
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 5

Session of
1997

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

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
APRIL 22, 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

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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 (F) APPLICATION TO GRANTS.--THIS PART DOES NOT APPLY TO <—
4 GRANTS. FOR THE PURPOSE OF THIS PART, A GRANT IS THE FURNISHING
5 OF ASSISTANCE BY THE COMMONWEALTH OR ANY PERSON, WHETHER
6 FINANCIAL OR OTHERWISE, TO ANY PERSON TO SUPPORT A PROGRAM. THE
7 TERM DOES NOT INCLUDE AN AWARD WHOSE PRIMARY PURPOSE IS TO
8 PROCURE CONSTRUCTION FOR THE GRANTOR. ANY CONTRACT RESULTING
9 FROM SUCH AN AWARD IS NOT A GRANT BUT A PROCUREMENT CONTRACT.

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

27 § 103. Definitions.

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

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

3 "Change order." A written order signed by the contracting
4 officer directing the contractor to make changes which the
5 changes clause of the contract authorizes the contracting
6 officer to order. The change order may be either with the
7 consent of the contractor or a unilateral order by the
8 contracting officer.

9 "Commonwealth agency." An executive agency, an independent
10 agency or a State-affiliated entity.

11 "Construction." The process of building, altering,
12 repairing, improving or demolishing any public structure or
13 building or other public improvements of any kind to any public
14 real property. The term does not include the routine operation
15 or maintenance of existing structures, buildings or real
16 property.

17 "Contract." A type of written agreement, regardless of what
18 it may be called, for the procurement or disposal of supplies,
19 services or construction.

20 "Contract modification." A written alteration in
21 specifications, delivery point, rate of delivery, period of
22 performance, price, quantity or other provisions of any contract
23 accomplished by mutual action of the parties to the contract.

24 "Contracting officer." A person authorized to enter into and
25 administer contracts and make written determinations with
26 respect to contracts.

27 "Department." The Department of General Services of the
28 Commonwealth.

29 "Design/Build contract." A construction contract in which
30 the contractor is responsible for both the design and

1 construction of any public structure or building or other public
2 improvements of any kind to any public real property.

3 "Employee." An individual drawing a salary or wages from a
4 Commonwealth agency, whether elected or not, and any
5 noncompensated individual performing personal services for any
6 Commonwealth agency.

7 "Executive agency." The Governor and the departments,
8 boards, commissions, authorities and other officers and agencies
9 of the Commonwealth. The term does not include any court or
10 other officer or agency of the unified judicial system, the
11 General Assembly and its officers and agencies or any
12 independent agency or State-affiliated entity.

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

22 ~~"Grant." The furnishing of assistance by the Federal~~ <—
23 ~~Government, Commonwealth or any person, whether financial or~~
24 ~~otherwise, to any person to support a program authorized by law.~~
25 ~~The term does not include an award whose primary purpose is to~~
26 ~~procure for the grantor an end product, whether in the form of~~
27 ~~supplies, services or construction. A contract resulting from~~
28 ~~such an award is not a grant but a procurement contract.~~

29 "Independent agency." Boards, commissions and other agencies
30 and officers of the Commonwealth which are not subject to the

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

7 "Policy statement." Any document, except an adjudication,
8 regulation or privileged communication prepared by a
9 Commonwealth agency which sets forth substantive or procedural
10 personal or property rights, privileges, immunities, duties,
11 liabilities or obligations of the public or any person,
12 including any document interpreting or implementing any statute
13 enforced or administered by the agency.

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

21 "Purchasing agency." A Commonwealth agency authorized by
22 this part or by other law to enter into contracts for itself or
23 as the agent of another Commonwealth agency. When purchasing for
24 another Commonwealth agency, the purchasing agency acts on
25 behalf of the principal which needs the supplies, services and
26 construction and shall coordinate and cooperate with that
27 agency.

28 "Regulation." A regulation as defined in 45 Pa.C.S. § 501
29 (relating to definitions). This term shall include the
30 amendment, revision or otherwise alteration of the terms and

1 provisions of a regulation.

2 "Services." The furnishing of labor, time or effort by a
3 contractor not involving the delivery of a specific end product
4 other than drawings, specifications or reports which are merely
5 incidental to the required performance. The term shall include
6 the routine operation or maintenance of existing structures,
7 buildings or real property. The term does not include employment
8 agreements, OR collective bargaining agreements ~~or agreements~~ <—
9 ~~with litigation consultants~~. The term includes utility services
10 and those services formerly provided by public utilities such as
11 electrical, telephone, water and sewage service.

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

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

29 "State-related institution." The Pennsylvania State
30 University, the University of Pittsburgh, Lincoln University or

1 Temple University.

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

7 "Supplies." Any property, including, but not limited to,
8 equipment, materials, printing, insurance and leases of and
9 installment purchases of tangible or intangible personal
10 property. The term does not include real property ~~or~~, leases of <—
11 real property OR ALCOHOLIC BEVERAGES OR LIQUOR PURCHASED FOR <—
12 RESALE BY THE PENNSYLVANIA LIQUOR CONTROL BOARD.

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

15 § 104. General principles of law otherwise applicable.

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

19 § 105. Determinations.

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

22 § 106. Public access to procurement information.

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

29 § 107. Reciprocal limitations.

30 (a) Short title of section.--This section shall be known and

1 may be cited as the Reciprocal Limitations Act.

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

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

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

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

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

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

1 similar offsetting preference to residents in this
2 Commonwealth and bidders offering supplies manufactured in
3 this Commonwealth and by prohibiting the purchase or use of
4 certain supplies, in accordance with the provisions of this
5 section.

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

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

27 (e) Prohibition.--For public contracts exceeding the amount
28 established by the department for small procurements under
29 section 514, no Commonwealth agency shall specify for, use or
30 procure any supplies which are produced, manufactured, mined,

1 grown or performed in any state that prohibits the specification
2 for, use or procurement of these supplies in or on its public
3 buildings or other works when these supplies are not produced,
4 manufactured, mined, grown or performed in that state.

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

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

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

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

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

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

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

24 § 108. Recycled materials.

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

30 (b) Preference for recycled content.--For contracts

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

7 CHAPTER 3

8 PROCUREMENT ORGANIZATION

9 Subchapter

10 A. Organization of Public Procurement

11 B. Procurement Policy

12 C. Powers and Duties of Department

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

15 E. Coordination, Training and Education

16 SUBCHAPTER A

17 ORGANIZATION OF PUBLIC PROCUREMENT

18 Sec.

19 301. Procurement responsibility.

20 § 301. Procurement responsibility.

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

1 and duties of department).

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

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

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

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

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

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

30 (3) Published books, maps, periodicals and technical

1 pamphlets.

2 (4) Perishable food stuffs.

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

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

15 SUBCHAPTER B

16 PROCUREMENT POLICY

17 Sec.

18 311. Powers and duties.

19 312. Procurement regulations.

20 § 311. Powers and duties.

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

29 § 312. Procurement regulations.

30 Regulations shall be promulgated by the department as

1 provided in 45 Pa.C.S. Part II (relating to publication and
2 effectiveness of Commonwealth documents) and by the appropriate
3 purchasing agencies for those matters contained in section
4 301(c) (relating to procurement responsibility). The regulations
5 shall be subject to the act of June 25, 1982 (P.L.633, No.181),
6 known as the Regulatory Review Act. The department may not
7 delegate its power to promulgate regulations. No regulation may
8 change any commitment, right or obligation of any Commonwealth
9 agency or of a contractor under a contract in existence on the
10 effective date of the regulation.

11 SUBCHAPTER C

12 POWERS AND DUTIES OF DEPARTMENT

13 Sec.

14 321. Powers and duties.

15 322. Specific construction powers, duties and procedures.

16 § 321. Powers and duties.

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

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

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

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

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

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

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

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

§ 322. Specific construction powers, duties and procedures.

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

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

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

ACCORDANCE WITH SECTION 511 (RELATING TO METHODS OF SOURCE SELECTION). Such design/build contracts shall be subject to

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1 the requirements of this act and the provisions of the act of
2 August 15, 1961 (P.L.987, No.442), known as the Pennsylvania
3 Prevailing Wage ~~Act, and~~ ACT. DESIGN/BUILD CONTRACTS SHALL <—
4 ALSO BE SUBJECT TO the act of May 1, 1913 (P.L.155, No. 104),
5 entitled "An act regulating the letting of certain contracts
6 for the erection, construction, and alteration of public
7 buildings," to the extent provided in paragraph (6).

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

11 (i) A date for the completion of the plans and
12 specifications.

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

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

26 (iv) That the plans and specifications must be
27 approved by the Department of Labor and Industry, the
28 Department of Health and the Department of Environmental
29 Protection, to the extent to which those Commonwealth
30 agencies, respectively, have jurisdiction to require the

1 submission to them for approval of certain features of
2 the building.

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

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

27 (5) The department shall examine all bills on account of
28 the contracts entered into under the provisions of this
29 section, and, if they are correct, the department shall
30 certify that the materials have been furnished, or that the

1 work or labor has been performed in a workmanlike manner, and
2 in accordance with the contract, approve the bills and issue
3 its requisition therefor, or forward its certificate to the
4 proper Commonwealth agency or State-related institution, as
5 the case may be. Progress payments and final payments shall
6 not estop the department from pursuing its lawful remedies
7 for defects in workmanship or materials or both and other
8 damages.

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

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

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

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

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

SUBCHAPTER D

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

Sec.

326. Board of Commissioners of Public Grounds and Buildings.

327. Office of the Budget.

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

No lease of real estate for use by an executive or independent agency and no sole source procurement of supplies for an executive or independent agency for which the department acts as the purchasing agency shall be valid or effective unless, upon review, it is approved by the Board of

1 Commissioners of Public Grounds and Buildings. Where the board
2 is reviewing a proposed sole source lease or procurement being
3 submitted pursuant to section 515 (relating to sole source
4 procurement), approval of the lease or procurement shall require
5 the unanimous vote of the board. Where the board is reviewing a
6 proposed non-sole source lease, the lease shall be approved when
7 one member of the board votes to approve the lease. All votes
8 shall take place at a public meeting.

9 § 327. Office of the Budget.

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

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

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

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

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

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

30 (1) EXCEPT FOR CONTRACTS AWARDED PURSUANT TO SECTION 514

1 (RELATING TO SMALL PROCUREMENTS), THE COMPTROLLER AUTHORIZED
2 IN PARAGRAPH (2) SHALL REVIEW AND APPROVE ALL CONTRACTS FOR
3 SERVICES FOR:

4 (I) FISCAL RESPONSIBILITY AND BUDGETARY
5 APPROPRIATENESS.

6 (II) AVAILABILITY OF FUNDS.

7 (2) WHERE THE SERVICE CONTRACT IS FOR AN EXECUTIVE
8 AGENCY, INDEPENDENT AGENCY OR STATE-AFFILIATED ENTITY FOR
9 WHICH THE OFFICE OF THE BUDGET ACTS AS COMPTROLLER, THE
10 OFFICE OF THE BUDGET SHALL REVIEW AND APPROVE THE CONTRACT.

11 WHERE THE SERVICE CONTRACT IS FOR AN INDEPENDENT AGENCY OR
12 STATE-AFFILIATED ENTITY FOR WHICH THE OFFICE OF THE BUDGET
13 DOES NOT ACT AS COMPTROLLER, THE FISCAL OFFICE OR COMPTROLLER
14 OF THAT AGENCY OR ENTITY SHALL REVIEW AND APPROVE THE
15 CONTRACT.

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

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

28 SUBCHAPTER E

29 COORDINATION, TRAINING AND EDUCATION

30 Sec.

1 331. Collection of data concerning public procurement.

2 332. Advisory groups.

3 § 331. Collection of data concerning public procurement.

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

9 § 332. Advisory groups.

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

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

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

29 (d) Conflict of interest.--Members of the council and other
30 advisory groups shall be considered State advisors under the act

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

9 CHAPTER 5

10 SOURCE SELECTION AND CONTRACT FORMATION

11 Subchapter

12 A. Definitions

13 B. Methods of Source Selection

14 C. Cancellation of Invitations for Bids or Requests for
15 Proposals

16 D. Qualifications and Duties

17 E. Types of Contracts

18 F. Inspection of Plant and Audit of Records

19 G. Determinations and Reports

20 SUBCHAPTER A

21 DEFINITIONS

22 Sec.

23 501. Definitions.

24 § 501. Definitions.

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

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

30 (1) is regularly maintained by a manufacturer or

1 contractor;

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

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

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

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

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

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

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

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

27 "Sealed bid or proposal." A bid or proposal whose contents
28 is not disclosed until the bid opening time or the proposal
29 receipt date. Bids and proposals are typically submitted in
30 sealed envelopes to meet this requirement, but electronic

1 submission is not prohibited so long as the purchasing agency
2 has the electronic capability to maintain the confidentiality of
3 the bid or proposal until the bid opening time or proposal
4 receipt date.

5 SUBCHAPTER B

6 METHODS OF SOURCE SELECTION

7 Sec.

8 511. Methods of source selection.

9 512. Competitive sealed bidding.

10 513. Competitive sealed proposals.

11 514. Small procurements.

12 515. Sole source procurement.

13 516. Emergency procurement.

14 517. Multiple awards.

15 518. Competitive selection procedures for certain services.

16 519. Selection procedure for insurance and notary bonds.

17 520. Supplies manufactured by, and services performed by,
18 persons with disabilities.

19 § 511. Methods of source selection.

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

24 Section 513 (relating to competitive sealed proposals).

25 Section 514 (relating to small procurements).

26 Section 515 (relating to sole source procurement).

27 Section 516 (relating to emergency procurement).

28 Section 517 (relating to multiple awards).

29 Section 518 (relating to competitive selection procedures
30 for certain services).

1 Section 519 (relating to selection procedure for
2 insurance and notary bonds).

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

5 Section 905 (relating to procurement of design
6 professional services).

7 § 512. Competitive sealed bidding.

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

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

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

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

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

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

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

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

1 Copies of invitations to bid shall be made available to any
2 interested person upon request to the purchasing agency.
3 Purchasing agencies may establish procedures for the
4 distribution of invitations to bid including the imposition of a
5 fee to reimburse the agency for the costs of photocopying and
6 mailing.

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

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

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

27 (1) Bids may be modified or withdrawn by written notice
28 or in person by a bidder or its authorized representative if
29 its identity is made known and a receipt for the bid is
30 signed prior to the exact hour and date set for the opening

1 of bids. Except as otherwise provided in this part,
2 withdrawals and modifications of bids received after the
3 exact hour and date specified for the opening of bids shall
4 not be considered.

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

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

29 (g) Award.--The contract shall be awarded within 60 days of
30 the bid opening by written notice to the lowest responsible and

1 responsive bidder whose bid meets the requirements and criteria
2 set forth in the invitation for bids or all bids shall be
3 rejected except as otherwise provided in this section.
4 Extensions of the date for the award may be made by mutual
5 written consent of the contracting officer and the lowest
6 responsible and responsive bidder. Within 30 days of the bid
7 opening the contracting officer shall, if bid security was
8 required by the invitation for bids, return the bid security to
9 all but the lowest and next-to-lowest bidders then under
10 consideration for contract award.

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

18 § 513. Competitive sealed proposals.

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

23 (b) Request for proposals.--Proposals shall be solicited
24 through a request for proposals.

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

28 (d) Receipt of proposals.--Offerors shall submit their
29 proposal to ensure that their proposals are received prior to
30 the time and date established for receipt of the proposals.

1 Proposals shall be submitted in the format required by the
2 request for proposals. Proposals shall be opened so as to avoid
3 disclosure of their contents to competing offerors.

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

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

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

25 (h) Contract negotiation.--After selection, the purchasing
26 agency shall proceed to negotiate a contract with the selected
27 offeror.

28 § 514. Small procurements.

29 If the procurement is not the subject of a Statewide
30 requirements contract between the purchasing agency and a

1 contractor, the head of the purchasing agency may authorize in
2 writing procurements without formal bid procedures, not
3 exceeding the amount established by the purchasing agency. The
4 department may authorize procurement OF THE SUPPLY OR SERVICE on <—
5 a no-bid basis for procurements which do not exceed the amount
6 established by the department for small, no-bid procurements.
7 THE DEPARTMENT MAY AUTHORIZE PROCUREMENT ON A NO-BID BASIS FOR <—
8 CONSTRUCTION PROJECTS THAT DO NOT EXCEED A TOTAL CONSTRUCTION
9 COST OF \$10,000. THE AMOUNT OF \$10,000 SHALL BE ADJUSTED
10 ANNUALLY BY THE DEPARTMENT TO REFLECT THE ANNUAL PERCENTAGE
11 CHANGE IN THE COMPOSITE CONSTRUCTION COST INDEX OF THE UNITED
12 STATES DEPARTMENT OF COMMERCE OCCURRING ON THE ONE-YEAR PERIOD
13 ENDING DECEMBER 31 OF EACH YEAR. Procurement requirements shall
14 not be artificially divided so as to constitute a small
15 procurement under this section. Small procurements shall be made
16 in accordance with the requirements of the written authorization
17 and this section. Records of all small procurements shall be
18 transmitted to the purchasing agency.

19 § 515. Sole source procurement.

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

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

26 (2) A Federal or State statute or Federal regulation
27 exempts the supply, service or construction from the
28 competitive procedure.

29 (3) The total cost of the supply, service or
30 construction is less than the amount established by the

1 department for small, no-bid procurements under section 514
2 (relating to small procurements).

3 (4) It is clearly not feasible to award the contract FOR <—
4 SUPPLIES OR SERVICES on a competitive basis.

5 (5) The services are to be provided by attorneys or
6 litigation consultants selected by the Office of General
7 Counsel, the Office of Attorney General, the Department of
8 the Auditor General or the Treasury Department.

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

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

16 (8) The contract is for investment advisors or managers
17 selected by the Public School Employees' Retirement System,
18 the State Employees' Retirement System or a State-affiliated
19 entity.

20 (9) The contract is for financial or investment experts
21 to be used and selected by the Treasury Department or
22 financial or investment experts selected by the Secretary of
23 the Budget.

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

26 The written determination authorizing sole source procurement
27 shall be included in the contract file. With the exception of
28 small procurements under section 514 and emergency procurements
29 under section 516 (relating to emergency procurement), if the
30 sole source procurement is for a supply for which the department

1 acts as purchasing agency, it must be approved by the Board of
2 Commissioners of Public Grounds and Buildings prior to the award
3 of a contract.

4 § 516. Emergency procurement.

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

15 § 517. Multiple awards.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 § 518. Competitive selection procedures for certain services.

29 (a) Conditions for use.--The services of accountants,
30 clergy, physicians, lawyers, dentists and other personal

1 services which are not performed by other Commonwealth employees
2 shall be procured in accordance with this section except as
3 authorized under section 514 (relating to small procurements),
4 515 (relating to sole source procurement) or 516 (relating to
5 emergency procurement).

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

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

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

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

1 be conducted with the other offeror or offerors in the order of
2 their respective qualification ranking. The contract may be
3 awarded to the offeror then ranked as best qualified if the
4 amount of compensation is determined to be fair and reasonable.

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

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

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

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

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

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

1 offers.

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

7 § 520. Supplies manufactured by, and services performed by,
8 persons with disabilities.

9 ~~(a) General rule. Contracts may be entered into for~~ <—
10 ~~supplies manufactured by, and services performed by, persons~~
11 ~~with disabilities without competition in accordance with this~~
12 ~~section.~~

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

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

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

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

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

19 (F) EXCEPTION.--NOTWITHSTANDING SUBSECTION (H), WHEN THE <—
20 COMMONWEALTH ENTERS INTO A CONTRACT UNDER THIS SECTION FOR THE
21 OPERATION OF THE COMMONWEALTH'S DRIVER'S LICENSE PHOTO CENTERS,
22 AT LEAST 70% OF THE AMOUNT PAID BY THE COMMONWEALTH SHALL BE
23 USED TO COVER PAYMENT OF WAGES AND SALARIES TO PERSONS WITH
24 DISABILITIES AND TO COVER ACTUAL MANUFACTURING COSTS, REAL
25 ESTATE LEASE COSTS, PROPERTY INSURANCE AND OTHER COSTS WHICH ARE
26 SPECIFICALLY REQUIRED BY CONTRACT.

27 (G) APPLICATION.--

28 (1) THIS SECTION SHALL NOT SUPERSEDE ANY CONTRACT
29 CURRENTLY IN FORCE BETWEEN A COMMONWEALTH AGENCY AND ANOTHER
30 PARTY.

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

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

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

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

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

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

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

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

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

8 SUBCHAPTER C
9 CANCELLATION OF INVITATIONS FOR BIDS OR
10 REQUESTS FOR PROPOSALS

11 Sec.

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

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

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

22 SUBCHAPTER D
23 QUALIFICATIONS AND DUTIES

24 Sec.

25 531. Debarment or suspension.

26 532. Prequalification of bidders and offerors.

27 533. Security and performance bonds.

28 534. Cost or pricing data.

29 535. Printing.

30 § 531. Debarment or suspension.

1 (a) Authority.--After reasonable notice to the person
2 involved and reasonable opportunity for that person to be heard,
3 the head of a purchasing agency, after consultation with the
4 head of the using agency, shall have authority to debar a person
5 ~~for cause from consideration for award of contracts for a period~~ <—
6 ~~of not more than three years or to suspend a person from~~
7 ~~consideration for award of contracts if there is probable cause~~
8 ~~for debarment for a period of not more than three months.~~ FROM <—
9 CONSIDERATION FOR THE AWARD OF CONTRACTS. THE DECISION TO DEBAR
10 SHALL BE BASED UPON SUBSTANTIAL EVIDENCE THAT A CAUSE FOR
11 DEBARMENT OR SUSPENSION UNDER SUBSECTION (B) HAS OCCURRED. IN
12 MAKING THE DECISION OF WHETHER TO DEBAR A CONTRACTOR, THE HEAD
13 OF THE PURCHASING AGENCY SHALL TAKE INTO CONSIDERATION THE
14 SERIOUSNESS OF ANY VIOLATION AND ANY MITIGATING FACTORS. A
15 DEBARMENT MAY BE FOR A PERIOD OF NOT MORE THAN THREE YEARS. THE
16 HEAD OF THE PURCHASING AGENCY MAY SUSPEND A PERSON FROM
17 CONSIDERATION FOR AN AWARD OF CONTRACTS FOR A PERIOD OF UP TO
18 THREE MONTHS IF THERE IS PROBABLE CAUSE FOR DEBARMENT.

19 (b) Causes for debarment or suspension.--The causes for
20 debarment or suspension include:

21 (1) Commission of embezzlement, theft, forgery, bribery,
22 falsification or destruction of records, making false
23 statements or receiving stolen property.

24 (2) Commission of fraud or a criminal offense or other
25 improper conduct or knowledge of, approval of, or
26 acquiescence in such activities by a contractor or any
27 affiliate, officer, employee or other individual or entity
28 associated with:

29 (i) obtaining;

30 (ii) attempting to obtain; or

1 (iii) performing a public contract or subcontract.
2 The contractor's acceptance of the benefits derived from the
3 conduct shall be deemed evidence of such knowledge, approval
4 or acquiescence.

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

6 (4) Violation of any Federal or State law regulating
7 campaign contributions.

8 (5) Violations of any Federal or State environmental
9 law.

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

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

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

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

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

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

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

30 (ii) Offering unbalanced bids.

1 (iii) Failure to complete the work in the time frame
2 specified in the contract.

3 (iv) Being declared in default on prior work or
4 project.

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

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

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

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

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

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

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

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

30 (e) Finality of decision and appeal.--A decision under

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

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

§ 532. Prequalification of bidders and offerors.

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

§ 533. Security and performance bonds.

(a) Contract for supplies or services.--

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

(2) When the invitation for bids or the request for

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

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

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

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

27 § 534. Cost or pricing data.

28 (a) Submission by contractor.--A contractor shall, except as
29 provided in subsection (c), submit cost or pricing data and
30 shall certify that, to the best of its knowledge and belief, the

1 cost or pricing data submitted was accurate, complete and
2 current as of a mutually determined specified date prior to the
3 date of:

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

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

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

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

23 (1) When responsive proposals are received from two or
24 more offerors.

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

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

29 (4) When it is determined in writing by the contracting
30 officer that the requirements of this section may be waived

1 and the reasons for the waivers are stated in writing.

2 § 535. Printing.

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

8 SUBCHAPTER E

9 TYPES OF CONTRACTS

10 Sec.

11 541. Approval of accounting system.

12 542. Multiterm contracts.

13 543. Effective contracts.

14 § 541. Approval of accounting system.

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

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

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

23 Notwithstanding the preceding, a contract may be used without a
24 prior written determination where the contract is a firm fixed
25 price contract, or a contract awarded under section 516
26 (relating to emergency procurement).

27 § 542. Multiterm contracts.

28 (a) Specified period.--A contract for supplies, construction
29 or services may be entered into for a period of time deemed to
30 be in the best interests of the Commonwealth. The term of the

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

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

20 § 543. Effective contracts.

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

24 (b) Certain contracts.--Those Statewide requirements
25 contracts where the total dollar purchasing amount, based upon
26 estimated quantities, is in excess of \$1,000,000 shall not be
27 effective unless first approved by the State Treasurer. The
28 \$1,000,000 amount shall be adjusted each year by the department
29 to reflect the annual percentage change in the Composite
30 Construction Cost Index of the United States Department of

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

3 SUBCHAPTER F

4 INSPECTION OF PLANT AND AUDIT OF RECORDS

5 Sec.

6 551. Right to inspect plant.

7 552. Right to audit records.

8 § 551. Right to inspect plant.

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

13 § 552. Right to audit records.

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

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

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

6 SUBCHAPTER G

7 DETERMINATIONS AND REPORTS

8 Sec.

9 561. Finality of determinations.

10 562. Anticompetitive practices.

11 563. Retention of procurement records.

12 564. Record of certain actions.

13 § 561. Finality of determinations.

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

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

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

20 Section 515 (relating to sole source procurement).

21 Section 516 (relating to emergency procurement).

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

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

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

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

28 § 562. Anticompetitive practices.

29 Collusion among bidders is unlawful. Every contract,
30 combination or conspiracy which unreasonably restrains trade

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

10 § 563. Retention of procurement records.

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

20 § 564. Record of certain actions.

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

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

1 CHAPTER 7

2 (Reserved)

3 CHAPTER 9

4 PROCUREMENT OF CONSTRUCTION AND DESIGN

5 PROFESSIONAL SERVICES

6 Sec.

7 901. Definitions.

8 902. Bid or proposal security.

9 903. Contract performance security and payment bonds.

10 904. Copies of bonds.

11 905. Procurement of design professional services.

12 § 901. Definitions.

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

16 "Design professional services." Those professional services
17 within the scope of the practice of architecture, geology,
18 engineering, landscape architecture or land surveying, including
19 studies, investigations, surveying, mapping, tests, evaluations,
20 consultations, comprehensive planning, program management,
21 conceptual design, plans and specifications, value engineering,
22 maintenance manuals and other related services associated with
23 research, planning, development, design, construction,
24 alteration or repair of real property. The term includes
25 services provided under the supervision of a professional
26 engineer to develop engineering software which will aid design
27 professionals in performing their work. The term does not
28 include those services which are not exclusively within the
29 scope of architecture, geology, engineering or landscape
30 architecture, but which are related to capital improvements such

1 as, but not limited to, environmental hygienics, construction
2 management as described in section 322 (relating to specific
3 construction powers, duties and procedures), exhibit design,
4 fine arts or lesser arts and crafts, even though an architect,
5 geologist, engineer or landscape architect may provide such
6 services.

7 § 902. Bid or proposal security.

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

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

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

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

1 the bidder or the bid security.

2 § 903. Contract performance security and payment bonds.

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

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

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

27 (b) Protection.--A performance bond shall be solely for the
28 protection of the purchasing agency which awarded the contract.
29 A payment bond shall be solely for the protection of claimants
30 supplying labor or materials to the prime contractor to whom the

1 contract was awarded or to any of its subcontractors in the
2 prosecution of the work provided for in the contract, whether or
3 not the labor or materials constitute a component part of the
4 construction.

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

10 (d) Actions on payment bonds.--

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

22 (2) Any claimant who has a direct contractual
23 relationship with any subcontractor of the prime contractor
24 who gave the payment bond but has no contractual
25 relationship, express or implied, with the prime contractor
26 may bring an action on the payment bond only if it has given
27 written notice to the contractor within 90 days from the date
28 on which the claimant performed the last of the labor or
29 furnished the last of the materials for which it claims
30 payment, stating with substantial accuracy the amount and the

1 name of the person for whom the work was performed or to whom
2 the material was furnished.

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

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

16 § 904. Copies of bonds.

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

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

23 (c) Evidence.--A copy of any payment bond and of the
24 contract for which the bond was given constitutes prima facie
25 evidence of the contents, execution and delivery of the original
26 of the bond and contract.

27 § 905. Procurement of design professional services.

28 (a) Applicability.--Design professional services shall be
29 procured as provided in this section except as authorized by
30 sections 514 (relating to small procurements), 515 (relating to

1 sole source procurement) and 516 (relating to emergency
2 procurement).

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

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

20 (d) Selection committee for all other Commonwealth
21 agencies.--Except as provided for in subsection (c), all
22 purchasing agencies shall use the selection committee appointed
23 by the Governor which shall be composed of five members, none of
24 whom shall be employees of the Commonwealth or hold any elective
25 office or office in any political party. The members shall be
26 architects, engineers or other persons knowledgeable in
27 construction. The members shall serve for terms of two years and
28 shall not be removed except for cause. Of the original members,
29 three shall serve for terms of two years and two for terms of
30 one year. Thereafter, all terms shall be for two years. Each

1 member shall be reimbursed for reasonable travel and other
2 expenses incurred incident to attendance at meetings and to
3 assigned duties and also a per diem allowance in accordance with
4 Commonwealth travel policies.

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

7 (1) The committee shall give public notice of projects
8 requiring design services and publicly recommend to the
9 purchasing agency three qualified design professionals for
10 each project.

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

20 (i) An equitable distribution of contracts to design
21 professionals.

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

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

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

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

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

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

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

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

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

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

14 CHAPTER 11

15 (RESERVED)

16 CHAPTER 13

17 (Reserved)

18 CHAPTER 15

19 SUPPLY MANAGEMENT

20 Sec.

21 1501. Definitions.

22 1502. Supply management regulations.

23 1503. Proceeds from sale or disposal of surplus supplies.

24 1504. Exception.

25 § 1501. Definitions.

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

29 "Excess supplies." All nonexpendable supplies having a
30 remaining useful life but which are no longer required by the

1 using agency in possession of the supplies.

2 "Expendable supplies." All tangible supplies other than
3 nonexpendable supplies.

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

7 "Supplies." Supplies owned by Commonwealth agencies.

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

16 § 1502. Supply management regulations.

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

19 (1) The management of supplies during their entire life
20 cycle.

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

28 (3) Transfer of excess supplies.

29 § 1503. Proceeds from sale or disposal of surplus supplies.

30 The proceeds from the sale, lease or disposal of surplus

1 supplies by an executive or independent agency shall be paid
2 into the State Treasury and deposited in the fund out of which
3 the supplies sold was originally purchased by the appropriate
4 credit to the then-current appropriation. The costs incurred by
5 the department in advertising or selling the supplies shall be
6 deducted from the purchase price, and that amount shall be an
7 executively authorized augmentation to the appropriation from
8 which the costs were paid by the department.

9 § 1504. Exception.

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

13 CHAPTER 17

14 LEGAL AND CONTRACTUAL REMEDIES

15 Subchapter

16 A. General Provisions

17 B. Prelitigation Resolution of Controversies

18 C. Board of Claims

19 D. Solicitations or Awards in Violation of Law

20 E. Interest

21 SUBCHAPTER A

22 GENERAL PROVISIONS

23 Sec.

24 1701. Definitions.

25 1702. Sovereign immunity.

26 § 1701. Definitions.

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

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

1 Claims.

2 § 1702. Sovereign immunity.

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

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

14 SUBCHAPTER B

15 PRELITIGATION RESOLUTION OF CONTROVERSIES

16 Sec.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (e) Finality of decision.--The decision under subsection (c)

1 shall be final and conclusive unless the contractor files a
2 claim with the Board of Claims within 30 days of receipt of the
3 decision.

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

10 SUBCHAPTER C

11 BOARD OF CLAIMS

12 Sec.

13 1721. Function of Board of Claims.

14 1722. (Reserved).

15 1723. (Reserved).

16 1724. (Reserved).

17 1725. Hearings, decisions and awards.

18 1726. Appeals.

19 § 1721. Function of Board of Claims.

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

23 § 1722. (Reserved).

24 § 1723. (Reserved).

25 § 1724. (Reserved).

26 § 1725. Hearings, decisions and awards.

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

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

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

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

19 § 1726. Appeals.

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

25 SUBCHAPTER D

26 SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

27 Sec.

28 1741. Applicability.

29 1742. Remedies prior to execution of contract.

30 1743. Remedies after execution of contract.

1 § 1741. Applicability.

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

5 § 1742. Remedies prior to execution of contract.

6 If prior to execution of a contract it is determined that a
7 solicitation or proposed award of a contract is in violation of
8 law, then the remedies are limited to cancellation of the
9 solicitation or proposed award or revision of the solicitation
10 or proposed award to comply with the law.

11 § 1743. Remedies after execution of contract.

12 If after the execution of a contract it is determined that a
13 solicitation or award of a contract is in violation of law,
14 then:

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

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

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

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

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

30 (i) the contract may be declared void;

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

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

8 SUBCHAPTER E

9 INTEREST

10 Sec.

11 1751. Interest.

12 § 1751. Interest.

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

19 CHAPTER 19

20 INTERGOVERNMENTAL RELATIONS

21 Sec.

22 1901. Definitions.

23 1902. Cooperative purchasing authorized.

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

26 1904. Cooperative use of supplies or services.

27 1905. Joint use of facilities.

28 1906. Supply of personnel, information and technical services.

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

1 1908. Compliance of public procurement units.

2 1909. Review of procurement requirements.

3 1910. Contract controversies.

4 1911. Immunity.

5 1912. Investment management agreements.

6 § 1901. Definitions.

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

10 "Cooperative purchasing." Procurement conducted by or on
11 behalf of more than one public procurement unit or by a public
12 procurement unit with an external procurement activity.

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

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

25 "Public procurement unit." A local public procurement unit
26 or a purchasing agency.

27 § 1902. Cooperative purchasing authorized.

28 A public procurement unit may either participate in, sponsor,
29 conduct or administer a cooperative purchasing agreement for the
30 procurement of any supplies, services or construction with one

1 or more public procurement units or external procurement
2 activities in accordance with an agreement entered into between
3 the participants. Cooperative purchasing may include, but is not
4 limited to, joint or multiparty contracts between public
5 procurement units and open-ended purchasing agency contracts
6 which are made available to local public procurement units.

7 § 1903. Sale, acquisition or use of supplies by a public
8 procurement unit.

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

14 § 1904. Cooperative use of supplies or services.

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

22 § 1905. Joint use of facilities.

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

28 § 1906. Supply of personnel, information and technical
29 services.

30 (a) Supply of personnel.--Upon written request from another

1 public procurement unit or external procurement activity, a
2 public procurement unit may provide personnel to the requesting
3 public procurement unit or external procurement activity. The
4 public procurement unit or external procurement activity making
5 the request shall compensate the public procurement unit
6 providing the personnel the direct and indirect cost of
7 furnishing the personnel in accordance with an agreement between
8 the parties.

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

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

- 22 (1) Standard forms.
- 23 (2) Printed manuals.
- 24 (3) Product specifications and standards.
- 25 (4) Quality assurance testing services and methods.
- 26 (5) Qualified products lists.
- 27 (6) Source information.
- 28 (7) Common use commodities listings.
- 29 (8) Supplier prequalification information.
- 30 (9) Supplier performance ratings.

1 (10) Debarred and suspended bidders lists.

2 (11) Forms for invitations for bids, requests for
3 proposals, instructions to bidders, general contract
4 provisions and other contract forms.

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

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

9 (1) Development of products specifications.

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

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

13 (4) Use of personnel training programs.

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

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

19 All payments from any public procurement unit or external
20 procurement activity received by a public procurement unit
21 supplying personnel or services shall be available to the
22 supplying public procurement unit.

23 § 1908. Compliance of public procurement units.

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

1 § 1909. Review of procurement requirements.

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

9 § 1910. Contract controversies.

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

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

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

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

30 § 1911. Immunity.

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

6 § 1912. Investment management agreements.

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

11 CHAPTER 21

12 SMALL AND DISADVANTAGED BUSINESSES

13 Sec.

14 2101. Policy.

15 2102. Definitions.

16 2103. Regulations.

17 2104. Duties of department.

18 2105. Bonding and progress payments.

19 2106. Business assistance offices.

20 2107. Report to General Assembly.

21 2108. Compliance with Federal requirements.

22 § 2101. Policy.

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

28 § 2102. Definitions.

29 Subject to section 2103 (relating to regulations), the
30 following words and phrases when used in this chapter shall have

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

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

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

16 § 2103. Regulations.

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

26 § 2104. Duties of department.

27 The department shall have the following duties:

28 (1) Where feasible, provide appropriate staff who shall
29 be responsible to the department and who shall serve within
30 designated Commonwealth agencies to assist small and

disadvantaged businesses in this Commonwealth in learning how to do business with Commonwealth agencies.

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

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

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

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

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

§ 2105. Bonding and progress payments.

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

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

§ 2106. Business assistance offices.

The department shall establish, as it deems appropriate,

1 business assistance offices throughout this Commonwealth to
2 assist and carry out the provisions of this chapter.

3 § 2107. Report to General Assembly.

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

8 § 2108. Compliance with Federal requirements.

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

14 CHAPTER 23

15 ETHICS IN PUBLIC CONTRACTING

16 Subchapter

17 A. General Policy and Standards

18 B. Specific Standards

19 SUBCHAPTER A

20 GENERAL POLICY AND STANDARDS

21 Sec.

22 2301. Policy.

23 2302. General standards of ethical conduct.

24 2303. Reporting of breaches of ethical standards.

25 § 2301. Policy.

26 Public employment is a public trust. It is the policy of this
27 Commonwealth to promote and balance the objective of protecting
28 government integrity and the objective of facilitating the
29 recruitment and retention of personnel needed by this
30 Commonwealth. Implementation of this policy requires that public

1 employees discharge their duties impartially so as to assure
2 fair competitive access to Commonwealth agency procurement by
3 responsible contractors and that they conduct themselves in a
4 manner that fosters public confidence in the integrity of the
5 Commonwealth procurement process. It is also essential that
6 those doing business with the Commonwealth agencies observe high
7 standards of honesty and integrity.

8 § 2302. General standards of ethical conduct.

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

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

18 § 2303. Reporting of breaches of ethical standards.

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

23 SUBCHAPTER B

24 SPECIFIC STANDARDS

25 Sec.

26 2311. Bonds.

27 § 2311. Bonds.

28 It is a breach of ethical standards and unlawful for any
29 employee in issuing an invitation for bids or requests for
30 proposals to require that any bond required by this part be

furnished by a particular surety company or through a particular agent or broker. Any employee who violates this section commits a misdemeanor of the first degree.

PART II

GENERAL PROCUREMENT PROVISIONS

Chapter

31. General Provisions

33. Prevention of Environmental Pollution

35. (Reserved)

37. Contract Clauses and Preference Provisions

39. Construction Contracts Over \$50,000

41. Purchase of Surplus Federal Property

43. Public Facilities Concessions

45. Antibid-Rigging

CHAPTER 31

GENERAL PROVISIONS

Sec.

3101. Application of part.

3102. Definitions.

§ 3101. Application of part.

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

§ 3102. Definitions.

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

"Commonwealth agency." A Commonwealth agency as defined in

1 section 103 (relating to definitions).

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

6 CHAPTER 33

7 PREVENTION OF ENVIRONMENTAL POLLUTION

8 Sec.

9 3301. Invitations for bids and requests for proposals.

10 3302. Additional work.

11 § 3301. Invitations for bids and requests for proposals.

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

18 § 3302. Additional work.

19 If the successful bidder or offeror must undertake additional
20 work due to the enactment of new or the amendment of existing
21 statutes, rules or regulations occurring after the submission of
22 the successful bid or proposal, the government agency shall
23 issue a change order setting forth the additional work that must
24 be undertaken, which shall not invalidate the contract. The cost
25 of a change order to the government agency shall be determined
26 in accordance with the provisions of the contract for change
27 orders or force accounts, or, if there is not a provision set
28 forth in the contract, then the cost to the government agency
29 shall be the costs to the contractor for wages, labor costs
30 other than wages, wage taxes, materials, equipment rentals,

1 insurance and subcontracts attributable to the additional
2 activity plus a reasonable sum for overhead and profit.
3 Additional costs to undertake work not specified in the
4 invitation for bids or requests for proposals shall not be
5 approved unless written authorization is given the successful
6 bidder or offeror prior to its undertaking the additional
7 activity.

8 CHAPTER 35

9 (RESERVED)

10 CHAPTER 37

11 CONTRACT CLAUSES AND PREFERENCE PROVISIONS

12 Subchapter

13 A. Labor

14 B. Motor Vehicles

15 C. Used Oil Products

16 D. Guaranteed Energy Savings Contracts

17 SUBCHAPTER A

18 LABOR

19 Sec.

20 3701. Contract provisions prohibiting discrimination.

21 § 3701. Contract provisions prohibiting discrimination.

22 Each contract entered into by a government agency for the
23 construction, alteration or repair of any public building or
24 public work shall contain the following provisions by which the
25 contractor agrees that:

26 (1) In the hiring of employees for the performance of
27 work under the contract or any subcontract, no contractor,
28 subcontractor or any person acting on behalf of the
29 contractor or subcontractor shall by reason of gender, race,
30 creed or color discriminate against any citizen of this

Commonwealth who is qualified and available to perform the work to which the employment relates.

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

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

SUBCHAPTER B

MOTOR VEHICLES

Sec.

3731. Short title of subchapter and general provisions.

3732. Definitions.

3733. Police power.

3734. Contract provisions.

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

3736. Penalty.

§ 3731. Short title of subchapter and general provisions.

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

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

(1) The production of motor vehicles and component parts constitutes a major industry of this Commonwealth. It

1 provides employment for and incomes of hundreds of thousands
2 of the people of this Commonwealth and, in turn, millions of
3 persons in the United States.

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

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

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

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

27 (c) Purpose of subchapter.--This subchapter is intended as
28 remedial legislation designed to promote the general welfare and
29 stimulate the economy of this Commonwealth and its people. Each
30 provision shall receive a liberal construction to effectuate

1 that intention. None of the provisions of this subchapter shall
2 receive a strict or limited construction.

3 § 3732. Definitions.

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

7 "Motor vehicle." A vehicle which is self-propelled except
8 one which is propelled solely by human or animal power. The term
9 includes those vehicles designed primarily for use in
10 construction or agriculture or road maintenance such as tractors
11 and earth-moving equipment. THE TERM DOES NOT INCLUDE VEHICLES <—
12 USED PRIMARILY FOR GRASS CUTTING.

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

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

19 § 3733. Police power.

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

23 § 3734. Contract provisions.

24 (a) Motor vehicles to be manufactured in North America.--All
25 government agencies shall procure only motor vehicles which are
26 manufactured in North America. A motor vehicle is manufactured
27 in North America if a substantial majority of the principal
28 components are assembled into the final product in an assembly
29 plant in North America. Contract documents for the procurement
30 of motor vehicles shall contain a provision that the vehicles

1 procured by the government agency shall be manufactured in North
2 America.

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

7 § 3735. Payment under contract and action to recover
8 unauthorized payments.

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

22 § 3736. Penalty.

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

29 ~~SUBCHAPTER C~~

30 SUBCHAPTER C

MASS TRANSPORTATION VEHICLES

SEC.

3741. PROCUREMENT OF MASS TRANSPORTATION VEHICLES.

§ 3741. PROCUREMENT OF MASS TRANSPORTATION VEHICLES.

(A) GENERAL RULE.--NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHENEVER A LOCAL, REGIONAL OR METROPOLITAN TRANSPORTATION AUTHORITY DETERMINES IN WRITING THAT IT IS NOT PRACTICABLE OR ADVANTAGEOUS TO THE AUTHORITY TO ENTER INTO A CONTRACT FOR THE PURCHASE OF MASS TRANSPORTATION OR RAILWAY VEHICLES THROUGH COMPETITIVE SEALED BIDDING, THE AUTHORITY MAY UTILIZE THE COMPETITIVE SEALED PROPOSAL METHOD OF PROCUREMENT IN ACCORDANCE WITH SECTION 513 (RELATING TO COMPETITIVE SEALED PROPOSALS).

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

SUBCHAPTER D

USED OIL PRODUCTS

Sec.

~~3741. Preference.~~

~~§ 3741. Preference.~~

3746. PREFERENCE.

§ 3746. PREFERENCE.

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

1 substantially equivalent to products made from new oil.

2 SUBCHAPTER D E

<—

3 GUARANTEED ENERGY SAVINGS CONTRACTS

4 Sec.

5 3751. Short title of subchapter.

6 3752. Definitions.

7 3753. Contracting procedures.

8 3754. Contract provisions.

9 3755. Funding.

10 3756. Commonwealth contracts.

11 3757. Construction.

12 § 3751. Short title of subchapter.

13 This subchapter shall be known and may be cited as the
14 Guaranteed Energy Savings Act.

15 § 3752. Definitions.

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

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

22 (1) Insulation of the building structure or systems
23 within the building.

24 (2) Storm windows or doors, caulking or weather
25 stripping, multiglazed windows or doors, heat-absorbing or
26 heat-reflective glazed and coated window or door systems,
27 additional glazing, reductions in glass area or other window
28 and door system modifications that reduce energy consumption.

29 (3) Automated or computerized energy control systems.

30 (4) Heating, ventilating or air-conditioning system

1 modifications or replacements.

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

8 (6) Energy recovery systems.

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

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

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

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

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

1 IMPROVEMENT, INCLUDING, BUT NOT LIMITED TO, HIGHWAY WORK.

2 "Qualified provider." A person or business which is
3 responsible and capable of evaluating, recommending, designing,
4 implementing and installing energy conservation measures as
5 determined by the governmental unit.

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

8 § 3753. Contracting procedures.

9 (a) General rule.--Notwithstanding any other contrary or
10 inconsistent provision of law, a governmental unit may enter
11 into a guaranteed energy savings contract with a qualified
12 provider in accordance with the provisions of this subchapter or
13 in accordance with another statutorily authorized ~~competitive~~ <—
14 PROCUREMENT process. <—

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

29 ~~(c) Request for proposals. Before entering into a~~ <—
30 ~~guaranteed energy savings contract under this section, a~~

1 ~~governmental unit shall issue a request for proposals. The~~

2 (C) COMPETITIVE SEALED PROPOSALS.--FOR THE PURPOSE OF <—
3 ENTERING INTO A GUARANTEED ENERGY SAVINGS CONTRACT, ALL
4 GOVERNMENTAL UNITS ARE AUTHORIZED TO UTILIZE THE COMPETITIVE
5 SEALED PROPOSAL METHOD OF PROCUREMENT. THE governmental unit
6 shall evaluate any proposal that meets the requirements of the
7 governmental unit and is timely submitted by a qualified
8 provider. The ~~RFP~~ REQUEST FOR PROPOSALS shall be announced <—
9 through a public notice from the governmental unit which will
10 administer the program. The request for proposal shall ~~include~~ <—
11 ~~all of the following:~~

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

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

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

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

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

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

25 (d) Selection and notice.--The governmental unit shall
26 select the qualified provider that best meets the needs of the
27 governmental unit in accordance with criteria established by the
28 governmental unit. For governmental units that are not required
29 to take actions on contracts at public meetings, the
30 governmental unit shall provide public notice of the award of

1 the guaranteed energy savings contract within 30 days in the
2 Pennsylvania Bulletin. The notice shall include the names of the
3 parties to the contract and the purpose of the contract. For
4 governmental units that are required to take actions on
5 contracts at public meetings, the public notice shall be made at
6 least ten days prior to the meeting. After reviewing the
7 proposals pursuant to subsection (e), a governmental unit may
8 enter into a guaranteed energy savings contract with a qualified
9 provider if it finds that the amount it would spend on the
10 energy conservation measures recommended in the proposal would
11 not exceed the amount to be saved in both energy and operational
12 costs within a ten-year period from the date of installation, if
13 the recommendations in the proposal were followed and the
14 qualified provider provides a written guarantee that the energy
15 or operating cost savings will meet or exceed the cost of the
16 contract.

17 (e) Report.--

18 (1) Before the award of a guaranteed energy savings
19 contract, the qualified provider shall provide a report as
20 part of its proposal which shall be available for public
21 inspection summarizing estimates of all costs of
22 installation, maintenance, repairs and debt service, and
23 estimates of the amounts by which energy or operating costs
24 will be reduced.

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

28 (f) Bond.--A qualified provider to whom a contract is
29 awarded shall give a sufficient bond to the governmental unit
30 ~~for its faithful performance in accordance with the act of FOR~~

<—

1 ITS FAITHFUL PERFORMANCE. COMMONWEALTH AGENCIES SHALL OBTAIN
2 SUCH BONDS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 533
3 (RELATING TO SECURITY AND PERFORMANCE BONDS). ALL OTHER
4 GOVERNMENTAL UNITS SHALL OBTAIN SUCH BONDS IN ACCORDANCE WITH
5 THE ACT OF December 20, 1967 (P.L.869, No.385), known as the
6 Public Works Contractors' Bond Law of 1967.

7 (g) Award of contract.--Notwithstanding any other provision
8 of law governing the letting of public contracts, a governmental
9 unit may enter into a single guaranteed energy savings contract
10 with each responsible provider selected ~~through the request for~~ <—
11 ~~proposals process~~ in accordance with the provisions of this
12 subchapter.

13 § 3754. Contract provisions.

14 (a) General rule.--A guaranteed energy savings contract may
15 provide that all payments, except obligations on termination of
16 the contract before its scheduled expiration, shall be made over
17 a period of time. Every guaranteed energy savings contract shall
18 provide that the savings in any year are guaranteed to the
19 extent necessary to make payments under the contract during that
20 year.

21 (b) Written guarantee.--A guaranteed energy savings contract
22 shall include a written guarantee that savings will meet or
23 exceed the cost of the energy conservation measures to be
24 evaluated, recommended, designed, implemented or installed under
25 the contract.

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

1 § 3755. Funding.

2 (a) General rule.--Guaranteed energy savings contracts which
3 have terms which extend beyond one fiscal year of the
4 governmental unit must include a provision which allows the
5 governmental unit to terminate the contract if in any fiscal
6 year during the term of the contract the governmental unit does
7 not receive sufficient funds in its annual appropriations to
8 make the payments required under the contract.

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

13 (c) Grants, subsidies or other payments.--Grants, subsidies
14 or other payments from the Commonwealth to a governmental unit
15 shall not be reduced as a result of energy savings obtained as a
16 result of a guaranteed energy savings contract during the life
17 of the contract.

18 § 3756. Commonwealth contracts.

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

29 § 3757. Construction.

30 This subchapter shall not be construed to abrogate any duty

1 to comply with prevailing wage or residency requirements
2 contained in any other act or part thereof.

3 CHAPTER 39

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

5 CONTRACTS FOR PUBLIC WORKS <—

6 Subchapter

7 A. Preliminary Provisions

8 B. General Provisions

9 C. Retainage

10 D. Prompt Payment Schedules

11 E. Substantial/final Payment

12 SUBCHAPTER A

13 PRELIMINARY PROVISIONS

14 Sec.

15 3901. Application and purpose of chapter.

16 3902. Definitions.

17 § 3901. Application and purpose of chapter.

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

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

1 pursuant to any Federal law or regulations containing specific
2 provisions which are different from the public contract
3 requirements of this chapter.

4 § 3902. Definitions.

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

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

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

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

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

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

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

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

1 "State-aided institution." Any institution which receives
2 State funds DIRECTLY OR INDIRECTLY for construction AS DEFINED <—
3 IN SECTION 103 (RELATING TO DEFINITIONS).

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

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

15 SUBCHAPTER B

16 GENERAL PROVISIONS

17 Sec.

18 3911. Time for awarding contract.

19 3912. Time for executing contract.

20 3913. Release of successful bidder.

21 § 3911. Time for awarding contract.

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

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

1 bids shall be rejected.

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

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

13 § 3912. Time for executing contract.

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

18 § 3913. Release of successful bidder.

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

27 SUBCHAPTER C

28 RETAINAGE

29 Sec.

30 3921. Retainage.

1 3922. Payment of retainage to subcontractors.

2 § 3921. Retainage.

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

29 (b) Department of General Services.--Notwithstanding
30 subsection (a), when the Department of General Services is the

1 government agency, the contract may include a provision for the
2 retainage of a portion of the amount due the contractor to
3 insure the proper performance of the contract except that the
4 sum withheld by the department for the contractor shall not
5 exceed 6% of the then total estimates until 50% of the contract
6 is satisfactorily completed. The sum withheld by the department
7 from the contractor after the contract is 50% satisfactorily
8 completed shall not exceed 3% of the original contract amount.
9 § 3922. Payment of retainage to subcontractors.

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

14 SUBCHAPTER D

15 PROMPT PAYMENT SCHEDULES

16 Sec.

17 3931. Performance by contractor or subcontractor.

18 3932. Government agency's progress payment obligations.

19 3933. Contractors' and subcontractors' payment obligations.

20 3934. Withholding of payment for good faith claims.

21 3935. Penalty and attorney fees.

22 3936. Contracts involving Federal aid.

23 3937. Certain provisions unenforceable.

24 3938. Applicability.

25 3939. Claims by innocent parties.

26 § 3931. Performance by contractor or subcontractor.

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

30 (b) Entitlement of subcontractor to payment.--Performance by

1 a subcontractor in accordance with the provisions of a contract
2 shall entitle the subcontractor to payment from the contractor
3 with whom the subcontractor has contracted.

4 § 3932. Government agency's progress payment obligations.

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

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

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

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

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

6 § 3933. Contractors' and subcontractors' payment obligations.

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

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

28 (c) Payment.--When a subcontractor has performed in
29 accordance with the provisions of the contract, a contractor
30 shall pay to the subcontractor, and each subcontractor shall in

1 turn pay to its subcontractors, the full or proportional amount
2 received for each such subcontractor's work and material, based
3 on work completed or services provided under the subcontract, 14
4 days after receipt of a progress payment. Payment shall be made
5 under this section unless it is being withheld under section
6 3934 (relating to withholding of payment for good faith claims).

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

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

20 § 3934. Withholding of payment for good faith claims.

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

1 been satisfactorily completed.

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

12 § 3935. Penalty and attorney fees.

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

26 (b) Attorney fees.--Notwithstanding any agreement to the
27 contrary, the prevailing party in any proceeding to recover any
28 payment under this subchapter may be awarded a reasonable
29 attorney fee in an amount to be determined by the Board of
30 Claims, court or arbitrator, together with expenses, if it is

1 determined that the government agency, contractor or
2 subcontractor acted in bad faith. An amount shall be deemed to
3 have been withheld in bad faith to the extent that the
4 withholding was arbitrary or vexatious.

5 § 3936. Contracts involving Federal aid.

6 If any provision of this chapter conflicts with a Federal
7 statute or regulation or with conditions attached to the receipt
8 of Federal aid, this chapter shall not operate to prevent
9 receipt of the Federal aid in accordance with any Federal
10 statute or regulation.

11 § 3937. Certain provisions unenforceable.

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

16 § 3938. Applicability.

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

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

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

28 (3) Section 3932 shall not apply when government
29 agency's nonpayment on a particular project is caused by the
30 failure of the General Assembly to enact an operating budget

1 for the fiscal year of payment or a capital budget for the
2 capital project or by failure of the Federal, State or local
3 government to pay funds designated or to be designated for
4 the specific project.

5 (4) Nothing in this subchapter shall be construed to
6 require payment of interest penalties by the Federal or State
7 Government if the local government unit is liable for the
8 interest.

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

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

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

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

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

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

1 § 3939. Claims by innocent parties.

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

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

9 SUBCHAPTER E

10 SUBSTANTIAL/FINAL PAYMENT

11 Sec.

12 3941. Substantial/final payment under contract.

13 3942. Arbitration.

14 § 3941. Substantial/final payment under contract.

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

1 engineer shall list in detail each uncompleted item and a
2 reasonable cost of completion. Final payment of any amount
3 withheld for the completion of the minor items shall be paid
4 upon completion of the items in the certificate of the engineer
5 or architect.

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

18 § 3942. Arbitration.

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

29 CHAPTER 41

30 PURCHASE OF SURPLUS FEDERAL PROPERTY

1 Sec.

2 4101. Contracts with United States.

3 4102. Bids and down payments.

4 § 4101. Contracts with United States.

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

14 § 4102. Bids and down payments.

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

22 CHAPTER 43

23 PUBLIC FACILITIES CONCESSIONS

24 Sec.

25 4301. Short title of chapter and general provisions.

26 4302. Definitions.

27 4303. Terms of contracts.

28 § 4301. Short title of chapter and general provisions.

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

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

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

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

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

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

1 (c) Police power.--This chapter shall be deemed to be an
2 exercise of the police powers of this Commonwealth for the
3 protection of the health, safety and general welfare of the
4 people of this Commonwealth.

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

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

15 § 4302. Definitions.

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

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

23 § 4303. Terms of contracts.

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

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

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

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

CHAPTER 45

ANTIBID-RIGGING

Sec.

4501. Short title of chapter.

4502. Definitions.

4503. Prohibited activities.

4504. Civil action and damages.

4505. Suspension or debarment.

4506. Liability for increased costs.

4507. Noncollusion affidavits.

4508. Responsibility for enforcement.

4509. Investigation.

§ 4501. Short title of chapter.

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

§ 4502. Definitions.

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

"Bid-rigging." The concerted activity of two or more persons to determine in advance the winning bidder of a contract let or to be let for competitive bidding by a government agency. The

1 term includes, but is not limited to, any one or more of the
2 following:

3 (1) Agreeing to sell items or services at the same
4 price.

5 (2) Agreeing to submit identical bids.

6 (3) Agreeing to rotate bids.

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

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

11 (6) Agreeing to set up territories to restrict
12 competition.

13 (7) Agreeing not to submit bids.

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

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

21 § 4503. Prohibited activities.

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

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

28 (2) A subcontract for the purchase of equipment, goods,
29 services or materials or for construction or repair with a
30 prime contractor or proposed prime contractor for a

1 government agency.

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

6 (c) Fines and imprisonment.--Any person who violates this
7 section commits a felony of the third degree and shall, upon
8 conviction, be sentenced to pay a fine of not more than
9 \$1,000,000, if an entity other than an individual, or a fine of
10 not more than \$50,000, if an individual, or to serve a term of
11 imprisonment for not more than three years, or both.

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

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

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

25 (1) The prior record and the number of previous
26 violations.

27 (2) The net worth of the person.

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

29 (g) Civil action not barred.--A conviction or civil penalty
30 imposed under this section shall not bar a government agency

1 from pursuing additional civil action and administrative
2 sanctions.

3 (h) Limitation on prosecution.--No criminal prosecution
4 under this section shall be brought against a person who has
5 been previously charged by information or indictment with a
6 criminal violation of the Federal antitrust laws, based upon the
7 same allegedly unlawful conduct upon which a criminal
8 prosecution under this chapter could be based, where jeopardy
9 has attached under the Federal prosecution.

10 § 4504. Civil action and damages.

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

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

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

26 (d) When cause of action arises.--The cause of action shall
27 arise at the time the government agency which entered into the
28 contract discovered, or should have discovered, the conduct
29 amounting to the unlawful offense. The action shall be brought
30 within four years of the date that the cause of action arose. No

1 civil action shall be maintained after the expiration of ten
2 years from the date the contract was signed by the parties.

3 (e) Conviction to be dispositive of liability.--Any
4 conviction under section 4503 shall be dispositive of the
5 liability of the participants with the only issues for trial
6 being the fact and amount of damages.

7 § 4505. Suspension or debarment.

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

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

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

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

25 § 4506. Liability for increased costs.

26 A person who enters into a contract with a government agency,
27 either directly as a contractor or indirectly as a
28 subcontractor, during a period of suspension or debarment
29 imposed upon that person by that agency under its rules and
30 regulations shall be liable to the government agency and to an

1 eligible contractor for increased costs incurred as a result of
2 replacing the excluded or ineligible person.

3 § 4507. Noncollusion affidavits.

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

30 § 4508. Responsibility for enforcement.

1 (a) Criminal prosecution.--The Office of Attorney General
2 and the district attorneys of the several counties shall have
3 concurrent jurisdiction for the investigation and prosecution of
4 violations of section 4503 (relating to prohibited activities).

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

18 § 4509. Investigation.

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

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

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

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

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

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

21 § 2310. Sovereign immunity reaffirmed; specific waiver.

22 Pursuant to section 11 of Article 1 of the Constitution of
23 Pennsylvania, it is hereby declared to be the intent of the
24 General Assembly that the Commonwealth, and its officials and
25 employees acting within the scope of their duties, shall
26 continue to enjoy sovereign immunity and official immunity and
27 remain immune from suit except as the General Assembly shall
28 specifically waive the immunity. When the General Assembly
29 specifically waives sovereign immunity, a claim against the
30 Commonwealth and its officials and employees shall be brought

1 only in such manner and in such courts and in such cases as
2 directed by the provisions of Title 42 (relating to judiciary
3 and judicial procedure) or 62 (relating to procurement), unless
4 otherwise specifically authorized by statute.

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

6 § 763. Direct appeals from government agencies.

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

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

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

19 * * *

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

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

29 Section 6. (a) The following acts and parts of acts are
30 repealed:

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

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

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

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

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

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

1 sale of waste paper; the appointment of a director and other
2 employes; and repealing inconsistent and conflicting
3 legislation."

4 Sections 478, 2401.1(19), 2403(a), (b), (c) and (g), 2405,
5 2406(g), 2408, 2409, 2409.1, 2410, 2412, 2413 and 2414 of the
6 act of April 9, 1929 (P.L.177, No.175), known as The
7 Administrative Code of 1929.

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

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

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

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

29 Act of April 12, 1945 (P.L.220, No.99), entitled "An act
30 authorizing the Commonwealth and any administrative department,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Except as explicitly stated in the addition of 62 Pa.C.S. §
18 322(6), section 1 of the act of May 1, 1913 (P.L.155, No.104),
19 entitled "An act regulating the letting of certain contracts for
20 the erection, construction, and alteration of public buildings."

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

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

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

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

30 Act of April 3, 1992 (P.L.28, No.11), known as the Tuition

1 Account Program and College Savings Bond Act.

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

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

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