

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# SENATE BILL

## No. 5

Session of  
1997

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INTRODUCED BY THOMPSON, LOEPER, GERLACH, TOMLINSON, SALVATORE,  
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CORMAN, LEMMOND AND SLOCUM, JANUARY 29, 1997

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SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,  
JANUARY 20, 1998

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## 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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26 TITLE 62

27 PROCUREMENT

28 Part

29 I. Commonwealth Procurement Code

30 II. General Procurement Provisions



PART I

COMMONWEALTH PROCUREMENT CODE

Chapter

1. General Provisions

3. Procurement Organization

5. Source Selection and Contract Formation

7. (Reserved)

9. Procurement of Construction and Design Professional  
Services

11. (Reserved)

13. (Reserved)

15. Supply Management

17. Legal and Contractual Remedies

19. Intergovernmental Relations

21. Small and Disadvantaged Businesses

23. Ethics in Public Contracting

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

Section 1. Title 62 of the Pennsylvania Consolidated  
Statutes is amended by adding parts to read:

CHAPTER 1

GENERAL PROVISIONS

Sec.

101. Short title of part.

102. Application of part.

103. Definitions.

104. General principles of law otherwise applicable.

105. Determinations.

106. Public access to procurement information.

107. Reciprocal limitations.

1 108. Recycled materials.

2 § 101. Short title of part.

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

5 § 102. Application of part.

6 (a) Application to Commonwealth procurement.--This part  
7 applies to every expenditure of funds, other than the investment  
8 of funds, by Commonwealth agencies under any contract,  
9 irrespective of their source, including Federal assistance  
10 moneys except as specified in section 2108 (relating to  
11 compliance with Federal requirements). This part does not apply  
12 to grants nor does it apply to contracts between Commonwealth  
13 agencies or between the Commonwealth and its political  
14 subdivisions or other governments except as provided in Chapter  
15 19 (relating to intergovernmental relations). Nothing in this  
16 part or in accompanying regulations shall prevent any  
17 Commonwealth agency or political subdivision from complying with  
18 the terms and conditions of any grant, gift, bequest or  
19 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 (e) Application to certain entities.--Nothing in this part  
4 shall apply to the entity created by the act of August 7, 1963  
5 (P.L.549, No.290), referred to as the Pennsylvania Higher  
6 Education Assistance Agency Act.

7 § 103. Definitions.

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

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

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

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

27 "Contract." A type of written agreement, regardless of what  
28 it may be called, for the procurement or disposal of supplies,  
29 services or construction.

30 "Contract modification." A written alteration in

1 specifications, delivery point, rate of delivery, period of  
2 performance, price, quantity or other provisions of any contract  
3 accomplished by mutual action of the parties to the contract.

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

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

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

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

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

28 "Grant." The furnishing of assistance by the Federal  
29 Government, Commonwealth or any person, whether financial or  
30 otherwise, to any person to support a program authorized by law.

1 The term does not include an award whose primary purpose is to  
2 procure for the grantor an end product, whether in the form of  
3 supplies, services or construction. A contract resulting from  
4 such an award is not a grant but a procurement contract.

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

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

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

27 "Purchasing agency." A Commonwealth agency authorized by  
28 this part or by other law to enter into contracts for itself or  
29 as the agent of another Commonwealth agency. When purchasing for  
30 another Commonwealth agency, the purchasing agency acts on

1 behalf of the principal which needs the supplies, services and  
2 construction and shall coordinate and cooperate with that  
3 agency.

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

6 "Services." The furnishing of labor, time or effort by a  
7 contractor not involving the delivery of a specific end product  
8 other than drawings, specifications or reports which are merely  
9 incidental to the required performance. The term does not  
10 include employment agreements, collective bargaining agreements  
11 or agreements with litigation consultants. The term includes  
12 utility services and those services formerly provided by public  
13 utilities such as electrical, telephone, water and sewage  
14 service.

15 "Specification." A description of the physical or functional  
16 characteristics or the nature of a supply, service or  
17 construction item, including a description of any requirement  
18 for inspecting, testing or preparing a supply, service or  
19 construction item for delivery.

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

1 transportation authority.

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

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

10 "Supplies." Any property, including, but not limited to,  
11 equipment, materials, printing, insurance and leases of and  
12 installment purchases of tangible or intangible personal  
13 property. The term does not include real property or leases of  
14 real property.

15 "Using agency." A Commonwealth agency which utilizes any  
16 supplies, services or construction procured under this part.

17 § 104. General principles of law otherwise applicable.

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

21 § 105. Determinations.

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

24 § 106. Public access to procurement information.

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

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 procurements under section 514 (relating to small  
11      procurements), all Commonwealth agencies shall give preference  
12      to those bidders or offerors offering supplies produced,  
13      manufactured, mined, grown or performed in this Commonwealth as  
14      against those bidders or offerors offering supplies produced,  
15      manufactured, mined, grown or performed in any state that gives  
16      or requires a preference to supplies produced, manufactured,  
17      mined, grown or performed in that state. The amount of the  
18      preference shall be equal to the amount of the preference  
19      applied by the other state for that particular supply.

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

29      (e) Prohibition.--For public contracts exceeding the amount  
30      established by the department for small procurements under

1 section 514, no Commonwealth agency shall specify for, use or  
2 procure any supplies which are produced, manufactured, mined,  
3 grown or performed in any state that prohibits the specification  
4 for, use or procurement of these supplies in or on its public  
5 buildings or other works when these supplies are not produced,  
6 manufactured, mined, grown or performed in that state.

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

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

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

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

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

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

20 "Resident bidder or offeror." A person, partnership,  
21 corporation or other business entity authorized to transact  
22 business in this Commonwealth and having a bona fide  
23 establishment for transacting business in this Commonwealth at  
24 which it was transacting business on the date when bids or  
25 proposals for the public contract were first solicited.

26 § 108. Recycled materials.

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

1 Recycling and Waste Reduction Act.

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

9 CHAPTER 3

10 PROCUREMENT ORGANIZATION

11 Subchapter

12 A. Organization of Public Procurement

13 B. Procurement Policy

14 C. Powers and Duties of Department

15 D. Powers and Duties of the Board of Commissioners of  
16 Public Grounds and Buildings and the Office of the Budget

17 E. Coordination, Training and Education

18 SUBCHAPTER A

19 ORGANIZATION OF PUBLIC PROCUREMENT

20 Sec.

21 301. Procurement responsibility.

22 § 301. Procurement responsibility.

23 (a) General organization.--Formulation of procurement policy  
24 governing the procurement, management, control and disposal of  
25 supplies, services and construction for executive and  
26 independent agencies shall be the responsibility of the  
27 department as provided for in Subchapter B (relating to  
28 procurement policy). The procurement and supervision of the  
29 procurement of supplies, services and construction for executive  
30 agencies and those independent agencies for which the department

1 acts as purchasing agency shall be the responsibility of the  
2 department as provided for in Subchapter C (relating to powers  
3 and duties of department).

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

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

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

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

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

30 (2) Works of art, historic objects and documents for

1 acquisition and public exhibition.

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

4 (4) Perishable food stuffs.

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

10 (d) Application to State-affiliated entities.--State-  
11 affiliated entities may formulate their own procurement policy  
12 governing the procurement, management, control and disposal of  
13 supplies, services and construction and may act as their own  
14 purchasing agency for the procurement of supplies, services and  
15 construction, but they are required to use the procedures  
16 provided in this part for such procurement.

#### 17 SUBCHAPTER B

#### 18 PROCUREMENT POLICY

19 Sec.

20 311. Powers and duties.

21 312. Procurement regulations.

22 § 311. Powers and duties.

23 Except as otherwise provided in this part, the department may  
24 promulgate regulations governing the procurement, management,  
25 control and disposal of any and all supplies, services and  
26 construction to be procured by Commonwealth agencies. The  
27 department shall consider and decide matters of policy within  
28 the provisions of this part. The department may audit and  
29 monitor the implementation of its regulations and the  
30 requirements of this part.

1 § 312. Procurement regulations.

2 Regulations shall be promulgated by the department as  
3 provided in 45 Pa.C.S. Part II (relating to publication and  
4 effectiveness of Commonwealth documents) and by the appropriate  
5 purchasing agencies for those matters contained in section  
6 301(c) (relating to procurement responsibility). The department  
7 may not delegate its power to promulgate regulations. No  
8 regulation may change any commitment, right or obligation of any  
9 Commonwealth agency or of a contractor under a contract in  
10 existence on the effective date of the regulation.

11 SUBCHAPTER C

12 POWERS AND DUTIES OF DEPARTMENT

13 Sec.

14 321. Powers and duties.

15 322. Specific construction powers, duties and procedures.

16 § 321. Powers and duties.

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

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

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

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

29 (4) Coordinate programs of executive and independent  
30 agencies for the inspection, testing and acceptance of

1 supplies and construction to ensure availability of  
2 facilities and to avoid a duplication of functions.

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

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

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

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

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

21 (2) Promptly after the notice, in such cases, or  
22 promptly after any appropriation made to it becomes  
23 available, the department shall, if necessary, select an  
24 architect and/or an engineer, in accordance with the  
25 selection procedures of section 905 (relating to procurement  
26 of design professional services) to design the work and  
27 prepare the specifications therefor. The department may, as  
28 an alternative, enter into a design/build contract.

29 (3) The department shall enter into a contract with the  
30 architect or engineer, which shall provide all of the



1 following:

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

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

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

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

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

30 (4) The enforcement of all contracts provided for by

1 this section shall be under the control and supervision of  
2 the department. The department shall have the authority to  
3 engage the services of a construction management firm to  
4 coordinate the work of the total project. All questions or  
5 disputes arising between the department and any contractor  
6 with respect to any matter pertaining to a contract entered  
7 into with the department or any part thereto or any breach of  
8 contract arising thereunder shall be submitted to final and  
9 binding arbitration as provided by the terms of the contract  
10 which finding shall be final and not subject to further  
11 appeal or, if not so provided, shall be referred to the Board  
12 of Claims as set forth in the act of May 20, 1937 (P.L.728,  
13 No.193), referred to as the Board of Claims Act, whose  
14 decision and award shall be final and binding and conclusive  
15 upon all parties thereto, except that either party shall have  
16 the right to appeal from the decision and award as provided  
17 by law.

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

30 (6) The department may award construction contracts for

1 all the work or separately for parts of the work or both on  
2 all projects under \$25,000 base construction cost. All  
3 projects equal to or exceeding \$25,000 shall be subject to  
4 the act of May 1, 1913 (P.L.155, No.104), entitled "An act  
5 regulating the letting of certain contracts for the erection,  
6 construction, and alteration of public buildings." Whenever  
7 the department enters into a single contract for a project,  
8 in the absence of good and sufficient reasons, the contractor  
9 shall pay each subcontractor within 15 days of receipt of  
10 payment from the department, an amount equal to the  
11 percentage of completion allowed to the contractor on the  
12 account of the subcontractor's work. The contractor shall  
13 also require the subcontractor to make similar payments to  
14 his subcontractors.

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

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

28 (9) If the appropriation is to a Commonwealth agency,  
29 other than the department or State-related institution, the  
30 department shall award and enter into the contract as agent

1 for the Commonwealth agency or State-related institution to  
2 which the appropriation was made.

3 SUBCHAPTER D

4 POWERS AND DUTIES OF THE BOARD OF COMMISSIONERS OF  
5 PUBLIC GROUNDS AND BUILDINGS AND THE OFFICE OF THE BUDGET  
6 Sec.

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

8 327. Office of the Budget.

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

10 No lease of real estate for use by an executive or  
11 independent agency and no sole source procurement of supplies  
12 for an executive or independent agency for which the department  
13 acts as the purchasing agency shall be valid or effective  
14 unless, upon review, it is approved by the Board of  
15 Commissioners of Public Grounds and Buildings. Where the board  
16 is reviewing a proposed sole source lease or procurement being  
17 submitted pursuant to section 515 (relating to sole source  
18 procurement), approval of the lease or procurement shall require  
19 the unanimous vote of the board. Where the board is reviewing a  
20 proposed non-sole source lease, the lease shall be approved when  
21 one member of the board votes to approve the lease. All votes  
22 shall take place at a public meeting.

23 § 327. Office of the Budget.

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

30 (b) Contractor responsibility program.--The Office of the

1 Budget shall participate in the management and maintenance of a  
2 contractor responsibility program in coordination with the  
3 department and other agencies as may be directed by the  
4 Governor.

5 (c) Contracts for services.--Except for contracts awarded  
6 pursuant to section 514 (relating to small procurements), the  
7 Office of the Budget shall review and approve all contracts for  
8 services for executive agencies and independent agencies and  
9 State-affiliated entities where the department acts as  
10 purchasing agency for:

11 (1) Fiscal responsibility and budgetary appropriateness.

12 (2) Availability of funds.

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

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

## 25 SUBCHAPTER E

### 26 COORDINATION, TRAINING AND EDUCATION

27 Sec.

28 331. Collection of data concerning public procurement.

29 332. Advisory groups.

30 § 331. Collection of data concerning public procurement.

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

6 § 332. Advisory groups.

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

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

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

26 (d) Conflict of interest.--Members of the council and other  
27 advisory groups shall be considered State advisors under the act  
28 of July 19, 1957 (P.L.1017, No.451), known as the State Adverse  
29 Interest Act, and, as such, shall be subject to the prohibitions  
30 for State advisors set forth in that act, provided that a member

1 shall not be deemed to have an adverse interest by virtue of any  
2 action taken by the council or other advisory groups if the  
3 member discloses the conflict of interest and properly recuses  
4 himself from participating in any recommendation of the council  
5 or an advisory group.

6 CHAPTER 5

7 SOURCE SELECTION AND CONTRACT FORMATION

8 Subchapter

9 A. Definitions

10 B. Methods of Source Selection

11 C. Cancellation of Invitations for Bids or Requests for  
12 Proposals

13 D. Qualifications and Duties

14 E. Types of Contracts

15 F. Inspection of Plant and Audit of Records

16 G. Determinations and Reports

17 SUBCHAPTER A

18 DEFINITIONS

19 Sec.

20 501. Definitions.

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

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

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

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

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

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

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

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

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

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

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



1 receipt date.

2 SUBCHAPTER B

3 METHODS OF SOURCE SELECTION

4 Sec.

5 511. Methods of source selection.

6 512. Competitive sealed bidding.

7 513. Competitive sealed proposals.

8 514. Small procurements.

9 515. Sole source procurement.

10 516. Emergency procurement.

11 517. Multiple awards.

12 518. Competitive selection procedures for certain services.

13 519. Selection procedure for insurance and notary bonds.

14 520. Supplies manufactured by, and services performed by,  
15 persons with disabilities.

16 § 511. Methods of source selection.

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

21 Section 513 (relating to competitive sealed proposals).

22 Section 514 (relating to small procurements).

23 Section 515 (relating to sole source procurement).

24 Section 516 (relating to emergency procurement).

25 Section 517 (relating to multiple awards).

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

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

30 Section 520 (relating to supplies manufactured by, and

1 services performed by, persons with disabilities).

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

4 § 512. Competitive sealed bidding.

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

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

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

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

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

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

24 (4) Publication in a newspaper of general circulation.

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

28 Copies of invitations to bid shall be made available to any  
29 interested person upon request to the purchasing agency.

30 Purchasing agencies may establish procedures for the

1 distribution of invitations to bid including the imposition of a  
2 fee to reimburse the agency for the costs of photocopying and  
3 mailing.

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

10 (e) Bid acceptance and evaluation.--Bids shall be  
11 unconditionally accepted without alteration or modification  
12 except as authorized in this part or in the invitation for bids.  
13 Bids shall be evaluated based on the requirements set forth in  
14 the invitation for bids, which may include criteria to determine  
15 acceptability such as inspection, testing, quality, workmanship,  
16 delivery and suitability for a particular purpose. Those  
17 criteria that will affect the bid price and be considered in  
18 evaluation for award shall be objectively measurable, such as  
19 discounts, transportation costs and total or life cycle costs.  
20 The invitation for bids shall set forth the evaluation criteria  
21 to be used. No criteria may be used in bid evaluation that are  
22 not set forth in the invitation for bids.

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

24 (1) Bids may be modified or withdrawn by written notice  
25 or in person by a bidder or its authorized representative if  
26 its identity is made known and a receipt for the bid is  
27 signed prior to the exact hour and date set for the opening  
28 of bids. Except as otherwise provided in this part,  
29 withdrawals and modifications of bids received after the  
30 exact hour and date specified for the opening of bids shall

1 not be considered.

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

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

26 (g) Award.--The contract shall be awarded within 60 days of  
27 the bid opening by written notice to the lowest responsible and  
28 responsive bidder whose bid meets the requirements and criteria  
29 set forth in the invitation for bids or all bids shall be  
30 rejected except as otherwise provided in this section.

1 Extensions of the date for the award may be made by mutual  
2 written consent of the contracting officer and the lowest  
3 responsible and responsive bidder. Within 30 days of the bid  
4 opening the contracting officer shall, if bid security was  
5 required by the invitation for bids, return the bid security to  
6 all but the lowest and next-to-lowest bidders then under  
7 consideration for contract award.

8 (h) Multistep sealed bidding.--When it is considered  
9 impractical to prepare initially a procurement description to  
10 support an award based on price, an invitation for bids may be  
11 issued requesting the submission of unpriced offers, to be  
12 followed by an invitation for bids limited to those bidders  
13 whose offers have been qualified under the criteria set forth in  
14 the first solicitation.

15 § 513. Competitive sealed proposals.

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

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

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

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

1 (e) Evaluation.--The relative importance of the evaluation  
2 factors shall be fixed prior to opening the proposals. A  
3 Commonwealth agency is required to invite its comptroller to  
4 participate in the evaluation as a nonvoting member of any  
5 evaluation committee.

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

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

22 (h) Contract negotiation.--After selection, the purchasing  
23 agency shall proceed to negotiate a contract with the selected  
24 offeror.

25 § 514. Small procurements.

26 If the procurement is not the subject of a Statewide  
27 requirements contract between the purchasing agency and a  
28 contractor, the head of the purchasing agency may authorize in  
29 writing procurements without formal bid procedures, not  
30 exceeding the amount established by the purchasing agency. The

1 department may authorize procurement on a no-bid basis for  
2 procurements which do not exceed the amount established by the  
3 department for small, no-bid procurements. Procurement  
4 requirements shall not be artificially divided so as to  
5 constitute a small procurement under this section. Small  
6 procurements shall be made in accordance with the requirements  
7 of the written authorization and this section. Records of all  
8 small procurements shall be transmitted to the purchasing  
9 agency.

10 § 515. Sole source procurement.

11 A contract may be awarded for a supply, service or  
12 construction item without competition when the contracting  
13 officer first determines in writing that one of the following  
14 conditions exists:

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

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

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

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

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

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

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

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

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

15          (10) It is in the best interest of the Commonwealth.  
16 The written determination authorizing sole source procurement  
17 shall be included in the contract file. With the exception of  
18 small procurements under section 514 and emergency procurements  
19 under section 516 (relating to emergency procurement), if the  
20 sole source procurement is for a supply for which the department  
21 acts as purchasing agency, it must be approved by the Board of  
22 Commissioners of Public Grounds and Buildings prior to the award  
23 of a contract.

24 § 516. Emergency procurement.

25          The head of a purchasing agency may make or authorize others  
26 to make an emergency procurement when there exists a threat to  
27 public health, welfare or safety or circumstances outside the  
28 control of the agency creates an urgency of need which does not  
29 permit the delay involved in using more formal competitive  
30 methods. Whenever practical, in the case of a procurement of a



1 supply, at least two bids shall be solicited. A written  
2 determination of the basis for the emergency and for the  
3 selection of the particular contractor shall be included in the  
4 contract file.

5 § 517. Multiple awards.

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

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

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

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

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

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

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

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

30 (d) Receipt of bids or proposals.--Bids shall be opened in

1 the same manner as provided in section 512(d). Proposals shall  
2 be received in the same manner as provided in section 513(d)  
3 (relating to competitive sealed proposals).

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

7 (1) Awards shall be made to the lowest responsible and  
8 responsive bidder or offeror for each designated  
9 manufacturer.

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

13 (3) Awards shall be made to all responsible and  
14 responsive bidders or offers. The Commonwealth agency shall  
15 have the discretion to select the contractor to furnish the  
16 supply, service or construction based upon best value or  
17 return on investment.

18 § 518. Competitive selection procedures for certain services.

19 (a) Conditions for use.--The services of accountants,  
20 clergy, physicians, lawyers, dentists and other personal  
21 services which are not performed by other Commonwealth employees  
22 shall be procured in accordance with this section except as  
23 authorized under section 514 (relating to small procurements),  
24 515 (relating to sole source procurement) or 516 (relating to  
25 emergency procurement).

26 (b) Statement of qualifications.--Persons engaged in  
27 providing the types of services specified in subsection (a) may  
28 submit statements of qualifications and expressions of interest  
29 in providing these services. The contracting officer may specify  
30 a uniform format for statements of qualifications. Persons may

1 amend these statements at any time by filing a new statement.

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

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

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

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

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

30 (b) Statement of qualifications.--Insurance and bond

1 carriers may submit statements of qualifications and expressions  
2 of interest in providing insurance or notary bonds. The  
3 department may specify a uniform format for statements of  
4 qualifications.

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

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

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

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

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

29 (a) General rule.--Contracts may be entered into for  
30 supplies manufactured by, and services performed by, persons

1 with disabilities without competition in accordance with this  
2 section.

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

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

16 (d) Procurement of supplies manufactured by, and services  
17 performed by, persons with disabilities.--Except as provided in  
18 subsection (e), all supplies manufactured by, and services  
19 furnished by, persons with disabilities shall be procured in  
20 accordance with applicable specifications of the department or  
21 other Commonwealth agencies from any agency for persons with  
22 disabilities whenever the supplies and services are available at  
23 a price determined by the department to be the fair market  
24 price. The head of a purchasing agency shall annually discuss  
25 its needs for supplies or services with the agency for persons  
26 with disabilities.

27 (e) Procurement from Commonwealth agency.--If any supply  
28 manufactured by, or any service performed by, persons with  
29 disabilities and offered for sale is available for procurement  
30 from any Commonwealth agency and this part or any other statute

1 requires the procurement of the supply or service from the  
2 Commonwealth agency, then the procurement of the supply or  
3 service shall be made in accordance with the other provisions.

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

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

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

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

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

23 "Supply manufactured by, or service performed by, person with  
24 disabilities." At least 75% of the personnel either engaged in  
25 the direct labor of manufacturing of a product or engaged in the  
26 direct labor in performing a service in this Commonwealth must  
27 be visually impaired, mentally retarded or physically disabled.  
28 In addition, at least 75% of the amount paid by the Commonwealth  
29 agency for the product or the service shall be remitted to the  
30 agency for persons with disabilities to cover payment of wages

1 and salaries to persons with disabilities and to cover other  
2 actual manufacturing costs incurred by the agency for persons  
3 with disabilities in manufacturing of a product.

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

#### 8 SUBCHAPTER C

#### 9 CANCELLATION OF INVITATIONS FOR BIDS OR 10 REQUESTS FOR PROPOSALS

11 Sec.

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

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

16 An invitation for bids, a request for proposals or other  
17 solicitation may be canceled or any or all bids or proposals may  
18 be rejected when it is in the best interests of the  
19 Commonwealth. Bids may be rejected in part when specified in the  
20 solicitation. The reasons for the cancellation or rejection  
21 shall be made part of the contract file.

#### 22 SUBCHAPTER D

#### 23 QUALIFICATIONS AND DUTIES

24 Sec.

25 531. Debarment or suspension.

26 532. Prequalification of bidders and offerors.

27 533. Security and performance bonds.

28 534. Cost or pricing data.

29 535. Printing.

30 § 531. Debarment or suspension.

1 (a) Authority.--After reasonable notice to the person  
2 involved and reasonable opportunity for that person to be heard,  
3 the head of a purchasing agency, after consultation with the  
4 head of the using agency, shall have authority to debar a person  
5 for cause from consideration for award of contracts for a period  
6 of not more than three years or to suspend a person from  
7 consideration for award of contracts if there is probable cause  
8 for debarment for a period of not more than three months.

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

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

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

19 (i) obtaining;

20 (ii) attempting to obtain; or

21 (iii) performing a public contract or subcontract.

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

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

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

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

30 (6) Violation of any Federal or State law regulating



1 hours of labor, minimum wage standards or prevailing wage  
2 standards; discrimination in wages; or child labor  
3 violations.

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

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

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

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

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

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

20 (ii) Offering unbalanced bids.

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

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

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

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

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

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

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

(1) State the reasons for the action taken.

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

(d) Notice of decision.--A copy of the decision under subsection (c) shall be delivered by registered mail to the contractor and any other party intervening.

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

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

1 § 532. Prequalification of bidders and offerors.

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

4 § 533. Security and performance bonds.

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

6 (1) In the case of competitive sealed bidding or  
7 competitive sealed proposals for a contract for supplies or  
8 services, bidders or offerors may be required by the  
9 contracting officer to provide bid or proposal security. Bid  
10 or proposal security shall be in the form of a certified or  
11 bank check or a bond provided by a surety company authorized  
12 to do business in this Commonwealth or another form of  
13 security as specified in the invitation for bids or request  
14 for proposals. Bid or proposal security shall be at least in  
15 the minimum amount or percentage of the amount of the bid as  
16 shall be specified in the advertisement, invitation for bids  
17 or request for proposals.

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

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

1 the bid or proposal security.

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

11 (b) Contract for construction.--Bid security and performance  
12 bonds as required for contracts for construction are provided  
13 for in sections 902 (relating to bid or proposal security) and  
14 903 (relating to contract performance and payment bonds).

15 § 534. Cost or pricing data.

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

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

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

30 (b) Price adjustment.--Any contract, change order or

1 contract modification under which a certificate is required  
2 shall contain a provision that the price to the purchasing  
3 agency, including profit or fee, shall be adjusted to exclude  
4 any significant sums by which the purchasing agency finds that  
5 the price was increased because the cost or pricing data  
6 furnished by the contractor was inaccurate, incomplete or not  
7 current as of the date agreed upon between the parties.

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

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

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

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

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

20 § 535. Printing.

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

## 26 SUBCHAPTER E

### 27 TYPES OF CONTRACTS

28 Sec.

29 541. Approval of accounting system.

30 542. Multiterm contracts.

1 543. Effective contracts.

2 § 541. Approval of accounting system.

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

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

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

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

15 § 542. Multiterm contracts.

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

24 (b) Cancellation for unavailability of funds in succeeding  
25 fiscal periods.--When funds are not appropriated or otherwise  
26 made available to support continuation of performance in a  
27 subsequent fiscal period, the contract shall be canceled, and  
28 the contractor shall be reimbursed for the reasonable value of  
29 any nonrecurring costs incurred but not amortized in the price  
30 of the supplies, services or construction delivered under the

1 contract. Such reimbursement shall not include loss of  
2 anticipated profit, loss of use of money or administrative or  
3 overhead costs. The cost of cancellation may be paid from any  
4 appropriations available for that purpose. The contractor shall  
5 not be entitled to any reimbursement where the Commonwealth  
6 elects not to exercise a renewal or extension option provided  
7 for in the contract.

8 § 543. Effective contracts.

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

12 (b) Certain contracts.--Those Statewide requirements  
13 contracts where the total dollar purchasing amount, based upon  
14 estimated quantities, is in excess of \$1,000,000 shall not be  
15 effective unless first approved by the State Treasurer. The  
16 \$1,000,000 amount shall be adjusted each year by the department  
17 to reflect the annual percentage change in the Composite  
18 Construction Cost Index of the United States Department of  
19 Commerce occurring in the one-year period ending December 31  
20 each year.

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

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

16 § 562. Anticompetitive practices.

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

28 § 563. Retention of procurement records.

29 All procurement records, including any written determinations  
30 issued in accordance with section 561 (relating to finality of

1 determinations), shall be retained for a minimum of three years  
2 from the date of final payment under the contract and disposed  
3 of in accordance with records retention guidelines and schedules  
4 as provided by law. In accordance with applicable law, all  
5 retained documents shall be made available to the State  
6 Treasurer, Auditor General, General Counsel, Inspector General  
7 and Attorney General upon request.

8 § 564. Record of certain actions.

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

15 (1) Each contractor's name.

16 (2) The amount and type of each contract.

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

19 CHAPTER 7

20 (Reserved)

21 CHAPTER 9

22 PROCUREMENT OF CONSTRUCTION AND DESIGN

23 PROFESSIONAL SERVICES

24 Sec.

25 901. Definitions.

26 902. Bid or proposal security.

27 903. Contract performance security and payment bonds.

28 904. Copies of bonds.

29 905. Procurement of design professional services.

30 § 901. Definitions.

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

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

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

30 (1) A performance bond, executed by a surety company

1 authorized to do business in this Commonwealth and made  
2 payable to the Commonwealth, in an amount equal to 100% of  
3 the price specified in the contract and conditioned upon the  
4 faithful performance of the contract in accordance with the  
5 plans, specifications and conditions of the contract.

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

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

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

28 (d) Actions on payment bonds.--

29 (1) Subject to paragraph (2), any claimant who has  
30 performed labor or furnished material in the prosecution of

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

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

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

28 (e) Adjustment of threshold amount.--The dollar thresholds  
29 set forth in subsection (a) shall be adjusted annually by the  
30 department to reflect the annual percentage change in the

1 Composition Construction Cost Index of the United States  
2 Department of Commerce occurring in the one-year period ending  
3 on December 31 of each year.

4 § 904. Copies of bonds.

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

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

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

15 § 905. Procurement of design professional services.

16 (a) Applicability.--Design professional services shall be  
17 procured as provided in this section except as authorized by  
18 sections 514 (relating to small procurements), 515 (relating to  
19 sole source procurement) and 516 (relating to emergency  
20 procurement).

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

28 (c) Selection committees for Department of Transportation,  
29 Department of Environmental Protection, Department of  
30 Conservation and Natural Resources and State-affiliated

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

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

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

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

29 (2) If desired, the committee may conduct discussions  
30 with three or more professionals regarding anticipated design



1 concepts and proposed methods of approach to the assignment.  
2 The committee shall select, based upon criteria established  
3 by the head of the purchasing agency, no less than three  
4 design professionals deemed to be the most highly qualified  
5 to provide the services required. In exercising its  
6 responsibility, the committee shall consider the following  
7 factors:

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

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

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

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

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

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

22 (1) Where the amount of the base construction allocation  
23 is less than \$20,000,000, the head of the purchasing agency  
24 shall choose one of the three firms approved by the selection  
25 committee. The fee to be paid to the appointed design  
26 professional may be established by the selection committee or  
27 may be negotiated at the discretion of the head of the  
28 purchasing agency. The \$20,000,000 threshold shall be  
29 adjusted by the department to reflect the annual percentage  
30 change in the Composite Construction Cost Index of the United

1 States Department of Commerce occurring in the one-year  
2 period ending December 31 each year.

3 (2) Where the amount of base construction allocation is  
4 in excess of or equal to \$20,000,000, as annually adjusted,  
5 the head of the purchasing agency shall choose one of the  
6 three firms approved by the selection committee to begin  
7 contract negotiations. The fee to be paid to the design  
8 professional and the terms of the contract between the design  
9 professional and the department shall be negotiated by the  
10 head of the purchasing agency. In negotiating the contract  
11 and the fee, the head of the purchasing agency shall take  
12 into account the estimated value, scope, complexity,  
13 uniqueness and the professional nature of the services to be  
14 rendered. In the event the head of the purchasing agency is  
15 unable to negotiate a satisfactory contract or fee with the  
16 appointed design professional, negotiations with that design  
17 professional shall be terminated and the head of the  
18 purchasing agency shall commence negotiations with one of the  
19 other firms chosen by the selection committee. In the event  
20 the head of the purchasing agency is unable to negotiate a  
21 satisfactory contract or fee with the second firm, the head  
22 of the purchasing agency shall terminate negotiations with  
23 the second design professional and commence negotiation with  
24 the third firm. In the event the head of the purchasing  
25 agency is unable to negotiate a satisfactory contract with  
26 any of the selected firms, the selection committee shall  
27 choose additional qualified firms and the head of the  
28 purchasing agency shall continue negotiations in accordance  
29 with this subsection until an agreement is reached.

30 (g) Selection method for Department of Transportation,

1 Department of Conservation and Natural Resources, Department of  
2 Environmental Protection and State-affiliated entities.--In the  
3 event the Department of Transportation, the Department of  
4 Conservation and Natural Resources, the Department of  
5 Environmental Protection or a State-affiliated entity otherwise  
6 authorized by law to use its own selection committee requires  
7 the services of a design professional, the head of the  
8 purchasing agency or a State-affiliated entity shall choose one  
9 of the three firms approved by the selection committee. The head  
10 of the purchasing agency or a State-affiliated entity shall  
11 negotiate with the firm determined to be the highest qualified  
12 firm for design professional services at a fee which is  
13 determined to be fair and reasonable to the Commonwealth. In  
14 making this decision, the head of the purchasing agency shall  
15 take into account the estimated value, scope, complexity and  
16 professional nature of the services to be rendered. Should the  
17 head of the purchasing agency be unable to negotiate a  
18 satisfactory contract with the firm considered to be the most  
19 qualified at a fee he determines to be fair and reasonable to  
20 the Commonwealth, negotiations with that firm shall be formally  
21 terminated. The head of the purchasing agency shall then  
22 undertake negotiations with the firm he determines to be the  
23 second highest qualified firm. Failing accord with the second  
24 most qualified firm, the head of the purchasing agency shall  
25 formally terminate negotiations and then undertake negotiations  
26 with the third highest qualified firm. Should the head of the  
27 purchasing agency be unable to negotiate a satisfactory contract  
28 with any of the selected firms, the committee shall select  
29 additional qualified firms, and the head of the purchasing  
30 agency shall continue negotiations in accordance with this

1 section until an agreement is reached.

2 CHAPTER 11

3 (RESERVED)

4 CHAPTER 13

5 (Reserved)

6 CHAPTER 15

7 SUPPLY MANAGEMENT

8 Sec.

9 1501. Definitions.

10 1502. Supply management regulations.

11 1503. Proceeds from sale or disposal of surplus supplies.

12 1504. Exception.

13 § 1501. Definitions.

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

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

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

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

25 "Supplies." Supplies owned by Commonwealth agencies.

26 "Surplus supplies." Nonexpendable supplies no longer having  
27 any use to any Commonwealth agency. The term includes obsolete  
28 supplies, scrap materials and nonexpendable supplies that have  
29 completed their useful life cycle. The term does not include  
30 road or bridge materials or equipment that have been declared

1 surplus by the Department of Transportation under section 510 of  
2 the act of April 9, 1929 (P.L.177, No.175), known as The  
3 Administrative Code of 1929.

4 § 1502. Supply management regulations.

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

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

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

16 (3) Transfer of excess supplies.

17 § 1503. Proceeds from sale or disposal of surplus supplies.

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

27 § 1504. Exception.

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

1 CHAPTER 17

2 LEGAL AND CONTRACTUAL REMEDIES

3 Subchapter

4 A. General Provisions

5 B. Prelitigation Resolution of Controversies

6 C. Board of Claims

7 D. Solicitations or Awards in Violation of Law

8 E. Interest

9 SUBCHAPTER A

10 GENERAL PROVISIONS

11 Sec.

12 1701. Definitions.

13 1702. Sovereign immunity.

14 § 1701. Definitions.

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

18 "Claimant." A person filing a claim with the Board of  
19 Claims.

20 § 1702. Sovereign immunity.

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

27 (b) Exception.--The General Assembly under section 11 of  
28 Article I of the Constitution of Pennsylvania does hereby waive  
29 sovereign immunity as a bar to claims against Commonwealth  
30 agencies arising under this chapter but only to the extent set

1 forth in this chapter.

2 SUBCHAPTER B

3 PRELITIGATION RESOLUTION OF CONTROVERSIES

4 Sec.

5 1711. Authority to resolve protests of solicitations or  
6 awards.

7 1712. Authority to resolve contract and breach of contract  
8 controversies.

9 § 1711. Authority to resolve protests of solicitations or  
10 awards.

11 (a) Right to protest.--An actual or prospective bidder,  
12 offeror or contractor who is aggrieved in connection with the  
13 solicitation or award of a contract may protest to the head of  
14 the purchasing agency in writing. All protests under this  
15 subsection must be made within seven days after the protestant  
16 knows or should have known of the facts giving rise to the  
17 protest. If a protest is submitted by a protestant who did not  
18 submit a bid, the protest must be received by the head of the  
19 purchasing agency prior to the bid opening time or the proposal  
20 receipt date or it shall be considered untimely and can be  
21 disregarded by the purchasing agency.

22 (b) Authority to resolve protests.--The head of the  
23 purchasing agency shall have the authority to settle and resolve  
24 a protest of an aggrieved bidder, offeror or contractor, actual  
25 or prospective, concerning the solicitation or award of a  
26 contract.

27 (c) Decision.--If the protest is not resolved by mutual  
28 agreement, the head of the purchasing agency shall promptly, but  
29 in no event later than 120 days from the filing of the protest,  
30 issue a decision in writing. The decision shall:

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

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

4       (d) Notice of decision.--A copy of the decision under  
5       subsection (c) shall be delivered by registered mail to the  
6       protestant and any other person determined by the head of the  
7       purchasing agency to be affected by the decision.

8       (e) Finality of decision.--A decision under subsection (c)  
9       shall be final and conclusive unless a person adversely affected  
10      by the decision files an action based on subsection (a) in  
11      Commonwealth Court within 14 days of receipt of the decision. No  
12      action may be commenced in Commonwealth Court under this  
13      subsection until the protestant has exhausted the administrative  
14      remedies provided for in this section.

15      (f) Stay of procurements during protests.--In the event of a  
16      timely protest under subsection (a) and until the time has  
17      elapsed for the protestant to file an action in Commonwealth  
18      Court, the purchasing agency shall not proceed further with the  
19      solicitation or with the award of the contract unless and until  
20      the head of the purchasing agency, after consultation with the  
21      head of the using agency, makes a written determination that the  
22      protest is clearly without merit or that award of the contract  
23      without delay is necessary to protect substantial interests of  
24      the Commonwealth.

25   § 1712. Authority to resolve contract and breach of contract  
26                      controversies.

27      (a) Applicability.--This section applies to controversies  
28      between a Commonwealth agency and a contractor which arise under  
29      or by virtue of a contract between them, including controversies  
30      based upon breach of contract, mistake, misrepresentation or



1 other cause for contract modification or rescission. Prior to  
2 filing a claim under this section with the Board of Claims under  
3 the exclusive jurisdiction provided in the act of May 20, 1937  
4 (P.L.728, No.193), referred to as the Board of Claims Act, the  
5 claim must first be filed in writing with the contracting  
6 officer within six months after it accrues and not thereafter.

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

9 (c) Decision.--If the controversy is not resolved by mutual  
10 agreement, the head of 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 contractor of its right to administrative  
14 and judicial review as provided in this chapter.

15 (d) Notice of decision.--A copy of the decision under  
16 subsection (c) shall be delivered by registered mail to the  
17 contractor.

18 (e) Finality of decision.--The decision under subsection (c)  
19 shall be final and conclusive unless the contractor files a  
20 claim with the Board of Claims within 30 days of receipt of the  
21 decision.

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

28 SUBCHAPTER C

29 BOARD OF CLAIMS

30 Sec.

1 1721. Function of Board of Claims.

2 1722. (Reserved).

3 1723. (Reserved).

4 1724. (Reserved).

5 1725. Hearings, decisions and awards.

6 1726. Appeals.

7 § 1721. Function of Board of Claims.

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

11 § 1722. (Reserved).

12 § 1723. (Reserved).

13 § 1724. (Reserved).

14 § 1725. Hearings, decisions and awards.

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

19 (b) Hearing and decision.--All hearings before the Board of  
20 Claims or hearings before a hearing panel shall be public and  
21 the proceedings shall be de novo. Any prior determinations by  
22 administrative officials shall not be final or conclusive except  
23 as provided in section 561 (relating to finality of  
24 determinations). The board or hearing panel shall make a  
25 decision within a reasonable time from the date of the hearing.  
26 The board shall promptly decide the contract or breach of  
27 contract controversy and, if appropriate, make an award of a sum  
28 that it determines the claimant is entitled to receive.

29 (c) Certification of award.--The Board of Claims shall  
30 certify an award for the purpose of entering the same as a

1 judgment in any court of record.

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

7 § 1726. Appeals.

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

#### 13 SUBCHAPTER D

#### 14 SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

15 Sec.

16 1741. Applicability.

17 1742. Remedies prior to execution of contract.

18 1743. Remedies after execution of contract.

19 § 1741. Applicability.

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

23 § 1742. Remedies prior to execution of contract.

24 If prior to execution of a contract it is determined that a  
25 solicitation or proposed award of a contract is in violation of  
26 law, then the remedies are limited to cancellation of the  
27 solicitation or proposed award or revision of the solicitation  
28 or proposed award to comply with the law.

29 § 1743. Remedies after execution of contract.

30 If after the execution of a contract it is determined that a

solicitation or award of a contract is in violation of law,  
then:

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

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

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

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

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

(i) the contract may be declared void;

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

(iii) the contract may be ratified and affirmed,  
provided it is determined by the purchasing agency, if  
that action is in the best interest of the Commonwealth  
and without prejudice to the right of the Commonwealth  
agency to damages as may be appropriate.

#### SUBCHAPTER E

#### INTEREST

Sec.

1751. Interest.

§ 1751. Interest.

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

7 CHAPTER 19

8 INTERGOVERNMENTAL RELATIONS

9 Sec.

10 1901. Definitions.

11 1902. Cooperative purchasing authorized.

12 1903. Sale, acquisition or use of supplies by a public  
13 procurement unit.

14 1904. Cooperative use of supplies or services.

15 1905. Joint use of facilities.

16 1906. Supply of personnel, information and technical services.

17 1907. Use of payments received by a supplying public  
18 procurement unit.

19 1908. Compliance of public procurement units.

20 1909. Review of procurement requirements.

21 1910. Contract controversies.

22 1911. Immunity.

23 1912. Investment management agreements.

24 § 1901. Definitions.

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

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

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

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

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

15 § 1902. Cooperative purchasing authorized.

16 A public procurement unit may either participate in, sponsor,  
17 conduct or administer a cooperative purchasing agreement for the  
18 procurement of any supplies, services or construction with one  
19 or more public procurement units or external procurement  
20 activities in accordance with an agreement entered into between  
21 the participants. Cooperative purchasing may include, but is not  
22 limited to, joint or multiparty contracts between public  
23 procurement units and open-ended purchasing agency contracts  
24 which are made available to local public procurement units.

25 § 1903. Sale, acquisition or use of supplies by a public  
26 procurement unit.

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

1 and 15 (relating to supply management).

2 § 1904. Cooperative use of supplies or services.

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

10 § 1905. Joint use of facilities.

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

16 § 1906. Supply of personnel, information and technical  
17 services.

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

27 (b) Supply of services.--The informational, technical and  
28 other services of any public procurement unit may be made  
29 available to any other public procurement unit or external  
30 procurement activity. However, the requirements of the public

1 procurement unit tendering the services shall have precedence  
2 over the requesting public procurement unit or external  
3 procurement activity. The requesting public procurement unit or  
4 external procurement activity shall compensate for the expenses  
5 of the services provided in accordance with an agreement between  
6 the parties.

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

- 10 (1) Standard forms.
- 11 (2) Printed manuals.
- 12 (3) Product specifications and standards.
- 13 (4) Quality assurance testing services and methods.
- 14 (5) Qualified products lists.
- 15 (6) Source information.
- 16 (7) Common use commodities listings.
- 17 (8) Supplier prequalification information.
- 18 (9) Supplier performance ratings.
- 19 (10) Debarred and suspended bidders lists.
- 20 (11) Forms for invitations for bids, requests for  
21 proposals, instructions to bidders, general contract  
22 provisions and other contract forms.
- 23 (12) Contracts or published summaries of contracts,  
24 including price and time of delivery information.

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

- 27 (1) Development of products specifications.
- 28 (2) Development of quality assurance test methods,  
29 including receiving, inspection and acceptance procedures.
- 30 (3) Use of product testing and inspection facilities.



1           (4) Use of personnel training programs.

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

5   § 1907. Use of payments received by a supplying public  
6           procurement unit.

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

11   § 1908. Compliance of public procurement units.

12          Where the public procurement unit or external procurement  
13 activity administering a cooperative purchase complies with the  
14 requirements of this part, any public procurement unit  
15 participating in the purchase shall be deemed to have complied  
16 with this part. Public procurement units may not enter into a  
17 cooperative purchasing agreement for the purpose of  
18 circumventing this part.

19   § 1909. Review of procurement requirements.

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

27   § 1910. Contract controversies.

28          (a) Public procurement unit subject to certain legal and  
29 contractual remedies.--Under a cooperative purchasing agreement,  
30 controversies arising between an administering public

1 procurement unit subject to Chapter 17 (relating to legal and  
2 contractual remedies) and its bidders, offerors or contractors  
3 shall be resolved in accordance with Chapter 17.

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

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

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

18 § 1911. Immunity.

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

23 § 1912. Investment management agreements.

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

28 CHAPTER 21

29 SMALL AND DISADVANTAGED BUSINESSES

30 Sec.

- 1 2101. Policy.
- 2 2102. Definitions.
- 3 2103. Regulations.
- 4 2104. Duties of department.
- 5 2105. Bonding and progress payments.
- 6 2106. Business assistance offices.
- 7 2107. Report to General Assembly.
- 8 2108. Compliance with Federal requirements.

9 § 2101. Policy.

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

15 § 2102. Definitions.

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

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

25 "Small business." A business in the United States which is  
26 independently owned, is not dominant in its field of operation  
27 and meets the criteria established by the Department of General  
28 Services, by regulation, for qualification as a small business.  
29 The department, through regulation, shall have the authority to  
30 establish the maximum number of persons a company may employ to

1 qualify as a small business, which number shall not exceed 50  
2 persons.

3 § 2103. Regulations.

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

13 § 2104. Duties of department.

14 The department shall have the following duties:

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

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

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

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

30 (5) Assure that small and disadvantaged businesses are

solicited on each procurement for which the businesses may be suited.

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

§ 2105. Bonding and progress payments.

(a) Bonding.--Notwithstanding other provisions of this part, a purchasing agency may reduce the level or change the types of bonding normally required or accept alternative forms of security to the extent reasonably necessary to encourage procurement from small and disadvantaged businesses.

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

§ 2106. Business assistance offices.

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

§ 2107. Report to General Assembly.

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

§ 2108. Compliance with Federal requirements.

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

CHAPTER 23

ETHICS IN PUBLIC CONTRACTING

Subchapter

A. General Policy and Standards

B. Specific Standards

SUBCHAPTER A

GENERAL POLICY AND STANDARDS

Sec.

2301. Policy.

2302. General standards of ethical conduct.

2303. Reporting of breaches of ethical standards.

§ 2301. Policy.

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

§ 2302. General standards of ethical conduct.

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

1 confidential information.

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

5 § 2303. Reporting of breaches of ethical standards.

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

10 SUBCHAPTER B

11 SPECIFIC STANDARDS

12 Sec.

13 2311. Bonds.

14 § 2311. Bonds.

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

21 PART II

22 GENERAL PROCUREMENT PROVISIONS

23 Chapter

24 31. General Provisions

25 33. Prevention of Environmental Pollution

26 35. (Reserved)

27 37. Contract Clauses and Preference Provisions

28 39. Construction Contracts Over \$50,000

29 41. Purchase of Surplus Federal Property

30 43. Public Facilities Concessions

1 45. Antibid-Rigging

2 CHAPTER 31

3 GENERAL PROVISIONS

4 Sec.

5 3101. Application of part.

6 3102. Definitions.

7 § 3101. Application of part.

8 This part applies to government agencies. In the case of  
9 Commonwealth agencies, this part shall be read in pari materia  
10 with Part I (relating to Commonwealth Procurement Code).

11 § 3102. Definitions.

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

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

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

23 CHAPTER 33

24 PREVENTION OF ENVIRONMENTAL POLLUTION

25 Sec.

26 3301. Invitations for bids and requests for proposals.

27 3302. Additional work.

28 § 3301. Invitations for bids and requests for proposals.

29 All invitations for bids and requests for proposals for  
30 construction projects issued by any government agency shall set



1 forth any provision of Federal and State statutes, rules and  
2 regulations dealing with the prevention of environmental  
3 pollution and the preservation of public natural resources that  
4 affect the projects.

5 § 3302. Additional work.

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

25 CHAPTER 35

26 (RESERVED)

27 CHAPTER 37

28 CONTRACT CLAUSES AND PREFERENCE PROVISIONS

29 Subchapter

30 A. Labor

1 B. Steel Products

2 C. Trade Practices

3 D. Motor Vehicles

4 E. Used Oil Products

5 F. Guaranteed Energy Savings Contracts

6 SUBCHAPTER A

7 LABOR

8 Sec.

9 3701. Contract provisions prohibiting discrimination.

10 § 3701. Contract provisions prohibiting discrimination.

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

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

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

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

1 SUBCHAPTER B

2 STEEL PRODUCTS

3 Sec.

4 3711. Short title of subchapter and general provisions.

5 3712. Definitions.

6 3713. Requirement of contract provision.

7 3714. Payments under contracts.

8 § 3711. Short title of subchapter and general provisions.

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

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

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

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

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

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

30 (5) The economy and general welfare of this Commonwealth

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

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

15 (d) Purpose of chapter.--This chapter 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 and every provision of this chapter is intended to receive a  
19 liberal construction as will best effectuate that purpose, and  
20 no provision is intended to receive a strict or limited  
21 construction.

22 § 3712. Definitions.

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

26 "Steel products." Products rolled, formed, shaped, drawn,  
27 extruded, forged, cast, fabricated or otherwise similarly  
28 processed, or processed by a combination of two or more of these  
29 operations, from steel made in the United States by the open  
30 hearth, basic oxygen, electric furnace, Bessemer or other steel-

1 making process. The term includes cast iron products. The term  
2 also includes machinery and equipment listed in United States  
3 Department of Commerce Standard Industrial Classification 25  
4 (furniture and fixture), 35 (machinery, except electrical) and  
5 37 (transportation equipment) and made of, fabricated from or  
6 containing steel components. If a product contains both foreign  
7 and United States steel, the product shall be determined to be a  
8 United States steel product only if at least 75% of the cost of  
9 the articles, materials and supplies have been mined, produced  
10 or manufactured, as the case may be, in the United States.  
11 Transportation equipment shall be determined to be a United  
12 States steel product if it complies with section 165 of the  
13 Surface Transportation Assistance Act of 1982 (Public Law 97-  
14 424, 96 Stat. 2097).

15 "United States." The United States of America, including all  
16 territory, continental or insular, subject to the jurisdiction  
17 of the United States.

18 § 3713. Requirement of contract provision.

19 (a) General rule.--Each construction contract in excess of  
20 \$250,000 which is entered into by a government agency shall  
21 contain a provision that if any steel products are to be used or  
22 supplied in the performance of the contract, only steel products  
23 as defined in this subchapter shall be used or supplied in the  
24 performance of the contract or any subcontracts. The amount of  
25 \$250,000 shall be adjusted annually by the department to reflect  
26 the annual percentage change in the Composite Construction Cost  
27 Index of the United States Department of Commerce occurring in  
28 the one-year period ending on December 31 of each year.

29 (b) Exception.--This section does not apply in any case  
30 where the head of the government agency in writing determines

1 that steel products as defined in this subchapter are not  
2 produced in the United States in sufficient quantities to meet  
3 the requirements of the contract.

4 § 3714. Payments under contracts.

5 (a) Compliance with required contract provisions.--No  
6 government agency shall authorize, provide for or make any  
7 payments to any person under any contract containing the  
8 provision required by section 3713 (relating to requirement of  
9 contract provision) unless, when unidentified steel products are  
10 supplied under a contract, the person has provided  
11 documentation, including, but not limited to, invoices, bills of  
12 lading and mill certification that the steel was melted and  
13 manufactured in the United States, which establishes that the  
14 person has fully complied with section 3713. If a steel product  
15 is identifiable from its face, the person must submit  
16 certification which satisfies the government agency that the  
17 person has fully complied with section 3713. Any payments made  
18 to any person by any government agency which should not have  
19 been made as a result of this section shall be recoverable by  
20 either the government agency or the Attorney General directly  
21 from the contractor, subcontractor, manufacturer or supplier who  
22 did not comply with section 3713.

23 (b) Penalties.--In addition to the withholding of payments,  
24 any person who willfully violates any of the provisions of this  
25 subchapter shall be prohibited from submitting any bids to any  
26 government agency for any contract for a period of three years  
27 from the date of the determination that a violation has  
28 occurred. In the event the person who violates the provisions of  
29 section 3713 is a subcontractor, manufacturer or supplier, that  
30 person shall be prohibited from performing any work or supplying

1 any materials to a government agency for a period of three years  
2 from the date of the determination that a violation has  
3 occurred.

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

#### 7 SUBCHAPTER C

#### 8 TRADE PRACTICES

9 Sec.

10 3721. Short title of subchapter and general provisions.

11 3722. Definitions.

12 3723. Unlawful acts.

13 3724. Preference for aluminum and steel products made in  
14 United States.

15 3725. Requirement to list discriminating countries.

16 3726. Procedure to determine discrimination.

17 3727. Foreign registry docket.

18 3728. Aluminum or steel products from a country listed on  
19 foreign registry docket.

20 § 3721. Short title of subchapter and general provisions.

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

23 (b) Legislative findings.--It is hereby determined by the  
24 General Assembly to reaffirm the legislative findings contained  
25 in the 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," and codified in  
7 this chapter:

8       (1) It has long been the policy of this Commonwealth not  
9 to purchase any supplies, equipment or materials manufactured  
10 in any foreign country which prohibits the specification for  
11 or use of supplies, equipment or materials manufactured in  
12 this Commonwealth.

13       (2) Many world trading countries, directly or indirectly  
14 by statute, regulation, policy, procedure or practice, grant  
15 or bestow a preference for supplies, equipment or materials  
16 manufactured in their country, thereby discriminating against  
17 the use of supplies, equipment or materials manufactured in  
18 this Commonwealth. The General Assembly therefore declares it  
19 to be the policy of this Commonwealth that aluminum and steel  
20 products made in the United States should be purchased by all  
21 public agencies in preference to aluminum and steel products  
22 made in foreign countries which discriminate against  
23 supplies, equipment or materials manufactured in this  
24 Commonwealth.

25       (c) Purpose of subchapter.--This subchapter is intended as  
26 remedial legislation designed to promote the general welfare and  
27 stimulate the economy of this Commonwealth and its people; each  
28 and every provision of this chapter is intended to receive a  
29 liberal construction as will best effectuate the purpose, no  
30 provision is intended to receive a strict or limited



1 construction.

2 § 3722. Definitions.

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

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

7 Aluminum or steel products rolled, formed, shaped, drawn,  
8 extruded, forged, cast, fabricated or otherwise similarly  
9 processed, or processed by a combination of two or more of these  
10 operations, from aluminum or steel not made in the United  
11 States.

12 "Court." The Commonwealth Court.

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

15 (1) Prevents the importation, sale or use of any  
16 supplies, materials or equipment manufactured in this  
17 Commonwealth.

18 (2) Grants or bestows a preference, discount or other  
19 competitive advantage to supplies, materials or equipment  
20 manufactured in the foreign country, the effect of which is  
21 to place similar supplies, materials or equipment  
22 manufactured in this Commonwealth at a competitive  
23 disadvantage.

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

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

30 (5) Imposes discriminatory duties, tariffs or border

1 taxes on the importation of supplies, materials or equipment  
2 not produced in the foreign country, the effect of which is  
3 to place supplies, materials or equipment manufactured in  
4 this Commonwealth at a competitive disadvantage with like  
5 goods manufactured in any foreign country.

6 (6) Adopts or condones any other unfair method of  
7 competition in international trade, including, but not  
8 limited to, the exportation of aluminum or steel products  
9 made in the foreign country through cartels or the  
10 subsidization of aluminum or steel products.

11 "Importer." Any person registered and doing business in this  
12 Commonwealth who engages in the receiving, storing, distributing  
13 or other processing of aluminum or steel products made in a  
14 foreign country or who engages in the solicitation or acceptance  
15 of orders or contracts for the furnishing of or supplying of  
16 aluminum or steel products made in a foreign country.

17 "Public works." Any structure, building, highway, waterway,  
18 street, bridge, pier, transit car or system, airport or other  
19 betterment, work or improvement, whether of a permanent or  
20 temporary nature and whether for governmental or proprietary use  
21 contracted for by any government agency or financed in whole or  
22 in part by any government agency.

23 § 3723. Unlawful acts.

24 It is unlawful for:

25 (1) Any government agency to specify, purchase or permit  
26 to be furnished or used in any public works aluminum or steel  
27 products made in a foreign country which has been determined  
28 as discriminating by the court unless the amount of the  
29 purchase or contract is equal to or less than \$250,000. This  
30 amount shall be adjusted annually by the department to

1 reflect the annual percentage charge in accordance with the  
2 change in the Composite Construction Cost Index of the United  
3 States Department of Commerce, occurring in the one-year  
4 period ending on December 31 of each year.

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

9 § 3724. Preference for aluminum and steel products made in  
10 United States.

11 If all considerations in or affecting a bid or proposal or a  
12 bidder or offeror are equal, each government agency shall give  
13 preference to aluminum and steel products made in the United  
14 States.

15 § 3725. Requirement to list discriminating countries.

16 In all its invitations for bids or requests for proposals,  
17 schedules or purchase orders issued for public works exceeding  
18 the amount established in section 3723 (relating to unlawful  
19 acts), every government agency shall include a listing of the  
20 foreign countries which have been found by the court to  
21 discriminate.

22 § 3726. Procedure to determine discrimination.

23 (a) Petition.--Any government agency, importer or taxpayer  
24 of this Commonwealth may file with the court a petition  
25 specifically setting forth alleged discrimination by a foreign  
26 country and praying for a determination. A copy of the petition  
27 to the court and notice of the time of hearing set by the court  
28 shall be served by registered mail on the consular officer, if  
29 any, of the country having an office in this Commonwealth and  
30 upon a person in charge of the embassy of the foreign country in

1 Washington, D.C.

2 (b) Hearing.--Upon presentation of a petition filed pursuant  
3 to subsection (a), the court shall make an order fixing a time  
4 for a hearing. The hearing shall be fixed on a day not later  
5 than 45 days after the filing of the petition. The  
6 representative of the foreign country and any other interested  
7 person may appear and present testimony at the hearing. At the  
8 hearing, the court shall consider the statutes, regulations,  
9 policies, procedures and practices of the foreign country  
10 specified in the petition.

11 § 3727. Foreign registry docket.

12 (a) Entering name in docket.--If, after a hearing, the court  
13 determines that the foreign country discriminates, it shall  
14 direct the prothonotary of the court to enter the name of the  
15 foreign country in a foreign registry docket maintained in the  
16 office of the prothonotary.

17 (b) Striking name from docket.--Any foreign country  
18 determined to be practicing discrimination may petition the  
19 court to have its name stricken from the foreign registry  
20 docket. The court shall grant the prayer of the petition if,  
21 after hearing, it determines that the foreign country has  
22 discontinued and not engaged in discrimination for a period of  
23 at least one year prior to the filing of the petition. Notice of  
24 the filing of the petition shall be served upon the original  
25 petitioner and all other parties to the original petition.

26 § 3728. Aluminum or steel products from a country listed on  
27 foreign registry docket.

28 (a) General rule.--It is unlawful for any person in the  
29 performance of a public works contract, subcontract or purchase  
30 order to furnish aluminum or steel products made in a foreign

1 country that is listed on a foreign registry docket if the  
2 amount exceeds the amount established in section 3723 (relating  
3 to unlawful acts). The person or any organization, corporation,  
4 partnership, business unit, association or joint venture in  
5 which the person has a substantial interest shall not be  
6 eligible to bid or submit an offer on or be awarded any contract  
7 or subcontract or be issued a purchase order for public works  
8 for a period of three years.

9 (b) Persons deemed not in violation.--Notwithstanding  
10 subsection (a), a person shall not be held to have violated this  
11 subchapter if he has not received notification of the listing as  
12 provided in section 3725 (relating to requirement to list  
13 discriminating countries) or solely because his subcontractor or  
14 supplier of materials violates this subchapter if the person had  
15 no knowledge of the violation.

#### 16 SUBCHAPTER D

#### 17 MOTOR VEHICLES

18 Sec.

19 3731. Short title of subchapter and general provisions.

20 3732. Definitions.

21 3733. Police power.

22 3734. Contract provisions.

23 3735. Payment under contract and action to recover  
24 unauthorized payments.

25 3736. Penalty.

26 § 3731. Short title of subchapter and general provisions.

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

29 (b) Legislative findings.--It is hereby determined by the  
30 General Assembly to reaffirm the legislative findings contained

1 in the act of April 4, 1984 (P.L.193, No.40), known as the Motor  
2 Vehicle Procurement Act, and codified in this chapter:

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

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

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

16 (4) The economy and general welfare of this Commonwealth  
17 and its citizens, as well as the economy, general welfare and  
18 national security of the United States, are inseparably  
19 related in the preservation and development of the motor  
20 vehicle industry in this Commonwealth and in other states of  
21 the United States.

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

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

7 § 3732. Definitions.

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

11 "Motor vehicle." A vehicle which is self-propelled except  
12 one which is propelled solely by human or animal power. The term  
13 includes those vehicles designed primarily for use in  
14 construction or agriculture or road maintenance such as tractors  
15 and earth-moving equipment.

16 "North America." The United States and Canada. The United  
17 States includes all territory, continental or insular, subject  
18 to the jurisdiction of the United States.

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

22 § 3733. Police power.

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

26 § 3734. Contract provisions.

27 (a) Motor vehicles to be manufactured in North America.--All  
28 government agencies shall procure only motor vehicles which are  
29 manufactured in North America. A motor vehicle is manufactured  
30 in North America if a substantial majority of the principal

1 components are assembled into the final product in an assembly  
2 plant in North America. Contract documents for the procurement  
3 of motor vehicles shall contain a provision that the vehicles  
4 procured by the government agency shall be manufactured in North  
5 America.

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

10 § 3735. Payment under contract and action to recover  
11 unauthorized payments.

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

25 § 3736. Penalty.

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



1 occurred.

2 SUBCHAPTER E  
3 USED OIL PRODUCTS

4 Sec.

5 3741. Preference.

6 § 3741. Preference.

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

13 SUBCHAPTER F  
14 GUARANTEED ENERGY SAVINGS CONTRACTS

15 Sec.

16 3751. Definitions.

17 3752. Selection process.

18 3753. Award of single contract.

19 § 3751. Definitions.

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

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

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

28 (2) Storm windows or doors, caulking or weather  
29 stripping, multiglazed windows or doors, heat-absorbing or  
30 heat-reflective glazed and coated window or door systems,

1 additional glazing, reductions in glass area or other window  
2 and door system modifications that reduce energy consumption.

3 (3) Automated or computerized energy control systems.

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

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

12 (6) Energy recovery systems.

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

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

18 "Guaranteed energy savings contract." A contract for the  
19 evaluation and recommendation of energy conservation measures  
20 and for implementation of one or more such measures.

21 § 3752. Selection process.

22 In connection with the letting of any guaranteed energy  
23 savings contract, Commonwealth agencies shall have the power to  
24 waive the process for the selection of design professionals  
25 prescribed under section 905 (relating to procurement of design  
26 professionals).

27 § 3753. Award of single contract.

28 Notwithstanding section 905 (relating to procurement of  
29 design professionals), the Commonwealth agencies may enter into  
30 a single guaranteed energy savings contract for the design and

1 complete implementation of the energy conservation measures  
2 involved in a project.

3 CHAPTER 39

4 CONSTRUCTION CONTRACTS OVER \$50,000

5 Subchapter

6 A. Preliminary Provisions

7 B. General Provisions

8 C. Retainage

9 D. Prompt Payment Schedules

10 E. Substantial/final Payment

11 SUBCHAPTER A

12 PRELIMINARY PROVISIONS

13 Sec.

14 3901. Application and purpose of chapter.

15 3902. Definitions.

16 § 3901. Application and purpose of chapter.

17 (a) Application.--Except as otherwise specifically provided  
18 in this chapter, this chapter applies to contracts entered into  
19 by a government agency through competitive sealed bidding or  
20 competitive sealed proposals.

21 (b) Purpose of chapter.--The purpose of this chapter is to  
22 establish a uniform and mandatory system governing public  
23 contracts to the extent of the requirements set forth in this  
24 chapter and shall be construed to effectuate such purpose. The  
25 provisions of this chapter shall in no way affect the provisions  
26 of the act of August 15, 1961 (P.L.987, No.442), known as the  
27 Pennsylvania Prevailing Wage Act, nor the regulations  
28 promulgated under that act, nor shall any requirements of this  
29 chapter affect any provisions of a contract to be awarded  
30 pursuant to any Federal law or regulations containing specific

1 provisions which are different from the public contract  
2 requirements of this chapter.

3 § 3902. 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 "Contract." A contract exceeding \$50,000 for construction as  
8 defined in section 103 (relating to definitions), including  
9 heating or plumbing contracts but excluding Department of  
10 Transportation contracts under section 301(c)(1) (relating to  
11 procurement responsibility).

12 "Contractor." A person who enters into a contract with a  
13 government agency.

14 "Deficiency item." Work performed but which the design  
15 professional, the contractor or the inspector will not certify  
16 as being completed according to the contract.

17 "Design professional." Persons performing professional  
18 services as defined in section 901 (relating to definitions).

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 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.--Extensions of the date for the award may be  
30 made by the mutual written consent of the government agency and

1 the lowest responsible and responsive bidder.

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

10 § 3912. Time for executing contract.

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

15 § 3913. Release of successful bidder.

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

24 SUBCHAPTER C

25 RETAINAGE

26 Sec.

27 3921. Retainage.

28 3922. Payment of retainage to subcontractors.

29 § 3921. Retainage.

30 (a) Contract provision.--A contract may include a provision

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

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 chapter conflicts with a Federal  
4 statute or regulation or with conditions attached to the receipt  
5 of Federal aid, this chapter 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  
18 Commonwealth agency'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 local government unit is liable for the  
5 interest.

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

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

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

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

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

25 (5) A transportation authority organized or operating  
26 under 74 Pa.C.S. Ch. 17 (relating to metropolitan  
27 transportation authorities).

28 § 3939. Claims by innocent parties.

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

1 (b) Barred claims.--Once a contractor has made payment to  
2 the subcontractor according to the provisions of this  
3 subchapter, future claims for payment against the contractor or  
4 the contractor's surety by parties owed payment from the  
5 subcontractor which has been paid shall be barred.

6 SUBCHAPTER E

7 SUBSTANTIAL/FINAL PAYMENT

8 Sec.

9 3941. Substantial/final payment under contract.

10 3942. Arbitration.

11 § 3941. 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 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% per annum for all contracts  
6 without provisions for retainage and at a rate of 10% per annum  
7 for all contracts with provisions for retainage, the interest to  
8 begin after the date that such payment becomes due and payable  
9 to the contractor. However, where the government agency has  
10 issued bonds to finance the project, interest shall be payable  
11 to the contractor at the rate of interest of the bond issue or  
12 at the rate of 10% per annum, whichever is less, but in no event  
13 shall the interest payable to the contractor be at a rate of  
14 interest less 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, an  
8 executive or independent agency may only enter into a contract  
9 authorized by this section through the Department of General  
10 Services.

11 § 4102. Bids and down payments.

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

19 CHAPTER 43

20 PUBLIC FACILITIES CONCESSIONS

21 Sec.

22 4301. Short title of chapter and general provisions.

23 4302. Definitions.

24 4303. Terms of contracts.

25 § 4301. Short title of chapter and general provisions.

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

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

1 Public Facilities Concession Regulation Act, and codified in  
2 this chapter:

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

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

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

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

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

1 people of this Commonwealth.

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

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

12 § 4302. Definitions.

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

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

20 § 4303. Terms of contracts.

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

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

30 (1) Where the right to regulate price or quality is

1 vested exclusively in or has been preempted by the United  
2 States or any of its agencies or another government agency.

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

## 6 CHAPTER 45

### 7 ANTIBID-RIGGING

8 Sec.

9 4501. Short title of chapter.

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17 4509. Investigation.

18 § 4501. Short title of chapter.

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

21 § 4502. 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 "Bid-rigging." The concerted activity of two or more persons  
26 to determine in advance the winning bidder of a contract let or  
27 to be let for competitive bidding by a government agency. The  
28 term includes, but is not limited to, any one or more of the  
29 following:

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

1 price.

2 (2) Agreeing to submit identical bids.

3 (3) Agreeing to rotate bids.

4 (4) Agreeing to share profits with a contractor who does  
5 not submit the low bid.

6 (5) Submitting prearranged bids, agreed-upon higher or  
7 lower bids or other complementary bids.

8 (6) Agreeing to set up territories to restrict  
9 competition.

10 (7) Agreeing not to submit bids.

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

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

18 § 4503. Prohibited activities.

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

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

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

29 (b) Simultaneous bids.--Notwithstanding other provisions of  
30 this chapter, it is not unlawful for the same person to

1 simultaneously submit bids for the same work, or a portion  
2 thereof, as a proposed prime contractor and subcontractor.

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

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

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

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

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

24 (2) The net worth of the person.

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

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

30 (h) Limitation on prosecution.--No criminal prosecution

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

7 § 4504. Civil action and damages.

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

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

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

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

30 (e) Conviction to be dispositive of liability.--Any

1 conviction under section 4503 shall be dispositive of the  
2 liability of the participants with the only issues for trial  
3 being the fact and amount of damages.

4 § 4505. Suspension or debarment.

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

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

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

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

22 § 4506. Liability for increased costs.

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

30 § 4507. Noncollusion affidavits.



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

27 § 4508. Responsibility for enforcement.

28 (a) Criminal prosecution.--The Office of Attorney General  
29 and the district attorneys of the several counties shall have  
30 concurrent jurisdiction for the investigation and prosecution of

1 violations of section 4503 (relating to prohibited activities).

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

15 § 4509. Investigation.

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

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

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

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

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

17 Section 2. Section 2310 of Title 1 is amended to read:  
18 § 2310. Sovereign immunity reaffirmed; specific waiver.

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

1 otherwise specifically authorized by statute.

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

3 § 763. Direct appeals from government agencies.

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

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

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

16 \* \* \*

17 Section 4. Except as otherwise provided, this act is  
18 intended to provide a complete and exclusive procedure to govern  
19 the procurement by Commonwealth agencies of supplies, services  
20 and construction, including the disposal of surplus supplies.

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

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

28 Act of May 4, 1876 (P.L.99, No.68), entitled "A supplement to  
29 an act, entitled 'An act to carry out the provisions of section  
30 twelve, article three of the constitution, relative to contracts

1 for supplies for the legislature and various departments of the  
2 state government.'"

3 Act of June 12, 1879 (P.L.170, No.187), entitled "An act to  
4 carry out the provisions of section twelve, article three, of  
5 the constitution, relative to contracts for supplies for the  
6 legislature and the various departments of the state  
7 government."

8 Act of June 25, 1895 (P.L.269, No.182), entitled "An act  
9 providing that none but citizens of the United States shall be  
10 employed in any capacity in the erection, enlargement or  
11 improvement of any public building or public work within this  
12 Commonwealth."

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

19 Act of May 1, 1919 (P.L.103, No.79), referred to as the State  
20 Art Commission Law.

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

1 Sections 478, 2401.1(19), 2403(a), (b), (c) and (g), 2405,  
2 2406(g), 2408, 2409, 2409.1, 2410, 2412, 2413 and 2414 of the  
3 act of April 9, 1929 (P.L.177, No.175), known as The  
4 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 Act of January 2, 1934 (Sp.Sess., 1933 P.L.200, No.41),  
8 entitled "An act authorizing officers, departments, boards and  
9 commissions of any political subdivision of the Commonwealth,  
10 and cities, counties, boroughs, incorporated towns, townships,  
11 school districts, to make adjustments with certain supply  
12 contractors to reimburse losses sustained in performance of  
13 contracts under certain circumstances."

14 Act of July 18, 1935 (P.L.1173, No.382), entitled "An act to  
15 prohibit discrimination on account of race, creed or color in  
16 employment under contracts for public buildings or public  
17 works."

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

26 Act of April 12, 1945 (P.L.220, No.99), entitled "An act  
27 authorizing the Commonwealth and any administrative department,  
28 boards, and commissions thereof acting through the Department of  
29 Property and Supplies, and political subdivisions of the  
30 Commonwealth, including municipal authorities, to enter into

1 contracts with the United States of America, or any agency  
2 thereof, for the purchase, lease, or other acquisition of  
3 property, real or personal, offered for sale pursuant to the  
4 Surplus Property Act of one thousand nine hundred forty-four,  
5 without complying with any requirement of existing law as to  
6 specifications, advertising, award of contract, and approval of  
7 purchases by a State agency receiving competitive bids, or the  
8 delivery of property purchased before payment therefor."

9 Sections 404, 405 and 405.1 of the act of June 1, 1945  
10 (P.L.1242, No.428), known as the State Highway Law.

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

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

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

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

21 Act of July 23, 1968 (P.L.686, No.226), entitled "An act  
22 equalizing trade practices in public works procurement;  
23 authorizing the purchase by the Commonwealth, its political  
24 subdivisions, and all public agencies, of aluminum and steel  
25 products produced in a foreign country, provided the foreign  
26 country does not prohibit or discriminate against the  
27 importation to, sale or use in the foreign country of supplies,  
28 material or equipment manufactured in this Commonwealth;  
29 establishing procedures for determining whether foreign  
30 countries discriminate against supplies, materials or equipment



1 manufactured in this Commonwealth; and imposing penalties and  
2 providing for relief for violation of this act."

3 Act of October 26, 1972 (P.L.1017, No.247), entitled "An act  
4 relating to the prevention of environment pollution and the  
5 preservation of public natural resources in construction  
6 projects."

7 Act of March 3, 1978 (P.L.6, No.3), known as the Steel  
8 Products Procurement Act.

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

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

16 Act of October 28, 1983 (P.L.176, No.45), known as the  
17 Antibid-Rigging Act.

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

20 Act of November 28, 1986 (P.L.1465, No.146), known as the  
21 Reciprocal Limitations Act.

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

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

27 Act of January 23, 1974 (P.L.9, No.4), entitled "An act  
28 prescribing the procedure, after the opening of bids, for the  
29 withdrawal of bids on certain public contracts, setting forth  
30 the rights of the parties involved and providing penalties,"

1 except insofar as the act applies to the leases of real  
2 property.

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

5 (c) The following acts and parts of acts are repealed  
6 insofar as they are inconsistent with this act:

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

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

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

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

30 Act of June 23, 1931 (P.L.1181, No.321), entitled "An act

1 authorizing persons, co-partnerships, associations, and  
2 corporations, who, whether as sub-contractor or otherwise, have  
3 furnished material or supplied or performed labor in connection  
4 with any public work or improvement, to intervene in or  
5 institute actions on certain bonds given to the Commonwealth or  
6 to municipal corporations in connection with the performance of  
7 public contracts; fixing the time within which such actions must  
8 be brought, and the amounts recoverable therein; and providing  
9 for distribution of amounts recovered; and prescribing  
10 procedure."

11 Section 6 of the act of May 20, 1937 (P.L.728, No.193),  
12 referred to as the Board of Claims Act only insofar as it is  
13 inconsistent with the procedure provided for in 62 Pa.C.S. §  
14 1712 regarding the resolution of a contract controversy by the  
15 head of a purchasing agency.

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

18 Section 12 of the act of December 6, 1967 (P.L.678, No.318),  
19 known as The Pennsylvania Higher Educational Facilities  
20 Authority Act of 1967.

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

26 (d) Nothing in this act shall repeal, modify or supplant the  
27 following acts and parts of acts:

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

30 Section 303 of the act of April 9, 1929 (P.L.343, No.176),

1 known as The Fiscal Code.

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

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

7 Act of April 3, 1992 (P.L.28, No.11), known as the Tuition  
8 Account Program and College Savings Bond Act.

9 (e) 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.