms which extend beyond one fiscal year of the governmental unit must include a provision which allows the governmental unit to terminate the contract if in any fiscal year during the term of the contract the governmental unit does not receive sufficient funds in its annual appropriations to make the payments required under the contract.

(b) Funds.--A governmental unit may use funds designated for operating, utilities or capital expenditures for any guaranteed energy savings contract, including, without limitation, for purchases on an installment payment or lease purchase basis.

(c) Grants, subsidies or other payments.--Grants, subsidies or other payments from the Commonwealth to a governmental unit shall not be reduced as a result of energy conservation measure cost savings obtained as a result of a guaranteed energy savings contract during the life of the contract.

(Nov. 4, 2016, P.L.1216, No.163, eff. 60 days)

2016 Amendment. Act 163 amended subsec. (c).

§ 3756. Commonwealth contracts.

In connection with the letting of any guaranteed energy savings contract for a governmental unit under this subchapter, the department shall have the power to waive the process for selection of architects or engineers otherwise prescribed under section 905 (relating to procurement of design professional services). In exercising its discretion under this section, the department shall consider the best interests of this Commonwealth and any relevant circumstances peculiar to the proposed contract.

§ 3757. Construction.

This subchapter shall not be construed to abrogate any duty to comply with prevailing wage or residency requirements contained in any other act or part thereof.

§ 3758. Review of proposed capital improvement projects.

Prior to entering into a guaranteed energy savings contract, every governmental unit shall review all proposed capital improvement projects for potential applicability of this subchapter and shall consider proceeding with a guaranteed energy savings contract under this subchapter where appropriate.

(July 15, 2004, P.L.703, No.77, eff. 60 days)

2004 Amendment. Act 77 added section 3758.

CHAPTER 39
CONTRACTS FOR PUBLIC WORKS

Subchapter
A. Preliminary Provisions
B. General Provisions
C. Retainage
D. Prompt Payment Schedules
E. Substantial/Final Payment

Enactment. Chapter 39 was added May 15, 1998, P.L.358, No.57, effective in 180 days.
Cross References. Chapter 39 is referred to in section 11901.7 of Title 11 (Cities); section 1750 of Title 74 (Transportation).

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.
3901. Application and purpose of chapter.
3902. Definitions.

§ 3901. Application and purpose of chapter.
(a) Application.--Except as otherwise specifically provided in this chapter, this chapter applies to contracts entered into by a government agency through competitive sealed bidding or competitive sealed proposals.
(b) Purpose of chapter.--The purpose of this chapter is to establish a uniform and mandatory system governing public contracts to the extent of the requirements set forth in this chapter and shall be construed to effectuate such purpose. The provisions of this chapter shall in no way affect the provisions of the act of August 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing Wage Act, nor the regulations promulgated under that act, nor shall any requirements of this chapter affect any provisions of a contract to be awarded pursuant to any Federal law or regulations containing specific provisions which are different from the public contract requirements of this chapter.

§ 3902. Definitions.
The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:
"Contract." A contract exceeding $50,000 for construction as defined in section 103 (relating to definitions), including heating or plumbing contracts but excluding Department of Transportation contracts under section 301(c)(1) (relating to procurement responsibility).
"Contractor." A person who enters into a contract with a government agency.
"Deficiency item." Work performed but which the design professional, the contractor or the inspector will not certify as being completed according to the contract.
"Design professional." Persons performing professional services as defined in section 901 (relating to definitions).
"Government agency." Includes any State-aided institutions.

"Inspector." The person authorized or engaged by the government agency to inspect the work performed and materials furnished pursuant to a contract to determine whether the work completed is in compliance with the contract.

"Local government unit." Any county, city, borough, incorporated town, township, school district, vocational school district, county institution, local authority or any joint or cooperative body of local government units or any instrumentality, authority or corporation thereof which has authority to enter into a contract.

"State-aided institution." Any institution which receives State funds directly or indirectly for construction as defined in section 103 (relating to definitions).

"Subcontractor." A person who has contracted to furnish labor or materials to or has performed labor for a contractor or another subcontractor in connection with a contract.

"Substantial completion." Construction that is sufficiently completed in accordance with the contract and certified by the architect or engineer of the government agency, as modified by change orders agreed to by the parties, so that the project can be used, occupied or operated for its intended use. In no event shall a project be certified as substantially complete until at least 90% of the work on the project is completed.

SUBCHAPTER B
GENERAL PROVISIONS

Sec.

3911. Time for awarding contract.
3912. Time for executing contract.
3913. Release of successful bidder.

§ 3911. Time for awarding contract.

(a) General rule.--In the case of a contract to be entered into by a government agency through competitive sealed bidding, the contract shall be awarded to the lowest responsible and responsive bidder within 60 days of the bid opening, or all bids shall be rejected except as otherwise provided in this section.

(b) Delay.--If the award is delayed by the required approval of another government agency, the sale of bonds or the award of a grant, the contract shall be awarded to the lowest responsible and responsive bidder within 120 days of the bid opening, or all bids shall be rejected.

(c) Extensions.--Extensions of the date for the award may be made by the mutual written consent of the government agency and the lowest responsible and responsive bidder.

(d) List of bidders.--All government agencies shall be required to provide a list of the bidders and their bid amount on each contract within ten working days of the bid opening to interested parties for a fee to be determined by the government agency to cover the cost of developing such list. This requirement shall not apply to the contracting bodies of any political subdivision or local authority which has the authority to enter into a contract.

(e) Contract negotiation.--When the amount of the bid submitted by the lowest responsive and responsible bidder for a Department of General Services construction contract exceeds the verifiable contract allocation established by the Department of General Services for the contract, the department may, prior to awarding the contract, negotiate the price, work items and time requirements for the contract with the lowest responsive

and responsible bidder to bring the bid within the established contract allocation.
(Dec. 3, 2002, P.L.1147, No.142, eff. imd.)

2002 Amendment. Act 142 added subsec. (e).

Cross References. Section 3911 is referred to in section 3913 of this title.

§ 3912. Time for executing contract.

In the case of a contract entered into by a government agency through competitive sealed bidding, the contract shall be executed by the government agency within 60 days of the date that the contract is awarded.

Cross References. Section 3912 is referred to in section 3913 of this title.

§ 3913. Release of successful bidder.

Failure of the government agency to comply with the requirements of sections 3911 (relating to time for awarding contract) and 3912 (relating to time for executing contract) shall, unless the successful bidder waives the noncompliance by written notice to the government agency, release the successful bidder from any liability in respect to its bid or contract and entitle all bidders to the immediate return of any bonds or security deposits posted in connection with the bid or contract.

SUBCHAPTER C
RETAINAGE

Sec.
3921. Retainage.
3922. Payment of retainage to subcontractors.

§ 3921. Retainage.

(a) Contract provision.--A contract may include a provision for the retainage of a portion of the amount due the contractor to insure the proper performance of the contract except that the sum withheld by the government agency from the contractor shall not exceed 10% of the amount due the contractor until 50% of the contract is completed. When the contract is 50% completed, one-half of the amount retained by the government agency shall be returned to the contractor. However, the architect or engineer must approve the application for payment. The contractor must be making satisfactory progress, and there must be no specific cause for greater withholding. The sum withheld by the government agency from the contractor after the contract is 50% completed shall not exceed 5% of the value of completed work based on monthly progress payment requests. In the event a dispute arises between the government agency and any prime contractor, which dispute is based upon increased costs claimed by one prime contractor occasioned by delays or other actions of another prime contractor, additional retainage in the sum of one and one-half times the amount of any possible liability may be withheld until such time as a final resolution is agreed to by all parties directly or indirectly involved unless the contractor causing the additional claim furnishes a bond satisfactory to the government agency to indemnify the agency against the claim. All money retained by the government agency may be withheld from the contractor until substantial completion of the contract.

(b) Department of General Services.--Notwithstanding subsection (a), when the Department of General Services is the

government agency, the contract may include a provision for the retainage of a portion of the amount due the contractor to insure the proper performance of the contract except that the sum withheld by the department for the contractor shall not exceed 6% of the then total estimates until 50% of the contract is satisfactorily completed. The sum withheld by the department from the contractor after the contract is 50% satisfactorily completed shall not exceed 3% of the original contract amount.

Cross References. Section 3921 is referred to in sections 3932, 3941 of this title.

§ 3922. Payment of retainage to subcontractors.

In the absence of sufficient reason, within 20 days of the receipt of payment by the contractor, the contractor shall pay all subcontractors with which it has contracted their earned share of the payment the contractor received.

SUBCHAPTER D
PROMPT PAYMENT SCHEDULES

Sec.

3931. Performance by contractor or subcontractor.
3932. Government agency's progress payment obligations.
3933. Contractors' and subcontractors' payment obligations.
3934. Withholding of payment for good faith claims.
3935. Penalty and attorney fees.
3936. Contracts involving Federal aid.
3937. Certain provisions unenforceable.
3938. Applicability.
3939. Claims by innocent parties.

§ 3931. Performance by contractor or subcontractor.

(a) Entitlement of contractor to payment.--Performance by a contractor in accordance with the provisions of a contract shall entitle the contractor to payment by the government agency.

(b) Entitlement of subcontractor to payment.--Performance by a subcontractor in accordance with the provisions of a contract shall entitle the subcontractor to payment from the contractor with whom the subcontractor has contracted.

§ 3932. Government agency's progress payment obligations.

(a) Payments in accordance with contract.--The government agency shall pay the contractor or design professional strictly in accordance with the contract.

(b) Application for progress payments.--If the contract does not contain a term governing the time for payment, the contractor or design professional shall be entitled to make application for payment from the government agency for progress payments, and the government agency shall make payment less the applicable retainage amount as authorized in section 3921 (relating to retainage) to the contractor or design professional within 45 calendar days of the date the application for payment is received.

(c) Interest on progress payments not timely made.--Except as otherwise agreed by the parties, if any progress payment less the applicable retainage amount as authorized in section 3921 is not made to a contractor or design professional by the due date established in the contract or in subsection (b), the government agency shall pay to the contractor or design professional, in addition to the amount due, interest on the amount due, and the interest shall be computed at the rate determined by the Secretary of Revenue for interest payments

on overdue taxes or the refund of taxes as provided in sections 806 and 806.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(d) When interest payment not required.--In the event that the contract does not contain a grace period and if a contractor or design professional is not paid by the payment date required by subsection (b), no interest penalty payment required under this section shall be paid if payment is made on or before the 15th calendar day after the payment date required under this subchapter.

Cross References. Section 3932 is referred to in sections 3933, 3938 of this title.

§ 3933. Contractors' and subcontractors' payment obligations.

(a) Performance by subcontractor entitles subcontractor to payment.--Performance by a subcontractor in accordance with the provisions of the contract shall entitle the subcontractor to payment from the party with whom the subcontractor has contracted. For purposes of this section, the contract between the contractor and subcontractor is presumed to incorporate the terms of the contract between the contractor and the government agency.

(b) Disclosure of progress payment due dates.--A contractor or subcontractor shall disclose to a subcontractor, before a subcontract is executed, the due date for receipt of progress payments from the government agency. Notwithstanding any other provisions of this subchapter, if a contractor or a subcontractor fails to accurately disclose the due date to a subcontractor, the contractor or subcontractor shall be obligated to pay the subcontractor as though the due dates established in subsection (c) were met by the government agency. This subsection shall not apply to a change in due dates because of conditions outside of the contractor's control, including, but not limited to, design changes, change orders or delays in construction due to weather conditions.

(c) Payment.--When a subcontractor has performed in accordance with the provisions of the contract, a contractor shall pay to the subcontractor, and each subcontractor shall in turn pay to its subcontractors, the full or proportional amount received for each such subcontractor's work and material, based on work completed or services provided under the subcontract, 14 days after receipt of a progress payment. Payment shall be made under this section unless it is being withheld under section 3934 (relating to withholding of payment for good faith claims).

(d) Interest due when progress payment not timely.--If any progress payment is not made to a subcontractor by the due date established in the contract or in subsection (c), the contractor shall pay to the subcontractor, in addition to the amount due, interest as computed in section 3932(c) (relating to government agency's progress payment obligations).

(e) When interest payment not required.--In the event that the contract does not contain a grace period and if a subcontractor is not paid by the payment date required by subsection (c), no interest penalty payment required under this section shall be paid if payment is made on or before the 15th calendar day after the payment date required under this subchapter.

§ 3934. Withholding of payment for good faith claims.

(a) When government agency may withhold payment.--The government agency may withhold payment for deficiency items according to terms of the contract. The government agency shall

pay the contractor according to the provisions of this subchapter for all other items which appear on the application for payment and have been satisfactorily completed. The contractor may withhold payment from any subcontractor responsible for a deficiency item. The contractor shall pay any subcontractor according to the provisions of this subchapter for any item which appears on the application for payment and has been satisfactorily completed.

(b) Notification when payment withheld for deficiency item.--If a government agency withholds payment from a contractor for a deficiency item, it shall notify the contractor of the deficiency item within the time period specified in the contract or 15 calendar days of the date that the application for payment is received. If a contractor withholds payment from a subcontractor for a deficiency item, it must notify the subcontractor or supplier and the government agency of the reason within 15 calendar days of the date after receipt of the notice of the deficiency item from the government agency.

Cross References. Section 3934 is referred to in sections 3933, 3935 of this title.

§ 3935. Penalty and attorney fees.

(a) Penalty.--If arbitration or a claim with the Board of Claims or a court of competent jurisdiction is commenced to recover payment due under this subchapter and it is determined that the government agency, contractor or subcontractor has failed to comply with the payment terms of this subchapter, the arbitrator, the Board of Claims or the court may award, in addition to all other damages due, a penalty equal to 1% per month of the amount that was withheld in bad faith. An amount shall be deemed to have been withheld in bad faith to the extent that the withholding was arbitrary or vexatious. An amount shall not be deemed to have been withheld in bad faith to the extent it was withheld pursuant to section 3934 (relating to withholding of payment for good faith claims).

(b) Attorney fees.--Notwithstanding any agreement to the contrary, the prevailing party in any proceeding to recover any payment under this subchapter may be awarded a reasonable attorney fee in an amount to be determined by the Board of Claims, court or arbitrator, together with expenses, if it is determined that the government agency, contractor or subcontractor acted in bad faith. An amount shall be deemed to have been withheld in bad faith to the extent that the withholding was arbitrary or vexatious.

§ 3936. Contracts involving Federal aid.

If any provision of this chapter conflicts with a Federal statute or regulation or with conditions attached to the receipt of Federal aid, this chapter shall not operate to prevent receipt of the Federal aid in accordance with any Federal statute or regulation.

§ 3937. Certain provisions unenforceable.

A provision in the contract making it subject to the laws of another state or requiring that any litigation, arbitration or other dispute resolution process on the contract occurs in another state shall be unenforceable.

§ 3938. Applicability.

(a) Not applicable in certain situations.--This subchapter shall not apply in the following situations:

(1) Section 3932 (relating to government agency's progress payment obligations) shall not apply when the Commonwealth agency's nonpayment on a particular project is

caused by the failure of the General Assembly to enact a budget for the fiscal year of payment.

(2) Section 3932 shall not apply when a local government unit's nonpayment on a particular project is caused by failure of the Federal or State Government to pay funds due and payable to the local government unit.

(3) Section 3932 shall not apply when a government agency's nonpayment on a particular project is caused by the failure of the General Assembly to enact an operating budget for the fiscal year of payment or a capital budget for the capital project or by failure of the Federal, State or local government to pay funds designated or to be designated for the specific project.

(4) Nothing in this subchapter shall be construed to require payment of interest penalties by the Federal or State Government if the local government unit is liable for the interest.

(b) Not applicable to following entities.--This chapter shall not apply to any of the following:

(1) A municipality determined to be distressed under the act of July 10, 1987 (P.L.246, No.47), known as the Municipalities Financial Recovery Act.

(2) A school district which has been determined to be a distressed school district under section 691 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(3) (Repealed).

(4) A corporate entity or school district as defined in the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

(5) A transportation authority organized or operating under 74 Pa.C.S. Ch. 17 (relating to metropolitan transportation authorities).

(July 7, 2022, P.L.440, No.36, eff. 60 days)

2022 Repeal. Act 36 repealed subsec. (b)(3).

§ 3939. Claims by innocent parties.

(a) No obligation to third parties.--The government agency shall have no obligation to any third parties for any claim.

(b) Barred claims.--Once a contractor has made payment to the subcontractor according to the provisions of this subchapter, future claims for payment against the contractor or the contractor's surety by parties owed payment from the subcontractor which has been paid shall be barred.

SUBCHAPTER E
SUBSTANTIAL/FINAL PAYMENT

Sec.

3941. Substantial/final payment under contract.
3942. Arbitration.

§ 3941. Substantial/final payment under contract.

(a) Contract containing provision for retainage.--A contract containing a provision for retainage as provided in section 3921 (relating to retainage) shall contain a provision requiring the architect or engineer to make final inspection within 30 days of receipt of the request of the contractor for final inspection and application for final payment. If the work is substantially completed, the architect or engineer shall issue a certificate of completion and a final certificate for payment, and the government agency shall make payment in full within 45

days except as provided in section 3921, less only one and one-half times the amount required to complete any then-remaining uncompleted minor items, which amount shall be certified by the architect or engineer and, upon receipt by the government agency of any guarantee bonds which may be required, in accordance with the contract, to insure proper workmanship for a designated period of time. The certificate given by the architect or engineer shall list in detail each uncompleted item and a reasonable cost of completion. Final payment of any amount withheld for the completion of the minor items shall be paid upon completion of the items in the certificate of the engineer or architect.

(b) Interest.--The final payment due the contractor from the government agency after substantial completion of the contract shall bear interest at a rate of 6% per annum for all contracts without provisions for retainage and at a rate of 10% per annum for all contracts with provisions for retainage, the interest to begin after the date that such payment becomes due and payable to the contractor. However, where the government agency has issued bonds to finance the project, interest shall be payable to the contractor at the rate of interest of the bond issue or at the rate of 10% per annum, whichever is less, but in no event shall the interest payable to the contractor be at a rate of interest less than the legal rate of interest.

§ 3942. Arbitration.

If a dispute should arise between the contractor and the government agency over the payment of retainages and final payment, then the dispute shall be arbitrated under the applicable terms of the contract. If the contract contains no provision for arbitration, then both parties may mutually agree to arbitrate the dispute under the rules of the American Arbitration Association or in accordance with 42 Pa.C.S. Ch. 73 (relating to arbitration). In any event, either party shall have the right of appeal from any decision and award as provided by law.

CHAPTER 41
PURCHASE OF SURPLUS FEDERAL PROPERTY

Sec.
4101. Contracts with United States.
4102. Bids and down payments.

Enactment. Chapter 41 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

§ 4101. Contracts with United States.

Any government agency may enter into a contract with the Federal Government for the purchase, lease or other acquisition, including the warehousing and distribution, of any surplus real or personal Federal property without complying with any requirement of law as to specifications, advertising, award of contract or approval by another government agency. However, an executive or independent agency may only enter into a contract authorized by this section through the Department of General Services.

Cross References. Section 4101 is referred to in section 4102 of this title.

§ 4102. Bids and down payments.

Any government agency authorized to enter into a contract under section 4101 (relating to contracts with United States)

may designate by appropriate order an officeholder or employee of its own to enter a bid in its behalf at any sale of any surplus real or personal Federal property and may authorize the designee to make any down payment or payment in full required in connection with the bidding.

CHAPTER 43
PUBLIC FACILITIES CONCESSIONS

Sec.
4301. Short title of chapter and general provisions.
4302. Definitions.
4303. Terms of contracts.

Enactment. Chapter 43 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

§ 4301. Short title of chapter and general provisions.

(a) Short title.--This chapter shall be known and may be cited as the Public Facilities Concession Regulation Act.

(b) Legislative findings.--It is hereby determined by the General Assembly to reaffirm the legislative findings contained in the act of November 26, 1978 (P.L.1303, No.315), known as the Public Facilities Concession Regulation Act, and codified in this chapter:

(1) It is and has been the policy of this Commonwealth to require and encourage public agencies to own and operate a variety of public facilities for the conduct of public business and for the health, education, protection, transportation, recreation, entertainment and cultural advancement of the people of this Commonwealth.

(2) It is and has been the policy of this Commonwealth to promote the public welfare by permitting the operation, within these public facilities, of various concessions to provide goods and services to the public.

(3) Due to the nature, configuration and location of many public facilities, members of the public utilizing the facilities must either patronize the concessionaires operating therein or undergo great expense, inconvenience and hardship.

(4) The general welfare of the people of this Commonwealth requires that concessionaires operating in public facilities offer to the public goods and services of good quality at reasonable prices. The General Assembly therefore declares it to be the policy of this Commonwealth that all public officers and agencies should, at all times, make efforts to see that concessionaires in public facilities provide goods and services of high quality at reasonable prices in order to protect the public and encourage use of public facilities.

(c) Police power.--This chapter shall be deemed to be an exercise of the police powers of this Commonwealth for the protection of the health, safety and general welfare of the people of this Commonwealth.

(d) Purpose of chapter.--This chapter is intended as remedial legislation designed to promote the general welfare, protect the public and encourage full and proper use of public facilities. Each provision of this chapter is intended to receive a liberal construction as will best effectuate those purposes, and no provision is intended to receive a strict or limited construction.

(e) Certain rights preserved.--This chapter is not intended to limit or deny any other rights previously enjoyed by any government agency.

References in Text. The act of November 26, 1978 (P.L.1303, No.315), known as the Public Facilities Concession Regulation Act, referred to in subsec. (b), was repealed by the act of May 15, 1998 (P.L.358, No.57). The subject matter is now contained in Chapter 43 of this title.

§ 4302. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Public facility." Any building, airport, school, park, hospital or other structure, grounds or place owned or operated by a government agency, whether for governmental or proprietary use.

§ 4303. Terms of contracts.

(a) General rule.--Each government agency shall require that every contract granting any concession, license, permit or right to sell, lease, contract for or otherwise make available for consideration goods or services to the public in any public facility contains provisions giving the government agency the right to regulate the kinds, quality and prices of the goods and services upon terms and conditions as may be appropriate.

(b) Exceptions.--This section is not intended to apply in any of the following cases:

(1) Where the right to regulate price or quality is vested exclusively in or has been preempted by the United States or any of its agencies or another government agency.

(2) Where the head of the government agency determines in writing that the retention of the right to regulate is not necessary to protect the general welfare.

CHAPTER 45
ANTIBID-RIGGING

Sec.

4501. Short title of chapter.
4502. Definitions.
4503. Prohibited activities.
4504. Civil action and damages.
4505. Suspension or debarment.
4506. Liability for increased costs.
4507. Noncollusion affidavits.
4508. Responsibility for enforcement.
4509. Investigation.

Enactment. Chapter 45 was added May 15, 1998, P.L.358, No.57, effective in 180 days.

Cross References. Chapter 45 is referred to in section 11901.7 of Title 11 (Cities).

§ 4501. Short title of chapter.

This chapter shall be known and may be cited as the Antibid-Rigging Act.

§ 4502. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Bid-rigging." The concerted activity of two or more persons to determine in advance the winning bidder of a contract let or to be let for competitive bidding by a government agency. The term includes, but is not limited to, any one or more of the following:

(1) Agreeing to sell items or services at the same price.

(2) Agreeing to submit identical bids.

(3) Agreeing to rotate bids.

(4) Agreeing to share profits with a contractor who does not submit the low bid.

(5) Submitting prearranged bids, agreed-upon higher or lower bids or other complementary bids.

(6) Agreeing to set up territories to restrict competition.

(7) Agreeing not to submit bids.

"Government agency." The Commonwealth and any of its departments, boards, agencies, authorities and commissions, any political subdivision, municipal or other local authority or any officer or agency of any political subdivision or local authority.

"Person." An individual, corporation or partnership or any other entity capable of submitting a bid to the Commonwealth.

§ 4503. Prohibited activities.

(a) Bid-rigging unlawful.--It is unlawful for any person to conspire, collude or combine with another in order to commit or attempt to commit bid-rigging involving:

(1) A contract for the purchase of equipment, goods, services or materials or for construction or repair let or to be let by a government agency.

(2) A subcontract for the purchase of equipment, goods, services or materials or for construction or repair with a prime contractor or proposed prime contractor for a government agency.

(b) Simultaneous bids.--Notwithstanding other provisions of this chapter, it is not unlawful for the same person to simultaneously submit bids for the same work, or a portion thereof, as a proposed prime contractor and subcontractor.

(c) Fines and imprisonment.--Any person who violates this section commits a felony of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than $1,000,000 if an entity other than an individual or a fine of not more than $50,000 if an individual or to serve a term of imprisonment for not more than three years, or both.

(d) Alternative civil penalty.--In lieu of criminal prosecution for violation of this section, the Attorney General may bring an action for a civil penalty. In this action, a person found by a court to have violated this section shall be liable for a civil penalty of not more than $100,000.

(e) Disposition of fines and penalties.--Criminal fines and civil penalties collected under subsections (c) and (d) shall be paid into the State Treasury and deposited in the appropriate fund.

(f) Factors to be considered in determining fines, imprisonment or civil penalties.--In determining the appropriate sanctions to be imposed for a violation of this section, the court shall consider at least the following three factors:

(1) The prior record and the number of previous violations.

(2) The net worth of the person.

(3) The size and amount of the contract involved.

(g) Civil action not barred.--A conviction or civil penalty imposed under this section shall not bar a government agency from pursuing additional civil action and administrative sanctions.

(h) Limitation on prosecution.--No criminal prosecution under this section shall be brought against a person who has been previously charged by information or indictment with a criminal violation of the Federal antitrust laws, based upon the same allegedly unlawful conduct upon which a criminal prosecution under this chapter could be based, where jeopardy has attached under the Federal prosecution.

Cross References. Section 4503 is referred to in sections 4504, 4505, 4508, 4509 of this title.

§ 4504. Civil action and damages.

(a) Government agency to have right of action.--Any government agency entering into a contract which is or has been the subject of activities prohibited by section 4503 (relating to prohibited activities) shall have a right of action against the participants in the prohibited activities to recover damages.

(b) Options.--The government agency shall have the option to proceed jointly and severally in a civil action against any one or more of the participants for recovery of the full amount of the damages. There shall be no right to contribution among participants not named defendants by the government agency.

(c) Measure of damages.--The measure of damages recoverable under this section shall be the actual damages, which damages shall be trebled plus the cost of suit, including reasonable attorney fees.

(d) When cause of action arises.--The cause of action shall arise at the time the government agency which entered into the contract discovered or should have discovered the conduct amounting to the unlawful offense. The action shall be brought within four years of the date that the cause of action arose. No civil action shall be maintained after the expiration of ten years from the date the contract was signed by the parties.

(e) Conviction to be dispositive of liability.--Any conviction under section 4503 shall be dispositive of the liability of the participants with the only issues for trial being the fact and amount of damages.

Cross References. Section 4504 is referred to in section 4508 of this title.

§ 4505. Suspension or debarment.

(a) Maximum suspension or debarment.--A government agency proceeding under its rules and regulations to exclude or render ineligible a person from participation in contracts or subcontracts based upon conduct prohibited by section 4503 (relating to prohibited activities) shall limit the exclusion or ineligibility to a period not to exceed the following:

(1) Three years in the case of a person found for the first time to have engaged in this conduct.

(2) Five years in the case of a person found to have engaged in this conduct for a second or subsequent time.

(b) Lists of persons excluded.--A government agency that lets a contract by competitive bidding shall maintain a current list of persons excluded or ineligible by reason of suspension or debarment for participation in contracts or subcontracts with that agency and shall furnish a copy of the list upon request to a person considering the submission of a bid as a prime contractor or as a subcontractor.

§ 4506. Liability for increased costs.

A person who enters into a contract with a government agency, either directly as a contractor or indirectly as a subcontractor, during a period of suspension or debarment imposed upon that person by that agency under its rules and regulations shall be liable to the government agency and to an eligible contractor for increased costs incurred as a result of replacing the excluded or ineligible person.

§ 4507. Noncollusion affidavits.

Noncollusion affidavits may be required by rule or regulation of any government agency for all persons. Any requirement for noncollusion affidavits shall be set forth in the invitation to bid. Failure of any person to provide a required affidavit to the government agency may be grounds for disqualification of his bid. Any required noncollusion affidavit shall state whether or not the person has been convicted or found liable for any act prohibited by Federal or State law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract within the last three years. The form for any required noncollusion affidavit shall provide that the person's statement on the affidavit that he has been convicted or found liable for any act prohibited by Federal or State law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract within the last three years does not prohibit a government agency from accepting a bid from or awarding a contract to that person, but it may be grounds for administrative suspension or debarment in the discretion of the government agency under the rules and regulations of that agency or, in the case of a government agency with no administrative suspension or debarment regulations or procedures, may be grounds for consideration on the question of whether the agency should decline to award a contract to that person on the basis of lack of responsibility. The provisions of this section are in addition to and not in derogation of any other powers and authority of any government agency.

§ 4508. Responsibility for enforcement.

(a) Criminal prosecution.--The Office of Attorney General and the district attorneys of the several counties shall have concurrent jurisdiction for the investigation and prosecution of violations of section 4503 (relating to prohibited activities).

(b) Civil action.--The Office of Attorney General shall have the authority to bring civil action under section 4504 (relating to civil action and damages) on behalf of the Commonwealth and any of its departments, boards, agencies, authorities and commissions. Political subdivisions or municipal or other local authorities or any officer or agency of any such political subdivision or local authority shall have the right to bring a civil action under section 4504. Upon the filing of a complaint, a copy shall be served on the Attorney General. The plaintiff, at any time, may request the Attorney General to act on its behalf. The Attorney General, upon determining that it is in the best interest of the Commonwealth, shall have the authority to intervene on behalf of the Commonwealth in these actions.

§ 4509. Investigation.

(a) Required attendance.--Whenever the Office of Attorney General believes that a person may be in possession, custody or control of documentary material or may have information relevant to the subject matter of a civil investigation for the purpose of ascertaining whether a person is or has been engaged

in a violation of this chapter, the Attorney General may require the attendance and testimony of witnesses and the production of books, accounts, papers, records, documents and files relating to the civil investigation. For this purpose, the Attorney General or his representatives may sign subpoenas, administer oaths or affirmations, examine witnesses and receive evidence during the investigation. A request for information shall state the subject matter of the investigation, the conduct constituting the alleged violation which is under investigation and the provisions of this chapter applicable to the alleged violation. A request for documentary material shall describe the material to be produced with reasonable particularity so as to fairly identify the documents demanded, provide a return date within which the material is to be produced and identify the member of the Attorney General's staff to whom the material shall be given. In case of disobedience of a subpoena or the contumacy of a witness appearing before the Attorney General or his representative, the Attorney General or his representative may invoke the aid of a court of record of this Commonwealth, and the court may issue an order requiring the person subpoenaed to obey the subpoena or to give evidence or to produce books, accounts, papers, records, documents and files relative to the matter in question. Failure to obey an order of the court may be punished by the court as a contempt.

(b) Confidentiality.--No information or documentary material produced under a demand under this section shall, unless otherwise ordered by a court for good cause shown, be produced for inspection or copying by, nor shall the contents be disclosed to, a person other than the Attorney General or his representative without the consent of the person who produced the information or material. However, the Attorney General or his representative shall disclose information or documentary material produced under this section or information derived therefrom to officials of a government agency affected by the alleged violation, for use by that agency in connection with an investigation or proceeding within its jurisdiction and authority, upon the prior certification of an appropriate official of the agency that the information shall be maintained in confidence other than use for official purposes. Under reasonable terms and conditions as the Attorney General or his representative shall prescribe, the documentary material shall be available for inspection and copying by the person who produced the material or a duly authorized representative of that person. The Attorney General or his representative may use the documentary material or information or copies as he determines necessary in the civil enforcement of this chapter, including presentation before any court. Material which contains trade secrets or other highly confidential matter shall not be presented except with the approval of the court in which a proceeding is pending after adequate notice to the person furnishing the material.

(c) Limitation on use.--No criminal prosecution under section 4503 (relating to prohibited activities) may be brought by either the Attorney General or a district attorney based solely upon information or documents obtained in a civil investigation under this section.

CHAPTER 46
ELECTRONIC BIDDING BY LOCAL GOVERNMENT UNITS

Sec.

4601. Short title of chapter.
4602. Definitions.
4603. Electronic bidding.
4604. Competitive electronic auction bidding.

Enactment. Chapter 46 was added July 7, 2006, P.L.600, No.88, effective in 60 days.

Cross References. Chapter 46 is referred to in section 3101 of this title; section 1401 of Title 8 (Boroughs and Incorporated Towns).

§ 4601. Short title of chapter.

This chapter shall be known and may be cited as the Local Government Unit Electronic Bidding Act.

§ 4602. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Local government unit." A county, city, borough, incorporated town, township, school district, vocational school district, county institution district, home rule municipality, local authority or any joint or cooperative body of local government units or any instrumentality, authority or corporation thereof which has authority to enter into a contract.

§ 4603. Electronic bidding.

Notwithstanding any other provision of law concerning the requirements for competitive bidding for purchases and contracts by a local government unit, a local government unit may permit the electronic submission of bids and may receive bids electronically if the local government unit has the electronic capability to maintain the confidentiality of the bid until the bid opening time.

§ 4604. Competitive electronic auction bidding.

(a) Conditions for use.--Notwithstanding any other provision of law concerning the requirements for competitive bidding for purchases and contracts, if a local government unit determines by resolution that use of competitive electronic auction bidding is in the best interests of the local government unit, a contract for supplies or services, but not for construction or design professional services, may be entered into by competitive electronic auction bidding.

(b) Invitation for bids.--An invitation for bids shall be issued and shall include a procurement description and all contractual terms, whenever practical, and conditions applicable to the procurement, including a notice that bids will be received in an electronic auction manner.

(c) Public notice.--Public notice and advertisement of the invitation for bids shall be given in the same manner as provided in the law otherwise applicable to the local government unit.

(d) Auctions.--Bids shall be accepted electronically at the time and in the manner designated in the invitation for bids. During the auction, each bidder shall have the capability to view their bid rank or the low bid price. Bidders may reduce their bid prices during the auction. At the conclusion of the auction, the record of the bid prices received and the name of each bidder shall be open to public inspection.

(e) Withdrawal of bids.--After the auction period has terminated, withdrawal of bids shall be permitted by the written determination of the local government unit when the bidder requests relief and presents credible evidence that the reason for the lower bid price was a clerical mistake, as opposed to

a judgment mistake, and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the bid. The request for relief and the supporting evidence must be received by the local government unit within a reasonable time period after the bid opening. The time period shall be specified by the local government unit.

(f) Award.--The contract shall be awarded within 60 days of the auction by written notice to the lowest responsible bidder, or all bids shall be rejected, except as otherwise provided in this section. Extensions of the date for the award may be made by mutual written consent of the local government unit and the lowest responsible bidder.

APPENDIX TO TITLE 62
PROCUREMENT

Supplementary Provisions of Amendatory Statutes

1998, MAY 15, P.L.358, NO.57

§ 4. Legislative intent.

Except as otherwise provided, this act is intended to provide a complete and exclusive procedure to govern the procurement by Commonwealth agencies of supplies, services and construction, including the disposal of surplus supplies.

Explanatory Note. Act 57 added Parts I and II of Title 62.

§ 5. Terms of office of present members.

The terms of office of the present members of the selection committee appointed pursuant to section 2401.1(19) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, repealed by this act, shall not be affected by 62 Pa.C.S. § 905(d).

§ 7. Applicability to contracts.

This act shall apply to contracts solicited or entered into on or after the effective date of this act unless the parties agree to its application to a contract solicited or entered into prior to the effective date of this act.