
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 5

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

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 20, 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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20 The General Assembly of the Commonwealth of Pennsylvania

21 hereby enacts as follows:

22 Section 1. Title 62 of the Pennsylvania Consolidated

23 Statutes is amended by adding parts to read:

24 TITLE 62

25 PROCUREMENT

26 Part

27 I. Commonwealth Procurement Code

28 II. General Procurement Provisions

29 PART I

30 COMMONWEALTH PROCUREMENT CODE

1 Chapter

2 1. General Provisions

3 3. Procurement Organization

4 5. Source Selection and Contract Formation

5 7. (Reserved)

6 9. Procurement of Construction and Design Professional
7 Services

8 11. (Reserved)

9 13. (Reserved)

10 15. Supply Management

11 17. Legal and Contractual Remedies

12 19. Intergovernmental Relations

13 21. Small and Disadvantaged Businesses

14 23. Ethics in Public Contracting

15 CHAPTER 1

16 GENERAL PROVISIONS

17 Sec.

18 101. Short title of part.

19 102. Application of part.

20 103. Definitions.

21 104. General principles of law otherwise applicable.

22 105. Determinations.

23 106. Public access to procurement information.

24 107. Reciprocal limitations.

25 108. Recycled materials.

26 § 101. Short title of part.

27 This part shall be known and may be cited as the Commonwealth
28 Procurement Code.

29 § 102. Application of part.

30 (a) Application to Commonwealth procurement.--This part

1 applies to every expenditure of funds, other than the investment
2 of funds, by Commonwealth agencies under any contract,
3 irrespective of their source, including Federal assistance
4 moneys except as specified in section 2108 (relating to
5 compliance with Federal requirements). This part does not apply
6 to grants ~~nor does it~~ EXCEPT WHERE THE PRIMARY PURPOSE OF THE ←
7 GRANT IS TO PROCURE THE CONSTRUCTION OF BUILDINGS FOR THE
8 GRANTOR. THIS PART DOES NOT apply to contracts between
9 Commonwealth agencies or between the Commonwealth and its
10 political subdivisions or other governments except as provided
11 in Chapter 19 (relating to intergovernmental relations). Nothing
12 in this part or in accompanying regulations shall prevent any
13 Commonwealth agency or political subdivision from complying with
14 the terms and conditions of any grant, gift, bequest or
15 cooperative agreement.

16 (b) Application to disposal of Commonwealth supplies.--This
17 part applies to the disposal of supplies of Commonwealth
18 agencies.

19 (c) Application to General Assembly and unified judicial
20 system.--The General Assembly and its agencies and the unified
21 judicial system and its agencies may use the department as its
22 purchasing agency for the purchase of supplies under this part
23 and may use the department to dispose of surplus supplies under
24 Chapter 15 (relating to supply management).

25 (d) Application to certain entities.--Nothing in this part
26 shall apply to the entity created by the act of August 7, 1963
27 (P.L.549, No.290), referred to as the Pennsylvania Higher
28 Education Assistance Agency Act.

29 (E) APPLICATION TO MEDICAL ASSISTANCE PROVIDERS.--NOTHING IN ←
30 THIS PART SHALL APPLY TO MEDICAL ASSISTANCE PROVIDER AGREEMENTS

1 ENTERED INTO BY THE DEPARTMENT OF PUBLIC WELFARE UNDER THE
2 MEDICAL ASSISTANCE PROGRAMS.

3 ~~(e)~~ (F) Impact on existing acts.--Nothing in this part shall ←
4 affect the scope, effect or applicability of the act of August
5 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing
6 Wage Act, the act of March 3, 1978 (P.L.6, No.3), known as the
7 Steel Products Procurement Act, and the act of July 23, 1968
8 (P.L.686, No.226), entitled "An act equalizing trade practices
9 in public works procurement; authorizing the purchase by the
10 Commonwealth, its political subdivisions, and all public
11 agencies, of aluminum and steel products produced in a foreign
12 country, provided the foreign country does not prohibit or
13 discriminate against the importation to, sale or use in the
14 foreign country of supplies, material or equipment manufactured
15 in this Commonwealth; establishing procedures for determining
16 whether foreign countries discriminate against supplies,
17 materials or equipment manufactured in this Commonwealth; and
18 imposing penalties and providing for relief for violation of
19 this act."

20 § 103. Definitions.

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

26 "Change order." A written order signed by the contracting
27 officer directing the contractor to make changes which the
28 changes clause of the contract authorizes the contracting
29 officer to order. The change order may be either with the
30 consent of the contractor or a unilateral order by the

1 contracting officer.

2 "Commonwealth agency." An executive agency, an independent
3 agency or a State-affiliated entity.

4 "Construction." The process of building, altering,
5 repairing, improving or demolishing any public structure or
6 building or other public improvements of any kind to any public
7 real property. The term does not include the routine operation
8 or maintenance of existing structures, buildings or real
9 property.

10 "Contract." A type of written agreement, regardless of what
11 it may be called, for the procurement or disposal of supplies,
12 services or construction.

13 "Contract modification." A written alteration in
14 specifications, delivery point, rate of delivery, period of
15 performance, price, quantity or other provisions of any contract
16 accomplished by mutual action of the parties to the contract.

17 "Contracting officer." A person authorized to enter into and
18 administer contracts and make written determinations with
19 respect to contracts.

20 "Department." The Department of General Services of the
21 Commonwealth.

22 "Design/Build contract." A construction contract in which
23 the contractor is responsible for both the design and
24 construction of any public structure or building or other public
25 improvements of any kind to any public real property.

26 "Employee." An individual drawing a salary or wages from a
27 Commonwealth agency, whether elected or not, and any
28 noncompensated individual performing personal services for any
29 Commonwealth agency.

30 "Executive agency." The Governor and the departments,

1 boards, commissions, authorities and other officers and agencies
2 of the Commonwealth. The term does not include any court or
3 other officer or agency of the unified judicial system, the
4 General Assembly and its officers and agencies or any
5 independent agency or State-affiliated entity.

6 "Firm, fixed-price contract." A contract where the total
7 amount to be paid to the contractor is fixed and is not subject
8 to adjustment by reason of the cost experience of the
9 contractor. The term includes contracts where the unit price is
10 set but the total price varies because actual quantities
11 purchased deviate from the quantities estimated to be purchased.
12 The term also includes contracts where the price may be adjusted
13 in accordance with a contractually established price adjustment
14 provision which is not based upon the contractor's costs.

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

22 "Independent agency." Boards, commissions and other agencies
23 and officers of the Commonwealth which are not subject to the
24 policy supervision and control of the Governor. The term does
25 not include any State-affiliated entity, any court or other
26 officer or agency of the unified judicial system, the General
27 Assembly and its officers and agencies, any State-related
28 institution, political subdivision or any local, regional or
29 metropolitan transportation authority.

30 "Policy statement." Any document, except an adjudication,

1 regulation or privileged communication prepared by a
2 Commonwealth agency which sets forth substantive or procedural
3 personal or property rights, privileges, immunities, duties,
4 liabilities or obligations of the public or any person,
5 including any document interpreting or implementing any statute
6 enforced or administered by the agency.

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

14 "Purchasing agency." A Commonwealth agency authorized by
15 this part or by other law to enter into contracts for itself or
16 as the agent of another Commonwealth agency. When purchasing for
17 another Commonwealth agency, the purchasing agency acts on
18 behalf of the principal which needs the supplies, services and
19 construction and shall coordinate and cooperate with that
20 agency.

21 "Regulation." A regulation as defined in 45 Pa.C.S. § 501
22 (relating to definitions). This term shall include the
23 amendment, revision or otherwise alteration of the terms and
24 provisions of a regulation.

25 "Services." The furnishing of labor, time or effort by a
26 contractor not involving the delivery of a specific end product
27 other than drawings, specifications or reports which are merely
28 incidental to the required performance. The term shall include
29 the routine operation or maintenance of existing structures,
30 buildings or real property. The term does not include employment

1 agreements, OR collective bargaining agreements ~~or agreements~~ ←
2 ~~with litigation consultants~~. The term includes utility services
3 and those services formerly provided by public utilities such as
4 electrical, telephone, water and sewage service.

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

10 "State-affiliated entity." A Commonwealth authority or a
11 Commonwealth entity. The term includes the Pennsylvania Turnpike
12 Commission, the Pennsylvania Housing Finance Agency, the
13 Pennsylvania Municipal Retirement System, the Pennsylvania
14 Infrastructure Investment Authority, the State Public School
15 Building Authority, the Pennsylvania Higher Educational
16 Facilities Authority and the State System of Higher Education.
17 The term does not include any court or other officer or agency
18 of the unified judicial system, the General Assembly and its
19 officers and agencies, any State-related institution, political
20 subdivision or any local, regional or metropolitan
21 transportation authority.

22 "State-related institution." The Pennsylvania State
23 University, the University of Pittsburgh, Lincoln University or
24 Temple University.

25 "Statewide requirements contract." A contract entered into
26 by the Department of General Services as purchasing agency which
27 covers the annual, semiannual or quarterly contract requirements
28 of all Commonwealth agencies and allows the agencies to order
29 needed supplies directly from the contractor.

30 "Supplies." Any property, including, but not limited to,

1 equipment, materials, printing, insurance and leases of and
2 installment purchases of tangible or intangible personal
3 property. The term does not include real property ~~or~~, leases of <—
4 real property OR ALCOHOLIC BEVERAGES OR LIQUOR PURCHASED FOR <—
5 RESALE BY THE PENNSYLVANIA LIQUOR CONTROL BOARD.

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

8 § 104. General principles of law otherwise applicable.

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

12 § 105. Determinations.

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

15 § 106. Public access to procurement information.

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

22 § 107. Reciprocal limitations.

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

29 (1) The award of contracts to the lowest responsible
30 bidder generally provides for the most economical procurement

1 of supplies and construction.

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

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

8 (4) The application of this preference or prohibition by
9 other states diminishes or eliminates opportunities for
10 bidders and manufacturers who reside in this Commonwealth to
11 obtain construction contracts from or to sell supplies to
12 states that have this preference, thereby resulting in the
13 loss of business for resident bidders and manufacturers.
14 Therefore, in order to offset or counteract the
15 discriminatory practices of other states, discourage other
16 states from applying a preference and ultimately to aid
17 employment, help business and industry located in this
18 Commonwealth, attract new business and industry to this
19 Commonwealth and provide additional tax revenue both from
20 those receiving contracts and those employed by contractors,
21 the General Assembly hereby declares that it is the policy of
22 this Commonwealth to respond in like manner against those
23 states that apply preferences or prohibitions by giving a
24 similar offsetting preference to residents in this
25 Commonwealth and bidders offering supplies manufactured in
26 this Commonwealth and by prohibiting the purchase or use of
27 certain supplies, in accordance with the provisions of this
28 section.

29 (c) Preference for supplies.--In all procurements of
30 supplies exceeding the amount established by the department for

1 small procurements under section 514 (relating to small
2 procurements), all Commonwealth agencies shall give preference
3 to those bidders or offerors offering supplies produced,
4 manufactured, mined, grown or performed in this Commonwealth as
5 against those bidders or offerors offering supplies produced,
6 manufactured, mined, grown or performed in any state that gives
7 or requires a preference to supplies produced, manufactured,
8 mined, grown or performed in that state. The amount of the
9 preference shall be equal to the amount of the preference
10 applied by the other state for that particular supply.

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

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

28 (f) Listing discriminating states.--The department shall
29 prepare a list of the states which apply a preference favoring
30 in-State supplies or bidders or offerors or a prohibition

1 against the use of out-of-State supplies or bidders or offerors
2 and shall publish the list in the Pennsylvania Bulletin. When a
3 state applies a new preference or prohibition, the department
4 shall publish that information in the Pennsylvania Bulletin as
5 an addition to the original list.

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

1 supplies, the bid or proposal shall be rejected.

2 (h) Federal funds.--The provisions of this section shall not
3 be applicable when the application of this section may
4 jeopardize the receipt of Federal funds.

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

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

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

17 § 108. Recycled materials.

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

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

30

CHAPTER 3

1 acts as its own purchasing agency it shall use the procedures
2 provided in this part for any procurement of supplies, services
3 or construction.

4 (c) Exceptions for executive and independent agencies.--The
5 following supplies, services and construction need not be
6 procured through the department, nor shall the procurement
7 policy be established by the department, but shall nevertheless
8 be procured by the appropriate purchasing agency, subject to the
9 requirements of this part:

10 (1) Bridge, highway, dam, airport (except vertical
11 construction), railroad or other heavy or specialized
12 construction including:

13 (i) The construction of facilities and improvements
14 by the Department of Conservation and Natural Resources
15 in State parks and State forests.

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

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

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

25 (4) Perishable food stuffs.

26 (5) The procurement of services, the renting of
27 machinery and equipment and the licensing of specialized
28 computer software by the Office of Attorney General, the
29 Department of the Auditor General and the Treasury
30 Department.

1 (d) Application to State-affiliated entities.--State-
2 affiliated entities may formulate their own procurement policy
3 governing the procurement, management, control and disposal of
4 supplies, services and construction and may act as their own
5 purchasing agency for the procurement of supplies, services and
6 construction, but they are required to use the procedures
7 provided in this part for such procurement.

8 SUBCHAPTER B

9 PROCUREMENT POLICY

10 Sec.

11 311. Powers and duties.

12 312. Procurement regulations.

13 § 311. Powers and duties.

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

22 § 312. Procurement regulations.

23 Regulations shall be promulgated by the department as
24 provided in 45 Pa.C.S. Part II (relating to publication and
25 effectiveness of Commonwealth documents) and by the appropriate
26 purchasing agencies for those matters contained in section
27 301(c) (relating to procurement responsibility). The regulations
28 shall be subject to the act of June 25, 1982 (P.L.633, No.181),
29 known as the Regulatory Review Act. The department may not
30 delegate its power to promulgate regulations. No regulation may

1 change any commitment, right or obligation of any Commonwealth
2 agency or of a contractor under a contract in existence on the
3 effective date of the regulation.

4 SUBCHAPTER C

5 POWERS AND DUTIES OF DEPARTMENT

6 Sec.

7 321. Powers and duties.

8 322. Specific construction powers, duties and procedures.

9 § 321. Powers and duties.

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

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

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

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

22 (4) Coordinate programs of executive and independent
23 agencies for the inspection, testing and acceptance of
24 supplies and construction to ensure availability of
25 facilities and to avoid a duplication of functions.

26 (5) Establish and maintain a central office where
27 businesses operating in this Commonwealth may obtain
28 information pertaining to the procurement needs of
29 Commonwealth agencies.

30 (6) Participate in the management and maintenance of a

1 contractor responsibility program in coordination with the
2 Office of the Budget and other agencies as may be directed by
3 the Governor.

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

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

11 (1) The Commonwealth agency or State-related institution
12 shall notify the department to have plans and specifications
13 for the project.

14 (2) Promptly after the notice, in such cases, or
15 promptly after any appropriation made to it becomes
16 available, the department shall, if necessary, select an
17 architect and/or an engineer, in accordance with the
18 selection procedures of section 905 (relating to procurement
19 of design professional services) to design the work and
20 prepare the specifications therefor. The department may, as
21 an alternative, enter into a design/build contract IN ←
22 ACCORDANCE WITH SECTION 511 (RELATING TO METHODS OF SOURCE
23 SELECTION). Such design/build contracts shall be subject to
24 the requirements of this act and the provisions of the act of
25 August 15, 1961 (P.L.987, No.442), known as the Pennsylvania
26 Prevailing Wage Act, and ACT. DESIGN/BUILD CONTRACTS SHALL ←
27 ALSO BE SUBJECT TO the act of May 1, 1913 (P.L.155, No. 104),
28 entitled "An act regulating the letting of certain contracts
29 for the erection, construction, and alteration of public
30 buildings," to the extent provided in paragraph (6).

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

4 (i) A date for the completion of the plans and
5 specifications.

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

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

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

26 The architect or engineer in preparing plans and
27 specifications shall consult with the department and the
28 department shall insist upon the prompt completion of the
29 plans and specifications, within the time prescribed in the
30 architect's or engineer's contracts unless it shall

1 specifically agree in writing to an extension thereof.

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

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

1 damages.

2 ~~(6) The department may award construction contracts for~~ <—
3 ~~all the work or separately for parts of the work or both on~~
4 ~~all projects under \$25,000 base construction cost.~~

5 (6) FOR CONSTRUCTION CONTRACTS WHERE THE TOTAL <—
6 CONSTRUCTION COSTS ARE LESS THAN \$25,000, THE DEPARTMENT
7 SHALL NOT BE REQUIRED TO COMPLY WITH THE ACT OF MAY 1, 1913
8 (P.L.155, NO.104), ENTITLED "AN ACT REGULATING THE LETTING OF
9 CERTAIN CONTRACTS FOR THE ERECTION, CONSTRUCTION, AND
10 ALTERATION OF PUBLIC BUILDINGS," AND THE DEPARTMENT MAY AWARD
11 SUCH CONTRACTS IN ACCORDANCE WITH SECTION 511. All projects
12 equal to or exceeding \$25,000 shall be subject to the act of
13 May 1, 1913 (P.L.155, No.104), entitled "An act regulating
14 the letting of certain contracts for the erection,
15 construction, and alteration of public buildings." Whenever
16 the department enters into a single contract for a project,
17 in the absence of good and sufficient reasons, the contractor
18 shall pay each subcontractor within 15 days of receipt of
19 payment from the department, an amount equal to the
20 percentage of completion allowed to the contractor on the
21 account of the subcontractor's work. The contractor shall
22 also require the subcontractor to make similar payments to
23 his subcontractors.

24 (7) The department shall have the right to engage the
25 services of any architect or consulting or supervising
26 engineer or engineers, whom it may deem necessary for the
27 proper designing of or inspection or supervision of projects
28 constructed, altered or enlarged by the department under this
29 section in accordance with the selection procedures of
30 section 905.

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

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

12 SUBCHAPTER D

13 POWERS AND DUTIES OF THE BOARD OF COMMISSIONERS OF
14 PUBLIC GROUNDS AND BUILDINGS AND THE OFFICE OF THE BUDGET

15 Sec.

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

17 327. Office of the Budget.

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

19 No lease of real estate for use by an executive or
20 independent agency and no sole source procurement of supplies
21 for an executive or independent agency for which the department
22 acts as the purchasing agency shall be valid or effective
23 unless, upon review, it is approved by the Board of
24 Commissioners of Public Grounds and Buildings. Where the board
25 is reviewing a proposed sole source lease or procurement being
26 submitted pursuant to section 515 (relating to sole source
27 procurement), approval of the lease or procurement shall require
28 the unanimous vote of the board. Where the board is reviewing a
29 proposed non-sole source lease, the lease shall be approved when
30 one member of the board votes to approve the lease. All votes

1 shall take place at a public meeting.

2 § 327. Office of the Budget.

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

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

14 ~~(c) Contracts for services. Except for contracts awarded~~ <—
15 ~~pursuant to section 514 (relating to small procurements), the~~
16 ~~Office of the Budget shall review and approve all contracts for~~
17 ~~services for executive agencies and independent agencies and~~
18 ~~State-affiliated entities where the department acts as~~
19 ~~purchasing agency for:~~

20 ~~(1) Fiscal responsibility and budgetary appropriateness.~~

21 ~~(2) Availability of funds.~~

22 (C) COMPTROLLER REVIEW OF CONTRACTS FOR SERVICES.-- <—

23 (1) EXCEPT FOR CONTRACTS AWARDED PURSUANT TO SECTION 514
24 (RELATING TO SMALL PROCUREMENTS), THE COMPTROLLER AUTHORIZED
25 IN PARAGRAPH (2) SHALL REVIEW AND APPROVE ALL CONTRACTS FOR
26 SERVICES FOR:

27 (I) FISCAL RESPONSIBILITY AND BUDGETARY
28 APPROPRIATENESS.

29 (II) AVAILABILITY OF FUNDS.

30 (2) WHERE THE SERVICE CONTRACT IS FOR AN EXECUTIVE

1 AGENCY, INDEPENDENT AGENCY OR STATE-AFFILIATED ENTITY FOR
2 WHICH THE OFFICE OF THE BUDGET ACTS AS COMPTROLLER, THE
3 OFFICE OF THE BUDGET SHALL REVIEW AND APPROVE THE CONTRACT.
4 WHERE THE SERVICE CONTRACT IS FOR AN INDEPENDENT AGENCY OR
5 STATE-AFFILIATED ENTITY FOR WHICH THE OFFICE OF THE BUDGET
6 DOES NOT ACT AS COMPTROLLER, THE FISCAL OFFICE OR COMPTROLLER
7 OF THAT AGENCY OR ENTITY SHALL REVIEW AND APPROVE THE
8 CONTRACT.

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

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

21 SUBCHAPTER E

22 COORDINATION, TRAINING AND EDUCATION

23 Sec.

24 331. Collection of data concerning public procurement.

25 332. Advisory groups.

26 § 331. Collection of data concerning public procurement.

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

1 and reporting supplies, services and construction.

2 § 332. Advisory groups.

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

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

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

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

1 or an advisory group.

2 CHAPTER 5

3 SOURCE SELECTION AND CONTRACT FORMATION

4 Subchapter

5 A. Definitions

6 B. Methods of Source Selection

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

9 D. Qualifications and Duties

10 E. Types of Contracts

11 F. Inspection of Plant and Audit of Records

12 G. Determinations and Reports

13 SUBCHAPTER A

14 DEFINITIONS

15 Sec.

16 501. Definitions.

17 § 501. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

28

SUBCHAPTER B

29

METHODS OF SOURCE SELECTION

30 Sec.

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

12 § 511. Methods of source selection.

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

17 Section 513 (relating to competitive sealed proposals).

18 Section 514 (relating to small procurements).

19 Section 515 (relating to sole source procurement).

20 Section 516 (relating to emergency procurement).

21 Section 517 (relating to multiple awards).

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

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

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

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

30 § 512. Competitive sealed bidding.

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

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

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

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

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

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

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

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

24 Copies of invitations to bid shall be made available to any
25 interested person upon request to the purchasing agency.
26 Purchasing agencies may establish procedures for the
27 distribution of invitations to bid including the imposition of a
28 fee to reimburse the agency for the costs of photocopying and
29 mailing.

30 (d) Bid opening.--Bids shall be opened publicly in the

1 presence of one or more witnesses at the time and place
2 designated in the invitation for bids. The amount of each bid
3 and any other relevant information as may be specified by
4 regulation, together with the name of each bidder, shall be
5 recorded. The record shall be open to public inspection.

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

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

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

28 (2) Withdrawal of erroneous bids after bid opening but
29 before award based on bid mistakes shall be permitted by the
30 written determination of the contracting officer when the

1 bidder requests relief and presents credible evidence that
2 the reason for the lower bid price was a clerical mistake as
3 opposed to a judgment mistake and was actually due to an
4 unintentional arithmetical error or an unintentional omission
5 of a substantial quantity of work, labor, material or
6 services made directly in the compilation of the bid. The
7 request for relief and the supporting evidence must be
8 received by the contracting officer within a reasonable time
9 period after the bid opening. The time period shall be
10 specified by the department.

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

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

27 Extensions of the date for the award may be made by mutual
28 written consent of the contracting officer and the lowest
29 responsible and responsive bidder. Within 30 days of the bid
30 opening the contracting officer shall, if bid security was

1 required by the invitation for bids, return the bid security to
2 all but the lowest and next-to-lowest bidders then under
3 consideration for contract award.

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

11 § 513. Competitive sealed proposals.

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

16 (b) Request for proposals.--Proposals shall be solicited
17 through a request for proposals.

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

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

27 (e) Evaluation.--The relative importance of the evaluation
28 factors shall be fixed prior to opening the proposals. A
29 Commonwealth agency is required to invite its comptroller to
30 participate in the evaluation as a nonvoting member of any

1 evaluation committee.

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

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

18 (h) Contract negotiation.--After selection, the purchasing
19 agency shall proceed to negotiate a contract with the selected
20 offeror.

21 § 514. Small procurements.

22 If the procurement is not the subject of a Statewide
23 requirements contract between the purchasing agency and a
24 contractor, the head of the purchasing agency may authorize in
25 writing procurements without formal bid procedures, not
26 exceeding the amount established by the purchasing agency. The
27 department may authorize procurement OF THE SUPPLY OR SERVICE on <—
28 a no-bid basis for procurements which do not exceed the amount
29 established by the department for small, no-bid procurements.

30 THE DEPARTMENT MAY AUTHORIZE PROCUREMENT ON A NO-BID BASIS FOR <—

1 CONSTRUCTION PROJECTS THAT DO NOT EXCEED A TOTAL CONSTRUCTION
2 COST OF \$10,000. THE AMOUNT OF \$10,000 SHALL BE ADJUSTED
3 ANNUALLY BY THE DEPARTMENT TO REFLECT THE ANNUAL PERCENTAGE
4 CHANGE IN THE COMPOSITE CONSTRUCTION COST INDEX OF THE UNITED
5 STATES DEPARTMENT OF COMMERCE OCCURRING ON THE ONE-YEAR PERIOD
6 ENDING DECEMBER 31 OF EACH YEAR. Procurement requirements shall
7 not be artificially divided so as to constitute a small
8 procurement under this section. Small procurements shall be made
9 in accordance with the requirements of the written authorization
10 and this section. Records of all small procurements shall be
11 transmitted to the purchasing agency.

12 § 515. Sole source procurement.

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

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

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

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

26 (4) It is clearly not feasible to award the contract FOR ←
27 SUPPLIES OR SERVICES on a competitive basis.

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

1 the Auditor General or the Treasury Department.

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

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

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

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

17 (10) ~~It~~ THE CONTRACT FOR SUPPLIES OR SERVICES is in the <—
18 best interest of the Commonwealth.

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

27 § 516. Emergency procurement.

28 The head of a purchasing agency may make or authorize others
29 to make an emergency procurement when there exists a threat to
30 public health, welfare or safety or circumstances outside the

1 control of the agency creates an urgency of need which does not
2 permit the delay involved in using more formal competitive
3 methods. Whenever practical, in the case of a procurement of a
4 supply, at least two bids shall be solicited. A written
5 determination of the basis for the emergency and for the
6 selection of the particular contractor shall be included in the
7 contract file.

8 § 517. Multiple awards.

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

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

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

19 (3) It is administratively or economically impractical
20 to develop or modify specifications because of the
21 heterogeneous nature of the product lines.

22 (4) There is a need for compatibility with existing
23 systems.

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

27 (b) Solicitation process.--Invitations to bid or requests
28 for proposals shall be issued for the supplies, services or
29 construction to be purchased.

30 (c) Public notice.--Public notice of the invitation for bids

1 shall be given in the same manner as provided in section 512(c)
2 (relating to competitive sealed bidding).

3 (d) Receipt of bids or proposals.--Bids shall be opened in
4 the same manner as provided in section 512(d). Proposals shall
5 be received in the same manner as provided in section 513(d)
6 (relating to competitive sealed proposals).

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

10 (1) Awards shall be made to the lowest responsible and
11 responsive bidder or offeror for each designated
12 manufacturer.

13 (2) Awards shall be made to the two or three lowest
14 responsible and responsive bidders or offerors for each
15 designated manufacturer.

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

21 § 518. Competitive selection procedures for certain services.

22 (a) Conditions for use.--The services of accountants,
23 clergy, physicians, lawyers, dentists and other personal
24 services which are not performed by other Commonwealth employees
25 shall be procured in accordance with this section except as
26 authorized under section 514 (relating to small procurements),
27 515 (relating to sole source procurement) or 516 (relating to
28 emergency procurement).

29 (b) Statement of qualifications.--Persons engaged in
30 providing the types of services specified in subsection (a) may

1 submit statements of qualifications and expressions of interest
2 in providing these services. The contracting officer may specify
3 a uniform format for statements of qualifications. Persons may
4 amend these statements at any time by filing a new statement.

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

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

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

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

29 (a) Conditions for use.--Insurance and notary bonds shall be
30 procured by the department in accordance with this section

1 except as authorized under section 515 (relating to sole source
2 procurement) or 516 (relating to emergency procurement).

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

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

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

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

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

30 § 520. Supplies manufactured by, and services performed by,

1 persons with disabilities.

2 ~~(a) General rule. Contracts may be entered into for~~ <—
3 ~~supplies manufactured by, and services performed by, persons~~
4 ~~with disabilities without competition in accordance with this~~
5 ~~section.~~

6 (A) GENERAL RULE.--CONTRACTS FOR SUPPLIES MANUFACTURED BY <—
7 AND SERVICES PERFORMED BY PERSONS WITH DISABILITIES SHALL BE
8 ENTERED INTO IN ACCORDANCE WITH THIS SECTION WITHOUT THE
9 REQUIREMENT FOR COMPETITIVE BIDDING.

10 (b) Fair market price.--Upon request ~~from an agency for~~ <—
11 ~~persons with disabilities~~ OF THE DEPARTMENT and notice to the <—
12 purchasing agency, the department shall determine the fair
13 market price of any supply manufactured by, or service performed
14 by, persons with disabilities and offered for sale to any
15 Commonwealth agency by an agency for persons with disabilities.
16 The department shall revise the prices in accordance with
17 changing market conditions.

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

24 (d) Procurement of supplies manufactured by, and services
25 performed by, persons with disabilities.--Except as provided in
26 subsection (e), all supplies manufactured by, and services
27 furnished by, persons with disabilities shall be procured in
28 accordance with applicable specifications of the department or
29 other Commonwealth agencies from any agency for persons with
30 disabilities whenever the supplies and services are available at

1 a price determined by the department to be the fair market
2 price. The head of a purchasing agency shall annually discuss
3 its needs for supplies or services with ~~the~~ ANY agency for
4 persons with disabilities. ←

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

12 (F) EXCEPTION.--NOTWITHSTANDING SUBSECTION (H), WHEN THE ←
13 COMMONWEALTH ENTERS INTO A CONTRACT UNDER THIS SECTION FOR THE
14 OPERATION OF THE COMMONWEALTH'S DRIVER'S LICENSE PHOTO CENTERS,
15 AT LEAST 70% OF THE AMOUNT PAID BY THE COMMONWEALTH SHALL BE
16 USED TO COVER PAYMENT OF WAGES AND SALARIES TO PERSONS WITH
17 DISABILITIES AND TO COVER ACTUAL MANUFACTURING COSTS, REAL
18 ESTATE LEASE COSTS, PROPERTY INSURANCE AND OTHER COSTS WHICH ARE
19 SPECIFICALLY REQUIRED BY CONTRACT.

20 (G) APPLICATION.--

21 (1) THIS SECTION SHALL NOT SUPERSEDE ANY CONTRACT
22 CURRENTLY IN FORCE BETWEEN A COMMONWEALTH AGENCY AND ANOTHER
23 PARTY.

24 (2) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS
25 CONFERRING UPON ANY PARTY ANY RIGHT OR INTEREST IN ANY
26 CONTRACT ENTERED INTO WITH THE COMMONWEALTH.

27 ~~(f)~~ (H) Definitions.--As used in this section, the following ←
28 words and phrases shall have the meanings given to them in this
29 subsection:

30 "Agency for persons with disabilities." Any charitable,

1 nonprofit agency incorporated under the laws of this
2 Commonwealth and approved by the department through which
3 persons with disabilities manufacture supplies or perform
4 services in this Commonwealth.

5 "Mentally retarded." Subaverage general intellectual
6 functioning which originates during the developmental period and
7 is associated with the impairment of maturation, learning or
8 social adjustment.

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

11 "Physically disabled." A limitation of most activities and
12 functioning by virtue of a severe impairment of the various
13 bodily systems which cannot be eliminated, modified or
14 substantially reduced by the usual rehabilitation services and
15 which precludes competitive employment.

16 "Supply manufactured by, or service performed by, person with
17 disabilities." At least 75% of the personnel either engaged in
18 the direct labor of manufacturing of a product or engaged in the
19 direct labor in performing a service in this Commonwealth must
20 be visually impaired, mentally retarded or physically disabled.
21 In addition, at least 75% of the amount paid by the Commonwealth
22 agency for the product or the service shall be remitted to the
23 agency for persons with disabilities to cover payment of wages
24 and salaries to persons with disabilities and to cover other
25 actual manufacturing costs incurred by the agency for persons
26 with disabilities in manufacturing of a product.

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

1 SUBCHAPTER C

2 CANCELLATION OF INVITATIONS FOR BIDS OR
3 REQUESTS FOR PROPOSALS

4 Sec.

5 521. Cancellation of invitations for bids or requests for
6 proposals.

7 § 521. Cancellation of invitations for bids or requests for
8 proposals.

9 An invitation for bids, a request for proposals or other
10 solicitation may be canceled or any or all bids or proposals may
11 be rejected when it is in the best interests of the
12 Commonwealth. Bids may be rejected in part when specified in the
13 solicitation. The reasons for the cancellation or rejection
14 shall be made part of the contract file.

15 SUBCHAPTER D

16 QUALIFICATIONS AND DUTIES

17 Sec.

18 531. Debarment or suspension.

19 532. Prequalification of bidders and offerors.

20 533. Security and performance bonds.

21 534. Cost or pricing data.

22 535. Printing.

23 § 531. Debarment or suspension.

24 (a) Authority.--After reasonable notice to the person
25 involved and reasonable opportunity for that person to be heard,
26 the head of a purchasing agency, after consultation with the
27 head of the using agency, shall have authority to debar a person
28 ~~for cause from consideration for award of contracts for a period~~ ←
29 ~~of not more than three years or to suspend a person from~~
30 ~~consideration for award of contracts if there is probable cause~~

1 ~~for debarment for a period of not more than three months.~~ FROM
 2 CONSIDERATION FOR THE AWARD OF CONTRACTS. THE DECISION TO DEBAR
 3 SHALL BE BASED UPON SUBSTANTIAL EVIDENCE THAT A CAUSE FOR
 4 DEBARMENT OR SUSPENSION UNDER SUBSECTION (B) HAS OCCURRED. IN
 5 MAKING THE DECISION OF WHETHER TO DEBAR A CONTRACTOR, THE HEAD
 6 OF THE PURCHASING AGENCY SHALL TAKE INTO CONSIDERATION THE
 7 SERIOUSNESS OF ANY VIOLATION AND ANY MITIGATING FACTORS. A
 8 DEBARMENT MAY BE FOR A PERIOD OF NOT MORE THAN THREE YEARS. THE
 9 HEAD OF THE PURCHASING AGENCY MAY SUSPEND A PERSON FROM
 10 CONSIDERATION FOR AN AWARD OF CONTRACTS FOR A PERIOD OF UP TO
 11 THREE MONTHS IF THERE IS PROBABLE CAUSE FOR DEBARMENT.

12 (b) Causes for debarment or suspension.--The causes for
 13 debarment or suspension include:

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

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

- 22 (i) obtaining;
- 23 (ii) attempting to obtain; or
- 24 (iii) performing a public contract or subcontract.

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

- 28 (3) Violation of Federal or State antitrust statutes.
- 29 (4) Violation of any Federal or State law regulating
 30 campaign contributions.

1 (5) Violations of any Federal or State environmental
2 law.

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

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

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

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

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

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

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

23 (ii) Offering unbalanced bids.

24 (iii) Failure to complete the work in the time frame
25 specified in the contract.

26 (iv) Being declared in default on prior work or
27 project.

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

30 (vi) Making false statements or failing to provide

1 information or otherwise to cooperate with the
2 contracting agency, the Office of State Inspector General
3 or other Commonwealth authorities.

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

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

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

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

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

18 (d) Notice of decision.--A copy of the decision under
19 subsection (c) shall be delivered by registered mail to the
20 contractor, any other party intervening or any interested party
21 that has provided written notice to the purchasing agency of
22 that party's interest in the decision under subsection (c).

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

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

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

6 § 532. Prequalification of bidders and offerors.

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

9 § 533. Security and performance bonds.

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

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

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

30 (3) After the bids are opened, they shall be irrevocable

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

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

16 (b) Contract for construction.--Bid security and performance
17 bonds as required for contracts for construction are provided
18 for in sections 902 (relating to bid or proposal security) and
19 903 (relating to contract performance and payment bonds).

20 § 534. Cost or pricing data.

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

27 (1) the award of any contract under section 513
28 (relating to competitive sealed proposals) or 515 (relating
29 to sole source procurement) where, under either section, the
30 total contract price is expected to exceed an amount

1 established by the head of the purchasing agency; or

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

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

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

16 (1) When responsive proposals are received from two or
17 more offerors.

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

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

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

25 § 535. Printing.

26 No contract for printing shall be entered into with any
27 contractor until the purchasing agency is satisfied that the
28 contractor is the owner or lessee of machinery and equipment
29 necessary to properly and promptly perform any orders issued to
30 the contractor under the proposed printing contract.

1 SUBCHAPTER E

2 TYPES OF CONTRACTS

3 Sec.

4 541. Approval of accounting system.

5 542. Multiterm contracts.

6 543. Effective contracts.

7 § 541. Approval of accounting system.

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

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

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

16 Notwithstanding the preceding, a contract may be used without a
17 prior written determination where the contract is a firm fixed
18 price contract, or a contract awarded under section 516
19 (relating to emergency procurement).

20 § 542. Multiterm contracts.

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

29 (b) Cancellation for unavailability of funds in succeeding
30 fiscal periods.--When funds are not appropriated or otherwise

1 made available to support continuation of performance in a
2 subsequent fiscal period, the contract shall be canceled, and
3 the contractor shall be reimbursed for the reasonable value of
4 any nonrecurring costs incurred but not amortized in the price
5 of the supplies, services or construction delivered under the
6 contract. Such reimbursement shall not include loss of
7 anticipated profit, loss of use of money or administrative or
8 overhead costs. The cost of cancellation may be paid from any
9 appropriations available for that purpose. The contractor shall
10 not be entitled to any reimbursement where the Commonwealth
11 elects not to exercise a renewal or extension option provided
12 for in the contract.

13 § 543. Effective contracts.

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

17 (b) Certain contracts.--Those Statewide requirements
18 contracts where the total dollar purchasing amount, based upon
19 estimated quantities, is in excess of \$1,000,000 shall not be
20 effective unless first approved by the State Treasurer. The
21 \$1,000,000 amount shall be adjusted each year by the department
22 to reflect the annual percentage change in the Composite
23 Construction Cost Index of the United States Department of
24 Commerce occurring in the one-year period ending December 31
25 each year.

26

SUBCHAPTER F

27

INSPECTION OF PLANT AND AUDIT OF RECORDS

28 Sec.

29 551. Right to inspect plant.

30 552. Right to audit records.

1 § 551. Right to inspect plant.

2 The purchasing agency may, at reasonable times, inspect the
3 part of the plant or place of business of a contractor or any
4 subcontractor which is related to the performance of any
5 contract awarded or to be awarded by the purchasing agency.

6 § 552. Right to audit records.

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

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

29

SUBCHAPTER G

30

DETERMINATIONS AND REPORTS

- 1 Sec.
2 561. Finality of determinations.
3 562. Anticompetitive practices.
4 563. Retention of procurement records.
5 564. Record of certain actions.

6 § 561. Finality of determinations.

7 The determinations required by the following sections are
8 final and conclusive unless they are clearly erroneous,
9 arbitrary, capricious or contrary to law:

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

11 Section 513(a) and (g) (relating to competitive sealed
12 proposals).

13 Section 515 (relating to sole source procurement).

14 Section 516 (relating to emergency procurement).

15 Section 518(e) (relating to competitive selection
16 procedures for certain services).

17 Section 519(f) (relating to selection procedure for
18 insurance and notary bonds).

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

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

21 § 562. Anticompetitive practices.

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

1 transmitted to the Attorney General who shall investigate the
2 reports.

3 § 563. Retention of procurement records.

4 All procurement records, including any written determinations
5 issued in accordance with section 561 (relating to finality of
6 determinations), shall be retained for a minimum of three years
7 from the date of final payment under the contract and disposed
8 of in accordance with records retention guidelines and schedules
9 as provided by law. In accordance with applicable law, all
10 retained documents shall be made available to the State
11 Treasurer, Auditor General, General Counsel, Inspector General
12 and Attorney General upon request.

13 § 564. Record of certain actions.

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

20 (1) Each contractor's name.

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

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

24 CHAPTER 7

25 (Reserved)

26 CHAPTER 9

27 PROCUREMENT OF CONSTRUCTION AND DESIGN

28 PROFESSIONAL SERVICES

29 Sec.

30 901. Definitions.

- 1 902. Bid or proposal security.
- 2 903. Contract performance security and payment bonds.
- 3 904. Copies of bonds.
- 4 905. Procurement of design professional services.

5 § 901. Definitions.

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

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

30 § 902. Bid or proposal security.

1 (a) Requirement for bid security.--Bidders or offerors may
2 be required to provide bid or proposal security for construction
3 contracts. Bid or proposal security shall be in the form of a
4 certified or bank check or a bond provided by a surety company
5 authorized to do business in this Commonwealth or another form
6 of security as specified in the invitation for bids or request
7 for proposals.

8 (b) Amount of bid or proposal security.--Bid security shall
9 be at least in the minimum amount or percentage of the amount of
10 the bid as shall be specified in the advertisement, the
11 invitation for bids or the request for proposals.

12 (c) Rejection of bids or proposals.--When the invitation for
13 bids or the request for proposals requires security,
14 noncompliance with the instructions in the invitation for bids
15 or the request for proposals requires that the bid or proposal
16 be rejected unless it is determined that the bid or proposal
17 fails to comply with the security requirements in a
18 nonsubstantial manner.

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

25 § 903. Contract performance security and payment bonds.

26 (a) When required and amounts.--For construction contracts
27 awarded for amounts between \$25,000 and \$100,000, the purchasing
28 agency shall require contract performance security, in an amount
29 equal to at least 50% of the contract price, as the purchasing
30 agency, in its discretion, determines necessary to protect the

1 interests of the Commonwealth. When a construction contract is
2 awarded in excess of \$100,000, the following bonds shall be
3 delivered to the purchasing agency and shall be binding on the
4 parties upon the execution of the contract:

5 (1) A performance bond, executed by a surety company
6 authorized to do business in this Commonwealth and made
7 payable to the Commonwealth, in an amount equal to 100% of
8 the price specified in the contract and conditioned upon the
9 faithful performance of the contract in accordance with the
10 plans, specifications and conditions of the contract.

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

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

28 (c) Authority to require additional bonds.--Nothing in this
29 section shall be construed to limit the authority of the
30 Commonwealth agency to require a performance bond, payment bond

1 or other security in addition to those bonds or in circumstances
2 other than specified in subsection (a).

3 (d) Actions on payment bonds.--

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

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

26 (3) Notice shall be served by registered mail in an
27 envelope addressed to the contractor at any place where its
28 office is regularly maintained for the transaction of
29 business or served in any manner in which legal process may
30 be served in the manner provided by law for the service of a

1 summons except that the service need not be made by a public
2 officer.

3 (e) Adjustment of threshold amount.--The dollar thresholds
4 set forth in subsection (a) shall be adjusted annually by the
5 department to reflect the annual percentage change in the
6 Composition Construction Cost Index of the United States
7 Department of Commerce occurring in the one-year period ending
8 on December 31 of each year.

9 § 904. Copies of bonds.

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

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

16 (c) Evidence.--A copy of any payment bond and of the
17 contract for which the bond was given constitutes prima facie
18 evidence of the contents, execution and delivery of the original
19 of the bond and contract.

20 § 905. Procurement of design professional services.

21 (a) Applicability.--Design professional services shall be
22 procured as provided in this section except as authorized by
23 sections 514 (relating to small procurements), 515 (relating to
24 sole source procurement) and 516 (relating to emergency
25 procurement).

26 (b) Policy.--It is the policy of this Commonwealth to
27 publicly announce all requirements for design professional
28 services and to award contracts for design professional services
29 on the basis of demonstrated competence and qualification for
30 the types of services required. There shall be a committee to

1 review the qualifications, experience and work of design
2 professionals seeking contracts with purchasing agencies.

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

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

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

30 (1) The committee shall give public notice of projects

1 requiring design services and publicly recommend to the
2 purchasing agency three qualified design professionals for
3 each project.

4 (2) If desired, the committee may conduct discussions
5 with three or more professionals regarding anticipated design
6 concepts and proposed methods of approach to the assignment.
7 The committee shall select, based upon criteria established
8 by the head of the purchasing agency, no less than three
9 design professionals deemed to be the most highly qualified
10 to provide the services required. In exercising its
11 responsibility, the committee shall consider the following
12 factors:

13 (i) An equitable distribution of contracts to design
14 professionals.

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

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

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

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

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

27 (1) Where the amount of the base construction allocation
28 is less than \$20,000,000, the head of the purchasing agency
29 shall choose one of the three firms approved by the selection
30 committee. The fee to be paid to the appointed design

1 professional may be established by the selection committee or
2 may be negotiated at the discretion of the head of the
3 purchasing agency. The \$20,000,000 threshold shall be
4 adjusted by the department to reflect the annual percentage
5 change in the Composite Construction Cost Index of the United
6 States Department of Commerce occurring in the one-year
7 period ending December 31 each year.

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

1 any of the selected firms, the selection committee shall
2 choose additional qualified firms and the head of the
3 purchasing agency shall continue negotiations in accordance
4 with this subsection until an agreement is reached.

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

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

7 CHAPTER 11

8 (RESERVED)

9 CHAPTER 13

10 (Reserved)

11 CHAPTER 15

12 SUPPLY MANAGEMENT

13 Sec.

14 1501. Definitions.

15 1502. Supply management regulations.

16 1503. Proceeds from sale or disposal of surplus supplies.

17 1504. Exception.

18 § 1501. 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 "Excess supplies." All nonexpendable supplies having a
23 remaining useful life but which are no longer required by the
24 using agency in possession of the supplies.

25 "Expendable supplies." All tangible supplies other than
26 nonexpendable supplies.

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

30 "Supplies." Supplies owned by Commonwealth agencies.

1 "Surplus supplies." Nonexpendable supplies no longer having
2 any use to any Commonwealth agency. The term includes obsolete
3 supplies, scrap materials and nonexpendable supplies that have
4 completed their useful life cycle. The term does not include
5 road or bridge materials or equipment that have been declared
6 surplus by the Department of Transportation under section 510 of
7 the act of April 9, 1929 (P.L.177, No.175), known as The
8 Administrative Code of 1929.

9 § 1502. Supply management regulations.

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

12 (1) The management of supplies during their entire life
13 cycle.

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

21 (3) Transfer of excess supplies.

22 § 1503. Proceeds from sale or disposal of surplus supplies.

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

1 which the costs were paid by the department.

2 § 1504. Exception.

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

6 CHAPTER 17

7 LEGAL AND CONTRACTUAL REMEDIES

8 Subchapter

9 A. General Provisions

10 B. Prelitigation Resolution of Controversies

11 C. Board of Claims

12 D. Solicitations or Awards in Violation of Law

13 E. Interest

14 SUBCHAPTER A

15 GENERAL PROVISIONS

16 Sec.

17 1701. Definitions.

18 1702. Sovereign immunity.

19 § 1701. Definitions.

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

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

25 § 1702. Sovereign immunity.

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

1 to sovereign immunity reaffirmed; specific waiver) or otherwise.

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

7 SUBCHAPTER B

8 PRELITIGATION RESOLUTION OF CONTROVERSIES

9 Sec.

10 1711. Authority to resolve protests of solicitations or
11 awards.

12 1712. Authority to resolve contract and breach of contract
13 controversies.

14 § 1711. Authority to resolve protests of solicitations or
15 awards.

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

27 (b) Authority to resolve protests.--The head of the
28 purchasing agency shall have the authority to settle and resolve
29 a protest of an aggrieved bidder, offeror or contractor, actual
30 or prospective, concerning the solicitation or award of a

1 contract.

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

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

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

9 (d) Notice of decision.--A copy of the decision under
10 subsection (c) shall be delivered by registered mail to the
11 protestant and any other person determined by the head of the
12 purchasing agency to be affected by the decision.

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

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

30 § 1712. Authority to resolve contract and breach of contract

1 controversies.

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

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

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

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

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

20 (d) Notice of decision.--A copy of the decision under
21 subsection (c) shall be delivered by registered mail to the
22 contractor.

23 (e) Finality of decision.--The decision under subsection (c)
24 shall be final and conclusive unless the contractor files a
25 claim with the Board of Claims within 30 days of receipt of the
26 decision.

27 (f) Failure to render timely decision.--If the contracting
28 officer does not issue the written decision required under
29 subsection (c) within 120 days after written request for a final
30 decision or within a longer period as may be agreed upon by the

1 parties, then the contractor may proceed as if an adverse
2 decision had been received.

3 SUBCHAPTER C

4 BOARD OF CLAIMS

5 Sec.

6 1721. Function of Board of Claims.

7 1722. (Reserved).

8 1723. (Reserved).

9 1724. (Reserved).

10 1725. Hearings, decisions and awards.

11 1726. Appeals.

12 § 1721. Function of Board of Claims.

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

16 § 1722. (Reserved).

17 § 1723. (Reserved).

18 § 1724. (Reserved).

19 § 1725. Hearings, decisions and awards.

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

24 (b) Hearing and decision.--All hearings before the Board of
25 Claims or hearings before a hearing panel shall be public and
26 the proceedings shall be de novo. Any prior determinations by
27 administrative officials shall not be final or conclusive except
28 as provided in section 561 (relating to finality of
29 determinations). The board or hearing panel shall make a
30 decision within a reasonable time from the date of the hearing.

1 The board shall promptly decide the contract or breach of
2 contract controversy and, if appropriate, make an award of a sum
3 that it determines the claimant is entitled to receive.

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

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

12 § 1726. Appeals.

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

18 SUBCHAPTER D

19 SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

20 Sec.

21 1741. Applicability.

22 1742. Remedies prior to execution of contract.

23 1743. Remedies after execution of contract.

24 § 1741. Applicability.

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

28 § 1742. Remedies prior to execution of contract.

29 If prior to execution of a contract it is determined that a
30 solicitation or proposed award of a contract is in violation of

1 law, then the remedies are limited to cancellation of the
2 solicitation or proposed award or revision of the solicitation
3 or proposed award to comply with the law.

4 § 1743. Remedies after execution of contract.

5 If after the execution of a contract it is determined that a
6 solicitation or award of a contract is in violation of law,
7 then:

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

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

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

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

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

23 (i) the contract may be declared void;

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 ratified and affirmed,
27 provided it is determined by the purchasing agency, if
28 that action is in the best interest of the Commonwealth
29 and without prejudice to the right of the Commonwealth
30 agency to damages as may be appropriate.

1 SUBCHAPTER E

2 INTEREST

3 Sec.

4 1751. Interest.

5 § 1751. Interest.

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

12 CHAPTER 19

13 INTERGOVERNMENTAL RELATIONS

14 Sec.

15 1901. Definitions.

16 1902. Cooperative purchasing authorized.

17 1903. Sale, acquisition or use of supplies by a public
18 procurement unit.

19 1904. Cooperative use of supplies or services.

20 1905. Joint use of facilities.

21 1906. Supply of personnel, information and technical services.

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

24 1908. Compliance of public procurement units.

25 1909. Review of procurement requirements.

26 1910. Contract controversies.

27 1911. Immunity.

28 1912. Investment management agreements.

29 § 1901. 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 "Cooperative purchasing." Procurement conducted by or on
4 behalf of more than one public procurement unit or by a public
5 procurement unit with an external procurement activity.

6 "External procurement activity." A buying organization not
7 located in this Commonwealth which if located in this
8 Commonwealth would qualify as a public procurement unit. An
9 agency of the United States is an external procurement activity.

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

18 "Public procurement unit." A local public procurement unit
19 or a purchasing agency.

20 § 1902. Cooperative purchasing authorized.

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

30 § 1903. Sale, acquisition or use of supplies by a public

1 procurement unit.

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

7 § 1904. Cooperative use of supplies or services.

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

15 § 1905. Joint use of facilities.

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

21 § 1906. Supply of personnel, information and technical
22 services.

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

1 the parties.

2 (b) Supply of services.--The informational, technical and
3 other services of any public procurement unit may be made
4 available to any other public procurement unit or external
5 procurement activity. However, the requirements of the public
6 procurement unit tendering the services shall have precedence
7 over the requesting public procurement unit or external
8 procurement activity. The requesting public procurement unit or
9 external procurement activity shall compensate for the expenses
10 of the services provided in accordance with an agreement between
11 the parties.

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

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

30 (d) Technical services.--The department may provide the

1 following technical services, among others:

2 (1) Development of products specifications.

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

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

6 (4) Use of personnel training programs.

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

10 § 1907. Use of payments received by a supplying public
11 procurement unit.

12 All payments from any public procurement unit or external
13 procurement activity received by a public procurement unit
14 supplying personnel or services shall be available to the
15 supplying public procurement unit.

16 § 1908. Compliance of public procurement units.

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

24 § 1909. Review of procurement requirements.

25 To the extent possible, the department may collect
26 information concerning the type, cost, quality and quantity of
27 commonly used supplies, services or construction being procured
28 or used by Commonwealth agencies. The department may also
29 collect this information from local procurement units. The
30 department may make this information available to any public

1 procurement unit upon request.

2 § 1910. Contract controversies.

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

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

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

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

23 § 1911. Immunity.

24 A public procurement unit which provides personnel, property,
25 supplies or services to another public procurement unit shall be
26 immune from liability for any damages which arise out of the use
27 of such ~~items~~ PERSONNEL, PROPERTY, SUPPLIES OR SERVICES provided <—
28 under this chapter.

29 § 1912. Investment management agreements.

30 This chapter shall not apply to any contract for investment

1 management services, or any proposed contract for such services,
2 between a local public procurement unit and the Treasury
3 Department.

4 CHAPTER 21

5 SMALL AND DISADVANTAGED BUSINESSES

6 Sec.

7 2101. Policy.

8 2102. Definitions.

9 2103. Regulations.

10 2104. Duties of department.

11 2105. Bonding and progress payments.

12 2106. Business assistance offices.

13 2107. Report to General Assembly.

14 2108. Compliance with Federal requirements.

15 § 2101. Policy.

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

21 § 2102. Definitions.

22 Subject to section 2103 (relating to regulations), the
23 following words and phrases when used in this chapter shall have
24 the meanings given to them in this section unless the context
25 clearly indicates otherwise:

26 "Disadvantaged business." A small business which is owned or
27 controlled by a majority of persons, not limited to members of
28 minority groups, who have been deprived of the opportunity to
29 develop and maintain a competitive position in the economy
30 because of social disadvantages.

1 "Small business." A business in the United States which is
2 independently owned, is not dominant in its field of operation
3 and meets the criteria established by the Department of General
4 Services, by regulation, for qualification as a small business.
5 The department, through regulation, shall have the authority to
6 establish the maximum number of persons a company may employ to
7 qualify as a small business, which number shall not exceed 50
8 persons.

9 § 2103. Regulations.

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

19 § 2104. Duties of department.

20 The department shall have the following duties:

21 (1) Where feasible, provide appropriate staff who shall
22 be responsible to the department and who shall serve within
23 designated Commonwealth agencies to assist small and
24 disadvantaged businesses in this Commonwealth in learning how
25 to do business with Commonwealth agencies.

26 (2) Give special publicity to procurement procedures and
27 issue special publications designed to assist small and
28 disadvantaged businesses in learning how to do business with
29 Commonwealth agencies.

30 (3) Compile, maintain and make available source lists of

1 small and disadvantaged businesses for the purpose of
2 encouraging procurement from small and disadvantaged
3 businesses.

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

6 (5) Assure that small and disadvantaged businesses are
7 solicited on each procurement for which the businesses may be
8 suited.

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

12 § 2105. Bonding and progress payments.

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

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

22 § 2106. Business assistance offices.

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

26 § 2107. Report to General Assembly.

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

1 § 2108. Compliance with Federal requirements.

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

7 CHAPTER 23

8 ETHICS IN PUBLIC CONTRACTING

9 Subchapter

10 A. General Policy and Standards

11 B. Specific Standards

12 SUBCHAPTER A

13 GENERAL POLICY AND STANDARDS

14 Sec.

15 2301. Policy.

16 2302. General standards of ethical conduct.

17 2303. Reporting of breaches of ethical standards.

18 § 2301. Policy.

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

1 § 2302. General standards of ethical conduct.

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

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

11 § 2303. Reporting of breaches of ethical standards.

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

16 SUBCHAPTER B

17 SPECIFIC STANDARDS

18 Sec.

19 2311. Bonds.

20 § 2311. Bonds.

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

27 PART II

28 GENERAL PROCUREMENT PROVISIONS

29 Chapter

30 31. General Provisions

- 1 33. Prevention of Environmental Pollution
- 2 35. (Reserved)
- 3 37. Contract Clauses and Preference Provisions
- 4 39. Construction Contracts Over \$50,000
- 5 41. Purchase of Surplus Federal Property
- 6 43. Public Facilities Concessions
- 7 45. Antibid-Rigging

8 CHAPTER 31

9 GENERAL PROVISIONS

10 Sec.

11 3101. Application of part.

12 3102. Definitions.

13 § 3101. Application of part.

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

17 § 3102. Definitions.

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

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

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

29 CHAPTER 33

30 PREVENTION OF ENVIRONMENTAL POLLUTION

1 Sec.

2 3301. Invitations for bids and requests for proposals.

3 3302. Additional work.

4 § 3301. Invitations for bids and requests for proposals.

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

11 § 3302. Additional work.

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

1 CHAPTER 35

2 (RESERVED)

3 CHAPTER 37

4 CONTRACT CLAUSES AND PREFERENCE PROVISIONS

5 Subchapter

6 A. Labor

7 B. Motor Vehicles

8 C. Used Oil Products

9 D. Guaranteed Energy Savings Contracts

10 SUBCHAPTER A

11 LABOR

12 Sec.

13 3701. Contract provisions prohibiting discrimination.

14 § 3701. Contract provisions prohibiting discrimination.

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

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

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

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

5 SUBCHAPTER B

6 MOTOR VEHICLES

7 Sec.

8 3731. Short title of subchapter and general provisions.

9 3732. Definitions.

10 3733. Police power.

11 3734. Contract provisions.

12 3735. Payment under contract and action to recover
13 unauthorized payments.

14 3736. Penalty.

15 § 3731. Short title of subchapter and general provisions.

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

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

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

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

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

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

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

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

26 § 3732. Definitions.

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

30 "Motor vehicle." A vehicle which is self-propelled except

1 one which is propelled solely by human or animal power. The term
2 includes those vehicles designed primarily for use in
3 construction or agriculture or road maintenance such as tractors
4 and earth-moving equipment. THE TERM DOES NOT INCLUDE VEHICLES ←
5 USED PRIMARILY FOR GRASS CUTTING.

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 PRACTICABLE OR ADVANTAGEOUS TO THE AUTHORITY TO ENTER INTO A
2 CONTRACT FOR THE PURCHASE OF MASS TRANSPORTATION OR RAILWAY
3 VEHICLES THROUGH COMPETITIVE SEALED BIDDING, THE AUTHORITY MAY
4 UTILIZE THE COMPETITIVE SEALED PROPOSAL METHOD OF PROCUREMENT IN
5 ACCORDANCE WITH SECTION 513 (RELATING TO COMPETITIVE SEALED
6 PROPOSALS).

7 (B) DEFINITION.--AS USED IN THIS SECTION, THE TERM "MASS
8 TRANSPORTATION OR RAILWAY VEHICLES" INCLUDES BUSES, RAILCARS,
9 LOCOMOTIVES, TROLLEY CARS, FERRY BOATS AND OTHER VEHICLES USED
10 TO PROVIDE FOR THE MASS TRANSIT OF PEOPLE, AS WELL AS ANY
11 REPLACEMENT PARTS FOR THE VEHICLES.

12 SUBCHAPTER D

13 USED OIL PRODUCTS

14 Sec.

15 ~~3741. Preference.~~ <—

16 ~~§ 3741. Preference.~~

17 3746. PREFERENCE. <—

18 § 3746. PREFERENCE.

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

25 SUBCHAPTER D E <—

26 GUARANTEED ENERGY SAVINGS CONTRACTS

27 Sec.

28 3751. Short title of subchapter.

29 3752. Definitions.

30 3753. Contracting procedures.

1 3754. Contract provisions.

2 3755. Funding.

3 3756. Commonwealth contracts.

4 3757. Construction.

5 § 3751. Short title of subchapter.

6 This subchapter shall be known and may be cited as the
7 Guaranteed Energy Savings Act.

8 § 3752. Definitions.

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

12 "Energy conservation measure." A training program or
13 facility alteration designed to reduce energy consumption or
14 operating costs. The term may include, without limitation:

15 (1) Insulation of the building structure or systems
16 within the building.

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

22 (3) Automated or computerized energy control systems.

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

25 (5) Replacement or modification of lighting fixtures to
26 increase the energy efficiency of the lighting system without
27 increasing the overall illumination of a facility, unless an
28 increase in illumination is necessary to conform to
29 applicable State or local building codes for the lighting
30 system after the proposed modifications are made.

1 (6) Energy recovery systems.

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

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

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

10 ~~"Governmental unit." Any contracting body as defined in~~ <—
11 ~~section 2 of the act of December 20, 1967 (P.L.869, No.385),~~
12 ~~known as the Public Works Contractors' Bond Law of 1967.~~

13 "GOVERNMENTAL UNIT." ANY OFFICER, EMPLOYEE, AUTHORITY, <—
14 BOARD, BUREAU, COMMISSION, DEPARTMENT, AGENCY OR INSTITUTION OF
15 A GOVERNMENT AGENCY, INCLUDING, BUT NOT LIMITED TO, ANY
16 COMMONWEALTH AGENCY, STATE-AIDED INSTITUTION OR ANY COUNTY,
17 CITY, DISTRICT, MUNICIPAL CORPORATION, MUNICIPALITY, MUNICIPAL
18 AUTHORITY, POLITICAL SUBDIVISION, SCHOOL DISTRICT, EDUCATIONAL
19 INSTITUTION, BOROUGH, INCORPORATED TOWN, TOWNSHIP, POOR
20 DISTRICT, COUNTY INSTITUTION DISTRICT, OTHER INCORPORATED
21 DISTRICT OR OTHER PUBLIC INSTRUMENTALITY WHICH HAS THE AUTHORITY
22 TO CONTRACT FOR THE CONSTRUCTION, RECONSTRUCTION, ALTERATION OR
23 REPAIR OF ANY PUBLIC BUILDING OR OTHER PUBLIC WORK OR PUBLIC
24 IMPROVEMENT, INCLUDING, BUT NOT LIMITED TO, HIGHWAY WORK.

25 "Qualified provider." A person or business which is
26 responsible and capable of evaluating, recommending, designing,
27 implementing and installing energy conservation measures as
28 determined by the governmental unit.

29 ~~"Request for proposals (RFP)." A type of competitive~~ <—
30 ~~procurement.~~

1 § 3753. Contracting procedures.

2 (a) General rule.--Notwithstanding any other contrary or
3 inconsistent provision of law, a governmental unit may enter
4 into a guaranteed energy savings contract with a qualified
5 provider in accordance with the provisions of this subchapter or
6 in accordance with another statutorily authorized ~~competitive~~ <—
7 PROCUREMENT process. <—

8 (b) Guaranteed ENERGY SAVINGS contract.--If in accordance <—
9 with applicable law the award of a contract by a governmental
10 unit requires action at a public meeting, a governmental unit
11 may award a guaranteed energy savings contract at a public
12 meeting if it has provided public notice in the manner
13 prescribed by the act of July 3, 1986 (P.L.388, No.84), known as
14 the Sunshine Act, the notice including the names of the parties
15 to the contract and the purpose of the contract. For
16 governmental units that are not required to take actions on
17 contracts at public meetings, the governmental unit may award a
18 guaranteed energy savings contract in accordance with the
19 ~~protocol for action on contracts~~ PROCEDURES adopted by the <—
20 governmental unit and the requirements of ~~this subchapter~~ ALL <—
21 APPLICABLE LAWS.

22 ~~(c) Request for proposals. Before entering into a~~ <—
23 ~~guaranteed energy savings contract under this section, a~~
24 ~~governmental unit shall issue a request for proposals. The~~

25 (C) COMPETITIVE SEALED PROPOSALS.--FOR THE PURPOSE OF <—
26 ENTERING INTO A GUARANTEED ENERGY SAVINGS CONTRACT, ALL
27 GOVERNMENTAL UNITS ARE AUTHORIZED TO UTILIZE THE COMPETITIVE
28 SEALED PROPOSAL METHOD OF PROCUREMENT. THE governmental unit
29 shall evaluate any proposal that meets the requirements of the
30 governmental unit and is timely submitted by a qualified

1 provider. The RFP REQUEST FOR PROPOSALS shall be announced <—
2 through a public notice from the governmental unit which will
3 administer the program. The request for proposal shall include <—
4 ~~all of the following:~~

5 ~~(1) The name and address of the governmental unit.~~

6 ~~(2) The name, address, title and telephone number of a~~
7 ~~contact person.~~

8 ~~(3) Notice indicating that the governmental unit is~~
9 ~~requesting qualified providers to propose energy conservation~~
10 ~~measures through a guaranteed energy savings contract.~~

11 ~~(4) The date, time and place where proposals must be~~
12 ~~received.~~

13 ~~(5) The information to be included in the proposal.~~

14 ~~(6) Any other stipulations and clarifications the~~
15 ~~governmental unit may require.~~ PROVIDE ALL INTERESTED PARTIES <—
16 WITH SUFFICIENT INFORMATION NECESSARY TO SUBMIT A TIMELY AND
17 RESPONSIVE PROPOSAL.

18 (d) Selection and notice.--The governmental unit shall
19 select the qualified provider that best meets the needs of the
20 governmental unit in accordance with criteria established by the
21 governmental unit. For governmental units that are not required
22 to take actions on contracts at public meetings, the
23 governmental unit shall provide public notice of the award of
24 the guaranteed energy savings contract within 30 days in the
25 Pennsylvania Bulletin. The notice shall include the names of the
26 parties to the contract and the purpose of the contract. For
27 governmental units that are required to take actions on
28 contracts at public meetings, the public notice shall be made at
29 least ten days prior to the meeting. After reviewing the
30 proposals pursuant to subsection (e), a governmental unit may

1 enter into a guaranteed energy savings contract with a qualified
2 provider if it finds that the amount it would spend on the
3 energy conservation measures recommended in the proposal would
4 not exceed the amount to be saved in both energy and operational
5 costs within a ten-year period from the date of installation, if
6 the recommendations in the proposal were followed and the
7 qualified provider provides a written guarantee that the energy
8 or operating cost savings will meet or exceed the cost of the
9 contract.

10 (e) Report.--

11 (1) Before the award of a guaranteed energy savings
12 contract, the qualified provider shall provide a report as
13 part of its proposal which shall be available for public
14 inspection summarizing estimates of all costs of
15 installation, maintenance, repairs and debt service, and
16 estimates of the amounts by which energy or operating costs
17 will be reduced.

18 (2) The report shall contain a listing of contractors
19 and subcontractors to be used by the qualified provider with
20 respect to the energy conservation measures.

21 (f) Bond.--A qualified provider to whom a contract is
22 awarded shall give a sufficient bond to the governmental unit
23 ~~for its faithful performance in accordance with the act of FOR~~ ←
24 ITS FAITHFUL PERFORMANCE. COMMONWEALTH AGENCIES SHALL OBTAIN
25 SUCH BONDS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 533
26 (RELATING TO SECURITY AND PERFORMANCE BONDS). ALL OTHER
27 GOVERNMENTAL UNITS SHALL OBTAIN SUCH BONDS IN ACCORDANCE WITH
28 THE ACT OF December 20, 1967 (P.L.869, No.385), known as the
29 Public Works Contractors' Bond Law of 1967.

30 (g) Award of contract.--Notwithstanding any other provision

1 of law governing the letting of public contracts, a governmental
2 unit may enter into a single guaranteed energy savings contract
3 with each responsible provider selected ~~through the request for~~ ←
4 ~~proposals process~~ in accordance with the provisions of this
5 subchapter.

6 § 3754. Contract provisions.

7 (a) General rule.--A guaranteed energy savings contract may
8 provide that all payments, except obligations on termination of
9 the contract before its scheduled expiration, shall be made over
10 a period of time. Every guaranteed energy savings contract shall
11 provide that the savings in any year are guaranteed to the
12 extent necessary to make payments under the contract during that
13 year.

14 (b) Written guarantee.--A guaranteed energy savings contract
15 shall include a written guarantee that savings will meet or
16 exceed the cost of the energy conservation measures to be
17 evaluated, recommended, designed, implemented or installed under
18 the contract.

19 (c) Payments.--A guaranteed energy savings contract may
20 provide for payments over a period of time, not to exceed ten
21 years, and for the evaluation, recommendation, design,
22 implementation and installation of energy conservation measures
23 on an installment payment or lease purchase basis.

24 § 3755. Funding.

25 (a) General rule.--Guaranteed energy savings contracts which
26 have terms which extend beyond one fiscal year of the
27 governmental unit must include a provision which allows the
28 governmental unit to terminate the contract if in any fiscal
29 year during the term of the contract the governmental unit does
30 not receive sufficient funds in its annual appropriations to

1 make the payments required under the contract.

2 (b) Funds.--A governmental unit may use funds designated for
3 operating, utilities or capital expenditures for any guaranteed
4 energy savings contract, including, without limitation, for
5 purchases on an installment payment or lease purchase basis.

6 (c) Grants, subsidies or other payments.--Grants, subsidies
7 or other payments from the Commonwealth to a governmental unit
8 shall not be reduced as a result of energy savings obtained as a
9 result of a guaranteed energy savings contract during the life
10 of the contract.

11 § 3756. Commonwealth contracts.

12 In connection with the letting of any guaranteed energy
13 savings contract for a governmental unit under this subchapter,
14 the department shall have the power to waive the process for
15 selection of architects or engineers otherwise prescribed under
16 section ~~2401.1(19) of the act of April 9, 1929 (P.L.177,~~ <—
17 ~~No.175), known as The Administrative Code of 1929~~ 905 (RELATING <—
18 TO PROCUREMENT OF DESIGN PROFESSIONAL SERVICES). In exercising
19 its discretion under this section, the department shall consider
20 the best interests of this Commonwealth and any relevant
21 circumstances peculiar to the proposed contract.

22 § 3757. Construction.

23 This subchapter shall not be construed to abrogate any duty
24 to comply with prevailing wage or residency requirements
25 contained in any other act or part thereof.

26 CHAPTER 39

27 ~~CONSTRUCTION CONTRACTS OVER \$50,000~~ <—

28 CONTRACTS FOR PUBLIC WORKS <—

29 Subchapter

30 A. Preliminary Provisions

- 1 B. General Provisions
- 2 C. Retainage
- 3 D. Prompt Payment Schedules
- 4 E. Substantial/final Payment

5 SUBCHAPTER A

6 PRELIMINARY PROVISIONS

7 Sec.

8 3901. Application and purpose of chapter.

9 3902. Definitions.

10 § 3901. Application and purpose of chapter.

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

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

27 § 3902. Definitions.

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

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

6 "Contractor." A person who enters into a contract with a
7 government agency.

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

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

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

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

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

24 "State-aided institution." Any institution which receives
25 State funds for construction AS DEFINED IN SECTION 103 (RELATING ←
26 TO DEFINITIONS).

27 "Subcontractor." A person who has contracted to furnish
28 labor or materials to or has performed labor for a contractor or
29 another subcontractor in connection with a contract.

30 "Substantial completion." Construction that is sufficiently

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

8 SUBCHAPTER B

9 GENERAL PROVISIONS

10 Sec.

11 3911. Time for awarding contract.

12 3912. Time for executing contract.

13 3913. Release of successful bidder.

14 § 3911. Time for awarding contract.

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

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

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

28 (d) List of bidders.--All government agencies shall be
29 required to provide a list of the bidders and their bid amount
30 on each contract within ten working days of the bid opening to

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

6 § 3912. Time for executing contract.

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

11 § 3913. Release of successful bidder.

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

20 SUBCHAPTER C

21 RETAINAGE

22 Sec.

23 3921. Retainage.

24 3922. Payment of retainage to subcontractors.

25 § 3921. Retainage.

26 (a) Contract provision.--A contract may include a provision
27 for the retainage of a portion of the amount due the contractor
28 to insure the proper performance of the contract except that the
29 sum withheld by the government agency from the contractor shall
30 not exceed 10% of the amount due the contractor until 50% of the

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

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

1 completed shall not exceed 3% of the original contract amount.

2 § 3922. Payment of retainage to subcontractors.

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

7 SUBCHAPTER D

8 PROMPT PAYMENT SCHEDULES

9 Sec.

10 3931. Performance by contractor or subcontractor.

11 3932. Government agency's progress payment obligations.

12 3933. Contractors' and subcontractors' payment obligations.

13 3934. Withholding of payment for good faith claims.

14 3935. Penalty and attorney fees.

15 3936. Contracts involving Federal aid.

16 3937. Certain provisions unenforceable.

17 3938. Applicability.

18 3939. Claims by innocent parties.

19 § 3931. Performance by contractor or subcontractor.

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

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

27 § 3932. Government agency's progress payment obligations.

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

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

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

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

29 § 3933. Contractors' and subcontractors' payment obligations.

30 (a) Performance by subcontractor entitles subcontractor to

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

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

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

30 (d) Interest due when progress payment not timely.--If any

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

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

13 § 3934. Withholding of payment for good faith claims.

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

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

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

5 § 3935. Penalty and attorney fees.

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

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

28 § 3936. Contracts involving Federal aid.

29 If any provision of this chapter conflicts with a Federal
30 statute or regulation or with conditions attached to the receipt

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

4 § 3937. Certain provisions unenforceable.

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

9 § 3938. Applicability.

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

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

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

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

28 (4) Nothing in this subchapter shall be construed to
29 require payment of interest penalties by the Federal or State
30 Government if the local government unit is liable for the

1 interest.

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

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

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

11 (3) A city of the first class that has entered into an
12 intergovernmental cooperation agreement under the act of June
13 5, 1991 (P.L.9, No.6), known as the Pennsylvania
14 Intergovernmental Cooperation Authority Act for Cities of the
15 First Class, for so long as any deficit-reducing bonds issued
16 by the authority pursuant to section 301(b)(1) of that act
17 are outstanding and payable.

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

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

24 § 3939. Claims by innocent parties.

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

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

1 subcontractor which has been paid shall be barred.

2

SUBCHAPTER E

3

SUBSTANTIAL/FINAL PAYMENT

4 Sec.

5 3941. Substantial/final payment under contract.

6 3942. Arbitration.

7 § 3941. Substantial/final payment under contract.

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

29 (b) Interest.--The final payment due the contractor from the
30 government agency after substantial completion of the contract

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

11 § 3942. Arbitration.

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

22 CHAPTER 41

23 PURCHASE OF SURPLUS FEDERAL PROPERTY

24 Sec.

25 4101. Contracts with United States.

26 4102. Bids and down payments.

27 § 4101. Contracts with United States.

28 Any government agency may enter into a contract with the
29 Federal Government for the purchase, lease or other acquisition,
30 including the warehousing and distribution, of any surplus real

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

7 § 4102. Bids and down payments.

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

15 CHAPTER 43

16 PUBLIC FACILITIES CONCESSIONS

17 Sec.

18 4301. Short title of chapter and general provisions.

19 4302. Definitions.

20 4303. Terms of contracts.

21 § 4301. Short title of chapter and general provisions.

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

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

29 (1) It is and has been the policy of this Commonwealth
30 to require and encourage public agencies to own and operate a

1 variety of public facilities for the conduct of public
2 business and for the health, education, protection,
3 transportation, recreation, entertainment and cultural
4 advancement of the people of this Commonwealth.

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

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

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

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

28 (d) Purpose of chapter.--This chapter is intended as
29 remedial legislation designed to promote the general welfare,
30 protect the public and encourage full and proper use of public

1 facilities. Each provision of this chapter is intended to
2 receive a liberal construction as will best effectuate those
3 purposes, and no provision is intended to receive a strict or
4 limited construction.

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

8 § 4302. Definitions.

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

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

16 § 4303. Terms of contracts.

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

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

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

29 (2) Where the head of the government agency determines
30 in writing that the retention of the right to regulate is not

1 necessary to protect the general welfare.

2 CHAPTER 45

3 ANTIBID-RIGGING

4 Sec.

5 4501. Short title of chapter.

6 4502. Definitions.

7 4503. Prohibited activities.

8 4504. Civil action and damages.

9 4505. Suspension or debarment.

10 4506. Liability for increased costs.

11 4507. Noncollusion affidavits.

12 4508. Responsibility for enforcement.

13 4509. Investigation.

14 § 4501. Short title of chapter.

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

17 § 4502. Definitions.

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

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

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

28 (2) Agreeing to submit identical bids.

29 (3) Agreeing to rotate bids.

30 (4) Agreeing to share profits with a contractor who does

1 not submit the low bid.

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

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

6 (7) Agreeing not to submit bids.

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

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

14 § 4503. Prohibited activities.

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

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

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

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

29 (c) Fines and imprisonment.--Any person who violates this
30 section commits a felony of the third degree and shall, upon

1 conviction, be sentenced to pay a fine of not more than
2 \$1,000,000, if an entity other than an individual, or a fine of
3 not more than \$50,000, if an individual, or to serve a term of
4 imprisonment for not more than three years, or both.

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

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

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

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

20 (2) The net worth of the person.

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

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

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

1 prosecution under this chapter could be based, where jeopardy
2 has attached under the Federal prosecution.

3 § 4504. Civil action and damages.

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

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

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

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

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

30 § 4505. Suspension or debarment.

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

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

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

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

18 § 4506. Liability for increased costs.

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

26 § 4507. Noncollusion affidavits.

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

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

23 § 4508. Responsibility for enforcement.

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

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

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

11 § 4509. Investigation.

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

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

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

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

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

13 Section 2. Section 2310 of Title 1 is amended to read:
14 § 2310. Sovereign immunity reaffirmed; specific waiver.

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

28 Section 3. Section 763(a) of Title 42 is amended to read:
29 § 763. Direct appeals from government agencies.

30 (a) General rule.--Except as provided in subsection (c), the

1 Commonwealth Court shall have exclusive jurisdiction of appeals
2 from final orders of government agencies in the following cases:

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

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

12 * * *

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

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

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

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

29 Act of June 12, 1879 (P.L.170, No.187), entitled "An act to
30 carry out the provisions of section twelve, article three, of

1 the constitution, relative to contracts for supplies for the
2 legislature and the various departments of the state
3 government."

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

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

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

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

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

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

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

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

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

1 without complying with any requirement of existing law as to
2 specifications, advertising, award of contract, and approval of
3 purchases by a State agency receiving competitive bids, or the
4 delivery of property purchased before payment therefor."

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

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

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

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

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

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

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

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

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

30 Act of April 4, 1984 (P.L.193, No.40), known as the Motor

1 Vehicle Procurement Act.

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

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

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

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

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

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

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

24 Act of May 24, 1917 (P.L.260, No.141), entitled "An act
25 regulating the time for advertising for and receiving proposals
26 for furnishing paper, cardboard, cuts, plates, and other
27 supplies for the use of the Commonwealth for executing the
28 public printing, and the time contracts for furnishing such
29 supplies shall run."

30 Act of May 8, 1923 (P.L.161, No.120), entitled "An act

1 providing for and regulating the public printing and binding,
2 the editing for publication and the distribution of all
3 documents, reports, bulletins, and other publications for the
4 use of the Commonwealth, the several departments, boards,
5 commissions, and other agencies engaged in the legislative,
6 judicial, and administrative work of the State Government; the
7 sale of waste paper; the appointment of a director and other
8 employes; and repealing inconsistent and conflicting
9 legislation."

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

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

23 Section 6 of the act of May 20, 1937 (P.L.728, No.193),
24 referred to as the Board of Claims Act only insofar as it is
25 inconsistent with the procedure provided for in 62 Pa.C.S. §
26 1712 regarding the resolution of a contract controversy by the
27 head of a purchasing agency.

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

30 Section 12 of the act of December 6, 1967 (P.L.678, No.318),

1 known as The Pennsylvania Higher Educational Facilities
2 Authority Act of 1967.

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

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

10 Except as explicitly stated in the addition of 62 Pa.C.S. §
11 322(6), section 1 of the act of May 1, 1913 (P.L.155, No.104),
12 entitled "An act regulating the letting of certain contracts for
13 the erection, construction, and alteration of public buildings."

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

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

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

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

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

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

27 Section 7. This act shall apply to contracts solicited or
28 entered into on or after the effective date of this act unless
29 the parties agree to its application to a contract solicited or
30 entered into prior to the effective date of this act.

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