

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2674 Session of
2002

INTRODUCED BY STEIL, CAPPELLI, CREIGHTON, DALLY, HENNESSEY,
MELIO, PISTELLA, ROBINSON, RUBLEY, E. Z. TAYLOR, TURZAI AND
WASHINGTON, JUNE 4, 2002

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JUNE 4, 2002

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, further providing for application of part, for
3 definitions, for public access to procurement information,
4 for reciprocal limitations, for procurement responsibility,
5 for Board of Commissioners of Public Grounds and Buildings,
6 for method of source selection and for competitive sealed
7 bidding; providing for competitive electronic auction
8 bidding; further providing for competitive sealed proposals,
9 for small procurements, for sole source procurement, for
10 multiple awards, for competitive selection procedures for
11 certain services, for selection procedure for insurance and
12 notary bonds, for cancellation of invitations for bids or
13 requests for proposals, for debarment or suspension, for
14 security and performance bonds, for printing, for
15 anticompetitive practices, for bid or proposal security and
16 for contract performance security and payment bonds;
17 providing for letters of intent, for protests of
18 solicitations or awards and for contract controversies;
19 further providing for the Board of Claims and for compliance
20 of public procurement units; and making repeals.

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

23 Section 1. Section 102(e) of Title 62 of the Pennsylvania
24 Consolidated Statutes is amended and the section is amended by
25 adding a subsection to read:

26 § 102. Application of part.

1 * * *

2 (e) Application to medical assistance [providers] provider
3 agreements and participating provider agreements.--Nothing in
4 this part shall apply to medical assistance provider agreements
5 [entered into] administered by the Department of Public Welfare
6 [under the medical assistance programs] or to participating
7 provider agreements entered into by the Department of Health.

8 * * *

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

14 * * *

15 Section 2. The definition of "contract" in section 103 of
16 Title 62 is amended and the section is amended by adding
17 definitions to read:

18 § 103. Definitions.

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

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

26 * * *

27 "Contract." A type of written agreement, regardless of what
28 it may be called, for the procurement or disposal of supplies,
29 services or construction[.], and executed by all parties in
30 accordance with the act of October 15, 1980 (P.L.950, No.164).

1 known as the Commonwealth Attorneys Act.

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

4 * * *

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

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

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

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

18 * * *

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

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

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

30 "Responsive bid." A bid which conforms in all material

1 respects to the requirements and criteria in the invitation for
2 bids.

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

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

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

19 * * *

20 Section 3. Sections 106, 107(e) and (g), 301(c), 326, 501,
21 511 and 512(g) and (h) of Title 62 are amended to read:

22 § 106. Public access to procurement information.

23 (a) Open records.--Except as provided in section 512(d)
24 (relating to competitive sealed bidding) and subsection (b), any
25 documents created by or provided to any Commonwealth agency for
26 any procurement shall be subject to inspection and copying only
27 to the extent already required under the act of June 21, 1957
28 (P.L.390, No.212), referred to as the Right-to-Know Law.

29 (b) Exception.--Financial information of a bidder or offeror
30 which was requested in an invitation for bids or request for

1 proposals to demonstrate its economic capability to fully
2 perform the contract requirements and which is contained in a
3 sealed bid, sealed proposal or prequalification document, and an
4 unsuccessful proposal shall be confidential. The financial
5 information or an unsuccessful proposal may only be disclosed by
6 a Commonwealth agency if:

7 (1) the information or proposal is disclosed to a
8 consultant who is retained by the Commonwealth and who has
9 signed a confidentiality agreement;

10 (2) the information or proposal is used to defend the
11 Commonwealth's interests in a legal action; or

12 (3) the information or proposal is disclosed under a
13 court order.

14 § 107. Reciprocal limitations.

15 * * *

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

25 * * *

26 (g) Inclusion in invitation for bids or request for
27 proposals.--In all invitations for bids and requests for
28 proposals for the procurement of supplies exceeding the amount
29 established by the department for small procurements under
30 section 514, all Commonwealth agencies shall include a list of

1 all the states that have been found by the department to have
2 applied a preference favoring in-state supplies, bidders or
3 offerors and the amount of the preference. All invitations for
4 bids, requests for proposals and notices issued for the purpose
5 of securing bids or proposals for [public contracts as issued by
6 any Commonwealth agency] contracts for construction or supplies
7 exceeding the amount established by the department for small
8 procurements under section 514 shall include a list of all
9 states that have been found by the department to have applied a
10 preference for in-state bidders or offerors and the amount of
11 the preference. All invitations for bids, requests for proposals
12 and notices issued for the purpose of securing bids or proposals
13 for contracts for construction or supplies [as issued by any
14 Commonwealth agency] exceeding the amount established by the
15 purchasing agency for small procurements under section 514 shall
16 also include a list of all states that apply a prohibition
17 against certain supplies and shall inform potential bidders or
18 offerors that they are prohibited from using supplies from those
19 states. If a bid or proposal discloses that the bidder or
20 offeror is offering supplies from a state which prohibits the
21 use of out-of-state supplies, the bid or proposal shall be
22 rejected.

23 * * *

24 § 301. Procurement responsibility.

25 * * *

26 (c) Exceptions for executive and independent agencies.--The
27 following supplies, services and construction need not be
28 procured through the department, nor shall the procurement
29 policy be established by the department, but shall nevertheless
30 be procured by the appropriate purchasing agency, subject to the

1 requirements of this part:

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

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

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

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

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

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

21 (4) Perishable food stuffs.

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

27 * * *

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

29 No lease of real estate for use by an executive or
30 independent agency and no sole source procurement of supplies,

1 except for computer software, for an executive or independent
2 agency for which the department acts as the purchasing agency
3 shall be valid or effective unless, upon review, it is approved
4 by the Board of Commissioners of Public Grounds and Buildings.
5 Where the board is reviewing a proposed sole source lease or
6 procurement being submitted pursuant to section 515 (relating to
7 sole source procurement), approval of the lease or procurement
8 shall require the unanimous vote of the board. Where the board
9 is reviewing a proposed non-sole source lease, the lease shall
10 be approved when one member of the board votes to approve the
11 lease. All votes shall take place at a public meeting.

12 § 501. Definitions.

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

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

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

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

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

26 ["Invitation for bids." All documents, including those
27 either attached or incorporated by reference, used for
28 soliciting bids.]

29 "Life cycle cost." The total cost of the supply in terms of
30 purchase cost, installation cost, maintenance cost, energy cost,

1 supply cost and other costs.

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

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

9 "Responsible bidder or offeror." A person who has the
10 capability in all respects to fully perform the contract
11 requirements and the integrity and reliability which will assure
12 good faith performance.

13 "Responsive bidder or offeror." A person who has submitted a
14 bid which conforms in all material respects to the invitation
15 for bids.

16 "Sealed bid or proposal." A bid or proposal whose contents
17 are not disclosed until the bid opening time or the proposal
18 receipt date. Bids and proposals are typically submitted in
19 sealed envelopes to meet this requirement, but electronic
20 submission is not prohibited so long as the purchasing agency
21 has the electronic capability to maintain the confidentiality of
22 the bid or proposal until the bid opening time or proposal
23 receipt date.]

24 § 511. Methods of source selection.

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

29 Section 512.1 (relating to competitive electronic auction
30 bidding).

1 Section 513 (relating to competitive sealed proposals).

2 Section 514 (relating to small procurements).

3 Section 515 (relating to sole source procurement).

4 Section 516 (relating to emergency procurement).

5 Section 517 (relating to multiple awards).

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

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

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

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

14 § 512. Competitive sealed bidding.

15 * * *

16 (g) Award.--The contract shall be awarded within 60 days of
17 the bid opening by written notice to the lowest responsible [and
18 responsive] bidder [whose bid meets the requirements and
19 criteria set forth in the invitation for bids] or all bids shall
20 be rejected except as otherwise provided in this section.

21 Extensions of the date for the award may be made by mutual
22 written consent of the contracting officer and the lowest
23 responsible [and responsive] bidder. Within 30 days of the bid
24 opening the contracting officer shall, if bid security was
25 required by the invitation for bids, return the bid security to
26 all but the lowest and next-to-lowest responsible bidders then
27 under consideration for contract award.

28 (h) Multistep sealed bidding.--When it is considered
29 impractical to prepare initially a procurement description to
30 support an award based on price, an invitation for bids may be

1 issued requesting the submission of unpriced [offers] bids, to
2 be followed by an invitation for bids [limited to those bidders
3 whose offers have been qualified under the criteria set forth
4 in] requesting priced bids from responsible bidders of the first
5 solicitation.

6 Section 4. Title 62 is amended by adding a section to read:
7 § 512.1. Competitive electronic auction bidding.

8 (a) Conditions for use.--When the purchasing agency
9 determines in writing that use of competitive electronic auction
10 bidding is in the best interests of the Commonwealth, a contract
11 for supplies or services may be entered into by competitive
12 electronic auction bidding.

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

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

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

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

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

7 Section 5. Sections 513(f), (g) and (h), 514 and 515 of
8 Title 62 are amended to read:

9 § 513. Competitive sealed proposals.

10 * * *

11 (f) Discussion with responsible offerors and revision of
12 proposals.--As provided in the request for proposals,
13 discussions and negotiations may be conducted with responsible
14 offerors [who submit proposals determined to be reasonably
15 susceptible of being selected for award] for the purpose of
16 clarification [to assure full understanding of and
17 responsiveness to the solicitation requirements and for the
18 purpose] and of obtaining best and final offers. [Offerors]
19 Responsible offers shall be accorded fair and equal treatment
20 with respect to any opportunity for discussion and revision of
21 proposals. In conducting discussions, there shall be no
22 disclosure of any information derived from proposals submitted
23 by competing offerors.

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

29 [(h) Contract negotiation.--After selection, the purchasing
30 agency shall proceed to negotiate a contract with the selected

1 offeror.]

2 § 514. Small procurements.

3 If the procurement is not the subject of a Statewide
4 requirements contract between the purchasing agency and a
5 contractor, the head of the purchasing agency may authorize in
6 writing procurements without formal bid procedures, not
7 exceeding the amount established by the purchasing agency. The
8 [department] head of the purchasing agency may authorize
9 procurement of the supply or service on a no-bid basis for
10 procurements which do not exceed the amount established by the
11 [department] head of the purchasing agency for small, no-bid
12 procurements. The [department] head of the purchasing agency may
13 authorize procurement on a no-bid basis for construction
14 projects that do not exceed a total construction cost of
15 \$10,000. The amount of \$10,000 shall be adjusted annually by the
16 department to reflect the annual percentage change in the
17 Composite Construction Cost Index of the United States
18 Department of Commerce occurring in the one-year period ending
19 December 31 of each year. Procurement requirements shall not be
20 artificially divided so as to constitute a small procurement
21 under this section. Small procurements shall be made in
22 accordance with the requirements of the written authorization
23 and this section. Records of all small procurements shall be
24 transmitted to the purchasing agency.

25 § 515. Sole source procurement.

26 A contract may be awarded for a supply, service or
27 construction item without competition when the contracting
28 officer first determines in writing that one of the following
29 conditions exists:

30 (1) Only a single contractor is capable of providing the

1 supply, service or construction.

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

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

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

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

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

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

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

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

30 (10) The contract for supplies or services is in the

best interest of the Commonwealth.

The written determination authorizing sole source procurement shall be included in the contract file. 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, 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.

Section 6. Section 517(c) and (e) of Title 62 are amended and the section is amended by adding a subsection to read:

§ 517. Multiple awards.

* * *

(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).

* * *

(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 [and responsive] bidder or offeror for each designated manufacturer.

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

(3) Awards shall be made to all responsible [and responsive] bidders or [offers. The Commonwealth agency shall have the discretion to select the contractor to furnish the

supply, service or construction based upon best value or
return on investment] 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.

Section 7. Sections 518(a), (d) and (e), 519(e) and (f),
521, 531, 533(a)(3), 535, 562, 901, 902(a), (b) and (d) and
903(e) of Title 62 are amended to read:

§ 518. Competitive selection procedures for certain services.

(a) Conditions for use.--The services of accountants,
clergy, physicians, lawyers, dentists and other [personal]
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).

* * *

(d) Discussions.--The contracting officer may conduct
discussions with any responsible offeror [who has submitted a
proposal] 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 [selected]

1 offeror. If proposals were submitted by one or more other
2 responsible offerors [determined to be qualified], negotiations
3 may be conducted with the other responsible offeror or
4 responsible offerors in the order of their respective
5 qualification ranking. The contract may be awarded to the
6 responsible offeror then ranked as best qualified if the amount
7 of compensation is determined to be fair and reasonable.

8 § 519. Selection procedure for insurance and notary bonds.

9 * * *

10 (e) Discussions with responsible offerors and revision to
11 proposals.--Discussions and negotiations may be conducted with
12 responsible offerors [who submit proposals determined to be
13 reasonably susceptible of being selected for award. Offerors]_.
14 Responsible offerors shall be accorded fair and equal treatment
15 with respect to any opportunity for discussion, negotiation and
16 revision of proposals. Revisions may be permitted after
17 submissions and prior to award for the purpose of obtaining best
18 and final offers.

19 (f) Award.--Award shall be made to the responsible offeror
20 whose proposal is determined in writing by the department to be
21 the most advantageous to the Commonwealth based on criteria
22 determined by the department, including the coverage offered and
23 the cost of the premium.

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

26 An invitation for bids, a request for proposals or other
27 solicitation may be canceled, or any or all bids or proposals
28 may be rejected, at any time prior to the time a contract is
29 executed by all parties when it is in the best interests of the
30 Commonwealth. Bids may be rejected in part when specified in the

1 solicitation. The reasons for the cancellation or rejection
2 shall be made part of the contract file.

3 § 531. Debarment or suspension.

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

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

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

23 (2) Commission of fraud or a criminal offense or other
24 improper conduct or knowledge of, approval of or acquiescence
25 in such activities by a [contractor or any affiliate,
26 officer, employee or other individual or entity] person
27 associated with:

28 (i) obtaining;

29 (ii) attempting to obtain; or

30 (iii) performing a public contract or subcontract.

1 The [contractor's] person's acceptance of the benefits
2 derived from the conduct shall be deemed evidence of such
3 knowledge, approval or acquiescence.

4 (3) Violation of Federal or State antitrust statutes.

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

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

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

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

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

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

19 (10) Three or more occurrences where a [contractor]
20 person has been declared ineligible for a contract.

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

23 (i) Failure to comply with terms of a Commonwealth
24 agency contract or subcontract, including, but not
25 limited to: willful failure to perform in accordance with
26 the terms of one or more contracts, a history of failure
27 to perform or unsatisfactory performance of one or more
28 contracts.

29 (ii) Offering unbalanced bids.

30 (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 [contractor] person as determined by the purchasing agency.

(c) Decision.--After the [contractor] 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 [contractor] 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 [delivered by registered mail] sent, with delivery confirmed, to the [contractor] 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 [contractor] 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 [contractor, vendor or other] person shall automatically prohibit all Commonwealth agencies from awarding any contract to [such contractor, vendor or other] the person or renewing or extending any contract with [such contractor, vendor or other] the person unless the contracting officer determines that there are compelling reasons for [such] the award, renewal or extension and the head of the purchasing agency approves the determination.

§ 533. Security and performance bonds.

(a) Contract for supplies or services.--

* * *

(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.

* * *

§ 535. Printing.

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

1 printing contract.

2 § 562. Anticompetitive practices.

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

14 § 901. Definitions.

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

18 "Design professional services." Those professional services
19 within the scope of the practice of architecture, geology,
20 engineering, landscape architecture or land surveying, including
21 studies, investigations, surveying, mapping, tests, evaluations,
22 consultations, comprehensive planning, program management,
23 conceptual design, plans and specifications, value engineering,
24 maintenance manuals and other related services associated with
25 research, planning, development, design, construction,
26 alteration or repair of real property. The term includes
27 services provided under the supervision of a professional
28 engineer to develop engineering software which will aid design
29 professionals in performing their work. The term also includes
30 right-of-way acquisition assistance services provided in

1 conjunction with the planning, development, design,
2 construction, alteration or repair of bridges and highways by
3 the Department of Transportation, even if the services are not
4 provided under the supervision of a licensed engineer. The term
5 does not include those services which are not exclusively within
6 the scope of architecture, geology, engineering or landscape
7 architecture but which are related to capital improvements such
8 as, but not limited to, environmental hygienics, construction
9 management as described in section 322 (relating to specific
10 construction powers, duties and procedures), exhibit design,
11 fine arts or lesser arts and crafts, even though an architect,
12 geologist, engineer or landscape architect may provide such
13 services.

14 § 902. Bid or proposal security.

15 (a) Requirement for bid or proposal security.--Bidders or
16 offerors may be required to provide bid or proposal security for
17 construction contracts. Bid or proposal security shall be in the
18 form of a certified or bank check or a bond provided by a surety
19 company authorized to do business in this Commonwealth or
20 another form of security as specified in the invitation for bids
21 or request for proposals.

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

27 * * *

28 (d) Withdrawal of bids and proposals.--After the bids or
29 proposals are opened, they shall be irrevocable for the period
30 specified in the invitation for bids or request for proposals

1 except as provided in section 512(f) (relating to competitive
2 sealed bidding). If a bidder or offeror is permitted to withdraw
3 its bid or proposal before award, no action shall be had against
4 the bidder or offeror or the bid or proposal security.

5 § 903. Contract performance security and payment bonds.

6 * * *

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

13 Section 8. Title 62 is amended by adding a section to read:

14 § 906. Letters of intent.

15 Before a contract for construction is effective, the head or
16 a deputy of the purchasing agency may issue binding letters of
17 intent to contract. A bidder or offeror receiving a letter of
18 intent may rely on the letter to prepare to start work to the
19 extent authorized by the letter and incur costs in preparation
20 for performance of the contract. No work on the construction
21 site shall be commenced and no payment shall be made to the
22 bidder or offeror until the contract is fully executed. If the
23 contract is not fully executed, the bidder or offeror shall be
24 entitled to reimbursement for its actual expenses reasonably
25 incurred pursuant to the letter prior to notification from the
26 purchasing agency not to proceed. Reimbursement shall not
27 include any loss of anticipated profit, loss of use of money or
28 administrative or overhead costs.

29 Section 9. Section 1701 of Title 62 is amended to read:

30 § 1701. Definitions.

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

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

6 "Claimant." A [person filing] contractor or Commonwealth
7 agency that files a claim with the Board of Claims.

8 "Respondent." A contractor or Commonwealth agency against
9 which a claim filed with the Board of Claims is asserted.

10 Section 10. Section 1702(b) of Title 62 is amended to read:
11 § 1702. Sovereign immunity.

12 * * *

13 (b) Exception.--The General Assembly under section 11 of
14 Article I of the Constitution of Pennsylvania does hereby waive
15 sovereign immunity as a bar to claims against Commonwealth
16 agencies [arising under this chapter] brought in accordance with
17 sections 1711.1 (relating to protests of solicitations or
18 awards) and 1712.1 (relating to contract controversies) and
19 Subchapter C (relating to Board of Claims) but only to the
20 extent set forth in this chapter.

21 Section 11. Sections 1711 and 1712 of Title 62 are repealed.

22 Section 12. Title 62 is amended by adding sections to read:
23 § 1711.1. Protests of solicitations or awards.

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

30 (b) Filing of protest.--If the protestant is a bidder or

1 offeror or a prospective contractor, the protest shall be filed
2 with the head of the purchasing agency within seven days after
3 the aggrieved bidder or offeror or prospective contractor knew
4 or should have known of the facts giving rise to the protest
5 except that in no event may a protest be filed later than seven
6 days after the date the contract was awarded. If the protestant
7 is a prospective bidder or offeror, a protest shall be filed
8 with the head of the purchasing agency prior to the bid opening
9 time or the proposal receipt date. If a bidder or offeror, a
10 prospective bidder or offeror, or a prospective contractor fails
11 to file a protest or files an untimely protest, the bidder or
12 offeror, the prospective bidder or offeror, or the prospective
13 contractor shall be deemed to have waived its right to protest
14 the solicitation or award of the contract in any forum. Untimely
15 filed protests shall be disregarded by the purchasing agency.

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

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

27 (e) Evaluation of protest.--The head of the purchasing
28 agency or his designee shall review the protest and any response
29 or reply and may request and review such additional documents or
30 information he deems necessary to render a decision, and may, at

1 his sole discretion, conduct a hearing. The head of the
2 purchasing agency or his designee shall provide to the
3 protestant and the contracting officer a reasonable opportunity
4 to review and address any additional documents or information
5 deemed necessary by the head of the purchasing agency or his
6 designee to render a decision.

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

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

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

30 (i) Standard of review.--The court shall hear the appeal,

1 without a jury, on the record of determination certified by the
2 purchasing agency. The court shall affirm the determination of
3 the purchasing agency unless it finds from the record that the
4 determination is arbitrary and capricious, an abuse of
5 discretion or is contrary to law.

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

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

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

30 § 1711.2. Solicitations or awards contrary to law.

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

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

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

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

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

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

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

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

1 appropriate.

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

4 (iii) the contract may be declared void.

5 § 1712.1. Contract controversies.

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

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

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

17 (d) Determination.--The contracting officer shall review a
18 claim and issue a final determination in writing regarding the
19 claim within 120 days of the receipt of the claim unless
20 extended by consent of the contracting officer and the
21 contractor. If the contracting officer fails to issue a final
22 determination within the 120 days unless extended by consent of
23 the parties, the claim shall be deemed denied. The determination
24 of the contracting officer shall be the final order of the
25 purchasing agency.

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

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

4 Section 13. Subchapter C of Chapter 17 of Title 62 is
5 repealed.

6 Section 14. Chapter 17 of Title 62 is amended by adding a
7 subchapter to read:

8 SUBCHAPTER C

9 BOARD OF CLAIMS

10 Sec.

11 1721. Board of Claims.

12 1722. Powers and duties of board.

13 1723. Employees and hearing panel members.

14 1724. Jurisdiction.

15 1725. Procedure.

16 1726. Payment of awards and costs.

17 § 1721. Board of Claims.

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

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

29 (c) Term.--A member of the board shall be appointed for a
30 term of eight years. In the event a vacancy shall occur during a

1 term of office, the Governor shall appoint a successor who shall
2 hold office for the remainder of the unexpired term. A member of
3 the board may be removed by the Governor for inefficiency,
4 neglect of duty or malfeasance in office.

5 (d) Compensation.--A member of the board shall receive an
6 annual compensation in accordance with the act of September 30,
7 1983 (P.L.160, No.39), known as the Public Official Compensation
8 Law. A member of the board shall be entitled to all necessary
9 travel and other expenses incurred by him in the discharge of
10 his official duties. A member shall hold no other public
11 position to which a salary is attached.

12 § 1722. Powers and duties of board.

13 The board shall do all of the following:

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

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

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

22 (4) Adopt an official seal.

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

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

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

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

§ 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.

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

§ 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

1 filed, the respondent shall file with the board a response to
2 the averments of the claimant's statement of claim. The response
3 shall be signed and verified. Prior to accepting a response, the
4 board shall require a respondent to prove that the claimant was
5 mailed a copy of the response.

6 (c) Listing.--

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

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

26 (d) Hearing.--

27 (1) The board shall hold the hearing at the place and
28 time determined by the board. All hearings shall be public.
29 All matters before the board shall be governed by rules
30 established by the board. The board shall have power to issue

1 subpoenas requiring the attendance and giving of testimony of
2 witnesses or the production of any book, paper, documentary
3 or other evidence and to order the interpleader or impleader
4 of other parties whenever necessary for a complete
5 determination of any claim or counterclaim.

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

16 (e) Decision.--

17 (1) After considering the pleadings and the testimony
18 given at the hearing before it, the board shall file a
19 written opinion either dismissing the claim of the claimant
20 or ordering an award in favor of the claimant. If the board
21 orders an award, the board shall order an amount which the
22 claimant is legally entitled to receive. The board in
23 dismissing any claim or ordering any award shall dispose of
24 all costs of the proceedings by providing for the payment of
25 costs by the claimant or the respondent, or by providing that
26 the costs shall be shared by the parties in proportion as the
27 board, in its discretion, shall direct. Costs shall include
28 witness fees and expenses. The board shall, under the seal of
29 the board, immediately notify the parties involved of the
30 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

1 against the non-Commonwealth party was ordered, the amount of
2 the award shall be deducted from whatever balance may be due the
3 party on the contract out of which the claim arose. An amount in
4 excess of any deduction remaining unsatisfied shall be paid by
5 the non-Commonwealth party to the purchasing agency.

6 Section 15. Subchapter D of Chapter 17 of Title 62 is
7 repealed.

8 Section 16. The definition of "local public procurement
9 unit" in section 1901 of Title 62 is amended to read:

10 § 1901. Definitions.

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

14 * * *

15 "Local public procurement unit." A political subdivision,
16 public authority, tax exempt, nonprofit educational[,] or public
17 health [or other] institution [and, to the extent provided by
18 law, any other entity, including a council of governments or an
19 area government, which expends public funds for the procurement
20 of supplies, services and construction, any nonprofit
21 corporation operating a charitable hospital and any] or
22 organization, nonprofit fire company, nonprofit rescue company,
23 [and] nonprofit ambulance company[.] and, to the extent provided
24 by law, any other entity, including a council of governments or
25 an area government, which expends public funds for the
26 procurement of supplies, services and construction.

27 * * *

28 Section 17. Section 1908 of Title 62 is amended to read:

29 § 1908. Compliance of public procurement units.

30 Where the public procurement unit or external procurement

1 activity administering a cooperative purchase complies with the
2 requirements [of this part,] governing its procurement of
3 supplies, services and construction, any public procurement unit
4 participating in the purchase shall be deemed to have complied
5 with [this part] the requirements governing its procurement of
6 supplies, services and construction. Public procurement units
7 may not enter into a cooperative purchasing agreement for the
8 purpose of circumventing this part.

9 Section 18. The definition of "small business" in section
10 2102 of Title 62 is amended to read:

11 § 2102. Definitions.

12 * * *

13 "Small business." A business in the United States which is
14 independently owned, is not dominant in its field of operation
15 and [meets the criteria established by the Department of General
16 Services, by regulation, for qualification as a small business.
17 The department, through regulation, shall have the authority to
18 establish the maximum number of persons a company may employ to
19 qualify as a small business, which number shall not exceed 50
20 persons] employs 100 or fewer employees.

21 Section 19. The definition of "North America" in section
22 3732 of Title 62 is amended to read:

23 § 3732. Definitions.

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

27 * * *

28 ["North America." The United States and Canada. The United
29 States includes all territory, continental or insular, subject
30 to the jurisdiction of the United States.]

1 Section 20. (a) The following acts and parts of acts are
2 repealed:

3 Section 2403(h) of the act of April 9, 1929 (P.L.177,
4 No.175), known as The Administrative Code of 1929.

5 Act of May 20, 1937 (P.L.728, No.193), referred to as the
6 Board of Claims Act.

7 (b) All other acts and parts of acts are repealed insofar as
8 they are inconsistent with this act.

9 Section 21. (a) A member of the Board of Claims as of the
10 effective date of this act shall continue to serve as a member
11 of the board until the member's present term expires or until a
12 successor has been appointed and qualified, but not longer than
13 six months after the present term of the member has expired.

14 (b) A member of the Board of Claims as of the effective date
15 of this act who was appointed on or before October 19, 1995,
16 shall receive an annual compensation as fixed by the Executive
17 Board, subject to the annual cost of living adjustment as
18 provided in section 3(e) of the act of September 30, 1983
19 (P.L.160, No.39), known as the Public Official Compensation Law.

20 Section 22. Any claim filed and not finally resolved under
21 the act of May 20, 1937 (P.L.728, No.193), referred to as the
22 Board of Claims Act, prior to the effective date of this act,
23 shall be disposed of in accordance with that act.

24 Section 23. This act shall take effect in 60 days.