

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 5

Session of 1997

INTRODUCED BY THOMPSON, LOEPER, GERLACH, TOMLINSON, SALVATORE, MUSTO, O'PAKE, ARMSTRONG, ROBBINS, WENGER, HART, RHOADES, MOWERY, WOZNIAK, HECKLER, MURPHY, MADIGAN, DELP, EARLL, CORMAN, LEMMOND AND SLOCUM, JANUARY 29, 1997

SENATOR LEMMOND, STATE GOVERNMENT, AS AMENDED, MAY 13, 1997

AN ACT

1 Amending Titles 62 (Procurement), 1 (General Provisions) and 42  
2 (Judiciary and Judicial Procedure) of the Pennsylvania  
3 Consolidated Statutes, adding provisions relating to  
4 procurement; and making repeals.

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27 TITLE 62

28 PROCUREMENT

29 Part

30 I. Commonwealth Procurement Code

1 II. General Procurement Provisions

2 PART I

3 COMMONWEALTH PROCUREMENT CODE

4 Chapter

5 1. General Provisions

6 3. Procurement Organization

7 5. Source Selection and Contract Formation

8 7. (Reserved)

9 9. Procurement of Construction, ~~Architect and Engineer~~ <—

10 AND DESIGN PROFESSIONAL Services <—

11 11. (Reserved)

12 13. (Reserved)

13 15. Supply Management

14 17. Legal and Contractual Remedies

15 19. Intergovernmental Relations

16 21. Small and Disadvantaged Businesses

17 23. Ethics in Public Contracting

18 The General Assembly of the Commonwealth of Pennsylvania

19 hereby enacts as follows:

20 Section 1. Title 62 of the Pennsylvania Consolidated

21 Statutes is amended by adding parts to read:

22 CHAPTER 1

23 GENERAL PROVISIONS

24 Sec.

25 101. Short title of part.

26 102. Application of part.

27 103. Definitions.

28 104. General principles of law otherwise applicable.

29 105. Determinations.

30 106. Public access to procurement information.

1 107. Reciprocal limitations.

2 108. Recycled materials.

3 § 101. Short title of part.

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

6 § 102. Application of part.

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

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

23 (c) Application to local agencies.--Any political  
24 subdivision or other local public agency may specifically or by  
25 reference adopt all or any part of this part and its  
26 accompanying regulations.

27 (d) Application to General Assembly and unified judicial  
28 system.--The General Assembly and its agencies and the unified  
29 judicial system and its agencies may use the department as its  
30 purchasing agency for the purchase of supplies under this part

1 and may use the department to dispose of surplus supplies under  
2 Chapter 15 (relating to supply management).

3 § 103. Definitions.

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

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

15 "Commonwealth agency." An executive ~~or independent agency~~ <—  
16 AGENCY, AN INDEPENDENT AGENCY OR AN INSTRUMENTALITY. <—

17 "Construction." The process of building, altering,  
18 repairing, improving or demolishing any public structure or  
19 building or other public improvements of any kind to any public  
20 real property. The term does not include the routine operation, <—  
21 ~~repair~~ or maintenance of existing structures, buildings or real  
22 property.

23 "Contract." A type of written agreement, regardless of what  
24 it may be called, for the procurement or disposal of supplies,  
25 services or construction.

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

30 "Contracting officer." A person authorized to enter into and

1 administer contracts and make written determinations with  
2 respect to contracts.

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

5 "Employee." An individual drawing a salary OR WAGES from a  
6 Commonwealth agency, whether elected or not, and any  
7 noncompensated individual performing personal services for any  
8 Commonwealth agency.

9 "Executive agency." The Governor and the departments,  
10 boards, commissions, authorities and other officers and agencies  
11 of the Commonwealth. The term does not include any court or  
12 other officer or agency of the unified judicial system, the  
13 General Assembly and its officers and agencies or any  
14 independent agency OR INSTRUMENTALITY.

15 "Grant." The furnishing of assistance by the Federal  
16 Government, Commonwealth or any person, whether financial or  
17 otherwise, to any person to support a program authorized by law.  
18 The term does not include an award whose primary purpose is to  
19 procure an end product, whether in the form of supplies,  
20 services or construction. A contract resulting from such an  
21 award is not a grant but a procurement contract.

22 "Independent agency." Boards, commissions, ~~authorities~~ and  
23 other agencies and officers of the Commonwealth which are not  
24 subject to the policy supervision and control of the Governor.  
25 The term does not include ANY INSTRUMENTALITY, any court or  
26 other officer or agency of the unified judicial system or the  
27 General Assembly and its officers and agencies.

28 "INSTRUMENTALITY." COMMONWEALTH AUTHORITIES AND COMMONWEALTH  
29 INSTRUMENTALITIES, INCLUDING, BUT NOT LIMITED TO, THE  
30 PENNSYLVANIA TURNPIKE COMMISSION, THE PENNSYLVANIA HIGHER

1 EDUCATION ASSISTANCE AGENCY, THE PENNSYLVANIA HOUSING FINANCE  
2 AGENCY, THE PENNSYLVANIA MUNICIPAL RETIREMENT SYSTEM, THE  
3 PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY, THE STATE  
4 PUBLIC SCHOOL BUILDING AUTHORITY, THE PENNSYLVANIA HIGHER  
5 EDUCATIONAL FACILITIES AUTHORITY AND THE STATE SYSTEM OF HIGHER  
6 EDUCATION. THE TERM DOES NOT INCLUDE ANY COURT OR OTHER OFFICER  
7 OR AGENCY OF THE UNIFIED JUDICIAL SYSTEM, THE GENERAL ASSEMBLY  
8 AND ITS OFFICERS AND AGENCIES, OR ANY STATE-RELATED INSTITUTION  
9 OR POLITICAL SUBDIVISIONS.

10 "Policy statement." Any document, except an adjudication ~~or~~ ←  
11 ~~a regulation, promulgated,~~ REGULATION OR PRIVILEGED ←  
12 COMMUNICATION PREPARED by a Commonwealth agency which sets forth  
13 substantive or procedural personal or property rights,  
14 privileges, immunities, duties, liabilities or obligations of  
15 the public or any person, including any document interpreting or  
16 implementing any statute enforced or administered by the agency.

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

24 "Purchasing agency." A Commonwealth agency authorized by  
25 this part OR BY OTHER LAW to enter into contracts. ←

26 "Regulation." A regulation as defined in 45 Pa.C.S. § 501  
27 (relating to definitions).

28 "Services." The furnishing of labor, time or effort by a  
29 contractor not involving the delivery of a specific end product  
30 other than DRAWINGS, SPECIFICATIONS OR reports which are merely ←

1 incidental to the required performance. The term does not  
2 include employment agreements, collective bargaining agreements  
3 or agreements with litigation consultants.

4 "Specification." A description of the physical or functional  
5 characteristics or the nature of a supply, service or  
6 construction item, including a description of any requirement  
7 for inspecting, testing or preparing a supply, service or  
8 construction item for delivery.

9 "STATE-RELATED INSTITUTION." THE PENNSYLVANIA STATE ←  
10 UNIVERSITY, THE UNIVERSITY OF PITTSBURGH, LINCOLN UNIVERSITY OR  
11 TEMPLE UNIVERSITY.

12 "Supplies." Any property, including, but not limited to,  
13 equipment, materials, printing, insurance and leases of and  
14 installment purchases of TANGIBLE OR INTANGIBLE personal ←  
15 property. The term does not include real property or leases of  
16 real property.

17 "Using agency." A Commonwealth agency which utilizes any  
18 supplies, services or construction procured under this part.  
19 § 104. General principles of law otherwise applicable.

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

23 § 105. Determinations.

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

26 § 106. Public access to procurement information.

27 Procurement information shall be a public record to the  
28 extent provided in the act of June 21, 1957 (P.L.390, No.212),  
29 referred to as the Right-to-Know Law, and shall be available to  
30 the public as provided in that act.

1 § 107. Reciprocal limitations.

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

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

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

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

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

17 (4) The application of this preference or prohibition by  
18 other states diminishes or eliminates opportunities for  
19 bidders and manufacturers who reside in this Commonwealth to  
20 obtain construction contracts from or to sell supplies to  
21 states that have this preference, thereby resulting in the  
22 loss of business for resident bidders and manufacturers.

23 Therefore, in order to offset or counteract the  
24 discriminatory practices of other states, discourage other  
25 states from applying a preference and ultimately to aid  
26 employment, help business and industry located in this  
27 Commonwealth, attract new business and industry to this  
28 Commonwealth and provide additional tax revenue both from  
29 those receiving contracts and those employed by contractors,  
30 the General Assembly hereby declares that it is the policy of

1 this Commonwealth to respond in like manner against those  
2 states that apply preferences or prohibitions by giving a  
3 similar offsetting preference to residents in this  
4 Commonwealth and bidders offering supplies manufactured in  
5 this Commonwealth and by prohibiting the purchase or use of  
6 certain supplies, in accordance with the provisions of this  
7 section.

8 (c) Preference for supplies.--In all procurements of  
9 supplies exceeding the amount established by the department for  
10 small ~~purchases~~ PROCUREMENTS under section 514 (relating to <—  
11 small ~~purchases~~ PROCUREMENTS), all ~~purchasing agencies~~ <—  
12 COMMONWEALTH AGENCIES shall give preference to those bidders or <—  
13 offerors offering supplies produced, manufactured, mined, grown  
14 or performed in this Commonwealth as against those bidders or  
15 offerors offering supplies produced, manufactured, mined, grown  
16 or performed in any state that gives or requires a preference to  
17 supplies produced, manufactured, mined, grown or performed in  
18 that state. The amount of the preference shall be equal to the  
19 amount of the preference applied by the other state for that  
20 particular supply.

21 (d) Preference for resident bidders or offerors.--When a  
22 ~~public contract~~ CONTRACT FOR CONSTRUCTION OR SUPPLIES exceeding <—  
23 the amount established by the department for small ~~purchases~~ <—  
24 PROCUREMENTS under section 514 is to be awarded, a resident <—  
25 bidder or offeror shall be granted a preference as against a  
26 nonresident bidder or offeror from any state that gives or  
27 requires a preference to bidders or offerors from that state.  
28 The amount of the preference shall be equal to the amount of the  
29 preference applied by the state of the nonresident bidder or  
30 offeror.

1 (e) Prohibition.--~~In the construction of any public building~~ <—  
2 ~~or other public work at the expense of the Commonwealth or any~~  
3 ~~authority or instrumentality thereof, the following prohibition~~  
4 ~~shall be recognized and applied. No purchasing~~ FOR PUBLIC <—  
5 CONTRACTS EXCEEDING THE AMOUNT ESTABLISHED BY THE DEPARTMENT FOR  
6 SMALL PROCUREMENTS UNDER SECTION 514, NO COMMONWEALTH agency  
7 shall specify for, use or procure any supplies which are  
8 produced, manufactured, mined, grown or performed in any state  
9 that prohibits the specification for, use or procurement of  
10 these supplies in or on its public buildings or other works when  
11 these supplies are not produced, manufactured, mined, grown or  
12 performed in that state.

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

21 (g) Inclusion in invitation for bids or request for  
22 proposals.--In all invitations for bids and requests for  
23 proposals for the procurement of supplies exceeding the amount  
24 established by the department for small ~~purchases~~ PROCUREMENTS <—  
25 under section 514 all ~~purchasing~~ COMMONWEALTH agencies shall <—  
26 include a list of all the states that have been found by the  
27 department to have applied a preference FAVORING IN-STATE <—  
28 SUPPLIES, BIDDERS OR OFFERORS and the amount of the preference.  
29 All invitations for bids, requests for proposals and notices  
30 issued for the purpose of securing bids or proposals for public

1 contracts as issued by any ~~purchasing~~ COMMONWEALTH agency <—  
2 exceeding the amount established by the department for small  
3 ~~purchases~~ PROCUREMENTS under section 514 shall include a list of <—  
4 all states THAT HAVE BEEN FOUND BY THE DEPARTMENT TO HAVE <—  
5 APPLIED A PREFERENCE FOR IN-STATE BIDDERS OR OFFERORS AND THE  
6 AMOUNT OF THE PREFERENCE. ALL INVITATIONS FOR BIDS, REQUESTS FOR  
7 PROPOSALS AND NOTICES ISSUED FOR THE PURPOSE OF SECURING BIDS OR  
8 PROPOSALS FOR CONTRACTS FOR CONSTRUCTION OR SUPPLIES AS ISSUED  
9 BY ANY COMMONWEALTH AGENCY EXCEEDING THE AMOUNT ESTABLISHED BY  
10 THE PURCHASING AGENCY FOR SMALL PROCUREMENTS UNDER SECTION 514  
11 SHALL ALSO INCLUDE A LIST OF ALL STATES that apply a prohibition  
12 against certain supplies and shall inform potential bidders or  
13 offerors that they are prohibited from using supplies from those  
14 states. If a bid or proposal discloses that the bidder or  
15 offeror is offering supplies from a state which prohibits the  
16 use of out-of-State supplies, the bid or proposal shall be  
17 rejected.

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

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

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

27 ~~"Public contract." A contract for the construction of any <—~~  
28 ~~public building or other public work constructed at the expense~~  
29 ~~of the Commonwealth or any authority or instrumentality thereof,~~  
30 ~~or the purchase or lease of any supplies by any Commonwealth~~

1 agency.

2 "Resident bidder or offeror." A person, partnership,  
3 corporation or other business entity authorized to transact  
4 business in this Commonwealth and having a bona fide  
5 establishment for transacting business in this Commonwealth at  
6 which it was transacting business on the date when bids or  
7 proposals for the public contract were first solicited.

8 § 108. Recycled materials.

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

14 (b) Preference for recycled content.--~~The~~ FOR CONTRACTS ←  
15 EXCEEDING THE AMOUNT ESTABLISHED BY THE DEPARTMENT FOR SMALL  
16 PROCUREMENTS UNDER SECTION 514 (RELATING TO SMALL PROCUREMENTS),  
17 THE contracting officer shall comply with section 1505 of the  
18 Municipal Waste Planning, Recycling and Waste Reduction Act  
19 regarding a preference for bids containing a minimum percentage  
20 of recycled content for the supply subject to the bid.

21 CHAPTER 3

22 PROCUREMENT ORGANIZATION

23 Subchapter

24 A. Organization of Public Procurement

25 B. Procurement Policy

26 C. Powers and Duties of Department

27 D. Powers and Duties of the Board of

28 Commissioners of Public Grounds and Buildings

29 and the Office of the Budget

30 E. Coordination, Training and Education

1 SUBCHAPTER A

2 ORGANIZATION OF PUBLIC PROCUREMENT

3 Sec.

4 301. Procurement responsibility.

5 § 301. Procurement responsibility.

6 (a) General organization.--Formulation of procurement policy  
7 governing the procurement, management, control and disposal of  
8 supplies, services and construction for ~~Commonwealth~~ EXECUTIVE <—  
9 AND INDEPENDENT agencies shall be the responsibility of the  
10 department as provided for in Subchapter B (relating to  
11 procurement policy). The procurement and supervision of the  
12 procurement of supplies, services and construction for executive  
13 agencies and those independent agencies for which the department  
14 acts as purchasing agency shall be the responsibility of the  
15 department as provided for in Subchapter C (relating to powers  
16 and duties of department).

17 (b) Application to independent agencies.--Except as  
18 otherwise specifically provided by law and this section, ~~an~~ <—  
19 independent ~~agency~~ AGENCIES shall use the department as ~~its~~ <—  
20 THEIR purchasing agency for the procurement of supplies or <—  
21 construction. However, WHEN any independent agency ~~that~~ acts as <—  
22 its own purchasing agency IT shall use the procedures provided <—  
23 in this part for any procurement of supplies, SERVICES or <—  
24 construction.

25 (c) Exceptions FOR EXECUTIVE AND INDEPENDENT AGENCIES.--The <—  
26 following supplies, services and construction need not be  
27 procured through the department, NOR SHALL THE PROCUREMENT <—  
28 POLICY BE ESTABLISHED BY THE DEPARTMENT, but shall nevertheless  
29 be procured by the appropriate purchasing agency, subject to the  
30 requirements of this part:

1 (1) Bridge, highway, dam, airport, EXCEPT VERTICAL <—  
2 CONSTRUCTION, railroad or other heavy or specialized  
3 construction INCLUDING: <—

4 (I) THE CONSTRUCTION OF FACILITIES AND IMPROVEMENTS  
5 BY THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
6 IN STATE PARKS AND STATE FORESTS.

7 (II) CONSTRUCTION ACTIVITIES, EXCLUDING BUILDINGS,  
8 SOLELY WITHIN THE EXPERTISE OF THE DEPARTMENT OF  
9 ENVIRONMENTAL PROTECTION, INCLUDING, BUT NOT LIMITED TO,  
10 MINE RECLAMATION, OIL AND GAS WELL PLUGGING, WASTE SITE  
11 REMEDIATION, FLOOD CONTROL AND STREAM REHABILITATION.

12 (2) Works of art ~~for museum and public display~~, HISTORIC <—  
13 OBJECTS AND DOCUMENTS FOR ACQUISITION AND PUBLIC EXHIBITION.

14 (3) Published books, maps, periodicals and technical  
15 pamphlets.

16 ~~(4) Architect and engineer services as defined in <—~~  
17 ~~section 901 (relating to definitions).~~

18 ~~(5)~~ (4) Perishable food stuffs. <—

19 (D) APPLICATION TO INSTRUMENTALITIES.--INSTRUMENTALITIES MAY <—  
20 FORMULATE THEIR OWN PROCUREMENT POLICY GOVERNING THE  
21 PROCUREMENT, MANAGEMENT, CONTROL AND DISPOSAL OF SUPPLIES,  
22 SERVICES AND CONSTRUCTION AND MAY ACT AS THEIR OWN PURCHASING  
23 AGENCY FOR THE PROCUREMENT OF SUPPLIES, SERVICES AND  
24 CONSTRUCTION, BUT THEY ARE REQUIRED TO USE THE PROCEDURES  
25 PROVIDED IN THIS PART FOR SUCH PROCUREMENT.

26 SUBCHAPTER B  
27 PROCUREMENT POLICY

28 Sec.

29 311. Powers and duties.

30 312. Procurement regulations.

1 § 311. Powers and duties.

2 Except as otherwise provided in this part, the department may  
3 promulgate regulations governing the procurement, management,  
4 control and disposal of any and all supplies, services and  
5 construction to be procured by Commonwealth agencies. The  
6 department shall consider and decide matters of policy within  
7 the provisions of this part. The department may audit and  
8 monitor the implementation of its regulations and the  
9 requirements of this part.

10 § 312. Procurement regulations.

11 Regulations shall be promulgated by the department as  
12 provided in 45 Pa.C.S. Part II (relating to publication and  
13 effectiveness of Commonwealth documents) AND BY THE APPROPRIATE <—  
14 PURCHASING AGENCIES FOR THOSE MATTERS CONTAINED IN SECTION  
15 301(C) (RELATING TO PROCUREMENT RESPONSIBILITY). The department  
16 may not delegate its power to promulgate regulations. No  
17 regulation may change any commitment, right or obligation of any  
18 Commonwealth agency or of a contractor under a contract in  
19 existence on the effective date of the regulation.

20 SUBCHAPTER C

21 POWERS AND DUTIES OF DEPARTMENT

22 Sec.

23 321. Powers and duties.

24 322. Specific construction powers, duties and procedures.

25 § 321. Powers and duties.

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

28 (1) Procure or supervise the procurement of all  
29 supplies, services and construction needed by executive  
30 agencies and those independent agencies for which the

1 department acts as purchasing agency. Procurement authority  
2 may be delegated in writing ~~to Commonwealth agencies~~ by the ~~the~~ ←  
3 Secretary of General Services.

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

6 (3) Sell, trade or otherwise dispose of surplus supplies  
7 belonging to ~~Commonwealth~~ EXECUTIVE OR INDEPENDENT agencies. ←

8 (4) ~~Establish and maintain programs~~ OVERSEE PROGRAMS OF ←  
9 EXECUTIVE AND INDEPENDENT AGENCIES for the inspection,  
10 testing and acceptance of supplies and construction.

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

15 (6) ~~Establish and maintain~~ PARTICIPATE IN THE MANAGEMENT ←  
16 AND MAINTENANCE OF a contractor responsibility program in  
17 coordination with the Office of the Budget AND OTHER AGENCIES ←  
18 AS MAY BE DIRECTED BY THE GOVERNOR.

19 § 322. Specific construction powers, duties and procedures.

20 ~~Whenever the General Assembly has made an appropriation or~~ ←  
21 ~~authorized borrowing under Article XVI B of the act of April 9,~~  
22 ~~1929 (P.L.343, No.176), known as The Fiscal Code, in any budget~~  
23 ~~to the department or to any Commonwealth agency or any State-~~  
24 ~~supported institution for the construction of a capital~~  
25 ~~improvement or for the repair or alteration of a capital~~  
26 ~~improvement to be completed by the department to cost more than~~  
27 ~~the amount established by the department in section 514~~  
28 ~~(relating to small purchases) for small construction purchases,~~  
29 ~~the construction of that capital improvement shall be carried~~  
30 ~~out by the department unless the work is to be done by State~~

1 ~~employees or by inmates or patients of a State institution or~~  
2 ~~State institutions or unless the Commonwealth agency or State-~~  
3 ~~supported institution to which the General Assembly has~~  
4 ~~appropriated money for the foregoing purposes is, by law or by~~  
5 ~~the act making the appropriation, authorized to erect, alter or~~  
6 ~~enlarge buildings independently of the department.~~

7 ~~(1) (i) If the appropriation for a maintenance project~~  
8 ~~is to a Commonwealth agency or State supported~~  
9 ~~institution other than the department, the Commonwealth~~  
10 ~~agency or State supported institution shall notify the~~  
11 ~~department to have plans and specifications for the~~  
12 ~~project prepared.~~

13 ~~(ii) Upon enactment of appropriations for capital~~  
14 ~~projects, all Commonwealth agencies and State supported~~  
15 ~~institutions shall, with the approval of the Governor,~~  
16 ~~notify the department to have plans and specifications~~  
17 ~~for the projects prepared.~~

18 THE FOLLOWING PROCEDURE SHALL APPLY TO CONSTRUCTION TO BE <—  
19 COMPLETED BY THE DEPARTMENT WHICH COSTS MORE THAN THE AMOUNT  
20 ESTABLISHED BY THE DEPARTMENT UNDER SECTION 514 (RELATING TO  
21 SMALL PROCUREMENTS) FOR CONSTRUCTION PROCUREMENT, UNLESS THE  
22 WORK IS TO BE DONE BY COMMONWEALTH AGENCY EMPLOYEES OR BY  
23 INMATES OR PATIENTS OF A COMMONWEALTH AGENCY INSTITUTION:

24 (1) THE COMMONWEALTH AGENCY OR STATE-RELATED INSTITUTION  
25 SHALL NOTIFY THE DEPARTMENT TO HAVE PLANS AND SPECIFICATIONS  
26 FOR THE PROJECT.

27 (2) Promptly after the notice, in such cases, or  
28 promptly after any appropriation made to it becomes  
29 available, the department shall, if necessary, select an  
30 architect and/or an engineer, in accordance with the

1 selection procedures of section 905 (relating to procurement  
2 of design professional services) to design the work and  
3 prepare the specifications therefor. THE DEPARTMENT MAY, AS ←  
4 AN ALTERNATIVE, ENTER INTO A DESIGN/BUILD CONTRACT.

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

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

10 (ii) That the plans and specifications must meet  
11 with the approval of the Commonwealth agency or ~~State~~ ←  
12 ~~supported~~ STATE-RELATED institution for which the ←  
13 building is being erected, altered or enlarged and, in  
14 the case of an administrative board or commission of the  
15 Commonwealth agency with which the board or commission is  
16 respectively connected, to the extent of the type and  
17 general character of the building, design of the floor  
18 layouts, medical equipment or other equipment of a nature  
19 peculiar to the building for which the plans and  
20 specifications are being prepared.

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

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

30 The architect or engineer in preparing plans and

1 specifications shall consult with the ~~Commonwealth agency of~~ <—  
2 ~~State supported institution for which the building is to be~~  
3 ~~erected, altered or enlarged, but~~ DEPARTMENT AND the <—  
4 department shall insist upon the prompt completion of the  
5 plans and specifications, within the time prescribed in the  
6 architect's or engineer's contracts unless it shall  
7 specifically agree in writing to an extension thereof.

8 ~~(4) Every Commonwealth agency or State supported~~ <—  
9 ~~institution whose approval of plans and specifications is~~  
10 ~~required under this section shall, within 30 days after~~  
11 ~~submission thereof by the architect or engineer, approve or~~  
12 ~~disapprove all sketches, drawings, specifications and other~~  
13 ~~documents, and shall inform the architect or engineer of~~  
14 ~~decisions in a reasonable time so as not to delay him in his~~  
15 ~~work.~~

16 ~~(5)~~ (4) The enforcement of all contracts provided for by <—  
17 this section shall be under the control and supervision of  
18 the department. The department shall have the authority to  
19 engage the services of a construction management firm to  
20 coordinate the work of the total project. All questions or  
21 disputes arising between the department and any contractor  
22 with respect to any matter pertaining to a contract entered  
23 into with the department or any part thereto or any breach of  
24 contract arising thereunder shall be submitted to final and  
25 binding arbitration as provided by the terms of the contract  
26 which finding shall be final and not subject to further  
27 appeal or, if not so provided, shall be referred to the Board  
28 of Claims as set forth in the act of May 20, 1937 (P.L.728,  
29 No.193), referred to as the Board of Claims Act, whose  
30 decision and award shall be final and binding and conclusive

1 upon all parties thereto, except that either party shall have  
2 the right to appeal from the decision and award as provided  
3 by law.

4 ~~(6)~~ (5) The department shall examine all bills on ←  
5 account of the contracts entered into under the provisions of  
6 this section, and, if they are correct, the department shall  
7 certify that the materials have been furnished, or that the  
8 work or labor has been performed in a workmanlike manner, and  
9 in accordance with the contract, approve the bills and issue  
10 its requisition therefor, or forward its certificate to the  
11 proper Commonwealth agency or ~~State-supported~~ STATE-RELATED ←  
12 institution, as the case may be. Progress payments and final  
13 payments shall not estop the department from pursuing its  
14 lawful remedies for defects in workmanship or materials or  
15 both and other damages.

16 ~~(7)~~ (6) THE DEPARTMENT MAY AWARD CONSTRUCTION CONTRACTS ←  
17 FOR ALL THE WORK OR SEPARATELY FOR PARTS OF THE WORK OR BOTH  
18 ON ALL PROJECTS UNDER \$25,000 BASE CONSTRUCTION COST. ALL  
19 PROJECTS EQUAL TO OR EXCEEDING \$25,000 SHALL BE SUBJECT TO  
20 THE ACT OF MAY 1, 1913 (P.L.155, NO.104), ENTITLED "AN ACT  
21 REGULATING THE LETTING OF CERTAIN CONTRACTS FOR THE ERECTION,  
22 CONSTRUCTION, AND ALTERATION OF PUBLIC BUILDINGS." Whenever  
23 the department enters into a single contract for a project,  
24 in the absence of good and sufficient reasons, the contractor  
25 shall pay each subcontractor within 15 days of receipt of  
26 payment from the department, an amount equal to the  
27 percentage of completion allowed to the contractor on the  
28 account of the subcontractor's work. The contractor shall  
29 also require the subcontractor to make similar payments to  
30 his subcontractors.



1 review, it is approved by the Board of Commissioners of Public  
2 Grounds and Buildings as provided in section 515 (relating to  
3 sole source procurement).

4 § 327. Office of the Budget.

5 (a) Encumbrance of funds.--~~The~~ FOR EXECUTIVE AGENCIES AND <—  
6 INDEPENDENT AGENCIES AND INSTRUMENTALITIES WHERE THE DEPARTMENT  
7 IS USED AS THE PURCHASING AGENCY, Office of the Budget shall  
8 encumber sufficient funds for the payment of all invoices for  
9 the procurement of supplies, services and construction.

10 (b) Contractor responsibility program.--The Office of the  
11 Budget shall ~~assist the department in the establishment~~ <—  
12 PARTICIPATE IN THE MANAGEMENT and maintenance of a contractor <—  
13 responsibility program IN COORDINATION WITH THE DEPARTMENT AND <—  
14 OTHER AGENCIES AS MAY BE DIRECTED BY THE GOVERNOR.

15 (c) Contracts for services.--Except for contracts awarded  
16 pursuant to section 514 (relating to small ~~purchases~~ <—  
17 PROCUREMENTS), the Office of the Budget shall review and approve <—  
18 all contracts for services FOR EXECUTIVE AGENCIES AND <—  
19 INDEPENDENT AGENCIES AND INSTRUMENTALITIES WHERE THE DEPARTMENT  
20 ACTS AS PURCHASING AGENCY for:

- 21 (1) Fiscal responsibility and budgetary appropriateness.
- 22 (2) Availability of funds.

23 (d) Agency comptrollers.--~~An agency comptroller may~~ A <—  
24 COMMONWEALTH AGENCY COMPTROLLER MAY, at his option, serve as a <—  
25 nonvoting member of an evaluation committee for requests for  
26 proposals or a similar contract bidding or selection committee  
27 for the acquisition of services.

28 SUBCHAPTER E

29 COORDINATION, TRAINING AND EDUCATION

30 Sec.

1 331. Collection of data concerning public procurement.

2 332. Advisory groups.

3 § 331. Collection of data concerning public procurement.

4 All ~~using~~ EXECUTIVE AND INDEPENDENT agencies shall furnish <—  
5 such reports as the department may require concerning usage,  
6 needs and stock on hand, and the department may prescribe the  
7 format and forms to be used by the ~~using~~ agencies in <—  
8 requisitioning, ordering and reporting supplies, services and  
9 construction.

10 § 332. Advisory groups.

11 (a) Procurement Advisory Council.--The department may  
12 establish a Procurement Advisory Council and allocate funds for  
13 it that may be available. If created, the council, upon adequate  
14 public notice, shall meet at least once a year for the  
15 discussion of problems and recommendations for improvement of  
16 the procurement process. When requested by the department, the  
17 council may conduct studies, research and analyses and make  
18 reports and recommendations with respect to subjects or matters  
19 within the jurisdiction of the department. The council may  
20 consist of any qualified persons the department deems ~~desirable~~ <—  
21 APPROPRIATE. <—

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

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

30

CHAPTER 5

1 SOURCE SELECTION AND CONTRACT FORMATION

2 Subchapter

3 A. Definitions

4 B. Methods of Source Selection

5 C. Cancellation of Invitations for Bids or Requests for  
6 Proposals

7 D. Qualifications and Duties

8 E. Types of Contracts

9 F. Inspection of Plant and Audit of Records

10 G. Determinations and Reports

11 SUBCHAPTER A

12 DEFINITIONS

13 Sec.

14 501. Definitions.

15 § 501. Definitions.

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

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

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

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

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

29 "Invitation for bids." All documents, ~~whether~~ INCLUDING  
30 THOSE EITHER attached or incorporated by reference, used for

<—

1 soliciting bids.

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

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

9 "Request for proposals." All documents, ~~whether~~ INCLUDING ←  
10 THOSE EITHER attached or incorporated by reference, used for  
11 soliciting proposals.

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

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

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

27 SUBCHAPTER B  
28 METHODS OF SOURCE SELECTION

29 Sec.

30 511. Methods of source selection.

- 1 512. Competitive sealed bidding.
- 2 513. Competitive sealed proposals.
- 3 514. Small ~~purchases~~ PROCUREMENTS. <—
- 4 515. Sole source procurement.
- 5 516. Emergency procurement.
- 6 517. Multiple awards.
- 7 518. Competitive selection procedures for certain services.
- 8 519. Selection procedure for insurance and NOTARY bonds. <—
- 9 520. ~~Supplies and services furnished by~~ MANUFACTURED BY, <—
- 10 AND SERVICES PERFORMED BY, persons with disabilities.

11 § 511. Methods of source selection.

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

- 16 Section 513 (relating to competitive sealed proposals).
- 17 Section 514 (relating to small ~~purchases~~ PROCUREMENTS). <—
- 18 Section 515 (relating to sole source procurement).
- 19 Section 516 (relating to emergency procurement).
- 20 Section 517 (relating to multiple awards).
- 21 Section 518 (relating to competitive selection procedures  
 22 for certain services).
- 23 Section 519 (relating to selection procedure for  
 24 insurance and NOTARY bonds). <—
- 25 Section 520 (relating to ~~supplies and services furnished~~ <—  
 26 ~~by~~ MANUFACTURED BY, AND SERVICES PERFORMED BY, persons with <—  
 27 disabilities).
- 28 Section 905 (relating to procurement of design  
 29 professional services).

30 § 512. Competitive sealed bidding.

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

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

8 (c) Public notice.--Adequate public notice of the invitation  
9 for bids shall be given a reasonable time prior to the date set  
10 for the opening of bids. The notice may include ELECTRONIC ←  
11 PUBLICATION WHICH IS ACCESSIBLE TO THE PUBLIC AND publication in  
12 a newspaper of general circulation a reasonable time before bid  
13 opening. The notice may also include advertisement as provided  
14 for in 45 Pa.C.S. § 306 (relating to use of trade publications).

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

21 (e) Bid acceptance and evaluation.--Bids shall be  
22 unconditionally accepted without alteration or modification  
23 except as authorized in this part or in the invitation for bids.  
24 Bids shall be evaluated based on the requirements set forth in  
25 the invitation for bids, which may include criteria to determine  
26 acceptability such as inspection, testing, quality, workmanship,  
27 delivery and suitability for a particular purpose. Those  
28 criteria that will affect the bid price and be considered in  
29 evaluation for award shall be objectively measurable, such as  
30 discounts, transportation costs and total or life cycle costs.

1 The invitation for bids shall set forth the evaluation criteria  
2 to be used. No criteria may be used in bid evaluation that are  
3 not set forth in the invitation for bids.

4 (f) Modification or withdrawal of bids.--

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

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

26 (3) The contracting officer shall not permit a  
27 withdrawal of a bid if the withdrawal of the bid would result  
28 in the awarding of the contract on another bid of the same  
29 bidder, its partner or a corporation or business venture  
30 owned by or in which the bidder has a substantial interest.

1 No bidder who is permitted to withdraw a bid shall supply any  
2 material or labor to or perform any subcontract or other work  
3 agreement for any person to whom a contract or subcontract is  
4 awarded in the performance of the contract for which the  
5 withdrawn bid was submitted, without the written approval of  
6 the contracting officer.

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 criteria  
10 set forth in the invitation for bids. ~~Thirty day extensions~~ OR <—  
11 ALL BIDS SHALL BE REJECTED EXCEPT AS OTHERWISE PROVIDED IN THIS  
12 SECTION. EXTENSIONS of the date for the award may be made by  
13 mutual 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 and responsive~~ <—  
18 ~~bidders~~ BIDDERS THEN 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, to be  
23 followed by an invitation for bids limited to those bidders  
24 whose offers have been qualified under the criteria set forth in  
25 the first solicitation.

26 § 513. Competitive sealed proposals.

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

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

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

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

12 (e) Evaluation.--The relative importance of the evaluation  
13 factors shall be fixed prior to opening the proposals. A  
14 Commonwealth agency is required to invite its comptroller to  
15 participate in the evaluation as a nonvoting member of any  
16 evaluation committee.

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

29 (g) Award of contract.--The responsible offeror whose  
30 proposal is determined in writing to be the most advantageous to

1 the purchasing agency, taking into consideration price and all  
2 evaluation factors, shall be selected for contract negotiation.

3 (h) Contract negotiation.--After selection, the purchasing  
4 agency shall proceed to negotiate a contract with the selected  
5 offeror.

6 § 514. Small ~~purchases~~ PROCUREMENTS. <—

7 If the procurement is not the subject of a requirements  
8 contract between the purchasing agency and a contractor, the  
9 head of the purchasing agency may authorize in writing ~~purchases~~ <—  
10 PROCUREMENTS without formal bid procedures in the field, not <—  
11 exceeding the amount established by the purchasing agency. The  
12 department may authorize procurement on a no-bid basis for  
13 procurements which do not exceed the amount established by the  
14 department for small, no-bid ~~purchases~~ PROCUREMENTS. Procurement <—  
15 requirements shall not be artificially divided so as to  
16 constitute a small ~~purchase~~ PROCUREMENT under this section. <—  
17 Small ~~purchases~~ PROCUREMENTS shall be made in accordance with <—  
18 the requirements of the written authorization and this section.  
19 Records of all small ~~purchases~~ PROCUREMENTS shall be transmitted <—  
20 to the purchasing agency.

21 § 515. Sole source procurement.

22 A contract may be awarded for a supply, service or  
23 construction item without competition when the contracting  
24 officer determines in writing that one of the following  
25 conditions exists:

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

28 (2) A Federal or State statute or regulation exempts the  
29 supply, service or construction from the competitive <—  
30 procedure.

1 (3) The total cost of the supply, service or  
2 construction is less than the amount established by the  
3 department for small, no-bid ~~purchases~~ PROCUREMENTS under <—  
4 section 514 (relating to small ~~purchases~~ PROCUREMENTS). <—

5 (4) It is clearly not feasible to award the contract on  
6 a competitive basis.

7 (5) The services are to be provided by attorneys OR <—  
8 LITIGATION CONSULTANTS selected by the Office of General  
9 Counsel.

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

11 (7) The services involve the repair of equipment and  
12 they are to be performed by the manufacturer of the equipment  
13 or by the manufacturer's authorized dealer, provided the  
14 contracting officer determines that bidding is not  
15 appropriate under the circumstances. THE CONTRACT IS FOR <—  
16 INVESTMENT ADVISORS OR MANAGERS SELECTED BY THE PUBLIC SCHOOL  
17 EMPLOYEES' RETIREMENT SYSTEM, THE STATE EMPLOYEES' RETIREMENT  
18 SYSTEM OR AN INSTRUMENTALITY.

19 (8) The contract is for financial or investment experts  
20 selected by the Secretary of the Budget.

21 ~~(9) It is in the best of the Commonwealth. This written <—~~  
22 ~~determination shall be included in the contract file. With~~  
23 ~~the exception of paragraph (3),~~

24 (9) IT IS IN THE BEST INTEREST OF THE COMMONWEALTH. <—  
25 THE WRITTEN DETERMINATION AUTHORIZING SOLE SOURCE PROCUREMENT  
26 SHALL BE INCLUDED IN THE CONTRACT FILE. WITH THE EXCEPTION OF  
27 SMALL PROCUREMENTS UNDER SECTION 514 AND EMERGENCY PROCUREMENTS  
28 UNDER SECTION 516 (RELATING TO EMERGENCY PROCUREMENT), if the  
29 sole source procurement is for a supply FOR WHICH THE DEPARTMENT <—  
30 ACTS AS PURCHASING AGENCY, it must be approved by the Board of

1 Commissioners of Public Grounds and Buildings prior to the award  
2 of a contract.

3 § 516. Emergency procurement.

4 The head of a purchasing agency may make or authorize others  
5 to make an emergency procurement when there exists a threat to  
6 public health, welfare or safety or ~~the urgency of the need~~ <—  
7 CIRCUMSTANCES OUTSIDE THE CONTROL OF THE AGENCY CREATES AN <—  
8 URGENCY OF NEED WHICH does not permit the delay involved in  
9 using more formal competitive methods. Whenever practical, in  
10 the case of a procurement of a supply, at least two bids shall  
11 be solicited. A written determination of the basis for the  
12 emergency and for the selection of the particular contractor  
13 shall be included in the contract file.

14 § 517. Multiple awards.

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

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

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

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

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

30 (5) The agency should select the contractor to furnish

1 the supply, service or construction based upon best value or  
2 return on investment.

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

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

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

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

16 (1) Awards shall be made to the lowest responsible and  
17 responsive bidder or offeror for each designated  
18 manufacturer.

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

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

27 § 518. Competitive selection procedures for certain services.

28 (a) Conditions for use.--The services of accountants,  
29 clergy, physicians, lawyers, dentists and other personal  
30 services which are not performed by other ~~salaried~~ COMMONWEALTH <—

1 employees shall be procured in accordance with this section  
2 except as authorized under section 514 (relating to small  
3 ~~purchases~~ PROCUREMENTS), 515 (relating to sole source ←  
4 procurement) or 516 (relating to emergency procurement).

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

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

17 (d) Discussions.--The contracting officer may conduct  
18 discussions with any offeror who has submitted a proposal to  
19 determine the offeror's qualifications for further  
20 consideration. Discussions shall not disclose any information  
21 derived from proposals submitted by other offerors.

22 (e) Award.--Award shall be made to the offeror determined in  
23 writing by the contracting officer to be best qualified based on  
24 the evaluation factors set forth in the request for proposals.  
25 Fair and reasonable compensation shall be determined through  
26 negotiation. If compensation cannot be agreed upon with the best  
27 qualified offeror, then negotiations will be formally terminated  
28 with the selected offeror. If proposals were submitted by one or  
29 more other offerors determined to be qualified, negotiations may  
30 be conducted with the other offeror or offerors in the order of

1 their respective qualification ranking. The contract may be  
2 awarded to the offeror then ranked as best qualified if the  
3 amount of compensation is determined to be fair and reasonable.

4 § 519. Selection procedure for insurance and NOTARY bonds. <—

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

9 (b) Statement of qualifications.--Insurance and bond  
10 carriers may submit statements of qualifications and expressions  
11 of interest in providing insurance or NOTARY bonds. The <—  
12 department may specify a uniform format for statements of  
13 qualifications.

14 (c) Request for proposals.--Adequate notice of the need for  
15 insurance or ~~bond coverage shall be given~~ NOTARY BOND COVERAGE <—  
16 SHALL BE GIVEN BY THE PURCHASING AGENCY through a request for  
17 proposals. The request for proposals shall describe the type of  
18 insurance or bond coverage required and list the type of  
19 information and data required of each offeror.

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

22 (e) Discussions with responsible offerors and revision to  
23 proposals.--Discussions and negotiations may be conducted with  
24 responsible offerors who submit proposals determined to be  
25 reasonably susceptible of being selected for award. Offerors  
26 shall be accorded fair and equal treatment with respect to any  
27 opportunity for discussion, negotiation and revision of  
28 proposals. Revisions may be permitted after submissions and  
29 prior to award for the purpose of obtaining best and final  
30 offers.

1 (f) Award.--Award shall be made to the offeror whose  
2 proposal is determined in writing by the department to be the  
3 most advantageous to the Commonwealth based on criteria  
4 determined by the department, including the coverage offered and  
5 the cost of the premium.

6 ~~§ 520. Supplies and services furnished by persons with~~ <—  
7 ~~disabilities.~~

8 ~~(a) General rule. Supplies and services furnished by~~  
9 ~~persons with disabilities shall be procured by a purchasing~~  
10 ~~agency in accordance with this section.~~

11 ~~(b) Fair market price. The department shall determine the~~  
12 ~~fair market price of any supply or service furnished by persons~~  
13 ~~with disabilities and offered for sale to any Commonwealth~~  
14 ~~agency by an agency for persons with disabilities. The~~  
15 ~~department shall also revise the prices in accordance with~~  
16 ~~changing market conditions and promulgate regulations regarding~~  
17 ~~specifications, time of delivery and other relevant matters.~~

18 ~~(c) Distribution. At the request of the department, the~~  
19 ~~Department of Public Welfare or a nonprofit agency with the~~  
20 ~~approval of the Department of Public Welfare shall facilitate~~  
21 ~~the distribution of orders for supplies and services among~~  
22 ~~agencies for persons with disabilities.~~

23 ~~(d) Procurement of supplies and services furnished by~~  
24 ~~persons with disabilities. Except as provided in subsection~~  
25 ~~(c), all supplies or services furnished by persons with~~  
26 ~~disabilities shall be procured in accordance with applicable~~  
27 ~~specifications of the department or other Commonwealth agencies~~  
28 ~~from any agency for persons with disabilities whenever the~~  
29 ~~supplies and services are available at a price determined to be~~  
30 ~~the fair market price. The head of a purchasing agency shall~~

1 ~~annually discuss its needs for supplies or services with~~  
2 ~~agencies for persons with disabilities.~~

3 ~~(e) Procurement from Commonwealth agency. If any supply or~~  
4 ~~service furnished by persons with disabilities and offered for~~  
5 ~~sale is available for procurement from any Commonwealth agency~~  
6 ~~and this part or any other statute requires the procurement of~~  
7 ~~the supply or service from the Commonwealth agency, then the~~  
8 ~~procurement of the supply or service shall be made in accordance~~  
9 ~~with the other provisions.~~

10 ~~(f) Definitions. As used in this section, the following~~  
11 ~~words and phrases shall have the meanings given to them in this~~  
12 ~~subsection:~~

13 ~~"Agency for persons with disabilities." Any charitable~~  
14 ~~nonprofit agency incorporated under the laws of this~~  
15 ~~Commonwealth and approved by the Department of General Services~~  
16 ~~through which persons with disabilities manufacture supplies and~~  
17 ~~provide services in this Commonwealth.~~

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

22 ~~"Person with a disability." A person who is visually~~  
23 ~~impaired, mentally retarded or physically disabled.~~

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

29 ~~"Supply or service furnished by persons with disabilities."~~  
30 ~~Any supply manufactured or service rendered in this Commonwealth~~



1 ACCORDANCE WITH APPLICABLE SPECIFICATIONS OF THE DEPARTMENT OR  
2 OTHER COMMONWEALTH AGENCIES FROM ANY AGENCY FOR PERSONS WITH  
3 DISABILITIES WHENEVER THE SUPPLIES AND SERVICES ARE AVAILABLE AT  
4 A PRICE DETERMINED BY THE DEPARTMENT TO BE THE FAIR MARKET  
5 PRICE. THE HEAD OF A PURCHASING AGENCY SHALL ANNUALLY DISCUSS  
6 ITS NEEDS FOR SUPPLIES OR SERVICES WITH THE AGENCY FOR PERSONS  
7 WITH DISABILITIES.

8 (E) PROCUREMENT FROM COMMONWEALTH AGENCY.--IF ANY SUPPLY  
9 MANUFACTURED BY, OR ANY SERVICE PERFORMED BY, PERSONS WITH  
10 DISABILITIES AND OFFERED FOR SALE IS AVAILABLE FOR PROCUREMENT  
11 FROM ANY COMMONWEALTH AGENCY AND THIS PART OR ANY OTHER STATUTE  
12 REQUIRES THE PROCUREMENT OF THE SUPPLY OR SERVICE FROM THE  
13 COMMONWEALTH AGENCY, THEN THE PROCUREMENT OF THE SUPPLY OR  
14 SERVICE SHALL BE MADE IN ACCORDANCE WITH THE OTHER PROVISIONS.

15 (F) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
16 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
17 SUBSECTION:

18 "AGENCY FOR PERSONS WITH DISABILITIES." ANY CHARITABLE,  
19 NONPROFIT AGENCY INCORPORATED UNDER THE LAWS OF THIS  
20 COMMONWEALTH AND APPROVED BY THE DEPARTMENT THROUGH WHICH  
21 PERSONS WITH DISABILITIES MANUFACTURE SUPPLIES OR PERFORM  
22 SERVICES IN THIS COMMONWEALTH.

23 "MENTALLY RETARDED." SUBAVERAGE GENERAL INTELLECTUAL  
24 FUNCTIONING WHICH ORIGINATES DURING THE DEVELOPMENTAL PERIOD AND  
25 IS ASSOCIATED WITH THE IMPAIRMENT OF MATURATION, LEARNING OR  
26 SOCIAL ADJUSTMENT.

27 "PERSONS WITH A DISABILITY." A PERSON WHO IS VISUALLY  
28 IMPAIRED, MENTALLY RETARDED OR PHYSICALLY DISABLED.

29 "PHYSICALLY DISABLED." A LIMITATION OF MOST ACTIVITIES AND  
30 FUNCTIONING BY VIRTUE OF A SEVERE IMPAIRMENT OF THE VARIOUS

1 BODILY SYSTEMS WHICH CANNOT BE ELIMINATED, MODIFIED OR  
2 SUBSTANTIALLY REDUCED BY THE USUAL REHABILITATION SERVICES AND  
3 WHICH PRECLUDES COMPETITIVE EMPLOYMENT.

4 "SUPPLY MANUFACTURED BY, OR SERVICE PERFORMED BY, PERSON WITH  
5 DISABILITIES." AT LEAST 75% OF THE PERSONNEL EITHER ENGAGED IN  
6 THE DIRECT LABOR OF MANUFACTURING OF A PRODUCT OR ENGAGED IN THE  
7 DIRECT LABOR IN PERFORMING A SERVICE IN THIS COMMONWEALTH MUST  
8 BE VISUALLY IMPAIRED, MENTALLY RETARDED OR PHYSICALLY DISABLED.  
9 IN ADDITION, AT LEAST 75% OF THE AMOUNT PAID BY THE COMMONWEALTH  
10 AGENCY FOR THE PRODUCT OR THE SERVICE SHALL BE REMITTED TO THE  
11 AGENCY FOR PERSONS WITH DISABILITIES TO COVER PAYMENT OF WAGES  
12 AND SALARIES TO PERSONS WITH DISABILITIES AND TO COVER OTHER  
13 ACTUAL MANUFACTURING COSTS INCURRED BY THE AGENCY FOR PERSONS  
14 WITH DISABILITIES IN MANUFACTURING OF A PRODUCT.

15 "VISUALLY IMPAIRED." A CONDITION IN WHICH CENTRAL VISUAL  
16 ACUITY DOES NOT EXCEED 20/200 IN THE BETTER EYE WITH CORRECTING  
17 LENSES OR IN WHICH THE WIDEST DIAMETER OF THE VISUAL FIELD  
18 SUBTENDS AN ANGLE NO GREATER THAN 20 DEGREES.

19 SUBCHAPTER C

20 CANCELLATION OF INVITATIONS FOR BIDS OR

21 REQUESTS FOR PROPOSALS

22 Sec.

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

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

27 An invitation for bids, a request for proposals or other  
28 solicitation may be canceled or any or all bids or proposals may  
29 be rejected ~~in whole or in part as may be specified in the~~ ←  
30 ~~solicitation~~ when it is in the best interests of the

1 Commonwealth. BIDS MAY BE REJECTED IN PART WHEN SPECIFIED IN THE <—  
2 SOLICITATION. The reasons for the cancellation or rejection  
3 shall be made part of the contract file.

4 SUBCHAPTER D  
5 QUALIFICATIONS AND DUTIES

6 Sec.

7 531. Debarment or suspension.

8 532. Prequalification of bidders and offerors.

9 ~~533. Responsibility of bidders and offerors.~~ <—

10 ~~534. Security and performance bonds.~~

11 ~~535. Cost or pricing data.~~

12 533. SECURITY AND PERFORMANCE BONDS. <—

13 534. COST OR PRICING DATA.

14 § 531. Debarment or suspension.

15 (a) Authority.--After reasonable notice to the person  
16 involved and reasonable opportunity for that person to be heard,  
17 the head of a purchasing agency, after consultation with the  
18 head of the using agency, shall have authority to debar a person  
19 for cause from consideration for award of contracts for a period  
20 of not more than three years or to suspend a person from  
21 consideration for award of contracts if there is probable cause  
22 for debarment for a period of not more than three months.

23 ~~(b) Causes for debarment or suspension. The causes for~~ <—  
24 ~~debarment or suspension include:~~

25 ~~(1) Conviction, including a plea of guilty or nolo~~  
26 ~~contendere, for commission of a criminal offense as an~~  
27 ~~incident to obtaining or attempting to obtain a public or~~  
28 ~~private contract or subcontract or in the performance of the~~  
29 ~~contract or subcontract.~~

30 ~~(2) Conviction, including a plea of guilty or nolo~~

1 ~~contendere, under Federal or State statutes of embezzlement,~~  
2 ~~theft, forgery, bribery, falsification or destruction of~~  
3 ~~records, receiving stolen property or any other offense~~  
4 ~~indicating a lack of business integrity or business honesty~~  
5 ~~which currently, seriously and directly affects~~  
6 ~~responsibility as a contractor.~~

7 ~~(3) Conviction, including a plea of guilty or nolo~~  
8 ~~contendere, under Federal or State antitrust statutes arising~~  
9 ~~out of the submission of bids or proposals.~~

10 ~~(4) Any of the following violations of contract~~  
11 ~~provisions of a character which is regarded by the head of a~~  
12 ~~purchasing agency to be so serious as to justify debarment~~  
13 ~~action:~~

14 ~~(i) Deliberate failure without good cause to perform~~  
15 ~~in accordance with the specifications or within the time~~  
16 ~~limit provided in the contract.~~

17 ~~(ii) A recent record of failure to perform or of~~  
18 ~~unsatisfactory performance in accordance with the terms~~  
19 ~~of one or more contracts.~~

20 ~~Failure to perform or unsatisfactory performance caused by~~  
21 ~~acts beyond the control of the contractor shall not be~~  
22 ~~considered to be a basis for debarment.~~

23 ~~(5) Any other cause the head of a purchasing agency~~  
24 ~~determines to be so serious and compelling as to affect~~  
25 ~~responsibility as a contractor, including debarment by~~  
26 ~~another governmental entity for any cause listed in the~~  
27 ~~contractor responsibility program established under~~  
28 ~~Subchapters C (relating to powers and duties of department)~~  
29 ~~and D (relating to powers and duties of the Board of~~  
30 ~~Commissioners of Public Grounds and Buildings and the Office~~

1 ~~of the Budget) of Chapter 3.~~

2 ~~(6) Violations of the ethical standards set forth in~~  
3 ~~Chapter 23 (relating to ethics in public contracting) or the~~  
4 ~~act of July 19, 1957 (P.L.1017, No.451), known as the State~~  
5 ~~Adverse Interest Act.~~

6 (B) CAUSES FOR DEBARMENT OR SUSPENSION.--THE CAUSES FOR ←  
7 DEBARMENT OR SUSPENSION INCLUDE:

8 (1) COMMISSION OF EMBEZZLEMENT, THEFT, FORGERY, BRIBERY,  
9 FALSIFICATION OR DESTRUCTION OF RECORDS, MAKING FALSE  
10 STATEMENTS OR RECEIVING STOLEN PROPERTY.

11 (2) COMMISSION OF FRAUD OR A CRIMINAL OFFENSE OR OTHER  
12 IMPROPER CONDUCT OR KNOWLEDGE OF, APPROVAL OF, OR  
13 ACQUIESCENCE IN SUCH ACTIVITIES BY A CONTRACTOR OR ANY  
14 AFFILIATE, OFFICER, EMPLOYEE OR OTHER INDIVIDUAL OR ENTITY  
15 ASSOCIATED WITH:

16 (I) OBTAINING;

17 (II) ATTEMPTING TO OBTAIN; OR

18 (III) PERFORMING A PUBLIC CONTRACT OR SUBCONTRACT.

19 THE CONTRACTOR'S ACCEPTANCE OF THE BENEFITS DERIVED FROM THE  
20 CONDUCT SHALL BE DEEMED EVIDENCE OF SUCH KNOWLEDGE, APPROVAL  
21 OR ACQUIESCENCE.

22 (3) VIOLATION OF FEDERAL OR STATE ANTITRUST STATUTES.

23 (4) VIOLATION OF ANY FEDERAL OR STATE LAW REGULATING  
24 CAMPAIGN CONTRIBUTIONS.

25 (5) VIOLATIONS OF ANY FEDERAL OR STATE ENVIRONMENTAL  
26 LAW.

27 (6) VIOLATION OF ANY FEDERAL OR STATE LAW REGULATING  
28 HOURS OF LABOR, MINIMUM WAGE STANDARDS OR PREVAILING WAGE  
29 STANDARDS; DISCRIMINATION IN WAGES; OR CHILD LABOR  
30 VIOLATIONS.

1 (7) VIOLATION OF THE ACT OF JUNE 2, 1915 (P.L.736,  
2 NO.338), KNOWN AS THE WORKERS' COMPENSATION ACT.

3 (8) VIOLATION OF ANY FEDERAL OR STATE LAW PROHIBITING  
4 DISCRIMINATION IN EMPLOYMENT.

5 (9) DEBARMENT BY ANY AGENCY OR DEPARTMENT OF THE FEDERAL  
6 GOVERNMENT OR BY ANY OTHER STATE.

7 (10) THREE OR MORE OCCURRENCES WHERE A CONTRACTOR HAS  
8 BEEN DECLARED INELIGIBLE FOR A CONTRACT.

9 (11) UNSATISFACTORY PERFORMANCE, INCLUDING, BUT NOT  
10 LIMITED TO, ANY OF THE FOLLOWING:

11 (I) FAILURE TO COMPLY WITH TERMS OF A COMMONWEALTH  
12 AGENCY CONTRACT OR SUBCONTRACT, INCLUDING, BUT NOT  
13 LIMITED TO: WILLFUL FAILURE TO PERFORM IN ACCORDANCE WITH  
14 THE TERMS OF ONE OR MORE CONTRACTS, A HISTORY OF FAILURE  
15 TO PERFORM, OR UNSATISFACTORY PERFORMANCE OF ONE OR MORE  
16 CONTRACTS.

17 (II) OFFERING UNBALANCED BIDS.

18 (III) FAILURE TO COMPLETE THE WORK IN THE TIME FRAME  
19 SPECIFIED IN THE CONTRACT.

20 (IV) BEING DECLARED IN DEFAULT ON PRIOR WORK OR  
21 PROJECT.

22 (V) FAILURE TO SUBMIT DOCUMENTS, INFORMATION OR  
23 FORMS AS REQUIRED BY CONTRACT.

24 (VI) MAKING FALSE STATEMENTS OR FAILING TO PROVIDE  
25 INFORMATION OR OTHERWISE TO COOPERATE WITH THE  
26 CONTRACTING AGENCY, THE OFFICE OF STATE INSPECTOR GENERAL  
27 OR OTHER COMMONWEALTH AUTHORITIES.

28 (VII) DISCRIMINATION IN VIOLATION OF LAWS OR  
29 REGULATIONS IN THE CONDUCT OF BUSINESS AS A CONTRACTOR.

30 (12) ANY OTHER ACT OR OMISSION INDICATING A LACK OF

1 SKILL, ABILITY, CAPACITY, QUALITY CONTROL, BUSINESS INTEGRITY  
2 OR BUSINESS HONESTY THAT SERIOUSLY AND DIRECTLY AFFECT THE  
3 PRESENT RESPONSIBILITY OF A CONTRACTOR AS DETERMINED BY THE  
4 PURCHASING AGENCY.

5 (c) Decision.--~~The~~ AFTER THE CONTRACTOR HAS BEEN GIVEN ←  
6 NOTICE OF THE POTENTIAL DEBARMENT AND THE OPPORTUNITY TO BE  
7 HEARD, THE head of a purchasing agency shall issue a written  
8 decision to debar or suspend. The decision shall:

9 (1) State the reasons for the action taken.

10 (2) Inform the debarred or suspended person involved of  
11 the right to judicial review as provided in subsection (e).

12 (d) Notice of decision.--A copy of the decision under  
13 subsection (c) shall be delivered by registered mail to the  
14 debarred or suspended person and any other party intervening.

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

20 (F) EFFECT OF SUSPENSION/DEBARMENT.--SUSPENSION OR DEBARMENT ←  
21 OF A CONTRACTOR, VENDOR OR OTHER PERSON SHALL AUTOMATICALLY  
22 PROHIBIT ALL COMMONWEALTH AGENCIES FROM AWARDING ANY CONTRACT TO  
23 SUCH CONTRACTOR, VENDOR OR OTHER PERSON OR RENEWING OR EXTENDING  
24 ANY CONTRACT WITH SUCH CONTRACTOR, VENDOR OR OTHER PERSON,  
25 UNLESS THE CONTRACTING OFFICER DETERMINES THAT THERE ARE  
26 COMPELLING REASONS FOR SUCH AWARD, RENEWAL OR EXTENSION AND THE  
27 HEAD OF THE PURCHASING AGENCY APPROVES THE DETERMINATION.

28 § 532. Prequalification of bidders and offerors.

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

1 ~~Solicitation mailing lists of potential contractors shall~~ <—  
2 ~~include, but shall not be limited to, prequalified bidders and~~  
3 ~~offerors.~~

4 ~~§ 533. Responsibility of bidders and offerors.~~

5 ~~(a) Determination of nonresponsibility. A written~~  
6 ~~determination of nonresponsibility of a bidder or offeror shall~~  
7 ~~be made in accordance with the contractor responsibility program~~  
8 ~~established under section 327(b) (relating to Office of the~~  
9 ~~Budget). The unreasonable failure of a bidder or offeror to~~  
10 ~~promptly supply information in connection with an inquiry with~~  
11 ~~respect to responsibility may be grounds for a determination of~~  
12 ~~nonresponsibility with respect to that bidder or offeror.~~

13 ~~(b) Right of nondisclosure. Information furnished by a~~  
14 ~~bidder or offeror under this section shall not be disclosed~~  
15 ~~outside of the purchasing agency without prior written consent~~  
16 ~~by the bidder or offeror except as otherwise provided in section~~  
17 ~~563 (relating to retention of procurement records).~~

18 ~~§ 534~~ 533. Security and performance bonds. <—

19 (a) Contract for supplies OR SERVICES.-- <—

20 (1) In the case of competitive sealed bidding or  
21 competitive sealed proposals for a contract for supplies or  
22 services, bidders or offerors may be required by the  
23 contracting officer to provide bid or proposal security. Bid  
24 or proposal security shall be in the form of a certified or  
25 bank check or a bond provided by a surety company authorized  
26 to do business in this Commonwealth or another form of  
27 security as specified in the invitation for bids or request  
28 for proposals. Bid or proposal security shall be at least in  
29 the minimum amount or percentage of the amount of the bid as  
30 shall be specified in the advertisement, invitation for bids

1 or request for proposals.

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

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

16 (4) A contractor may be required by the contracting  
17 officer to provide a performance bond executed by a surety  
18 company authorized to do business in this Commonwealth. In  
19 lieu of a bond, a contractor may provide other security as  
20 permitted by the head of the purchasing agency. The  
21 performance bond OR OTHER REQUIRED SECURITY shall be in an ←  
22 amount determined by the head of the purchasing agency, and  
23 it shall be conditioned upon the faithful performance of the  
24 contract.

25 (b) Contract for construction.--Bid security and performance  
26 bonds as required for contracts for construction are provided  
27 for in sections 902 (relating to bid or proposal security) and  
28 903 (relating to contract performance and payment bonds).

29 § ~~535~~ 534. Cost or pricing data. ←

30 (a) Submission by contractor.--A contractor shall, except as

1 provided in subsection (c), submit cost or pricing data and  
2 shall certify that, to the best of its knowledge and belief, the  
3 cost or pricing data submitted was accurate, complete and  
4 current as of a mutually determined specified date prior to the  
5 date of:

6 (1) the ~~pricing of any contract awarded~~ AWARD OF ANY ←  
7 CONTRACT under section 513 (relating to competitive sealed  
8 proposals) or 515 (relating to sole source procurement)  
9 where, UNDER EITHER SECTION, the total contract price is ←  
10 expected to exceed an amount established by the head of the  
11 purchasing agency; or

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

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

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

26 ~~(1) The contract price is based on adequate price ←  
27 competition.~~

28 (1) WHEN RESPONSIVE PROPOSALS ARE RECEIVED FROM THREE OR ←  
29 MORE OFFERORS.

30 (2) ~~The~~ WHEN THE contract price is based on established ←

1 catalog prices or market prices.

2 (3) ~~Contract~~ WHEN CONTRACT prices are set by statute or ←  
3 regulation.

4 (4) ~~It~~ WHEN IT is determined in writing by the ←  
5 contracting officer that the requirements of this section may  
6 be waived and the reasons for the waivers are stated in  
7 writing.

8 SUBCHAPTER E

9 TYPES OF CONTRACTS

10 Sec.

11 541. Approval of accounting system.

12 542. Multiterm contracts.

13 543. Effective contracts.

14 § 541. Approval of accounting system.

15 Except with respect to firm fixed-price contracts, no  
16 contract type shall be used unless it has been determined in  
17 writing by the head of a purchasing agency that:

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

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

24 § 542. Multiterm contracts.

25 (a) Specified period.--A contract for supplies, construction  
26 or services may be entered into for a period of time deemed to  
27 be in the best interests of the Commonwealth. The term of the  
28 contract and conditions of renewal or extension, if any, shall  
29 be included in the solicitation, and funds shall be available  
30 for the first fiscal period at the time of contracting. Payment

1 and performance obligations for succeeding fiscal periods shall  
2 be subject to the availability and appropriation of funds.

3 (b) Cancellation for unavailability of funds in succeeding  
4 fiscal periods.--When funds are not appropriated or otherwise  
5 made available to support continuation of performance in a  
6 subsequent fiscal period, the contract shall be canceled, and  
7 the contractor shall be reimbursed for the reasonable value of  
8 any nonrecurring costs incurred but not amortized in the price  
9 of the supplies ~~or services delivered under the contract.~~, <—

10 SERVICES OR CONSTRUCTION DELIVERED UNDER THE CONTRACT. SUCH  
11 REIMBURSEMENT SHALL NOT INCLUDE LOSS OF ANTICIPATED PROFIT, LOSS  
12 OF USE OF MONEY OR ADMINISTRATIVE OR OVERHEAD COSTS. The cost of  
13 cancellation may be paid from any appropriations available for  
14 that purpose. THE CONTRACTOR SHALL NOT BE ENTITLED TO ANY <—  
15 REIMBURSEMENT WHERE THE COMMONWEALTH ELECTS NOT TO EXERCISE A  
16 RENEWAL OR EXTENSION OPTION PROVIDED FOR IN THE CONTRACT.

17 § 543. Effective contracts.

18 Irrespective of the type of contract, no contract shall be  
19 effective until executed by all necessary Commonwealth officials  
20 as provided by law.

## 21 SUBCHAPTER F

### 22 INSPECTION OF PLANT AND AUDIT OF RECORDS

23 Sec.

24 551. Right to inspect plant.

25 552. Right to audit records.

26 § 551. Right to inspect plant.

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

1 § 552. Right to audit records.

2 (a) Audit of cost or pricing data.--The purchasing agency or  
3 its designee may, at reasonable times and places, audit the  
4 books and records of any person who has submitted cost or  
5 pricing data under section ~~535~~ 534 (relating to cost or pricing ←  
6 data) to the extent that the books and records relate to the  
7 cost or pricing data. A person who receives a contract, change  
8 order or contract modification for which cost or pricing data is  
9 required shall maintain the books and records that relate to the  
10 cost or pricing data for three years from the date of final  
11 payment under the contract unless a shorter period is otherwise  
12 authorized BY THE PURCHASING AGENCY in writing. ←

13 (b) Contract audit.--The purchasing agency may audit the  
14 books and records of a contractor or any subcontractor under any  
15 negotiated contract or subcontract other than a firm fixed-price  
16 contract to the extent that the books and records relate to the  
17 performance of the contract or subcontract. The books and  
18 records shall be maintained by the contractor for a period of  
19 three years from the date of final payment under the prime  
20 contract and by the subcontractor for a period of three years  
21 from the date of final payment under the prime contract unless a  
22 shorter period is otherwise authorized BY THE PURCHASING AGENCY ←  
23 in writing.

24 SUBCHAPTER G

25 DETERMINATIONS AND REPORTS

26 Sec.

27 561. Finality of determinations.

28 562. Anticompetitive practices.

29 563. Retention of procurement records.

30 564. Record of certain actions.

1 § 561. Finality of determinations.

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

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

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

8 Section 515 (relating to sole source procurement).

9 Section 516 (relating to emergency procurement).

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

12 Section 519(f) (relating to selection procedure for  
13 insurance and NOTARY bonds). <—

14 ~~Section 533(a) (relating to responsibility of bidders and~~ <—  
15 ~~offerors).~~

16 Section ~~535(e)~~ 534(C) (relating to cost or pricing data). <—

17 Section 541 (relating to approval of accounting system).

18 § 562. Anticompetitive practices.

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

30 § 563. Retention of procurement records.

1 All procurement records, INCLUDING ANY WRITTEN DETERMINATIONS <—  
2 ISSUED IN ACCORDANCE WITH SECTION 561 (RELATING TO FINALITY OF  
3 DETERMINATIONS), shall be retained for a minimum of three years  
4 from the date of final payment under the contract and disposed  
5 of in accordance with records retention guidelines and schedules  
6 as provided by law. ~~All~~ IN ACCORDANCE WITH APPLICABLE LAW, ALL <—  
7 retained documents shall be made available to the State  
8 Treasurer, Auditor General, General Counsel, INSPECTOR GENERAL <—  
9 and Attorney General upon request.

10 § 564. Record of certain actions.

11 The purchasing agency shall maintain a record listing all  
12 contracts made under sections 514 (relating to small ~~purchases~~ <—  
13 PROCUREMENTS), 515 (relating to sole source procurement) and 516 <—  
14 (relating to emergency procurement) for a minimum of three years  
15 from the date of final payment under the contract. The record  
16 shall contain:

- 17 (1) Each contractor's name.
- 18 (2) The amount and type of each contract.
- 19 (3) A listing of the supplies, services or construction  
20 procured under each contract.

21 CHAPTER 7

22 (Reserved)

23 CHAPTER 9

24 ~~PROCUREMENT OF CONSTRUCTION, ARCHITECT AND <—~~

25 ~~ENGINEER SERVICES~~

26 PROCUREMENT OF CONSTRUCTION AND DESIGN <—

27 PROFESSIONAL SERVICES

28 Sec.

29 901. Definitions.

30 902. Bid or proposal security.

1 903. Contract performance and payment bonds.

2 904. Copies of bonds.

3 905. Procurement of design professional services.

4 § 901. Definitions.

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

8 "Design professional services." Those professional services  
9 within the scope of the practice of architecture, GEOLOGY ←—  
10 engineering, landscape architecture or land surveying, including  
11 studies, investigations, surveying, mapping, tests, evaluations,  
12 consultations, comprehensive planning, program management,  
13 conceptual design, plans and specifications, value engineering,  
14 maintenance manuals and other related services associated with  
15 research, planning, development, design, construction,  
16 alteration or repair of real property. THE TERM DOES NOT INCLUDE ←—  
17 THOSE SERVICES WHICH ARE NOT EXCLUSIVELY WITHIN THE SCOPE OF  
18 ARCHITECTURE, GEOLOGY ENGINEERING OR LANDSCAPE ARCHITECTURE, BUT  
19 WHICH ARE RELATED TO CAPITAL IMPROVEMENTS SUCH AS, BUT NOT  
20 LIMITED TO, ENVIRONMENTAL HYGIENICS, CONSTRUCTION MANAGEMENT AS  
21 DESCRIBED IN SECTION 322 (RELATING TO SPECIFIC CONSTRUCTION  
22 POWERS, DUTIES AND PROCEDURES), EXHIBIT DESIGN, FINE ARTS OR  
23 LESSER ARTS AND CRAFTS, EVEN THOUGH AN ARCHITECT, GEOLOGY  
24 ENGINEER OR LANDSCAPE ARCHITECT MAY PROVIDE SUCH SERVICES.

25 § 902. Bid or proposal security.

26 (a) Requirement for bid security.--Bidders or offerors may  
27 be required to provide bid or proposal security for construction  
28 contracts. Bid or proposal security shall be in the form of a  
29 certified or bank check or a bond provided by a surety company  
30 authorized to do business in this Commonwealth or another form

1 of security as specified in the invitation for bids or request  
2 for proposals.

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

7 (c) Rejection of bids or proposals.--When the invitation for  
8 bids or the request for proposals requires security,  
9 noncompliance with the instructions in the invitation for bids  
10 or the request for proposals requires that the bid or proposal  
11 be rejected unless it is determined that the bid OR PROPOSAL ←  
12 fails to comply with the security requirements in a  
13 nonsubstantial manner.

14 (d) Withdrawal of bids.--After the bids are opened, they  
15 shall be irrevocable for the period specified in the invitation  
16 for bids except as provided in section 512(f) (relating to  
17 competitive sealed bidding). If a bidder is permitted to  
18 withdraw its bid before award, no action shall be had against  
19 the bidder or the bid security.

20 § 903. Contract performance and payment bonds.

21 (a) When required and amounts.--When a construction contract  
22 is awarded in excess of \$250,000, the following bonds or  
23 security shall be delivered to the purchasing agency and shall  
24 be binding on the parties upon the execution of the contract:

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

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

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

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

23       (d) Actions on payment bonds.--

24           (1) Subject to paragraph (2), any claimant who has  
25 performed labor or furnished material in the prosecution of  
26 the work provided for in any contract for which a payment  
27 bond has been given under subsection (a) and who has not been  
28 paid in full before the expiration of 90 days after the day  
29 on which the claimant performed the last of the labor or  
30 furnished the last of the materials for which it claims

1 payments may bring an action on the payment bond in its own  
2 name, in assumpsit, to recover any amount due it for the  
3 labor or material and may prosecute the action to final  
4 judgment and have execution on the judgment.

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

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

23 (e) Adjustment of threshold amount.--The dollar threshold of  
24 \$250,000 set forth in subsection (a) shall be adjusted annually  
25 by the department to reflect the annual percentage change in the  
26 Composition Construction Cost Index of the United States  
27 Department of Commerce occurring in the one-year period ending  
28 on December 31 of each year.

29 § 904. Copies of bonds.

30 (a) Copies of bonds.--The purchasing agency shall furnish a

1 copy of any payment bond and the contract for which the bond was  
2 given to any person who makes an application for the copy.

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

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

10 § 905. Procurement of design professional services.

11 (a) Applicability.--Design professional services shall be  
12 procured as provided in this section except as authorized by  
13 sections 514 (relating to small ~~purchases~~ PROCUREMENTS), 515 ←  
14 (relating to sole source procurement) and 516 (relating to  
15 emergency procurement).

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

23 ~~(c) Selection committees for the Departments of ←~~  
24 ~~Transportation and Environmental Protection. The Department of~~  
25 ~~Transportation and the Department of Environmental Protection~~  
26 ~~shall each establish a selection committee and procedure. The~~  
27 ~~procedure to procure design professional services shall be~~  
28 ~~similar to and consistent with the procedure provided for in~~  
29 ~~subsection (c). None of the members of these committees shall~~  
30 ~~hold any elective office or office in any political party.~~

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

15       ~~(e) Procedure for selection committee. The selection~~  
16 ~~committee established under subsection (d) shall use the~~  
17 ~~procedure set forth in this subsection:~~

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

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

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

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

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

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

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

12          ~~The fee to be paid to the selected design professional shall~~  
13          ~~be established by the selections committee.~~

14          ~~(3) Of the three firms selected by the committee, the~~  
15          ~~head of the purchasing agency shall negotiate a contract with~~  
16          ~~the firm he determines to be the highest qualified firm for~~  
17          ~~the design professional services at compensation which he~~  
18          ~~determines to be fair and reasonable to the Commonwealth. In~~  
19          ~~making this decision the head of the purchasing agency shall~~  
20          ~~take into account the estimated value, scope, complexity and~~  
21          ~~professional nature of the services to be rendered. Should~~  
22          ~~the head of the purchasing agency be unable to negotiate a~~  
23          ~~satisfactory contract with the firm considered to be the most~~  
24          ~~qualified at a fee he determines to be fair and reasonable to~~  
25          ~~the Commonwealth, negotiations with that firm shall be~~  
26          ~~formally terminated. The head of the purchasing agency shall~~  
27          ~~then undertake negotiations with the firm he determines to be~~  
28          ~~the second highest qualified firm. Failing accord with the~~  
29          ~~second most qualified firm, the head of the purchasing agency~~  
30          ~~shall formally terminate negotiations and then undertake~~

1 ~~negotiations with the third highest qualified firm. Should~~  
2 ~~the head of the purchasing agency be unable to negotiate a~~  
3 ~~satisfactory contract with any of the selected firms, the~~  
4 ~~committee shall select additional qualified firms, and the~~  
5 ~~head of the purchasing agency shall continue negotiations in~~  
6 ~~accordance with this section until an agreement is reached.~~

7 (C) SELECTION COMMITTEES FOR DEPARTMENT OF TRANSPORTATION, <—  
8 DEPARTMENT OF ENVIRONMENTAL PROTECTION, DEPARTMENT OF  
9 CONSERVATION AND NATURAL RESOURCES AND INSTRUMENTALITIES.--WHERE  
10 THEY ARE AUTHORIZED BY LAW TO ACT AS PURCHASING AGENCY FOR  
11 DESIGN PROFESSIONAL SERVICES, THE DEPARTMENT OF TRANSPORTATION,  
12 THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE DEPARTMENT OF  
13 CONSERVATION AND NATURAL RESOURCES AND INSTRUMENTALITIES SHALL  
14 EACH ESTABLISH A SELECTION COMMITTEE AND A PROCEDURE FOR  
15 SELECTION OF COMMITTEE MEMBERS. NONE OF THE MEMBERS OF THESE  
16 COMMITTEES SHALL HOLD ANY ELECTIVE OFFICE OR OFFICE IN ANY  
17 POLITICAL PARTY.

18 (D) SELECTION COMMITTEE FOR ALL OTHER COMMONWEALTH  
19 AGENCIES.--EXCEPT AS PROVIDED FOR IN SUBSECTION (C), ALL  
20 PURCHASING AGENCIES SHALL USE THE SELECTION COMMITTEE APPOINTED  
21 BY THE GOVERNOR WHICH SHALL BE COMPOSED OF FIVE MEMBERS, NONE OF  
22 WHOM SHALL BE EMPLOYEES OF THE COMMONWEALTH OR HOLD ANY ELECTIVE  
23 OFFICE OR OFFICE IN ANY POLITICAL PARTY. THE MEMBERS SHALL BE  
24 ARCHITECTS, ENGINEERS OR OTHER PERSONS KNOWLEDGEABLE IN  
25 CONSTRUCTION. THE MEMBERS SHALL SERVE FOR TERMS OF TWO YEARS AND  
26 SHALL NOT BE REMOVED EXCEPT FOR CAUSE. OF THE ORIGINAL MEMBERS,  
27 THREE SHALL SERVE FOR TERMS OF TWO YEARS AND TWO FOR TERMS OF  
28 ONE YEAR. THEREAFTER, ALL TERMS SHALL BE FOR TWO YEARS. EACH  
29 MEMBER SHALL BE REIMBURSED FOR REASONABLE TRAVEL AND OTHER  
30 EXPENSES INCURRED INCIDENT TO ATTENDANCE AT MEETINGS AND TO

1 ASSIGNED DUTIES AND ALSO A PER DIEM ALLOWANCE IN ACCORDANCE WITH  
2 COMMONWEALTH TRAVEL POLICIES.

3 (E) PROCEDURE FOR SELECTION COMMITTEES.--THE SELECTION  
4 COMMITTEES SHALL USE THE PROCEDURE SET FORTH IN THIS SUBSECTION:

5 (1) THE COMMITTEE SHALL GIVE PUBLIC NOTICE OF PROJECTS  
6 REQUIRING DESIGN SERVICES AND PUBLICLY RECOMMEND TO THE  
7 PURCHASING AGENCY THREE QUALIFIED DESIGN PROFESSIONALS FOR  
8 EACH PROJECT.

9 (2) IF DESIRED, THE COMMITTEE MAY CONDUCT DISCUSSIONS  
10 WITH THREE OR MORE PROFESSIONALS REGARDING ANTICIPATED DESIGN  
11 CONCEPTS AND PROPOSED METHODS OF APPROACH TO THE ASSIGNMENT.  
12 THE COMMITTEE SHALL SELECT, BASED UPON CRITERIA ESTABLISHED  
13 BY THE HEAD OF THE PURCHASING AGENCY, NO LESS THAN THREE  
14 DESIGN PROFESSIONALS DEEMED TO BE THE MOST HIGHLY QUALIFIED  
15 TO PROVIDE THE SERVICES REQUIRED. IN EXERCISING ITS  
16 RESPONSIBILITY, THE COMMITTEE SHALL CONSIDER THE FOLLOWING  
17 FACTORS:

18 (I) AN EQUITABLE DISTRIBUTION OF CONTRACTS TO DESIGN  
19 PROFESSIONALS.

20 (II) PARTICULAR CAPABILITY TO PERFORM THE DESIGN OR  
21 CONSTRUCTION SERVICES FOR THE CONTRACT BEING CONSIDERED.

22 (III) GEOGRAPHIC PROXIMITY OF THE DESIGN  
23 PROFESSIONAL TO THE PROPOSED FACILITY.

24 (IV) THE DESIGN PROFESSIONAL SELECTED HAS THE  
25 NECESSARY AVAILABLE PERSONNEL TO PERFORM THE SERVICES  
26 REQUIRED BY THE PROJECT.

27 (V) ANY OTHER RELEVANT CIRCUMSTANCES PECULIAR TO THE  
28 PROPOSED CONTRACT.

29 (F) DESIGN PROFESSIONALS.--EXCEPT AS PROVIDED FOR IN  
30 SUBSECTION (G), THE HEAD OF THE PURCHASING AGENCY SHALL SELECT

1 DESIGN PROFESSIONALS AS FOLLOWS:

2 (1) WHERE THE AMOUNT OF THE BASE CONSTRUCTION ALLOCATION  
3 IS LESS THAN \$20,000,000, THE HEAD OF THE PURCHASING AGENCY  
4 SHALL CHOOSE ONE OF THE THREE FIRMS APPROVED BY THE SELECTION  
5 COMMITTEE. THE FEE TO BE PAID TO THE APPOINTED DESIGN  
6 PROFESSIONAL MAY BE ESTABLISHED BY THE SELECTION COMMITTEE OR  
7 MAY BE NEGOTIATED AT THE DISCRETION OF THE HEAD OF THE  
8 PURCHASING AGENCY. THE \$20,000,000 THRESHOLD SHALL BE  
9 ADJUSTED BY THE DEPARTMENT TO REFLECT THE ANNUAL PERCENTAGE  
10 CHANGE IN THE COMPOSITE CONSTRUCTION COST INDEX OF THE UNITED  
11 STATES DEPARTMENT OF COMMERCE OCCURRING IN THE ONE-YEAR  
12 PERIOD ENDING DECEMBER 31 EACH YEAR.

13 (2) WHERE THE AMOUNT OF BASE CONSTRUCTION ALLOCATION IS  
14 IN EXCESS OF OR EQUAL TO \$20,000,000, AS ANNUALLY ADJUSTED,  
15 THE HEAD OF THE PURCHASING AGENCY SHALL CHOOSE ONE OF THE  
16 THREE FIRMS APPROVED BY THE SELECTION COMMITTEE TO BEGIN  
17 CONTRACT NEGOTIATIONS. THE FEE TO BE PAID TO THE DESIGN  
18 PROFESSIONAL AND THE TERMS OF THE CONTRACT BETWEEN THE DESIGN  
19 PROFESSIONAL AND THE DEPARTMENT SHALL BE NEGOTIATED BY THE  
20 HEAD OF THE PURCHASING AGENCY. IN NEGOTIATING THE CONTRACT  
21 AND THE FEE, THE HEAD OF THE PURCHASING AGENCY SHALL TAKE  
22 INTO ACCOUNT THE ESTIMATED VALUE, SCOPE, COMPLEXITY,  
23 UNIQUENESS AND THE PROFESSIONAL NATURE OF THE SERVICES TO BE  
24 RENDERED. IN THE EVENT THE HEAD OF THE PURCHASING AGENCY IS  
25 UNABLE TO NEGOTIATE A SATISFACTORY CONTRACT OR FEE WITH THE  
26 APPOINTED DESIGN PROFESSIONAL, NEGOTIATIONS WITH THAT DESIGN  
27 PROFESSIONAL SHALL BE TERMINATED AND THE HEAD OF THE  
28 PURCHASING AGENCY SHALL COMMENCE NEGOTIATIONS WITH ONE OF THE  
29 OTHER FIRMS CHOSEN BY THE SELECTION COMMITTEE. IN THE EVENT  
30 THE HEAD OF THE PURCHASING AGENCY IS UNABLE TO NEGOTIATE A

1 SATISFACTORY CONTRACT OR FEE WITH THE SECOND FIRM, THE HEAD  
2 OF THE PURCHASING AGENCY SHALL TERMINATE NEGOTIATIONS WITH  
3 THE SECOND DESIGN PROFESSIONAL AND COMMENCE NEGOTIATION WITH  
4 THE THIRD FIRM. IN THE EVENT THE HEAD OF THE PURCHASING  
5 AGENCY IS UNABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH  
6 ANY OF THE SELECTED FIRMS, THE SELECTION COMMITTEE SHALL  
7 CHOOSE ADDITIONAL QUALIFIED FIRMS AND THE HEAD OF THE  
8 PURCHASING AGENCY SHALL CONTINUE NEGOTIATIONS IN ACCORDANCE  
9 WITH THIS SUBSECTION UNTIL AN AGREEMENT IS REACHED.

10 (G) SELECTION METHOD FOR DEPARTMENT OF TRANSPORTATION,  
11 DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DEPARTMENT OF  
12 ENVIRONMENTAL PROTECTION AND INSTRUMENTALITIES.--IN THE EVENT  
13 THE DEPARTMENT OF TRANSPORTATION, THE DEPARTMENT OF CONSERVATION  
14 AND NATURAL RESOURCES, THE DEPARTMENT OF ENVIRONMENTAL  
15 PROTECTION OR AN INSTRUMENTALITY OTHERWISE AUTHORIZED BY LAW TO  
16 USE ITS OWN SELECTION COMMITTEE REQUIRES THE SERVICES OF A  
17 DESIGN PROFESSIONAL, THE HEAD OF THE PURCHASING AGENCY OR  
18 INSTRUMENTALITY SHALL CHOOSE ONE OF THE THREE FIRMS APPROVED BY  
19 THE SELECTION COMMITTEE. THE HEAD OF THE PURCHASING AGENCY OR  
20 INSTRUMENTALITY SHALL NEGOTIATE WITH THE FIRM DETERMINED TO BE  
21 THE HIGHEST QUALIFIED FIRM FOR DESIGN PROFESSIONAL SERVICES AT A  
22 FEE WHICH IS DETERMINED TO BE FAIR AND REASONABLE TO THE  
23 COMMONWEALTH. IN MAKING THIS DECISION, THE HEAD OF THE  
24 PURCHASING AGENCY SHALL TAKE INTO ACCOUNT THE ESTIMATED VALUE,  
25 SCOPE, COMPLEXITY AND PROFESSIONAL NATURE OF THE SERVICES TO BE  
26 RENDERED. SHOULD THE HEAD OF THE PURCHASING AGENCY BE UNABLE TO  
27 NEGOTIATE A SATISFACTORY CONTRACT WITH THE FIRM CONSIDERED TO BE  
28 THE MOST QUALIFIED AT A FEE HE DETERMINES TO BE FAIR AND  
29 REASONABLE TO THE COMMONWEALTH, NEGOTIATIONS WITH THAT FIRM  
30 SHALL BE FORMALLY TERMINATED. THE HEAD OF THE PURCHASING AGENCY

1 SHALL THEN UNDERTAKE NEGOTIATIONS WITH THE FIRM HE DETERMINES TO  
2 BE THE SECOND HIGHEST QUALIFIED FIRM. FAILING ACCORD WITH THE  
3 SECOND MOST QUALIFIED FIRM, THE HEAD OF THE PURCHASING AGENCY  
4 SHALL FORMALLY TERMINATE NEGOTIATIONS AND THEN UNDERTAKE  
5 NEGOTIATIONS WITH THE THIRD HIGHEST QUALIFIED FIRM. SHOULD THE  
6 HEAD OF THE PURCHASING AGENCY BE UNABLE TO NEGOTIATE A  
7 SATISFACTORY CONTRACT WITH ANY OF THE SELECTED FIRMS, THE  
8 COMMITTEE SHALL SELECT ADDITIONAL QUALIFIED FIRMS, AND THE HEAD  
9 OF THE PURCHASING AGENCY SHALL CONTINUE NEGOTIATIONS IN  
10 ACCORDANCE WITH THIS SECTION UNTIL AN AGREEMENT IS REACHED.

11 CHAPTER 11

12 (RESERVED)

13 CHAPTER 13

14 (Reserved)

15 CHAPTER 15

16 SUPPLY MANAGEMENT

17 Sec.

18 1501. Definitions.

19 1502. Supply management regulations.

20 1503. Proceeds from sale or disposal of surplus supplies.

21 § 1501. Definitions.

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

25 "Excess supplies." All ~~supplies other than expendable~~ <—  
26 NONEXPENDABLE supplies having a remaining useful life but which <—  
27 are no longer required by the using agency in possession of the  
28 supplies.

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

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

4 "Supplies." Supplies owned by Commonwealth agencies.

5 "Surplus supplies." ~~Supplies other than expendable~~ <—  
6 NONEXPENDABLE supplies no longer having any use to any <—  
7 Commonwealth agency. The term includes obsolete supplies, scrap  
8 materials and nonexpendable supplies that have completed their  
9 useful life cycle. THE TERM DOES NOT INCLUDE ROAD OR BRIDGE <—  
10 MATERIALS OR EQUIPMENT THAT HAVE BEEN DECLARED SURPLUS BY THE  
11 DEPARTMENT OF TRANSPORTATION UNDER SECTION 510 OF THE ACT OF  
12 APRIL 9, 1929 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE  
13 CODE OF 1929.

14 § 1502. Supply management regulations.

15 The department shall establish policy and may promulgate  
16 regulations governing:

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

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

26 (3) Transfer of excess supplies.

27 § 1503. Proceeds from sale or disposal of surplus supplies.

28 ~~The~~ FOR ALL COMMONWEALTH AGENCIES AND INSTRUMENTALITIES WHO <—  
29 RECEIVE FUNDS THROUGH THE STATE TREASURY FOR THE PURCHASE OF  
30 SUPPLIES, THE proceeds from the sale, lease or disposal of

1 surplus supplies shall be paid into the State Treasury and  
2 deposited in the fund out of which the supplies sold was  
3 originally purchased by the appropriate credit to the then-  
4 current appropriation. FOR COMMONWEALTH AGENCIES AND ←  
5 INSTRUMENTALITIES WHO DO NOT RECEIVE FUNDS THROUGH THE STATE  
6 TREASURY FOR THE PURCHASE OF SUPPLIES, THE PROCEEDS FROM ANY  
7 SALE OR DISPOSAL OF SURPLUS PROPERTY SHALL BE PAID TO THE AGENCY  
8 OR INSTRUMENTALITY. The costs incurred by the department in  
9 advertising or selling the supplies shall be deducted from the  
10 purchase price, and that amount shall be an executively  
11 authorized augmentation to the appropriation from which the  
12 costs were paid by the department.

13 CHAPTER 17

14 LEGAL AND CONTRACTUAL REMEDIES

15 Subchapter

- 16 A. General Provisions
- 17 B. Prelitigation Resolution of Controversies
- 18 C. Board of Claims
- 19 D. Solicitations or Awards in Violation of Law
- 20 E. Interest

21 SUBCHAPTER A

22 GENERAL PROVISIONS

23 Sec.

24 1701. Definitions.

25 1702. Sovereign immunity.

26 § 1701. 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 "Claimant." A person filing a claim with the Board of

1 Claims.

2 § 1702. Sovereign immunity.

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

9 (b) Exception.--The General Assembly under section 11 of  
10 Article I of the Constitution of Pennsylvania does hereby waive  
11 sovereign immunity as a bar to claims against Commonwealth  
12 agencies arising under this chapter but only to the extent set  
13 forth in this chapter.

14 SUBCHAPTER B

15 PRELITIGATION RESOLUTION OF CONTROVERSIES

16 Sec.

17 1711. Authority to resolve protests of solicitations or  
18 awards.

19 1712. Authority to resolve contract and breach of contract  
20 controversies.

21 § 1711. Authority to resolve protests of solicitations or  
22 awards.

23 (a) Right to protest.--An actual or prospective bidder,  
24 offeror or contractor who is aggrieved in connection with the  
25 solicitation or award of a contract may protest to the head of a <—  
26 THE purchasing agency in writing. All protests under this <—  
27 subsection must be made within seven days after the protestant  
28 knows or should have known of the facts giving rise to the  
29 protest. If a protest is submitted by a protestant who did not  
30 submit a bid, the protest must be received by the HEAD OF THE <—

1 purchasing agency prior to the bid opening time or the proposal  
2 receipt date or it shall be considered untimely and can be  
3 disregarded by the purchasing agency.

4 (b) Authority to resolve protests.--The head of a THE ←  
5 purchasing agency shall have the authority to settle and resolve  
6 a protest of an aggrieved bidder, offeror or contractor, actual  
7 or prospective, concerning the solicitation or award of a  
8 contract.

9 (c) Decision.--If the protest is not resolved by mutual  
10 agreement, the head of a THE purchasing agency shall promptly ←  
11 issue a decision in writing. The decision shall:

12 (1) State the reasons for the action taken.

13 (2) Inform the protestant of his right to file an action  
14 in Commonwealth Court as provided in subsection (e).

15 (d) Notice of decision.--A copy of the decision under  
16 subsection (c) shall be delivered by registered mail to the  
17 protestant and any other person determined by the head of the  
18 purchasing agency to be affected by the decision.

19 (e) Finality of decision.--A decision under subsection (c)  
20 shall be final and conclusive unless a person adversely affected  
21 by the decision files an action based on subsection (a) in  
22 Commonwealth Court within 14 days of receipt of the decision. No  
23 action may be commenced in Commonwealth Court under this  
24 subsection until the protestant has exhausted the administrative  
25 remedies provided for in this section.

26 (f) Stay of procurements during protests.--In the event of a  
27 timely protest under subsection (a) and until the time has  
28 elapsed for the protestant to file an action in Commonwealth  
29 Court, the purchasing agency shall not proceed further with the  
30 solicitation or with the award of the contract unless and until

1 the head of the purchasing agency, after consultation with the  
2 head of the using agency, makes a written determination that the  
3 protest is clearly without merit or that award of the contract  
4 without delay is necessary to protect substantial interests of  
5 the Commonwealth.

6 § 1712. Authority to resolve contract and breach of contract  
7 controversies.

8 (a) Applicability.--This section applies to controversies  
9 between a Commonwealth agency and a contractor which arise under  
10 or by virtue of a contract between them, including controversies  
11 based upon breach of contract, mistake, misrepresentation or  
12 other cause for contract modification or rescission. Prior to  
13 filing a claim under this section with the Board of Claims under  
14 the exclusive jurisdiction provided in the act of May 20, 1937  
15 (P.L.728, No.193), referred to as the Board of Claims Act, the  
16 claim must first be filed in writing with the contracting  
17 officer within six months after it accrues and not thereafter.

18 (b) Authority.--The contracting officer is authorized to  
19 settle and resolve a controversy described in subsection (a).

20 (c) Decision.--If the controversy is not resolved by mutual  
21 agreement, the head of a THE purchasing agency shall promptly  
22 issue a decision in writing. The decision shall:

23 (1) State the reasons for the action taken.

24 (2) Inform the contractor of its right to administrative  
25 and judicial review as provided in this chapter.

26 (d) Notice of decision.--A copy of the decision under  
27 subsection (c) shall be delivered by registered mail to the  
28 contractor.

29 (e) Finality of decision.--The decision under subsection (c)  
30 shall be final and conclusive unless the contractor files a

1 claim with the Board of Claims within 30 days of receipt of the  
2 decision.

3 (f) Failure to render timely decision.--If the contracting  
4 officer does not issue the written decision required under  
5 subsection (c) within 120 days after written request for a final  
6 decision or within a longer period as may be agreed upon by the  
7 parties, then the contractor may proceed as if an adverse  
8 decision had been received.

9 SUBCHAPTER C

10 BOARD OF CLAIMS

11 Sec.

12 1721. Function of Board of Claims.

13 1722. (Reserved).

14 1723. (Reserved).

15 1724. (Reserved).

16 1725. Hearings, decisions and awards.

17 1726. Appeals.

18 § 1721. Function of Board of Claims.

19 The Board of Claims created under the act of May 20, 1937  
20 (P.L.728, No.193), referred to as the Board of Claims Act, shall  
21 be constituted and administered as provided in that act.

22 § 1722. (Reserved).

23 § 1723. (Reserved).

24 § 1724. (Reserved).

25 § 1725. Hearings, decisions and awards.

26 (a) General rule.--All hearings before the Board of Claims  
27 under this part shall be in accordance with the procedure set  
28 forth in the act of May 20, 1937 (P.L.728, No.193), referred to  
29 as the Board of Claims Act.

30 (b) Hearing and decision.--All hearings before the Board of

1 Claims or hearings before a hearing panel shall be public and  
2 the proceedings shall be de novo. Any prior determinations by  
3 administrative officials shall not be final or conclusive except  
4 as provided in section 561 (relating to finality of  
5 determinations). The board or hearing panel shall make a  
6 decision within a reasonable time from the date of the hearing.  
7 The board shall promptly decide the contract or breach of  
8 contract controversy and, if appropriate, make an award of a sum  
9 that it determines the claimant is entitled to receive.

10 (c) Certification of award.--The Board of Claims shall  
11 certify an award for the purpose of entering the same as a  
12 judgment in any court of record.

13 (d) Public records.--All papers filed under this subchapter  
14 shall be a public record to the extent provided in the act of  
15 June 21, 1957 (P.L.390, No.212), referred to as the Right-to-  
16 Know Law, and shall be available to the public as provided in  
17 that act.

18 § 1726. Appeals.

19 Any person, including a Commonwealth agency, aggrieved by a  
20 decision of the Board of Claims may appeal to the Commonwealth  
21 Court under 42 Pa.C.S. § 763(a)(1) (relating to direct appeals  
22 from government agencies) within 30 days after certification of  
23 the decision.

24 SUBCHAPTER D

25 SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

26 Sec.

27 1741. Applicability.

28 1742. Remedies prior to ~~award~~ EXECUTION OF CONTRACT. <—

29 1743. Remedies after ~~award~~ EXECUTION OF CONTRACT. <—

30 § 1741. Applicability.

1 The provisions of this subchapter apply where it is  
2 determined by the contracting officer or the court that a  
3 solicitation or award of a contract is in violation of law.

4 § 1742. Remedies prior to ~~award~~ EXECUTION OF CONTRACT. <—

5 If prior to ~~award~~ EXECUTION OF A CONTRACT it is determined <—  
6 that a solicitation or proposed award of a contract is in  
7 violation of law, then the remedies are limited to cancellation  
8 of the solicitation or proposed award or revision of the  
9 solicitation or proposed award to comply with the law.

10 § 1743. Remedies after ~~award~~ EXECUTION OF CONTRACT. <—

11 If after ~~an award~~ THE EXECUTION OF A CONTRACT it is <—  
12 determined that a solicitation or award of a contract is in  
13 violation of law, then:

14 (1) If the person awarded the contract has not acted  
15 fraudulently or in bad faith:

16 (i) the contract may be ratified and affirmed  
17 provided it is determined BY THE PURCHASING AGENCY that <—  
18 doing so is in the best interest of the Commonwealth; ~~or~~ <—

19 (II) THE CONTRACT, WITH THE CONSENT OF ALL PARTIES, <—  
20 MAY BE MODIFIED TO COMPLY WITH THE LAW; OR

21 ~~(ii)~~ (III) the contract may be terminated and the <—  
22 person awarded the contract shall be compensated for the  
23 actual expenses reasonably incurred under the contract  
24 prior to the termination. SUCH COMPENSATION SHALL NOT <—  
25 INCLUDE LOSS OF ANTICIPATED PROFIT, LOSS OF USE OF MONEY  
26 OR ADMINISTRATIVE OR OVERHEAD COSTS.

27 (2) If the person awarded the contract has acted  
28 fraudulently or in bad faith:

29 (i) the contract may be declared void; ~~or~~ <—

30 (II) THE CONTRACT, WITH THE CONSENT OF ALL PARTIES, <—

1 MAY BE MODIFIED TO COMPLY WITH THE LAW; OR  
2 ~~(ii)~~ (III) the contract may be ratified and <—  
3 affirmed, PROVIDED IT IS DETERMINED BY THE PURCHASING <—  
4 AGENCY, if that action is in the best ~~interests~~ INTEREST <—  
5 of the Commonwealth and without prejudice to the right of  
6 the Commonwealth agency to damages as may be appropriate.

7 SUBCHAPTER E

8 INTEREST

9 Sec.

10 1751. Interest.

11 § 1751. Interest.

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

18 CHAPTER 19

19 INTERGOVERNMENTAL RELATIONS

20 Sec.

21 1901. Definitions.

22 1902. Cooperative purchasing authorized.

23 1903. Sale, acquisition or use of supplies by a public  
24 procurement unit.

25 1904. Cooperative use of supplies or services.

26 1905. Joint use of facilities.

27 1906. Supply of personnel, information and technical services.

28 1907. Use of payments received by a supplying public  
29 procurement unit.

30 1908. Compliance of public procurement units.

1 1909. Review of procurement requirements.

2 1910. Contract controversies.

3 § 1901. 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 "Cooperative purchasing." Procurement conducted by or on  
8 behalf of more than one public procurement unit or by a public  
9 procurement unit with an external procurement activity.

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

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

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

24 § 1902. Cooperative purchasing authorized.

25 A public procurement unit may either participate in, sponsor,  
26 conduct or administer a cooperative purchasing agreement for the  
27 procurement of any supplies, services or construction with one  
28 or more public procurement units or external procurement  
29 activities in accordance with an agreement entered into between  
30 the participants. Cooperative purchasing may include, but is not

1 limited to, joint or multiparty contracts between public  
2 procurement units and open-ended purchasing agency contracts  
3 which are made available to local public procurement units.

4 § 1903. Sale, acquisition or use of supplies by a public  
5 procurement unit.

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

11 § 1904. Cooperative use of supplies or services.

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

19 § 1905. Joint use of facilities.

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

25 § 1906. Supply of personnel, information and technical  
26 services.

27 (a) Supply of personnel.--Upon written request from another  
28 public procurement unit or external procurement activity, a  
29 public procurement unit may provide personnel to the requesting  
30 public procurement unit or external procurement activity. The

1 public procurement unit or external procurement activity making  
2 the request shall ~~pay~~ COMPENSATE the public procurement unit ←  
3 providing the personnel the direct and indirect cost of  
4 furnishing the personnel in accordance with an agreement between  
5 the parties.

6 (b) Supply of services.--The informational, technical and  
7 other services of any public procurement unit may be made  
8 available to any other public procurement unit or external  
9 procurement activity. However, the requirements of the public  
10 procurement unit tendering the services shall have precedence  
11 over the requesting public procurement unit or external  
12 procurement activity. The requesting public procurement unit or  
13 external procurement activity shall ~~pay~~ COMPENSATE for the ←  
14 expenses of the services provided in accordance with an  
15 agreement between the parties.

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

- 19 (1) Standard forms.
- 20 (2) Printed manuals.
- 21 (3) Product specifications and standards.
- 22 (4) Quality assurance testing services and methods.
- 23 (5) Qualified products lists.
- 24 (6) Source information.
- 25 (7) Common use commodities listings.
- 26 (8) Supplier prequalification information.
- 27 (9) Supplier performance ratings.
- 28 (10) Debarred and suspended bidders lists.
- 29 (11) Forms for invitations for bids, requests for  
30 proposals, instructions to bidders, general contract

1 provisions and other contract forms.

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

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

6 (1) Development of products specifications.

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

9 (3) Use of product testing and inspection facilities.

10 (4) Use of personnel training programs.

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

14 § 1907. Use of payments received by a supplying public  
15 procurement unit.

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

20 § 1908. Compliance of public procurement units.

21 Where the public procurement unit or external procurement  
22 activity administering a cooperative purchase complies with the  
23 requirements of this part, any public procurement unit  
24 participating in the purchase shall be deemed to have complied  
25 with this part. Public procurement units may not enter into a  
26 cooperative purchasing agreement for the purpose of  
27 circumventing this part.

28 § 1909. Review of procurement requirements.

29 To the extent possible, the department may collect  
30 information concerning the type, cost, quality and quantity of

1 commonly used supplies, services or construction being procured  
2 or used by Commonwealth agencies. The department may also  
3 collect this information from local procurement units. The  
4 department may make this information available to any public  
5 procurement unit upon request.

6 § 1910. Contract controversies.

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

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

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

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

27 CHAPTER 21

28 SMALL AND DISADVANTAGED BUSINESSES

29 Sec.

30 2101. Policy.

- 1 2102. Definitions.
- 2 2103. Regulations.
- 3 2104. Duties of department.
- 4 2105. Bonding and progress payments.
- 5 2106. Business assistance offices.
- 6 2107. Report to General Assembly.
- 7 2108. Compliance with Federal requirements.

8 § 2101. Policy.

9 The policy of this Commonwealth is to assist small and  
10 disadvantaged businesses in learning how to do business with  
11 Commonwealth agencies. The department shall implement this  
12 policy in accordance with regulations promulgated by the  
13 department.

14 § 2102. Definitions.

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

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

24 "Small business." A business in the United States which is  
25 independently owned and which is not dominant in its field of  
26 operation or an affiliate or subsidiary of a business dominant  
27 in its field of operation.

28 § 2103. Regulations.

29 The department shall establish policy and may promulgate  
30 regulations establishing detailed definitions of the words and

1 phrases defined in section 2102 (relating to definitions) using,  
2 in addition to the criteria set forth in section 2102, other  
3 criteria as it deems ~~desirable~~ APPROPRIATE, including the number ←  
4 of employees and the dollar volume of business.

5 § 2104. Duties of department.

6 The department shall have the following duties:

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

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

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

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

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

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

28 § 2105. Bonding and progress payments.

29 (a) Bonding.--Notwithstanding other provisions of this part,  
30 a purchasing agency may reduce the level or change the types of

1 bonding normally required or accept alternative forms of  
2 security to the extent reasonably necessary to encourage  
3 procurement from small and disadvantaged businesses.

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

8 § 2106. Business assistance offices.

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

12 § 2107. Report to General Assembly.

13 The department shall annually, before October 1, report in  
14 writing to the General Assembly concerning the awarding of  
15 contracts to small and disadvantaged businesses during the  
16 preceding fiscal year.

17 § 2108. Compliance with Federal requirements.

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

23 CHAPTER 23

24 ETHICS IN PUBLIC CONTRACTING

25 Subchapter

26 A. General Policy and Standards

27 B. Specific Standards

28 SUBCHAPTER A

29 GENERAL POLICY AND STANDARDS

30 Sec.

1 2301. Policy.

2 2302. General standards of ethical conduct.

3 2303. Reporting of breaches of ethical standards.

4 § 2301. Policy.

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

17 § 2302. General standards of ethical conduct.

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

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

27 § 2303. Reporting of breaches of ethical standards.

28 When any person has reason to believe that any breach of  
29 standards set forth in this chapter has occurred, that person  
30 shall report all relevant facts to the State Ethics Commission

1 and to the Attorney General for any appropriate action.

2

SUBCHAPTER B

3

SPECIFIC STANDARDS

4 Sec.

5 2311. Bonds.

6 § 2311. Bonds.

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

13

PART II

14

GENERAL PROCUREMENT PROVISIONS

15 Chapter

16 31. General Provisions

17 33. Prevention of Environmental Pollution

18 35. (Reserved)

19 37. Contract Clauses and Preference Provisions

20 39. Construction Contracts Over \$50,000

21 41. Purchase of Surplus Federal Property

22 43. Public Facilities Concessions

23 45. Antibid-Rigging

24

CHAPTER 31

25

GENERAL PROVISIONS

26 Sec.

27 3101. Application of part.

28 3102. Definitions.

29 § 3101. Application of part.

30 This part applies to government agencies. In the case of

1 Commonwealth agencies, this part shall be read in pari materia  
2 with Part I (relating to Commonwealth Procurement Code).

3 § 3102. Definitions.

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

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

11 "Government agency." Any Commonwealth agency or any  
12 political subdivision or municipal or other local authority, or  
13 any officer or agency of any political subdivision or local  
14 authority.

15 CHAPTER 33

16 PREVENTION OF ENVIRONMENTAL POLLUTION

17 Sec.

18 3301. Invitations for bids and requests for proposals.

19 3302. Additional work.

20 § 3301. Invitations for bids and requests for proposals.

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

27 § 3302. Additional work.

28 If the successful bidder or offeror must undertake additional  
29 work due to the enactment of new or the amendment of existing  
30 statutes, rules or regulations occurring after the submission of

1 the successful bid or proposal, the government agency shall  
2 issue a change order setting forth the additional work that must  
3 be undertaken, which shall not invalidate the contract. The cost  
4 of a change order to the government agency shall be determined  
5 in accordance with the provisions of the contract for change  
6 orders or force accounts, or, if there is not a provision set  
7 forth in the contract, then the cost to the government agency  
8 shall be the costs to the contractor for wages, labor costs  
9 other than wages, wage taxes, materials, equipment rentals,  
10 insurance and subcontracts attributable to the additional  
11 activity plus a reasonable sum for overhead and profit.  
12 Additional costs to undertake work not specified in the  
13 invitation for bids or requests for proposals shall not be  
14 approved unless written authorization is given the successful  
15 bidder or offeror prior to its undertaking the additional  
16 activity.

17 CHAPTER 35

18 (RESERVED)

19 CHAPTER 37

20 CONTRACT CLAUSES AND PREFERENCE PROVISIONS

21 Subchapter

22 A. Labor

23 B. Steel Products

24 C. Trade Practices

25 D. Motor Vehicles

26 E. Used Oil Products

27 F. Guaranteed Energy Savings ~~Contract~~ CONTRACTS

<—

28 SUBCHAPTER A

29 LABOR

30 Sec.

1 3701. Contract provisions prohibiting discrimination.

2 3702. Contract provision requiring residents to be employed.

3 § 3701. Contract provisions prohibiting discrimination.

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

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

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

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

24 § 3702. Contract provision requiring residents to be employed.

25 Each contract entered into by a government agency for the  
26 construction, alteration or repair of any public works shall  
27 contain a provision that laborers and mechanics employed on the  
28 public works shall have been residents of this Commonwealth for  
29 at least 90 days prior to their employment. Failure to comply  
30 with this section shall be sufficient legal reason to refuse

1 payment of the contract price to the contractor.

2 SUBCHAPTER B

3 STEEL PRODUCTS

4 Sec.

5 3711. Short title of subchapter and general provisions.

6 3712. Definitions.

7 3713. Requirement of contract provision.

8 3714. Payments under contracts.

9 § 3711. Short title of subchapter and general provisions.

10 (a) Short title.--This subchapter shall be known and may be  
11 cited as the Steel Products Procurement Act.

12 (b) Legislative findings.--It is hereby determined by the  
13 General Assembly to reaffirm the legislative findings contained  
14 in the act of March 3, 1978 (P.L.6, No.3), known as the Steel  
15 Products Procurement Act, and codified in this chapter:

16 (1) This Commonwealth is one of the leading states in  
17 the United States in the production of steel.

18 (2) The production of steel products constitutes a major  
19 industry of this Commonwealth and, as such, provides the jobs  
20 and family incomes of hundreds of thousands of the people of  
21 this Commonwealth and, in turn, millions of persons in the  
22 United States.

23 (3) The taxes paid to the Commonwealth and its political  
24 subdivisions by employers and employees engaged in the  
25 production and sale of steel products are one of the largest  
26 single sources of public revenues in this Commonwealth.

27 (4) It has, for many years, been the policy of this  
28 Commonwealth to aid and support the development and expansion  
29 of industry in this Commonwealth in order to foster the  
30 economic well-being of this Commonwealth and its people.

1           (5) The economy and general welfare of this Commonwealth  
2           and its people, as well as the economy, general welfare and  
3           national security of the United States, are inseparably  
4           related to the preservation and development of the steel  
5           industry in this Commonwealth and in the other states of the  
6           United States. The General Assembly therefore declares it to  
7           be the policy of this Commonwealth that all public officers  
8           and agencies should, at all times, aid and promote the  
9           development of the steel industry of the United States in  
10          order to stimulate and improve the economic well-being of  
11          this Commonwealth and its people.

12          (c) Police power.--This chapter shall be deemed to be an  
13          exercise of the police powers of this Commonwealth for the  
14          protection of the health, safety and general welfare of the  
15          people of this Commonwealth.

16          (d) Purpose of chapter.--This chapter is intended as  
17          remedial legislation designed to promote the general welfare and  
18          stimulate the economy of this Commonwealth and its people; each  
19          and every provision of this chapter is intended to receive a  
20          liberal construction as will best effectuate that purpose, and  
21          no provision is intended to receive a strict or limited  
22          construction.

23          § 3712. Definitions.

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

27          ~~"Public works." Any structure, building, highway, waterway, <—~~  
28          ~~street, bridge, transit system, airport or other betterment,~~  
29          ~~work or improvement, whether of a permanent or temporary nature~~  
30          ~~and whether for governmental or proprietary use. The term~~

1 ~~includes, but is not limited to, any railway, street railway,~~  
2 ~~subway, elevated and monorail passenger or passenger and rail~~  
3 ~~rolling stock, self propelled cars, gallery cars, locomotives,~~  
4 ~~passenger buses, wires, poles and equipment for electrification~~  
5 ~~of a transit system, rails, tracks, roadbeds, guideways,~~  
6 ~~elevated structures, buildings, stations, terminals, docks,~~  
7 ~~shelters and repairs to any of the foregoing.~~

8 "Steel products." Products rolled, formed, shaped, drawn,  
9 extruded, forged, cast, fabricated or otherwise similarly  
10 processed, or processed by a combination of two or more of these  
11 operations, from steel made in the United States by the open  
12 hearth, basic oxygen, electric furnace, Bessemer or other steel-  
13 making process. The term includes cast iron products. The term  
14 also includes machinery and equipment listed in United States  
15 Department of Commerce Standard Industrial Classification 25  
16 (furniture and fixture), 35 (machinery, except electrical) and  
17 37 (transportation equipment) and made of, fabricated from or  
18 containing steel components. If a product contains both foreign  
19 and United States steel, the product shall be determined to be a  
20 United States steel product only if at least 75% of the cost of  
21 the articles, materials and supplies have been mined, produced  
22 or manufactured, as the case may be, in the United States.  
23 Transportation equipment shall be determined to be a United  
24 States steel product if it complies with section 165 of the  
25 Surface Transportation Assistance Act of 1982 (Public Law 97-  
26 424, 96 Stat. 2097).

27 "United States." The United States of America, including all  
28 territory, continental or insular, subject to the jurisdiction  
29 of the United States.

30 § 3713. Requirement of contract provision.

1 (a) General rule.--Each CONSTRUCTION contract in excess of <—  
2 \$250,000 which is entered into by a government agency ~~for the~~ <—  
3 ~~construction, reconstruction, alteration, repair, improvement or~~  
4 ~~maintenance of public works~~ shall contain a provision that if  
5 any steel products are to be used or supplied in the performance  
6 of the contract, only steel products as defined in this  
7 subchapter shall be used or supplied in the performance of the  
8 contract or any subcontracts. The amount of \$250,000 shall be  
9 adjusted annually by the department to reflect the annual  
10 percentage change in the Composite Construction Cost Index of  
11 the United States Department of Commerce occurring in the one-  
12 year period ending on December 31 of each year.

13 (b) Exception.--This section does not apply in any case  
14 where the head of the government agency in writing determines  
15 that steel products as defined in this subchapter are not  
16 produced in the United States in sufficient quantities to meet  
17 the requirements of the contract.

18 § 3714. Payments under contracts.

19 (a) Compliance with required contract provisions.--No  
20 government agency shall authorize, provide for or make any  
21 payments to any person under any contract containing the  
22 provision required by section 3713 (relating to requirement of  
23 contract provision) unless, when unidentified steel products are  
24 supplied under a contract, the person has provided  
25 documentation, including, but not limited to, invoices, bills of  
26 lading and mill certification that the steel was melted and  
27 manufactured in the United States, which establishes that the  
28 person has fully complied with section 3713. If a steel product  
29 is identifiable from its face, the person must submit  
30 certification which satisfies the government agency that the

1 person has fully complied with section 3713. Any payments made  
2 to any person by any government agency which should not have  
3 been made as a result of this section shall be recoverable by  
4 either the government agency or the Attorney General directly  
5 from the contractor, subcontractor, manufacturer or supplier who  
6 did not comply with section 3713.

7 (b) Penalties.--In addition to the withholding of payments,  
8 any person who willfully violates any of the provisions of this  
9 subchapter shall be prohibited from submitting any bids to any  
10 government agency for any contract for a period of ~~five~~ THREE ←  
11 years from the date of the determination that a violation has  
12 occurred. In the event the person who violates the provisions of  
13 section 3713 is a subcontractor, manufacturer or supplier, that  
14 person shall be prohibited from performing any work or supplying  
15 any materials to a government agency for a period of ~~five~~ THREE ←  
16 years from the date of the determination that a violation has  
17 occurred.

18 (c) Application of Title 2.--Title 2 (relating to  
19 administrative law and procedure) applies to decisions by  
20 government agencies that a person has violated section 3713.

21 SUBCHAPTER C

22 TRADE PRACTICES

23 Sec.

24 3721. Short title of subchapter and general provisions.

25 3722. Definitions.

26 3723. Unlawful acts.

27 3724. Preference for aluminum and steel products made in  
28 United States.

29 3725. Requirement to list discriminating countries.

30 3726. Procedure to determine discrimination.

1 3727. Foreign registry docket.

2 3728. Aluminum or steel products from a country listed on  
3 foreign registry docket.

4 § 3721. Short title of subchapter and general provisions.

5 (a) Short title.--This subchapter shall be known and may be  
6 cited as the Trade Practices Act.

7 (b) Legislative findings.--It is hereby determined by the  
8 General Assembly to reaffirm the legislative findings contained  
9 in the act of July 23, 1968 (P.L.686, No.226), entitled "An act  
10 equalizing trade practices in public works procurement;  
11 authorizing the purchase by the Commonwealth, its political  
12 subdivisions, and all public agencies, of aluminum and steel  
13 products produced in a foreign country, provided the foreign  
14 country does not prohibit or discriminate against the  
15 importation to, sale or use in the foreign country of supplies,  
16 material or equipment manufactured in this Commonwealth;  
17 establishing procedures for determining whether foreign  
18 countries discriminate against supplies, materials or equipment  
19 manufactured in this Commonwealth; and imposing penalties and  
20 providing for relief for violation of this act," and codified in  
21 this chapter:

22 (1) It has long been the policy of this Commonwealth not  
23 to purchase any supplies, equipment or materials manufactured  
24 in any foreign country which prohibits the specification for  
25 or use of supplies, equipment or materials manufactured in  
26 this Commonwealth.

27 (2) Many world trading countries, directly or indirectly  
28 by statute, regulation, policy, procedure or practice, grant  
29 or bestow a preference for supplies, equipment or materials  
30 manufactured in their country, thereby discriminating against

1 the use of supplies, equipment or materials manufactured in  
2 this Commonwealth. The General Assembly therefore declares it  
3 to be the policy of this Commonwealth that aluminum and steel  
4 products made in the United States should be purchased by all  
5 public agencies in preference to aluminum and steel products  
6 made in foreign countries which discriminate against  
7 supplies, equipment or materials manufactured in this  
8 Commonwealth.

9 (c) Purpose of subchapter.--This subchapter is intended as  
10 remedial legislation designed to promote the general welfare and  
11 stimulate the economy of this Commonwealth and its people; each  
12 and every provision of this chapter is intended to receive a  
13 liberal construction as will best effectuate the purpose, no  
14 provision is intended to receive a strict or limited  
15 construction.

16 § 3722. Definitions.

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

20 "Aluminum or steel products made in a foreign country."

21 Aluminum or steel products rolled, formed, shaped, drawn,  
22 extruded, forged, cast, fabricated or otherwise similarly  
23 processed, or processed by a combination of two or more of these  
24 operations, from aluminum or steel not made in the United  
25 States.

26 "Court." The Commonwealth Court.

27 "Discriminates." Any statute, regulation or policy of a  
28 foreign country which directly or indirectly:

29 (1) Prevents the importation, sale or use of any  
30 supplies, materials or equipment manufactured in this

1 Commonwealth.

2 (2) Grants or bestows a preference, discount or other  
3 competitive advantage to supplies, materials or equipment  
4 manufactured in the foreign country, the effect of which is  
5 to place similar supplies, materials or equipment  
6 manufactured in this Commonwealth at a competitive  
7 disadvantage.

8 (3) Restricts the opportunities for persons having a  
9 business situs in this Commonwealth to bid on or compete for  
10 government contracts, including, but not limited to, a  
11 preference for residents of the foreign country.

12 (4) Solicits for awards or negotiates public works  
13 contracts on a selective tender basis.

14 (5) Imposes discriminatory duties, tariffs or border  
15 taxes on the importation of supplies, materials or equipment  
16 not produced in the foreign country, the effect of which is  
17 to place supplies, materials or equipment manufactured in  
18 this Commonwealth at a competitive disadvantage with like  
19 goods manufactured in any foreign country.

20 (6) Adopts or condones any other unfair method of  
21 competition in international trade, including, but not  
22 limited to, the exportation of aluminum or steel products  
23 made in the foreign country through cartels or the  
24 subsidization of aluminum or steel products.

25 "Importer." Any person registered and doing business in this  
26 Commonwealth who engages in the receiving, storing, distributing  
27 or other processing of aluminum or steel products made in a  
28 foreign country or who engages in the solicitation or acceptance  
29 of orders or contracts for the furnishing of or supplying of  
30 aluminum or steel products made in a foreign country.

1 "Public works." Any structure, building, highway, waterway,  
2 street, bridge, pier, transit car or system, airport or other  
3 betterment, work or improvement, whether of a permanent or  
4 temporary nature and whether for governmental or proprietary use  
5 contracted for by any government agency or financed in whole or  
6 in part by any government agency.

7 § 3723. Unlawful acts.

8 It is unlawful for:

9 (1) Any government agency to specify, purchase or permit  
10 to be furnished or used in any public works aluminum or steel  
11 products made in a foreign country which has been determined  
12 as discriminating by the court unless the amount of the  
13 purchase or contract is equal to or less than \$250,000. This  
14 amount shall be adjusted annually by the department to  
15 reflect the annual percentage change in accordance with the  
16 change in the Composite Construction Cost Index of the United  
17 States Department of Commerce, occurring in the one-year  
18 period ending on December 31 of each year.

19 (2) Any person to sell or offer for sale to any person  
20 for use in any public works aluminum or steel products made  
21 in a foreign country which has been determined as  
22 discriminating by the court.

23 § 3724. Preference for aluminum and steel products made in  
24 United States.

25 If all considerations in or affecting a bid or proposal or a  
26 bidder or offeror are equal, each government agency shall give  
27 preference to aluminum and steel products made in the United  
28 States.

29 § 3725. Requirement to list discriminating countries.

30 In all its invitations for bids or requests for proposals,

1 schedules or purchase orders issued for public works exceeding  
2 the amount established in section 3723 (relating to unlawful  
3 acts), every government agency shall include a listing of the  
4 foreign countries which have been found by the court to  
5 discriminate.

6 § 3726. Procedure to determine discrimination.

7 (a) Petition.--Any government agency, importer or taxpayer  
8 of this Commonwealth may file with the court a petition  
9 specifically setting forth alleged discrimination by a foreign  
10 country and praying for a determination. A copy of the petition  
11 to the court and notice of the time of hearing set by the court  
12 shall be served by registered mail on the consular officer, if  
13 any, of the country having an office in this Commonwealth and  
14 upon a person in charge of the embassy of the foreign country in  
15 Washington, D.C.

16 (b) Hearing.--Upon presentation of a petition filed pursuant  
17 to subsection (a), the court shall make an order fixing a time  
18 for a hearing. The hearing shall be fixed on a day not later  
19 than 45 days after the filing of the petition. The  
20 representative of the foreign country and any other interested  
21 person may appear and present testimony at the hearing. At the  
22 hearing, the court shall consider the statutes, regulations,  
23 policies, procedures and practices of the foreign country  
24 specified in the petition.

25 § 3727. Foreign registry docket.

26 (a) Entering name in docket.--If, after a hearing, the court  
27 determines that the foreign country discriminates, it shall  
28 direct the prothonotary of the court to enter the name of the  
29 foreign country in a foreign registry docket maintained in the  
30 office of the prothonotary.

1 (b) Striking name from docket.--Any foreign country  
2 determined to be practicing discrimination may petition the  
3 court to have its name stricken from the foreign registry  
4 docket. The court shall grant the prayer of the petition if,  
5 after hearing, it determines that the foreign country has  
6 discontinued and not engaged in discrimination for a period of  
7 at least one year prior to the filing of the petition. Notice of  
8 the filing of the petition shall be served upon the original  
9 petitioner and all other parties to the original petition.

10 § 3728. Aluminum or steel products from a country listed on  
11 foreign registry docket.

12 (a) General rule.--It is unlawful for any person in the  
13 performance of a public works contract, subcontract or purchase  
14 order to furnish aluminum or steel products made in a foreign  
15 country that is listed on a foreign registry docket if the  
16 amount exceeds the amount established in section 3723 (relating  
17 to unlawful acts). The person or any organization, corporation,  
18 partnership, business unit, association or joint venture in  
19 which the person has a substantial interest shall not be  
20 eligible to bid or submit an offer on or be awarded any contract  
21 or subcontract or be issued a purchase order for public works  
22 for a period of three years.

23 (b) Persons deemed not in violation.--Notwithstanding  
24 subsection (a), a person shall not be held to have violated this  
25 subchapter if he has not received notification of the listing as  
26 provided in section 3725 (relating to requirement to list  
27 discriminating countries) or solely because his subcontractor or  
28 supplier of materials violates this subchapter if the person had  
29 no knowledge of the violation.

MOTOR VEHICLES

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Sec.

3731. Short title of subchapter and general provisions.

3732. Definitions.

3733. Police power.

3734. Contract provisions.

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

3736. Penalty.

§ 3731. Short title of subchapter and general provisions.

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

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

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

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

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

(4) The economy and general welfare of this Commonwealth

1 and its citizens, as well as the economy, general welfare and  
2 national security of the United States, are inseparably  
3 related in the preservation and development of the motor  
4 vehicle industry in this Commonwealth and in other states of  
5 the United States.

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

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

21 § 3732. Definitions.

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

25 "Motor vehicle." A vehicle which is self-propelled except  
26 one which is propelled solely by human or animal power. The term  
27 includes those vehicles designed primarily for use in  
28 construction or agriculture or road maintenance such as tractors  
29 and earth-moving equipment.

30 "North America." The United States and Canada. The United

1 States includes all territory, continental or insular, subject  
2 to the jurisdiction of the United States.

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

6 § 3733. Police power.

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

10 § 3734. Contract provisions.

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

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

24 § 3735. Payment under contract and action to recover  
25 unauthorized payments.

26 A government agency shall not authorize, provide for or make  
27 a payment to a person under a contract containing the provision  
28 required by section 3734 (relating to contract provisions)  
29 unless the government agency is satisfied that the person has  
30 complied with the provision. The payment made to a person by a

1 government agency which should not have been made shall be  
2 recoverable directly from the supplier of the motor vehicle who  
3 did not comply with section 3734 by the government agency or the  
4 Attorney General by appropriate legal action. Nothing in this  
5 section shall authorize any government agency to initiate a  
6 legal action independently of the Attorney General unless  
7 otherwise authorized under the act of October 15, 1980 (P.L.950,  
8 No.164), known as the Commonwealth Attorneys Act.

9 § 3736. Penalty.

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

#### 16 SUBCHAPTER E

#### 17 USED OIL PRODUCTS

18 Sec.

19 3741. Preference.

20 § 3741. Preference.

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

#### 27 SUBCHAPTER F

#### 28 GUARANTEED ENERGY SAVINGS CONTRACTS

29 Sec.

30 3751. Definitions.

1 3752. Selection process.

2 3753. Award of single contract.

3 § 3751. Definitions.

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

7 "Energy conservation measure." A training program or  
8 facility alteration designed to reduce energy consumption or  
9 operating costs. The term shall include, without limitation:

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

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

17 (3) Automated or computerized energy control systems.

18 (4) Heating, ventilating or air-conditioning system  
19 modifications or replacements.

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

26 (6) Energy recovery systems.

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

30 (8) Energy conservation measures that provide operating

1 cost reductions based on life-cycle cost analysis.

2 "Guaranteed energy savings contract." A contract for the  
3 evaluation and recommendation of energy conservation measures  
4 and for implementation of one or more such measures.

5 § 3752. Selection process.

6 In connection with the letting of any guaranteed energy  
7 savings contract, Commonwealth agencies shall have the power to  
8 waive the process for the selection of design professionals  
9 prescribed under section 905 (relating to procurement of design  
10 professionals).

11 § 3753. Award of single contract.

12 Notwithstanding section 905 (relating to procurement of  
13 design professionals), the Commonwealth agencies may enter into  
14 a single guaranteed energy savings contract for the design and  
15 complete implementation of the energy conservation measures  
16 involved in a project.

17 CHAPTER 39

18 CONSTRUCTION CONTRACTS OVER \$50,000

19 Subchapter

20 A. Preliminary Provisions

21 B. General Provisions

22 C. Retainage

23 D. Prompt Payment Schedules

24 E. ~~Final~~ SUBSTANTIAL/FINAL Payment

←

25 SUBCHAPTER A

26 PRELIMINARY PROVISIONS

27 Sec.

28 3901. Application and purpose of chapter.

29 3902. Definitions.

30 § 3901. Application and purpose of chapter.

1 (a) Application.--Except as otherwise specifically provided  
2 in this chapter, this chapter applies to contracts entered into  
3 by a government agency through competitive sealed bidding or  
4 competitive sealed proposals.

5 (b) Purpose of chapter.--The purpose of this chapter is to  
6 establish a uniform and mandatory system governing public  
7 contracts to the extent of the requirements set forth in this  
8 chapter and shall be construed to effectuate such purpose. The  
9 provisions of this chapter shall in no way affect the provisions  
10 of the act of August 15, 1961 (P.L.987, No.442), known as the  
11 Pennsylvania Prevailing Wage Act, nor the regulations  
12 promulgated under that act, nor shall any requirements of this  
13 chapter affect any provisions of a contract to be awarded  
14 pursuant to any Federal law or regulations containing specific  
15 provisions which are different from the public contract  
16 requirements of this chapter.

17 § 3902. Definitions.

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

21 "Contract." A contract exceeding \$50,000 for construction as  
22 defined in section 103 (relating to definitions), including  
23 heating or plumbing contracts but ~~excepting work performed for~~ <—  
24 ~~the Department of Transportation.~~ EXCLUDING DEPARTMENT OF <—  
25 TRANSPORTATION CONTRACTS FOR HIGHWAY AND AIRPORT, VERTICAL  
26 CONSTRUCTION.

27 "Contractor." A person who enters into a contract with a  
28 government agency.

29 "Deficiency item." Work performed but which the design  
30 professional, the contractor or the inspector will not certify

1 as being completed according to the contract.

2 ~~"Design professional." A professional engineer or~~ <—  
3 ~~professional land surveyor licensed under the act of May 23,~~  
4 ~~1945 (P.L.913, No.367), known as the Engineer, Land Surveyor and~~  
5 ~~Geologist Registration Law, a landscape architect licensed under~~  
6 ~~the act of January 24, 1966 (1965 P.L.1527, No.535), known as~~  
7 ~~the Landscape Architects' Registration Law, or an architect~~  
8 ~~licensed under the act of December 14, 1982 (P.L.1227, No.281),~~  
9 ~~known as the Architects Licensure Law.~~

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.

19 "Government agency." Includes any State-aided institutions.

20 "Inspector." The person authorized or engaged by the  
21 government agency to inspect the work performed and materials  
22 furnished pursuant to a contract to determine whether the work  
23 completed is in compliance with the contract.

24 "Local government unit." Any county, city, borough,  
25 incorporated town, township, school district, vocational school  
26 district, county institution, local authority or any joint or  
27 cooperative body of local government units or any  
28 instrumentality, authority or corporation thereof which has  
29 authority to enter into a contract.

30 "State-aided institution." Any institution which receives

1 State funds directly or indirectly for construction.

2 "Subcontractor." A person who has contracted to furnish  
3 labor or materials to or has performed labor for a contractor or  
4 another subcontractor in connection with a contract.

5 "Substantial completion." Construction that is sufficiently  
6 completed in accordance with the contract and certified by the  
7 architect or engineer of the government agency, as modified by  
8 change orders agreed to by the parties, so that the project can  
9 be used, occupied or operated for its intended use. In no event  
10 shall a project be certified as substantially complete until at  
11 least 90% of the work on the project is completed.

12 SUBCHAPTER B

13 GENERAL PROVISIONS

14 Sec.

15 3911. Time for awarding contract.

16 3912. Time for executing contract.

17 3913. Release of successful bidder.

18 § 3911. Time for awarding contract.

19 (a) General rule.--In the case of a contract to be entered  
20 into by a government agency through competitive sealed bidding,  
21 the contract shall be awarded to the lowest responsible and  
22 responsive bidder within 60 days of the bid opening, or all bids  
23 shall be rejected except as otherwise provided in this section.

24 (b) Delay.--If the award is delayed by the required approval  
25 of another government agency, the sale of bonds or the award of  
26 a grant, the contract shall be awarded to the lowest responsible  
27 and responsive bidder within 120 days of the bid opening, or all  
28 bids shall be rejected.

29 (c) Extensions.--~~Thirty day extensions~~ EXTENSIONS of the  
30 date for the award may be made by the mutual written consent of

<—

1 the government agency and the lowest responsible and responsive  
2 bidder.

3 (d) List of bidders.--All government agencies shall be  
4 required to provide a list of the bidders and their bid amount  
5 on each contract within ten working days of the bid opening to  
6 interested parties for a fee to be determined by the government  
7 agency to cover the cost of developing such list. This  
8 requirement shall not apply to the contracting bodies of any  
9 political subdivision or local authority which has the authority  
10 to enter into a contract.

11 § 3912. Time for executing contract.

12 In the case of a contract entered into by a government agency  
13 through competitive sealed bidding, the contract shall be  
14 executed by the government agency within ~~45~~ 60 days of the date ←  
15 that the contract is awarded.

16 § 3913. Release of successful bidder.

17 Failure of the government agency to comply with the  
18 requirements of sections 3911 (relating to time for awarding  
19 contract) and 3912 (relating to time for executing contract)  
20 shall, unless the successful bidder waives the noncompliance by  
21 written notice to the government agency, release the successful  
22 bidder from any liability in respect to its bid or contract and  
23 entitle all bidders to the immediate return of any bonds or  
24 security deposits posted in connection with the bid or contract.

25 SUBCHAPTER C

26 RETAINAGE

27 Sec.

28 3921. Retainage.

29 3922. Payment of retainage to subcontractors.

30 § 3921. Retainage.

1 (a) Contract provision.--A contract may include a provision  
2 for the retainage of a portion of the amount due the contractor  
3 to insure the proper performance of the contract except that the  
4 sum withheld by the government agency from the contractor shall  
5 not exceed 10% of the amount due the contractor until 50% of the  
6 contract is completed. When the contract is 50% completed, one-  
7 half of the amount retained by the government agency shall be  
8 returned to the contractor. However, the architect or engineer  
9 must approve the application for payment. The contractor must be  
10 making satisfactory progress, and there must be no specific  
11 cause for greater withholding. The sum withheld by the  
12 government agency from the contractor after the contract is 50%  
13 completed shall not exceed 5% of the value of completed work  
14 based on monthly progress payment requests. In the event a  
15 dispute arises between the government agency and any prime  
16 contractor, which dispute is based upon increased costs claimed  
17 by one prime contractor occasioned by delays or other actions of  
18 another prime contractor, additional retainage in the sum of one  
19 and one-half times the amount of any possible liability may be  
20 withheld until a time as a final resolution is agreed to by all  
21 parties directly or indirectly involved unless the contractor  
22 causing the additional claim furnishes a bond satisfactory to  
23 the government agency to indemnify the agency against the claim.  
24 All money retained by the government agency may be withheld from  
25 the contractor until substantial completion of the contract.

26 (b) Department of General Services.--Notwithstanding  
27 subsection (a), when the Department of General Services is the  
28 government agency, the contract may include a provision for the  
29 retainage of a portion of the amount due the contractor to  
30 insure the proper performance of the contract except that the

1 sum withheld by the department for the contractor shall not  
2 exceed 6% of the then total estimates until 50% of the contract  
3 is satisfactorily completed. The sum withheld by the department  
4 from the contractor after the contract is 50% satisfactorily  
5 completed shall not exceed 3% of the original contract amount.  
6 § 3922. Payment of retainage to subcontractors.

7 In the absence of sufficient reason, within 20 days of the  
8 receipt of payment by the contractor, the contractor shall pay  
9 all subcontractors with which it has contracted their earned  
10 share of the payment the contractor received.

#### 11 SUBCHAPTER D

#### 12 PROMPT PAYMENT SCHEDULES

13 Sec.

14 3931. Performance by contractor or subcontractor.

15 3932. Government agency's progress payment obligations.

16 3933. Contractors' and subcontractors' payment obligations.

17 3934. Withholding of payment for good faith claims.

18 3935. Penalty and attorney fees.

19 3936. Contracts involving Federal aid.

20 3937. Certain provisions unenforceable.

21 3938. Applicability.

22 3939. Claims by innocent parties.

23 § 3931. Performance by contractor or subcontractor.

24 (a) Entitlement of contractor to payment.--Performance by a  
25 contractor in accordance with the provisions of a contract shall  
26 entitle the contractor to payment by the government agency.

27 (b) Entitlement of subcontractor to payment.--Performance by  
28 a subcontractor in accordance with the provisions of a contract  
29 shall entitle the subcontractor to payment from the contractor  
30 with whom the subcontractor has contracted.

1 § 3932. Government agency's progress payment obligations.

2 (a) Payments in accordance with contract.--The government  
3 agency shall pay the contractor or design professional strictly  
4 in accordance with the contract.

5 (b) Application for progress payments.--If the contract does  
6 not contain a term governing the time for payment, the  
7 contractor or design professional shall be entitled to make  
8 application for payment from the government agency for progress  
9 payments, and the government agency shall make payment less the  
10 applicable retainage amount as authorized in section 3921  
11 (relating to retainage) to the contractor or design professional  
12 within 45 calendar days of the date the application for payment  
13 is received.

14 (c) Interest on progress payments not timely made.--Except  
15 as otherwise agreed by the parties, if any progress payment less  
16 the applicable retainage amount as authorized in section 3921 is  
17 not made to a contractor or design professional by the due date  
18 established in the contract or in subsection (b), the government  
19 agency shall pay to the contractor or design professional, in  
20 addition to the amount due, interest on the amount due, and the  
21 interest shall be computed at the rate determined by the  
22 Secretary of Revenue for interest payments on overdue taxes or  
23 the refund of taxes as provided in sections 806 and 806.1 of the  
24 act of April 9, 1929 (P.L.343, No.176), known as The Fiscal  
25 Code.

26 (d) When interest payment not required.--In the event that  
27 the contract does not contain a grace period and if a contractor  
28 or design professional is not paid by the payment date required  
29 by subsection (b), no interest penalty payment required under  
30 this section shall be paid if payment is made on or before the

1 15th calendar day after the payment date required under this  
2 subchapter.

3 § 3933. Contractors' and subcontractors' payment obligations.

4 (a) Performance by subcontractor entitles subcontractor to  
5 payment.--Performance by a subcontractor in accordance with the  
6 provisions of the contract shall entitle the subcontractor to  
7 payment from the party with whom the subcontractor has  
8 contracted. For purposes of this section, the contract between  
9 the contractor and subcontractor is presumed to incorporate the  
10 terms of the contract between the contractor and the government  
11 agency.

12 (b) Disclosure of progress payment due dates.--A contractor  
13 or subcontractor shall disclose to a subcontractor, before a  
14 subcontract is executed, the due date for receipt of progress  
15 payments from the government agency. Notwithstanding any other  
16 provisions of this subchapter, if a contractor or a  
17 subcontractor fails to accurately disclose the due date to a  
18 subcontractor, the contractor or subcontractor shall be  
19 obligated to pay the subcontractor as though the due dates  
20 established in subsection (c) were met by the government agency.  
21 This subsection shall not apply to a change in due dates because  
22 of conditions outside of the contractor's control, including,  
23 but not limited to, design changes, change orders or delays in  
24 construction due to weather conditions.

25 (c) Payment.--When a subcontractor has performed in  
26 accordance with the provisions of the contract, a contractor  
27 shall pay to the subcontractor, and each subcontractor shall in  
28 turn pay to its subcontractors, the full or proportional amount  
29 received for each such subcontractor's work and material, based  
30 on work completed or services provided under the subcontract, 14

1 days after receipt of a progress payment. Payment shall be made  
2 under this section unless it is being withheld under section  
3 3934 (relating to withholding of payment for good faith claims).

4 (d) Interest due when progress payment not timely.--If any  
5 progress payment is not made to a subcontractor by the due date  
6 established in the contract or in subsection (c), the contractor  
7 shall pay to the subcontractor, in addition to the amount due,  
8 interest as computed in section 3932(c) (relating to government  
9 agency's progress payment obligations).

10 (e) When interest payment not required.--In the event that  
11 the contract does not contain a grace period and if a  
12 subcontractor is not paid by the payment date required by  
13 subsection (c), no interest penalty payment required under this  
14 section shall be paid if payment is made on or before the 15th  
15 calendar day after the payment date required under this  
16 subchapter.

17 § 3934. Withholding of payment for good faith claims.

18 (a) When government agency may withhold payment.--The  
19 government agency may withhold payment for deficiency items  
20 according to terms of the contract. The government agency shall  
21 pay the contractor according to the provisions of this  
22 subchapter for all other items which appear on the application  
23 for payment and have been satisfactorily completed. The  
24 contractor may withhold payment from any subcontractor  
25 responsible for a deficiency item. The contractor shall pay any  
26 subcontractor according to the provisions of this subchapter for  
27 any item which appears on the application for payment and has  
28 been satisfactorily completed.

29 (b) Notification when payment withheld for deficiency  
30 item.--If a government agency withholds payment from a

1 contractor for a deficiency item, it shall notify the contractor  
2 of the deficiency item within the time period specified in the  
3 contract or 15 calendar days of the date that the application  
4 for payment is received. If a contractor withholds payment from  
5 a subcontractor for a deficiency item, it must notify the  
6 subcontractor or supplier and the government agency of the  
7 reason within 15 calendar days of the date after receipt of the  
8 notice of the deficiency item from the owner.

9 § 3935. Penalty and attorney fees.

10 (a) Penalty.--If arbitration or a claim with the Board of  
11 Claims or a court of competent jurisdiction is commenced to  
12 recover payment due under this subchapter and it is determined  
13 that the government agency, contractor or subcontractor has  
14 failed to comply with the payment terms of this subchapter, the  
15 arbitrator, the Board of Claims or the court may award, in  
16 addition to all other damages due, a penalty equal to 1% per  
17 month of the amount that was withheld in bad faith. An amount  
18 shall be deemed to have been withheld in bad faith to the extent  
19 that the withholding was arbitrary or vexatious. An amount shall  
20 not be deemed to have been withheld in bad faith to the extent  
21 it was withheld pursuant to section 3934 (relating to  
22 withholding of payment for good faith claims).

23 (b) Attorney fees.--Notwithstanding any agreement to the  
24 contrary, the prevailing party in any proceeding to recover any  
25 payment under this subchapter may be awarded a reasonable  
26 attorney fee in an amount to be determined by the Board of  
27 Claims, court or arbitrator, together with expenses, if it is  
28 determined that the government agency, contractor or  
29 subcontractor acted in bad faith. An amount shall be deemed to  
30 have been withheld in bad faith to the extent that the

1 withholding was arbitrary or vexatious.

2 § 3936. Contracts involving Federal aid.

3 If any provision of this subchapter conflicts with a Federal  
4 statute or regulation or with conditions attached to the receipt  
5 of Federal aid, this subchapter shall not operate to prevent  
6 receipt of the Federal aid in accordance with any Federal  
7 statute or regulation.

8 § 3937. Certain provisions unenforceable.

9 A provision in the contract making it subject to the laws of  
10 another state or requiring that any litigation, arbitration or  
11 other dispute resolution process on the contract occurs in  
12 another state shall be unenforceable.

13 § 3938. Applicability.

14 (a) Not applicable in certain situations.--This subchapter  
15 shall not apply in the following situations:

16 (1) Section 3932 (relating to government agency's  
17 progress payment obligations) shall not apply when the State  
18 government unit's nonpayment on a particular project is  
19 caused by the failure of the General Assembly to enact a  
20 budget for the fiscal year of payment.

21 (2) Section 3932 shall not apply when a local government  
22 unit's nonpayment on a particular project is caused by  
23 failure of the Federal or State Government to pay funds due  
24 and payable to the local government unit.

25 (3) Section 3932 shall not apply when government  
26 agency's nonpayment on a particular project is caused by the  
27 failure of the General Assembly to enact an operating budget  
28 for the fiscal year of payment or a capital budget for the  
29 capital project or by failure of the Federal, State or local  
30 government to pay funds designated or to be designated for

1 the specific project.

2 (4) Nothing in this subchapter shall be construed to  
3 require payment of interest penalties by the Federal or State  
4 Government if the municipality is liable for such interest.

5 (b) Not applicable to following entities.--This act shall  
6 not apply to any of the following:

7 (1) A municipality determined to be distressed under the  
8 act of July 10, 1987 (P.L.246, No.47), known as the  
9 Municipalities Financial Recovery Act.

10 (2) A school district which has been determined to be a  
11 distressed school district under section 691 of the act of  
12 March 10, 1949 (P.L.30, No.14), known as the Public School  
13 Code of 1949.

14 (3) A city of the first class that has entered into an  
15 intergovernmental cooperation agreement under the act of June  
16 5, 1991 (P.L.9, No.6), known as the Pennsylvania  
17 Intergovernmental Cooperation Authority Act for Cities of the  
18 First Class, for so long as any deficit-reducing bonds issued  
19 by the authority pursuant to section 301(b)(1) of ~~the~~ THAT ←  
20 act are outstanding and payable.

21 (4) Any corporate entity or school district as defined  
22 in the Pennsylvania Intergovernmental Cooperation Authority  
23 Act for Cities of the First Class.

24 § 3939. Claims by innocent parties.

25 (a) No obligation to third parties.--The government agency  
26 shall have no obligation to any third parties for any claim.

27 (b) Barred claims.--Once a contractor has made payment to  
28 the subcontractor according to the provisions of this  
29 subchapter, future claims for payment against the contractor or  
30 the contractor's surety by parties owed payment from the

1 subcontractor which has been paid shall be barred.

2 SUBCHAPTER E

3 ~~FINAL PAYMENT~~ ←

4 ~~Sec.~~

5 ~~3941. Final payment under contract.~~

6 ~~3942. Arbitration.~~

7 SUBSTANTIAL/FINAL PAYMENT ←

8 SEC.

9 3941. SUBSTANTIAL/FINAL PAYMENT UNDER CONTRACT.

10 3942. ARBITRATION.

11 § 3941. ~~Final~~ SUBSTANTIAL/FINAL payment under contract. ←

12 (a) Contract containing provision for retainage.--A contract  
13 containing a provision for retainage as provided in section 3921  
14 (relating to retainage) shall contain a provision requiring the  
15 architect or engineer to make final inspection within 30 days of  
16 receipt of the request of the contractor for final inspection  
17 and application for final payment. If the work is substantially  
18 completed, the architect or engineer shall issue a certificate  
19 of completion and a final certificate for payment, and the  
20 government agency shall make payment in full within 45 days  
21 except as provided in section 3921, less only one and one-half  
22 times the amount as is required to complete any then-remaining  
23 uncompleted minor items, which amount shall be certified by the  
24 architect or engineer and, upon receipt by the government agency  
25 of any guarantee bonds which may be required, in accordance with  
26 the contract, to insure proper workmanship for a designated  
27 period of time. The certificate given by the architect or  
28 engineer shall list in detail each uncompleted item and a  
29 reasonable cost of completion. Final payment of any amount  
30 withheld for the completion of the minor items shall be paid

1 upon completion of the items in the certificate of the engineer  
2 or architect.

3 (b) Interest.--The final payment due the contractor from the  
4 government agency after substantial completion of the contract  
5 shall bear interest at a rate of 6% for all contracts without  
6 provisions for retainage and at a rate of 10% for all contracts  
7 with provisions for retainage, the interest to begin after the  
8 date that such payment becomes due and payable to the  
9 contractor. However, where the government agency has issued  
10 bonds to finance the project, interest shall be payable to the  
11 contractor at the rate of interest of the bond issue or at the  
12 rate of 10%, whichever is less, but in no event shall the  
13 interest payable to the contractor be at a rate of interest less  
14 than the legal rate of interest.

15 § 3942. Arbitration.

16 If a dispute should arise between the contractor and the  
17 government agency over the payment of retainages and final  
18 payment, then the dispute shall be arbitrated under the  
19 applicable terms of the contract. If the contract contains no  
20 provision for arbitration, then both parties may mutually agree  
21 to arbitrate the dispute under the rules of the American  
22 Arbitration Association or in accordance with 42 Pa.C.S. Ch. 73  
23 (relating to arbitration). In any event, either party shall have  
24 the right of appeal from any decision and award as provided by  
25 law.

## 26 CHAPTER 41

### 27 PURCHASE OF SURPLUS FEDERAL PROPERTY

28 Sec.

29 4101. Contracts with United States.

30 4102. Bids and down payments.

1 § 4101. Contracts with United States.

2 Any government agency may enter into a contract with the  
3 Federal Government for the purchase, lease or other acquisition,  
4 including the warehousing and distribution, of any surplus real  
5 or personal Federal property without complying with any  
6 requirement of law as to specifications, advertising, award of  
7 contract or approval by another government agency. However, any  
8 Commonwealth agency may only enter into a contract authorized by  
9 this section through the Department of General Services.

10 § 4102. Bids and down payments.

11 Any government agency authorized to enter into a contract  
12 under section 4101 (relating to contracts with United States)  
13 may designate by appropriate order an officeholder or employee  
14 of its own to enter a bid in its behalf at any sale of any  
15 surplus real or personal Federal property and may authorize the  
16 designee to make any down payment or payment in full required in  
17 connection with the bidding.

18 CHAPTER 43

19 PUBLIC FACILITIES CONCESSIONS

20 Sec.

21 4301. Short title of chapter and general provisions.

22 4302. Definitions.

23 4303. Terms of contracts.

24 § 4301. Short title of chapter and general provisions.

25 (a) Short title.--This chapter shall be known and may be  
26 cited as the Public Facilities Concession Regulation Act.

27 (b) Legislative findings.--It is hereby determined by the  
28 General Assembly to reaffirm the legislative findings contained  
29 in the act of November 26, 1978 (P.L.1303, No.315), known as the  
30 Public Facilities Concession Regulation Act, and codified in

1 this chapter:

2 (1) It is and has been the policy of this Commonwealth  
3 to require and encourage public agencies to own and operate a  
4 variety of public facilities for the conduct of public  
5 business and for the health, education, protection,  
6 transportation, recreation, entertainment and cultural  
7 advancement of the people of this Commonwealth.

8 (2) It is and has been the policy of this Commonwealth  
9 to promote the public welfare by permitting the operation,  
10 within these public facilities, of various concessions to  
11 provide goods and services to the public.

12 (3) Due to the nature, configuration and location of  
13 many public facilities, members of the public utilizing the  
14 facilities must either patronize the concessionaires  
15 operating therein or undergo great expense, inconvenience and  
16 hardship.

17 (4) The general welfare of the people of this  
18 Commonwealth requires that concessionaires operating in  
19 public facilities offer to the public goods and services of  
20 good quality at reasonable prices. The General Assembly  
21 therefore declares it to be the policy of this Commonwealth  
22 that all public officers and agencies should, at all times,  
23 make efforts to see that concessionaires in public facilities  
24 provide goods and services of high quality, at reasonable  
25 prices, in order to protect the public and encourage use of  
26 public facilities.

27 (c) Police power.--This chapter shall be deemed to be an  
28 exercise of the police powers of this Commonwealth for the  
29 protection of the health, safety and general welfare of the  
30 people of this Commonwealth.

1 (d) Purpose of chapter.--This chapter is intended as  
2 remedial legislation designed to promote the general welfare,  
3 protect the public and encourage full and proper use of public  
4 facilities. Each provision of this chapter is intended to  
5 receive a liberal construction as will best effectuate those  
6 purposes, and no provision is intended to receive a strict or  
7 limited construction.

8 (e) Certain rights preserved.--This chapter is not intended  
9 to limit or deny any other rights previously enjoyed by any  
10 government agency.

11 § 4302. Definitions.

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

15 "Public facility." Any building, airport, school, park,  
16 hospital or other structure, grounds or place owned or operated  
17 by a government agency, whether for governmental or proprietary  
18 use.

19 § 4303. Terms of contracts.

20 (a) General rule.--Each government agency shall require that  
21 every contract granting any concession, license, permit or right  
22 to sell, lease, contract for or otherwise make available for  
23 consideration goods or services to the public in any public  
24 facility contains provisions giving the government agency the  
25 right to regulate the kinds, quality and prices of the goods and  
26 services, upon terms and conditions as may be appropriate.

27 (b) Exceptions.--This section is not intended to apply in  
28 any of the following cases:

29 (1) Where the right to regulate price or quality is  
30 vested exclusively in or has been preempted by the United

1 States or any of its agencies or another government agency.

2 (2) Where the head of the government agency determines  
3 in writing that the retention of the right to regulate is not  
4 necessary to protect the general welfare.

5 CHAPTER 45

6 ANTIBID-RIGGING

7 Sec.

8 4501. Short title of chapter.

9 4502. Definitions.

10 4503. Prohibited activities.

11 4504. Civil action and damages.

12 4505. Suspension or debarment.

13 4506. Liability for increased costs.

14 4507. Noncollusion affidavits.

15 4508. Responsibility for enforcement.

16 4509. Investigation.

17 § 4501. Short title of chapter.

18 This chapter shall be known and may be cited as the Antibid-  
19 Rigging Act.

20 § 4502. Definitions.

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

24 "Bid-rigging." The concerted activity of two or more persons  
25 to determine in advance the winning bidder of a contract let or  
26 to be let for competitive bidding by a government agency. The  
27 term includes, but is not limited to, any one or more of the  
28 following:

29 (1) Agreeing to sell items or services at the same  
30 price.

- 1 (2) Agreeing to submit identical bids.
- 2 (3) Agreeing to rotate bids.
- 3 (4) Agreeing to share profits with a contractor who does
- 4 not submit the low bid.
- 5 (5) Submitting prearranged bids, agreed-upon higher or
- 6 lower bids or other complementary bids.
- 7 (6) Agreeing to set up territories to restrict
- 8 competition.
- 9 (7) Agreeing not to submit bids.

10 "Government agency." The Commonwealth and any of its  
11 departments, boards, agencies, authorities and commissions, any  
12 political subdivision, municipal or other local authority or any  
13 officer or agency of any political subdivision or local  
14 authority.

15 "Person." An individual, corporation or partnership or any  
16 other entity capable of submitting a bid to the Commonwealth.  
17 § 4503. Prohibited activities.

18 (a) Bid-rigging unlawful.--It is unlawful for any person to  
19 conspire, collude or combine with another in order to commit or  
20 attempt to commit bid-rigging involving:

21 (1) A contract for the purchase of equipment, goods,  
22 services or materials or for construction or repair let or to  
23 be let by a government agency.

24 (2) A subcontract for the purchase of equipment, goods,  
25 services or materials or for construction or repair with a  
26 prime contractor or proposed prime contractor for a  
27 government agency.

28 (b) Simultaneous bids.--Notwithstanding other provisions of  
29 this chapter, it is not unlawful for the same person to  
30 simultaneously submit bids for the same work, or a portion

1 thereof, as a proposed prime contractor and subcontractor.

2 (c) Fines and imprisonment.--Any person who violates this  
3 section commits a felony of the third degree and shall, upon  
4 conviction, be sentenced to pay a fine of not more than  
5 \$1,000,000, if an entity other than an individual, or a fine of  
6 not more than \$50,000, if an individual, or to serve a term of  
7 imprisonment for not more than three years, or both.

8 (d) Alternative civil penalty.--In lieu of criminal  
9 prosecution for violation of this section, the Attorney General  
10 may bring an action for a civil penalty. In this action, a  
11 person found by a court to have violated this section shall be  
12 liable for a civil penalty of not more than \$100,000.

13 (e) Disposition of fines and penalties.--Criminal fines and  
14 civil penalties collected under subsections (c) and (d) shall be  
15 paid into the State Treasury and deposited in the appropriate  
16 fund.

17 (f) Factors to be considered in determining fines,  
18 imprisonment or civil penalties.--In determining the appropriate  
19 sanctions to be imposed for a violation of this section, the  
20 court shall consider at least the following three factors:

21 (1) The prior record and the number of previous  
22 violations.

23 (2) The net worth of the person.

24 (3) The size and amount of the contract involved.

25 (g) Civil action not barred.--A conviction or civil penalty  
26 imposed under this section shall not bar a government agency  
27 from pursuing additional civil action and administrative  
28 sanctions.

29 (h) Limitation on prosecution.--No criminal prosecution  
30 under this section shall be brought against a person who has

1 been previously charged by information or indictment with a  
2 criminal violation of the Federal antitrust laws, based upon the  
3 same allegedly unlawful conduct upon which a criminal  
4 prosecution under this chapter could be based, where jeopardy  
5 has attached under the Federal prosecution.

6 § 4504. Civil action and damages.

7 (a) Government agency to have right of action.--Any  
8 government agency entering into a contract which is or has been  
9 the subject of activities prohibited by section 4503 (relating  
10 to prohibited activities) shall have a right of action against  
11 the participants in the prohibited activities to recover  
12 damages.

13 (b) Options.--The government agency shall have the option to  
14 proceed jointly and severally in a civil action against any one  
15 or more of the participants for recovery of the full amount of  
16 the damages. There shall be no right to contribution among  
17 participants not named defendants by the government agency.

18 (c) Measure of damages.--The measure of damages recoverable  
19 under this section shall be the actual damages, which damages  
20 shall be trebled plus the cost of suit, including reasonable  
21 attorney fees.

22 (d) When cause of action arises.--The cause of action shall  
23 arise at the time the government agency which entered into the  
24 contract discovered, or should have discovered, the conduct  
25 amounting to the unlawful offense. The action shall be brought  
26 within four years of the date that the cause of action arose. No  
27 civil action shall be maintained after the expiration of ten  
28 years from the date the contract was signed by the parties.

29 (e) Conviction to be dispositive of liability.--Any  
30 conviction under section 4503 shall be dispositive of the

1 liability of the participants with the only issues for trial  
2 being the fact and amount of damages.

3 § 4505. Suspension or debarment.

4 (a) Maximum suspension or debarment.--A government agency  
5 proceeding under its rules and regulations to exclude or render  
6 ineligible a person from participation in contracts or  
7 subcontracts based upon conduct prohibited by section 4503  
8 (relating to prohibited activities) shall limit the exclusion or  
9 ineligibility to a period not to exceed the following:

10 (1) Three years in the case of a person found for the  
11 first time to have engaged in this conduct.

12 (2) Five years in the case of a person found to have  
13 engaged in this conduct for a second or subsequent time.

14 (b) Lists of persons excluded.--A government agency that  
15 lets a contract by competitive bidding shall maintain a current  
16 list of persons excluded or ineligible by reason of suspension  
17 or debarment for participation in contracts or subcontracts with  
18 that agency and shall furnish a copy of the list upon request to  
19 a person considering the submission of a bid as a prime  
20 contractor or as a subcontractor.

21 § 4506. Liability for increased costs.

22 A person who enters into a contract with a government agency,  
23 either directly as a contractor or indirectly as a  
24 subcontractor, during a period of suspension or debarment  
25 imposed upon that person by that agency under its rules and  
26 regulations shall be liable to the government agency and to an  
27 eligible contractor for increased costs incurred as a result of  
28 replacing the excluded or ineligible person.

29 § 4507. Noncollusion affidavits.

30 Noncollusion affidavits may be required by rule or regulation

1 of any government agency for all persons. Any requirement for  
2 noncollusion affidavits shall be set forth in the invitation to  
3 bid. Failure of any person to provide a required affidavit to  
4 the government agency may be grounds for disqualification of his  
5 bid. Any required noncollusion affidavit shall state whether or  
6 not the person has been convicted or found liable for any act  
7 prohibited by Federal or State law in any jurisdiction involving  
8 conspiracy or collusion with respect to bidding on any public  
9 contract within the last three years. The form for any required  
10 noncollusion affidavit shall provide that the person's statement  
11 on the affidavit that he has been convicted or found liable for  
12 any act prohibited by Federal or State law in any jurisdiction  
13 involving conspiracy or collusion with respect to bidding on any  
14 public contract within the last three years does not prohibit a  
15 government agency from accepting a bid from or awarding a  
16 contract to that person, but it may be grounds for  
17 administrative suspension or debarment in the discretion of the  
18 government agency under the rules and regulations of that agency  
19 or, in the case of a government agency with no administrative  
20 suspension or debarment regulations or procedures, may be  
21 grounds for consideration on the question of whether the agency  
22 should decline to award a contract to that person on the basis  
23 of lack of responsibility. The provisions of this section are in  
24 addition to and not in derogation of any other powers and  
25 authority of any government agency.

26 § 4508. Responsibility for enforcement.

27 (a) Criminal prosecution.--The Office of Attorney General  
28 and the district attorneys of the several counties shall have  
29 concurrent jurisdiction for the investigation and prosecution of  
30 violations of section 4503 (relating to prohibited activities).

1 (b) Civil action.--The Office of Attorney General shall have  
2 the authority to bring civil action under section 4504 (relating  
3 to civil action and damages) on behalf of the Commonwealth and  
4 any of its departments, boards, agencies, authorities and  
5 commissions. Political subdivisions or municipal or other local  
6 authorities or any officer or agency of any such political  
7 subdivision or local authority shall have the right to bring a  
8 civil action under section 4504. Upon the filing of a complaint,  
9 a copy shall be served on the Attorney General. The plaintiff,  
10 at any time, may request the Attorney General to act on its  
11 behalf. The Attorney General, upon determining that it is in the  
12 best interest of the Commonwealth, shall have the authority to  
13 intervene on behalf of the Commonwealth in these actions.

14 § 4509. Investigation.

15 (a) Required attendance.--Whenever the Office of Attorney  
16 General believes that a person may be in possession, custody or  
17 control of documentary material or may have information relevant  
18 to the subject matter of a civil investigation for the purpose  
19 of ascertaining whether a person is or has been engaged in a  
20 violation of this chapter, the Attorney General may require the  
21 attendance and testimony of witnesses and the production of  
22 books, accounts, papers, records, documents and files relating  
23 to the civil investigation. For this purpose, the Attorney  
24 General or his representatives may sign subpoenas, administer  
25 oaths or affirmations, examine witnesses and receive evidence  
26 during the investigation. A request for information shall state  
27 the subject matter of the investigation, the conduct  
28 constituting the alleged violation which is under investigation  
29 and the provisions of this chapter applicable to the alleged  
30 violation. A request for documentary material shall describe the

1 material to be produced with reasonable particularity so as to  
2 fairly identify the documents demanded, provide a return date  
3 within which the material is to be produced and identify the  
4 member of the Attorney General's staff to whom the material  
5 shall be given. In case of disobedience of a subpoena or the  
6 contumacy of a witness appearing before the Attorney General or  
7 his representative, the Attorney General or his representative  
8 may invoke the aid of a court of record of this Commonwealth,  
9 and the court may issue an order requiring the person subpoenaed  
10 to obey the subpoena or to give evidence or to produce books,  
11 accounts, papers, records, documents and files relative to the  
12 matter in question. Failure to obey an order of the court may be  
13 punished by the court as a contempt.

14 (b) Confidentiality.--No information or documentary material  
15 produced under a demand under this section shall, unless  
16 otherwise ordered by a court for good cause shown, be produced  
17 for inspection or copying by, nor shall the contents be  
18 disclosed to, a person other than the Attorney General or his  
19 representative without the consent of the person who produced  
20 the information or material. However, the Attorney General or  
21 his representative shall disclose information or documentary  
22 material produced under this section or information derived  
23 therefrom to officials of a government agency affected by the  
24 alleged violation, for use by that agency in connection with an  
25 investigation or proceeding within its jurisdiction and  
26 authority, upon the prior certification of an appropriate  
27 official of the agency that the information shall be maintained  
28 in confidence other than use for official purposes. Under  
29 reasonable terms and conditions as the Attorney General or his  
30 representative shall prescribe, the documentary material shall

1 be available for inspection and copying by the person who  
2 produced the material or a duly authorized representative of  
3 that person. The Attorney General or his representative may use  
4 the documentary material or information or copies as he  
5 determines necessary in the civil enforcement of this chapter,  
6 including presentation before any court. Material which contains  
7 trade secrets or other highly confidential matter shall not be  
8 presented except with the approval of the court in which a  
9 proceeding is pending after adequate notice to the person  
10 furnishing the material.

11 (c) Limitation on use.--No criminal prosecution under  
12 section 4503 (relating to prohibited activities) may be brought  
13 by either the Attorney General or a district attorney based  
14 solely upon information or documents obtained in a civil  
15 investigation under this section.

16 Section 2. Section 2310 of Title 1 is amended to read:  
17 § 2310. Sovereign immunity reaffirmed; specific waiver.

18 Pursuant to section 11 of Article 1 of the Constitution of  
19 Pennsylvania, it is hereby declared to be the intent of the  
20 General Assembly that the Commonwealth, and its officials and  
21 employees acting within the scope of their duties, shall  
22 continue to enjoy sovereign immunity and official immunity and  
23 remain immune from suit except as the General Assembly shall  
24 specifically waive the immunity. When the General Assembly  
25 specifically waives sovereign immunity, a claim against the  
26 Commonwealth and its officials and employees shall be brought  
27 only in such manner and in such courts and in such cases as  
28 directed by the provisions of Title 42 (relating to judiciary  
29 and judicial procedure) or 62 (relating to procurement), unless  
30 otherwise specifically authorized by statute.

1 Section 3. Section 763(a) of Title 42 is amended to read:

2 § 763. Direct appeals from government agencies.

3 (a) General rule.--Except as provided in subsection (c), the  
4 Commonwealth Court shall have exclusive jurisdiction of appeals  
5 from final orders of government agencies in the following cases:

6 (1) All appeals from Commonwealth agencies under  
7 Subchapter A of Chapter 7 of Title 2 (relating to judicial  
8 review of Commonwealth agency action) or otherwise and  
9 including appeals from the Board of Claims, the Environmental  
10 Hearing Board, the Pennsylvania Public Utility Commission,  
11 the Unemployment Compensation Board of Review and from any  
12 other Commonwealth agency having Statewide jurisdiction.

13 (2) All appeals jurisdiction of which is vested in the  
14 Commonwealth Court by any statute hereafter enacted.

15 \* \* \*

16 Section 4. ~~This~~ EXCEPT AS OTHERWISE PROVIDED, THIS act is ←  
17 intended to provide a complete and exclusive procedure to govern  
18 the procurement by Commonwealth agencies of supplies, services  
19 and construction, including the disposal of surplus supplies.

20 Section 5. The terms of office of the present members of the  
21 selection committee appointed pursuant to section 2401.1(19) of  
22 the act of April 9, 1929 (P.L.177, No.175), known as The  
23 Administrative Code of 1929, repealed by this act, shall not be  
24 affected by 62 Pa.C.S. § 905(d).

25 ~~Section 6. (a) The following acts and parts of acts are ←~~  
26 ~~repealed:~~

27 ~~Act of June 25, 1895 (P.L.269, No.182), entitled "An act~~  
28 ~~providing that none but citizens of the United States shall be~~  
29 ~~employed in any capacity in the erection, enlargement or~~  
30 ~~improvement of any public building or public work within this~~

1 Commonwealth."

2 Sections ~~478, 2401.1(19), 2403(b)(c) and (g), 2405, 2408(11),~~  
3 ~~2409, 2409.1, 2410, 2412 and 2413 of the act of April 9, 1929~~  
4 ~~(P.L.177, No.175), known as The Administrative Code of 1929.~~

5 Section ~~1809 of the act of June 24, 1931 (P.L.1206, No.331),~~  
6 ~~known as The First Class Township Code.~~

7 Section ~~808 of the act of May 1, 1933 (P.L.103, No.69), known~~  
8 ~~as The Second Class Township Code.~~

9 Act of ~~July 18, 1935 (P.L.1173, No.382), entitled "An act to~~  
10 ~~prohibit discrimination on account of race, creed or color in~~  
11 ~~employment under contracts for public buildings or public~~  
12 ~~works."~~

13 Act of ~~July 19, 1935 (P.L.1321, No.414), entitled "An act~~  
14 ~~requiring specifications for the construction, alteration, or~~  
15 ~~repair of public works of the Commonwealth, county,~~  
16 ~~municipality, or other subdivisions of the Commonwealth, to~~  
17 ~~contain a provision that the laborers or mechanics employed~~  
18 ~~thereon shall have been residents of this Commonwealth for at~~  
19 ~~least ninety days prior to their employment; and prescribing~~  
20 ~~penalties."~~

21 Act of ~~April 12, 1945 (P.L.220, No.99), entitled "An act~~  
22 ~~authorizing the Commonwealth and any administrative department,~~  
23 ~~boards, and commissions thereof acting through the Department of~~  
24 ~~Property and Supplies, and political subdivisions of the~~  
25 ~~Commonwealth, including municipal authorities, to enter into~~  
26 ~~contracts with the United States of America, or any agency~~  
27 ~~thereof, for the purchase, lease, or other acquisition of~~  
28 ~~property, real or personal, offered for sale pursuant to the~~  
29 ~~Surplus Property Act of one thousand nine hundred forty four,~~  
30 ~~without complying with any requirement of existing law as to~~

1 ~~specifications, advertising, award of contract, and approval of~~  
2 ~~purchases by a State agency receiving competitive bids, or the~~  
3 ~~delivery of property purchased before payment therefor."~~

4 ~~Sections 404 and 405.1 of the act of June 1, 1945 (P.L.1242,~~  
5 ~~No.428), known as the State Highway Law.~~

6 ~~Act of June 10, 1947 (P.L.493, No.223), entitled "An act~~  
7 ~~further prescribing the bonds required of foreign corporations~~  
8 ~~contracting for public buildings, public works or projects."~~

9 ~~Sections 754 and 755 of the act of March 10, 1949 (P.L.30,~~  
10 ~~No.14), known as the Public School Code of 1949.~~

11 ~~Section 11 of the act of March 31, 1949 (P.L.372, No.34),~~  
12 ~~known as The General State Authority Act of one thousand nine~~  
13 ~~hundred forty nine.~~

14 ~~Act of May 5, 1965 (P.L.40, No.34), entitled "An act~~  
15 ~~authorizing the Commonwealth through the Department of Property~~  
16 ~~and Supplies and its duly authorized bureau or agents, to enter~~  
17 ~~into contracts with the United States of America or any agency~~  
18 ~~thereof, for the acquisition, acceptance, receipt, warehousing~~  
19 ~~and distribution of surplus property of the United States of~~  
20 ~~America pursuant to the 'Federal Property and Administrative~~  
21 ~~Services Act of 1949,' particularly section 203(j) and (k), as~~  
22 ~~amended, and Federal regulations appertaining thereto."~~

23 ~~Section 1408 of the act of February 1, 1966 (1965 P.L.1656,~~  
24 ~~No.581), known as The Borough Code.~~

25 ~~Act of July 23, 1968 (P.L.686, No.226), entitled "An act~~  
26 ~~equalizing trade practices in public works procurement;~~  
27 ~~authorizing the purchase by the Commonwealth, its political~~  
28 ~~subdivisions, and all public agencies, of aluminum and steel~~  
29 ~~products produced in a foreign country, provided the foreign~~  
30 ~~country does not prohibit or discriminate against the~~

~~1 importation to, sale or use in the foreign country of supplies,  
2 material or equipment manufactured in this Commonwealth;  
3 establishing procedures for determining whether foreign  
4 countries discriminate against supplies, materials or equipment  
5 manufactured in this Commonwealth; and imposing penalties and  
6 providing for relief for violation of this act."~~

~~7 Act of October 26, 1972 (P.L.1017, No.247), entitled "An act  
8 relating to the prevention of environment pollution and the  
9 preservation of public natural resources in construction  
10 projects."~~

~~11 Act of March 3, 1978 (P.L.6, No.3), known as the Steel  
12 Products Procurement Act.~~

~~13 Act of November 26, 1978 (P.L.1303, No.315), known as the  
14 Public Facilities Concession Regulation Act.~~

~~15 Act of November 26, 1978 (P.L.1309, No.317), entitled "An act  
16 regulating the awarding and execution of certain public  
17 contracts; providing for contract provisions relating to the  
18 retention, interest, and payment of funds payable under the  
19 contracts; and repealing inconsistent acts."~~

~~20 Act of October 28, 1983 (P.L.176, No.45), known as the  
21 Antibid Rigging Act.~~

~~22 Act of April 4, 1984 (P.L.193, No.40), known as the Motor  
23 Vehicle Procurement Act.~~

~~24 Act of November 28, 1986 (P.L.1465, No.146), known as the  
25 Reciprocal Limitations Act.~~

~~26 (b) The following acts and parts of acts are repealed  
27 insofar as they relate to Commonwealth agencies as defined in 62  
28 Pa.C.S. § 103:~~

~~29 Act of December 20, 1967 (P.L.869, No.385), known as the  
30 Public Works Contractors' Bond Law of 1967.~~

1 ~~Act of January 23, 1974 (P.L.9, No.4), entitled "An act~~  
2 ~~prescribing the procedure, after the opening of bids, for the~~  
3 ~~withdrawal of bids on certain public contracts, setting forth~~  
4 ~~the rights of the parties involved and providing penalties,"~~  
5 ~~except insofar as the act applies to the leases of real~~  
6 ~~property.~~

7 ~~Act of May 10, 1996 (P.L.153 No.29), known as the Guaranteed~~  
8 ~~Energy Savings Act.~~

9 ~~(c) The following acts and parts of acts are repealed~~  
10 ~~insofar as they are inconsistent with this act:~~

11 ~~Act of June 12, 1879 (P.L.170, No.187), entitled "An act to~~  
12 ~~carry out the provisions of section twelve, article three, of~~  
13 ~~the constitution, relative to contracts for supplies for the~~  
14 ~~legislature and the various departments of the state~~  
15 ~~government."~~

16 ~~Act of May 24, 1917 (P.L.260, No.141), entitled "An act~~  
17 ~~regulating the time for advertising for and receiving proposals~~  
18 ~~for furnishing paper, cardboard, cuts, plates, and other~~  
19 ~~supplies for the use of the Commonwealth for executing the~~  
20 ~~public printing, and the time contracts for furnishing such~~  
21 ~~supplies shall run."~~

22 ~~Act of May 8, 1923 (P.L.161, No.120), entitled "An act~~  
23 ~~providing for and regulating the public printing and binding,~~  
24 ~~the editing for publication and the distribution of all~~  
25 ~~documents, reports, bulletins, and other publications for the~~  
26 ~~use of the Commonwealth, the several departments, boards,~~  
27 ~~commissions, and other agencies engaged in the legislative,~~  
28 ~~judicial, and administrative work of the State Government; the~~  
29 ~~sale of waste paper; the appointment of a director and other~~  
30 ~~employees; and repealing inconsistent and conflicting~~

1 ~~legislation."~~

2 ~~Sections 507, 508, 510 and 511 of the act of April 9, 1929~~  
3 ~~(P.L.177, No.175), known as The Administrative Code of 1929.~~

4 ~~Act of June 23, 1931 (P.L.1181, No.321), entitled "An act~~  
5 ~~authorizing persons, co partnerships, associations, and~~  
6 ~~corporations, who, whether as sub contractor or otherwise, have~~  
7 ~~furnished material or supplied or performed labor in connection~~  
8 ~~with any public work or improvement, to intervene in or~~  
9 ~~institute actions on certain bonds given to the Commonwealth or~~  
10 ~~to municipal corporations in connection with the performance of~~  
11 ~~public contracts; fixing the time within which such actions must~~  
12 ~~be brought, and the amounts recoverable therein; and providing~~  
13 ~~for distribution of amounts recovered; and prescribing~~  
14 ~~procedure."~~

15 ~~Section 6 of the act of May 20, 1937 (P.L.728, No.193),~~  
16 ~~referred to as the Board of Claims Act only insofar as it is~~  
17 ~~inconsistent with the procedure provided for in 62 Pa.C.S. §~~  
18 ~~1712 regarding the resolution of a contract controversy by the~~  
19 ~~head of a purchasing agency.~~

20 ~~Section 10 of the act of July 5, 1947 (P.L.1217, No.498),~~  
21 ~~known as the State Public School Building Authority Act.~~

22 ~~Section 12 of the act of December 6, 1967 (P.L.678, No.318),~~  
23 ~~known as The Pennsylvania Higher Educational Facilities~~  
24 ~~Authority Act of 1967.~~

25 ~~Section 4 of the act of November 20, 1968 (P.L.1075, No.329),~~  
26 ~~entitled "An act providing for the growth and development of~~  
27 ~~noncommercial educational television; creating the Pennsylvania~~  
28 ~~Public Television Network Commission as an independent~~  
29 ~~commission and defining its powers and duties."~~

30 ~~(d) Nothing in this act shall repeal, modify or supplant the~~

1 following acts and parts of acts:

2 Section 516 of the act of April 9, 1929 (P.L.177, No.175),  
3 known as The Administrative Code of 1929.

4 Act of July 19, 1957 (P.L.1017, No.451), known as the State  
5 Adverse Interest Act.

6 Act of February 11, 1976 (P.L.14, No.10), known as the  
7 Pennsylvania Rural and Intercity Common Carrier Surface  
8 Transportation Assistance Act.

9 (c) All other acts and parts of acts are repealed insofar as  
10 they are inconsistent with this act.

11 Section 7. This act shall apply to contracts solicited or  
12 entered into on or after the effective date of this act unless  
13 the parties agree to its application to a contract solicited or  
14 entered into prior to the effective date of this act.

15 Section 8. This act shall take effect in 180 days.

16 SECTION 6. (A) THE FOLLOWING ACTS AND PARTS OF ACTS ARE  
17 REPEALED: <—

18 ACT OF MAY 4, 1876 (P.L.99, NO.68), ENTITLED "A SUPPLEMENT TO  
19 AN ACT, ENTITLED 'AN ACT TO CARRY OUT THE PROVISIONS OF SECTION  
20 TWELVE, ARTICLE THREE OF THE CONSTITUTION, RELATIVE TO CONTRACTS  
21 FOR SUPPLIES FOR THE LEGISLATURE AND VARIOUS DEPARTMENTS OF THE  
22 STATE GOVERNMENT.' "

23 ACT OF JUNE 12, 1879 (P.L.170, NO.187), ENTITLED "AN ACT TO  
24 CARRY OUT THE PROVISIONS OF SECTION TWELVE, ARTICLE THREE, OF  
25 THE CONSTITUTION, RELATIVE TO CONTRACTS FOR SUPPLIES FOR THE  
26 LEGISLATURE AND THE VARIOUS DEPARTMENTS OF THE STATE  
27 GOVERNMENT. "

28 ACT OF JUNE 25, 1895 (P.L.269, NO.182), ENTITLED "AN ACT  
29 PROVIDING THAT NONE BUT CITIZENS OF THE UNITED STATES SHALL BE  
30 EMPLOYED IN ANY CAPACITY IN THE ERECTION, ENLARGEMENT OR

1 IMPROVEMENT OF ANY PUBLIC BUILDING OR PUBLIC WORK WITHIN THIS  
2 COMMONWEALTH."

3 ACT OF MAY 24, 1917 (P.L.260, NO.141), ENTITLED "AN ACT  
4 REGULATING THE TIME FOR ADVERTISING FOR AND RECEIVING PROPOSALS  
5 FOR FURNISHING PAPER, CARDBOARD, CUTS, PLATES, AND OTHER  
6 SUPPLIES FOR THE USE OF THE COMMONWEALTH FOR EXECUTING THE  
7 PUBLIC PRINTING, AND THE TIME CONTRACTS FOR FURNISHING SUCH  
8 SUPPLIES SHALL RUN."

9 ACT OF MAY 1, 1919 (P.L.103, NO.79), REFERRED TO AS THE STATE  
10 ART COMMISSION LAW.

11 ACT OF MAY 8, 1923 (P.L.161, NO.120), ENTITLED "AN ACT  
12 PROVIDING FOR AND REGULATING THE PUBLIC PRINTING AND BINDING,  
13 THE EDITING FOR PUBLICATION AND THE DISTRIBUTION OF ALL  
14 DOCUMENTS, REPORTS, BULLETINS, AND OTHER PUBLICATIONS FOR THE  
15 USE OF THE COMMONWEALTH, THE SEVERAL DEPARTMENTS, BOARDS,  
16 COMMISSIONS, AND OTHER AGENCIES ENGAGED IN THE LEGISLATIVE,  
17 JUDICIAL, AND ADMINISTRATIVE WORK OF THE STATE GOVERNMENT; THE  
18 SALE OF WASTE PAPER; THE APPOINTMENT OF A DIRECTOR AND OTHER  
19 EMPLOYES; AND REPEALING INCONSISTENT AND CONFLICTING  
20 LEGISLATION."

21 SECTIONS 478, 2401.1(19), 2403(A), (B), (C) AND (G), 2405,  
22 2406(G), 2408, 2409, 2409.1, 2410, 2412, 2413 AND 2414 OF THE  
23 ACT OF APRIL 9, 1929 (P.L.177, NO.175), KNOWN AS THE  
24 ADMINISTRATIVE CODE OF 1929.

25 SECTION 1809 OF THE ACT OF JUNE 24, 1931 (P.L.1206, NO.331),  
26 KNOWN AS THE FIRST CLASS TOWNSHIP CODE.

27 ACT OF JANUARY 2, 1934 (SP.SESS., 1933 P.L.200, NO.41),  
28 ENTITLED "AN ACT AUTHORIZING OFFICERS, DEPARTMENTS, BOARDS AND  
29 COMMISSIONS OF ANY POLITICAL SUBDIVISION OF THE COMMONWEALTH,  
30 AND CITIES, COUNTIES, BOROUGH, INCORPORATED TOWNS, TOWNSHIPS,

1 SCHOOL DISTRICTS, TO MAKE ADJUSTMENTS WITH CERTAIN SUPPLY  
2 CONTRACTORS TO REIMBURSE LOSSES SUSTAINED IN PERFORMANCE OF  
3 CONTRACTS UNDER CERTAIN CIRCUMSTANCES."

4 ACT OF JULY 18, 1935 (P.L.1173, NO.382), ENTITLED "AN ACT TO  
5 PROHIBIT DISCRIMINATION ON ACCOUNT OF RACE, CREED OR COLOR IN  
6 EMPLOYMENT UNDER CONTRACTS FOR PUBLIC BUILDINGS OR PUBLIC  
7 WORKS."

8 ACT OF JULY 19, 1935 (P.L.1321, NO.414), ENTITLED "AN ACT  
9 REQUIRING SPECIFICATIONS FOR THE CONSTRUCTION, ALTERATION, OR  
10 REPAIR OF PUBLIC WORKS OF THE COMMONWEALTH, COUNTY,  
11 MUNICIPALITY, OR OTHER SUBDIVISIONS OF THE COMMONWEALTH, TO  
12 CONTAIN A PROVISION THAT THE LABORERS OR MECHANICS EMPLOYED  
13 THEREON SHALL HAVE BEEN RESIDENTS OF THIS COMMONWEALTH FOR AT  
14 LEAST NINETY DAYS PRIOR TO THEIR EMPLOYMENT; AND PRESCRIBING  
15 PENALTIES."

16 ACT OF APRIL 12, 1945 (P.L.220, NO.99), ENTITLED "AN ACT  
17 AUTHORIZING THE COMMONWEALTH AND ANY ADMINISTRATIVE DEPARTMENT,  
18 BOARDS, AND COMMISSIONS THEREOF ACTING THROUGH THE DEPARTMENT OF  
19 PROPERTY AND SUPPLIES, AND POLITICAL SUBDIVISIONS OF THE  
20 COMMONWEALTH, INCLUDING MUNICIPAL AUTHORITIES, TO ENTER INTO  
21 CONTRACTS WITH THE UNITED STATES OF AMERICA, OR ANY AGENCY  
22 THEREOF, FOR THE PURCHASE, LEASE, OR OTHER ACQUISITION OF  
23 PROPERTY, REAL OR PERSONAL, OFFERED FOR SALE PURSUANT TO THE  
24 SURPLUS PROPERTY ACT OF ONE THOUSAND NINE HUNDRED FORTY-FOUR,  
25 WITHOUT COMPLYING WITH ANY REQUIREMENT OF EXISTING LAW AS TO  
26 SPECIFICATIONS, ADVERTISING, AWARD OF CONTRACT, AND APPROVAL OF  
27 PURCHASES BY A STATE AGENCY RECEIVING COMPETITIVE BIDS, OR THE  
28 DELIVERY OF PROPERTY PURCHASED BEFORE PAYMENT THEREFOR."

29 SECTIONS 404 AND 405.1 OF THE ACT OF JUNE 1, 1945 (P.L.1242,  
30 NO.428), KNOWN AS THE STATE HIGHWAY LAW.

1 ACT OF JUNE 10, 1947 (P.L.493, NO.223), ENTITLED "AN ACT  
2 FURTHER PRESCRIBING THE BONDS REQUIRED OF FOREIGN CORPORATIONS  
3 CONTRACTING FOR PUBLIC BUILDINGS, PUBLIC WORKS OR PROJECTS."

4 SECTIONS 754 AND 755 OF THE ACT OF MARCH 10, 1949 (P.L.30,  
5 NO.14), KNOWN AS THE PUBLIC SCHOOL CODE OF 1949.

6 SECTION 11 OF THE ACT OF MARCH 31, 1949 (P.L.372, NO.34),  
7 KNOWN AS THE GENERAL STATE AUTHORITY ACT OF ONE THOUSAND NINE  
8 HUNDRED FORTY-NINE.

9 SECTION 1408 OF THE ACT OF FEBRUARY 1, 1966 (1965 P.L.1656,  
10 NO.581), KNOWN AS THE BOROUGH CODE.

11 ACT OF JULY 23, 1968 (P.L.686, NO.226), ENTITLED "AN ACT  
12 EQUALIZING TRADE PRACTICES IN PUBLIC WORKS PROCUREMENT;  
13 AUTHORIZING THE PURCHASE BY THE COMMONWEALTH, ITS POLITICAL  
14 SUBDIVISIONS, AND ALL PUBLIC AGENCIES, OF ALUMINUM AND STEEL  
15 PRODUCTS PRODUCED IN A FOREIGN COUNTRY, PROVIDED THE FOREIGN  
16 COUNTRY DOES NOT PROHIBIT OR DISCRIMINATE AGAINST THE  
17 IMPORTATION TO, SALE OR USE IN THE FOREIGN COUNTRY OF SUPPLIES,  
18 MATERIAL OR EQUIPMENT MANUFACTURED IN THIS COMMONWEALTH;  
19 ESTABLISHING PROCEDURES FOR DETERMINING WHETHER FOREIGN  
20 COUNTRIES DISCRIMINATE AGAINST SUPPLIES, MATERIALS OR EQUIPMENT  
21 MANUFACTURED IN THIS COMMONWEALTH; AND IMPOSING PENALTIES AND  
22 PROVIDING FOR RELIEF FOR VIOLATION OF THIS ACT."

23 ACT OF OCTOBER 26, 1972 (P.L.1017, NO.247), ENTITLED "AN ACT  
24 RELATING TO THE PREVENTION OF ENVIRONMENT POLLUTION AND THE  
25 PRESERVATION OF PUBLIC NATURAL RESOURCES IN CONSTRUCTION  
26 PROJECTS."

27 ACT OF MARCH 3, 1978 (P.L.6, NO.3), KNOWN AS THE STEEL  
28 PRODUCTS PROCUREMENT ACT.

29 ACT OF NOVEMBER 26, 1978 (P.L.1303, NO.315), KNOWN AS THE  
30 PUBLIC FACILITIES CONCESSION REGULATION ACT.

1 ACT OF NOVEMBER 26, 1978 (P.L.1309, NO.317), ENTITLED "AN ACT  
2 REGULATING THE AWARDING AND EXECUTION OF CERTAIN PUBLIC  
3 CONTRACTS; PROVIDING FOR CONTRACT PROVISIONS RELATING TO THE  
4 RETENTION, INTEREST, AND PAYMENT OF FUNDS PAYABLE UNDER THE  
5 CONTRACTS; AND REPEALING INCONSISTENT ACTS."

6 ACT OF OCTOBER 28, 1983 (P.L.176, NO.45), KNOWN AS THE  
7 ANTIBID-RIGGING ACT.

8 ACT OF APRIL 4, 1984 (P.L.193, NO.40), KNOWN AS THE MOTOR  
9 VEHICLE PROCUREMENT ACT.

10 ACT OF NOVEMBER 28, 1986 (P.L.1465, NO.146), KNOWN AS THE  
11 RECIPROCAL LIMITATIONS ACT.

12 (B) THE FOLLOWING ACTS AND PARTS OF ACTS ARE REPEALED  
13 INSOFAR AS THEY RELATE TO COMMONWEALTH AGENCIES AS DEFINED IN 62  
14 PA.C.S. § 103:

15 ACT OF DECEMBER 20, 1967 (P.L.869, NO.385), KNOWN AS THE  
16 PUBLIC WORKS CONTRACTORS' BOND LAW OF 1967.

17 ACT OF JANUARY 23, 1974 (P.L.9, NO.4), ENTITLED "AN ACT  
18 PRESCRIBING THE PROCEDURE, AFTER THE OPENING OF BIDS, FOR THE  
19 WITHDRAWAL OF BIDS ON CERTAIN PUBLIC CONTRACTS, SETTING FORTH  
20 THE RIGHTS OF THE PARTIES INVOLVED AND PROVIDING PENALTIES,"  
21 EXCEPT INSOFAR AS THE ACT APPLIES TO THE LEASES OF REAL  
22 PROPERTY.

23 ACT OF MAY 10, 1996 (P.L.153 NO.29), KNOWN AS THE GUARANTEED  
24 ENERGY SAVINGS ACT.

25 (C) THE FOLLOWING ACTS AND PARTS OF ACTS ARE REPEALED  
26 INSOFAR AS THEY ARE INCONSISTENT WITH THIS ACT:

27 ACT OF JUNE 12, 1879 (P.L.170, NO.187), ENTITLED "AN ACT TO  
28 CARRY OUT THE PROVISIONS OF SECTION TWELVE, ARTICLE THREE, OF  
29 THE CONSTITUTION, RELATIVE TO CONTRACTS FOR SUPPLIES FOR THE  
30 LEGISLATURE AND THE VARIOUS DEPARTMENTS OF THE STATE

1 GOVERNMENT. "

2 ACT OF MAY 24, 1917 (P.L.260, NO.141), ENTITLED "AN ACT  
3 REGULATING THE TIME FOR ADVERTISING FOR AND RECEIVING PROPOSALS  
4 FOR FURNISHING PAPER, CARDBOARD, CUTS, PLATES, AND OTHER  
5 SUPPLIES FOR THE USE OF THE COMMONWEALTH FOR EXECUTING THE  
6 PUBLIC PRINTING, AND THE TIME CONTRACTS FOR FURNISHING SUCH  
7 SUPPLIES SHALL RUN. "

8 ACT OF MAY 8, 1923 (P.L.161, NO.120), ENTITLED "AN ACT  
9 PROVIDING FOR AND REGULATING THE PUBLIC PRINTING AND BINDING,  
10 THE EDITING FOR PUBLICATION AND THE DISTRIBUTION OF ALL  
11 DOCUMENTS, REPORTS, BULLETINS, AND OTHER PUBLICATIONS FOR THE  
12 USE OF THE COMMONWEALTH, THE SEVERAL DEPARTMENTS, BOARDS,  
13 COMMISSIONS, AND OTHER AGENCIES ENGAGED IN THE LEGISLATIVE,  
14 JUDICIAL, AND ADMINISTRATIVE WORK OF THE STATE GOVERNMENT; THE  
15 SALE OF WASTE PAPER; THE APPOINTMENT OF A DIRECTOR AND OTHER  
16 EMPLOYES; AND REPEALING INCONSISTENT AND CONFLICTING  
17 LEGISLATION. "

18 SECTIONS 507, 508, 510 AND 511 OF THE ACT OF APRIL 9, 1929  
19 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929.

20 ACT OF JUNE 23, 1931 (P.L.1181, NO.321), ENTITLED "AN ACT  
21 AUTHORIZING PERSONS, CO-PARTNERSHIPS, ASSOCIATIONS, AND  
22 CORPORATIONS, WHO, WHETHER AS SUB-CONTRACTOR OR OTHERWISE, HAVE  
23 FURNISHED MATERIAL OR SUPPLIED OR PERFORMED LABOR IN CONNECTION  
24 WITH ANY PUBLIC WORK OR IMPROVEMENT, TO INTERVENE IN OR  
25 INSTITUTE ACTIONS ON CERTAIN BONDS GIVEN TO THE COMMONWEALTH OR  
26 TO MUNICIPAL CORPORATIONS IN CONNECTION WITH THE PERFORMANCE OF  
27 PUBLIC CONTRACTS; FIXING THE TIME WITHIN WHICH SUCH ACTIONS MUST  
28 BE BROUGHT, AND THE AMOUNTS RECOVERABLE THEREIN; AND PROVIDING  
29 FOR DISTRIBUTION OF AMOUNTS RECOVERED; AND PRESCRIBING  
30 PROCEDURE. "

1 SECTION 6 OF THE ACT OF MAY 20, 1937 (P.L.728, NO.193),  
2 REFERRED TO AS THE BOARD OF CLAIMS ACT ONLY INSOFAR AS IT IS  
3 INCONSISTENT WITH THE PROCEDURE PROVIDED FOR IN 62 PA.C.S. §  
4 1712 REGARDING THE RESOLUTION OF A CONTRACT CONTROVERSY BY THE  
5 HEAD OF A PURCHASING AGENCY.

6 SECTION 10 OF THE ACT OF JULY 5, 1947 (P.L.1217, NO.498),  
7 KNOWN AS THE STATE PUBLIC SCHOOL BUILDING AUTHORITY ACT.

8 SECTION 12 OF THE ACT OF DECEMBER 6, 1967 (P.L.678, NO.318),  
9 KNOWN AS THE PENNSYLVANIA HIGHER EDUCATIONAL FACILITIES  
10 AUTHORITY ACT OF 1967.

11 SECTION 4 OF THE ACT OF NOVEMBER 20, 1968 (P.L.1075, NO.329),  
12 ENTITLED "AN ACT PROVIDING FOR THE GROWTH AND DEVELOPMENT OF  
13 NONCOMMERCIAL EDUCATIONAL TELEVISION; CREATING THE PENNSYLVANIA  
14 PUBLIC TELEVISION NETWORK COMMISSION AS AN INDEPENDENT  
15 COMMISSION AND DEFINING ITS POWERS AND DUTIES."

16 (D) NOTHING IN THIS ACT SHALL REPEAL, MODIFY OR SUPPLANT THE  
17 FOLLOWING ACTS AND PARTS OF ACTS:

18 SECTION 516 OF THE ACT OF APRIL 9, 1929 (P.L.177, NO.175),  
19 KNOWN AS THE ADMINISTRATIVE CODE OF 1929.

20 ACT OF JULY 19, 1957 (P.L.1017, NO.451), KNOWN AS THE STATE  
21 ADVERSE INTEREST ACT.

22 ACT OF FEBRUARY 11, 1976 (P.L.14, NO.10), KNOWN AS THE  
23 PENNSYLVANIA RURAL AND INTERCITY COMMON CARRIER SURFACE  
24 TRANSPORTATION ASSISTANCE ACT.

25 (E) ALL OTHER ACTS AND PARTS OF ACTS ARE REPEALED INSOFAR AS  
26 THEY ARE INCONSISTENT WITH THIS ACT.

27 SECTION 7. THIS ACT SHALL APPLY TO CONTRACTS SOLICITED OR  
28 ENTERED INTO ON OR AFTER THE EFFECTIVE DATE OF THIS ACT UNLESS  
29 THE PARTIES AGREE TO ITS APPLICATION TO A CONTRACT SOLICITED OR  
30 ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS ACT.

1 SECTION 8. THIS ACT SHALL TAKE EFFECT IN 180 DAYS.