

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,
WASHINGTON, YOUNGBLOOD, STRITTMATTER AND THOMAS, JUNE 4, 2002

SENATOR THOMPSON, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, NOVEMBER 26, 2002

AN ACT

1 Amending ~~Title 62 (Procurement)~~ TITLES 62 (PROCUREMENT) AND 67 <—
2 (PUBLIC WELFARE) of the Pennsylvania Consolidated Statutes,
3 further providing for application of part, for definitions,
4 for public access to procurement information, for reciprocal
5 limitations, for procurement responsibility, for Board of
6 Commissioners of Public Grounds and Buildings, for method of
7 source selection and for competitive sealed bidding;
8 providing for competitive electronic auction bidding; further
9 providing for competitive sealed proposals, for small
10 procurements, for sole source procurement, for multiple
11 awards, for competitive selection procedures for certain
12 services, for selection procedure for insurance and notary
13 bonds, for cancellation of invitations for bids or requests
14 for proposals, for debarment or suspension, for security and
15 performance bonds, for printing, for anticompetitive
16 practices, for bid or proposal security and for contract
17 performance security and payment bonds; providing for letters
18 of intent, FOR PROCUREMENT OF RIGHT-OF-WAY ACQUISITION <—
19 ASSISTANCE SERVICES, for protests of solicitations or awards
20 and for contract controversies; further providing ~~for the~~ <—
21 ~~Board of Claims and~~ for compliance of public procurement
22 units AND FOR MASS TRANSPORTATION; PROVIDING FOR PROCUREMENT <—
23 LIMITS FOR MASS TRANSPORTATION AUTHORITIES ~~AND~~, FOR TIME FOR <—
24 AWARDED CONTRACT AND FOR MEDICAL ASSISTANCE HEARINGS AND <—
25 APPEALS; and making repeals.

26 The General Assembly of the Commonwealth of Pennsylvania

27 hereby enacts as follows:

28 Section 1. Section 102(e) of Title 62 of the Pennsylvania

1 Consolidated Statutes is amended and the section is amended by
2 adding a subsection to read:

3 § 102. Application of part.

4 * * *

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

11 * * *

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

17 * * *

18 Section 2. The definition of "contract" in section 103 of
19 Title 62 is amended and the section is amended by adding
20 definitions to read:

21 § 103. Definitions.

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

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

29 * * *

30 "Contract." A type of written agreement, regardless of what

1 it may be called, for the procurement or disposal of supplies,
2 services or construction[.], and executed by all parties in
3 accordance with the act of October 15, 1980 (P.L.950, No.164),
4 known as the Commonwealth Attorneys Act.

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

7 * * *

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

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

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

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

21 * * *

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

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

29 "Responsible offeror." An offeror that has submitted a
30 responsive proposal and that possesses the capability to fully

1 perform the contract requirements in all respects and the
2 integrity and reliability to assure good faith performance.

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

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

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

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

22 * * *

23 Section 3. Sections 106, 107(e) and (g), 301(c), 326, 501,
24 511 and 512(g) and (h) of Title 62 are amended to read:

25 § 106. Public access to procurement information.

26 (a) Open records.--Except as provided in section 512(d)
27 (relating to competitive sealed bidding) and subsection (b), any
28 documents created by or provided to any Commonwealth agency for
29 any procurement shall be subject to inspection and copying only
30 to the extent already required under the act of June 21, 1957

(P.L.390, No.212), referred to as the Right-to-Know Law.

~~(b) Exception. Financial information of a bidder or offeror~~ <—

~~(B) EXCEPTIONS.--~~ <—

(1) FINANCIAL INFORMATION OF A BIDDER OR OFFEROR which
was requested in an invitation for bids or request for
proposals to demonstrate its economic capability to fully
perform the contract requirements and which is contained in a
sealed bid, sealed proposal or prequalification document, and
an unsuccessful proposal shall be confidential. The financial
information or an unsuccessful proposal may only be disclosed
by a Commonwealth agency if:

~~(1) the information or proposal is disclosed to a~~ <—
~~consultant who is retained by the Commonwealth and who has~~
~~signed a confidentiality agreement;~~

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

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

(I) THE INFORMATION OR PROPOSAL IS DISCLOSED TO A <—
CONSULTANT WHO IS RETAINED BY THE COMMONWEALTH AND WHO
HAS SIGNED A CONFIDENTIALITY AGREEMENT;

(II) THE INFORMATION OR PROPOSAL IS USED TO DEFEND
THE COMMONWEALTH'S INTERESTS IN A LEGAL ACTION; OR

(III) THE INFORMATION OR PROPOSAL IS DISCLOSED UNDER
A COURT ORDER.

(2) IF A COMMONWEALTH AGENCY TERMINATES A CONTACT FOR
DEFAULT, REJECTS A BIDDER OR OFFEROR ON THE GROUNDS THAT THE
BIDDER OR OFFEROR IS NOT RESPONSIBLE OR SUSPENDS OR DEBARS A
PERSON, THE BIDDER, OFFEROR, CONTRACTOR OR PERSON SHALL, UPON
WRITTEN REQUEST, BE PROVIDED WITH A COPY OF THE INFORMATION

1 CONTAINED IN THE FILE OF THE BIDDER, OFFEROR, CONTRACTOR OR
2 PERSON MAINTAINED BY THE DEPARTMENT AND THE OFFICE OF THE
3 BUDGET UNDER THE CONTRACTOR RESPONSIBILITY PROGRAM.

4 § 107. Reciprocal limitations.

5 * * *

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

15 * * *

16 (g) Inclusion in invitation for bids or request for
17 proposals.--In all invitations for bids and requests for
18 proposals for the procurement of supplies exceeding the amount
19 established by the department for small procurements under
20 section 514, all Commonwealth agencies shall include a list of
21 all the states that have been found by the department to have
22 applied a preference favoring in-state supplies, bidders or
23 offerors and the amount of the preference. All invitations for
24 bids, requests for proposals and notices issued for the purpose
25 of securing bids or proposals for [public contracts as issued by
26 any Commonwealth agency] contracts for construction or supplies
27 exceeding the amount established by the department for small
28 procurements under section 514 shall include a list of all
29 states that have been found by the department to have applied a
30 preference for in-state bidders or offerors and the amount of

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

13 * * *

14 § 301. Procurement responsibility.

15 * * *

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

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

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

28 (ii) Construction activities, excluding buildings,
29 solely within the expertise of the Department of
30 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 [and], 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.

* * *

§ 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

<—

1 votes to approve the lease. All votes shall take place at a
2 public meeting.

3 § 501. Definitions.

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

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

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

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

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

17 ["Invitation for bids." All documents, including those
18 either attached or incorporated by reference, used for
19 soliciting bids.]

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

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

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

30 "Responsible bidder or offeror." A person who has the

1 capability in all respects to fully perform the contract
2 requirements and the integrity and reliability which will assure
3 good faith performance.

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

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

15 § 511. Methods of source selection.

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

20 Section 512.1 (relating to competitive electronic auction
21 bidding).

22 Section 513 (relating to competitive sealed proposals).

23 Section 514 (relating to small procurements).

24 Section 515 (relating to sole source procurement).

25 Section 516 (relating to emergency procurement).

26 Section 517 (relating to multiple awards).

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

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

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

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

5 § 512. Competitive sealed bidding.

6 * * *

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

12 Extensions of the date for the award may be made by mutual
13 written consent of the contracting officer and the lowest
14 responsible [and responsive] bidder. Within 30 days of the bid
15 opening the contracting officer shall, if bid security was
16 required by the invitation for bids, return the bid security to
17 all but the lowest and next-to-lowest responsible bidders then
18 under consideration for contract award.

19 (h) Multistep sealed bidding.--When it is considered
20 impractical to prepare initially a procurement description to
21 support an award based on price, an invitation for bids may be
22 issued requesting the submission of unpriced [offers] bids, to
23 be followed by an invitation for bids [limited to those bidders
24 whose offers have been qualified under the criteria set forth
25 in] requesting priced bids from responsible bidders of the first
26 solicitation.

27 Section 4. Title 62 is amended by adding a section to read:

28 § 512.1. Competitive electronic auction bidding.

29 (a) Conditions for use.--When IF the purchasing agency
30 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 be 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.

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

§ 513. Competitive sealed proposals.

1 * * *

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

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

20 [(h) Contract negotiation.--After selection, the purchasing
21 agency shall proceed to negotiate a contract with the selected
22 offeror.]

23 § 514. Small procurements.

24 If the procurement is not the subject of a Statewide
25 requirements contract between the purchasing agency and a
26 contractor, the head of the purchasing agency may authorize in
27 writing procurements without formal bid procedures, not
28 exceeding the amount established by the purchasing agency. The
29 [department] head of the purchasing agency may authorize
30 procurement of the supply or service on a no-bid basis for

1 procurements which do not exceed the amount established by the
2 [department] head of the purchasing agency for small, no-bid
3 procurements. The [department] head of the purchasing agency may
4 authorize procurement on a no-bid basis for construction
5 projects that do not exceed a total construction cost of
6 \$10,000. The amount of \$10,000 shall be adjusted annually by the
7 department to reflect the annual percentage change in the
8 Composite Construction Cost Index of the United States
9 Department of Commerce occurring in the one-year period ending
10 December 31 of each year. Procurement requirements shall not be
11 artificially divided so as to constitute a small procurement
12 under this section. Small procurements shall be made in
13 accordance with the requirements of the written authorization
14 and this section. Records of all small procurements shall be
15 transmitted to the purchasing agency.

16 § 515. Sole source procurement.

17 A contract may be awarded for a supply, service or
18 construction item without competition [when] IF the contracting <—
19 officer first determines in writing that one of the following
20 conditions exists:

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

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

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

30 (4) It is clearly not feasible to award the contract for

1 supplies or services on a competitive basis.

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

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

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

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

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

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

23 The written determination authorizing sole source procurement
24 shall be included in the contract file. With the exception of
25 small procurements under section 514 and emergency procurements
26 under section 516 (relating to emergency procurement), if the
27 sole source procurement is for a supply, except for computer

28 software UPDATES UNDER \$50,000, for which the department acts as <—
29 purchasing agency, it must be approved by the Board of
30 Commissioners of Public Grounds and Buildings prior to the award

1 of a contract.

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

4 § 517. Multiple awards.

5 * * *

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

10 * * *

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

14 (1) Awards shall be made to the lowest responsible [and
15 responsive] bidder or offeror for each designated
16 manufacturer.

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

20 (3) Awards shall be made to all responsible [and
21 responsive] bidders or [offers. The Commonwealth agency shall
22 have the discretion to select the contractor to furnish the
23 supply, service or construction based upon best value or
24 return on investment] offerors.

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

29 Section 7. Sections 518(a), (d) and (e), 519(e) and (f),
30 521, 531, 533(a)(3), 535, 562, ~~901~~, 902(a), (b) and (d) and

<—

1 903(e) of Title 62 are amended to read:

2 § 518. Competitive selection procedures for certain services.

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

10 * * *

11 (d) Discussions.--The contracting officer may conduct
12 discussions with any responsible offeror [who has submitted a
13 proposal] to determine the offeror's qualifications for further
14 consideration. Discussions shall not disclose any information
15 derived from proposals submitted by other offerors.

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

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

1 * * *

2 (e) Discussions with responsible offerors and revision to
3 proposals.--Discussions and negotiations may be conducted with
4 responsible offerors [who submit proposals determined to be
5 reasonably susceptible of being selected for award. Offerors].
6 Responsible offerors shall be accorded fair and equal treatment
7 with respect to any opportunity for discussion, negotiation and
8 revision of proposals. Revisions may be permitted after
9 submissions and prior to award for the purpose of obtaining best
10 and final offers.

11 (f) Award.--Award shall be made to the responsible offeror
12 whose proposal is determined in writing by the department to be
13 the most advantageous to the Commonwealth based on criteria
14 determined by the department, including the coverage offered and
15 the cost of the premium.

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

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

25 § 531. Debarment or suspension.

26 (a) Authority.--After reasonable notice to the person
27 involved and reasonable opportunity for that person to be heard,
28 the head of a purchasing agency, after consultation with the
29 head of the using agency, shall have authority to debar a person
30 from consideration for the award of contracts. The decision to

1 debar shall be based upon substantial evidence that a cause for
2 debarment or suspension under subsection (b) has occurred. In
3 making the decision of whether to debar a [contractor] person,
4 the head of the purchasing agency shall take into consideration
5 the seriousness of any violation and any mitigating factors. A
6 debarment may be for a period of not more than three years. The
7 head of the purchasing agency may suspend a person from
8 consideration for an award of contracts for a period of up to
9 three months if there is probable cause for debarment.

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

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

15 (2) Commission of fraud or a criminal offense or other
16 improper conduct or knowledge of, approval of or acquiescence
17 in such activities by a [contractor or any affiliate,
18 officer, employee or other individual or entity] person
19 associated with:

20 (i) obtaining;

21 (ii) attempting to obtain; or

22 (iii) performing a public contract or subcontract.

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

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

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

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

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

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

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

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

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

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

15 (i) Failure to comply with terms of a Commonwealth
16 agency contract or subcontract, including, but not
17 limited to: willful failure to perform in accordance with
18 the terms of one or more contracts, a history of failure
19 to perform or unsatisfactory performance of one or more
20 contracts.

21 (ii) Offering unbalanced bids.

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

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

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

28 (vi) Making false statements or failing to provide
29 information or otherwise to cooperate with the

30 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

1 renewing or extending any contract with [such contractor, vendor
2 or other] the person unless the contracting officer determines
3 that there are compelling reasons for [such] the award, renewal
4 or extension and the head of the purchasing agency approves the
5 determination.

6 § 533. Security and performance bonds.

7 (a) Contract for supplies or services.--

8 * * *

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

16 * * *

17 § 535. Printing.

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

24 § 562. Anticompetitive practices.

25 Collusion among bidders or offerors is unlawful. Every
26 contract, combination or conspiracy which unreasonably restrains
27 trade among bidders or offerors is unlawful. Contracts so
28 arrived at may be declared void at the option of the
29 Commonwealth. In addition to remedies available to the
30 Commonwealth in the Federal courts, there shall be the same

1 remedies in the courts of this Commonwealth. When any person has
2 reason to believe collusion or other anticompetitive practices
3 have occurred among any bidders or offerors, a notice of the
4 relevant facts shall be transmitted to the Attorney General, who
5 shall investigate the reports.

6 ~~§ 901. Definitions.~~

<—

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

10 ~~"Design professional services." Those professional services~~
11 ~~within the scope of the practice of architecture, geology,~~
12 ~~engineering, landscape architecture or land surveying, including~~
13 ~~studies, investigations, surveying, mapping, tests, evaluations,~~
14 ~~consultations, comprehensive planning, program management,~~
15 ~~conceptual design, plans and specifications, value engineering,~~
16 ~~maintenance manuals and other related services associated with~~
17 ~~research, planning, development, design, construction,~~
18 ~~alteration or repair of real property. The term includes~~
19 ~~services provided under the supervision of a professional~~
20 ~~engineer to develop engineering software which will aid design~~
21 ~~professionals in performing their work. The term also includes~~
22 ~~right of way acquisition assistance services provided in~~
23 ~~conjunction with the planning, development, design,~~
24 ~~construction, alteration or repair of bridges and highways by~~
25 ~~the Department of Transportation, even if the services are not~~
26 ~~provided under the supervision of a licensed engineer. The term~~
27 ~~does not include those services which are not exclusively within~~
28 ~~the scope of architecture, geology, engineering or landscape~~
29 ~~architecture but which are related to capital improvements such~~
30 ~~as, but not limited to, environmental hygienics, construction~~

1 ~~management as described in section 322 (relating to specific~~
2 ~~construction powers, duties and procedures), exhibit design,~~
3 ~~fine arts or lesser arts and crafts, even though an architect,~~
4 ~~geologist, engineer or landscape architect may provide such~~
5 ~~services.~~

6 § 902. Bid or proposal security.

7 (a) Requirement for bid or proposal security.--Bidders or
8 offerors may be required to provide bid or proposal security for
9 construction contracts. Bid or proposal security shall be in the
10 form of a certified or bank check or a bond provided by a surety
11 company authorized to do business in this Commonwealth or
12 another form of security as specified in the invitation for bids
13 or request for proposals.

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

19 * * *

20 (d) Withdrawal of bids and proposals.--After the bids or
21 proposals are opened, they shall be irrevocable for the period
22 specified in the invitation for bids or request for proposals
23 except as provided in section 512(f) (relating to competitive
24 sealed bidding). If a bidder or offeror is permitted to withdraw
25 its bid or proposal before award, no action shall be had against
26 the bidder or offeror or the bid or proposal security.

27 § 903. Contract performance security and payment bonds.

28 * * *

29 (e) Adjustment of threshold amount.--The dollar thresholds
30 set forth in subsection (a) shall be adjusted annually by the

1 department to reflect the annual percentage change in the
2 [Composition] Composite Construction Cost Index of the United
3 States Department of Commerce occurring in the one-year period
4 ending on December 31 of each year.

5 Section 8. Title 62 is amended by adding ~~a section~~ SECTIONS <—
6 to read:

7 § 906. Letters of intent.

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

22 § 907. PROCUREMENT OF RIGHT-OF-WAY ACQUISITION ASSISTANCE <—

23 SERVICES.

24 RIGHT-OF-WAY ACQUISITION ASSISTANCE SERVICES TO BE PROVIDED
25 IN CONJUNCTION WITH THE PLANNING, DEVELOPMENT, DESIGN,
26 CONSTRUCTION, ALTERATION OR REPAIR OF BRIDGES AND HIGHWAYS BY
27 THE DEPARTMENT OF TRANSPORTATION SHALL BE PROCURED IN ACCORDANCE
28 WITH SECTION 905 (RELATING TO PROCUREMENT OF DESIGN PROFESSIONAL
29 SERVICES).

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

1 § 1701. Definitions.

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

5 ~~"Board." The Board of Claims established in section 1721~~ <—
6 ~~(relating to function of Board of Claims).~~

7 ~~"BOARD." THE BOARD OF CLAIMS ESTABLISHED IN SECTION 1721~~ <—
8 ~~(RELATING TO BOARD OF CLAIMS).~~

9 "Claimant." A [person filing] contractor or Commonwealth
10 agency that files a claim with the [Board of Claims] BOARD. <—

11 "Respondent." A contractor or Commonwealth agency against
12 which a claim filed with the Board of Claims BOARD is asserted. <—

13 Section 10. Section 1702(b) of Title 62 is amended to read:

14 § 1702. Sovereign immunity.

15 * * *

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

24 Section 11. ~~Sections 1711 and 1712~~ SECTION 1711 of Title 62 <—
25 ~~are~~ IS repealed. <—

26 Section ~~12~~ 11.1. Title 62 is amended by adding sections to <—
27 read:

28 § 1711.1. Protests of solicitations or awards.

29 (a) Right to protest.--A bidder or offeror, a prospective
30 bidder or offeror, or a prospective contractor, that is

1 aggrieved in connection with the solicitation or award of a
2 contract except as provided in section 521 (relating to
3 cancellation of invitations for bids or requests for proposals)
4 may protest to the head of the purchasing agency in writing.

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

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

26 (d) Response and reply.--Within 15 days of receipt of a
27 protest, the contracting officer may submit to the head of the
28 purchasing agency and the protestant a response to the protest,
29 including any documents or information he deems relevant to the
30 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.

§ 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:

1 of the contracting officer shall be the final order of the
2 purchasing agency.

3 (e) Statement of claim.--Within 15 days of the mailing date
4 of a final determination denying a claim or within 135 days of
5 filing a claim if no extension is agreed to by the parties,
6 whichever occurs first, the contractor may file a statement of
7 claim with the Board of Claims BOARD. <—

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

11 ~~Section 13. Subchapter C of Chapter 17 of Title 62 is~~ <—
12 ~~repealed.~~

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

15 ~~SUBCHAPTER C~~
16 ~~BOARD OF CLAIMS~~

17 ~~Sec.~~

18 ~~1721. Board of Claims.~~

19 ~~1722. Powers and duties of board.~~

20 ~~1723. Employees and hearing panel members.~~

21 ~~1724. Jurisdiction.~~

22 ~~1725. Procedure.~~

23 ~~1726. Payment of awards and costs.~~

24 ~~§ 1721. Board of Claims.~~

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

29 ~~(b) Composition. The board shall consist of three members~~
30 ~~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 in accordance with 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.~~

~~§ 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.~~

~~§ 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~~

1 ~~controversies).~~

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

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

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

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

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

18 ~~(c) Limitations. The board shall have no power and exercise~~
19 ~~no jurisdiction over a claim asserted under subsection (a)(1)~~
20 ~~unless it is filed with the board in accordance with section~~
21 ~~1712.1. The board shall have no power and exercise no~~
22 ~~jurisdiction over a claim asserted against a Commonwealth agency~~
23 ~~under subsection (a)(2) or (3) unless the claim was filed with~~
24 ~~the board within six months after it accrued.~~

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

28 ~~§ 1725. Procedure.~~

29 ~~(a) Statement of claim. The board shall accept a statement~~
30 ~~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~~

1 ~~parties with 30 days' written notice of the time and place of~~
2 ~~the hearing.~~

3 ~~(d) Hearing.—~~

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

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

23 ~~(e) Decision.—~~

24 ~~(1) After considering the pleadings and the testimony~~
25 ~~given at the hearing before it, the board shall file a~~
26 ~~written opinion either dismissing the claim of the claimant~~
27 ~~or ordering an award in favor of the claimant. If the board~~
28 ~~orders an award, the board shall order an amount which the~~
29 ~~claimant is legally entitled to receive. The board in~~
30 ~~dismissing any claim or ordering any award shall dispose of~~

1 ~~all costs of the proceedings by providing for the payment of~~
2 ~~costs by the claimant or the respondent, or by providing that~~
3 ~~the costs shall be shared by the parties in proportion as the~~
4 ~~board, in its discretion, shall direct. Costs shall include~~
5 ~~witness fees and expenses. The board shall, under the seal of~~
6 ~~the board, immediately notify the parties involved of the~~
7 ~~entry of a final order.~~

8 ~~(2) If the hearing was before a hearing panel, the~~
9 ~~hearing panel shall make its recommendation or~~
10 ~~recommendations to the board within 30 days of the hearing.~~
11 ~~After considering the hearing panel's recommendation, the~~
12 ~~board shall file a written opinion either dismissing the~~
13 ~~claim of the claimant or ordering an award in favor of the~~
14 ~~claimant. If the board orders an award, the board shall order~~
15 ~~an amount which the claimant is legally entitled to receive.~~
16 ~~The board in dismissing any claim or ordering any award shall~~
17 ~~dispose of all costs of the proceedings by providing for the~~
18 ~~payment of costs by the claimant or the respondent, or by~~
19 ~~providing that the costs shall be shared by the parties in~~
20 ~~proportion as the board, in its discretion, shall direct.~~
21 ~~Costs shall include witness fees and expenses. The board~~
22 ~~shall, under the seal of the board, immediately notify the~~
23 ~~parties involved of the entry of a final order.~~

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

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

1 ~~§ 1726. Payment of awards and costs.~~

2 ~~If an award against the purchasing agency was ordered, the~~
3 ~~amount of the award shall be paid to the non Commonwealth party~~
4 ~~by the purchasing agency from funds appropriated against the~~
5 ~~contract out of which the claim arose and any costs assessed~~
6 ~~against the Commonwealth agency shall be paid by the purchasing~~
7 ~~agency from funds or appropriations to the agency. If an award~~
8 ~~against the non Commonwealth party was ordered, the amount of~~
9 ~~the award shall be deducted from whatever balance may be due the~~
10 ~~party on the contract out of which the claim arose. An amount in~~
11 ~~excess of any deduction remaining unsatisfied shall be paid by~~
12 ~~the non Commonwealth party to the purchasing agency.~~

13 SECTION 12.1. SUBCHAPTER C OF CHAPTER 17 OF TITLE 62 IS
14 REPEALED.

15 SECTION 12.2. CHAPTER 17 OF TITLE 62 IS AMENDED BY ADDING A
16 SUBCHAPTER TO READ:

17 SUBCHAPTER C
18 BOARD OF CLAIMS
19 SEC.

20 1721. BOARD OF CLAIMS.

21 1722. POWERS AND DUTIES OF BOARD.

22 1723. EMPLOYEES AND HEARING PANEL MEMBERS.

23 1724. JURISDICTION.

24 1725. PROCEDURE.

25 1726. PAYMENT OF AWARDS AND COSTS.

26 § 1721. BOARD OF CLAIMS.

27 (A) ESTABLISHMENT.--THERE IS HEREBY ESTABLISHED AN
28 INDEPENDENT ADMINISTRATIVE BOARD TO BE KNOWN AS THE BOARD OF
29 CLAIMS. ADMINISTRATIVE SERVICES FOR THE BOARD SHALL BE PROVIDED
30 BY THE DEPARTMENT OF THE AUDITOR GENERAL.

1 (B) COMPOSITION.--THE BOARD SHALL CONSIST OF THREE MEMBERS
2 APPOINTED BY THE GOVERNOR BY AND WITH THE ADVICE AND CONSENT OF
3 A MAJORITY OF THE ELECTED MEMBERS OF THE SENATE. ONE MEMBER
4 SHALL BE AN ATTORNEY AND ANOTHER SHALL BE A REGISTERED CIVIL
5 ENGINEER. THE THIRD MEMBER OF THE BOARD SHALL BE A CITIZEN AND
6 RESIDENT OF THIS COMMONWEALTH. THE ATTORNEY SHALL SERVE AS
7 CHAIRMAN OF THE BOARD.

8 (C) TERM.--A MEMBER OF THE BOARD SHALL BE APPOINTED FOR A
9 TERM OF EIGHT YEARS. IN THE EVENT A VACANCY SHALL OCCUR DURING A
10 TERM OF OFFICE, THE GOVERNOR SHALL APPOINT A SUCCESSOR WHO SHALL
11 HOLD OFFICE FOR THE REMAINDER OF THE UNEXPIRED TERM. A MEMBER OF
12 THE BOARD MAY BE REMOVED BY THE GOVERNOR FOR INEFFICIENCY,
13 NEGLECT OF DUTY OR MALFEASANCE IN OFFICE.

14 (D) COMPENSATION.--A MEMBER OF THE BOARD SHALL RECEIVE AN
15 ANNUAL COMPENSATION AS FIXED BY THE EXECUTIVE BOARD, SUBJECT TO
16 THE ANNUAL COST-OF-LIVING ADJUSTMENT PROVIDED FOR IN SECTION
17 3(E) OF THE ACT OF SEPTEMBER 30, 1983 (P.L.160, NO.39), KNOWN AS
18 THE PUBLIC OFFICIAL COMPENSATION LAW. A MEMBER OF THE BOARD
19 SHALL BE ENTITLED TO ALL NECESSARY TRAVEL AND OTHER EXPENSES
20 INCURRED BY HIM IN THE DISCHARGE OF HIS OFFICIAL DUTIES. A
21 MEMBER SHALL HOLD NO OTHER PUBLIC POSITION TO WHICH A SALARY IS
22 ATTACHED.

23 § 1722. POWERS AND DUTIES OF BOARD.

24 THE BOARD SHALL DO ALL OF THE FOLLOWING:

25 (1) EMPLOY ADMINISTRATIVE, PROFESSIONAL, CLERICAL AND
26 OTHER PERSONNEL AS IS NECESSARY FOR THE ORDERLY
27 ADMINISTRATION OF THE BOARD.

28 (2) MAKE, EXECUTE AND DELIVER CONTRACTS AND OTHER
29 INSTRUMENTS AS IS NECESSARY.

30 (3) ESTABLISH AND MAINTAIN A PRINCIPAL OFFICE IN

1 HARRISBURG AND SUCH OTHER OFFICES WITHIN THIS COMMONWEALTH AS
2 ARE NECESSARY.

3 (4) ADOPT AN OFFICIAL SEAL.

4 (5) APPOINT THREE SEPARATE HEARING PANELS CONSISTING OF
5 TWO INDIVIDUALS. FOR EACH HEARING PANEL, ONE INDIVIDUAL SHALL
6 BE AN ATTORNEY AND THE OTHER SHALL BE A LICENSED ENGINEER.
7 THE ATTORNEY SHALL SERVE AS CHAIRPERSON.

8 (6) ESTABLISH, BY REGULATION, RULES GOVERNING PRACTICE
9 BEFORE THE BOARD CONSISTENT, EXCEPT AS MAY BE PROVIDED BY
10 THIS PART, WITH THE PENNSYLVANIA RULES OF CIVIL PROCEDURE AND
11 THE PENNSYLVANIA RULES OF EVIDENCE.

12 (7) ARBITRATE CLAIMS BEFORE IT IN ACCORDANCE WITH THIS
13 SUBCHAPTER.

14 (8) CATALOG AND PUBLISH ALL OPINIONS OF THE BOARD.

15 § 1723. EMPLOYEES AND HEARING PANEL MEMBERS.

16 (A) EMPLOYEES.--EMPLOYEES OF THE BOARD SHALL, FOR THE
17 PURPOSES OF 71 PA.C.S. PT. XXV (RELATING TO RETIREMENT FOR STATE
18 EMPLOYEES AND OFFICERS), BE CONSIDERED A STATE EMPLOYEE.
19 EMPLOYEES OF THE BOARD SHALL BE REIMBURSED FOR ALL NECESSARY
20 TRAVEL AND OTHER EXPENSES INCURRED IN THE DISCHARGE OF OFFICIAL
21 DUTIES.

22 (B) HEARING PANEL MEMBERS.--INDIVIDUALS APPOINTED TO HEARING
23 PANELS IN ACCORDANCE WITH SECTION 1722 (RELATING TO POWERS AND
24 DUTIES OF BOARD) SHALL RECEIVE A PER DIEM FOR THE TIME ACTUALLY
25 DEVOTED TO THE BUSINESS OF THE BOARD. THE PER DIEM RATE SHALL BE
26 FIXED BY THE EXECUTIVE BOARD, BUT NO PANEL MEMBER SHALL BE PAID
27 MORE THAN \$25,000 PER DIEM COMPENSATION IN ANY CALENDAR YEAR.

28 § 1724. JURISDICTION.

29 (A) EXCLUSIVE JURISDICTION.--THE BOARD SHALL HAVE EXCLUSIVE
30 JURISDICTION TO ARBITRATE CLAIMS ARISING FROM ALL OF THE

1 FOLLOWING:

2 (1) A CONTRACT ENTERED INTO BY A COMMONWEALTH AGENCY IN
3 ACCORDANCE WITH THIS PART AND FILED WITH THE BOARD IN
4 ACCORDANCE WITH SECTION 1712.1 (RELATING TO CONTRACT
5 CONTROVERSIES).

6 (2) A WRITTEN AGREEMENT EXECUTED BY A COMMONWEALTH
7 AGENCY AND THE OFFICE OF ATTORNEY GENERAL IN WHICH THE
8 PARTIES EXPRESSLY AGREE TO UTILIZE THE BOARD TO ARBITRATE
9 DISPUTES ARISING FROM THE AGREEMENT.

10 (3) UNLESS OTHERWISE PROVIDED BY LAW, A CONTRACT ENTERED
11 INTO BY A COMMONWEALTH AGENCY INVOLVING REAL PROPERTY
12 INTERESTS IN WHICH THE COMMONWEALTH AGENCY IS THE RESPONDENT.

13 (B) CONCURRENT JURISDICTION.--THE BOARD SHALL HAVE
14 CONCURRENT JURISDICTION TO ARBITRATE CLAIMS ARISING FROM ALL OF
15 THE FOLLOWING:

16 (1) A CONTRACT ENTERED INTO BY A COMMONWEALTH AGENCY IN
17 ACCORDANCE WITH THIS PART IN WHICH THE COMMONWEALTH AGENCY IS
18 THE CLAIMANT.

19 (2) UNLESS OTHERWISE PROVIDED BY LAW, A CONTRACT ENTERED
20 INTO BY A COMMONWEALTH AGENCY INVOLVING REAL PROPERTY
21 INTERESTS IN WHICH THE COMMONWEALTH AGENCY IS THE CLAIMANT.

22 (C) LIMITATIONS.--THE BOARD SHALL HAVE NO POWER AND EXERCISE
23 NO JURISDICTION OVER A CLAIM ASSERTED UNDER SUBSECTION (A)(1)
24 UNLESS IT IS FILED WITH THE BOARD IN ACCORDANCE WITH SECTION
25 1712.1. THE BOARD SHALL HAVE NO POWER AND EXERCISE NO
26 JURISDICTION OVER A CLAIM ASSERTED AGAINST A COMMONWEALTH AGENCY
27 UNDER SUBSECTION (A)(2) OR (3) UNLESS THE CLAIM WAS FILED WITH
28 THE BOARD WITHIN SIX MONTHS AFTER IT ACCRUED. THE BOARD SHALL
29 HAVE NO POWER AND EXERCISE NO JURISDICTION OVER CLAIMS FOR
30 PAYMENT OR DAMAGES TO PROVIDERS OF MEDICAL ASSISTANCE SERVICES

1 ARISING OUT OF THE OPERATION OF THE MEDICAL ASSISTANCE PROGRAM
2 ESTABLISHED BY THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN
3 AS THE PUBLIC WELFARE CODE.

4 (D) NONMONETARY RELIEF.--NOTHING IN THIS SECTION SHALL
5 PRECLUDE A PARTY FROM SEEKING NONMONETARY RELIEF IN ANOTHER
6 FORUM AS PROVIDED BY LAW.

7 § 1725. PROCEDURE.

8 (A) STATEMENT OF CLAIM.--THE BOARD SHALL ACCEPT A STATEMENT
9 OF CLAIM FILED IN ACCORDANCE WITH SECTION 1724 (RELATING TO
10 JURISDICTION). THE STATEMENT OF CLAIM SHALL BE SIGNED AND
11 VERIFIED. PRIOR TO ACCEPTING A STATEMENT OF CLAIM, THE BOARD
12 SHALL REQUIRE A CLAIMANT TO PROVE THAT THE RESPONDENT WAS MAILED
13 A COPY OF THE STATEMENT OF CLAIM. IF THE RESPONDENT IS A
14 COMMONWEALTH AGENCY, UPON ACCEPTING A STATEMENT OF CLAIM THE
15 BOARD SHALL DELIVER ONE COPY TO THE ATTORNEY GENERAL.

16 (B) RESPONSE.--WITHIN 30 DAYS OF A STATEMENT OF CLAIM BEING
17 FILED, THE RESPONDENT SHALL FILE WITH THE BOARD A RESPONSE TO
18 THE AVERMENTS OF THE CLAIMANT'S STATEMENT OF CLAIM. THE RESPONSE
19 SHALL BE SIGNED AND VERIFIED. PRIOR TO ACCEPTING A RESPONSE, THE
20 BOARD SHALL REQUIRE A RESPONDENT TO PROVE THAT THE CLAIMANT WAS
21 MAILED A COPY OF THE RESPONSE.

22 (C) LISTING.--

23 (1) AFTER THE PLEADINGS ARE COMPLETE, THE BOARD SHALL
24 LIST THE CASE FOR HEARING BEFORE THE BOARD AT THE EARLIEST
25 AVAILABLE DATE, BUT NOT EARLIER THAN 30 DAYS AFTER THE
26 PLEADINGS ARE COMPLETE. ALL CASES SHALL, AS FAR AS
27 PRACTICABLE, BE LISTED FOR HEARING IN THE ORDER OF THE DATE
28 OF THE FILING OF THE RESPECTIVE STATEMENTS OF CLAIM. THE
29 BOARD SHALL PROVIDE THE PARTIES WITH 30 DAYS' WRITTEN NOTICE
30 OF THE TIME AND PLACE OF THE HEARING.

1 (2) IF A DECISION BY THE BOARD IS UNLIKELY TO BE MADE
2 WITHIN 60 DAYS FROM THE DATE OF THE HEARING, THE BOARD MAY
3 REFER THE CASE, TOGETHER WITH ALL PLEADINGS, TO THE HEARING
4 PANEL WHERE THE NON-COMMONWEALTH PARTY RESIDES. THE HEARING
5 PANEL SHALL LIST THE CASE FOR HEARING AT THE EARLIEST
6 AVAILABLE DATE AFTER RECEIPT OF THE CASE FROM THE BOARD. ALL
7 CASES SHALL, AS FAR AS PRACTICABLE, BE LISTED FOR HEARING IN
8 THE ORDER OF THE DATE OF THE FILING OF THE RESPECTIVE
9 STATEMENTS OF CLAIM. THE HEARING PANEL SHALL PROVIDE THE
10 PARTIES WITH 30 DAYS' WRITTEN NOTICE OF THE TIME AND PLACE OF
11 THE HEARING.

12 (D) HEARING.--

13 (1) THE BOARD SHALL HOLD THE HEARING AT THE PLACE AND
14 TIME DETERMINED BY THE BOARD. ALL HEARINGS SHALL BE PUBLIC.
15 ALL MATTERS BEFORE THE BOARD SHALL BE GOVERNED BY RULES
16 ESTABLISHED BY THE BOARD. THE BOARD SHALL HAVE POWER TO ISSUE
17 SUBPOENAS REQUIRING THE ATTENDANCE AND GIVING OF TESTIMONY OF
18 WITNESSES OR THE PRODUCTION OF ANY BOOK, PAPER, DOCUMENTARY
19 OR OTHER EVIDENCE AND TO ORDER THE INTERPLEADER OR IMPLEADER
20 OF OTHER PARTIES WHENEVER NECESSARY FOR A COMPLETE
21 DETERMINATION OF ANY CLAIM OR COUNTERCLAIM.

22 (2) IF THE MATTER WAS REFERRED TO A HEARING PANEL, THE
23 HEARING PANEL SHALL HOLD THE HEARING AT THE PLACE AND TIME
24 DETERMINED BY THE PANEL. ALL HEARINGS SHALL BE PUBLIC. ALL
25 MATTERS BEFORE THE HEARING PANEL SHALL BE GOVERNED BY RULES
26 ESTABLISHED BY THE BOARD. THE HEARING PANEL SHALL HAVE POWER
27 TO ISSUE SUBPOENAS REQUIRING THE ATTENDANCE AND GIVING OF
28 TESTIMONY OF WITNESSES OR THE PRODUCTION OF ANY BOOK, PAPER,
29 DOCUMENTARY OR OTHER EVIDENCE AND TO ORDER THE INTERPLEADER
30 OR IMPLEADER OF OTHER PARTIES WHENEVER NECESSARY FOR A

1 COMPLETE DETERMINATION OF ANY CLAIM OR COUNTERCLAIM.

2 (E) DECISION.--

3 (1) AFTER CONSIDERING THE PLEADINGS AND THE TESTIMONY
4 GIVEN AT THE HEARING BEFORE IT, THE BOARD SHALL FILE A
5 WRITTEN OPINION EITHER DISMISSING THE CLAIM OF THE CLAIMANT
6 OR ORDERING AN AWARD IN FAVOR OF THE CLAIMANT. IF THE BOARD
7 ORDERS AN AWARD, THE BOARD SHALL ORDER AN AMOUNT WHICH THE
8 CLAIMANT IS LEGALLY ENTITLED TO RECEIVE. THE BOARD IN
9 DISMISSING ANY CLAIM OR ORDERING ANY AWARD SHALL DISPOSE OF
10 ALL COSTS OF THE PROCEEDINGS BY PROVIDING FOR THE PAYMENT OF
11 COSTS BY THE CLAIMANT OR THE RESPONDENT, OR BY PROVIDING THAT
12 THE COSTS SHALL BE SHARED BY THE PARTIES IN PROPORTION AS THE
13 BOARD, IN ITS DISCRETION, SHALL DIRECT. COSTS SHALL INCLUDE
14 WITNESS FEES AND EXPENSES. THE BOARD SHALL, UNDER THE SEAL OF
15 THE BOARD, IMMEDIATELY NOTIFY THE PARTIES INVOLVED OF THE
16 ENTRY OF A FINAL ORDER.

17 (2) IF THE HEARING WAS BEFORE A HEARING PANEL, THE
18 HEARING PANEL SHALL MAKE ITS RECOMMENDATION OR
19 RECOMMENDATIONS TO THE BOARD WITHIN 30 DAYS OF THE HEARING.
20 AFTER CONSIDERING THE HEARING PANEL'S RECOMMENDATION, THE
21 BOARD SHALL FILE A WRITTEN OPINION EITHER DISMISSING THE
22 CLAIM OF THE CLAIMANT OR ORDERING AN AWARD IN FAVOR OF THE
23 CLAIMANT. IF THE BOARD ORDERS AN AWARD, THE BOARD SHALL ORDER
24 AN AMOUNT WHICH THE CLAIMANT IS LEGALLY ENTITLED TO RECEIVE.
25 THE BOARD IN DISMISSING ANY CLAIM OR ORDERING ANY AWARD SHALL
26 DISPOSE OF ALL COSTS OF THE PROCEEDINGS BY PROVIDING FOR THE
27 PAYMENT OF COSTS BY THE CLAIMANT OR THE RESPONDENT, OR BY
28 PROVIDING THAT THE COSTS SHALL BE SHARED BY THE PARTIES IN
29 PROPORTION AS THE BOARD, IN ITS DISCRETION, SHALL DIRECT.
30 COSTS SHALL INCLUDE WITNESS FEES AND EXPENSES. THE BOARD

1 SHALL, UNDER THE SEAL OF THE BOARD, IMMEDIATELY NOTIFY THE
2 PARTIES INVOLVED OF THE ENTRY OF A FINAL ORDER.

3 (F) APPEALS.--WITHIN 30 DAYS OF A FINAL ORDER BEING ENTERED,
4 A PARTY MAY FILE AN APPEAL WITH COMMONWEALTH COURT IN ACCORDANCE
5 WITH 42 PA.C.S. § 763 (RELATING TO DIRECT APPEALS FROM
6 GOVERNMENT AGENCIES).

7 (G) COPIES.--THE BOARD MAY NOT CHARGE THE COMMONWEALTH FOR
8 COPIES OF DOCUMENTS FILED WITH THE BOARD OR FOR COPIES OF
9 TRANSCRIPTS AND EXHIBITS.

10 § 1726. PAYMENT OF AWARDS AND COSTS.

11 IF AN AWARD AGAINST THE PURCHASING AGENCY WAS ORDERED, THE
12 AMOUNT OF THE AWARD SHALL BE PAID TO THE NON-COMMONWEALTH PARTY
13 BY THE PURCHASING AGENCY FROM FUNDS APPROPRIATED AGAINST THE
14 CONTRACT OUT OF WHICH THE CLAIM AROSE AND ANY COSTS ASSESSED
15 AGAINST THE COMMONWEALTH AGENCY SHALL BE PAID BY THE PURCHASING
16 AGENCY FROM FUNDS OR APPROPRIATIONS TO THE AGENCY. IF AN AWARD
17 AGAINST THE NON-COMMONWEALTH PARTY WAS ORDERED, THE AMOUNT OF
18 THE AWARD SHALL BE DEDUCTED FROM WHATEVER BALANCE MAY BE DUE THE
19 PARTY ON THE CONTRACT OUT OF WHICH THE CLAIM AROSE. AN AMOUNT IN
20 EXCESS OF ANY DEDUCTION REMAINING UNSATISFIED SHALL BE PAID BY
21 THE NON-COMMONWEALTH PARTY TO THE PURCHASING AGENCY.

22 Section ~~15~~ 13. Subchapter D of Chapter 17 of Title 62 is <—
23 repealed.

24 Section ~~16~~ 14. The definition of "local public procurement <—
25 unit" in section 1901 of Title 62 is amended to read:

26 § 1901. Definitions.

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

30 * * *

1 "Local public procurement unit." A political subdivision,
2 public authority, tax exempt, nonprofit educational[,] or public
3 health [or other] institution [and, to the extent provided by
4 law, any other entity, including a council of governments or an
5 area government, which expends public funds for the procurement
6 of supplies, services and construction, any nonprofit
7 corporation operating a charitable hospital and any] or
8 organization, nonprofit fire company, nonprofit rescue company,
9 [and] nonprofit ambulance company[.] and, to the extent provided
10 by law, any other entity, including a council of governments or
11 an area government, which expends public funds for the
12 procurement of supplies, services and construction.

13 * * *

14 Section ~~17~~ 15. Section 1908 of Title 62 is amended to read: <—
15 § 1908. Compliance of public procurement units.

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

25 Section ~~18~~ 16. The definition of "small business" in section <—
26 2102 of Title 62 is amended to read:
27 § 2102. Definitions.

28 * * *

29 "Small business." A business in the United States which is
30 independently owned, is not dominant in its field of operation

1 and [meets the criteria established by the Department of General
2 Services, by regulation, for qualification as a small business.
3 The department, through regulation, shall have the authority to
4 establish the maximum number of persons a company may employ to
5 qualify as a small business, which number shall not exceed 50
6 persons] employs 100 or fewer employees.

7 Section ~~19~~ 17. The ~~definition of~~ DEFINITIONS OF "MOTOR <—
8 VEHICLE" AND "North America" in section 3732 of Title 62 ~~is~~ ARE <—
9 amended to read:

10 § 3732. Definitions.

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

14 * * * <—

15 "MOTOR VEHICLE." [A VEHICLE WHICH IS SELF-PROPELLED EXCEPT <—
16 ONE WHICH IS PROPELLED SOLELY BY HUMAN OR ANIMAL POWER. THE TERM
17 INCLUDES THOSE VEHICLES DESIGNED PRIMARILY FOR USE IN
18 CONSTRUCTION OR AGRICULTURE OR ROAD MAINTENANCE SUCH AS TRACTORS
19 AND EARTH-MOVING EQUIPMENT. THE TERM DOES NOT INCLUDE VEHICLES
20 USED PRIMARILY FOR GRASS CUTTING.] A PASSENGER CAR OR A TRUCK AS
21 THOSE TERMS ARE DEFINED UNDER 75 PA.C.S. § 102 (RELATING TO
22 DEFINITIONS).

23 ["North America." The United States and Canada. The United
24 States includes all territory, continental or insular, subject
25 to the jurisdiction of the United States.]

26 * * * <—

27 SECTION 18. THE HEADING OF SUBCHAPTER C OF CHAPTER 37 OF
28 TITLE 62 IS AMENDED TO READ:

29 SUBCHAPTER C

30 MASS TRANSPORTATION [VEHICLES]

SECTION 19. TITLE 62 IS AMENDED BY ADDING A SECTION TO READ:
§ 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 C.F.R. CH. 1 PT. 13.

SECTION 20. SECTION 3911 OF TITLE 62 IS AMENDED BY ADDING A
SUBSECTION TO READ:

§ 3911. TIME FOR AWARDED CONTRACT.

* * *

1 (E) CONTRACT NEGOTIATION.--WHEN THE AMOUNT OF THE BID
2 SUBMITTED BY THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER FOR A
3 DEPARTMENT OF GENERAL SERVICES CONSTRUCTION CONTRACT EXCEEDS THE
4 BASE CONSTRUCTION VERIFIABLE CONTRACT ALLOCATION ESTABLISHED BY <—
5 THE DEPARTMENT OF GENERAL SERVICES FOR THE CONTRACT, THE
6 DEPARTMENT MAY, PRIOR TO AWARDED THE CONTRACT, NEGOTIATE THE
7 PRICE, WORK ITEMS AND TIME REQUIREMENTS FOR THE CONTRACT WITH
8 THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER TO BRING THE BID
9 WITHIN THE ESTABLISHED CONTRACT ALLOCATION.

10 SECTION 20.1. TITLE 67 IS AMENDED BY ADDING CHAPTERS TO <—
11 READ:

12 CHAPTER

13 1. PRELIMINARY PROVISIONS

14 11. MEDICAL ASSISTANCE HEARINGS AND APPEALS

15 CHAPTER 1

16 PRELIMINARY PROVISIONS

17 SEC.

18 101. DEFINITIONS.

19 § 101. DEFINITIONS.

20 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THE CHAPTER
21 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
22 CONTEXT CLEARLY INDICATES OTHERWISE:

23 "DEPARTMENT." THE DEPARTMENT OF PUBLIC WELFARE OF THE
24 COMMONWEALTH.

25 "SECRETARY." THE SECRETARY OF THE DEPARTMENT OF PUBLIC
26 WELFARE OF THIS COMMONWEALTH.

27 CHAPTER 11

28 MEDICAL ASSISTANCE HEARINGS AND APPEALS

29 SEC.

30 1101. DEFINITIONS.

1 1102. HEARINGS BEFORE THE BUREAU.

2 1103. SUPERSEDEAS.

3 1104. SUBPOENAS.

4 1105. DETERMINATIONS, REVIEW, APPEAL AND ENFORCEMENT.

5 1106. REGULATIONS.

6 § 1101. DEFINITIONS.

7 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
8 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
9 CONTEXT CLEARLY INDICATES OTHERWISE:

10 "BUREAU." THE BUREAU OF HEARINGS AND APPEALS OF THE
11 DEPARTMENT OF PUBLIC WELFARE.

12 "HEARING." A PROCEEDING COMMENCED IN ACCORDANCE WITH THIS
13 CHAPTER BY A PROVIDER CONCERNING AN ADJUDICATION OF THE
14 DEPARTMENT RELATING TO THE ADMINISTRATION OF THE PROGRAM. THE
15 TERM INCLUDES AN ACTION RELATING TO A PROVIDER'S ENROLLMENT IN,
16 PARTICIPATION IN, CLAIMS FOR PAYMENT OR DAMAGES UNDER OR
17 PENALTIES IMPOSED UNDER THE PROGRAM.

18 "PROGRAM." THE MEDICAL ASSISTANCE PROGRAM ESTABLISHED BY
19 ARTICLE IV (F) OF THE ACT OF JUNE 13, 1967 (P.L.31, NO.21),
20 KNOWN AS THE PUBLIC WELFARE CODE.

21 "PROVIDER." A PERSON THAT IS APPROVED OR WAS APPROVED BY THE
22 DEPARTMENT TO PARTICIPATE IN THE PROGRAM OR THAT SEEKS APPROVAL
23 TO PROVIDE MEDICAL ASSISTANCE SERVICES UNDER THE PROGRAM.

24 § 1102. HEARINGS BEFORE THE BUREAU.

25 (A) GENERAL RULE.--A PROVIDER THAT IS AGGRIEVED BY A
26 DECISION OF THE DEPARTMENT REGARDING THE PROGRAM MAY REQUEST A
27 HEARING BEFORE THE BUREAU IN ACCORDANCE WITH THIS CHAPTER.

28 (B) FILING.--

29 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2), A PROVIDER MUST
30 FILE A REQUEST FOR A HEARING WITH THE BUREAU IN ACCORDANCE

1 WITH ALL OF THE FOLLOWING:

2 (I) THE REQUEST MUST BE IN WRITING.

3 (II) THE REQUEST MUST BE FILED WITH THE BUREAU:

4 (A) WITHIN 30 DAYS OF THE DATE OF THE NOTICE OF
5 THE DEPARTMENTAL ACTION; OR

6 (B) IF NOTICE WAS GIVEN BY MAIL, WITHIN 33 DAYS
7 OF THE DATE OF THE NOTICE OF THE DEPARTMENTAL ACTION.

8 (III) IF THE REQUEST WAS FILED BY FIRST-CLASS MAIL,
9 THE UNITED STATES POSTMARK APPEARING UPON THE ENVELOPE IN
10 WHICH THE REQUEST WAS MAILED SHALL BE CONSIDERED THE
11 FILING DATE. THE FILING DATE OF A REQUEST FILED IN ANY
12 OTHER MANNER OR BEARING A POSTMARK OTHER THAN A UNITED
13 STATES POSTMARK SHALL BE THE DATE ON WHICH THE REQUEST IS
14 RECEIVED IN THE BUREAU.

15 (2) PARAGRAPH (1) DOES NOT APPLY IN THE FOLLOWING CASES:

16 (I) IN A NUNC PRO TUNC HEARING UNDER SUBSECTION (C).

17 (II) TO THE EXTENT SET FORTH IN THE STANDING ORDER
18 OF THE BUREAU ISSUED UNDER SUBSECTION (G).

19 (III) TO THE EXTENT MODIFIED BY REGULATIONS
20 PROMULGATED UNDER SECTION 1106 (RELATING TO REGULATIONS).

21 (C) HEARINGS NUNC PRO TUNC.--THE BUREAU, UPON WRITTEN
22 REQUEST AND FOR GOOD CAUSE SHOWN, MAY GRANT LEAVE FOR THE FILING
23 OF REQUESTS FOR HEARING NUNC PRO TUNC PURSUANT TO THE COMMON LAW
24 STANDARDS APPLICABLE IN ANALOGOUS CASES IN COURTS OF ORIGINAL
25 JURISDICTION.

26 (D) AMENDMENT.--A REQUEST FOR A HEARING MAY BE AMENDED AS OF
27 RIGHT WITHIN 90 DAYS AFTER THE DATE OF FILING OF THE REQUEST.

28 (E) ADJUDICATION.--

29 (1) THE BUREAU SHALL HOLD HEARINGS AND CONDUCT
30 ADJUDICATIONS REGARDING TIMELY FILED REQUESTS FOR HEARING IN

1 ACCORDANCE WITH 2 PA.C.S. CH. 5 SUBCH. A (RELATING TO
2 PRACTICE AND PROCEDURE OF COMMONWEALTH AGENCIES).

3 (2) NOTWITHSTANDING PARAGRAPH (1) IN HOLDING HEARINGS
4 AND CONDUCTING ADJUDICATIONS THE BUREAU SHALL DO ALL OF THE
5 FOLLOWING:

6 (I) ACT INDEPENDENTLY OF EMPLOYEES OR PUBLIC
7 OFFICIALS OF THE DEPARTMENT WHOSE ACTIONS ARE SUBJECT TO
8 REVIEW BEFORE THE BUREAU.

9 (II) NOT ENGAGE IN EX PARTE COMMUNICATIONS
10 CONCERNING A HEARING WITH ANY PARTY TO THE HEARING.

11 (III) PROMPTLY ADJUDICATE TIMELY FILED REQUESTS FOR
12 HEARING.

13 (IV) ESTABLISH DEADLINES FOR INTERIM AND FINAL
14 ACTIONS BY THE BUREAU AND PARTIES TO ANY PROCEEDING
15 BEFORE THE BUREAU.

16 (V) ALLOW REASONABLE AND NECESSARY DISCOVERY IN THE
17 FORM OF INTERROGATORIES, REQUESTS FOR THE PRODUCTION OF
18 DOCUMENTS, EXPERT REPORTS, REQUESTS FOR ADMISSIONS AND
19 DEPOSITIONS OF WITNESSES AND DESIGNEES OF PARTIES,
20 SUBJECT TO CASE MANAGEMENT PLANS AND LIMITATIONS AS
21 NECESSARY TO FACILITATE THE PROMPT AND EFFICIENT ISSUANCE
22 OF ADJUDICATIONS.

23 (VI) CONSIDER AND, WHEN APPROPRIATE, GRANT
24 APPLICATIONS BY AFFECTED PARTIES TO CONSOLIDATE HEARINGS
25 INVOLVING SUBSTANTIALLY SIMILAR OR MATERIALLY RELATED
26 ISSUES OF LAW OR FACT.

27 (VII) CONDUCT DE NOVO REVIEW OF ALL FACTUAL AND
28 LEGAL ISSUES RAISED BY A PROVIDER IN THE REQUEST FOR
29 HEARING BASED UPON EVIDENCE PRESENTED TO THE BUREAU.

30 (VIII) EXCEPT AS PROHIBITED BY STATUTE OR

1 REGULATION, INDEX AND PUBLISH AT REASONABLE COSTS
2 DETERMINATIONS ISSUED BY THE BUREAU AND FINAL ORDERS
3 ISSUED BY THE SECRETARY ADJUDICATING REQUESTS ON OR AFTER
4 THE EFFECTIVE DATE OF THIS SECTION. BY JULY 1, 2003, THE
5 BUREAU SHALL MAKE THE DETERMINATIONS, FINAL ORDERS AND
6 INDEX AVAILABLE ELECTRONICALLY WITHOUT COST TO THE
7 PUBLIC.

8 (F) MEDIATION.--THE BUREAU MAY ESTABLISH PROGRAMS AND
9 PROCEDURES TO PROMOTE THE SETTLEMENT OF MATTERS SUBJECT TO ITS
10 JURISDICTION OR TO NARROW ISSUES SUBJECT TO DISPUTE THROUGH THE
11 USE OF MEDIATION AND ARBITRATION.

12 (G) STANDING ORDER.--BY JULY 1, 2003, THE BUREAU SHALL,
13 AFTER RECEIVING COMMENT BY INTERESTED PARTIES, ISSUE A STANDING
14 ORDER ESTABLISHING RULES GOVERNING PRACTICE BEFORE THE BUREAU.
15 THE STANDING ORDER SHALL BE PUBLISHED IN THE PENNSYLVANIA
16 BULLETIN. THE STANDING ORDER OF THE BUREAU SHALL BE EFFECTIVE
17 UNTIL MODIFIED BY REGULATION.

18 § 1103. SUPERSEDEAS.

19 (A) NOT AUTOMATIC.--A REQUEST FOR HEARING FILED PURSUANT TO
20 THIS CHAPTER SHALL NOT ACT AS AN AUTOMATIC SUPERSEDEAS. THE
21 BUREAU MAY, HOWEVER, GRANT A SUPERSEDEAS UPON GOOD CAUSE SHOWN.

22 (B) CRITERIA.--THE BUREAU, IN GRANTING OR DENYING A
23 SUPERSEDEAS, SHALL BE GUIDED BY RELEVANT JUDICIAL PRECEDENT.
24 AMONG THE FACTORS TO BE CONSIDERED ARE:

- 25 (1) IRREPARABLE HARM TO THE PETITIONER;
26 (2) LIKELIHOOD OF THE PETITIONER PREVAILING ON THE
27 MERITS; AND
28 (3) LIKELIHOOD OF INJURY TO THE PUBLIC OR OTHER PARTIES.

29 (C) PROHIBITION.--A SUPERSEDEAS SHALL NOT BE ISSUED IF
30 INJURY TO THE PUBLIC HEALTH, SAFETY OR WELFARE EXISTS OR IS

1 THREATENED DURING THE PERIOD WHEN THE SUPERSEDEAS WOULD BE IN
2 EFFECT.

3 (D) CONDITIONS.--IN GRANTING A SUPERSEDEAS, THE BUREAU MAY
4 IMPOSE CONDITIONS WHICH ARE WARRANTED BY THE CIRCUMSTANCES,
5 INCLUDING THE FILING OF A BOND OR OTHER SECURITY.

6 § 1104. SUBPOENAS.

7 CONSISTENT WITH SECTION 1102(E)(2)(V) (RELATING TO HEARINGS
8 BEFORE THE BUREAU), THE BUREAU MAY ISSUE SUBPOENAS COMPELLING
9 THE ATTENDANCE OF WITNESSES, RECORDS AND PAPERS. THE BUREAU MAY
10 ENFORCE ITS SUBPOENAS IN COMMONWEALTH COURT. COMMONWEALTH COURT,
11 AFTER A HEARING, MAY MAKE AN ADJUDICATION OF CONTEMPT OR MAY
12 ISSUE ANOTHER APPROPRIATE ORDER.

13 § 1105. DETERMINATIONS, REVIEW, APPEAL AND ENFORCEMENT.

14 (A) DETERMINATIONS.--THE BUREAU SHALL ISSUE A DETERMINATION
15 ADJUDICATING CONTESTED ISSUES OF FACT AND LAW AND ANY
16 APPROPRIATE ORDER, DECREE OR DECISION. A DETERMINATION NOT
17 APPEALED IN ACCORDANCE WITH SUBSECTION (B) SHALL BE THE FINAL
18 DETERMINATION OF THE BUREAU AND SHALL BE BINDING UPON THE
19 DEPARTMENT AND THE PROVIDER WHO BROUGHT THE APPEAL.

20 (B) REVIEW.--

21 (1) A PARTY THAT IS AGGRIEVED BY A DETERMINATION OF THE
22 BUREAU MAY REQUEST REVIEW OF THE DETERMINATION BY THE
23 SECRETARY WITHIN 30 DAYS OF THE ISSUANCE OF THE
24 DETERMINATION.

25 (2) IF THE SECRETARY FAILS TO ACT UPON A REQUEST WITHIN
26 30 DAYS OF RECEIPT OF THE REQUEST FOR REVIEW, THE REQUEST FOR
27 REVIEW SHALL BE DEEMED DENIED.

28 (3) IF THE SECRETARY GRANTS REVIEW, THE SECRETARY SHALL
29 ENTER A FINAL ORDER WITHIN 180 DAYS OF THE DATE OF THE ORDER
30 GRANTING REVIEW. THE SECRETARY MAY AFFIRM, REVERSE OR MODIFY

1 THE DETERMINATION OF THE BUREAU, OR MAY WAIVE COMPLIANCE WITH
2 PROGRAM REQUIREMENTS, TO PROMOTE FAIRNESS AND THE PROPER
3 ADMINISTRATION OF THE PROGRAM.

4 (4) IF THE SECRETARY GRANTS REVIEW BUT FAILS TO ACT
5 WITHIN 180 DAYS OF THE DATE OF THE ORDER GRANTING THE REVIEW,
6 THE DETERMINATION OF THE BUREAU SHALL BE DEEMED APPROVED BY
7 THE SECRETARY.

8 (C) APPEALS.--A PROVIDER AGGRIEVED BY A FINAL DETERMINATION
9 OF THE BUREAU OR A FINAL ORDER OF THE SECRETARY MAY PETITION FOR
10 JUDICIAL REVIEW IN ACCORDANCE WITH 2 PA.C.S. CH. 7 SUBCH. A
11 (RELATING TO JUDICIAL REVIEW OF COMMONWEALTH AGENCY ACTION).

12 (D) ENFORCEMENT.--FINAL DETERMINATIONS, ORDERS, DECREES OR
13 DECISIONS OF THE DEPARTMENT, THE BUREAU OR THE SECRETARY SHALL
14 BE SUBJECT TO ENFORCEMENT BY COMMONWEALTH COURT.

15 § 1106. REGULATIONS.

16 (A) AUTHORITY.--BY JULY 1, 2004, THE BUREAU, THROUGH THE
17 DEPARTMENT, SHALL PROMULGATE REGULATIONS ESTABLISHING RULES OF
18 PROCEDURE AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF
19 THIS CHAPTER.

20 (B) ADVISORY COMMITTEE.--THE BUREAU SHALL ESTABLISH AN
21 ADVISORY COMMITTEE, INCLUDING INDIVIDUALS EXPERIENCED IN
22 PROCEEDINGS BEFORE THE BUREAU AND OTHER ADMINISTRATIVE AGENCIES,
23 TO PROVIDE ASSISTANCE AND GUIDANCE IN THE DEVELOPMENT AND
24 MODIFICATION OF REGULATIONS WHICH MAY BE PROMULGATED UNDER THIS
25 SECTION.

26 Section ~~20~~ 21. (a) The following acts and parts of acts are <—
27 repealed:

28 ~~Section 2403(h) of the act of April 9, 1929 (P.L.177,~~ <—
29 ~~No.175), known as The Administrative Code of 1929.~~

30 ~~Act of May 20, 1937 (P.L.728, No.193), referred to as the~~

1 ~~Board of Claims Act.~~

2 ~~SECTION 2403(H) OF THE ACT OF APRIL 9, 1929 (P.L.177,~~ <—
3 ~~NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929.~~

4 ~~SECTION 2 OF THE ACT OF OCTOBER 2, 2002 (P.L.812, NO.118)~~
5 ~~ENTITLED "AN ACT AMENDING THE ACT OF MAY 20, 1937 (P.L.728,~~
6 ~~NO.193), ENTITLED, AS AMENDED, 'AN ACT PROVIDING FOR THE~~
7 ~~CREATION OF A BOARD OF CLAIMS ARISING FROM CONTRACTS WITH THE~~
8 ~~COMMONWEALTH; PROVIDING FOR AND REGULATING THE PROCEDURE IN~~
9 ~~PROSECUTING CLAIMS BEFORE SUCH BOARD; DEFINING THE POWERS OF THE~~
10 ~~BOARD; AND FIXING THE COMPENSATION OF MEMBERS AND EMPLOYES~~
11 ~~THEREOF; PROVIDING THAT THE AWARDS OF SUCH BOARD SHALL BE FINAL;~~
12 ~~PROVIDING FOR THE PAYMENT OF AWARDS; AND AUTHORIZING AN~~
13 ~~APPROPRIATION, ' FURTHER PROVIDING FOR COMPENSATION FOR MEMBERS~~
14 ~~OF THE BOARD OF CLAIMS AND ITS HEARING PANELS, FOR THE~~
15 ~~JURISDICTION OF THE HEARING PANELS AND FOR AUTHORITY TO RESOLVE~~
16 ~~PROTESTS OF SOLICITATIONS OR AWARDS; AND MAKING A REPEAL."~~

17 ~~SECTION 2403(H) OF THE ACT OF APRIL 9, 1929 (P.L.177,~~ <—
18 ~~NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929.~~

19 ~~THE ACT OF MAY 20, 1937 (P.L.728, NO.193), REFERRED TO AS THE~~
20 ~~BOARD OF CLAIMS ACT.~~

21 ~~SECTION 2 OF THE ACT OF OCTOBER 2, 2002 (P.L.812, NO.118)~~
22 ~~ENTITLED "AN ACT AMENDING THE ACT OF MAY 20, 1937 (P.L.728,~~
23 ~~NO.193), ENTITLED, AS AMENDED, 'AN ACT PROVIDING FOR THE~~
24 ~~CREATION OF A BOARD OF CLAIMS ARISING FROM CONTRACTS WITH THE~~
25 ~~COMMONWEALTH; PROVIDING FOR AND REGULATING THE PROCEDURE IN~~
26 ~~PROSECUTING CLAIMS BEFORE SUCH BOARD; DEFINING THE POWERS OF THE~~
27 ~~BOARD; AND FIXING THE COMPENSATION OF MEMBERS AND EMPLOYES~~
28 ~~THEREOF; PROVIDING THAT THE AWARDS OF SUCH BOARD SHALL BE FINAL;~~
29 ~~PROVIDING FOR THE PAYMENT OF AWARDS; AND AUTHORIZING AN~~
30 ~~APPROPRIATION, ' FURTHER PROVIDING FOR COMPENSATION FOR MEMBERS~~

1 OF THE BOARD OF CLAIMS AND ITS HEARING PANELS, FOR THE
2 JURISDICTION OF THE HEARING PANELS AND FOR AUTHORITY TO RESOLVE
3 PROTESTS OF SOLICITATIONS OR AWARDS; AND MAKING A REPEAL."

4 (B) THE FOLLOWING ACTS AND PARTS OF ACTS ARE REPEALED
5 INSOFAR AS THEY ARE INCONSISTENT WITH THIS ACT:

6 SECTION 559.1 OF THE ACT OF APRIL 6, 1956 (1955 P.L.1414,
7 NO.465), KNOWN AS THE SECOND CLASS COUNTY PORT AUTHORITY ACT.

8 ~~(b)~~ (C) All other acts and parts of acts are repealed <—
9 insofar as they are inconsistent with this act.

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

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

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

25 ~~Section 23. This act shall take effect in 60 days.~~

26 ~~SECTION 22. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.~~ <—

27 SECTION 21.1. A MEMBER OF THE BOARD OF CLAIMS AS OF THE <—
28 EFFECTIVE DATE OF THIS ACT SHALL CONTINUE TO SERVE AS A MEMBER
29 OF THE BOARD UNTIL THE MEMBER'S PRESENT TERM EXPIRES OR UNTIL A
30 SUCCESSOR HAS BEEN APPOINTED AND QUALIFIED.

1 SECTION 21.2. ANY CLAIM FILED AND NOT FINALLY RESOLVED UNDER
2 THE ACT OF MAY 20, 1937 (P.L.728, NO.193), REFERRED TO AS THE
3 BOARD OF CLAIMS ACT, PRIOR TO THE EFFECTIVE DATE OF THIS ACT,
4 SHALL BE DISPOSED OF IN ACCORDANCE WITH THE BOARD OF CLAIMS ACT.

5 SECTION 22. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

6 (1) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT UPON
7 PUBLICATION IN THE PENNSYLVANIA BULLETIN OF THE STANDING
8 ORDER UNDER 67 PA.C.S. § 1102(G):

9 (I) THE AMENDMENT OF 62 PA. CODE § 1701.

10 (II) THE REPEAL OF 62 PA.C.S. CH. 17 SUBCH C.

11 (III) THE ADDITION OF 62 PA.C.S. CH. 17 SUBCH. C.

12 (IV) SECTION 21(A)(2) OF THIS ACT.

13 (V) SECTIONS 21.1 AND 21.2 OF THIS ACT.

14 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT
15 IMMEDIATELY.