
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

AS AMENDED ON THIRD CONSIDERATION, FEBRUARY 9, 1998

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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6 TITLE 62

7 PROCUREMENT

8 Part

- 9 I. Commonwealth Procurement Code
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11 PART I

12 COMMONWEALTH PROCUREMENT CODE

13 Chapter

- 14 1. General Provisions
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- 23 17. Legal and Contractual Remedies
- 24 19. Intergovernmental Relations
- 25 21. Small and Disadvantaged Businesses
- 26 23. Ethics in Public Contracting

27 The General Assembly of the Commonwealth of Pennsylvania

28 hereby enacts as follows:

29 Section 1. Title 62 of the Pennsylvania Consolidated

30 Statutes is amended by adding parts to read:

1 CHAPTER 1

2 GENERAL PROVISIONS

3 Sec.

4 101. Short title of part.

5 102. Application of part.

6 103. Definitions.

7 104. General principles of law otherwise applicable.

8 105. Determinations.

9 106. Public access to procurement information.

10 107. Reciprocal limitations.

11 108. Recycled materials.

12 § 101. Short title of part.

13 This part shall be known and may be cited as the Commonwealth
14 Procurement Code.

15 § 102. Application of part.

16 (a) Application to Commonwealth procurement.--This part
17 applies to every expenditure of funds, other than the investment
18 of funds, by Commonwealth agencies under any contract,
19 irrespective of their source, including Federal assistance
20 moneys except as specified in section 2108 (relating to
21 compliance with Federal requirements). This part does not apply
22 to grants nor does it apply to contracts between Commonwealth
23 agencies or between the Commonwealth and its political
24 subdivisions or other governments except as provided in Chapter
25 19 (relating to intergovernmental relations). Nothing in this
26 part or in accompanying regulations shall prevent any
27 Commonwealth agency or political subdivision from complying with
28 the terms and conditions of any grant, gift, bequest or
29 cooperative agreement.

30 (b) Application to disposal of Commonwealth supplies.--This

1 part applies to the disposal of supplies of Commonwealth
2 agencies.

3 ~~(c) Application to local agencies. Any political~~ <—
4 ~~subdivision or other local public agency may specifically or by~~
5 ~~reference adopt all or any part of this part and its~~
6 ~~accompanying regulations.~~

7 ~~(d)~~ (C) Application to General Assembly and unified judicial <—
8 system.--The General Assembly and its agencies and the unified
9 judicial system and its agencies may use the department as its
10 purchasing agency for the purchase of supplies under this part
11 and may use the department to dispose of surplus supplies under
12 Chapter 15 (relating to supply management).

13 ~~(e)~~ (D) Application to certain entities.--Nothing in this <—
14 part shall apply to the entity created by the act of August 7,
15 1963 (P.L.549, No.290), referred to as the Pennsylvania Higher
16 Education Assistance Agency Act.

17 (E) IMPACT ON EXISTING ACTS.--NOTHING IN THIS PART SHALL <—
18 AFFECT THE SCOPE, EFFECT OR APPLICABILITY OF THE ACT OF AUGUST
19 15, 1961 (P.L.987, NO.442), KNOWN AS THE PENNSYLVANIA PREVAILING
20 WAGE ACT, THE ACT OF MARCH 3, 1978 (P.L.6, NO.3), KNOWN AS THE
21 STEEL PRODUCTS PROCUREMENT ACT, AND THE ACT OF JULY 23, 1968
22 (P.L.686, NO.226), ENTITLED "AN ACT EQUALIZING TRADE PRACTICES
23 IN PUBLIC WORKS PROCUREMENT; AUTHORIZING THE PURCHASE BY THE
24 COMMONWEALTH, ITS POLITICAL SUBDIVISIONS, AND ALL PUBLIC
25 AGENCIES, OF ALUMINUM AND STEEL PRODUCTS PRODUCED IN A FOREIGN
26 COUNTRY, PROVIDED THE FOREIGN COUNTRY DOES NOT PROHIBIT OR
27 DISCRIMINATE AGAINST THE IMPORTATION TO, SALE OR USE IN THE
28 FOREIGN COUNTRY OF SUPPLIES, MATERIAL OR EQUIPMENT MANUFACTURED
29 IN THIS COMMONWEALTH; ESTABLISHING PROCEDURES FOR DETERMINING
30 WHETHER FOREIGN COUNTRIES DISCRIMINATE AGAINST SUPPLIES,

1 MATERIALS OR EQUIPMENT MANUFACTURED IN THIS COMMONWEALTH; AND
2 IMPOSING PENALTIES AND PROVIDING FOR RELIEF FOR VIOLATION OF
3 THIS ACT."

4 § 103. Definitions.

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

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

16 "Commonwealth agency." An executive agency, an independent
17 agency or a State-affiliated entity.

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

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

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

1 "Contracting officer." A person authorized to enter into and
2 administer contracts and make written determinations with
3 respect to contracts.

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

6 "DESIGN/BUILD CONTRACT." A CONSTRUCTION CONTRACT IN WHICH
7 THE CONTRACTOR IS RESPONSIBLE FOR BOTH THE DESIGN AND
8 CONSTRUCTION OF ANY PUBLIC STRUCTURE OR BUILDING OR OTHER PUBLIC
9 IMPROVEMENTS OF ANY KIND TO ANY PUBLIC REAL PROPERTY.

<—

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 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 State-affiliated entity, any court or other
10 officer or agency of the unified judicial system, the General
11 Assembly and its officers and agencies, any State-related
12 institution, political subdivision or any local, regional or
13 metropolitan transportation authority.

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

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

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

1 another Commonwealth agency, the purchasing agency acts on
2 behalf of the principal which needs the supplies, services and
3 construction and shall coordinate and cooperate with that
4 agency.

5 "Regulation." A regulation as defined in 45 Pa.C.S. § 501
6 (relating to definitions). THIS TERM SHALL INCLUDE THE <—
7 AMENDMENT, REVISION OR OTHERWISE ALTERATION OF THE TERMS AND
8 PROVISIONS OF A REGULATION.

9 "Services." The furnishing of labor, time or effort by a
10 contractor not involving the delivery of a specific end product
11 other than drawings, specifications or reports which are merely
12 incidental to the required performance. THE TERM SHALL INCLUDE <—
13 THE ROUTINE OPERATION OR MAINTENANCE OF EXISTING STRUCTURES,
14 BUILDINGS OR REAL PROPERTY. The term does not include employment
15 agreements, collective bargaining agreements or agreements with
16 litigation consultants. The term includes utility services and
17 those services formerly provided by public utilities such as
18 electrical, telephone, water and sewage service.

19 "Specification." A description of the physical or functional
20 characteristics or the nature of a supply, service or
21 construction item, including a description of any requirement
22 for inspecting, testing or preparing a supply, service or
23 construction item for delivery.

24 "State-affiliated entity." A Commonwealth authority or a
25 Commonwealth entity. The term includes the Pennsylvania Turnpike
26 Commission, the Pennsylvania Housing Finance Agency, the
27 Pennsylvania Municipal Retirement System, the Pennsylvania
28 Infrastructure Investment Authority, the State Public School
29 Building Authority, the Pennsylvania Higher Educational
30 Facilities Authority and the State System of Higher Education.

1 The term does not include any court or other officer or agency
2 of the unified judicial system, the General Assembly and its
3 officers and agencies, any State-related institution, political
4 subdivision or any local, regional or metropolitan
5 transportation authority.

6 "State-related institution." The Pennsylvania State
7 University, the University of Pittsburgh, Lincoln University or
8 Temple University.

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

14 "Supplies." Any property, including, but not limited to,
15 equipment, materials, printing, insurance and leases of and
16 installment purchases of tangible or intangible personal
17 property. The term does not include real property or leases of
18 real property.

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

21 § 104. General principles of law otherwise applicable.

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

25 § 105. Determinations.

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

28 § 106. Public access to procurement information.

29 Except as provided in section 512(d) (relating to competitive
30 sealed bidding), any documents created by or provided to any

1 Commonwealth agency for any procurement shall be subject to
2 inspection and copying only to the extent already required under
3 the act of June 21, 1957 (P.L.390, No.212), referred to as the
4 Right-to-Know Law.

5 § 107. Reciprocal limitations.

6 (a) Short title of section.--This section shall be known and
7 may be cited as the Reciprocal Limitations 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 November 28, 1986 (P.L.1465, No.146), known as the
11 Reciprocal Limitations Act, and codified in this section:

12 (1) The award of contracts to the lowest responsible
13 bidder generally provides for the most economical procurement
14 of supplies and construction.

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

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

21 (4) The application of this preference or prohibition by
22 other states diminishes or eliminates opportunities for
23 bidders and manufacturers who reside in this Commonwealth to
24 obtain construction contracts from or to sell supplies to
25 states that have this preference, thereby resulting in the
26 loss of business for resident bidders and manufacturers.
27 Therefore, in order to offset or counteract the
28 discriminatory practices of other states, discourage other
29 states from applying a preference and ultimately to aid
30 employment, help business and industry located in this

1 Commonwealth, attract new business and industry to this
2 Commonwealth and provide additional tax revenue both from
3 those receiving contracts and those employed by contractors,
4 the General Assembly hereby declares that it is the policy of
5 this Commonwealth to respond in like manner against those
6 states that apply preferences or prohibitions by giving a
7 similar offsetting preference to residents in this
8 Commonwealth and bidders offering supplies manufactured in
9 this Commonwealth and by prohibiting the purchase or use of
10 certain supplies, in accordance with the provisions of this
11 section.

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

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

1 preference shall be equal to the amount of the preference
2 applied by the state of the nonresident bidder or offeror.

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

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

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

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

15 (h) Federal funds.--The provisions of this section shall not
16 be applicable when the application of this section may
17 jeopardize the receipt of Federal funds.

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

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

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

30 § 108. Recycled materials.

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

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

CHAPTER 3

PROCUREMENT ORGANIZATION

Subchapter

A. Organization of Public Procurement

B. Procurement Policy

C. Powers and Duties of Department

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

E. Coordination, Training and Education

SUBCHAPTER A

ORGANIZATION OF PUBLIC PROCUREMENT

Sec.

301. Procurement responsibility.

§ 301. Procurement responsibility.

(a) General organization.--Formulation of procurement policy governing the procurement, management, control and disposal of supplies, services and construction for executive and independent agencies shall be the responsibility of the

1 department as provided for in Subchapter B (relating to
2 procurement policy). The procurement and supervision of the
3 procurement of supplies, services and construction for executive
4 agencies and those independent agencies for which the department
5 acts as purchasing agency shall be the responsibility of the
6 department as provided for in Subchapter C (relating to powers
7 and duties of department).

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

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

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

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

29 (ii) Construction activities, excluding buildings,
30 solely within the expertise of the Department of

1 Environmental Protection, including, but not limited to,
2 mine reclamation, oil and gas well plugging, waste site
3 remediation, flood control and stream rehabilitation.

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

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

8 (4) Perishable food stuffs.

9 (5) The procurement of services, the renting of
10 machinery and equipment and the licensing of specialized
11 computer software by the Office of Attorney General, the
12 Department of the Auditor General and the Treasury
13 Department.

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

21 SUBCHAPTER B

22 PROCUREMENT POLICY

23 Sec.

24 311. Powers and duties.

25 312. Procurement regulations.

26 § 311. Powers and duties.

27 Except as otherwise provided in this part, the department may
28 promulgate regulations governing the procurement, management,
29 control and disposal of any and all supplies, services and
30 construction to be procured by Commonwealth agencies. The

1 department shall consider and decide matters of policy within
2 the provisions of this part. The department may audit and
3 monitor the implementation of its regulations and the
4 requirements of this part.

5 § 312. Procurement regulations.

6 Regulations shall be promulgated by the department as
7 provided in 45 Pa.C.S. Part II (relating to publication and
8 effectiveness of Commonwealth documents) and by the appropriate
9 purchasing agencies for those matters contained in section
10 301(c) (relating to procurement responsibility). THE REGULATIONS <—
11 SHALL BE SUBJECT TO THE ACT OF JUNE 25, 1982 (P.L.633, NO.181),
12 KNOWN AS THE REGULATORY REVIEW ACT. The department may not
13 delegate its power to promulgate regulations. No regulation may
14 change any commitment, right or obligation of any Commonwealth
15 agency or of a contractor under a contract in existence on the
16 effective date of the regulation.

17 SUBCHAPTER C

18 POWERS AND DUTIES OF DEPARTMENT

19 Sec.

20 321. Powers and duties.

21 322. Specific construction powers, duties and procedures.

22 § 321. Powers and duties.

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

25 (1) Procure or supervise the procurement of all
26 supplies, services and construction needed by executive
27 agencies and those independent agencies for which the
28 department acts as purchasing agency. Procurement authority
29 may be delegated in writing by the Secretary of General
30 Services.

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

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

5 (4) Coordinate programs of executive and independent
6 agencies for the inspection, testing and acceptance of
7 supplies and construction to ensure availability of
8 facilities and to avoid a duplication of functions.

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

13 (6) Participate in the management and maintenance of a
14 contractor responsibility program in coordination with the
15 Office of the Budget and other agencies as may be directed by
16 the Governor.

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

18 The following procedure shall apply to construction to be
19 completed by the department which costs more than the amount
20 established by the department under section 514 (relating to
21 small procurements) for construction procurement, unless the
22 work is to be done by Commonwealth agency employees or by
23 inmates or patients of a Commonwealth agency institution:

24 (1) The Commonwealth agency or State-related institution
25 shall notify the department to have plans and specifications
26 for the project.

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

1 selection procedures of section 905 (relating to procurement
2 of design professional services) to design the work and
3 prepare the specifications therefor. The department may, as
4 an alternative, enter into a design/build contract. SUCH <—
5 DESIGN/BUILD CONTRACTS SHALL BE SUBJECT TO THE REQUIREMENTS
6 OF THIS ACT AND THE PROVISIONS OF THE ACT OF AUGUST 15, 1961
7 (P.L.987, NO.442), KNOWN AS THE PENNSYLVANIA PREVAILING WAGE
8 ACT, AND THE ACT OF MAY 1, 1913 (P.L.155, NO. 104), ENTITLED
9 "AN ACT REGULATING THE LETTING OF CERTAIN CONTRACTS FOR THE
10 ERECTION, CONSTRUCTION, AND ALTERATION OF PUBLIC BUILDINGS,"
11 TO THE EXTENT PROVIDED IN PARAGRAPH (6).

12 (3) The department shall enter into a contract with the
13 architect or engineer, which shall provide all of the
14 following:

15 (i) A date for the completion of the plans and
16 specifications.

17 (ii) That the plans and specifications must meet
18 with the approval of the Commonwealth agency or State-
19 related institution for which the building is being
20 erected, altered or enlarged and, in the case of an
21 administrative board or commission of the Commonwealth
22 agency with which the board or commission is respectively
23 connected, to the extent of the type and general
24 character of the building, design of the floor layouts,
25 medical equipment or other equipment of a nature peculiar
26 to the building for which the plans and specifications
27 are being prepared.

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

30 (iv) That the plans and specifications must be

1 approved by the Department of Labor and Industry, the
2 Department of Health and the Department of Environmental
3 Protection, to the extent to which those Commonwealth
4 agencies, respectively, have jurisdiction to require the
5 submission to them for approval of certain features of
6 the building.

7 The architect or engineer in preparing plans and
8 specifications shall consult with the department and the
9 department shall insist upon the prompt completion of the
10 plans and specifications, within the time prescribed in the
11 architect's or engineer's contracts unless it shall
12 specifically agree in writing to an extension thereof.

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

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

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

28 (7) The department shall have the right to engage the
29 services of any architect or consulting or supervising
30 engineer or engineers, whom it may deem necessary for the

1 proper designing of or inspection or supervision of projects
2 constructed, altered or enlarged by the department under this
3 section in accordance with the selection procedures of
4 section 905.

5 (8) Changes in scope in the plans or specifications, or
6 both, may be made after their approval only with the consent
7 of the Governor and all of the Commonwealth agencies and
8 State-related institutions whose approval of the original
9 plans or specifications, or both, was necessary under this
10 section.

11 (9) If the appropriation is to a Commonwealth agency,
12 other than the department or State-related institution, the
13 department shall award and enter into the contract as agent
14 for the Commonwealth agency or State-related institution to
15 which the appropriation was made.

16 SUBCHAPTER D

17 POWERS AND DUTIES OF THE BOARD OF COMMISSIONERS OF
18 PUBLIC GROUNDS AND BUILDINGS AND THE OFFICE OF THE BUDGET
19 Sec.

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

21 327. Office of the Budget.

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

23 No lease of real estate for use by an executive or
24 independent agency and no sole source procurement of supplies
25 for an executive or independent agency for which the department
26 acts as the purchasing agency shall be valid or effective
27 unless, upon review, it is approved by the Board of
28 Commissioners of Public Grounds and Buildings. Where the board
29 is reviewing a proposed sole source lease or procurement being
30 submitted pursuant to section 515 (relating to sole source

1 procurement), approval of the lease or procurement shall require
2 the unanimous vote of the board. Where the board is reviewing a
3 proposed non-sole source lease, the lease shall be approved when
4 one member of the board votes to approve the lease. All votes
5 shall take place at a public meeting.

6 § 327. Office of the Budget.

7 (a) Encumbrance of funds.--For executive agencies and
8 independent agencies and State-affiliated entities where the
9 department is used as the purchasing agency, Office of the
10 Budget shall encumber sufficient funds for the payment of all
11 invoices for the procurement of supplies, services and
12 construction.

13 (b) Contractor responsibility program.--The Office of the
14 Budget shall participate in the management and maintenance of a
15 contractor responsibility program in coordination with the
16 department and other agencies as may be directed by the
17 Governor.

18 (c) Contracts for services.--Except for contracts awarded
19 pursuant to section 514 (relating to small procurements), the
20 Office of the Budget shall review and approve all contracts for
21 services for executive agencies and independent agencies and
22 State-affiliated entities where the department acts as
23 purchasing agency for:

24 (1) Fiscal responsibility and budgetary appropriateness.

25 (2) Availability of funds.

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

30 (e) Exceptions.--Notwithstanding the foregoing, subsections

(a) and (c) shall not apply to procurements made by the Office of Attorney General, the Department of the Auditor General or the Treasury Department. However, where the department is used as the purchasing agency, the Office of Attorney General, the Department of the Auditor General and the Treasury Department shall certify to the department that they have encumbered sufficient funds for the procurement.

SUBCHAPTER E

COORDINATION, TRAINING AND EDUCATION

Sec.

331. Collection of data concerning public procurement.

332. Advisory groups.

§ 331. Collection of data concerning public procurement.

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

§ 332. Advisory groups.

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

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

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

(d) Conflict of interest.--Members of the council and other advisory groups shall be considered State advisors under the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act, and, as such, shall be subject to the prohibitions for State advisors set forth in that act, provided that a member shall not be deemed to have an adverse interest by virtue of any action taken by the council or other advisory groups if the member discloses the conflict of interest and properly recuses himself from participating in any recommendation of the council or an advisory group.

CHAPTER 5

SOURCE SELECTION AND CONTRACT FORMATION

Subchapter

A. Definitions

B. Methods of Source Selection

C. Cancellation of Invitations for Bids or Requests for Proposals

D. Qualifications and Duties

E. Types of Contracts

F. Inspection of Plant and Audit of Records

G. Determinations and Reports

SUBCHAPTER A

1 DEFINITIONS

2 Sec.

3 501. Definitions.

4 § 501. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 SUBCHAPTER B

16 METHODS OF SOURCE SELECTION

17 Sec.

18 511. Methods of source selection.

19 512. Competitive sealed bidding.

20 513. Competitive sealed proposals.

21 514. Small procurements.

22 515. Sole source procurement.

23 516. Emergency procurement.

24 517. Multiple awards.

25 518. Competitive selection procedures for certain services.

26 519. Selection procedure for insurance and notary bonds.

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

29 § 511. Methods of source selection.

30 Unless otherwise authorized by law, all Commonwealth agency

1 contracts shall be awarded by competitive sealed bidding under
2 section 512 (relating to competitive sealed bidding) except as
3 provided in:

4 Section 513 (relating to competitive sealed proposals).

5 Section 514 (relating to small procurements).

6 Section 515 (relating to sole source procurement).

7 Section 516 (relating to emergency procurement).

8 Section 517 (relating to multiple awards).

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

11 Section 519 (relating to selection procedure for
12 insurance and notary bonds).

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

15 Section 905 (relating to procurement of design
16 professional services).

17 § 512. Competitive sealed bidding.

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

21 (b) Invitation for bids.--An invitation for bids shall be
22 issued and shall include a procurement description and all
23 contractual terms, whenever practical, and conditions applicable
24 to the procurement.

25 (c) Public notice.--Adequate public notice of the invitation
26 for bids shall be given a reasonable time prior to the date set
27 for the opening of bids. The purchasing agency shall establish
28 written policies and may promulgate regulations regarding
29 methods of public notice. The method of public notice may
30 include any of the following:

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

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

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

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

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

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

13 Purchasing agencies may establish procedures for the
14 distribution of invitations to bid including the imposition of a
15 fee to reimburse the agency for the costs of photocopying and
16 mailing.

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

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

1 evaluation for award shall be objectively measurable, such as
2 discounts, transportation costs and total or life cycle costs.
3 The invitation for bids shall set forth the evaluation criteria
4 to be used. No criteria may be used in bid evaluation that are
5 not set forth in the invitation for bids.

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

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

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

28 (3) The contracting officer shall not permit a
29 withdrawal of a bid if the withdrawal of the bid would result
30 in the awarding of the contract on another bid of the same

bidder, its partner or a corporation or business venture
owned by or in which the bidder has a substantial interest.

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

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

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

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

§ 513. Competitive sealed proposals.

(a) Conditions for use.--When the contracting officer
determines in writing that the use of competitive sealed bidding

1 is either not practicable or advantageous to the Commonwealth, a
2 contract may be entered into by competitive sealed proposals.

3 (b) Request for proposals.--Proposals shall be solicited
4 through a request for proposals.

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

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

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

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

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

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

8 § 514. Small procurements.

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

23 § 515. Sole source procurement.

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

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

30 (2) A Federal or State statute or Federal regulation

1 exempts the supply, service or construction from the
2 competitive procedure.

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

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

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

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

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

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

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

28 (10) It is in the best interest of the Commonwealth.

29 The written determination authorizing sole source procurement
30 shall be included in the contract file. With the exception of

1 small procurements under section 514 and emergency procurements
2 under section 516 (relating to emergency procurement), if the
3 sole source procurement is for a supply for which the department
4 acts as purchasing agency, it must be approved by the Board of
5 Commissioners of Public Grounds and Buildings prior to the award
6 of a contract.

7 § 516. Emergency procurement.

8 The head of a purchasing agency may make or authorize others
9 to make an emergency procurement when there exists a threat to
10 public health, welfare or safety or circumstances outside the
11 control of the agency creates an urgency of need which does not
12 permit the delay involved in using more formal competitive
13 methods. Whenever practical, in the case of a procurement of a
14 supply, at least two bids shall be solicited. A written
15 determination of the basis for the emergency and for the
16 selection of the particular contractor shall be included in the
17 contract file.

18 § 517. Multiple awards.

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

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

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

29 (3) It is administratively or economically impractical
30 to develop or modify specifications because of the

1 heterogeneous nature of the product lines.

2 (4) There is a need for compatibility with existing
3 systems.

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

7 (b) Solicitation process.--Invitations to bid or requests
8 for proposals shall be issued for the supplies, services or
9 construction to be purchased.

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

13 (d) Receipt of bids or proposals.--Bids shall be opened in
14 the same manner as provided in section 512(d). Proposals shall
15 be received in the same manner as provided in section 513(d)
16 (relating to competitive sealed proposals).

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

20 (1) Awards shall be made to the lowest responsible and
21 responsive bidder or offeror for each designated
22 manufacturer.

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

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

1 § 518. Competitive selection procedures for certain services.

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

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

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

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

26 (e) Award.--Award shall be made to the offeror determined in
27 writing by the contracting officer to be best qualified based on
28 the evaluation factors set forth in the request for proposals.
29 Fair and reasonable compensation shall be determined through
30 negotiation. If compensation cannot be agreed upon with the best

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

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

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

13 (b) Statement of qualifications.--Insurance and bond
14 carriers may submit statements of qualifications and expressions
15 of interest in providing insurance or notary bonds. The
16 department may specify a uniform format for statements of
17 qualifications.

18 (c) Request for proposals.--Adequate notice of the need for
19 insurance or notary bond coverage shall be given by the
20 purchasing agency through a request for proposals. The request
21 for proposals shall describe the type of insurance or bond
22 coverage required and list the type of information and data
23 required of each offeror.

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

26 (e) Discussions with responsible offerors and revision to
27 proposals.--Discussions and negotiations may be conducted with
28 responsible offerors who submit proposals determined to be
29 reasonably susceptible of being selected for award. Offerors
30 shall be accorded fair and equal treatment with respect to any

1 opportunity for discussion, negotiation and revision of
2 proposals. Revisions may be permitted after submissions and
3 prior to award for the purpose of obtaining best and final
4 offers.

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

10 § 520. Supplies manufactured by, and services performed by,
11 persons with disabilities.

12 (a) General rule.--Contracts may be entered into for
13 supplies manufactured by, and services performed by, persons
14 with disabilities without competition in accordance with this
15 section.

16 (b) Fair market price.--Upon request from an agency for
17 persons with disabilities and notice to the purchasing agency,
18 the department shall determine the fair market price of any
19 supply manufactured by, or service performed by, persons with
20 disabilities and offered for sale to any Commonwealth agency by
21 an agency for persons with disabilities. The department shall
22 revise the prices in accordance with changing market conditions.

23 (c) Distribution.--At the request of the department, the
24 Department of Public Welfare, or a nonprofit agency with the
25 approval of the Department of Public Welfare, shall facilitate
26 the distribution of orders for supplies manufactured by or
27 services performed by persons with disabilities among agencies
28 for persons with disabilities.

29 (d) Procurement of supplies manufactured by, and services
30 performed by, persons with disabilities.--Except as provided in

1 subsection (e), all supplies manufactured by, and services
2 furnished by, persons with disabilities shall be procured in
3 accordance with applicable specifications of the department or
4 other Commonwealth agencies from any agency for persons with
5 disabilities whenever the supplies and services are available at
6 a price determined by the department to be the fair market
7 price. The head of a purchasing agency shall annually discuss
8 its needs for supplies or services with the agency for persons
9 with disabilities.

10 (e) Procurement from Commonwealth agency.--If any supply
11 manufactured by, or any service performed by, persons with
12 disabilities and offered for sale is available for procurement
13 from any Commonwealth agency and this part or any other statute
14 requires the procurement of the supply or service from the
15 Commonwealth agency, then the procurement of the supply or
16 service shall be made in accordance with the other provisions.

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

20 "Agency for persons with disabilities." Any charitable,
21 nonprofit agency incorporated under the laws of this
22 Commonwealth and approved by the department through which
23 persons with disabilities manufacture supplies or perform
24 services in this Commonwealth.

25 "Mentally retarded." Subaverage general intellectual
26 functioning which originates during the developmental period and
27 is associated with the impairment of maturation, learning or
28 social adjustment.

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

1 "Physically disabled." A limitation of most activities and
2 functioning by virtue of a severe impairment of the various
3 bodily systems which cannot be eliminated, modified or
4 substantially reduced by the usual rehabilitation services and
5 which precludes competitive employment.

6 "Supply manufactured by, or service performed by, person with
7 disabilities." At least 75% of the personnel either engaged in
8 the direct labor of manufacturing of a product or engaged in the
9 direct labor in performing a service in this Commonwealth must
10 be visually impaired, mentally retarded or physically disabled.
11 In addition, at least 75% of the amount paid by the Commonwealth
12 agency for the product or the service shall be remitted to the
13 agency for persons with disabilities to cover payment of wages
14 and salaries to persons with disabilities and to cover other
15 actual manufacturing costs incurred by the agency for persons
16 with disabilities in manufacturing of a product.

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

21 SUBCHAPTER C

22 CANCELLATION OF INVITATIONS FOR BIDS OR

23 REQUESTS FOR PROPOSALS

24 Sec.

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

27 § 521. Cancellation of invitations for bids or requests for
28 proposals.

29 An invitation for bids, a request for proposals or other
30 solicitation may be canceled or any or all bids or proposals may

1 be rejected when it is in the best interests of the
2 Commonwealth. Bids may be rejected in part when specified in the
3 solicitation. The reasons for the cancellation or rejection
4 shall be made part of the contract file.

5 SUBCHAPTER D

6 QUALIFICATIONS AND DUTIES

7 Sec.

8 531. Debarment or suspension.

9 532. Prequalification of bidders and offerors.

10 533. Security and performance bonds.

11 534. Cost or pricing data.

12 535. Printing.

13 § 531. Debarment or suspension.

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

22 (b) Causes for debarment or suspension.--The causes for
23 debarment or suspension include:

24 (1) Commission of embezzlement, theft, forgery, bribery,
25 falsification or destruction of records, making false
26 statements or receiving stolen property.

27 (2) Commission of fraud or a criminal offense or other
28 improper conduct or knowledge of, approval of, or
29 acquiescence in such activities by a contractor or any
30 affiliate, officer, employee or other individual or entity

1 associated with:

2 (i) obtaining;

3 (ii) attempting to obtain; or

4 (iii) performing a public contract or subcontract.

5 The contractor's acceptance of the benefits derived from the
6 conduct shall be deemed evidence of such knowledge, approval
7 or acquiescence.

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

9 (4) Violation of any Federal or State law regulating
10 campaign contributions.

11 (5) Violations of any Federal or State environmental
12 law.

13 (6) Violation of any Federal or State law regulating
14 hours of labor, minimum wage standards or prevailing wage
15 standards; discrimination in wages; or child labor
16 violations.

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

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

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

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

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

27 (i) Failure to comply with terms of a Commonwealth
28 agency contract or subcontract, including, but not
29 limited to: willful failure to perform in accordance with
30 the terms of one or more contracts, a history of failure

1 to perform, or unsatisfactory performance of one or more
2 contracts.

3 (ii) Offering unbalanced bids.

4 (iii) Failure to complete the work in the time frame
5 specified in the contract.

6 (iv) Being declared in default on prior work or
7 project.

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

10 (vi) Making false statements or failing to provide
11 information or otherwise to cooperate with the
12 contracting agency, the Office of State Inspector General
13 or other Commonwealth authorities.

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

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

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

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

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

28 (d) Notice of decision.--A copy of the decision under
29 subsection (c) shall be delivered by registered mail to the
30 contractor ~~and any other party intervening~~, ANY OTHER PARTY

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1 INTERVENING OR ANY INTERESTED PARTY THAT HAS PROVIDED WRITTEN
2 NOTICE TO THE PURCHASING AGENCY OF THAT PARTY'S INTEREST IN THE
3 DECISION UNDER SUBSECTION (C).

4 (e) Finality of decision and appeal.--A decision under
5 subsection (c) shall be final and conclusive unless the
6 contractor appeals to the Commonwealth Court under 42 Pa.C.S. §
7 763(a)(1) (relating to direct appeals from government agencies)
8 within 30 days after receipt of the decision.

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

17 § 532. Prequalification of bidders and offerors.

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

20 § 533. Security and performance bonds.

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

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

1 the minimum amount or percentage of the amount of the bid as
2 shall be specified in the advertisement, invitation for bids
3 or request for proposals.

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

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

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

27 (b) Contract for construction.--Bid security and performance
28 bonds as required for contracts for construction are provided
29 for in sections 902 (relating to bid or proposal security) and
30 903 (relating to contract performance and payment bonds).

1 § 534. Cost or pricing data.

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

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

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

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

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

27 (1) When responsive proposals are received from two or
28 more offerors.

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

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

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

6 § 535. Printing.

7 No contract for printing shall be entered into with any
8 contractor until the purchasing agency is satisfied that the
9 contractor is the owner or lessee of machinery and equipment
10 necessary to properly and promptly perform any orders issued to
11 the contractor under the proposed printing contract.

12 SUBCHAPTER E

13 TYPES OF CONTRACTS

14 Sec.

15 541. Approval of accounting system.

16 542. Multiterm contracts.

17 543. Effective contracts.

18 § 541. Approval of accounting system.

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

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

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

27 Notwithstanding the preceding, a contract may be used without a
28 prior written determination where the contract is a firm fixed
29 price contract, or a contract awarded under section 516
30 (relating to emergency procurement).

1 § 542. Multiterm contracts.

2 (a) Specified period.--A contract for supplies, construction
3 or services may be entered into for a period of time deemed to
4 be in the best interests of the Commonwealth. The term of the
5 contract and conditions of renewal or extension, if any, shall
6 be included in the solicitation, and funds shall be available
7 for the first fiscal period at the time of contracting. Payment
8 and performance obligations for succeeding fiscal periods shall
9 be subject to the availability and appropriation of funds.

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

24 § 543. Effective contracts.

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

28 (b) Certain contracts.--Those Statewide requirements
29 contracts where the total dollar purchasing amount, based upon
30 estimated quantities, is in excess of \$1,000,000 shall not be

1 effective unless first approved by the State Treasurer. The
2 \$1,000,000 amount shall be adjusted each year by the department
3 to reflect the annual percentage change in the Composite
4 Construction Cost Index of the United States Department of
5 Commerce occurring in the one-year period ending December 31
6 each year.

7 SUBCHAPTER F

8 INSPECTION OF PLANT AND AUDIT OF RECORDS

9 Sec.

10 551. Right to inspect plant.

11 552. Right to audit records.

12 § 551. Right to inspect plant.

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

17 § 552. Right to audit records.

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

29 (b) Contract audit.--The purchasing agency may audit the
30 books and records of a contractor or any subcontractor under any

1 negotiated contract or subcontract other than a firm fixed-price
2 contract to the extent that the books and records relate to the
3 performance of the contract or subcontract. The books and
4 records shall be maintained by the contractor for a period of
5 three years from the date of final payment under the prime
6 contract and by the subcontractor for a period of three years
7 from the date of final payment under the prime contract unless a
8 shorter period is otherwise authorized by the purchasing agency
9 in writing.

10 SUBCHAPTER G

11 DETERMINATIONS AND REPORTS

12 Sec.

13 561. Finality of determinations.

14 562. Anticompetitive practices.

15 563. Retention of procurement records.

16 564. Record of certain actions.

17 § 561. Finality of determinations.

18 The determinations required by the following sections are
19 final and conclusive unless they are clearly erroneous,
20 arbitrary, capricious or contrary to law:

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

22 Section 513(a) and (g) (relating to competitive sealed
23 proposals).

24 Section 515 (relating to sole source procurement).

25 Section 516 (relating to emergency procurement).

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

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

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

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

2 § 562. Anticompetitive practices.

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

14 § 563. Retention of procurement records.

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

24 § 564. Record of certain actions.

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

1 professionals in performing their work. The term does not
2 include those services which are not exclusively within the
3 scope of architecture, geology, engineering or landscape
4 architecture, but which are related to capital improvements such
5 as, but not limited to, environmental hygienics, construction
6 management as described in section 322 (relating to specific
7 construction powers, duties and procedures), exhibit design,
8 fine arts or lesser arts and crafts, even though an architect,
9 geologist, engineer or landscape architect may provide such
10 services.

11 § 902. Bid or proposal security.

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

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

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

30 (d) Withdrawal of bids.--After the bids are opened, they

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

6 § 903. Contract performance security and payment bonds.

7 (a) When required and amounts.--For construction contracts
8 awarded for amounts between \$25,000 and \$100,000, the purchasing
9 agency shall require contract performance security, in an amount
10 equal to at least 50% of the contract price, as the purchasing
11 agency, in its discretion, determines necessary to protect the
12 interests of the Commonwealth. When a construction contract is
13 awarded in excess of \$100,000, the following bonds shall be
14 delivered to the purchasing agency and shall be binding on the
15 parties upon the execution of the contract:

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

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

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

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

14 (d) Actions on payment bonds.--

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

26 (2) Any claimant who has a direct contractual
27 relationship with any subcontractor of the prime contractor
28 who gave the payment bond but has no contractual
29 relationship, express or implied, with the prime contractor
30 may bring an action on the payment bond only if it has given

1 written notice to the contractor within 90 days from the date
2 on which the claimant performed the last of the labor or
3 furnished the last of the materials for which it claims
4 payment, stating with substantial accuracy the amount and the
5 name of the person for whom the work was performed or to whom
6 the material was furnished.

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

14 (e) Adjustment of threshold amount.--The dollar thresholds
15 set forth in subsection (a) shall be adjusted annually by the
16 department to reflect the annual percentage change in the
17 Composition Construction Cost Index of the United States
18 Department of Commerce occurring in the one-year period ending
19 on December 31 of each year.

20 § 904. Copies of bonds.

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

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

27 (c) Evidence.--A copy of any payment bond and of the
28 contract for which the bond was given constitutes prima facie
29 evidence of the contents, execution and delivery of the original
30 of the bond and contract.

1 § 905. Procurement of design professional services.

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

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

14 (c) Selection committees for Department of Transportation,
15 Department of Environmental Protection, Department of
16 Conservation and Natural Resources and State-affiliated
17 entities.--Where they are authorized by law to act as purchasing
18 agency for design professional services, the Department of
19 Transportation, the Department of Environmental Protection, the
20 Department of Conservation and Natural Resources and State-
21 affiliated entities shall each establish as many selection
22 committees as the department deems appropriate and a procedure
23 for the selection of committee members.

24 (d) Selection committee for all other Commonwealth
25 agencies.--Except as provided for in subsection (c), all
26 purchasing agencies shall use the selection committee appointed
27 by the Governor which shall be composed of five members, none of
28 whom shall be employees of the Commonwealth or hold any elective
29 office or office in any political party. The members shall be
30 architects, engineers or other persons knowledgeable in

1 construction. The members shall serve for terms of two years and
2 shall not be removed except for cause. Of the original members,
3 three shall serve for terms of two years and two for terms of
4 one year. Thereafter, all terms shall be for two years. Each
5 member shall be reimbursed for reasonable travel and other
6 expenses incurred incident to attendance at meetings and to
7 assigned duties and also a per diem allowance in accordance with
8 Commonwealth travel policies.

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

11 (1) The committee shall give public notice of projects
12 requiring design services and publicly recommend to the
13 purchasing agency three qualified design professionals for
14 each project.

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

24 (i) An equitable distribution of contracts to design
25 professionals.

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

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

30 (iv) The design professional selected has the

1 necessary available personnel to perform the services
2 required by the project.

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

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

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

19 (2) Where the amount of base construction allocation is
20 in excess of or equal to \$20,000,000, as annually adjusted,
21 the head of the purchasing agency shall choose one of the
22 three firms approved by the selection committee to begin
23 contract negotiations. The fee to be paid to the design
24 professional and the terms of the contract between the design
25 professional and the department shall be negotiated by the
26 head of the purchasing agency. In negotiating the contract
27 and the fee, the head of the purchasing agency shall take
28 into account the estimated value, scope, complexity,
29 uniqueness and the professional nature of the services to be
30 rendered. In the event the head of the purchasing agency is

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

16 (g) Selection method for Department of Transportation,
17 Department of Conservation and Natural Resources, Department of
18 Environmental Protection and State-affiliated entities.--In the
19 event the Department of Transportation, the Department of
20 Conservation and Natural Resources, the Department of
21 Environmental Protection or a State-affiliated entity otherwise
22 authorized by law to use its own selection committee requires
23 the services of a design professional, the head of the
24 purchasing agency or a State-affiliated entity shall choose one
25 of the three firms approved by the selection committee. The head
26 of the purchasing agency or a State-affiliated entity shall
27 negotiate with the firm determined to be the highest qualified
28 firm for design professional services at a fee which is
29 determined to be fair and reasonable to the Commonwealth. In
30 making this decision, the head of the purchasing agency shall

1 take into account the estimated value, scope, complexity and
2 professional nature of the services to be rendered. Should the
3 head of the purchasing agency be unable to negotiate a
4 satisfactory contract with the firm considered to be the most
5 qualified at a fee he determines to be fair and reasonable to
6 the Commonwealth, negotiations with that firm shall be formally
7 terminated. The head of the purchasing agency shall then
8 undertake negotiations with the firm he determines to be the
9 second highest qualified firm. Failing accord with the second
10 most qualified firm, the head of the purchasing agency shall
11 formally terminate negotiations and then undertake negotiations
12 with the third highest qualified firm. Should the head of the
13 purchasing agency be unable to negotiate a satisfactory contract
14 with any of the selected firms, the committee shall select
15 additional qualified firms, and the head of the purchasing
16 agency shall continue negotiations in accordance with this
17 section until an agreement is reached.

18 CHAPTER 11

19 (RESERVED)

20 CHAPTER 13

21 (Reserved)

22 CHAPTER 15

23 SUPPLY MANAGEMENT

24 Sec.

25 1501. Definitions.

26 1502. Supply management regulations.

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

28 1504. Exception.

29 § 1501. Definitions.

30 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

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

6 "Expendable supplies." All tangible supplies other than
7 nonexpendable supplies.

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

11 "Supplies." Supplies owned by Commonwealth agencies.

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

20 § 1502. Supply management regulations.

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

23 (1) The management of supplies during their entire life
24 cycle.

25 (2) The sale, lease or disposal of surplus supplies by
26 public auction, competitive sealed bidding or other
27 appropriate method designated by the department. However, no
28 employee of the owning or disposing agency shall be entitled
29 to purchase any of these supplies except when the sale price
30 of the surplus supply is less than the amount established by

the department for permissible purchases by such employees.

(3) Transfer of excess supplies.

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

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

§ 1504. Exception.

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

CHAPTER 17

LEGAL AND CONTRACTUAL REMEDIES

Subchapter

A. General Provisions

B. Prelitigation Resolution of Controversies

C. Board of Claims

D. Solicitations or Awards in Violation of Law

E. Interest

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

1701. Definitions.

1702. Sovereign immunity.

§ 1701. Definitions.

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

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

§ 1702. Sovereign immunity.

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

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

SUBCHAPTER B

PRELITIGATION RESOLUTION OF CONTROVERSIES

Sec.

1711. Authority to resolve protests of solicitations or awards.

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

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

(a) Right to protest.--An actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the head of the purchasing agency in writing. All protests under this

1 subsection must be made within seven days after the protestant
2 knows or should have known of the facts giving rise to the
3 protest. If a protest is submitted by a protestant who did not
4 submit a bid, the protest must be received by the head of the
5 purchasing agency prior to the bid opening time or the proposal
6 receipt date or it shall be considered untimely and can be
7 disregarded by the purchasing agency.

8 (b) Authority to resolve protests.--The head of the
9 purchasing agency shall have the authority to settle and resolve
10 a protest of an aggrieved bidder, offeror or contractor, actual
11 or prospective, concerning the solicitation or award of a
12 contract.

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

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

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

20 (d) Notice of decision.--A copy of the decision under
21 subsection (c) shall be delivered by registered mail to the
22 protestant and any other person determined by the head of the
23 purchasing agency to be affected by the decision.

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

1 (f) Stay of procurements during protests.--In the event of a
2 timely protest under subsection (a) and until the time has
3 elapsed for the protestant to file an action in Commonwealth
4 Court, the purchasing agency shall not proceed further with the
5 solicitation or with the award of the contract unless and until
6 the head of the purchasing agency, after consultation with the
7 head of the using agency, makes a written determination that the
8 protest is clearly without merit or that award of the contract
9 without delay is necessary to protect substantial interests of
10 the Commonwealth.

11 § 1712. Authority to resolve contract and breach of contract
12 controversies.

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

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

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

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

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

1 (d) Notice of decision.--A copy of the decision under
2 subsection (c) shall be delivered by registered mail to the
3 contractor.

4 (e) Finality of decision.--The decision under subsection (c)
5 shall be final and conclusive unless the contractor files a
6 claim with the Board of Claims within 30 days of receipt of the
7 decision.

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

14 SUBCHAPTER C

15 BOARD OF CLAIMS

16 Sec.

17 1721. Function of Board of Claims.

18 1722. (Reserved).

19 1723. (Reserved).

20 1724. (Reserved).

21 1725. Hearings, decisions and awards.

22 1726. Appeals.

23 § 1721. Function of Board of Claims.

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

27 § 1722. (Reserved).

28 § 1723. (Reserved).

29 § 1724. (Reserved).

30 § 1725. Hearings, decisions and awards.

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

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

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

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

23 § 1726. Appeals.

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

29 SUBCHAPTER D

30 SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

1 Sec.

2 1741. Applicability.

3 1742. Remedies prior to execution of contract.

4 1743. Remedies after execution of contract.

5 § 1741. Applicability.

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

9 § 1742. Remedies prior to execution of contract.

10 If prior to execution of a contract it is determined that a
11 solicitation or proposed award of a contract is in violation of
12 law, then the remedies are limited to cancellation of the
13 solicitation or proposed award or revision of the solicitation
14 or proposed award to comply with the law.

15 § 1743. Remedies after execution of contract.

16 If after the execution of a contract it is determined that a
17 solicitation or award of a contract is in violation of law,
18 then:

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

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

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

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

1 administrative or overhead costs.

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

4 (i) the contract may be declared void;

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

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

12 SUBCHAPTER E

13 INTEREST

14 Sec.

15 1751. Interest.

16 § 1751. Interest.

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

23 CHAPTER 19

24 INTERGOVERNMENTAL RELATIONS

25 Sec.

26 1901. Definitions.

27 1902. Cooperative purchasing authorized.

28 1903. Sale, acquisition or use of supplies by a public
29 procurement unit.

30 1904. Cooperative use of supplies or services.

- 1 1905. Joint use of facilities.
- 2 1906. Supply of personnel, information and technical services.
- 3 1907. Use of payments received by a supplying public
- 4 procurement unit.
- 5 1908. Compliance of public procurement units.
- 6 1909. Review of procurement requirements.
- 7 1910. Contract controversies.
- 8 1911. Immunity.
- 9 1912. Investment management agreements.

10 § 1901. Definitions.

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

14 "Cooperative purchasing." Procurement conducted by or on
15 behalf of more than one public procurement unit or by a public
16 procurement unit with an external procurement activity.

17 "External procurement activity." A buying organization not
18 located in this Commonwealth which if located in this
19 Commonwealth would qualify as a public procurement unit. An
20 agency of the United States is an external procurement activity.

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

29 "Public procurement unit." A local public procurement unit
30 or a purchasing agency.

1 § 1902. Cooperative purchasing authorized.

2 A public procurement unit may either participate in, sponsor,
3 conduct or administer a cooperative purchasing agreement for the
4 procurement of any supplies, services or construction with one
5 or more public procurement units or external procurement
6 activities in accordance with an agreement entered into between
7 the participants. Cooperative purchasing may include, but is not
8 limited to, joint or multiparty contracts between public
9 procurement units and open-ended purchasing agency contracts
10 which are made available to local public procurement units.

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

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

18 § 1904. Cooperative use of supplies or services.

19 A public procurement unit may enter into an agreement,
20 independent of the requirements of Chapters 5 (relating to
21 source selection and contract formation) and 15 (relating to
22 supply management), with any other public procurement unit or
23 external procurement activity for the cooperative use of
24 supplies or services under the terms agreed upon between the
25 parties.

26 § 1905. Joint use of facilities.

27 Any public procurement unit may enter into agreements for the
28 common use or lease of warehousing facilities, capital equipment
29 and other facilities with another public procurement unit or an
30 external procurement activity under the terms agreed upon

1 between the parties.

2 § 1906. Supply of personnel, information and technical
3 services.

4 (a) Supply of personnel.--Upon written request from another
5 public procurement unit or external procurement activity, a
6 public procurement unit may provide personnel to the requesting
7 public procurement unit or external procurement activity. The
8 public procurement unit or external procurement activity making
9 the request shall compensate the public procurement unit
10 providing the personnel the direct and indirect cost of
11 furnishing the personnel in accordance with an agreement between
12 the parties.

13 (b) Supply of services.--The informational, technical and
14 other services of any public procurement unit may be made
15 available to any other public procurement unit or external
16 procurement activity. However, the requirements of the public
17 procurement unit tendering the services shall have precedence
18 over the requesting public procurement unit or external
19 procurement activity. The requesting public procurement unit or
20 external procurement activity shall compensate for the expenses
21 of the services provided in accordance with an agreement between
22 the parties.

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

- 26 (1) Standard forms.
- 27 (2) Printed manuals.
- 28 (3) Product specifications and standards.
- 29 (4) Quality assurance testing services and methods.
- 30 (5) Qualified products lists.

1 (6) Source information.

2 (7) Common use commodities listings.

3 (8) Supplier prequalification information.

4 (9) Supplier performance ratings.

5 (10) Debarred and suspended bidders lists.

6 (11) Forms for invitations for bids, requests for
7 proposals, instructions to bidders, general contract
8 provisions and other contract forms.

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

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

13 (1) Development of products specifications.

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

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

17 (4) Use of personnel training programs.

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

21 § 1907. Use of payments received by a supplying public
22 procurement unit.

23 All payments from any public procurement unit or external
24 procurement activity received by a public procurement unit
25 supplying personnel or services shall be available to the
26 supplying public procurement unit.

27 § 1908. Compliance of public procurement units.

28 Where the public procurement unit or external procurement
29 activity administering a cooperative purchase complies with the
30 requirements of this part, any public procurement unit

1 participating in the purchase shall be deemed to have complied
2 with this part. Public procurement units may not enter into a
3 cooperative purchasing agreement for the purpose of
4 circumventing this part.

5 § 1909. Review of procurement requirements.

6 To the extent possible, the department may collect
7 information concerning the type, cost, quality and quantity of
8 commonly used supplies, services or construction being procured
9 or used by Commonwealth agencies. The department may also
10 collect this information from local procurement units. The
11 department may make this information available to any public
12 procurement unit upon request.

13 § 1910. Contract controversies.

14 (a) Public procurement unit subject to certain legal and
15 contractual remedies.--Under a cooperative purchasing agreement,
16 controversies arising between an administering public
17 procurement unit subject to Chapter 17 (relating to legal and
18 contractual remedies) and its bidders, offerors or contractors
19 shall be resolved in accordance with Chapter 17.

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

23 (1) Enter into an agreement with the Board of Claims to
24 use the board to resolve controversies between the local
25 public procurement unit and its contractors, whether or not
26 the controversy arose from a cooperative purchasing
27 agreement.

28 (2) Enter into an agreement with another local public
29 procurement unit or external procurement activity to
30 establish procedures or use existing procedures of the unit

or activity to resolve controversies with contractors,
whether or not the controversy arose under a cooperative
purchasing agreement.

§ 1911. Immunity.

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

§ 1912. Investment management agreements.

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

CHAPTER 21

SMALL AND DISADVANTAGED BUSINESSES

Sec.

2101. Policy.

2102. Definitions.

2103. Regulations.

2104. Duties of department.

2105. Bonding and progress payments.

2106. Business assistance offices.

2107. Report to General Assembly.

2108. Compliance with Federal requirements.

§ 2101. Policy.

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

1 § 2102. Definitions.

2 Subject to section 2103 (relating to regulations), the
3 following words and phrases when used in this chapter shall have
4 the meanings given to them in this section unless the context
5 clearly indicates otherwise:

6 "Disadvantaged business." A small business which is owned or
7 controlled by a majority of persons, not limited to members of
8 minority groups, who have been deprived of the opportunity to
9 develop and maintain a competitive position in the economy
10 because of social disadvantages.

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

19 § 2103. Regulations.

20 The department shall establish policy for executive and those
21 independent agencies for which the department acts as purchasing
22 agency and may promulgate regulations establishing detailed
23 definitions of the words and phrases defined in section 2102
24 (relating to definitions) using, in addition to the criteria set
25 forth in section 2102, other criteria as it deems appropriate,
26 including the number of employees and the dollar volume of
27 business. State-affiliated entities shall implement the policy
28 for their procurement programs.

29 § 2104. Duties of department.

30 The department shall have the following duties:

1 (1) Where feasible, provide appropriate staff who shall
2 be responsible to the department and who shall serve within
3 designated Commonwealth agencies to assist small and
4 disadvantaged businesses in this Commonwealth in learning how
5 to do business with Commonwealth agencies.

6 (2) Give special publicity to procurement procedures and
7 issue special publications designed to assist small and
8 disadvantaged businesses in learning how to do business with
9 Commonwealth agencies.

10 (3) Compile, maintain and make available source lists of
11 small and disadvantaged businesses for the purpose of
12 encouraging procurement from small and disadvantaged
13 businesses.

14 (4) Include small and disadvantaged businesses on
15 solicitation mailing lists.

16 (5) Assure that small and disadvantaged businesses are
17 solicited on each procurement for which the businesses may be
18 suited.

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

22 § 2105. Bonding and progress payments.

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

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

1 businesses.

2 § 2106. Business assistance offices.

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

6 § 2107. Report to General Assembly.

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

11 § 2108. Compliance with Federal requirements.

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

17 CHAPTER 23

18 ETHICS IN PUBLIC CONTRACTING

19 Subchapter

20 A. General Policy and Standards

21 B. Specific Standards

22 SUBCHAPTER A

23 GENERAL POLICY AND STANDARDS

24 Sec.

25 2301. Policy.

26 2302. General standards of ethical conduct.

27 2303. Reporting of breaches of ethical standards.

28 § 2301. Policy.

29 Public employment is a public trust. It is the policy of this
30 Commonwealth to promote and balance the objective of protecting

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

11 § 2302. General standards of ethical conduct.

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

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

21 § 2303. Reporting of breaches of ethical standards.

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

26 SUBCHAPTER B

27 SPECIFIC STANDARDS

28 Sec.

29 2311. Bonds.

30 § 2311. Bonds.

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

7 PART II

8 GENERAL PROCUREMENT PROVISIONS

9 Chapter

10 31. General Provisions

11 33. Prevention of Environmental Pollution

12 35. (Reserved)

13 37. Contract Clauses and Preference Provisions

14 39. Construction Contracts Over \$50,000

15 41. Purchase of Surplus Federal Property

16 43. Public Facilities Concessions

17 45. Antibid-Rigging

18 CHAPTER 31

19 GENERAL PROVISIONS

20 Sec.

21 3101. Application of part.

22 3102. Definitions.

23 § 3101. Application of part.

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

27 § 3102. Definitions.

28 Subject to additional definitions contained in subsequent
29 provisions of this part which are applicable to specific
30 provisions of this part, the following words and phrases when

used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

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

CHAPTER 33

PREVENTION OF ENVIRONMENTAL POLLUTION

Sec.

3301. Invitations for bids and requests for proposals.

3302. Additional work.

§ 3301. Invitations for bids and requests for proposals.

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

§ 3302. Additional work.

If the successful bidder or offeror must undertake additional work due to the enactment of new or the amendment of existing statutes, rules or regulations occurring after the submission of the successful bid or proposal, the government agency shall issue a change order setting forth the additional work that must be undertaken, which shall not invalidate the contract. The cost of a change order to the government agency shall be determined in accordance with the provisions of the contract for change orders or force accounts, or, if there is not a provision set

1 forth in the contract, then the cost to the government agency
2 shall be the costs to the contractor for wages, labor costs
3 other than wages, wage taxes, materials, equipment rentals,
4 insurance and subcontracts attributable to the additional
5 activity plus a reasonable sum for overhead and profit.
6 Additional costs to undertake work not specified in the
7 invitation for bids or requests for proposals shall not be
8 approved unless written authorization is given the successful
9 bidder or offeror prior to its undertaking the additional
10 activity.

11 CHAPTER 35

12 (RESERVED)

13 CHAPTER 37

14 CONTRACT CLAUSES AND PREFERENCE PROVISIONS

15 Subchapter

16 A. Labor

17 ~~B. Steel Products~~

<—

18 ~~C. Trade Practices~~

19 ~~D. Motor Vehicles~~

20 ~~E. Used Oil Products~~

21 ~~F. Guaranteed Energy Savings Contracts~~

22 B. MOTOR VEHICLES

<—

23 C. USED OIL PRODUCTS

24 D. GUARANTEED ENERGY SAVINGS CONTRACTS

25 SUBCHAPTER A

26 LABOR

27 Sec.

28 3701. Contract provisions prohibiting discrimination.

29 § 3701. Contract provisions prohibiting discrimination.

30 Each contract entered into by a government agency for the

1 construction, alteration or repair of any public building or
2 public work shall contain the following provisions by which the
3 contractor agrees that:

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

11 (2) No contractor or subcontractor or any person on
12 their behalf shall in any manner discriminate against or
13 intimidate any employee hired for the performance of work
14 under the contract on account of gender, race, creed or
15 color.

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

20 ~~SUBCHAPTER B~~

<—

21 ~~STEEL PRODUCTS~~

22 ~~See.~~

23 ~~3711. Short title of subchapter and general provisions.~~

24 ~~3712. Definitions.~~

25 ~~3713. Requirement of contract provision.~~

26 ~~3714. Payments under contracts.~~

27 ~~§ 3711. Short title of subchapter and general provisions.~~

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

30 ~~(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.~~

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

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

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

~~(c) Police power. This chapter shall be deemed to be an~~

~~exercise of the police powers of this Commonwealth for the protection of the health, safety and general welfare of the people of this Commonwealth.~~

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

~~§ 3712. 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:~~

~~"Steel products." Products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of these operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. The term includes cast iron products. The term also includes machinery and equipment listed in United States Department of Commerce Standard Industrial Classification 25 (furniture and fixture), 35 (machinery, except electrical) and 37 (transportation equipment) and made of, fabricated from or containing steel components. If a product contains both foreign and United States steel, the product shall be determined to be a United States steel product only if at least 75% of the cost of the articles, materials and supplies have been mined, produced or manufactured, as the case may be, in the United States. Transportation equipment shall be determined to be a United~~

~~States steel product if it complies with section 165 of the Surface Transportation Assistance Act of 1982 (Public Law 97-424, 96 Stat. 2097).~~

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

~~§ 3713. Requirement of contract provision.~~

~~(a) General rule. Each construction contract in excess of \$250,000 which is entered into by a government agency shall contain a provision that if any steel products are to be used or supplied in the performance of the contract, only steel products as defined in this subchapter shall be used or supplied in the performance of the contract or any subcontracts. The amount of \$250,000 shall be adjusted annually 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 on December 31 of each year.~~

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

~~§ 3714. Payments under contracts.~~

~~(a) Compliance with required contract provisions. No government agency shall authorize, provide for or make any payments to any person under any contract containing the provision required by section 3713 (relating to requirement of contract provision) unless, when unidentified steel products are supplied under a contract, the person has provided documentation, including, but not limited to, invoices, bills of~~

~~loading and mill certification that the steel was melted and
manufactured in the United States, which establishes that the
person has fully complied with section 3713. If a steel product
is identifiable from its face, the person must submit
certification which satisfies the government agency that the
person has fully complied with section 3713. Any payments made
to any person by any government agency which should not have
been made as a result of this section shall be recoverable by
either the government agency or the Attorney General directly
from the contractor, subcontractor, manufacturer or supplier who
did not comply with section 3713.~~

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

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

~~SUBCHAPTER C~~

~~TRADE PRACTICES~~

~~Sec.~~

~~3721. Short title of subchapter and general provisions.~~

~~3722. Definitions.~~

1 ~~3723. Unlawful acts.~~

2 ~~3724. Preference for aluminum and steel products made in~~
3 ~~United States.~~

4 ~~3725. Requirement to list discriminating countries.~~

5 ~~3726. Procedure to determine discrimination.~~

6 ~~3727. Foreign registry docket.~~

7 ~~3728. Aluminum or steel products from a country listed on~~
8 ~~foreign registry docket.~~

9 ~~§ 3721. Short title of subchapter and general provisions.~~

10 ~~(a) Short title. This subchapter shall be known and may be~~
11 ~~cited as the Trade Practices Act.~~

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

27 ~~(1) It has long been the policy of this Commonwealth not~~
28 ~~to purchase any supplies, equipment or materials manufactured~~
29 ~~in any foreign country which prohibits the specification for~~
30 ~~or use of supplies, equipment or materials manufactured in~~

1 ~~this Commonwealth.~~

2 ~~(2) Many world trading countries, directly or indirectly~~
3 ~~by statute, regulation, policy, procedure or practice, grant~~
4 ~~or bestow a preference for supplies, equipment or materials~~
5 ~~manufactured in their country, thereby discriminating against~~
6 ~~the use of supplies, equipment or materials manufactured in~~
7 ~~this Commonwealth. The General Assembly therefore declares it~~
8 ~~to be the policy of this Commonwealth that aluminum and steel~~
9 ~~products made in the United States should be purchased by all~~
10 ~~public agencies in preference to aluminum and steel products~~
11 ~~made in foreign countries which discriminate against~~
12 ~~supplies, equipment or materials manufactured in this~~
13 ~~Commonwealth.~~

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

21 ~~§ 3722. Definitions.~~

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

25 ~~"Aluminum or steel products made in a foreign country."~~
26 ~~Aluminum or steel products rolled, formed, shaped, drawn,~~
27 ~~extruded, forged, cast, fabricated or otherwise similarly~~
28 ~~processed, or processed by a combination of two or more of these~~
29 ~~operations, from aluminum or steel not made in the United~~
30 ~~States.~~

1 ~~"Court." The Commonwealth Court.~~

2 ~~"Discriminates." Any statute, regulation or policy of a~~
3 ~~foreign country which directly or indirectly:~~

4 ~~(1) Prevents the importation, sale or use of any~~
5 ~~supplies, materials or equipment manufactured in this~~
6 ~~Commonwealth.~~

7 ~~(2) Grants or bestows a preference, discount or other~~
8 ~~competitive advantage to supplies, materials or equipment~~
9 ~~manufactured in the foreign country, the effect of which is~~
10 ~~to place similar supplies, materials or equipment~~
11 ~~manufactured in this Commonwealth at a competitive~~
12 ~~disadvantage.~~

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

17 ~~(4) Solicits for awards or negotiates public works~~
18 ~~contracts on a selective tender basis.~~

19 ~~(5) Imposes discriminatory duties, tariffs or border~~
20 ~~taxes on the importation of supplies, materials or equipment~~
21 ~~not produced in the foreign country, the effect of which is~~
22 ~~to place supplies, materials or equipment manufactured in~~
23 ~~this Commonwealth at a competitive disadvantage with like~~
24 ~~goods manufactured in any foreign country.~~

25 ~~(6) Adopts or condones any other unfair method of~~
26 ~~competition in international trade, including, but not~~
27 ~~limited to, the exportation of aluminum or steel products~~
28 ~~made in the foreign country through cartels or the~~
29 ~~subsidization of aluminum or steel products.~~

30 ~~"Importer." Any person registered and doing business in this~~

~~Commonwealth who engages in the receiving, storing, distributing or other processing of aluminum or steel products made in a foreign country or who engages in the solicitation or acceptance of orders or contracts for the furnishing of or supplying of aluminum or steel products made in a foreign country.~~

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

~~§ 3723. Unlawful acts.~~

~~It is unlawful for:~~

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

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

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

~~If all considerations in or affecting a bid or proposal or a~~

~~bidder or offeror are equal, each government agency shall give preference to aluminum and steel products made in the United States.~~

~~§ 3725. Requirement to list discriminating countries.~~

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

~~§ 3726. Procedure to determine discrimination.~~

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

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

~~§ 3727. Foreign registry docket.~~

1 ~~(a) Entering name in docket. If, after a hearing, the court~~
2 ~~determines that the foreign country discriminates, it shall~~
3 ~~direct the prothonotary of the court to enter the name of the~~
4 ~~foreign country in a foreign registry docket maintained in the~~
5 ~~office of the prothonotary.~~

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

15 ~~§ 3728. Aluminum or steel products from a country listed on~~
16 ~~foreign registry docket.~~

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

28 ~~(b) Persons deemed not in violation. Notwithstanding~~
29 ~~subsection (a), a person shall not be held to have violated this~~
30 ~~subchapter if he has not received notification of the listing as~~

1 ~~provided in section 3725 (relating to requirement to list~~
2 ~~discriminating countries) or solely because his subcontractor or~~
3 ~~supplier of materials violates this subchapter if the person had~~
4 ~~no knowledge of the violation.~~

5 SUBCHAPTER ~~D~~

6 SUBCHAPTER B

<—

7 MOTOR VEHICLES

8 Sec.

9 3731. Short title of subchapter and general provisions.

10 3732. Definitions.

11 3733. Police power.

12 3734. Contract provisions.

13 3735. Payment under contract and action to recover

14 unauthorized payments.

15 3736. Penalty.

16 § 3731. Short title of subchapter and general provisions.

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

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

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

28 (2) The taxes paid to the Commonwealth and its political
29 subdivisions by employers and employees engaged in the
30 production and sale of motor vehicles is one of the largest

1 single sources of public revenues in this Commonwealth.

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

6 (4) The economy and general welfare of this Commonwealth
7 and its citizens, as well as the economy, general welfare and
8 national security of the United States, are inseparably
9 related in the preservation and development of the motor
10 vehicle industry in this Commonwealth and in other states of
11 the United States.

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

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

27 § 3732. Definitions.

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

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

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

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

12 § 3733. Police power.

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

16 § 3734. Contract provisions.

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

26 (b) Exception.--This section shall not apply where the head
27 of the government agency states in writing that it is
28 inconsistent with the public interest or that the cost is
29 unreasonable.

30 § 3735. Payment under contract and action to recover

1 unauthorized payments.

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

15 § 3736. Penalty.

16 In addition to the withholding of payments, any person who
17 willfully violates any of the provisions of this subchapter may
18 be prohibited by any government agency from participation in
19 contracts awarded by the government agency for a period of five
20 years from the date of the determination that a violation has
21 occurred.

22 ~~SUBCHAPTER E~~ <—

23 SUBCHAPTER C <—

24 USED OIL PRODUCTS

25 Sec.

26 3741. Preference.

27 § 3741. Preference.

28 As provided for in the act of April 9, 1982 (P.L.314, No.89),
29 known as the Pennsylvania Used Oil Recycling Act, government
30 agencies and persons holding contracts with government agencies

1 shall encourage and, to the extent possible, require the
2 procurement and purchase of recycled oil products as
3 substantially equivalent to products made from new oil.

4 SUBCHAPTER F <—

5 SUBCHAPTER D <—

6 GUARANTEED ENERGY SAVINGS CONTRACTS

7 ~~Sec.~~ <—

8 ~~3751. Definitions.~~

9 ~~3752. Selection process.~~

10 ~~3753. Award of single contract.~~

11 ~~§ 3751. 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 ~~"Energy conservation measure." A training program or~~
16 ~~facility alteration designed to reduce energy consumption or~~
17 ~~operating costs. The term shall include, without limitation:~~

18 ~~(1) Insulation of the building structure or systems~~
19 ~~within the building.~~

20 ~~(2) Storm windows or doors, caulking or weather~~
21 ~~stripping, multiglazed windows or doors, heat absorbing or~~
22 ~~heat reflective glazed and coated window or door systems,~~
23 ~~additional glazing, reductions in glass area or other window~~
24 ~~and door system modifications that reduce energy consumption.~~

25 ~~(3) Automated or computerized energy control systems.~~

26 ~~(4) Heating, ventilating or air conditioning system~~
27 ~~modifications or replacements.~~

28 ~~(5) Replacement or modification of lighting fixtures to~~
29 ~~increase the energy efficiency of the lighting system without~~
30 ~~increasing the overall illumination of a facility unless an~~

~~increase in illumination is necessary to conform to applicable State or local building codes for the lighting system after the proposed modifications are made.~~

~~(6) Energy recovery systems.~~

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

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

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

~~§ 3752. Selection process.~~

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

~~§ 3753. Award of single contract.~~

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

SEC.

3751. SHORT TITLE OF SUBCHAPTER.

3752. DEFINITIONS.

3753. CONTRACTING PROCEDURES.

3754. CONTRACT PROVISIONS.

3755. FUNDING.

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1 3756. COMMONWEALTH CONTRACTS.

2 3757. CONSTRUCTION.

3 § 3751. SHORT TITLE OF SUBCHAPTER.

4 THIS SUBCHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE
5 GUARANTEED ENERGY SAVINGS ACT.

6 § 3752. DEFINITIONS.

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

10 "ENERGY CONSERVATION MEASURE." A TRAINING PROGRAM OR
11 FACILITY ALTERATION DESIGNED TO REDUCE ENERGY CONSUMPTION OR
12 OPERATING COSTS. THE TERM MAY INCLUDE, WITHOUT LIMITATION:

13 (1) INSULATION OF THE BUILDING STRUCTURE OR SYSTEMS
14 WITHIN THE BUILDING.

15 (2) STORM WINDOWS OR DOORS, CAULKING OR WEATHER
16 STRIPPING, MULTIGLAZED WINDOWS OR DOORS, HEAT-ABSORBING OR
17 HEAT-REFLECTIVE GLAZED AND COATED WINDOW OR DOOR SYSTEMS,
18 ADDITIONAL GLAZING, REDUCTIONS IN GLASS AREA OR OTHER WINDOW
19 AND DOOR SYSTEM MODIFICATIONS THAT REDUCE ENERGY CONSUMPTION.

20 (3) AUTOMATED OR COMPUTERIZED ENERGY CONTROL SYSTEMS.

21 (4) HEATING, VENTILATING OR AIR-CONDITIONING SYSTEM
22 MODIFICATIONS OR REPLACEMENTS.

23 (5) REPLACEMENT OR MODIFICATION OF LIGHTING FIXTURES TO
24 INCREASE THE ENERGY EFFICIENCY OF THE LIGHTING SYSTEM WITHOUT
25 INCREASING THE OVERALL ILLUMINATION OF A FACILITY, UNLESS AN
26 INCREASE IN ILLUMINATION IS NECESSARY TO CONFORM TO
27 APPLICABLE STATE OR LOCAL BUILDING CODES FOR THE LIGHTING
28 SYSTEM AFTER THE PROPOSED MODIFICATIONS ARE MADE.

29 (6) ENERGY RECOVERY SYSTEMS.

30 (7) SYSTEMS THAT PRODUCE STEAM OR FORMS OF ENERGY SUCH

AS HEAT, AS WELL AS ELECTRICITY, FOR USE WITHIN A BUILDING OR
COMPLEX OF BUILDINGS.

(8) ENERGY CONSERVATION MEASURES THAT PROVIDE OPERATING
COST REDUCTIONS BASED ON LIFE-CYCLE COST ANALYSIS.

"GUARANTEED ENERGY SAVINGS CONTRACT." A CONTRACT FOR THE
EVALUATION AND RECOMMENDATION OF ENERGY CONSERVATION MEASURES
AND FOR IMPLEMENTATION OF ONE OR MORE SUCH MEASURES.

"GOVERNMENTAL UNIT." ANY CONTRACTING BODY AS DEFINED IN
SECTION 2 OF THE ACT OF DECEMBER 20, 1967 (P.L.869, NO.385),
KNOWN AS THE PUBLIC WORKS CONTRACTORS' BOND LAW OF 1967.

"QUALIFIED PROVIDER." A PERSON OR BUSINESS WHICH IS
RESPONSIBLE AND CAPABLE OF EVALUATING, RECOMMENDING, DESIGNING,
IMPLEMENTING AND INSTALLING ENERGY CONSERVATION MEASURES AS
DETERMINED BY THE GOVERNMENTAL UNIT.

"REQUEST FOR PROPOSALS (RFP)." A TYPE OF COMPETITIVE
PROCUREMENT.

§ 3753. CONTRACTING PROCEDURES.

(A) GENERAL RULE.--NOTWITHSTANDING ANY OTHER CONTRARY OR
INCONSISTENT PROVISION OF LAW, A GOVERNMENTAL UNIT MAY ENTER
INTO A GUARANTEED ENERGY SAVINGS CONTRACT WITH A QUALIFIED
PROVIDER IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBCHAPTER OR
IN ACCORDANCE WITH ANOTHER STATUTORILY AUTHORIZED COMPETITIVE
PROCESS.

(B) GUARANTEED CONTRACT.--IF IN ACCORDANCE WITH APPLICABLE
LAW THE AWARD OF A CONTRACT BY A GOVERNMENTAL UNIT REQUIRES
ACTION AT A PUBLIC MEETING, A GOVERNMENTAL UNIT MAY AWARD A
GUARANTEED ENERGY SAVINGS CONTRACT AT A PUBLIC MEETING IF IT HAS
PROVIDED PUBLIC NOTICE IN THE MANNER PRESCRIBED BY THE ACT OF
JULY 3, 1986 (P.L.388, NO.84), KNOWN AS THE SUNSHINE ACT, THE
NOTICE INCLUDING THE NAMES OF THE PARTIES TO THE CONTRACT AND

1 THE PURPOSE OF THE CONTRACT. FOR GOVERNMENTAL UNITS THAT ARE NOT
2 REQUIRED TO TAKE ACTIONS ON CONTRACTS AT PUBLIC MEETINGS, THE
3 GOVERNMENTAL UNIT MAY AWARD A GUARANTEED ENERGY SAVINGS CONTRACT
4 IN ACCORDANCE WITH THE PROTOCOL FOR ACTION ON CONTRACTS ADOPTED
5 BY THE GOVERNMENTAL UNIT AND THE REQUIREMENTS OF THIS
6 SUBCHAPTER.

7 (C) REQUEST FOR PROPOSALS.--BEFORE ENTERING INTO A
8 GUARANTEED ENERGY SAVINGS CONTRACT UNDER THIS SECTION, A
9 GOVERNMENTAL UNIT SHALL ISSUE A REQUEST FOR PROPOSALS. THE
10 GOVERNMENTAL UNIT SHALL EVALUATE ANY PROPOSAL THAT MEETS THE
11 REQUIREMENTS OF THE GOVERNMENTAL UNIT AND IS TIMELY SUBMITTED BY
12 A QUALIFIED PROVIDER. THE RFP SHALL BE ANNOUNCED THROUGH A
13 PUBLIC NOTICE FROM THE GOVERNMENTAL UNIT WHICH WILL ADMINISTER
14 THE PROGRAM. THE REQUEST FOR PROPOSAL SHALL INCLUDE ALL OF THE
15 FOLLOWING:

16 (1) THE NAME AND ADDRESS OF THE GOVERNMENTAL UNIT.

17 (2) THE NAME, ADDRESS, TITLE AND TELEPHONE NUMBER OF A
18 CONTACT PERSON.

19 (3) NOTICE INDICATING THAT THE GOVERNMENTAL UNIT IS
20 REQUESTING QUALIFIED PROVIDERS TO PROPOSE ENERGY CONSERVATION
21 MEASURES THROUGH A GUARANTEED ENERGY SAVINGS CONTRACT.

22 (4) THE DATE, TIME AND PLACE WHERE PROPOSALS MUST BE
23 RECEIVED.

24 (5) THE INFORMATION TO BE INCLUDED IN THE PROPOSAL.

25 (6) ANY OTHER STIPULATIONS AND CLARIFICATIONS THE
26 GOVERNMENTAL UNIT MAY REQUIRE.

27 (D) SELECTION AND NOTICE.--THE GOVERNMENTAL UNIT SHALL
28 SELECT THE QUALIFIED PROVIDER THAT BEST MEETS THE NEEDS OF THE
29 GOVERNMENTAL UNIT IN ACCORDANCE WITH CRITERIA ESTABLISHED BY THE
30 GOVERNMENTAL UNIT. FOR GOVERNMENTAL UNITS THAT ARE NOT REQUIRED

1 TO TAKE ACTIONS ON CONTRACTS AT PUBLIC MEETINGS, THE
2 GOVERNMENTAL UNIT SHALL PROVIDE PUBLIC NOTICE OF THE AWARD OF
3 THE GUARANTEED ENERGY SAVINGS CONTRACT WITHIN 30 DAYS IN THE
4 PENNSYLVANIA BULLETIN. THE NOTICE SHALL INCLUDE THE NAMES OF THE
5 PARTIES TO THE CONTRACT AND THE PURPOSE OF THE CONTRACT. FOR
6 GOVERNMENTAL UNITS THAT ARE REQUIRED TO TAKE ACTIONS ON
7 CONTRACTS AT PUBLIC MEETINGS, THE PUBLIC NOTICE SHALL BE MADE AT
8 LEAST TEN DAYS PRIOR TO THE MEETING. AFTER REVIEWING THE
9 PROPOSALS PURSUANT TO SUBSECTION (E), A GOVERNMENTAL UNIT MAY
10 ENTER INTO A GUARANTEED ENERGY SAVINGS CONTRACT WITH A QUALIFIED
11 PROVIDER IF IT FINDS THAT THE AMOUNT IT WOULD SPEND ON THE
12 ENERGY CONSERVATION MEASURES RECOMMENDED IN THE PROPOSAL WOULD
13 NOT EXCEED THE AMOUNT TO BE SAVED IN BOTH ENERGY AND OPERATIONAL
14 COSTS WITHIN A TEN-YEAR PERIOD FROM THE DATE OF INSTALLATION, IF
15 THE RECOMMENDATIONS IN THE PROPOSAL WERE FOLLOWED AND THE
16 QUALIFIED PROVIDER PROVIDES A WRITTEN GUARANTEE THAT THE ENERGY
17 OR OPERATING COST SAVINGS WILL MEET OR EXCEED THE COST OF THE
18 CONTRACT.

19 (E) REPORT.--

20 (1) BEFORE THE AWARD OF A GUARANTEED ENERGY SAVINGS
21 CONTRACT, THE QUALIFIED PROVIDER SHALL PROVIDE A REPORT AS
22 PART OF ITS PROPOSAL WHICH SHALL BE AVAILABLE FOR PUBLIC
23 INSPECTION SUMMARIZING ESTIMATES OF ALL COSTS OF
24 INSTALLATION, MAINTENANCE, REPAIRS AND DEBT SERVICE, AND
25 ESTIMATES OF THE AMOUNTS BY WHICH ENERGY OR OPERATING COSTS
26 WILL BE REDUCED.

27 (2) THE REPORT SHALL CONTAIN A LISTING OF CONTRACTORS
28 AND SUBCONTRACTORS TO BE USED BY THE QUALIFIED PROVIDER WITH
29 RESPECT TO THE ENERGY CONSERVATION MEASURES.

30 (F) BOND.--A QUALIFIED PROVIDER TO WHOM A CONTRACT IS

1 AWARDED SHALL GIVE A SUFFICIENT BOND TO THE GOVERNMENTAL UNIT
2 FOR ITS FAITHFUL PERFORMANCE IN ACCORDANCE WITH THE ACT OF
3 DECEMBER 20, 1967 (P.L.869, NO.385), KNOWN AS THE PUBLIC WORKS
4 CONTRACTORS' BOND LAW OF 1967.

5 (G) AWARD OF CONTRACT.--NOTWITHSTANDING ANY OTHER PROVISION
6 OF LAW GOVERNING THE LETTING OF PUBLIC CONTRACTS, A GOVERNMENTAL
7 UNIT MAY ENTER INTO A SINGLE GUARANTEED ENERGY SAVINGS CONTRACT
8 WITH EACH RESPONSIBLE PROVIDER SELECTED THROUGH THE REQUEST FOR
9 PROPOSALS PROCESS IN ACCORDANCE WITH THE PROVISIONS OF THIS
10 SUBCHAPTER.

11 § 3754. CONTRACT PROVISIONS.

12 (A) GENERAL RULE.--A GUARANTEED ENERGY SAVINGS CONTRACT MAY
13 PROVIDE THAT ALL PAYMENTS, EXCEPT OBLIGATIONS ON TERMINATION OF
14 THE CONTRACT BEFORE ITS SCHEDULED EXPIRATION, SHALL BE MADE OVER
15 A PERIOD OF TIME. EVERY GUARANTEED ENERGY SAVINGS CONTRACT SHALL
16 PROVIDE THAT THE SAVINGS IN ANY YEAR ARE GUARANTEED TO THE
17 EXTENT NECESSARY TO MAKE PAYMENTS UNDER THE CONTRACT DURING THAT
18 YEAR.

19 (B) WRITTEN GUARANTEE.--A GUARANTEED ENERGY SAVINGS CONTRACT
20 SHALL INCLUDE A WRITTEN GUARANTEE THAT SAVINGS WILL MEET OR
21 EXCEED THE COST OF THE ENERGY CONSERVATION MEASURES TO BE
22 EVALUATED, RECOMMENDED, DESIGNED, IMPLEMENTED OR INSTALLED UNDER
23 THE CONTRACT.

24 (C) PAYMENTS.--A GUARANTEED ENERGY SAVINGS CONTRACT MAY
25 PROVIDE FOR PAYMENTS OVER A PERIOD OF TIME, NOT TO EXCEED TEN
26 YEARS, AND FOR THE EVALUATION, RECOMMENDATION, DESIGN,
27 IMPLEMENTATION AND INSTALLATION OF ENERGY CONSERVATION MEASURES
28 ON AN INSTALLMENT PAYMENT OR LEASE PURCHASE BASIS.

29 § 3755. FUNDING.

30 (A) GENERAL RULE.--GUARANTEED ENERGY SAVINGS CONTRACTS WHICH

1 HAVE TERMS WHICH EXTEND BEYOND ONE FISCAL YEAR OF THE
2 GOVERNMENTAL UNIT MUST INCLUDE A PROVISION WHICH ALLOWS THE
3 GOVERNMENTAL UNIT TO TERMINATE THE CONTRACT IF IN ANY FISCAL
4 YEAR DURING THE TERM OF THE CONTRACT THE GOVERNMENTAL UNIT DOES
5 NOT RECEIVE SUFFICIENT FUNDS IN ITS ANNUAL APPROPRIATIONS TO
6 MAKE THE PAYMENTS REQUIRED UNDER THE CONTRACT.

7 (B) FUNDS.--A GOVERNMENTAL UNIT MAY USE FUNDS DESIGNATED FOR
8 OPERATING, UTILITIES OR CAPITAL EXPENDITURES FOR ANY GUARANTEED
9 ENERGY SAVINGS CONTRACT, INCLUDING, WITHOUT LIMITATION, FOR
10 PURCHASES ON AN INSTALLMENT PAYMENT OR LEASE PURCHASE BASIS.

11 (C) GRANTS, SUBSIDIES OR OTHER PAYMENTS.--GRANTS, SUBSIDIES
12 OR OTHER PAYMENTS FROM THE COMMONWEALTH TO A GOVERNMENTAL UNIT
13 SHALL NOT BE REDUCED AS A RESULT OF ENERGY SAVINGS OBTAINED AS A
14 RESULT OF A GUARANTEED ENERGY SAVINGS CONTRACT DURING THE LIFE
15 OF THE CONTRACT.

16 § 3756. COMMONWEALTH CONTRACTS.

17 IN CONNECTION WITH THE LETTING OF ANY GUARANTEED ENERGY
18 SAVINGS CONTRACT FOR A GOVERNMENTAL UNIT UNDER THIS SUBCHAPTER,
19 THE DEPARTMENT SHALL HAVE THE POWER TO WAIVE THE PROCESS FOR
20 SELECTION OF ARCHITECTS OR ENGINEERS OTHERWISE PRESCRIBED UNDER
21 SECTION 2401.1(19) OF THE ACT OF APRIL 9, 1929 (P.L.177,
22 NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929. IN EXERCISING
23 ITS DISCRETION UNDER THIS SECTION, THE DEPARTMENT SHALL CONSIDER
24 THE BEST INTERESTS OF THIS COMMONWEALTH AND ANY RELEVANT
25 CIRCUMSTANCES PECULIAR TO THE PROPOSED CONTRACT.

26 § 3757. CONSTRUCTION.

27 THIS SUBCHAPTER SHALL NOT BE CONSTRUED TO ABROGATE ANY DUTY
28 TO COMPLY WITH PREVAILING WAGE OR RESIDENCY REQUIREMENTS
29 CONTAINED IN ANY OTHER ACT OR PART THEREOF.

30

CHAPTER 39

1 CONSTRUCTION CONTRACTS OVER \$50,000

2 Subchapter

3 A. Preliminary Provisions

4 B. General Provisions

5 C. Retainage

6 D. Prompt Payment Schedules

7 E. Substantial/final Payment

8 SUBCHAPTER A

9 PRELIMINARY PROVISIONS

10 Sec.

11 3901. Application and purpose of chapter.

12 3902. Definitions.

13 § 3901. Application and purpose of chapter.

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

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

30 § 3902. Definitions.

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

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

9 "Contractor." A person who enters into a contract with a
10 government agency.

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

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

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

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

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

27 "State-aided institution." Any institution which receives
28 State funds for construction.

29 "Subcontractor." A person who has contracted to furnish
30 labor or materials to or has performed labor for a contractor or

1 another subcontractor in connection with a contract.

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

9 SUBCHAPTER B

10 GENERAL PROVISIONS

11 Sec.

12 3911. Time for awarding contract.

13 3912. Time for executing contract.

14 3913. Release of successful bidder.

15 § 3911. Time for awarding contract.

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

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

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

29 (d) List of bidders.--All government agencies shall be
30 required to provide a list of the bidders and their bid amount

1 on each contract within ten working days of the bid opening to
2 interested parties for a fee to be determined by the government
3 agency to cover the cost of developing such list. This
4 requirement shall not apply to the contracting bodies of any
5 political subdivision or local authority which has the authority
6 to enter into a contract.

7 § 3912. Time for executing contract.

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

12 § 3913. Release of successful bidder.

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

21 SUBCHAPTER C

22 RETAINAGE

23 Sec.

24 3921. Retainage.

25 3922. Payment of retainage to subcontractors.

26 § 3921. Retainage.

27 (a) Contract provision.--A contract may include a provision
28 for the retainage of a portion of the amount due the contractor
29 to insure the proper performance of the contract except that the
30 sum withheld by the government agency from the contractor shall

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

23 (b) Department of General Services.--Notwithstanding
24 subsection (a), when the Department of General Services is the
25 government agency, the contract may include a provision for the
26 retainage of a portion of the amount due the contractor to
27 insure the proper performance of the contract except that the
28 sum withheld by the department for the contractor shall not
29 exceed 6% of the then total estimates until 50% of the contract
30 is satisfactorily completed. The sum withheld by the department

1 from the contractor after the contract is 50% satisfactorily
2 completed shall not exceed 3% of the original contract amount.

3 § 3922. Payment of retainage to subcontractors.

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

8 SUBCHAPTER D

9 PROMPT PAYMENT SCHEDULES

10 Sec.

11 3931. Performance by contractor or subcontractor.

12 3932. Government agency's progress payment obligations.

13 3933. Contractors' and subcontractors' payment obligations.

14 3934. Withholding of payment for good faith claims.

15 3935. Penalty and attorney fees.

16 3936. Contracts involving Federal aid.

17 3937. Certain provisions unenforceable.

18 3938. Applicability.

19 3939. Claims by innocent parties.

20 § 3931. Performance by contractor or subcontractor.

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

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

28 § 3932. Government agency's progress payment obligations.

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

1 in accordance with the contract.

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

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

23 (d) When interest payment not required.--In the event that
24 the contract does not contain a grace period and if a contractor
25 or design professional is not paid by the payment date required
26 by subsection (b), no interest penalty payment required under
27 this section shall be paid if payment is made on or before the
28 15th calendar day after the payment date required under this
29 subchapter.

30 § 3933. Contractors' and subcontractors' payment obligations.

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

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

22 (c) Payment.--When a subcontractor has performed in
23 accordance with the provisions of the contract, a contractor
24 shall pay to the subcontractor, and each subcontractor shall in
25 turn pay to its subcontractors, the full or proportional amount
26 received for each such subcontractor's work and material, based
27 on work completed or services provided under the subcontract, 14
28 days after receipt of a progress payment. Payment shall be made
29 under this section unless it is being withheld under section
30 3934 (relating to withholding of payment for good faith claims).

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

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

14 § 3934. Withholding of payment for good faith claims.

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

26 (b) Notification when payment withheld for deficiency
27 item.--If a government agency withholds payment from a
28 contractor for a deficiency item, it shall notify the contractor
29 of the deficiency item within the time period specified in the
30 contract or 15 calendar days of the date that the application

1 for payment is received. If a contractor withholds payment from
2 a subcontractor for a deficiency item, it must notify the
3 subcontractor or supplier and the government agency of the
4 reason within 15 calendar days of the date after receipt of the
5 notice of the deficiency item from the government agency.

6 § 3935. Penalty and attorney fees.

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

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

29 § 3936. Contracts involving Federal aid.

30 If any provision of this chapter conflicts with a Federal

1 statute or regulation or with conditions attached to the receipt
2 of Federal aid, this chapter shall not operate to prevent
3 receipt of the Federal aid in accordance with any Federal
4 statute or regulation.

5 § 3937. Certain provisions unenforceable.

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

10 § 3938. Applicability.

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

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

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

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

29 (4) Nothing in this subchapter shall be construed to
30 require payment of interest penalties by the Federal or State

Government if the local government unit is liable for the interest.

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

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

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

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

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

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

§ 3939. Claims by innocent parties.

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

(b) Barred claims.--Once a contractor has made payment to the subcontractor according to the provisions of this subchapter, future claims for payment against the contractor or

1 the contractor's surety by parties owed payment from the
2 subcontractor which has been paid shall be barred.

3 SUBCHAPTER E

4 SUBSTANTIAL/FINAL PAYMENT

5 Sec.

6 3941. Substantial/final payment under contract.

7 3942. Arbitration.

8 § 3941. Substantial/final payment under contract.

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

30 (b) Interest.--The final payment due the contractor from the

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

12 § 3942. Arbitration.

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

23 CHAPTER 41

24 PURCHASE OF SURPLUS FEDERAL PROPERTY

25 Sec.

26 4101. Contracts with United States.

27 4102. Bids and down payments.

28 § 4101. Contracts with United States.

29 Any government agency may enter into a contract with the
30 Federal Government for the purchase, lease or other acquisition,

1 including the warehousing and distribution, of any surplus real
2 or personal Federal property without complying with any
3 requirement of law as to specifications, advertising, award of
4 contract or approval by another government agency. However, an
5 executive or independent agency may only enter into a contract
6 authorized by this section through the Department of General
7 Services.

8 § 4102. Bids and down payments.

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

16 CHAPTER 43

17 PUBLIC FACILITIES CONCESSIONS

18 Sec.

19 4301. Short title of chapter and general provisions.

20 4302. Definitions.

21 4303. Terms of contracts.

22 § 4301. Short title of chapter and general provisions.

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

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

30 (1) It is and has been the policy of this Commonwealth

1 to require and encourage public agencies to own and operate a
2 variety of public facilities for the conduct of public
3 business and for the health, education, protection,
4 transportation, recreation, entertainment and cultural
5 advancement of the people of this Commonwealth.

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

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

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

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

29 (d) Purpose of chapter.--This chapter is intended as
30 remedial legislation designed to promote the general welfare,

1 protect the public and encourage full and proper use of public
2 facilities. Each provision of this chapter is intended to
3 receive a liberal construction as will best effectuate those
4 purposes, and no provision is intended to receive a strict or
5 limited construction.

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

9 § 4302. Definitions.

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

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

17 § 4303. Terms of contracts.

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

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

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

30 (2) Where the head of the government agency determines

1 in writing that the retention of the right to regulate is not
2 necessary to protect the general welfare.

3 CHAPTER 45

4 ANTIBID-RIGGING

5 Sec.

6 4501. Short title of chapter.

7 4502. Definitions.

8 4503. Prohibited activities.

9 4504. Civil action and damages.

10 4505. Suspension or debarment.

11 4506. Liability for increased costs.

12 4507. Noncollusion affidavits.

13 4508. Responsibility for enforcement.

14 4509. Investigation.

15 § 4501. Short title of chapter.

16 This chapter shall be known and may be cited as the Antibid-
17 Rigging Act.

18 § 4502. Definitions.

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

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

27 (1) Agreeing to sell items or services at the same
28 price.

29 (2) Agreeing to submit identical bids.

30 (3) Agreeing to rotate bids.

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

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

5 (6) Agreeing to set up territories to restrict
6 competition.

7 (7) Agreeing not to submit bids.

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

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

15 § 4503. Prohibited activities.

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

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

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

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

30 (c) Fines and imprisonment.--Any person who violates this

1 section commits a felony of the third degree and shall, upon
2 conviction, be sentenced to pay a fine of not more than
3 \$1,000,000, if an entity other than an individual, or a fine of
4 not more than \$50,000, if an individual, or to serve a term of
5 imprisonment for not more than three years, or both.

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

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

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

19 (1) The prior record and the number of previous
20 violations.

21 (2) The net worth of the person.

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

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

27 (h) Limitation on prosecution.--No criminal prosecution
28 under this section shall be brought against a person who has
29 been previously charged by information or indictment with a
30 criminal violation of the Federal antitrust laws, based upon the

1 same allegedly unlawful conduct upon which a criminal
2 prosecution under this chapter could be based, where jeopardy
3 has attached under the Federal prosecution.

4 § 4504. Civil action and damages.

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

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

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

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

27 (e) Conviction to be dispositive of liability.--Any
28 conviction under section 4503 shall be dispositive of the
29 liability of the participants with the only issues for trial
30 being the fact and amount of damages.

1 § 4505. Suspension or debarment.

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

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

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

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

19 § 4506. Liability for increased costs.

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

27 § 4507. Noncollusion affidavits.

28 Noncollusion affidavits may be required by rule or regulation
29 of any government agency for all persons. Any requirement for
30 noncollusion affidavits shall be set forth in the invitation to

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

24 § 4508. Responsibility for enforcement.

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

29 (b) Civil action.--The Office of Attorney General shall have
30 the authority to bring civil action under section 4504 (relating

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

12 § 4509. Investigation.

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

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

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

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

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

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

15 § 2310. Sovereign immunity reaffirmed; specific waiver.

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

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

30 § 763. Direct appeals from government agencies.

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

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

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

13 * * *

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

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

23 Section 6. (a) The following acts and parts of acts are
24 repealed:

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

30 Act of June 12, 1879 (P.L.170, No.187), entitled "An act to

1 carry out the provisions of section twelve, article three, of
2 the constitution, relative to contracts for supplies for the
3 legislature and the various departments of the state
4 government."

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

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

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

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

28 Sections 478, 2401.1(19), 2403(a), (b), (c) and (g), 2405,
29 2406(g), 2408, 2409, 2409.1, 2410, 2412, 2413 and 2414 of the
30 act of April 9, 1929 (P.L.177, No.175), known as The

1 Administrative Code of 1929.

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

4 Act of January 2, 1934 (Sp.Sess., 1933 P.L.200, No.41),
5 entitled "An act authorizing officers, departments, boards and
6 commissions of any political subdivision of the Commonwealth,
7 and cities, counties, boroughs, incorporated towns, townships,
8 school districts, to make adjustments with certain supply
9 contractors to reimburse losses sustained in performance of
10 contracts under certain circumstances."

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

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

23 Act of April 12, 1945 (P.L.220, No.99), entitled "An act
24 authorizing the Commonwealth and any administrative department,
25 boards, and commissions thereof acting through the Department of
26 Property and Supplies, and political subdivisions of the
27 Commonwealth, including municipal authorities, to enter into
28 contracts with the United States of America, or any agency
29 thereof, for the purchase, lease, or other acquisition of
30 property, real or personal, offered for sale pursuant to the

1 Surplus Property Act of one thousand nine hundred forty-four,
2 without complying with any requirement of existing law as to
3 specifications, advertising, award of contract, and approval of
4 purchases by a State agency receiving competitive bids, or the
5 delivery of property purchased before payment therefor."

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

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

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

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

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

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

30 Act of October 26, 1972 (P.L.1017, No.247), entitled "An act

1 relating to the prevention of environment pollution and the
2 preservation of public natural resources in construction
3 projects."

4 ~~Act of March 3, 1978 (P.L.6, No.3), known as the Steel~~ <—
5 ~~Products Procurement Act.~~

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

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

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

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

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

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

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

24 Act of January 23, 1974 (P.L.9, No.4), entitled "An act
25 prescribing the procedure, after the opening of bids, for the
26 withdrawal of bids on certain public contracts, setting forth
27 the rights of the parties involved and providing penalties,"
28 except insofar as the act applies to the leases of real
29 property.

30 Act of May 10, 1996 (P.L.153 No.29), known as the Guaranteed

1 Energy Savings Act.

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

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

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

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

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

27 Act of June 23, 1931 (P.L.1181, No.321), entitled "An act
28 authorizing persons, co-partnerships, associations, and
29 corporations, who, whether as sub-contractor or otherwise, have
30 furnished material or supplied or performed labor in connection

1 with any public work or improvement, to intervene in or
2 institute actions on certain bonds given to the Commonwealth or
3 to municipal corporations in connection with the performance of
4 public contracts; fixing the time within which such actions must
5 be brought, and the amounts recoverable therein; and providing
6 for distribution of amounts recovered; and prescribing
7 procedure."

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

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

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

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

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

25 EXCEPT AS EXPLICITLY STATED IN THE ADDITION OF 62 PA.C.S. § <—
26 322(6), SECTION 1 OF THE ACT OF MAY 1, 1913 (P.L.155, NO.104),
27 ENTITLED "AN ACT REGULATING THE LETTING OF CERTAIN CONTRACTS FOR
28 THE ERECTION, CONSTRUCTION, AND ALTERATION OF PUBLIC BUILDINGS."

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

1 Section 303 of the act of April 9, 1929 (P.L.343, No.176),
2 known as The Fiscal Code.

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

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

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

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

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

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