
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 5

Session of
1997

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

SENATOR LEMMOND, STATE GOVERNMENT, RE-REPORTED AS AMENDED,
NOVEMBER 18, 1997

AN ACT

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

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27 TITLE 62

28 PROCUREMENT

29 Part

30 I. Commonwealth Procurement Code

1 II. General Procurement Provisions

2 PART I

3 COMMONWEALTH PROCUREMENT CODE

4 Chapter

5 1. General Provisions

6 3. Procurement Organization

7 5. Source Selection and Contract Formation

8 7. (Reserved)

9 9. Procurement of Construction and Design Professional
10 Services

11 11. (Reserved)

12 13. (Reserved)

13 15. Supply Management

14 17. Legal and Contractual Remedies

15 19. Intergovernmental Relations

16 21. Small and Disadvantaged Businesses

17 23. Ethics in Public Contracting

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

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

22 CHAPTER 1

23 GENERAL PROVISIONS

24 Sec.

25 101. Short title of part.

26 102. Application of part.

27 103. Definitions.

28 104. General principles of law otherwise applicable.

29 105. Determinations.

30 106. Public access to procurement information.

1 107. Reciprocal limitations.

2 108. Recycled materials.

3 § 101. Short title of part.

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

6 § 102. Application of part.

7 (a) Application to Commonwealth procurement.--This part
8 applies to every expenditure of funds, other than the investment
9 of funds, by Commonwealth agencies under any contract,
10 irrespective of their source, including Federal assistance
11 moneys except as specified in section 2108 (relating to
12 compliance with Federal requirements). This part does not apply
13 to grants ~~or~~ NOR DOES IT APPLY TO contracts between Commonwealth <—
14 agencies or between the Commonwealth and its political
15 subdivisions or other governments except as provided in Chapter
16 19 (relating to intergovernmental relations). Nothing in this
17 part or in accompanying regulations shall prevent any
18 Commonwealth agency or political subdivision from complying with
19 the terms and conditions of any grant, gift, bequest or
20 cooperative agreement.

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

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

28 (d) Application to General Assembly and unified judicial
29 system.--The General Assembly and its agencies and the unified
30 judicial system and its agencies may use the department as its

1 purchasing agency for the purchase of supplies under this part
2 and may use the department to dispose of surplus supplies under
3 Chapter 15 (relating to supply management).

4 (E) APPLICATION TO CERTAIN ENTITIES.--NOTHING IN THIS PART <—
5 SHALL APPLY TO THE ENTITY CREATED BY THE ACT OF AUGUST 7, 1963
6 (P.L.549, NO.290), REFERRED TO AS THE PENNSYLVANIA HIGHER
7 EDUCATION ASSISTANCE AGENCY ACT.

8 § 103. Definitions.

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

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

20 "Commonwealth agency." An executive agency, an independent
21 agency or ~~an instrumentality~~ A STATE-AFFILIATED ENTITY. <—

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

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

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

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

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

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

14 "Executive agency." The Governor and the departments,
15 boards, commissions, authorities and other officers and agencies
16 of the Commonwealth. The term does not include any court or
17 other officer or agency of the unified judicial system, the
18 General Assembly and its officers and agencies or any
19 independent agency or ~~instrumentality~~ STATE-AFFILIATED ENTITY. <—

20 "FIRM, FIXED-PRICE CONTRACT." A CONTRACT WHERE THE TOTAL <—
21 AMOUNT TO BE PAID TO THE CONTRACTOR IS FIXED AND IS NOT SUBJECT
22 TO ADJUSTMENT BY REASON OF THE COST EXPERIENCE OF THE
23 CONTRACTOR. THE TERM INCLUDES CONTRACTS WHERE THE UNIT PRICE IS
24 SET BUT THE TOTAL PRICE VARIES BECAUSE ACTUAL QUANTITIES
25 PURCHASED DEVIATE FROM THE QUANTITIES ESTIMATED TO BE PURCHASED.
26 THE TERM ALSO INCLUDES CONTRACTS WHERE THE PRICE MAY BE ADJUSTED
27 IN ACCORDANCE WITH A CONTRACTUALLY ESTABLISHED PRICE ADJUSTMENT
28 PROVISION WHICH IS NOT BASED UPON THE CONTRACTOR'S COSTS.

29 "Grant." The furnishing of assistance by the Federal
30 Government, Commonwealth or any person, whether financial or

1 otherwise, to any person to support a program authorized by law.
2 The term does not include an award whose primary purpose is to
3 procure FOR THE GRANTOR an end product, whether in the form of <—
4 supplies, services or construction. A contract resulting from
5 such an award is not a grant but a procurement contract.

6 "Independent agency." Boards, commissions and other agencies
7 and officers of the Commonwealth which are not subject to the
8 policy supervision and control of the Governor. The term does
9 not include any ~~instrumentality~~ STATE-AFFILIATED ENTITY, any <—
10 court or other officer or agency of the unified judicial system
11 ~~or~~, the General Assembly and its officers and agencies, ANY <—
12 STATE-RELATED INSTITUTION, POLITICAL SUBDIVISION OR ANY LOCAL,
13 REGIONAL OR METROPOLITAN TRANSPORTATION AUTHORITY.

14 ~~"Instrumentality." Commonwealth authorities and Commonwealth <—~~
15 ~~instrumentalities, including, but not limited to, the~~
16 ~~Pennsylvania Turnpike Commission, the Pennsylvania Higher~~
17 ~~Education Assistance Agency, the Pennsylvania Housing Finance~~
18 ~~Agency, the Pennsylvania Municipal Retirement System, the~~
19 ~~Pennsylvania Infrastructure Investment Authority, the State~~
20 ~~Public School Building Authority, the Pennsylvania Higher~~
21 ~~Educational Facilities Authority and the State System of Higher~~
22 ~~Education. The term does not include any court or other officer~~
23 ~~or agency of the unified judicial system, the General Assembly~~
24 ~~and its officers and agencies, or any State related institution~~
25 ~~or political subdivisions.~~

26 "Policy statement." Any document, except an adjudication,
27 regulation or privileged communication prepared by a
28 Commonwealth agency which sets forth substantive or procedural
29 personal or property rights, privileges, immunities, duties,
30 liabilities or obligations of the public or any person,

1 including any document interpreting or implementing any statute
2 enforced or administered by the agency.

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

10 "Purchasing agency." A Commonwealth agency authorized by
11 this part or by other law to enter into contracts FOR ITSELF OR <—
12 AS THE AGENT OF ANOTHER COMMONWEALTH AGENCY. WHEN PURCHASING FOR
13 ANOTHER COMMONWEALTH AGENCY, THE PURCHASING AGENCY ACTS ON
14 BEHALF OF THE PRINCIPAL WHICH NEEDS THE SUPPLIES, SERVICES AND
15 CONSTRUCTION AND SHALL COORDINATE AND COOPERATE WITH THAT
16 AGENCY.

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

19 "Services." The furnishing of labor, time or effort by a
20 contractor not involving the delivery of a specific end product
21 other than drawings, specifications or reports which are merely
22 incidental to the required performance. The term does not
23 include employment agreements, collective bargaining agreements
24 or agreements with litigation consultants. THE TERM INCLUDES <—
25 UTILITY SERVICES AND THOSE SERVICES FORMERLY PROVIDED BY PUBLIC
26 UTILITIES SUCH AS ELECTRICAL, TELEPHONE, WATER AND SEWAGE
27 SERVICE.

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

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

3 "STATE-AFFILIATED ENTITY." A COMMONWEALTH AUTHORITY OR A <—
4 COMMONWEALTH ENTITY. THE TERM INCLUDES THE PENNSYLVANIA TURNPIKE
5 COMMISSION, THE PENNSYLVANIA HOUSING FINANCE AGENCY, THE
6 PENNSYLVANIA MUNICIPAL RETIREMENT SYSTEM, THE PENNSYLVANIA
7 INFRASTRUCTURE INVESTMENT AUTHORITY, THE STATE PUBLIC SCHOOL
8 BUILDING AUTHORITY, THE PENNSYLVANIA HIGHER EDUCATIONAL
9 FACILITIES AUTHORITY AND THE STATE SYSTEM OF HIGHER EDUCATION.
10 THE TERM DOES NOT INCLUDE ANY COURT OR OTHER OFFICER OR AGENCY
11 OF THE UNIFIED JUDICIAL SYSTEM, THE GENERAL ASSEMBLY AND ITS
12 OFFICERS AND AGENCIES, ANY STATE-RELATED INSTITUTION, POLITICAL
13 SUBDIVISION OR ANY LOCAL, REGIONAL OR METROPOLITAN
14 TRANSPORTATION AUTHORITY.

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

18 "STATEWIDE REQUIREMENTS CONTRACT." A CONTRACT ENTERED INTO <—
19 BY THE DEPARTMENT OF GENERAL SERVICES AS PURCHASING AGENCY WHICH
20 COVERS THE ANNUAL, SEMIANNUAL OR QUARTERLY CONTRACT REQUIREMENTS
21 OF ALL COMMONWEALTH AGENCIES AND ALLOWS THE AGENCIES TO ORDER
22 NEEDED SUPPLIES DIRECTLY FROM THE CONTRACTOR.

23 "Supplies." Any property, including, but not limited to,
24 equipment, materials, printing, insurance and leases of and
25 installment purchases of tangible or intangible personal
26 property. The term does not include real property or leases of
27 real property.

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

30 § 104. General principles of law otherwise applicable.

1 Unless displaced by the particular provisions of this part,
2 existing Pennsylvania law, including Title 13 (relating to
3 commercial code), shall supplement the provisions of this part.
4 § 105. Determinations.

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

7 § 106. Public access to procurement information.

8 ~~Procurement information shall be a public record to the~~ <—
9 ~~extent provided in the act of June 21, 1957 (P.L.390, No.212),~~
10 ~~referred to as the Right to Know Law, and shall be available to~~
11 ~~the public as provided in that act.~~

12 EXCEPT AS PROVIDED IN SECTION 512(D) (RELATING TO COMPETITIVE <—
13 SEALED BIDDING), ANY DOCUMENTS CREATED BY OR PROVIDED TO ANY
14 COMMONWEALTH AGENCY FOR ANY PROCUREMENT SHALL BE SUBJECT TO
15 INSPECTION AND COPYING ONLY TO THE EXTENT ALREADY REQUIRED UNDER
16 THE ACT OF JUNE 21, 1957 (P.L.390, NO.212), REFERRED TO AS THE
17 RIGHT-TO-KNOW LAW.

18 § 107. Reciprocal limitations.

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

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

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

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

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

4 (4) The application of this preference or prohibition by
5 other states diminishes or eliminates opportunities for
6 bidders and manufacturers who reside in this Commonwealth to
7 obtain construction contracts from or to sell supplies to
8 states that have this preference, thereby resulting in the
9 loss of business for resident bidders and manufacturers.

10 Therefore, in order to offset or counteract the
11 discriminatory practices of other states, discourage other
12 states from applying a preference and ultimately to aid
13 employment, help business and industry located in this
14 Commonwealth, attract new business and industry to this
15 Commonwealth and provide additional tax revenue both from
16 those receiving contracts and those employed by contractors,
17 the General Assembly hereby declares that it is the policy of
18 this Commonwealth to respond in like manner against those
19 states that apply preferences or prohibitions by giving a
20 similar offsetting preference to residents in this
21 Commonwealth and bidders offering supplies manufactured in
22 this Commonwealth and by prohibiting the purchase or use of
23 certain supplies, in accordance with the provisions of this
24 section.

25 (c) Preference for supplies.--In all procurements of
26 supplies exceeding the amount established by the department for
27 small procurements under section 514 (relating to small
28 procurements), all Commonwealth agencies shall give preference
29 to those bidders or offerors offering supplies produced,
30 manufactured, mined, grown or performed in this Commonwealth as

1 against those bidders or offerors offering supplies produced,
2 manufactured, mined, grown or performed in any state that gives
3 or requires a preference to supplies produced, manufactured,
4 mined, grown or performed in that state. The amount of the
5 preference shall be equal to the amount of the preference
6 applied by the other state for that particular supply.

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

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

24 (f) Listing discriminating states.--The department shall
25 prepare a list of the states which apply a preference favoring
26 in-State supplies or bidders or offerors or a prohibition
27 against the use of out-of-State supplies or bidders or offerors
28 and shall publish the list in the Pennsylvania Bulletin. When a
29 state applies a new preference or prohibition, the department
30 shall publish that information in the Pennsylvania Bulletin as

1 an addition to the original list.

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

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

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

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

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

13 § 108. Recycled materials.

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

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

26 CHAPTER 3

27 PROCUREMENT ORGANIZATION

28 Subchapter

29 A. Organization of Public Procurement

30 B. Procurement Policy

1 C. Powers and Duties of Department

2 D. Powers and Duties of the Board of Commissioners of
3 Public Grounds and Buildings and the Office of the Budget

4 E. Coordination, Training and Education

5 SUBCHAPTER A

6 ORGANIZATION OF PUBLIC PROCUREMENT

7 Sec.

8 301. Procurement responsibility.

9 § 301. Procurement responsibility.

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

21 (b) Application to independent agencies.--Except as
22 otherwise specifically provided by law and this section,
23 independent agencies shall use the department as their
24 purchasing agency for the procurement of supplies or
25 construction. INDEPENDENT AGENCIES SHALL HAVE THE AUTHORITY TO <—
26 PROCURE THEIR OWN SERVICES. However, when any independent agency
27 acts as its own purchasing agency it shall use the procedures
28 provided in this part for any procurement of supplies, services
29 or construction.

30 (c) Exceptions for executive and independent agencies.--The

1 following supplies, services and construction need not be
2 procured through the department, nor shall the procurement
3 policy be established by the department, but shall nevertheless
4 be procured by the appropriate purchasing agency, subject to the
5 requirements of this part:

6 (1) Bridge, highway, dam, airport (except vertical <—
7 construction), railroad or other heavy or specialized <—
8 construction including:

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

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

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

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

21 (4) Perishable food stuffs.

22 (5) THE PROCUREMENT OF SERVICES, THE RENTING OF <—
23 MACHINERY AND EQUIPMENT AND THE LICENSING OF SPECIALIZED
24 COMPUTER SOFTWARE BY THE OFFICE OF ATTORNEY GENERAL, THE
25 DEPARTMENT OF THE AUDITOR GENERAL AND THE TREASURY
26 DEPARTMENT.

27 (d) Application to ~~instrumentalities.~~—Instrumentalities <—
28 STATE-AFFILIATED ENTITIES.--STATE-AFFILIATED ENTITIES may <—
29 formulate their own procurement policy governing the
30 procurement, management, control and disposal of supplies,

1 services and construction and may act as their own purchasing
2 agency for the procurement of supplies, services and
3 construction, but they are required to use the procedures
4 provided in this part for such procurement.

5 SUBCHAPTER B

6 PROCUREMENT POLICY

7 Sec.

8 311. Powers and duties.

9 312. Procurement regulations.

10 § 311. Powers and duties.

11 Except as otherwise provided in this part, the department may
12 promulgate regulations governing the procurement, management,
13 control and disposal of any and all supplies, services and
14 construction to be procured by Commonwealth agencies. The
15 department shall consider and decide matters of policy within
16 the provisions of this part. The department may audit and
17 monitor the implementation of its regulations and the
18 requirements of this part.

19 § 312. Procurement regulations.

20 Regulations shall be promulgated by the department as
21 provided in 45 Pa.C.S. Part II (relating to publication and
22 effectiveness of Commonwealth documents) and by the appropriate
23 purchasing agencies for those matters contained in section
24 301(c) (relating to procurement responsibility). The department
25 may not delegate its power to promulgate regulations. No
26 regulation may change any commitment, right or obligation of any
27 Commonwealth agency or of a contractor under a contract in
28 existence on the effective date of the regulation.

29 SUBCHAPTER C

30 POWERS AND DUTIES OF DEPARTMENT

1 Sec.

2 321. Powers and duties.

3 322. Specific construction powers, duties and procedures.

4 § 321. Powers and duties.

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

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

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

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

17 (4) ~~Oversee~~ COORDINATE programs of executive and
18 independent agencies for the inspection, testing and
19 acceptance of supplies and construction TO ENSURE
20 AVAILABILITY OF FACILITIES AND TO AVOID A DUPLICATION OF
21 FUNCTIONS.

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

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

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

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

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

10 (2) Promptly after the notice, in such cases, or
11 promptly after any appropriation made to it becomes
12 available, the department shall, if necessary, select an
13 architect and/or an engineer, in accordance with the
14 selection procedures of section 905 (relating to procurement
15 of design professional services) to design the work and
16 prepare the specifications therefor. The department may, as
17 an alternative, enter into a design/build contract.

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

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

23 (ii) That the plans and specifications must meet
24 with the approval of the Commonwealth agency or State-
25 related institution for which the building is being
26 erected, altered or enlarged and, in the case of an
27 administrative board or commission of the Commonwealth
28 agency with which the board or commission is respectively
29 connected, to the extent of the type and general
30 character of the building, design of the floor layouts,

1 medical equipment or other equipment of a nature peculiar
2 to the building for which the plans and specifications
3 are being prepared.

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

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

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

19 (4) The enforcement of all contracts provided for by
20 this section shall be under the control and supervision of
21 the department. The department shall have the authority to
22 engage the services of a construction management firm to
23 coordinate the work of the total project. All questions or
24 disputes arising between the department and any contractor
25 with respect to any matter pertaining to a contract entered
26 into with the department or any part thereto or any breach of
27 contract arising thereunder shall be submitted to final and
28 binding arbitration as provided by the terms of the contract
29 which finding shall be final and not subject to further
30 appeal or, if not so provided, shall be referred to the Board

1 of Claims as set forth in the act of May 20, 1937 (P.L.728,
2 No.193), referred to as the Board of Claims Act, whose
3 decision and award shall be final and binding and conclusive
4 upon all parties thereto, except that either party shall have
5 the right to appeal from the decision and award as provided
6 by law.

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

19 (6) The department may award construction contracts for
20 all the work or separately for parts of the work or both on
21 all projects under \$25,000 base construction cost. All
22 projects equal to or exceeding \$25,000 shall be subject to
23 the act of May 1, 1913 (P.L.155, No.104), entitled "An act
24 regulating the letting of certain contracts for the erection,
25 construction, and alteration of public buildings." Whenever
26 the department enters into a single contract for a project,
27 in the absence of good and sufficient reasons, the contractor
28 shall pay each subcontractor within 15 days of receipt of
29 payment from the department, an amount equal to the
30 percentage of completion allowed to the contractor on the

1 account of the subcontractor's work. The contractor shall
2 also require the subcontractor to make similar payments to
3 his subcontractors.

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

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

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

22 SUBCHAPTER D

23 POWERS AND DUTIES OF THE BOARD OF COMMISSIONERS OF
24 PUBLIC GROUNDS AND BUILDINGS AND THE OFFICE OF THE BUDGET
25 Sec.

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

27 327. Office of the Budget.

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

29 ~~No sole source procurement for supplies or leases of real~~ <—
30 ~~estate for an executive or independent agency for which the~~

1 ~~department acts as the purchasing agency shall be valid or~~
2 ~~effective unless, upon review, it is approved by the Board of~~
3 ~~Commissioners of Public Grounds and Buildings as provided in~~
4 ~~section 515 (relating to sole source procurement).~~

5 NO LEASE OF REAL ESTATE FOR USE BY AN EXECUTIVE OR <—
6 INDEPENDENT AGENCY AND NO SOLE SOURCE PROCUREMENT OF SUPPLIES
7 FOR AN EXECUTIVE OR INDEPENDENT AGENCY FOR WHICH THE DEPARTMENT
8 ACTS AS THE PURCHASING AGENCY SHALL BE VALID OR EFFECTIVE
9 UNLESS, UPON REVIEW, IT IS APPROVED BY THE BOARD OF
10 COMMISSIONERS OF PUBLIC GROUNDS AND BUILDINGS. WHERE THE BOARD
11 IS REVIEWING A PROPOSED SOLE SOURCE LEASE OR PROCUREMENT BEING
12 SUBMITTED PURSUANT TO SECTION 515 (RELATING TO SOLE SOURCE
13 PROCUREMENT), APPROVAL OF THE LEASE OR PROCUREMENT SHALL REQUIRE
14 THE UNANIMOUS VOTE OF THE BOARD. WHERE THE BOARD IS REVIEWING A
15 PROPOSED NON-SOLE SOURCE LEASE, THE LEASE SHALL BE APPROVED WHEN
16 ONE MEMBER OF THE BOARD VOTES TO APPROVE THE LEASE. ALL VOTES
17 SHALL TAKE PLACE AT A PUBLIC MEETING.

18 § 327. Office of the Budget.

19 (a) Encumbrance of funds.--For executive agencies and
20 independent agencies and ~~instrumentalities~~ STATE-AFFILIATED <—
21 ENTITIES where the department is used as the purchasing agency,
22 Office of the Budget shall encumber sufficient funds for the
23 payment of all invoices for the procurement of supplies,
24 services and construction.

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

30 (c) Contracts for services.--Except for contracts awarded

1 pursuant to section 514 (relating to small procurements), the
2 Office of the Budget shall review and approve all contracts for
3 services for executive agencies and independent agencies and
4 ~~instrumentalities~~ STATE-AFFILIATED ENTITIES where the department <—
5 acts as purchasing agency for:

6 (1) Fiscal responsibility and budgetary appropriateness.

7 (2) Availability of funds.

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

12 (E) EXCEPTIONS.--NOTWITHSTANDING THE FOREGOING, SUBSECTIONS <—

13 (A) AND (C) SHALL NOT APPLY TO PROCUREMENTS MADE BY THE OFFICE
14 OF ATTORNEY GENERAL, THE DEPARTMENT OF THE AUDITOR GENERAL OR
15 THE TREASURY DEPARTMENT. HOWEVER, WHERE THE DEPARTMENT IS USED
16 AS THE PURCHASING AGENCY, THE OFFICE OF ATTORNEY GENERAL, THE
17 DEPARTMENT OF THE AUDITOR GENERAL AND THE TREASURY DEPARTMENT
18 SHALL CERTIFY TO THE DEPARTMENT THAT THEY HAVE ENCUMBERED
19 SUFFICIENT FUNDS FOR THE PROCUREMENT.

20 SUBCHAPTER E

21 COORDINATION, TRAINING AND EDUCATION

22 Sec.

23 331. Collection of data concerning public procurement.

24 332. Advisory groups.

25 § 331. Collection of data concerning public procurement.

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

1 § 332. Advisory groups.

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

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

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

21 (D) CONFLICT OF INTEREST.--MEMBERS OF THE COUNCIL AND OTHER <—
22 ADVISORY GROUPS SHALL BE CONSIDERED STATE ADVISORS UNDER THE ACT
23 OF JULY 19, 1957 (P.L.1017, NO.451), KNOWN AS THE STATE ADVERSE
24 INTEREST ACT, AND, AS SUCH, SHALL BE SUBJECT TO THE PROHIBITIONS
25 FOR STATE ADVISORS SET FORTH IN THAT ACT, PROVIDED THAT A MEMBER
26 SHALL NOT BE DEEMED TO HAVE AN ADVERSE INTEREST BY VIRTUE OF ANY
27 ACTION TAKEN BY THE COUNCIL OR OTHER ADVISORY GROUPS IF THE
28 MEMBER DISCLOSES THE CONFLICT OF INTEREST AND PROPERLY RECUSES
29 HIMSELF FROM PARTICIPATING IN ANY RECOMMENDATION OF THE COUNCIL
30 OR AN ADVISORY GROUP.

1 CHAPTER 5

2 SOURCE SELECTION AND CONTRACT FORMATION

3 Subchapter

4 A. Definitions

5 B. Methods of Source Selection

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

8 D. Qualifications and Duties

9 E. Types of Contracts

10 F. Inspection of Plant and Audit of Records

11 G. Determinations and Reports

12 SUBCHAPTER A

13 DEFINITIONS

14 Sec.

15 501. Definitions.

16 § 501. Definitions.

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

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

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

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

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

30 "Invitation for bids." All documents, including those either

1 attached or incorporated by reference, used for soliciting bids.

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

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

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

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

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

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

27 SUBCHAPTER B

28 METHODS OF SOURCE SELECTION

29 Sec.

30 511. Methods of source selection.

- 1 512. Competitive sealed bidding.
- 2 513. Competitive sealed proposals.
- 3 514. Small procurements.
- 4 515. Sole source procurement.
- 5 516. Emergency procurement.
- 6 517. Multiple awards.
- 7 518. Competitive selection procedures for certain services.
- 8 519. Selection procedure for insurance and notary bonds.
- 9 520. Supplies manufactured by, and services performed by,
- 10 persons with disabilities.

11 § 511. Methods of source selection.

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

16 Section 513 (relating to competitive sealed proposals).

17 Section 514 (relating to small procurements).

18 Section 515 (relating to sole source procurement).

19 Section 516 (relating to emergency procurement).

20 Section 517 (relating to multiple awards).

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

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

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

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

29 § 512. Competitive sealed bidding.

30 (a) Conditions for use.--Contracts shall be awarded by

1 competitive sealed bidding except as otherwise provided in
2 section 511 (relating to methods of source selection).

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

7 (c) Public notice.--Adequate public notice of the invitation
8 for bids shall be given a reasonable time prior to the date set
9 for the opening of bids. ~~The notice may include electronic~~ <—
10 ~~publication which is accessible to the public and publication in~~
11 ~~a newspaper of general circulation a reasonable time before bid~~
12 ~~opening. The notice may also include advertisement as provided~~
13 ~~for in 45 Pa.C.S. § 306 (relating to use of trade publications).~~

14 THE PURCHASING AGENCY SHALL ESTABLISH WRITTEN POLICIES AND MAY <—
15 PROMULGATE REGULATIONS REGARDING METHODS OF PUBLIC NOTICE. THE
16 METHOD OF PUBLIC NOTICE MAY INCLUDE ANY OF THE FOLLOWING:

17 (1) ELECTRONIC PUBLICATION WHICH IS ACCESSIBLE TO THE
18 GENERAL PUBLIC.

19 (2) ADVERTISEMENT AS PROVIDED FOR IN 45 PA.C.S. § 306
20 (RELATING TO USE OF TRADE PUBLICATIONS).

21 (3) ISSUANCE OF INVITATIONS FOR BIDS TO BIDDERS ON THE
22 SOLICITATION MAILING LIST OF THE PURCHASING AGENCY.

23 (4) PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION.

24 (5) WHERE PREQUALIFICATION IS A REQUIREMENT OF
25 SUBMITTING A BID, NOTIFICATION TO ALL CONTRACTORS WHO HAVE
26 BEEN PREQUALIFIED BY THE PURCHASING AGENCY.

27 COPIES OF INVITATIONS TO BID SHALL BE MADE AVAILABLE TO ANY
28 INTERESTED PERSON UPON REQUEST TO THE PURCHASING AGENCY.

29 PURCHASING AGENCIES MAY ESTABLISH PROCEDURES FOR THE
30 DISTRIBUTION OF INVITATIONS TO BID INCLUDING THE IMPOSITION OF A

1 FEE TO REIMBURSE THE AGENCY FOR THE COSTS OF PHOTOCOPYING AND
2 MAILING.

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

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

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

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

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

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

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

30 Extensions of the date for the award may be made by mutual

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

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

14 § 513. Competitive sealed proposals.

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

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

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

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

30 (e) Evaluation.--The relative importance of the evaluation

1 factors shall be fixed prior to opening the proposals. A
2 Commonwealth agency is required to invite its comptroller to
3 participate in the evaluation as a nonvoting member of any
4 evaluation committee.

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

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

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

24 § 514. Small procurements.

25 If the procurement is not the subject of a STATEWIDE <—
26 requirements contract between the purchasing agency and a
27 contractor, the head of the purchasing agency may authorize in
28 writing procurements without formal bid procedures ~~in the field~~, <—
29 not exceeding the amount established by the purchasing agency.
30 The department may authorize procurement on a no-bid basis for

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

9 § 515. Sole source procurement.

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

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

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

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

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

25 (5) The services are to be provided by attorneys or
26 litigation consultants selected by the Office of General
27 Counsel, THE OFFICE OF ATTORNEY GENERAL, THE DEPARTMENT OF <—
28 THE AUDITOR GENERAL OR THE TREASURY DEPARTMENT.

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

30 (7) The services involve the repair, MODIFICATION OR <—

1 CALIBRATION of equipment and they are to be performed by the
2 manufacturer of the equipment or by the manufacturer's
3 authorized dealer, provided the contracting officer
4 determines that bidding is not ~~appropriate under the~~ <—
5 ~~circumstances. The contract is for~~ 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 ~~an instrumentality~~ <—
10 A STATE-AFFILIATED ENTITY. <—

11 ~~(8)~~ (9) The contract is for financial or investment <—
12 experts TO BE USED AND SELECTED BY THE TREASURY DEPARTMENT OR <—
13 FINANCIAL OR INVESTMENT EXPERTS selected by the Secretary of
14 the Budget.

15 ~~(9)~~ (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 ~~and data~~ required of each offeror and state <—
7 the relative importance of ~~particular qualifications~~ THE <—
8 PARTICULAR INFORMATION.

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

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

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

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

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

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

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

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

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

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

30 (a) General rule.--Contracts may be entered into for

1 supplies manufactured by, and services performed by, persons
2 with disabilities without competition in accordance with this
3 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 SUBCHAPTER C

10 CANCELLATION OF INVITATIONS FOR BIDS OR
11 REQUESTS FOR PROPOSALS

12 Sec.

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

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

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

23 SUBCHAPTER D

24 QUALIFICATIONS AND DUTIES

25 Sec.

26 531. Debarment or suspension.

27 532. Prequalification of bidders and offerors.

28 533. Security and performance bonds.

29 534. Cost or pricing data.

30 535. PRINTING.

←

1 § 531. Debarment or suspension.

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

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

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

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

20 (i) obtaining;

21 (ii) attempting to obtain; or

22 (iii) performing a public contract or subcontract.

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

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

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

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

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

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

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

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

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

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

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

21 (ii) Offering unbalanced bids.

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

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

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

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

1 or other Commonwealth authorities.

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

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

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

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

14 (2) Inform the ~~debarred or suspended person~~ CONTRACTOR
15 involved of the right to judicial review as provided in
16 subsection (e).

17 (d) Notice of decision.--A copy of the decision under
18 subsection (c) shall be delivered by registered mail to the
19 ~~debarred or suspended person~~ CONTRACTOR and any other party
20 intervening.

21 (e) Finality of decision and appeal.--A decision under
22 subsection (c) shall be final and conclusive unless the ~~debarred~~
23 ~~or suspended person~~ CONTRACTOR appeals to the Commonwealth Court
24 under 42 Pa.C.S. § 763(a)(1) (relating to direct appeals from
25 government agencies) within 30 days after receipt of the
26 decision.

27 (f) Effect of suspension/debarment.--Suspension or debarment
28 of a contractor, vendor or other person shall automatically
29 prohibit all Commonwealth agencies from awarding any contract to
30 such contractor, vendor or other person or renewing or extending

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

5 § 532. Prequalification of bidders and offerors.

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

8 § 533. Security and performance bonds.

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

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

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

29 (3) After the bids are opened, they shall be irrevocable
30 for the period specified in the invitation for bids or the

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

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

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

§ 534. Cost or pricing data.

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

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

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

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

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

(1) When responsive proposals are received from ~~three~~ TWO or more offerors.

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

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

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

§ 535. PRINTING.

NO CONTRACT FOR PRINTING SHALL BE ENTERED INTO WITH ANY CONTRACTOR UNTIL THE PURCHASING AGENCY IS SATISFIED THAT THE CONTRACTOR IS THE OWNER OR LESSEE OF MACHINERY AND EQUIPMENT NECESSARY TO PROPERLY AND PROMPTLY PERFORM ANY ORDERS ISSUED TO THE CONTRACTOR UNDER THE PROPOSED PRINTING CONTRACT.

SUBCHAPTER E

TYPES OF CONTRACTS

Sec.

541. Approval of accounting system.

542. Multiterm contracts.

543. Effective contracts.

§ 541. Approval of accounting system.

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

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

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

NO CONTRACT TYPE SHALL BE USED UNLESS IT HAS BEEN DETERMINED IN WRITING BY THE HEAD OF THE PURCHASING AGENCY THAT:

(1) THE PROPOSED CONTRACTOR'S ACCOUNTING SYSTEM WILL PERMIT TIMELY DEVELOPMENT OF ALL NECESSARY COST DATA IN THE FORM REQUIRED BY THE SPECIFIC CONTRACT TYPE CONTEMPLATED.

(2) THE PROPOSED CONTRACTOR'S ACCOUNTING SYSTEM IS ADEQUATE TO ALLOCATE COSTS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

NOTWITHSTANDING THE PRECEDING, A CONTRACT MAY BE USED WITHOUT A PRIOR WRITTEN DETERMINATION WHERE THE CONTRACT IS A FIRM FIXED PRICE CONTRACT, OR A CONTRACT AWARDED UNDER SECTION 516 (RELATING TO EMERGENCY PROCUREMENT).

§ 542. Multiterm contracts.

(a) Specified period.--A contract for supplies, construction or services may be entered into for a period of time deemed to

1 be in the best interests of the Commonwealth. The term of the
2 contract and conditions of renewal or extension, if any, shall
3 be included in the solicitation, and funds shall be available
4 for the first fiscal period at the time of contracting. Payment
5 and performance obligations for succeeding fiscal periods shall
6 be subject to the availability and appropriation of funds.

7 (b) Cancellation for unavailability of funds in succeeding
8 fiscal periods.--When funds are not appropriated or otherwise
9 made available to support continuation of performance in a
10 subsequent fiscal period, the contract shall be canceled, and
11 the contractor shall be reimbursed for the reasonable value of
12 any nonrecurring costs incurred but not amortized in the price
13 of the supplies, services or construction delivered under the
14 contract. Such reimbursement shall not include loss of
15 anticipated profit, loss of use of money or administrative or
16 overhead costs. The cost of cancellation may be paid from any
17 appropriations available for that purpose. The contractor shall
18 not be entitled to any reimbursement where the Commonwealth
19 elects not to exercise a renewal or extension option provided
20 for in the contract.

21 § 543. Effective contracts.

22 (A) GENERAL RULE.--Irrespective of the type of contract, no
23 contract shall be effective until executed by all necessary
24 Commonwealth officials as provided by law. <—

25 (B) CERTAIN CONTRACTS.--THOSE STATEWIDE REQUIREMENTS <—
26 CONTRACTS WHERE THE TOTAL DOLLAR PURCHASING AMOUNT, BASED UPON
27 ESTIMATED QUANTITIES, IS IN EXCESS OF \$1,000,000 SHALL NOT BE
28 EFFECTIVE UNLESS FIRST APPROVED BY THE STATE TREASURER. THE
29 \$1,000,000 AMOUNT SHALL BE ADJUSTED EACH YEAR BY THE DEPARTMENT
30 TO REFLECT THE ANNUAL PERCENTAGE CHANGE IN THE COMPOSITE

1 CONSTRUCTION COST INDEX OF THE UNITED STATES DEPARTMENT OF
2 COMMERCE OCCURRING IN THE ONE-YEAR PERIOD ENDING DECEMBER 31
3 EACH YEAR.

4 SUBCHAPTER F
5 INSPECTION OF PLANT AND AUDIT OF RECORDS

6 Sec.

7 551. Right to inspect plant.

8 552. Right to audit records.

9 § 551. Right to inspect plant.

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

14 § 552. Right to audit records.

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

26 (b) Contract audit.--The purchasing agency may audit the
27 books and records of a contractor or any subcontractor under any
28 negotiated contract or subcontract other than a firm fixed-price
29 contract to the extent that the books and records relate to the
30 performance of the contract or subcontract. The books and

1 records shall be maintained by the contractor for a period of
2 three years from the date of final payment under the prime
3 contract and by the subcontractor for a period of three years
4 from the date of final payment under the prime contract unless a
5 shorter period is otherwise authorized by the purchasing agency
6 in writing.

7 SUBCHAPTER G

8 DETERMINATIONS AND REPORTS

9 Sec.

10 561. Finality of determinations.

11 562. Anticompetitive practices.

12 563. Retention of procurement records.

13 564. Record of certain actions.

14 § 561. Finality of determinations.

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

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

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

21 Section 515 (relating to sole source procurement).

22 Section 516 (relating to emergency procurement).

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

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

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

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

29 § 562. Anticompetitive practices.

30 Collusion among bidders is unlawful. Every contract,

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

11 § 563. Retention of procurement records.

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

21 § 564. Record of certain actions.

22 The purchasing agency shall maintain a record listing all
23 contracts made under sections 514 (relating to small
24 procurements), 515 (relating to sole source procurement) and 516
25 (relating to emergency procurement) for a minimum of three years
26 from the date of final payment under the contract. The record
27 shall contain:

- 28 (1) Each contractor's name.
- 29 (2) The amount and type of each contract.
- 30 (3) A listing of the supplies, services or construction

1 procured under each contract.

2 CHAPTER 7

3 (Reserved)

4 CHAPTER 9

5 PROCUREMENT OF CONSTRUCTION AND DESIGN

6 PROFESSIONAL SERVICES

7 Sec.

8 901. Definitions.

9 902. Bid or proposal security.

10 903. Contract performance SECURITY and payment bonds.

<—

11 904. Copies of bonds.

12 905. Procurement of design professional services.

13 § 901. 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 "Design professional services." Those professional services
18 within the scope of the practice of architecture, geology,
19 engineering, landscape architecture or land surveying, including
20 studies, investigations, surveying, mapping, tests, evaluations,
21 consultations, comprehensive planning, program management,
22 conceptual design, plans and specifications, value engineering,
23 maintenance manuals and other related services associated with
24 research, planning, development, design, construction,

25 alteration or repair of real property. THE TERM INCLUDES

<—

26 SERVICES PROVIDED UNDER THE SUPERVISION OF A PROFESSIONAL

27 ENGINEER TO DEVELOP ENGINEERING SOFTWARE WHICH WILL AID DESIGN

28 PROFESSIONALS IN PERFORMING THEIR WORK. The term does not

29 include those services which are not exclusively within the

30 scope of architecture, geology, engineering or landscape

<—

1 architecture, but which are related to capital improvements such
2 as, but not limited to, environmental hygienics, construction
3 management as described in section 322 (relating to specific
4 construction powers, duties and procedures), exhibit design,
5 fine arts or lesser arts and crafts, even though an architect,
6 ~~geology~~ GEOLOGIST, engineer or landscape architect may provide <—
7 such services.

8 § 902. Bid or proposal security.

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

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

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

27 (d) Withdrawal of bids.--After the bids are opened, they
28 shall be irrevocable for the period specified in the invitation
29 for bids except as provided in section 512(f) (relating to
30 competitive sealed bidding). If a bidder is permitted to

1 withdraw its bid before award, no action shall be had against
2 the bidder or the bid security.

3 ~~§ 903. Contract performance and payment bonds.~~ <—

4 ~~(a) When required and amounts. When a construction contract~~
5 ~~is awarded in excess of \$250,000, the following bonds or~~
6 ~~security shall be delivered to the purchasing agency and shall~~
7 ~~be binding on the parties upon the execution of the contract.~~

8 § 903. CONTRACT PERFORMANCE SECURITY AND PAYMENT BONDS. <—

9 (A) WHEN REQUIRED AND AMOUNTS.--FOR CONSTRUCTION CONTRACTS
10 AWARDED FOR AMOUNTS BETWEEN \$25,000 AND \$100,000, THE PURCHASING
11 AGENCY SHALL REQUIRE CONTRACT PERFORMANCE SECURITY, IN AN AMOUNT
12 EQUAL TO AT LEAST 50% OF THE CONTRACT PRICE, AS THE PURCHASING
13 AGENCY, IN ITS DISCRETION, DETERMINES NECESSARY TO PROTECT THE
14 INTERESTS OF THE COMMONWEALTH. WHEN A CONSTRUCTION CONTRACT IS
15 AWARDED IN EXCESS OF \$100,000, THE FOLLOWING BONDS SHALL BE
16 DELIVERED TO THE PURCHASING AGENCY AND SHALL BE BINDING ON THE
17 PARTIES UPON THE EXECUTION OF THE CONTRACT:

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

24 (2) A payment bond, executed by a surety company
25 authorized to do business in this Commonwealth and made
26 payable to the Commonwealth, in an amount equal to 100% of
27 the price specified in the contract and conditioned upon the
28 prompt payment for all materials furnished or labor supplied
29 or performed in the prosecution of the work. Labor or
30 materials include public utility services and reasonable

rentals of equipment for the periods when the equipment is actually used at the site.

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

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

(d) Actions on payment bonds.--

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

(2) Any claimant who has a direct contractual relationship with any subcontractor of the prime contractor who gave the payment bond but has no contractual

1 relationship, express or implied, with the prime contractor
2 may bring an action on the payment bond only if it has given
3 written notice to the contractor within 90 days from the date
4 on which the claimant performed the last of the labor or
5 furnished the last of the materials for which it claims
6 payment, stating with substantial accuracy the amount and the
7 name of the person for whom the work was performed or to whom
8 the material was furnished.

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

16 (e) Adjustment of threshold amount.--The dollar ~~threshold of~~ <—
17 ~~\$250,000~~ THRESHOLDS set forth in subsection (a) shall be <—
18 adjusted annually by the department to reflect the annual
19 percentage change in the Composition Construction Cost Index of
20 the United States Department of Commerce occurring in the one-
21 year period ending on December 31 of each year.

22 § 904. Copies of bonds.

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

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

29 (c) Evidence.--A copy of any payment bond and of the
30 contract for which the bond was given constitutes prima facie

1 evidence of the contents, execution and delivery of the original
2 of the bond and contract.

3 § 905. Procurement of design professional services.

4 (a) Applicability.--Design professional services shall be
5 procured as provided in this section except as authorized by
6 sections 514 (relating to small procurements), 515 (relating to
7 sole source procurement) and 516 (relating to emergency
8 procurement).

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

16 (c) Selection committees for Department of Transportation,
17 Department of Environmental Protection, Department of
18 Conservation and Natural Resources and ~~instrumentalities~~ STATE- <—
19 AFFILIATED ENTITIES.--Where they are authorized by law to act as
20 purchasing agency for design professional services, the
21 Department of Transportation, the Department of Environmental
22 Protection, the Department of Conservation and Natural Resources
23 and ~~instrumentalities~~ STATE-AFFILIATED ENTITIES shall each <—
24 establish a ~~selection committee and a procedure for selection of~~ <—
25 ~~committee members. None of the members of these committees shall~~
26 ~~hold any elective office or office in any political party.~~ AS <—
27 MANY SELECTION COMMITTEES AS THE DEPARTMENT DEEMS APPROPRIATE
28 AND A PROCEDURE FOR THE SELECTION OF COMMITTEE MEMBERS.

29 (d) Selection committee for all other Commonwealth
30 agencies.--Except as provided for in subsection (c), all

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

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

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

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

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

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

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

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

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

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

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

(2) Where the amount of base construction allocation is in excess of or equal to \$20,000,000, as annually adjusted, the head of the purchasing agency shall choose one of the three firms approved by the selection committee to begin contract negotiations. The fee to be paid to the design professional and the terms of the contract between the design professional and the department shall be negotiated by the

1 head of the purchasing agency. In negotiating the contract
2 and the fee, the head of the purchasing agency shall take
3 into account the estimated value, scope, complexity,
4 uniqueness and the professional nature of the services to be
5 rendered. In the event the head of the purchasing agency is
6 unable to negotiate a satisfactory contract or fee with the
7 appointed design professional, negotiations with that design
8 professional shall be terminated and the head of the
9 purchasing agency shall commence negotiations with one of the
10 other firms chosen by the selection committee. In the event
11 the head of the purchasing agency is unable to negotiate a
12 satisfactory contract or fee with the second firm, the head
13 of the purchasing agency shall terminate negotiations with
14 the second design professional and commence negotiation with
15 the third firm. In the event the head of the purchasing
16 agency is unable to negotiate a satisfactory contract with
17 any of the selected firms, the selection committee shall
18 choose additional qualified firms and the head of the
19 purchasing agency shall continue negotiations in accordance
20 with this subsection until an agreement is reached.

21 (g) Selection method for Department of Transportation,
22 Department of Conservation and Natural Resources, Department of
23 Environmental Protection and ~~instrumentalities~~ STATE-AFFILIATED <—
24 ENTITIES.--In the event the Department of Transportation, the
25 Department of Conservation and Natural Resources, the Department
26 of Environmental Protection or ~~an instrumentality~~ A STATE- <—
27 AFFILIATED ENTITY otherwise authorized by law to use its own
28 selection committee requires the services of a design
29 professional, the head of the purchasing agency or
30 ~~instrumentality~~ A STATE-AFFILIATED ENTITY shall choose one of <—

1 the three firms approved by the selection committee. The head of
2 the purchasing agency or ~~instrumentality~~ A STATE-AFFILIATED <—
3 ENTITY shall negotiate with the firm determined to be the
4 highest qualified firm for design professional services at a fee
5 which is determined to be fair and reasonable to the
6 Commonwealth. In making this decision, the head of the
7 purchasing agency shall take into account the estimated value,
8 scope, complexity and professional nature of the services to be
9 rendered. Should the head of the purchasing agency be unable to
10 negotiate a satisfactory contract with the firm considered to be
11 the most qualified at a fee he determines to be fair and
12 reasonable to the Commonwealth, negotiations with that firm
13 shall be formally terminated. The head of the purchasing agency
14 shall then undertake negotiations with the firm he determines to
15 be the second highest qualified firm. Failing accord with the
16 second most qualified firm, the head of the purchasing agency
17 shall formally terminate negotiations and then undertake
18 negotiations with the third highest qualified firm. Should the
19 head of the purchasing agency be unable to negotiate a
20 satisfactory contract with any of the selected firms, the
21 committee shall select additional qualified firms, and the head
22 of the purchasing agency shall continue negotiations in
23 accordance with this section until an agreement is reached.

24 CHAPTER 11

25 (RESERVED)

26 CHAPTER 13

27 (Reserved)

28 CHAPTER 15

29 SUPPLY MANAGEMENT

30 Sec.

1 1501. Definitions.

2 1502. Supply management regulations.

3 1503. Proceeds from sale or disposal of surplus supplies.

4 1504. EXCEPTION.

<—

5 § 1501. Definitions.

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

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

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

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

17 "Supplies." Supplies owned by Commonwealth agencies.

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

26 § 1502. Supply management regulations.

27 ~~The~~ FOR EXECUTIVE AND INDEPENDENT AGENCIES, THE department
28 shall establish policy and may promulgate regulations governing:

<—

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

1 Subchapter

2 A. General Provisions

3 B. Prelitigation Resolution of Controversies

4 C. Board of Claims

5 D. Solicitations or Awards in Violation of Law

6 E. Interest

7 SUBCHAPTER A

8 GENERAL PROVISIONS

9 Sec.

10 1701. Definitions.

11 1702. Sovereign immunity.

12 § 1701. 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 "Claimant." A person filing a claim with the Board of
17 Claims.

18 § 1702. Sovereign immunity.

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

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

30 SUBCHAPTER B

1 PRELITIGATION RESOLUTION OF CONTROVERSIES

2 Sec.

3 1711. Authority to resolve protests of solicitations or
4 awards.

5 1712. Authority to resolve contract and breach of contract
6 controversies.

7 § 1711. Authority to resolve protests of solicitations or
8 awards.

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

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

25 (c) Decision.--If the protest is not resolved by mutual
26 agreement, the head of the purchasing agency shall promptly, BUT <—
27 IN NO EVENT LATER THAN 120 DAYS FROM THE FILING OF THE PROTEST,
28 issue a decision in writing. The decision shall:

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

30 (2) Inform the protestant of his right to file an action

1 in Commonwealth Court as provided in subsection (e).

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

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

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

23 § 1712. Authority to resolve contract and breach of contract
24 controversies.

25 (a) Applicability.--This section applies to controversies
26 between a Commonwealth agency and a contractor which arise under
27 or by virtue of a contract between them, including controversies
28 based upon breach of contract, mistake, misrepresentation or
29 other cause for contract modification or rescission. Prior to
30 filing a claim under this section with the Board of Claims under

1 the exclusive jurisdiction provided in the act of May 20, 1937
2 (P.L.728, No.193), referred to as the Board of Claims Act, the
3 claim must first be filed in writing with the contracting
4 officer within six months after it accrues and not thereafter.

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

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

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

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

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

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

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

26 SUBCHAPTER C

27 BOARD OF CLAIMS

28 Sec.

29 1721. Function of Board of Claims.

30 1722. (Reserved).

1 1723. (Reserved).

2 1724. (Reserved).

3 1725. Hearings, decisions and awards.

4 1726. Appeals.

5 § 1721. Function of Board of Claims.

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

9 § 1722. (Reserved).

10 § 1723. (Reserved).

11 § 1724. (Reserved).

12 § 1725. Hearings, decisions and awards.

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

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

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

30 (d) Public records.--All papers filed under this subchapter

1 shall be a public record to the extent provided in the act of
2 June 21, 1957 (P.L.390, No.212), referred to as the Right-to-
3 Know Law, and shall be available to the public as provided in
4 that act.

5 § 1726. Appeals.

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

11 SUBCHAPTER D

12 SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

13 Sec.

14 1741. Applicability.

15 1742. Remedies prior to execution of contract.

16 1743. Remedies after execution of contract.

17 § 1741. Applicability.

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

21 § 1742. Remedies prior to execution of contract.

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

27 § 1743. Remedies after execution of contract.

28 If after the execution of a contract it is determined that a
29 solicitation or award of a contract is in violation of law,
30 then:

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

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

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

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

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

16 (i) the contract may be declared void;

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

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

24 SUBCHAPTER E

25 INTEREST

26 Sec.

27 1751. Interest.

28 § 1751. Interest.

29 Interest on amounts ultimately determined to be due shall be
30 payable at the statutory rate applicable to judgments from the

1 date the claim was filed with the contracting officer. Interest
2 on claims arising out of the provisions of section 1507 of the
3 act of April 9, 1929 (P.L.343, No.176), known as The Fiscal
4 Code, shall be payable as provided therein.

5 CHAPTER 19

6 INTERGOVERNMENTAL RELATIONS

7 Sec.

8 1901. Definitions.

9 1902. Cooperative purchasing authorized.

10 1903. Sale, acquisition or use of supplies by a public
11 procurement unit.

12 1904. Cooperative use of supplies or services.

13 1905. Joint use of facilities.

14 1906. Supply of personnel, information and technical services.

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

17 1908. Compliance of public procurement units.

18 1909. Review of procurement requirements.

19 1910. Contract controversies.

20 1911. IMMUNITY.

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21 1912. INVESTMENT MANAGEMENT AGREEMENTS.

22 § 1901. Definitions.

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

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

29 "External procurement activity." A buying organization not
30 located in this Commonwealth which if located in this

1 Commonwealth would qualify as a public procurement unit. An
2 agency of the United States is an external procurement activity.

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

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

13 § 1902. Cooperative purchasing authorized.

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

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

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

30 § 1904. Cooperative use of supplies or services.

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

8 § 1905. Joint use of facilities.

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

14 § 1906. Supply of personnel, information and technical
15 services.

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

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

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

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

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

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

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

30 (e) Fees.--The department may enter into contractual

1 arrangements and publish a schedule of fees for the services
2 provided under subsections (c) and (d).

3 § 1907. Use of payments received by a supplying public
4 procurement unit.

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

9 § 1908. Compliance of public procurement units.

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

17 § 1909. Review of procurement requirements.

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

25 § 1910. Contract controversies.

26 (a) Public procurement unit subject to certain legal and
27 contractual remedies.--Under a cooperative purchasing agreement,
28 controversies arising between an administering public
29 procurement unit subject to Chapter 17 (relating to legal and
30 contractual remedies) and its bidders, offerors or contractors

1 shall be resolved in accordance with Chapter 17.

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

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

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

16 § 1911. IMMUNITY.

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17 A PUBLIC PROCUREMENT UNIT WHICH PROVIDES PERSONNEL, PROPERTY,
18 SUPPLIES OR SERVICES TO ANOTHER PUBLIC PROCUREMENT UNIT SHALL BE
19 IMMUNE FROM LIABILITY FOR ANY DAMAGES WHICH ARISE OUT OF THE USE
20 OF SUCH ITEMS PROVIDED UNDER THIS CHAPTER.

21 § 1912. INVESTMENT MANAGEMENT AGREEMENTS.

22 THIS CHAPTER SHALL NOT APPLY TO ANY CONTRACT FOR INVESTMENT
23 MANAGEMENT SERVICES, OR ANY PROPOSED CONTRACT FOR SUCH SERVICES,
24 BETWEEN A LOCAL PUBLIC PROCUREMENT UNIT AND THE TREASURY
25 DEPARTMENT.

26 CHAPTER 21

27 SMALL AND DISADVANTAGED BUSINESSES

28 Sec.

29 2101. Policy.

30 2102. Definitions.

1 2103. Regulations.

2 2104. Duties of department.

3 2105. Bonding and progress payments.

4 2106. Business assistance offices.

5 2107. Report to General Assembly.

6 2108. Compliance with Federal requirements.

7 § 2101. Policy.

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

13 § 2102. Definitions.

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

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

23 "Small business." A business in the United States which is
24 independently owned ~~and which~~, is not dominant in its field of <—
25 operation ~~or an affiliate or subsidiary of a business dominant~~ <—
26 ~~in its field of operation.~~ AND MEETS THE CRITERIA ESTABLISHED BY <—
27 THE DEPARTMENT OF GENERAL SERVICES, BY REGULATION, FOR
28 QUALIFICATION AS A SMALL BUSINESS. THE DEPARTMENT, THROUGH
29 REGULATION, SHALL HAVE THE AUTHORITY TO ESTABLISH THE MAXIMUM
30 NUMBER OF PERSONS A COMPANY MAY EMPLOY TO QUALIFY AS A SMALL

1 BUSINESS, WHICH NUMBER SHALL NOT EXCEED 50 PERSONS.

2 § 2103. Regulations.

3 The department shall establish policy FOR EXECUTIVE AND THOSE <—
4 INDEPENDENT AGENCIES FOR WHICH THE DEPARTMENT ACTS AS PURCHASING
5 AGENCY and may promulgate regulations establishing detailed
6 definitions of the words and phrases defined in section 2102
7 (relating to definitions) using, in addition to the criteria set
8 forth in section 2102, other criteria as it deems appropriate,
9 including the number of employees and the dollar volume of
10 business. STATE-AFFILIATED ENTITIES SHALL IMPLEMENT THE POLICY <—
11 FOR THEIR PROCUREMENT PROGRAMS.

12 § 2104. Duties of department.

13 The department shall have the following duties:

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

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

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

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

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

1 suited.

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

5 § 2105. Bonding and progress payments.

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

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

15 § 2106. Business assistance offices.

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

19 § 2107. Report to General Assembly.

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

24 § 2108. Compliance with Federal requirements.

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

1 ETHICS IN PUBLIC CONTRACTING

2 Subchapter

3 A. General Policy and Standards

4 B. Specific Standards

5 SUBCHAPTER A

6 GENERAL POLICY AND STANDARDS

7 Sec.

8 2301. Policy.

9 2302. General standards of ethical conduct.

10 2303. Reporting of breaches of ethical standards.

11 § 2301. Policy.

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

24 § 2302. General standards of ethical conduct.

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

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

§ 2303. Reporting of breaches of ethical standards.

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

SUBCHAPTER B

SPECIFIC STANDARDS

Sec.

2311. Bonds.

§ 2311. Bonds.

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

PART II

GENERAL PROCUREMENT PROVISIONS

Chapter

31. General Provisions

33. Prevention of Environmental Pollution

35. (Reserved)

37. Contract Clauses and Preference Provisions

39. Construction Contracts Over \$50,000

41. Purchase of Surplus Federal Property

43. Public Facilities Concessions

45. Antibid-Rigging

1 CHAPTER 31

2 GENERAL PROVISIONS

3 Sec.

4 3101. Application of part.

5 3102. Definitions.

6 § 3101. Application of part.

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

10 § 3102. Definitions.

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

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

18 "Government agency." Any Commonwealth agency, ANY <—
19 TRANSPORTATION AUTHORITY OR AGENCY CREATED BY STATUTE or any
20 political subdivision or municipal or other local authority, or
21 ~~any officer or~~ agency of any political subdivision or local <—
22 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 ~~3702. Contract provision requiring residents to be employed.~~ <—

11 § 3701. Contract provisions prohibiting discrimination.

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

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

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

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

conditions of that portion of the contract.

~~§ 3702. Contract provision requiring residents to be employed.~~ <—

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

SUBCHAPTER B

STEEL PRODUCTS

Sec.

3711. Short title of subchapter and general provisions.

3712. Definitions.

3713. Requirement of contract provision.

3714. Payments under contracts.

§ 3711. Short title of subchapter and general provisions.

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

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

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

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

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

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

9 (5) The economy and general welfare of this Commonwealth
10 and its people, as well as the economy, general welfare and
11 national security of the United States, are inseparably
12 related to the preservation and development of the steel
13 industry in this Commonwealth and in the other states of the
14 United States. The General Assembly therefore declares it to
15 be the policy of this Commonwealth that all public officers
16 and agencies should, at all times, aid and promote the
17 development of the steel industry of the United States in
18 order to stimulate and improve the economic well-being of
19 this Commonwealth and its people.

20 (c) Police power.--This chapter shall be deemed to be an
21 exercise of the police powers of this Commonwealth for the
22 protection of the health, safety and general welfare of the
23 people of this Commonwealth.

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

1 § 3712. Definitions.

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

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

24 "United States." The United States of America, including all
25 territory, continental or insular, subject to the jurisdiction
26 of the United States.

27 § 3713. Requirement of contract provision.

28 (a) General rule.--Each construction contract in excess of
29 \$250,000 which is entered into by a government agency shall
30 contain a provision that if any steel products are to be used or

1 supplied in the performance of the contract, only steel products
2 as defined in this subchapter shall be used or supplied in the
3 performance of the contract or any subcontracts. The amount of
4 \$250,000 shall be adjusted annually by the department to reflect
5 the annual percentage change in the Composite Construction Cost
6 Index of the United States Department of Commerce occurring in
7 the one-year period ending on December 31 of each year.

8 (b) Exception.--This section does not apply in any case
9 where the head of the government agency in writing determines
10 that steel products as defined in this subchapter are not
11 produced in the United States in sufficient quantities to meet
12 the requirements of the contract.

13 § 3714. Payments under contracts.

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

1 did not comply with section 3713.

2 (b) Penalties.--In addition to the withholding of payments,
3 any person who willfully violates any of the provisions of this
4 subchapter shall be prohibited from submitting any bids to any
5 government agency for any contract for a period of three years
6 from the date of the determination that a violation has
7 occurred. In the event the person who violates the provisions of
8 section 3713 is a subcontractor, manufacturer or supplier, that
9 person shall be prohibited from performing any work or supplying
10 any materials to a government agency for a period of three years
11 from the date of the determination that a violation has
12 occurred.

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

16 SUBCHAPTER C

17 TRADE PRACTICES

18 Sec.

19 3721. Short title of subchapter and general provisions.

20 3722. Definitions.

21 3723. Unlawful acts.

22 3724. Preference for aluminum and steel products made in
23 United States.

24 3725. Requirement to list discriminating countries.

25 3726. Procedure to determine discrimination.

26 3727. Foreign registry docket.

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

29 § 3721. Short title of subchapter and general provisions.

30 (a) Short title.--This subchapter shall be known and may be

1 cited as the Trade Practices Act.

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

17 (1) It has long been the policy of this Commonwealth not
18 to purchase any supplies, equipment or materials manufactured
19 in any foreign country which prohibits the specification for
20 or use of supplies, equipment or materials manufactured in
21 this Commonwealth.

22 (2) Many world trading countries, directly or indirectly
23 by statute, regulation, policy, procedure or practice, grant
24 or bestow a preference for supplies, equipment or materials
25 manufactured in their country, thereby discriminating against
26 the use of supplies, equipment or materials manufactured in
27 this Commonwealth. The General Assembly therefore declares it
28 to be the policy of this Commonwealth that aluminum and steel
29 products made in the United States should be purchased by all
30 public agencies in preference to aluminum and steel products

1 made in foreign countries which discriminate against
2 supplies, equipment or materials manufactured in this
3 Commonwealth.

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

11 § 3722. Definitions.

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

15 "Aluminum or steel products made in a foreign country."
16 Aluminum or steel products rolled, formed, shaped, drawn,
17 extruded, forged, cast, fabricated or otherwise similarly
18 processed, or processed by a combination of two or more of these
19 operations, from aluminum or steel not made in the United
20 States.

21 "Court." The Commonwealth Court.

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

24 (1) Prevents the importation, sale or use of any
25 supplies, materials or equipment manufactured in this
26 Commonwealth.

27 (2) Grants or bestows a preference, discount or other
28 competitive advantage to supplies, materials or equipment
29 manufactured in the foreign country, the effect of which is
30 to place similar supplies, materials or equipment

1 manufactured in this Commonwealth at a competitive
2 disadvantage.

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

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

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

15 (6) Adopts or condones any other unfair method of
16 competition in international trade, including, but not
17 limited to, the exportation of aluminum or steel products
18 made in the foreign country through cartels or the
19 subsidization of aluminum or steel products.

20 "Importer." Any person registered and doing business in this
21 Commonwealth who engages in the receiving, storing, distributing
22 or other processing of aluminum or steel products made in a
23 foreign country or who engages in the solicitation or acceptance
24 of orders or contracts for the furnishing of or supplying of
25 aluminum or steel products made in a foreign country.

26 "Public works." Any structure, building, highway, waterway,
27 street, bridge, pier, transit car or system, airport or other
28 betterment, work or improvement, whether of a permanent or
29 temporary nature and whether for governmental or proprietary use
30 contracted for by any government agency or financed in whole or

1 in part by any government agency.

2 § 3723. Unlawful acts.

3 It is unlawful for:

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

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

18 § 3724. Preference for aluminum and steel products made in
19 United States.

20 If all considerations in or affecting a bid or proposal or a
21 bidder or offeror are equal, each government agency shall give
22 preference to aluminum and steel products made in the United
23 States.

24 § 3725. Requirement to list discriminating countries.

25 In all its invitations for bids or requests for proposals,
26 schedules or purchase orders issued for public works exceeding
27 the amount established in section 3723 (relating to unlawful
28 acts), every government agency shall include a listing of the
29 foreign countries which have been found by the court to
30 discriminate.

1 § 3726. Procedure to determine discrimination.

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

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

20 § 3727. Foreign registry docket.

21 (a) Entering name in docket.--If, after a hearing, the court
22 determines that the foreign country discriminates, it shall
23 direct the prothonotary of the court to enter the name of the
24 foreign country in a foreign registry docket maintained in the
25 office of the prothonotary.

26 (b) Striking name from docket.--Any foreign country
27 determined to be practicing discrimination may petition the
28 court to have its name stricken from the foreign registry
29 docket. The court shall grant the prayer of the petition if,
30 after hearing, it determines that the foreign country has

1 discontinued and not engaged in discrimination for a period of
2 at least one year prior to the filing of the petition. Notice of
3 the filing of the petition shall be served upon the original
4 petitioner and all other parties to the original petition.

5 § 3728. Aluminum or steel products from a country listed on
6 foreign registry docket.

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

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

25 SUBCHAPTER D

26 MOTOR VEHICLES

27 Sec.

28 3731. Short title of subchapter and general provisions.

29 3732. Definitions.

30 3733. Police power.

1 3734. Contract provisions.

2 3735. Payment under contract and action to recover
3 unauthorized payments.

4 3736. Penalty.

5 § 3731. Short title of subchapter and general provisions.

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

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

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

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

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

25 (4) The economy and general welfare of this Commonwealth
26 and its citizens, as well as the economy, general welfare and
27 national security of the United States, are inseparably
28 related in the preservation and development of the motor
29 vehicle industry in this Commonwealth and in other states of
30 the United States.

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

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

§ 3732. Definitions.

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

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

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

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

1 § 3733. Police power.

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

5 § 3734. Contract provisions.

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

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

19 § 3735. Payment under contract and action to recover
20 unauthorized payments.

21 A government agency shall not authorize, provide for or make
22 a payment to a person under a contract containing the provision
23 required by section 3734 (relating to contract provisions)
24 unless the government agency is satisfied that the person has
25 complied with the provision. The payment made to a person by a
26 government agency which should not have been made shall be
27 recoverable directly from the supplier of the motor vehicle who
28 did not comply with section 3734 by the government agency or the
29 Attorney General by appropriate legal action. Nothing in this
30 section shall authorize any government agency to initiate a

1 legal action independently of the Attorney General unless
2 otherwise authorized under the act of October 15, 1980 (P.L.950,
3 No.164), known as the Commonwealth Attorneys Act.

4 § 3736. Penalty.

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

11 SUBCHAPTER E

12 USED OIL PRODUCTS

13 Sec.

14 3741. Preference.

15 § 3741. Preference.

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

22 SUBCHAPTER F

23 GUARANTEED ENERGY SAVINGS CONTRACTS

24 Sec.

25 3751. Definitions.

26 3752. Selection process.

27 3753. Award of single contract.

28 § 3751. Definitions.

29 The following words and phrases when used in this subchapter
30 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

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

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

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

12 (3) Automated or computerized energy control systems.

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

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

21 (6) Energy recovery systems.

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

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

27 "Guaranteed energy savings contract." A contract for the
28 evaluation and recommendation of energy conservation measures
29 and for implementation of one or more such measures.

30 § 3752. Selection process.

1 In connection with the letting of any guaranteed energy
2 savings contract, Commonwealth agencies shall have the power to
3 waive the process for the selection of design professionals
4 prescribed under section 905 (relating to procurement of design
5 professionals).

6 § 3753. Award of single contract.

7 Notwithstanding section 905 (relating to procurement of
8 design professionals), the Commonwealth agencies may enter into
9 a single guaranteed energy savings contract for the design and
10 complete implementation of the energy conservation measures
11 involved in a project.

12 CHAPTER 39

13 CONSTRUCTION CONTRACTS OVER \$50,000

14 Subchapter

15 A. Preliminary Provisions

16 B. General Provisions

17 C. Retainage

18 D. Prompt Payment Schedules

19 E. Substantial/final Payment

20 SUBCHAPTER A

21 PRELIMINARY PROVISIONS

22 Sec.

23 3901. Application and purpose of chapter.

24 3902. Definitions.

25 § 3901. Application and purpose of chapter.

26 (a) Application.--Except as otherwise specifically provided
27 in this chapter, this chapter applies to contracts entered into
28 by a government agency through competitive sealed bidding or
29 competitive sealed proposals.

30 (b) Purpose of chapter.--The purpose of this chapter is to

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

12 § 3902. 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 "Contract." A contract exceeding \$50,000 for construction as
17 defined in section 103 (relating to definitions), including
18 heating or plumbing contracts but excluding Department of
19 Transportation contracts ~~for highway and airport, vertical~~ <—
20 ~~construction.~~ UNDER SECTION 301(C)(1) (RELATING TO PROCUREMENT <—
21 RESPONSIBILITY).

22 "Contractor." A person who enters into a contract with a
23 government agency.

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

27 ~~"Design professional services." Those professional services~~ <—
28 ~~within the scope of the practice of architecture, geology~~
29 ~~engineering, landscape architecture or land surveying, including~~
30 ~~studies, investigations, surveying, mapping, tests, evaluations,~~

1 ~~consultations, comprehensive planning, program management,~~
2 ~~conceptual design, plans and specifications, value engineering,~~
3 ~~maintenance manuals and other related services associated with~~
4 ~~research, planning, development, design, construction,~~
5 ~~alteration or repair of real property.~~

6 "DESIGN PROFESSIONAL." PERSONS PERFORMING PROFESSIONAL <—
7 SERVICES AS DEFINED IN SECTION 901 (RELATING TO DEFINITIONS).

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

9 "Inspector." The person authorized or engaged by the
10 government agency to inspect the work performed and materials
11 furnished pursuant to a contract to determine whether the work
12 completed is in compliance with the contract.

13 "Local government unit." Any county, city, borough,
14 incorporated town, township, school district, vocational school
15 district, county institution, local authority or any joint or
16 cooperative body of local government units or any
17 instrumentality, authority or corporation thereof which has
18 authority to enter into a contract.

19 "State-aided institution." Any institution which receives
20 State funds ~~directly or indirectly~~ for construction. <—

21 "Subcontractor." A person who has contracted to furnish
22 labor or materials to or has performed labor for a contractor or
23 another subcontractor in connection with a contract.

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

1 SUBCHAPTER B

2 GENERAL PROVISIONS

3 Sec.

4 3911. Time for awarding contract.

5 3912. Time for executing contract.

6 3913. Release of successful bidder.

7 § 3911. Time for awarding contract.

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

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

18 (c) Extensions.--Extensions of the date for the award may be
19 made by the mutual written consent of the government agency and
20 the lowest responsible and responsive bidder.

21 (d) List of bidders.--All government agencies shall be
22 required to provide a list of the bidders and their bid amount
23 on each contract within ten working days of the bid opening to
24 interested parties for a fee to be determined by the government
25 agency to cover the cost of developing such list. This
26 requirement shall not apply to the contracting bodies of any
27 political subdivision or local authority which has the authority
28 to enter into a contract.

29 § 3912. Time for executing contract.

30 In the case of a contract entered into by a government agency

1 through competitive sealed bidding, the contract shall be
2 executed by the government agency within 60 days of the date
3 that the contract is awarded.

4 § 3913. Release of successful bidder.

5 Failure of the government agency to comply with the
6 requirements of sections 3911 (relating to time for awarding
7 contract) and 3912 (relating to time for executing contract)
8 shall, unless the successful bidder waives the noncompliance by
9 written notice to the government agency, release the successful
10 bidder from any liability in respect to its bid or contract and
11 entitle all bidders to the immediate return of any bonds or
12 security deposits posted in connection with the bid or contract.

13 SUBCHAPTER C

14 RETAINAGE

15 Sec.

16 3921. Retainage.

17 3922. Payment of retainage to subcontractors.

18 § 3921. Retainage.

19 (a) Contract provision.--A contract may include a provision
20 for the retainage of a portion of the amount due the contractor
21 to insure the proper performance of the contract except that the
22 sum withheld by the government agency from the contractor shall
23 not exceed 10% of the amount due the contractor until 50% of the
24 contract is completed. When the contract is 50% completed, one-
25 half of the amount retained by the government agency shall be
26 returned to the contractor. However, the architect or engineer
27 must approve the application for payment. The contractor must be
28 making satisfactory progress, and there must be no specific
29 cause for greater withholding. The sum withheld by the
30 government agency from the contractor after the contract is 50%

1 completed shall not exceed 5% of the value of completed work
2 based on monthly progress payment requests. In the event a
3 dispute arises between the government agency and any prime
4 contractor, which dispute is based upon increased costs claimed
5 by one prime contractor occasioned by delays or other actions of
6 another prime contractor, additional retainage in the sum of one
7 and one-half times the amount of any possible liability may be
8 withheld until a SUCH time as a final resolution is agreed to by <—
9 all parties directly or indirectly involved unless the
10 contractor causing the additional claim furnishes a bond
11 satisfactory to the government agency to indemnify the agency
12 against the claim. All money retained by the government agency
13 may be withheld from the contractor until substantial completion
14 of the contract.

15 (b) Department of General Services.--Notwithstanding
16 subsection (a), when the Department of General Services is the
17 government agency, the contract may include a provision for the
18 retainage of a portion of the amount due the contractor to
19 insure the proper performance of the contract except that the
20 sum withheld by the department for the contractor shall not
21 exceed 6% of the then total estimates until 50% of the contract
22 is satisfactorily completed. The sum withheld by the department
23 from the contractor after the contract is 50% satisfactorily
24 completed shall not exceed 3% of the original contract amount.
25 § 3922. Payment of retainage to subcontractors.

26 In the absence of sufficient reason, within 20 days of the
27 receipt of payment by the contractor, the contractor shall pay
28 all subcontractors with which it has contracted their earned
29 share of the payment the contractor received.

30 SUBCHAPTER D

PROMPT PAYMENT SCHEDULES

Sec.

3931. Performance by contractor or subcontractor.

3932. Government agency's progress payment obligations.

3933. Contractors' and subcontractors' payment obligations.

3934. Withholding of payment for good faith claims.

3935. Penalty and attorney fees.

3936. Contracts involving Federal aid.

3937. Certain provisions unenforceable.

3938. Applicability.

3939. Claims by innocent parties.

§ 3931. Performance by contractor or subcontractor.

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

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

§ 3932. Government agency's progress payment obligations.

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

(b) Application for progress payments.--If the contract does not contain a term governing the time for payment, the contractor or design professional shall be entitled to make application for payment from the government agency for progress payments, and the government agency shall make payment less the applicable retainage amount as authorized in section 3921

(relating to retainage) to the contractor or design professional

1 within 45 calendar days of the date the application for payment
2 is received.

3 (c) Interest on progress payments not timely made.--Except
4 as otherwise agreed by the parties, if any progress payment less
5 the applicable retainage amount as authorized in section 3921 is
6 not made to a contractor or design professional by the due date
7 established in the contract or in subsection (b), the government
8 agency shall pay to the contractor or design professional, in
9 addition to the amount due, interest on the amount due, and the
10 interest shall be computed at the rate determined by the
11 Secretary of Revenue for interest payments on overdue taxes or
12 the refund of taxes as provided in sections 806 and 806.1 of the
13 act of April 9, 1929 (P.L.343, No.176), known as The Fiscal
14 Code.

15 (d) When interest payment not required.--In the event that
16 the contract does not contain a grace period and if a contractor
17 or design professional is not paid by the payment date required
18 by subsection (b), no interest penalty payment required under
19 this section shall be paid if payment is made on or before the
20 15th calendar day after the payment date required under this
21 subchapter.

22 § 3933. Contractors' and subcontractors' payment obligations.

23 (a) Performance by subcontractor entitles subcontractor to
24 payment.--Performance by a subcontractor in accordance with the
25 provisions of the contract shall entitle the subcontractor to
26 payment from the party with whom the subcontractor has
27 contracted. For purposes of this section, the contract between
28 the contractor and subcontractor is presumed to incorporate the
29 terms of the contract between the contractor and the government
30 agency.

1 (b) Disclosure of progress payment due dates.--A contractor
2 or subcontractor shall disclose to a subcontractor, before a
3 subcontract is executed, the due date for receipt of progress
4 payments from the government agency. Notwithstanding any other
5 provisions of this subchapter, if a contractor or a
6 subcontractor fails to accurately disclose the due date to a
7 subcontractor, the contractor or subcontractor shall be
8 obligated to pay the subcontractor as though the due dates
9 established in subsection (c) were met by the government agency.
10 This subsection shall not apply to a change in due dates because
11 of conditions outside of the contractor's control, including,
12 but not limited to, design changes, change orders or delays in
13 construction due to weather conditions.

14 (c) Payment.--When a subcontractor has performed in
15 accordance with the provisions of the contract, a contractor
16 shall pay to the subcontractor, and each subcontractor shall in
17 turn pay to its subcontractors, the full or proportional amount
18 received for each such subcontractor's work and material, based
19 on work completed or services provided under the subcontract, 14
20 days after receipt of a progress payment. Payment shall be made
21 under this section unless it is being withheld under section
22 3934 (relating to withholding of payment for good faith claims).

23 (d) Interest due when progress payment not timely.--If any
24 progress payment is not made to a subcontractor by the due date
25 established in the contract or in subsection (c), the contractor
26 shall pay to the subcontractor, in addition to the amount due,
27 interest as computed in section 3932(c) (relating to government
28 agency's progress payment obligations).

29 (e) When interest payment not required.--In the event that
30 the contract does not contain a grace period and if a

1 subcontractor is not paid by the payment date required by
2 subsection (c), no interest penalty payment required under this
3 section shall be paid if payment is made on or before the 15th
4 calendar day after the payment date required under this
5 subchapter.

6 § 3934. Withholding of payment for good faith claims.

7 (a) When government agency may withhold payment.--The
8 government agency may withhold payment for deficiency items
9 according to terms of the contract. The government agency shall
10 pay the contractor according to the provisions of this
11 subchapter for all other items which appear on the application
12 for payment and have been satisfactorily completed. The
13 contractor may withhold payment from any subcontractor
14 responsible for a deficiency item. The contractor shall pay any
15 subcontractor according to the provisions of this subchapter for
16 any item which appears on the application for payment and has
17 been satisfactorily completed.

18 (b) Notification when payment withheld for deficiency
19 item.--If a government agency withholds payment from a
20 contractor for a deficiency item, it shall notify the contractor
21 of the deficiency item within the time period specified in the
22 contract or 15 calendar days of the date that the application
23 for payment is received. If a contractor withholds payment from
24 a subcontractor for a deficiency item, it must notify the
25 subcontractor or supplier and the government agency of the
26 reason within 15 calendar days of the date after receipt of the
27 notice of the deficiency item from the ~~owner~~ GOVERNMENT AGENCY. <—

28 § 3935. Penalty and attorney fees.

29 (a) Penalty.--If arbitration or a claim with the Board of
30 Claims or a court of competent jurisdiction is commenced to

1 recover payment due under this subchapter and it is determined
2 that the government agency, contractor or subcontractor has
3 failed to comply with the payment terms of this subchapter, the
4 arbitrator, the Board of Claims or the court may award, in
5 addition to all other damages due, a penalty equal to 1% per
6 month of the amount that was withheld in bad faith. An amount
7 shall be deemed to have been withheld in bad faith to the extent
8 that the withholding was arbitrary or vexatious. An amount shall
9 not be deemed to have been withheld in bad faith to the extent
10 it was withheld pursuant to section 3934 (relating to
11 withholding of payment for good faith claims).

12 (b) Attorney fees.--Notwithstanding any agreement to the
13 contrary, the prevailing party in any proceeding to recover any
14 payment under this subchapter may be awarded a reasonable
15 attorney fee in an amount to be determined by the Board of
16 Claims, court or arbitrator, together with expenses, if it is
17 determined that the government agency, contractor or
18 subcontractor acted in bad faith. An amount shall be deemed to
19 have been withheld in bad faith to the extent that the
20 withholding was arbitrary or vexatious.

21 § 3936. Contracts involving Federal aid.

22 If any provision of this ~~subchapter~~ CHAPTER conflicts with a <—
23 Federal statute or regulation or with conditions attached to the
24 receipt of Federal aid, this ~~subchapter~~ CHAPTER shall not <—
25 operate to prevent receipt of the Federal aid in accordance with
26 any Federal statute or regulation.

27 § 3937. Certain provisions unenforceable.

28 A provision in the contract making it subject to the laws of
29 another state or requiring that any litigation, arbitration or
30 other dispute resolution process on the contract occurs in

1 another state shall be unenforceable.

2 § 3938. Applicability.

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

5 (1) Section 3932 (relating to government agency's
6 progress payment obligations) shall not apply when the State <—
7 ~~government unit's~~ COMMONWEALTH AGENCY'S nonpayment on a <—
8 particular project is caused by the failure of the General
9 Assembly to enact a budget for the fiscal year of payment.

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

14 (3) Section 3932 shall not apply when government
15 agency's nonpayment on a particular project is caused by the
16 failure of the General Assembly to enact an operating budget
17 for the fiscal year of payment or a capital budget for the
18 capital project or by failure of the Federal, State or local
19 government to pay funds designated or to be designated for
20 the specific project.

21 (4) Nothing in this subchapter shall be construed to
22 require payment of interest penalties by the Federal or State
23 Government if the ~~municipality~~ LOCAL GOVERNMENT UNIT is <—
24 liable for ~~such~~ THE interest. <—

25 (b) Not applicable to following entities.--This ~~act~~ CHAPTER <—
26 shall not apply to any of the following:

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

30 (2) A school district which has been determined to be a

1 distressed school district under section 691 of the act of
2 March 10, 1949 (P.L.30, No.14), known as the Public School
3 Code of 1949.

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

11 (4) ~~Any~~ A corporate entity or school district as defined <—
12 in the Pennsylvania Intergovernmental Cooperation Authority
13 Act for Cities of the First Class.

14 (5) A TRANSPORTATION AUTHORITY ORGANIZED OR OPERATING <—
15 UNDER 74 PA.C.S. CH. 17 (RELATING TO METROPOLITAN
16 TRANSPORTATION AUTHORITIES).

17 § 3939. Claims by innocent parties.

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

20 (b) Barred claims.--Once a contractor has made payment to
21 the subcontractor according to the provisions of this
22 subchapter, future claims for payment against the contractor or
23 the contractor's surety by parties owed payment from the
24 subcontractor which has been paid shall be barred.

25 SUBCHAPTER E

26 SUBSTANTIAL/FINAL PAYMENT

27 Sec.

28 3941. Substantial/final payment under contract.

29 3942. Arbitration.

30 § 3941. Substantial/final payment under contract.

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

22 (b) Interest.--The final payment due the contractor from the
23 government agency after substantial completion of the contract
24 shall bear interest at a rate of 6% PER ANNUM for all contracts <—
25 without provisions for retainage and at a rate of 10% PER ANNUM <—
26 for all contracts with provisions for retainage, the interest to
27 begin after the date that such payment becomes due and payable
28 to the contractor. However, where the government agency has
29 issued bonds to finance the project, interest shall be payable
30 to the contractor at the rate of interest of the bond issue or

1 at the rate of 10% PER ANNUM, whichever is less, but in no event <—
2 shall the interest payable to the contractor be at a rate of
3 interest less than the legal rate of interest.

4 § 3942. Arbitration.

5 If a dispute should arise between the contractor and the
6 government agency over the payment of retainages and final
7 payment, then the dispute shall be arbitrated under the
8 applicable terms of the contract. If the contract contains no
9 provision for arbitration, then both parties may mutually agree
10 to arbitrate the dispute under the rules of the American
11 Arbitration Association or in accordance with 42 Pa.C.S. Ch. 73
12 (relating to arbitration). In any event, either party shall have
13 the right of appeal from any decision and award as provided by
14 law.

15 CHAPTER 41

16 PURCHASE OF SURPLUS FEDERAL PROPERTY

17 Sec.

18 4101. Contracts with United States.

19 4102. Bids and down payments.

20 § 4101. Contracts with United States.

21 Any government agency may enter into a contract with the
22 Federal Government for the purchase, lease or other acquisition,
23 including the warehousing and distribution, of any surplus real
24 or personal Federal property without complying with any
25 requirement of law as to specifications, advertising, award of
26 contract or approval by another government agency. However, ~~any~~ <—
27 ~~Commonwealth~~ AN EXECUTIVE OR INDEPENDENT agency may only enter <—
28 into a contract authorized by this section through the
29 Department of General Services.

30 § 4102. Bids and down payments.

1 Any government agency authorized to enter into a contract
2 under section 4101 (relating to contracts with United States)
3 may designate by appropriate order an officeholder or employee
4 of its own to enter a bid in its behalf at any sale of any
5 surplus real or personal Federal property and may authorize the
6 designee to make any down payment or payment in full required in
7 connection with the bidding.

8 CHAPTER 43

9 PUBLIC FACILITIES CONCESSIONS

10 Sec.

11 4301. Short title of chapter and general provisions.

12 4302. Definitions.

13 4303. Terms of contracts.

14 § 4301. Short title of chapter and general provisions.

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

17 (b) Legislative findings.--It is hereby determined by the
18 General Assembly to reaffirm the legislative findings contained
19 in the act of November 26, 1978 (P.L.1303, No.315), known as the
20 Public Facilities Concession Regulation Act, and codified in
21 this chapter:

22 (1) It is and has been the policy of this Commonwealth
23 to require and encourage public agencies to own and operate a
24 variety of public facilities for the conduct of public
25 business and for the health, education, protection,
26 transportation, recreation, entertainment and cultural
27 advancement of the people of this Commonwealth.

28 (2) It is and has been the policy of this Commonwealth
29 to promote the public welfare by permitting the operation,
30 within these public facilities, of various concessions to

1 provide goods and services to the public.

2 (3) Due to the nature, configuration and location of
3 many public facilities, members of the public utilizing the
4 facilities must either patronize the concessionaires
5 operating therein or undergo great expense, inconvenience and
6 hardship.

7 (4) The general welfare of the people of this
8 Commonwealth requires that concessionaires operating in
9 public facilities offer to the public goods and services of
10 good quality at reasonable prices. The General Assembly
11 therefore declares it to be the policy of this Commonwealth
12 that all public officers and agencies should, at all times,
13 make efforts to see that concessionaires in public facilities
14 provide goods and services of high quality, at reasonable
15 prices, in order to protect the public and encourage use of
16 public facilities.

17 (c) Police power.--This chapter shall be deemed to be an
18 exercise of the police powers of this Commonwealth for the
19 protection of the health, safety and general welfare of the
20 people of this Commonwealth.

21 (d) Purpose of chapter.--This chapter is intended as
22 remedial legislation designed to promote the general welfare,
23 protect the public and encourage full and proper use of public
24 facilities. Each provision of this chapter is intended to
25 receive a liberal construction as will best effectuate those
26 purposes, and no provision is intended to receive a strict or
27 limited construction.

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

1 § 4302. Definitions.

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

5 "Public facility." Any building, airport, school, park,
6 hospital or other structure, grounds or place owned or operated
7 by a government agency, whether for governmental or proprietary
8 use.

9 § 4303. Terms of contracts.

10 (a) General rule.--Each government agency shall require that
11 every contract granting any concession, license, permit or right
12 to sell, lease, contract for or otherwise make available for
13 consideration goods or services to the public in any public
14 facility contains provisions giving the government agency the
15 right to regulate the kinds, quality and prices of the goods and
16 services, upon terms and conditions as may be appropriate.

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

19 (1) Where the right to regulate price or quality is
20 vested exclusively in or has been preempted by the United
21 States or any of its agencies or another government agency.

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

25 CHAPTER 45

26 ANTIBID-RIGGING

27 Sec.

28 4501. Short title of chapter.

29 4502. Definitions.

30 4503. Prohibited activities.

1 4504. Civil action and damages.
2 4505. Suspension or debarment.
3 4506. Liability for increased costs.
4 4507. Noncollusion affidavits.
5 4508. Responsibility for enforcement.
6 4509. Investigation.
7 § 4501. Short title of chapter.

8 This chapter shall be known and may be cited as the Antibid-
9 Rigging Act.

10 § 4502. Definitions.

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

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

19 (1) Agreeing to sell items or services at the same
20 price.

21 (2) Agreeing to submit identical bids.

22 (3) Agreeing to rotate bids.

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

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

27 (6) Agreeing to set up territories to restrict
28 competition.

29 (7) Agreeing not to submit bids.

30 "Government agency." The Commonwealth and any of its

1 departments, boards, agencies, authorities and commissions, any
2 political subdivision, municipal or other local authority or any
3 officer or agency of any political subdivision or local
4 authority.

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

7 § 4503. Prohibited activities.

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

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

14 (2) A subcontract for the purchase of equipment, goods,
15 services or materials or for construction or repair with a
16 prime contractor or proposed prime contractor for a
17 government agency.

18 (b) Simultaneous bids.--Notwithstanding other provisions of
19 this chapter, it is not unlawful for the same person to
20 simultaneously submit bids for the same work, or a portion
21 thereof, as a proposed prime contractor and subcontractor.

22 (c) Fines and imprisonment.--Any person who violates this
23 section commits a felony of the third degree and shall, upon
24 conviction, be sentenced to pay a fine of not more than
25 \$1,000,000, if an entity other than an individual, or a fine of
26 not more than \$50,000, if an individual, or to serve a term of
27 imprisonment for not more than three years, or both.

28 (d) Alternative civil penalty.--In lieu of criminal
29 prosecution for violation of this section, the Attorney General
30 may bring an action for a civil penalty. In this action, a

1 person found by a court to have violated this section shall be
2 liable for a civil penalty of not more than \$100,000.

3 (e) Disposition of fines and penalties.--Criminal fines and
4 civil penalties collected under subsections (c) and (d) shall be
5 paid into the State Treasury and deposited in the appropriate
6 fund.

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

11 (1) The prior record and the number of previous
12 violations.

13 (2) The net worth of the person.

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

15 (g) Civil action not barred.--A conviction or civil penalty
16 imposed under this section shall not bar a government agency
17 from pursuing additional civil action and administrative
18 sanctions.

19 (h) Limitation on prosecution.--No criminal prosecution
20 under this section shall be brought against a person who has
21 been previously charged by information or indictment with a
22 criminal violation of the Federal antitrust laws, based upon the
23 same allegedly unlawful conduct upon which a criminal
24 prosecution under this chapter could be based, where jeopardy
25 has attached under the Federal prosecution.

26 § 4504. Civil action and damages.

27 (a) Government agency to have right of action.--Any
28 government agency entering into a contract which is or has been
29 the subject of activities prohibited by section 4503 (relating
30 to prohibited activities) shall have a right of action against

1 the participants in the prohibited activities to recover
2 damages.

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

8 (c) Measure of damages.--The measure of damages recoverable
9 under this section shall be the actual damages, which damages
10 shall be trebled plus the cost of suit, including reasonable
11 attorney fees.

12 (d) When cause of action arises.--The cause of action shall
13 arise at the time the government agency which entered into the
14 contract discovered, or should have discovered, the conduct
15 amounting to the unlawful offense. The action shall be brought
16 within four years of the date that the cause of action arose. No
17 civil action shall be maintained after the expiration of ten
18 years from the date the contract was signed by the parties.

19 (e) Conviction to be dispositive of liability.--Any
20 conviction under section 4503 shall be dispositive of the
21 liability of the participants with the only issues for trial
22 being the fact and amount of damages.

23 § 4505. Suspension or debarment.

24 (a) Maximum suspension or debarment.--A government agency
25 proceeding under its rules and regulations to exclude or render
26 ineligible a person from participation in contracts or
27 subcontracts based upon conduct prohibited by section 4503
28 (relating to prohibited activities) shall limit the exclusion or
29 ineligibility to a period not to exceed the following:

30 (1) Three years in the case of a person found for the

1 first time to have engaged in this conduct.

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

4 (b) Lists of persons excluded.--A government agency that
5 lets a contract by competitive bidding shall maintain a current
6 list of persons excluded or ineligible by reason of suspension
7 or debarment for participation in contracts or subcontracts with
8 that agency and shall furnish a copy of the list upon request to
9 a person considering the submission of a bid as a prime
10 contractor or as a subcontractor.

11 § 4506. Liability for increased costs.

12 A person who enters into a contract with a government agency,
13 either directly as a contractor or indirectly as a
14 subcontractor, during a period of suspension or debarment
15 imposed upon that person by that agency under its rules and
16 regulations shall be liable to the government agency and to an
17 eligible contractor for increased costs incurred as a result of
18 replacing the excluded or ineligible person.

19 § 4507. Noncollusion affidavits.

20 Noncollusion affidavits may be required by rule or regulation
21 of any government agency for all persons. Any requirement for
22 noncollusion affidavits shall be set forth in the invitation to
23 bid. Failure of any person to provide a required affidavit to
24 the government agency may be grounds for disqualification of his
25 bid. Any required noncollusion affidavit shall state whether or
26 not the person has been convicted or found liable for any act
27 prohibited by Federal or State law in any jurisdiction involving
28 conspiracy or collusion with respect to bidding on any public
29 contract within the last three years. The form for any required
30 noncollusion affidavit shall provide that the person's statement

1 on the affidavit that he has been convicted or found liable for
2 any act prohibited by Federal or State law in any jurisdiction
3 involving conspiracy or collusion with respect to bidding on any
4 public contract within the last three years does not prohibit a
5 government agency from accepting a bid from or awarding a
6 contract to that person, but it may be grounds for
7 administrative suspension or debarment in the discretion of the
8 government agency under the rules and regulations of that agency
9 or, in the case of a government agency with no administrative
10 suspension or debarment regulations or procedures, may be
11 grounds for consideration on the question of whether the agency
12 should decline to award a contract to that person on the basis
13 of lack of responsibility. The provisions of this section are in
14 addition to and not in derogation of any other powers and
15 authority of any government agency.

16 § 4508. Responsibility for enforcement.

17 (a) Criminal prosecution.--The Office of Attorney General
18 and the district attorneys of the several counties shall have
19 concurrent jurisdiction for the investigation and prosecution of
20 violations of section 4503 (relating to prohibited activities).

21 (b) Civil action.--The Office of Attorney General shall have
22 the authority to bring civil action under section 4504 (relating
23 to civil action and damages) on behalf of the Commonwealth and
24 any of its departments, boards, agencies, authorities and
25 commissions. Political subdivisions or municipal or other local
26 authorities or any officer or agency of any such political
27 subdivision or local authority shall have the right to bring a
28 civil action under section 4504. Upon the filing of a complaint,
29 a copy shall be served on the Attorney General. The plaintiff,
30 at any time, may request the Attorney General to act on its

1 behalf. The Attorney General, upon determining that it is in the
2 best interest of the Commonwealth, shall have the authority to
3 intervene on behalf of the Commonwealth in these actions.

4 § 4509. Investigation.

5 (a) Required attendance.--Whenever the Office of Attorney
6 General believes that a person may be in possession, custody or
7 control of documentary material or may have information relevant
8 to the subject matter of a civil investigation for the purpose
9 of ascertaining whether a person is or has been engaged in a
10 violation of this chapter, the Attorney General may require the
11 attendance and testimony of witnesses and the production of
12 books, accounts, papers, records, documents and files relating
13 to the civil investigation. For this purpose, the Attorney
14 General or his representatives may sign subpoenas, administer
15 oaths or affirmations, examine witnesses and receive evidence
16 during the investigation. A request for information shall state
17 the subject matter of the investigation, the conduct
18 constituting the alleged violation which is under investigation
19 and the provisions of this chapter applicable to the alleged
20 violation. A request for documentary material shall describe the
21 material to be produced with reasonable particularity so as to
22 fairly identify the documents demanded, provide a return date
23 within which the material is to be produced and identify the
24 member of the Attorney General's staff to whom the material
25 shall be given. In case of disobedience of a subpoena or the
26 contumacy of a witness appearing before the Attorney General or
27 his representative, the Attorney General or his representative
28 may invoke the aid of a court of record of this Commonwealth,
29 and the court may issue an order requiring the person subpoenaed
30 to obey the subpoena or to give evidence or to produce books,

1 accounts, papers, records, documents and files relative to the
2 matter in question. Failure to obey an order of the court may be
3 punished by the court as a contempt.

4 (b) Confidentiality.--No information or documentary material
5 produced under a demand under this section shall, unless
6 otherwise ordered by a court for good cause shown, be produced
7 for inspection or copying by, nor shall the contents be
8 disclosed to, a person other than the Attorney General or his
9 representative without the consent of the person who produced
10 the information or material. However, the Attorney General or
11 his representative shall disclose information or documentary
12 material produced under this section or information derived
13 therefrom to officials of a government agency affected by the
14 alleged violation, for use by that agency in connection with an
15 investigation or proceeding within its jurisdiction and
16 authority, upon the prior certification of an appropriate
17 official of the agency that the information shall be maintained
18 in confidence other than use for official purposes. Under
19 reasonable terms and conditions as the Attorney General or his
20 representative shall prescribe, the documentary material shall
21 be available for inspection and copying by the person who
22 produced the material or a duly authorized representative of
23 that person. The Attorney General or his representative may use
24 the documentary material or information or copies as he
25 determines necessary in the civil enforcement of this chapter,
26 including presentation before any court. Material which contains
27 trade secrets or other highly confidential matter shall not be
28 presented except with the approval of the court in which a
29 proceeding is pending after adequate notice to the person
30 furnishing the material.

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

6 Section 2. Section 2310 of Title 1 is amended to read:

7 § 2310. Sovereign immunity reaffirmed; specific waiver.

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

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

22 § 763. Direct appeals from government agencies.

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

26 (1) All appeals from Commonwealth agencies under
27 Subchapter A of Chapter 7 of Title 2 (relating to judicial
28 review of Commonwealth agency action) or otherwise and
29 including appeals from the Board of Claims, the Environmental
30 Hearing Board, the Pennsylvania Public Utility Commission,

1 the Unemployment Compensation Board of Review and from any
2 other Commonwealth agency having Statewide jurisdiction.

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

5 * * *

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

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

15 Section 6. (a) The following acts and parts of acts are
16 repealed:

17 Act of May 4, 1876 (P.L.99, No.68), entitled "A supplement to
18 an act, entitled 'An act to carry out the provisions of section
19 twelve, article three of the constitution, relative to contracts
20 for supplies for the legislature and various departments of the
21 state government.'"

22 Act of June 12, 1879 (P.L.170, No.187), entitled "An act to
23 carry out the provisions of section twelve, article three, of
24 the constitution, relative to contracts for supplies for the
25 legislature and the various departments of the state
26 government."

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

1 Commonwealth."

2 Act of May 24, 1917 (P.L.260, No.141), entitled "An act
3 regulating the time for advertising for and receiving proposals
4 for furnishing paper, cardboard, cuts, plates, and other
5 supplies for the use of the Commonwealth for executing the
6 public printing, and the time contracts for furnishing such
7 supplies shall run."

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

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

20 Sections 478, 2401.1(19), 2403(a), (b), (c) and (g), 2405,
21 2406(g), 2408, 2409, 2409.1, 2410, 2412, 2413 and 2414 of the
22 act of April 9, 1929 (P.L.177, No.175), known as The
23 Administrative Code of 1929.

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

26 Act of January 2, 1934 (Sp.Sess., 1933 P.L.200, No.41),
27 entitled "An act authorizing officers, departments, boards and
28 commissions of any political subdivision of the Commonwealth,
29 and cities, counties, boroughs, incorporated towns, townships,
30 school districts, to make adjustments with certain supply

1 contractors to reimburse losses sustained in performance of
2 contracts under certain circumstances."

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

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

15 Act of April 12, 1945 (P.L.220, No.99), entitled "An act
16 authorizing the Commonwealth and any administrative department,
17 boards, and commissions thereof acting through the Department of
18 Property and Supplies, and political subdivisions of the
19 Commonwealth, including municipal authorities, to enter into
20 contracts with the United States of America, or any agency
21 thereof, for the purchase, lease, or other acquisition of
22 property, real or personal, offered for sale pursuant to the
23 Surplus Property Act of one thousand nine hundred forty-four,
24 without complying with any requirement of existing law as to
25 specifications, advertising, award of contract, and approval of
26 purchases by a State agency receiving competitive bids, or the
27 delivery of property purchased before payment therefor."

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

30 Act of June 10, 1947 (P.L.493, No.223), entitled "An act

<—

1 further prescribing the bonds required of foreign corporations
2 contracting for public buildings, public works or projects."

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

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

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

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

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

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

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

30 Act of November 26, 1978 (P.L.1309, No.317), entitled "An act

1 regulating the awarding and execution of certain public
2 contracts; providing for contract provisions relating to the
3 retention, interest, and payment of funds payable under the
4 contracts; and repealing inconsistent acts."

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

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

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

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

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

16 Act of January 23, 1974 (P.L.9, No.4), entitled "An act
17 prescribing the procedure, after the opening of bids, for the
18 withdrawal of bids on certain public contracts, setting forth
19 the rights of the parties involved and providing penalties,"
20 except insofar as the act applies to the leases of real
21 property.

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

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

26 Act of June 12, 1879 (P.L.170, No.187), entitled "An act to
27 carry out the provisions of section twelve, article three, of
28 the constitution, relative to contracts for supplies for the
29 legislature and the various departments of the state
30 government."

1 Act of May 24, 1917 (P.L.260, No.141), entitled "An act
2 regulating the time for advertising for and receiving proposals
3 for furnishing paper, cardboard, cuts, plates, and other
4 supplies for the use of the Commonwealth for executing the
5 public printing, and the time contracts for furnishing such
6 supplies shall run."

7 Act of May 8, 1923 (P.L.161, No.120), entitled "An act
8 providing for and regulating the public printing and binding,
9 the editing for publication and the distribution of all
10 documents, reports, bulletins, and other publications for the
11 use of the Commonwealth, the several departments, boards,
12 commissions, and other agencies engaged in the legislative,
13 judicial, and administrative work of the State Government; the
14 sale of waste paper; the appointment of a director and other
15 employes; and repealing inconsistent and conflicting
16 legislation."

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

19 Act of June 23, 1931 (P.L.1181, No.321), entitled "An act
20 authorizing persons, co-partnerships, associations, and
21 corporations, who, whether as sub-contractor or otherwise, have
22 furnished material or supplied or performed labor in connection
23 with any public work or improvement, to intervene in or
24 institute actions on certain bonds given to the Commonwealth or
25 to municipal corporations in connection with the performance of
26 public contracts; fixing the time within which such actions must
27 be brought, and the amounts recoverable therein; and providing
28 for distribution of amounts recovered; and prescribing
29 procedure."

30 Section 6 of the act of May 20, 1937 (P.L.728, No.193),

1 referred to as the Board of Claims Act only insofar as it is
2 inconsistent with the procedure provided for in 62 Pa.C.S. §
3 1712 regarding the resolution of a contract controversy by the
4 head of a purchasing agency.

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

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

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

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

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

19 SECTION 303 OF THE ACT OF APRIL 9, 1929 (P.L.343, NO.176),
20 KNOWN AS THE FISCAL CODE. <—

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

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

26 ACT OF APRIL 3, 1992 (P.L.28, NO.11), KNOWN AS THE TUITION
27 ACCOUNT PROGRAM AND COLLEGE SAVINGS BOND ACT. <—

28 (e) All other acts and parts of acts are repealed insofar as
29 they are inconsistent with this act.

30 Section 7. This act shall apply to contracts solicited or

1 entered into on or after the effective date of this act unless
2 the parties agree to its application to a contract solicited or
3 entered into prior to the effective date of this act.

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