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MELIO AND STEELMAN, MARCH 18, 1997

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 18, 1997

AN ACT

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

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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, Architect and Engineer
7 Services

8 11. (Reserved)

9 13. (Reserved)

10 15. Supply Management

11 17. Legal and Contractual Remedies

12 19. Intergovernmental Relations

13 21. Small and Disadvantaged Businesses

14 23. Ethics in Public Contracting

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

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

19 CHAPTER 1

20 GENERAL PROVISIONS

21 Sec.

22 101. Short title of part.

23 102. Application of part.

24 103. Definitions.

25 104. General principles of law otherwise applicable.

26 105. Determinations.

27 106. Public access to procurement information.

28 107. Reciprocal limitations.

29 108. Recycled materials.

30 § 101. Short title of part.

1 This part shall be known and may be cited as the Commonwealth
2 Procurement Code.

3 § 102. Application of part.

4 (a) Application to Commonwealth procurement.--This part
5 applies to every expenditure of funds other than the investment
6 of funds by Commonwealth agencies under any contract,
7 irrespective of their source, including Federal assistance
8 moneys except as specified in section 2108 (relating to
9 compliance with Federal requirements). This part does not apply
10 to grants or contracts between Commonwealth agencies or between
11 the Commonwealth and its political subdivisions or other
12 governments except as provided in Chapter 19 (relating to
13 intergovernmental relations). Nothing in this part or in
14 accompanying regulations shall prevent any Commonwealth agency
15 or political subdivision from complying with the terms and
16 conditions of any grant, gift, bequest or cooperative agreement.

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

20 (c) Application to local agencies.--Any political
21 subdivision or other local public agency may specifically or by
22 reference adopt all or any part of this part and its
23 accompanying regulations.

24 (d) Application to General Assembly and unified judicial
25 system.--The General Assembly and its agencies and the unified
26 judicial system and its agencies may use the department as its
27 purchasing agency for the purchase of supplies under this part
28 and may use the department to dispose of surplus supplies under
29 Chapter 15 (relating to supply management).

30 § 103. Definitions.

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

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

12 "Commonwealth agency." An executive or independent agency.

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

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

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

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

29 "Department." The Department of General Services of the
30 Commonwealth.

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

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

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

18 "Independent agency." Boards, commissions, authorities and
19 other agencies and officers of the Commonwealth which are not
20 subject to the policy supervision and control of the Governor.
21 The term does not include any court or other officer or agency
22 of the unified judicial system or the General Assembly and its
23 officers and agencies.

24 "Policy statement." Any document, except an adjudication or
25 a regulation, promulgated by a Commonwealth agency which sets
26 forth substantive or procedural personal or property rights,
27 privileges, immunities, duties, liabilities or obligations of
28 the public or any person, including any document interpreting or
29 implementing any statute enforced or administered by the agency.

30 "Procurement." Buying, purchasing, renting, leasing or

1 otherwise acquiring any supplies, services or construction. The
2 term also includes all functions that pertain to the obtaining
3 of any supply, service or construction, including description of
4 requirements, selection and solicitation of sources, preparation
5 and award of contract and all phases of contract administration.

6 "Purchasing agency." A Commonwealth agency authorized by
7 this part to enter into contracts.

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

10 "Services." The furnishing of labor, time or effort by a
11 contractor not involving the delivery of a specific end product
12 other than reports which are merely incidental to the required
13 performance. The term does not include employment agreements,
14 collective bargaining agreements or agreements with litigation
15 consultants.

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

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

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

27 § 104. General principles of law otherwise applicable.

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

1 § 105. Determinations.

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

4 § 106. Public access to procurement information.

5 Procurement information shall be a public record to the
6 extent provided in the act of June 21, 1957 (P.L.390, No.212),
7 referred to as the Right-to-Know Law, and shall be available to
8 the public as provided in that act.

9 § 107. Reciprocal limitations.

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

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

16 (1) The award of contracts to the lowest responsible
17 bidder generally provides for the most economical procurement
18 of supplies and construction.

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

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

25 (4) The application of this preference or prohibition by
26 other states diminishes or eliminates opportunities for
27 bidders and manufacturers who reside in this Commonwealth to
28 obtain construction contracts from or to sell supplies to
29 states that have this preference, thereby resulting in the
30 loss of business for resident bidders and manufacturers.

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

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

28 (d) Preference for resident bidders or offerors.--When a
29 public contract exceeding the amount established by the
30 department for small purchases under section 514 is to be

1 awarded, a resident bidder or offeror shall be granted a
2 preference as against a nonresident bidder or offeror from any
3 state that gives or requires a preference to bidders or offerors
4 from that state. The amount of the preference shall be equal to
5 the amount of the preference applied by the state of the
6 nonresident bidder or offeror.

7 (e) Prohibition.--In the construction of any public building
8 or other public work at the expense of the Commonwealth or any
9 authority or instrumentality thereof, the following prohibition
10 shall be recognized and applied. No purchasing agency shall
11 specify for, use or procure any supplies which are produced,
12 manufactured, mined, grown or performed in any state that
13 prohibits the specification for, use or procurement of these
14 supplies in or on its public buildings or other works when these
15 supplies are not produced, manufactured, mined, grown or
16 performed in that state.

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

25 (g) Inclusion in invitation for bids or request for
26 proposals.--In all invitations for bids and requests for
27 proposals for the procurement of supplies exceeding the amount
28 established by the department for small purchases under section
29 514 all purchasing agencies shall include a list of all the
30 states that have been found by the department to have applied a

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

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

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

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

21 "Public contract." A contract for the construction of any
22 public building or other public work constructed at the expense
23 of the Commonwealth or any authority or instrumentality thereof,
24 or the purchase or lease of any supplies by any Commonwealth
25 agency.

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

1 proposals for the public contract were first solicited.

2 § 108. Recycled materials.

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

8 (b) Preference for recycled content.--The contracting
9 officer shall comply with section 1505 of the Municipal Waste
10 Planning, Recycling and Waste Reduction Act regarding a
11 preference for bids containing a minimum percentage of recycled
12 content for the supply subject to the bid.

13 CHAPTER 3

14 PROCUREMENT ORGANIZATION

15 Subchapter

16 A. Organization of Public Procurement

17 B. Procurement Policy

18 C. Powers and Duties of Department

19 D. Powers and Duties of the Board of

20 Commissioners of Public Grounds and Buildings

21 and the Office of the Budget

22 E. Coordination, Training and Education

23 SUBCHAPTER A

24 ORGANIZATION OF PUBLIC PROCUREMENT

25 Sec.

26 301. Procurement responsibility.

27 § 301. Procurement responsibility.

28 (a) General organization.--Formulation of procurement policy
29 governing the procurement, management, control and disposal of
30 supplies, services and construction for Commonwealth agencies

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

8 (b) Application to independent agencies.--Except as
9 otherwise specifically provided by law and this section, an
10 independent agency shall use the department as its purchasing
11 agency for the procurement of supplies or construction. However,
12 any independent agency that acts as its own purchasing agency
13 shall use the procedures provided in this part for any
14 procurement of supplies or construction.

15 (c) Exceptions.--The following supplies, services and
16 construction need not be procured through the department but
17 shall nevertheless be procured by the appropriate purchasing
18 agency, subject to the requirements of this part:

19 (1) Bridge, highway, dam, airport, railroad or other
20 heavy or specialized construction.

21 (2) Works of art for museum and public display.

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

24 (4) Architect and engineer services as defined in
25 section 901 (relating to definitions).

26 (5) Perishable food stuffs.

27 SUBCHAPTER B

28 PROCUREMENT POLICY

29 Sec.

30 311. Powers and duties.

1 312. Procurement regulations.

2 § 311. Powers and duties.

3 Except as otherwise provided in this part, the department may
4 promulgate regulations governing the procurement, management,
5 control and disposal of any and all supplies, services and
6 construction to be procured by Commonwealth agencies. The
7 department shall consider and decide matters of policy within
8 the provisions of this part. The department may audit and
9 monitor the implementation of its regulations and the
10 requirements of this part.

11 § 312. Procurement regulations.

12 Regulations shall be promulgated by the department as
13 provided in 45 Pa.C.S. Part II (relating to publication and
14 effectiveness of Commonwealth documents). The department may not
15 delegate its power to promulgate regulations. No regulation may
16 change any commitment, right or obligation of any Commonwealth
17 agency or of a contractor under a contract in existence on the
18 effective date of the regulation.

19 SUBCHAPTER C

20 POWERS AND DUTIES OF DEPARTMENT

21 Sec.

22 321. Powers and duties.

23 322. Specific construction powers, duties and procedures.

24 § 321. Powers and duties.

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

27 (1) Procure or supervise the procurement of all
28 supplies, services and construction needed by executive
29 agencies and those independent agencies for which the
30 department acts as purchasing agency. Procurement authority

1 may be delegated in writing to Commonwealth agencies by the
2 Secretary of General Services.

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

5 (3) Sell, trade or otherwise dispose of surplus supplies
6 belonging to Commonwealth agencies.

7 (4) Establish and maintain programs for the inspection,
8 testing and acceptance of supplies and construction.

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

13 (6) Establish and maintain a contractor responsibility
14 program in coordination with the Office of the Budget.

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

16 Whenever the General Assembly has made an appropriation or
17 authorized borrowing under Article XVI-B of the act of April 9,
18 1929 (P.L.343, No.176), known as The Fiscal Code, in any budget
19 to the department or to any Commonwealth agency or any State-
20 supported institution for the construction of a capital
21 improvement or for the repair or alteration of a capital
22 improvement to be completed by the department to cost more than
23 the amount established by the department in section 514
24 (relating to small purchases) for small construction purchases,
25 the construction of that capital improvement shall be carried
26 out by the department unless the work is to be done by State
27 employees or by inmates or patients of a State institution or
28 State institutions or unless the Commonwealth agency or State-
29 supported institution to which the General Assembly has
30 appropriated money for the foregoing purposes is, by law or by

1 the act making the appropriation, authorized to erect, alter or
2 enlarge buildings independently of the department.

3 (1) (i) If the appropriation for a maintenance project
4 is to a Commonwealth agency or State-supported
5 institution other than the department, the Commonwealth
6 agency or State-supported institution shall notify the
7 department to have plans and specifications for the
8 project prepared.

9 (ii) Upon enactment of appropriations for capital
10 projects, all Commonwealth agencies and State-supported
11 institutions shall, with the approval of the Governor,
12 notify the department to have plans and specifications
13 for the projects prepared.

14 (2) Promptly after the notice, in such cases, or
15 promptly after any appropriation made to it becomes
16 available, the department shall, if necessary, select an
17 architect and/or an engineer, in accordance with the
18 selection procedures of section 905 (relating to procurement
19 of design professional services) to design the work and
20 prepare the specifications therefor.

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

24 (i) A date for the completion of the plans and
25 specifications.

26 (ii) That the plans and specifications must meet
27 with the approval of the Commonwealth agency or State-
28 supported institution for which the building is being
29 erected, altered or enlarged and, in the case of an
30 administrative board or commission of the Commonwealth

1 agency with which the board or commission is respectively
2 connected, to the extent of the type and general
3 character of the building, design of the floor layouts,
4 medical equipment or other equipment of a nature peculiar
5 to the building for which the plans and specifications
6 are being prepared.

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

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

16 The architect or engineer in preparing plans and
17 specifications shall consult with the Commonwealth agency of
18 State-supported institution for which the building is to be
19 erected, altered or enlarged, but the department shall insist
20 upon the prompt completion of the plans and specifications,
21 within the time prescribed in the architect's or engineer's
22 contracts unless it shall specifically agree in writing to an
23 extension thereof.

24 (4) Every Commonwealth agency or State-supported
25 institution whose approval of plans and specifications is
26 required under this section shall, within 30 days after
27 submission thereof by the architect or engineer, approve or
28 disapprove all sketches, drawings, specifications and other
29 documents, and shall inform the architect or engineer of
30 decisions in a reasonable time so as not to delay him in his

1 work.

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

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

1 damages.

2 (7) Whenever the department enters into a single
3 contract for a project, in the absence of good and sufficient
4 reasons, the contractor shall pay each subcontractor within
5 15 days of receipt of payment from the department, an amount
6 equal to the percentage of completion allowed to the
7 contractor on the account of the subcontractor's work. The
8 contractor shall also require the subcontractor to make
9 similar payments to his subcontractors.

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

17 (9) Changes in scope in the plans or specifications, or
18 both, may be made after their approval only with the consent
19 of the Governor and all of the Commonwealth agencies and
20 State-supported institutions whose approval of the original
21 plans or specifications, or both, was necessary under this
22 section.

23 (10) If the appropriation is to a Commonwealth agency,
24 other than the department or State-supported institution, the
25 department shall award and enter into the contract as agent
26 for the Commonwealth agency or State-supported institution to
27 which the appropriation was made.

28 SUBCHAPTER D

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

1 Sec.

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

3 327. Office of the Budget.

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

5 No sole source procurement for supplies or leases of real
6 estate when a Commonwealth agency is the lessee shall be valid
7 or effective unless, upon review, it is approved by the Board of
8 Commissioners of Public Grounds and Buildings as provided in
9 section 515 (relating to sole source procurement).

10 § 327. Office of the Budget.

11 (a) Encumbrance of funds.--The Office of the Budget shall
12 encumber sufficient funds for the payment of all invoices for
13 the procurement of supplies, services and construction.

14 (b) Contractor responsibility program.--The Office of the
15 Budget shall assist the department in the establishment and
16 maintenance of a contractor responsibility program.

17 (c) Contracts for services.--Except for contracts awarded
18 pursuant to section 514 (relating to small purchases), the
19 Office of the Budget shall review and approve all contracts for
20 services for:

21 (1) Fiscal responsibility and budgetary appropriateness.

22 (2) Availability of funds.

23 (d) Agency comptrollers.--An agency comptroller may at his
24 option serve as a nonvoting member of an evaluation committee
25 for requests for proposals or a similar contract bidding or
26 selection committee for the acquisition of services.

27 SUBCHAPTER E

28 COORDINATION, TRAINING AND EDUCATION

29 Sec.

30 331. Collection of data concerning public procurement.

1 332. Advisory groups.

2 § 331. Collection of data concerning public procurement.

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

8 § 332. Advisory groups.

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

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

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

27 CHAPTER 5

28 SOURCE SELECTION AND CONTRACT FORMATION

29 Subchapter

30 A. Definitions

- 1 B. Methods of Source Selection
- 2 C. Cancellation of Invitations for Bids or Requests for
- 3 Proposals
- 4 D. Qualifications and Duties
- 5 E. Types of Contracts
- 6 F. Inspection of Plant and Audit of Records
- 7 G. Determinations and Reports

8 SUBCHAPTER A

9 DEFINITIONS

10 Sec.

11 501. Definitions.

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

18 (1) is regularly maintained by a manufacturer or
19 contractor;

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

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

26 "Invitation for bids." All documents, whether attached or
27 incorporated by reference, used for soliciting bids.

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

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

5 "Request for proposals." All documents, whether attached or
6 incorporated by reference, used for soliciting proposals.

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

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

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

22 SUBCHAPTER B

23 METHODS OF SOURCE SELECTION

24 Sec.

25 511. Methods of source selection.

26 512. Competitive sealed bidding.

27 513. Competitive sealed proposals.

28 514. Small purchases.

29 515. Sole source procurement.

30 516. Emergency procurement.

- 1 517. Multiple awards.
- 2 518. Competitive selection procedures for certain services.
- 3 519. Selection procedure for insurance and bonds.
- 4 520. Supplies and services furnished by persons with
- 5 disabilities.
- 6 § 511. Methods of source selection.

7 Unless otherwise authorized by law, all Commonwealth agency

8 contracts shall be awarded by competitive sealed bidding under

9 section 512 (relating to competitive sealed bidding) except as

10 provided in:

11 Section 513 (relating to competitive sealed proposals).

12 Section 514 (relating to small purchases).

13 Section 515 (relating to sole source procurement).

14 Section 516 (relating to emergency procurement).

15 Section 517 (relating to multiple awards).

16 Section 518 (relating to competitive selection procedures

17 for certain services).

18 Section 519 (relating to selection procedure for

19 insurance and bonds).

20 Section 520 (relating to supplies and services furnished

21 by persons with disabilities).

22 Section 905 (relating to procurement of design

23 professional services).

24 § 512. Competitive sealed bidding.

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

26 competitive sealed bidding except as otherwise provided in

27 section 511 (relating to methods of source selection).

28 (b) Invitation for bids.--An invitation for bids shall be

29 issued and shall include a procurement description and all

30 contractual terms, whenever practical, and conditions applicable

1 to the procurement.

2 (c) Public notice.--Adequate public notice of the invitation
3 for bids shall be given a reasonable time prior to the date set
4 for the opening of bids. The notice may include publication in a
5 newspaper of general circulation a reasonable time before bid
6 opening. The notice may also include advertisement as provided
7 for in 45 Pa.C.S. § 306 (relating to use of trade publications).

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

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

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

28 (1) Bids may be modified or withdrawn by written notice
29 or in person by a bidder or its authorized representative if
30 its identity is made known and a receipt for the bid is

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

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

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

30 (g) Award.--The contract shall be awarded within 60 days of

1 the bid opening by written notice to the lowest responsible and
2 responsive bidder whose bid meets the requirements and criteria
3 set forth in the invitation for bids. Thirty-day extensions of
4 the date for the award may be made by mutual written consent of
5 the contracting officer and the lowest responsible and
6 responsive bidder. Within 30 days of the bid opening the
7 contracting officer shall, if bid security was required by the
8 invitation for bids, return the bid security to all but the
9 lowest and next-to-lowest responsible and responsive bidders.

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

17 § 513. Competitive sealed proposals.

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

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

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

27 (d) Receipt of proposals.--Offerors shall submit their
28 proposal to ensure that their proposals are received prior to
29 the time and date established for receipt to the proposals.
30 Proposals shall be submitted in the format required by the

1 request for proposals. Proposals shall be opened so as to avoid
2 disclosure of their contents to competing offerors.

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

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

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

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

27 § 514. Small purchases.

28 If the procurement is not the subject of a requirements
29 contract between the purchasing agency and a contractor, the
30 head of the purchasing agency may authorize in writing purchases

1 without formal bid procedures in the field, not exceeding the
2 amount established by the purchasing agency. The department may
3 authorize procurement on a no-bid basis for procurements which
4 do not exceed the amount established by the department for
5 small, no-bid purchases. Procurement requirements shall not be
6 artificially divided so as to constitute a small purchase under
7 this section. Small purchases shall be made in accordance with
8 the requirements of the written authorization and this section.
9 Records of all small purchases shall be transmitted to the
10 purchasing agency.

11 § 515. Sole source procurement.

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

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

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

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

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

27 (5) The services are to be provided by attorneys
28 selected by the Office of General Counsel.

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

30 (7) The services involve the repair of equipment and

1 they are to be performed by the manufacturer of the equipment
2 or by the manufacturer's authorized dealer, provided the
3 contracting officer determines that bidding is not
4 appropriate under the circumstances.

5 (8) The contract is for financial or investment experts
6 selected by the Secretary of the Budget.

7 (9) It is in the best of the Commonwealth. This written
8 determination shall be included in the contract file. With
9 the exception of paragraph (3), if the sole source
10 procurement is for a supply, it must be approved by the Board
11 of Commissioners of Public Grounds and Buildings prior to the
12 award of a contract.

13 § 516. Emergency procurement.

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

23 § 517. Multiple awards.

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

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

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

4 (3) It is administratively or economically impractical
5 to develop or modify specifications because of the
6 heterogeneous nature of the product lines.

7 (4) There is a need for compatibility with existing
8 systems.

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

12 (b) Solicitation process.--Invitations to bid or requests
13 for proposals shall be issued for the supplies, services or
14 construction to be purchased.

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

18 (d) Receipt of bids or proposals.--Bids shall be opened in
19 the same manner as provided in section 512(d). Proposals shall
20 be received in the same manner as provided in section 513(d)
21 (relating to competitive sealed proposals).

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

25 (1) Awards shall be made to the lowest responsible and
26 responsive bidder or offeror for each designated
27 manufacturer.

28 (2) Awards shall be made to the two or three lowest
29 responsible and responsive bidders or offerors for each
30 designated manufacturer.

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

6 § 518. Competitive selection procedures for certain services.

7 (a) Conditions for use.--The services of accountants,
8 clergy, physicians, lawyers, dentists and other personal
9 services which are not performed by other salaried employees
10 shall be procured in accordance with this section except as
11 authorized under section 514 (relating to small purchases), 515
12 (relating to sole source procurement) or 516 (relating to
13 emergency procurement).

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

20 (c) Request for proposals.--Adequate notice of the need for
21 the services specified in subsection (a) shall be given by the
22 purchasing agency through a request for proposals. The request
23 for proposals shall describe the services required, list the
24 type of information and data required of each offeror and state
25 the relative importance of particular qualifications.

26 (d) Discussions.--The contracting officer may conduct
27 discussions with any offeror who has submitted a proposal to
28 determine the offeror's qualifications for further
29 consideration. Discussions shall not disclose any information
30 derived from proposals submitted by other offerors.

1 (e) Award.--Award shall be made to the offeror determined in
2 writing by the contracting officer to be best qualified based on
3 the evaluation factors set forth in the request for proposals.
4 Fair and reasonable compensation shall be determined through
5 negotiation. If compensation cannot be agreed upon with the best
6 qualified offeror, then negotiations will be formally terminated
7 with the selected offeror. If proposals were submitted by one or
8 more other offerors determined to be qualified, negotiations may
9 be conducted with the other offeror or offerors in the order of
10 their respective qualification ranking. The contract may be
11 awarded to the offeror then ranked as best qualified if the
12 amount of compensation is determined to be fair and reasonable.

13 § 519. Selection procedure for insurance and bonds.

14 (a) Conditions for use.--Insurance and bonds shall be
15 procured by the department in accordance with this section
16 except as authorized under section 515 (relating to sole source
17 procurement) or 516 (relating to emergency procurement).

18 (b) Statement of qualifications.--Insurance and bond
19 carriers may submit statements of qualifications and expressions
20 of interest in providing insurance or bonds. The department may
21 specify a uniform format for statements of qualifications.

22 (c) Request for proposals.--Adequate notice of the need for
23 insurance or bond coverage shall be given through a request for
24 proposals. The request for proposals shall describe the type of
25 insurance or bond coverage required and list the type of
26 information and data required of each offeror.

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

29 (e) Discussions with responsible offerors and revision to
30 proposals.--Discussions and negotiations may be conducted with

1 responsible offerors who submit proposals determined to be
2 reasonably susceptible of being selected for award. Offerors
3 shall be accorded fair and equal treatment with respect to any
4 opportunity for discussion, negotiation and revision of
5 proposals. Revisions may be permitted after submissions and
6 prior to award for the purpose of obtaining best and final
7 offers.

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

13 § 520. Supplies and services furnished by persons with
14 disabilities.

15 (a) General rule.--Supplies and services furnished by
16 persons with disabilities shall be procured by a purchasing
17 agency in accordance with this section.

18 (b) Fair market price.--The department shall determine the
19 fair market price of any supply or service furnished by persons
20 with disabilities and offered for sale to any Commonwealth
21 agency by an agency for persons with disabilities. The
22 department shall also revise the prices in accordance with
23 changing market conditions and promulgate regulations regarding
24 specifications, time of delivery and other relevant matters.

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 and services among
29 agencies for persons with disabilities.

30 (d) Procurement of supplies and services furnished by

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

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

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

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

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

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

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

6 "Supply or service furnished by persons with disabilities."
7 Any supply manufactured or service rendered in this Commonwealth
8 by a person with a disability. The term does not include any
9 service the practice of which is licensed under the laws of this
10 Commonwealth.

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

15 SUBCHAPTER C

16 CANCELLATION OF INVITATIONS FOR BIDS OR

17 REQUESTS FOR PROPOSALS

18 Sec.

19 521. Cancellation of invitations for bids or requests for
20 proposals.

21 § 521. Cancellation of invitations for bids or requests for
22 proposals.

23 An invitation for bids, a request for proposals or other
24 solicitation may be canceled or any or all bids or proposals may
25 be rejected in whole or in part as may be specified in the
26 solicitation when it is in the best interests of the
27 Commonwealth. The reasons for the cancellation or rejection
28 shall be made part of the contract file.

29 SUBCHAPTER D

30 QUALIFICATIONS AND DUTIES

1 Sec.

2 531. Debarment or suspension.

3 532. Prequalification of bidders and offerors.

4 533. Responsibility of bidders and offerors.

5 534. Security and performance bonds.

6 535. Cost or pricing data.

7 § 531. Debarment or suspension.

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

16 (b) Causes for debarment or suspension.--The causes for
17 debarment or suspension include:

18 (1) Conviction, including a plea of guilty or nolo
19 contendere, for commission of a criminal offense as an
20 incident to obtaining or attempting to obtain a public or
21 private contract or subcontract or in the performance of the
22 contract or subcontract.

23 (2) Conviction, including a plea of guilty or nolo
24 contendere, under Federal or State statutes of embezzlement,
25 theft, forgery, bribery, falsification or destruction of
26 records, receiving stolen property or any other offense
27 indicating a lack of business integrity or business honesty
28 which currently, seriously and directly affects
29 responsibility as a contractor.

30 (3) Conviction, including a plea of guilty or nolo

1 contendere, under Federal or State antitrust statutes arising
2 out of the submission of bids or proposals.

3 (4) Any of the following violations of contract
4 provisions of a character which is regarded by the head of a
5 purchasing agency to be so serious as to justify debarment
6 action:

7 (i) Deliberate failure without good cause to perform
8 in accordance with the specifications or within the time
9 limit provided in the contract.

10 (ii) A recent record of failure to perform or of
11 unsatisfactory performance in accordance with the terms
12 of one or more contracts.

13 Failure to perform or unsatisfactory performance caused by
14 acts beyond the control of the contractor shall not be
15 considered to be a basis for debarment.

16 (5) Any other cause the head of a purchasing agency
17 determines to be so serious and compelling as to affect
18 responsibility as a contractor, including debarment by
19 another governmental entity for any cause listed in the
20 contractor responsibility program established under
21 Subchapters C (relating to powers and duties of department)
22 and D (relating to powers and duties of the Board of
23 Commissioners of Public Grounds and Buildings and the Office
24 of the Budget) of Chapter 3.

25 (6) Violations of the ethical standards set forth in
26 Chapter 23 (relating to ethics in public contracting) or the
27 act of July 19, 1957 (P.L.1017, No.451), known as the State
28 Adverse Interest Act.

29 (c) Decision.--The head of a purchasing agency shall issue a
30 written decision to debar or suspend. The decision shall:

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

2 (2) Inform the debarred or suspended person involved of
3 the right to judicial review as provided in subsection (e).

4 (d) Notice of decision.--A copy of the decision under
5 subsection (c) shall be delivered by registered mail to the
6 debarred or suspended person and any other party intervening.

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

12 § 532. Prequalification of bidders and offerors.

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

15 Solicitation mailing lists of potential contractors shall
16 include, but shall not be limited to, prequalified bidders and
17 offerors.

18 § 533. Responsibility of bidders and offerors.

19 (a) Determination of nonresponsibility.--A written
20 determination of nonresponsibility of a bidder or offeror shall
21 be made in accordance with the contractor responsibility program
22 established under section 327(b) (relating to Office of the
23 Budget). The unreasonable failure of a bidder or offeror to
24 promptly supply information in connection with an inquiry with
25 respect to responsibility may be grounds for a determination of
26 nonresponsibility with respect to that bidder or offeror.

27 (b) Right of nondisclosure.--Information furnished by a
28 bidder or offeror under this section shall not be disclosed
29 outside of the purchasing agency without prior written consent
30 by the bidder or offeror except as otherwise provided in section

1 563 (relating to retention of procurement records).

2 § 534. Security and performance bonds.

3 (a) Contract for supplies.--

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

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

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

30 (4) A contractor may be required by the contracting

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

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

12 § 535. Cost or pricing data.

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

19 (1) the pricing of any contract awarded under section
20 513 (relating to competitive sealed proposals) or 515
21 (relating to sole source procurement) where the total
22 contract price is expected to exceed an amount established by
23 the head of the purchasing agency; or

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

27 (b) Price adjustment.--Any contract, change order or
28 contract modification under which a certificate is required
29 shall contain a provision that the price to the purchasing
30 agency, including profit or fee, shall be adjusted to exclude

1 any significant sums by which the purchasing agency finds that
2 the price was increased because the cost or pricing data
3 furnished by the contractor was inaccurate, incomplete or not
4 current as of the date agreed upon between the parties.

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

8 (1) The contract price is based on adequate price
9 competition.

10 (2) The contract price is based on established catalog
11 prices or market prices.

12 (3) Contract prices are set by statute or regulation.

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

16 SUBCHAPTER E

17 TYPES OF CONTRACTS

18 Sec.

19 541. Approval of accounting system.

20 542. Multiterm contracts.

21 543. Effective contracts.

22 § 541. Approval of accounting system.

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

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

29 (2) The proposed contractor's accounting system is
30 adequate to allocate costs in accordance with generally

1 accepted accounting principles.

2 § 542. Multiterm contracts.

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

11 (b) Cancellation for unavailability of funds in succeeding
12 fiscal periods.--When funds are not appropriated or otherwise
13 made available to support continuation of performance in a
14 subsequent fiscal period, the contract shall be canceled, and
15 the contractor shall be reimbursed for the reasonable value of
16 any nonrecurring costs incurred but not amortized in the price
17 of the supplies or services delivered under the contract. The
18 cost of cancellation may be paid from any appropriations
19 available for that purpose.

20 § 543. Effective contracts.

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

24 SUBCHAPTER F

25 INSPECTION OF PLANT AND AUDIT OF RECORDS

26 Sec.

27 551. Right to inspect plant.

28 552. Right to audit records.

29 § 551. Right to inspect plant.

30 The purchasing agency may, at reasonable times, inspect the

1 part of the plant or place of business of a contractor or any
2 subcontractor which is related to the performance of any
3 contract awarded or to be awarded by the purchasing agency.

4 § 552. Right to audit records.

5 (a) Audit of cost or pricing data.--The purchasing agency or
6 its designee may, at reasonable times and places, audit the
7 books and records of any person who has submitted cost or
8 pricing data under section 535 (relating to cost or pricing
9 data) to the extent that the books and records relate to the
10 cost or pricing data. A person who receives a contract, change
11 order or contract modification for which cost or pricing data is
12 required shall maintain the books and records that relate to the
13 cost or pricing data for three years from the date of final
14 payment under the contract unless a shorter period is otherwise
15 authorized in writing.

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

26 SUBCHAPTER G

27 DETERMINATIONS AND REPORTS

28 Sec.

29 561. Finality of determinations.

30 562. Anticompetitive practices.

1 563. Retention of procurement records.

2 564. Record of certain actions.

3 § 561. Finality of determinations.

4 The determinations required by the following sections are
5 final and conclusive unless they are clearly erroneous,
6 arbitrary, capricious or contrary to law:

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

8 Section 513(a) and (g) (relating to competitive sealed
9 proposals).

10 Section 515 (relating to sole source procurement).

11 Section 516 (relating to emergency procurement).

12 Section 518(e) (relating to competitive selection
13 procedures for certain services).

14 Section 519(f) (relating to selection procedure for
15 insurance and bonds).

16 Section 533(a) (relating to responsibility of bidders and
17 offerors).

18 Section 535(c) (relating to cost or pricing data).

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

20 § 562. Anticompetitive practices.

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

1 reports.

2 § 563. Retention of procurement records.

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

9 § 564. Record of certain actions.

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

16 (1) Each contractor's name.

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

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

20 CHAPTER 7

21 (Reserved)

22 CHAPTER 9

23 PROCUREMENT OF CONSTRUCTION, ARCHITECT AND

24 ENGINEER SERVICES

25 Sec.

26 901. Definitions.

27 902. Bid or proposal security.

28 903. Contract performance and payment bonds.

29 904. Copies of bonds.

30 905. Procurement of design professional services.

1 § 901. Definitions.

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

5 "Design professional services." Those professional services
6 within the scope of the practice of architecture, engineering,
7 landscape architecture or land surveying, including studies,
8 investigations, surveying, mapping, tests, evaluations,
9 consultations, comprehensive planning, program management,
10 conceptual design, plans and specifications, value engineering,
11 maintenance manuals and other related services associated with
12 research, planning, development, design, construction,
13 alteration or repair of real property.

14 § 902. Bid or proposal security.

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

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

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

1 with the security requirements in a nonsubstantial manner.

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

8 § 903. Contract performance and payment bonds.

9 (a) When required and amounts.--When a construction contract
10 is awarded in excess of \$250,000, the following bonds or
11 security shall be delivered to the purchasing agency and shall
12 be binding on the parties upon the execution of the contract:

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

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

28 (b) Protection.--A performance bond shall be solely for the
29 protection of the purchasing agency which awarded the contract.
30 A payment bond shall be solely for the protection of claimants

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

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

11 (d) Actions on payment bonds.--

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

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

1 payment, stating with substantial accuracy the amount and the
2 name of the person for whom the work was performed or to whom
3 the material was furnished.

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

11 (e) Adjustment of threshold amount.--The dollar threshold of
12 \$250,000 set forth in subsection (a) shall be adjusted annually
13 by the department to reflect the annual percentage change in the
14 Composition Construction Cost Index of the United States
15 Department of Commerce occurring in the one-year period ending
16 on December 31 of each year.

17 § 904. Copies of bonds.

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

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

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

28 § 905. Procurement of design professional services.

29 (a) Applicability.--Design professional services shall be
30 procured as provided in this section except as authorized by

1 sections 514 (relating to small purchases), 515 (relating to
2 sole source procurement) and 516 (relating to emergency
3 procurement).

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

11 (c) Selection committees for the Departments of
12 Transportation and Environmental Protection.--The Department of
13 Transportation and the Department of Environmental Protection
14 shall each establish a selection committee and procedure. The
15 procedure to procure design professional services shall be
16 similar to and consistent with the procedure provided for in
17 subsection (e). None of the members of these committees shall
18 hold any elective office or office in any political party.

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

1 attendance at meetings and to assigned duties and also a per
2 diem allowance in accordance with Commonwealth travel policies.

3 (e) Procedure for selection committee.--The selection
4 committee established under subsection (d) shall use the
5 procedure set forth in this subsection:

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

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

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

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

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

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

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

30 The fee to be paid to the selected design professional shall

1 be established by the selections committee.

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

25 CHAPTER 11

26 (RESERVED)

27 CHAPTER 13

28 (Reserved)

29 CHAPTER 15

30 SUPPLY MANAGEMENT

1 Sec.

2 1501. Definitions.

3 1502. Supply management regulations.

4 1503. Proceeds from sale or disposal of surplus supplies.

5 § 1501. Definitions.

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

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

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

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

17 "Supplies." Supplies owned by Commonwealth agencies.

18 "Surplus supplies." Supplies other than expendable supplies
19 no longer having any use to any Commonwealth agency. The term
20 includes obsolete supplies, scrap materials and nonexpendable
21 supplies that have completed their useful life cycle.

22 § 1502. Supply management regulations.

23 The department shall establish policy and may promulgate
24 regulations governing:

25 (1) The management of supplies during their entire life
26 cycle.

27 (2) The sale, lease or disposal of surplus supplies by
28 public auction, competitive sealed bidding or other
29 appropriate method designated by the department. However, no
30 employee of the owning or disposing agency shall be entitled

1 to purchase any of these supplies except when the sale price
2 of the surplus supply is less than the amount established by
3 the department for permissible purchases by such employees.

4 (3) Transfer of excess supplies.

5 § 1503. Proceeds from sale or disposal of surplus supplies.

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

14 CHAPTER 17

15 LEGAL AND CONTRACTUAL REMEDIES

16 Subchapter

17 A. General Provisions

18 B. Prelitigation Resolution of Controversies

19 C. Board of Claims

20 D. Solicitations or Awards in Violation of Law

21 E. Interest

22 SUBCHAPTER A

23 GENERAL PROVISIONS

24 Sec.

25 1701. Definitions.

26 1702. Sovereign immunity.

27 § 1701. Definitions.

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

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

3 § 1702. Sovereign immunity.

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

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

15 SUBCHAPTER B

16 PRELITIGATION RESOLUTION OF CONTROVERSIES

17 Sec.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 § 1712. Authority to resolve contract and breach of contract
7 controversies.

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

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

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

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

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

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

29 (e) Finality of decision.--The decision under subsection (c)
30 shall be final and conclusive unless the contractor files a

1 claim with the Board of Claims within 30 days of receipt of the
2 decision.

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

9 SUBCHAPTER C

10 BOARD OF CLAIMS

11 Sec.

12 1721. Function of Board of Claims.

13 1722. (Reserved).

14 1723. (Reserved).

15 1724. (Reserved).

16 1725. Hearings, decisions and awards.

17 1726. Appeals.

18 § 1721. Function of Board of Claims.

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

22 § 1722. (Reserved).

23 § 1723. (Reserved).

24 § 1724. (Reserved).

25 § 1725. Hearings, decisions and awards.

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

30 (b) Hearing and decision.--All hearings before the Board of

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

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

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

18 § 1726. Appeals.

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

24 SUBCHAPTER D

25 SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

26 Sec.

27 1741. Applicability.

28 1742. Remedies prior to award.

29 1743. Remedies after award.

30 § 1741. Applicability.

1 The provisions of this subchapter apply where it is
2 determined by the contracting officer or the court that a
3 solicitation or award of a contract is in violation of law.
4 § 1742. Remedies prior to award.

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

10 § 1743. Remedies after award.

11 If after an award it is determined that a solicitation or
12 award of a contract is in violation of law, then:

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

15 (i) the contract may be ratified and affirmed
16 provided it is determined that doing so is in the best
17 interest of the Commonwealth; or

18 (ii) the contract may be terminated and the person
19 awarded the contract shall be compensated for the actual
20 expenses reasonably incurred under the contract prior to
21 the termination.

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

24 (i) the contract may be declared void; or

25 (ii) the contract may be ratified and affirmed if
26 that action is in the best interests of the Commonwealth
27 and without prejudice to the right of the Commonwealth
28 agency to damages as may be appropriate.

29 SUBCHAPTER E

30 INTEREST

1 Sec.

2 1751. Interest.

3 § 1751. Interest.

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

10

CHAPTER 19

11

INTERGOVERNMENTAL RELATIONS

12 Sec.

13 1901. Definitions.

14 1902. Cooperative purchasing authorized.

15 1903. Sale, acquisition or use of supplies by a public
16 procurement unit.

17 1904. Cooperative use of supplies or services.

18 1905. Joint use of facilities.

19 1906. Supply of personnel, information and technical services.

20 1907. Use of payments received by a supplying public
21 procurement unit.

22 1908. Compliance of public procurement units.

23 1909. Review of procurement requirements.

24 1910. Contract controversies.

25 § 1901. 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 "Cooperative purchasing." Procurement conducted by or on
30 behalf of more than one public procurement unit or by a public

1 procurement unit with an external procurement activity.

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

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

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

16 § 1902. Cooperative purchasing authorized.

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

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

28 A public procurement unit may sell to, acquire from or use
29 any supplies belonging to another public procurement unit or
30 external procurement activity independent of the requirements of

1 Chapters 5 (relating to source selection and contract formation)
2 and 15 (relating to supply management).

3 § 1904. Cooperative use of supplies or services.

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

11 § 1905. Joint use of facilities.

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

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

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

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

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

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

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

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

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

1 (4) Use of personnel training programs.

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

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

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

11 § 1908. Compliance of public procurement units.

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

19 § 1909. Review of procurement requirements.

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

27 § 1910. Contract controversies.

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

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

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

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

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

18 CHAPTER 21

19 SMALL AND DISADVANTAGED BUSINESSES

20 Sec.

21 2101. Policy.

22 2102. Definitions.

23 2103. Regulations.

24 2104. Duties of department.

25 2105. Bonding and progress payments.

26 2106. Business assistance offices.

27 2107. Report to General Assembly.

28 2108. Compliance with Federal requirements.

29 § 2101. Policy.

30 The policy of this Commonwealth is to assist small and

1 disadvantaged businesses in learning how to do business with
2 Commonwealth agencies. The department shall implement this
3 policy in accordance with regulations promulgated by the
4 department.

5 § 2102. Definitions.

6 Subject to section 2103 (relating to regulations), the
7 following words and phrases when used in this chapter shall have
8 the meanings given to them in this section unless the context
9 clearly indicates otherwise:

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

15 "Small business." A business in the United States which is
16 independently owned and which is not dominant in its field of
17 operation or an affiliate or subsidiary of a business dominant
18 in its field of operation.

19 § 2103. Regulations.

20 The department shall establish policy and may promulgate
21 regulations establishing detailed definitions of the words and
22 phrases defined in section 2102 (relating to definitions) using,
23 in addition to the criteria set forth in section 2102, other
24 criteria as it deems desirable, including the number of
25 employees and the dollar volume of business.

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

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

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

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

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

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

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

19 § 2105. Bonding and progress payments.

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

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

29 § 2106. Business assistance offices.

30 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

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

4 PART II

5 GENERAL PROCUREMENT PROVISIONS

6 Chapter

- 7 31. General Provisions
- 8 33. Prevention of Environmental Pollution
- 9 35. (Reserved)
- 10 37. Contract Clauses and Preference Provisions
- 11 39. Construction Contracts Over \$50,000
- 12 41. Purchase of Surplus Federal Property
- 13 43. Public Facilities Concessions
- 14 45. Antibid-Rigging

15 CHAPTER 31

16 GENERAL PROVISIONS

17 Sec.

18 3101. Application of part.

19 3102. Definitions.

20 § 3101. Application of part.

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

24 § 3102. Definitions.

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

30 "Commonwealth agency." A Commonwealth agency as defined in

1 section 103 (relating to definitions).

2 "Government agency." Any Commonwealth agency or any
3 political subdivision or municipal or other local authority, or
4 any officer or agency of any political subdivision or local
5 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. Steel Products

15 C. Trade Practices

16 D. Motor Vehicles

17 E. Used Oil Products

18 F. Guaranteed Energy Savings Contract

19 SUBCHAPTER A

20 LABOR

21 Sec.

22 3701. Contract provisions prohibiting discrimination.

23 3702. Contract provision requiring residents to be employed.

24 § 3701. Contract provisions prohibiting discrimination.

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

29 (1) In the hiring of employees for the performance of
30 work under the contract or any subcontract, no contractor,

1 subcontractor or any person acting on behalf of the
2 contractor or subcontractor shall by reason of race, creed or
3 color discriminate against any citizen of this Commonwealth
4 who is qualified and available to perform the work to which
5 the employment relates.

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

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

14 § 3702. Contract provision requiring residents to be employed.

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

22 SUBCHAPTER B

23 STEEL PRODUCTS

24 Sec.

25 3711. Short title of subchapter and general provisions.

26 3712. Definitions.

27 3713. Requirement of contract provision.

28 3714. Payments under contracts.

29 § 3711. Short title of subchapter and general provisions.

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

1 cited as the Steel Products Procurement 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 March 3, 1978 (P.L.6, No.3), known as the Steel
5 Products Procurement Act, and codified in this chapter:

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

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

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

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

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

1 this Commonwealth and its people.

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

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

13 § 3712. Definitions.

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

17 "Public works." Any structure, building, highway, waterway,
18 street, bridge, transit system, airport or other betterment,
19 work or improvement, whether of a permanent or temporary nature
20 and whether for governmental or proprietary use. The term
21 includes, but is not limited to, any railway, street railway,
22 subway, elevated and monorail passenger or passenger and rail
23 rolling stock, self-propelled cars, gallery cars, locomotives,
24 passenger buses, wires, poles and equipment for electrification
25 of a transit system, rails, tracks, roadbeds, guideways,
26 elevated structures, buildings, stations, terminals, docks,
27 shelters and repairs to any of the foregoing.

28 "Steel products." Products rolled, formed, shaped, drawn,
29 extruded, forged, cast, fabricated or otherwise similarly
30 processed, or processed by a combination of two or more of these

1 operations, from steel made in the United States by the open
2 hearth, basic oxygen, electric furnace, Bessemer or other steel-
3 making process. The term includes cast iron products. The term
4 also includes machinery and equipment listed in United States
5 Department of Commerce Standard Industrial Classification 25
6 (furniture and fixture), 35 (machinery, except electrical) and
7 37 (transportation equipment) and made of, fabricated from or
8 containing steel components. If a product contains both foreign
9 and United States steel, the product shall be determined to be a
10 United States steel product only if at least 75% of the cost of
11 the articles, materials and supplies have been mined, produced
12 or manufactured, as the case may be, in the United States.

13 Transportation equipment shall be determined to be a United
14 States steel product if it complies with section 165 of the
15 Surface Transportation Assistance Act of 1982 (Public Law 97-
16 424, 96 Stat. 2097).

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

20 § 3713. Requirement of contract provision.

21 (a) General rule.--Each contract in excess of \$250,000 which
22 is entered into by a government agency for the construction,
23 reconstruction, alteration, repair, improvement or maintenance
24 of public works shall contain a provision that if any steel
25 products are to be used or supplied in the performance of the
26 contract, only steel products as defined in this subchapter
27 shall be used or supplied in the performance of the contract or
28 any subcontracts. The amount of \$250,000 shall be adjusted
29 annually by the department to reflect the annual percentage
30 change in the Composite Construction Cost Index of the United

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

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

8 § 3714. Payments under contracts.

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

27 (b) Penalties.--In addition to the withholding of payments,
28 any person who willfully violates any of the provisions of this
29 subchapter shall be prohibited from submitting any bids to any
30 government agency for any contract for a period of five years

1 from the date of the determination that a violation has
2 occurred. In the event the person who violates the provisions of
3 section 3713 is a subcontractor, manufacturer or supplier, that
4 person shall be prohibited from performing any work or supplying
5 any materials to a government agency for a period of five years
6 from the date of the determination that a violation has
7 occurred.

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

11 SUBCHAPTER C

12 TRADE PRACTICES

13 Sec.

14 3721. Short title of subchapter and general provisions.

15 3722. Definitions.

16 3723. Unlawful acts.

17 3724. Preference for aluminum and steel products made in
18 United States.

19 3725. Requirement to list discriminating countries.

20 3726. Procedure to determine discrimination.

21 3727. Foreign registry docket.

22 3728. Aluminum or steel products from a country listed on
23 foreign registry docket.

24 § 3721. Short title of subchapter and general provisions.

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

27 (b) Legislative findings.--It is hereby determined by the
28 General Assembly to reaffirm the legislative findings contained
29 in the act of July 23, 1968 (P.L.686, No.226), entitled "An act
30 equalizing trade practices in public works procurement;

1 authorizing the purchase by the Commonwealth, its political
2 subdivisions, and all public agencies, of aluminum and steel
3 products produced in a foreign country, provided the foreign
4 country does not prohibit or discriminate against the
5 importation to, sale or use in the foreign country of supplies,
6 material or equipment manufactured in this Commonwealth;
7 establishing procedures for determining whether foreign
8 countries discriminate against supplies, materials or equipment
9 manufactured in this Commonwealth; and imposing penalties and
10 providing for relief for violation of this act," and codified in
11 this chapter:

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

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

29 (c) Purpose of subchapter.--This subchapter is intended as
30 remedial legislation designed to promote the general welfare and

1 stimulate the economy of this Commonwealth and its people; each
2 and every provision of this chapter is intended to receive a
3 liberal construction as will best effectuate the purpose, no
4 provision is intended to receive a strict or limited
5 construction.

6 § 3722. Definitions.

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

10 "Aluminum or steel products made in a foreign country."
11 Aluminum or steel products rolled, formed, shaped, drawn,
12 extruded, forged, cast, fabricated or otherwise similarly
13 processed, or processed by a combination of two or more of these
14 operations, from aluminum or steel not made in the United
15 States.

16 "Court." The Commonwealth Court.

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

19 (1) Prevents the importation, sale or use of any
20 supplies, materials or equipment manufactured in this
21 Commonwealth.

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

28 (3) Restricts the opportunities for persons having a
29 business situs in this Commonwealth to bid on or compete for
30 government contracts, including, but not limited to, a

1 preference for residents of the foreign country.

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

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

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

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

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

27 § 3723. Unlawful acts.

28 It is unlawful for:

29 (1) Any government agency to specify, purchase or permit
30 to be furnished or used in any public works aluminum or steel

1 products made in a foreign country which has been determined
2 as discriminating by the court unless the amount of the
3 purchase or contract is equal to or less than \$250,000. This
4 amount shall be adjusted annually by the department to
5 reflect the annual percentage charge in accordance with the
6 change in the Composite Construction Cost Index of the United
7 States Department of Commerce, occurring in the one-year
8 period ending on December 31 of each year.

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

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

15 If all considerations in or affecting a bid or proposal or a
16 bidder or offeror are equal, each government agency shall give
17 preference to aluminum and steel products made in the United
18 States.

19 § 3725. Requirement to list discriminating countries.

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

26 § 3726. Procedure to determine discrimination.

27 (a) Petition.--Any government agency, importer or taxpayer
28 of this Commonwealth may file with the court a petition
29 specifically setting forth alleged discrimination by a foreign
30 country and praying for a determination. A copy of the petition

1 to the court and notice of the time of hearing set by the court
2 shall be served by registered mail on the consular officer, if
3 any, of the country having an office in this Commonwealth and
4 upon a person in charge of the embassy of the foreign country in
5 Washington, D.C.

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

15 § 3727. Foreign registry docket.

16 (a) Entering name in docket.--If, after a hearing, the court
17 determines that the foreign country discriminates, it shall
18 direct the prothonotary of the court to enter the name of the
19 foreign country in a foreign registry docket maintained in the
20 office of the prothonotary.

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

30 § 3728. Aluminum or steel products from a country listed on

1 foreign registry docket.

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

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

20 SUBCHAPTER D

21 MOTOR VEHICLES

22 Sec.

23 3731. Short title of subchapter and general provisions.

24 3732. Definitions.

25 3733. Police power.

26 3734. Contract provisions.

27 3735. Payment under contract and action to recover
28 unauthorized payments.

29 3736. Penalty.

30 § 3731. Short title of subchapter and general provisions.

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

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

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

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

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

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

26 (5) The production of motor vehicles and motor vehicle
27 components in Canada involves the use of a substantial amount
28 of resources from the United States, including labor and
29 materials. The General Assembly declares it to be the policy
30 of the Commonwealth of Pennsylvania that public officers and

1 agencies should aid and promote the development of the motor
2 vehicle industry of North America to stimulate and improve
3 the economic well-being of this Commonwealth and its
4 citizens.

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

11 § 3732. Definitions.

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

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

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

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

26 § 3733. Police power.

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

30 § 3734. Contract provisions.

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

10 (b) Exception.--This section shall not apply where the head
11 of the government agency states in writing that it is
12 inconsistent with the public interest or that the cost is
13 unreasonable.

14 § 3735. Payment under contract and action to recover
15 unauthorized payments.

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

29 § 3736. Penalty.

30 In addition to the withholding of payments, any person who

1 willfully violates any of the provisions of this subchapter may
2 be prohibited by any government agency from participation in
3 contracts awarded by the government agency for a period of five
4 years from the date of the determination that a violation has
5 occurred.

6 SUBCHAPTER E

7 USED OIL PRODUCTS

8 Sec.

9 3741. Preference.

10 § 3741. Preference.

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

17 SUBCHAPTER F

18 GUARANTEED ENERGY SAVINGS CONTRACTS

19 Sec.

20 3751. Definitions.

21 3752. Selection process.

22 3753. Award of single contract.

23 § 3751. Definitions.

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

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

30 (1) Insulation of the building structure or systems

1 within the building.

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

7 (3) Automated or computerized energy control systems.

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

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

16 (6) Energy recovery systems.

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

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

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

25 § 3752. Selection process.

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

1 § 3753. Award of single contract.

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

7 CHAPTER 39

8 CONSTRUCTION CONTRACTS OVER \$50,000

9 Subchapter

- 10 A. Preliminary Provisions
- 11 B. General Provisions
- 12 C. Retainage
- 13 D. Prompt Payment Schedules
- 14 E. Final Payment

15 SUBCHAPTER A

16 PRELIMINARY PROVISIONS

17 Sec.

18 3901. Application and purpose of chapter.

19 3902. Definitions.

20 § 3901. Application and purpose of chapter.

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

25 (b) Purpose of chapter.--The purpose of this chapter is to
26 establish a uniform and mandatory system governing public
27 contracts to the extent of the requirements set forth in this
28 chapter and shall be construed to effectuate such purpose. The
29 provisions of this chapter shall in no way affect the provisions
30 of the act of August 15, 1961 (P.L.987, No.442), known as the

1 Pennsylvania Prevailing Wage Act, nor the regulations
2 promulgated under that act, nor shall any requirements of this
3 chapter affect any provisions of a contract to be awarded
4 pursuant to any Federal law or regulations containing specific
5 provisions which are different from the public contract
6 requirements of this chapter.

7 § 3902. Definitions.

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

11 "Contract." A contract exceeding \$50,000 for construction as
12 defined in section 103 (relating to definitions), including
13 heating or plumbing contracts but excepting work performed for
14 the Department of Transportation.

15 "Contractor." A person who enters into a contract with a
16 government agency.

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

20 "Design professional." A professional engineer or
21 professional land surveyor licensed under the act of May 23,
22 1945 (P.L.913, No.367), known as the Engineer, Land Surveyor and
23 Geologist Registration Law, a landscape architect licensed under
24 the act of January 24, 1966 (1965 P.L.1527, No.535), known as
25 the Landscape Architects' Registration Law, or an architect
26 licensed under the act of December 14, 1982 (P.L.1227, No.281),
27 known as the Architects Licensure Law.

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

29 "Inspector." The person authorized or engaged by the
30 government agency to inspect the work performed and materials

1 furnished pursuant to a contract to determine whether the work
2 completed is in compliance with the contract.

3 "Local government unit." Any county, city, borough,
4 incorporated town, township, school district, vocational school
5 district, county institution, local authority or any joint or
6 cooperative body of local government units or any
7 instrumentality, authority or corporation thereof which has
8 authority to enter into a contract.

9 "State-aided institution." Any institution which receives
10 State funds directly or indirectly for construction.

11 "Subcontractor." A person who has contracted to furnish
12 labor or materials to or has performed labor for a contractor or
13 another subcontractor in connection with a contract.

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

21 SUBCHAPTER B

22 GENERAL PROVISIONS

23 Sec.

24 3911. Time for awarding contract.

25 3912. Time for executing contract.

26 3913. Release of successful bidder.

27 § 3911. Time for awarding contract.

28 (a) General rule.--In the case of a contract to be entered
29 into by a government agency through competitive sealed bidding,
30 the contract shall be awarded to the lowest responsible and

1 responsive bidder within 60 days of the bid opening, or all bids
2 shall be rejected except as otherwise provided in this section.

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

8 (c) Extensions.--Thirty-day extensions of the date for the
9 award may be made by the mutual written consent of the
10 government agency and the lowest responsible and responsive
11 bidder.

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

20 § 3912. Time for executing contract.

21 In the case of a contract entered into by a government agency
22 through competitive sealed bidding, the contract shall be
23 executed by the government agency within 45 days of the date
24 that the contract is awarded.

25 § 3913. Release of successful bidder.

26 Failure of the government agency to comply with the
27 requirements of sections 3911 (relating to time for awarding
28 contract) and 3912 (relating to time for executing contract)
29 shall, unless the successful bidder waives the noncompliance by
30 written notice to the government agency, release the successful

1 bidder from any liability in respect to its bid or contract and
2 entitle all bidders to the immediate return of any bonds or
3 security deposits posted in connection with the bid or contract.

4 SUBCHAPTER C

5 RETAINAGE

6 Sec.

7 3921. Retainage.

8 3922. Payment of retainage to subcontractors.

9 § 3921. Retainage.

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

1 causing the additional claim furnishes a bond satisfactory to
2 the government agency to indemnify the agency against the claim.
3 All money retained by the government agency may be withheld from
4 the contractor until substantial completion of the contract.

5 (b) Department of General Services.--Notwithstanding
6 subsection (a), when the Department of General Services is the
7 government agency, the contract may include a provision for the
8 retainage of a portion of the amount due the contractor to
9 insure the proper performance of the contract except that the
10 sum withheld by the department for the contractor shall not
11 exceed 6% of the then total estimates until 50% of the contract
12 is satisfactorily completed. The sum withheld by the department
13 from the contractor after the contract is 50% satisfactorily
14 completed shall not exceed 3% of the original contract amount.
15 § 3922. Payment of retainage to subcontractors.

16 In the absence of sufficient reason, within 20 days of the
17 receipt of payment by the contractor, the contractor shall pay
18 all subcontractors with which it has contracted their earned
19 share of the payment the contractor received.

20 SUBCHAPTER D

21 PROMPT PAYMENT SCHEDULES

22 Sec.

23 3931. Performance by contractor or subcontractor.

24 3932. Government agency's progress payment obligations.

25 3933. Contractors' and subcontractors' payment obligations.

26 3934. Withholding of payment for good faith claims.

27 3935. Penalty and attorney fees.

28 3936. Contracts involving Federal aid.

29 3937. Certain provisions unenforceable.

30 3938. Applicability.

1 3939. Claims by innocent parties.

2 § 3931. Performance by contractor or subcontractor.

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

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

10 § 3932. Government agency's progress payment obligations.

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

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

23 (c) Interest on progress payments not timely made.--Except
24 as otherwise agreed by the parties, if any progress payment less
25 the applicable retainage amount as authorized in section 3921 is
26 not made to a contractor or design professional by the due date
27 established in the contract or in subsection (b), the government
28 agency shall pay to the contractor or design professional, in
29 addition to the amount due, interest on the amount due, and the
30 interest shall be computed at the rate determined by the

1 Secretary of Revenue for interest payments on overdue taxes or
2 the refund of taxes as provided in sections 806 and 806.1 of the
3 act of April 9, 1929 (P.L.343, No.176), known as The Fiscal
4 Code.

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

12 § 3933. Contractors' and subcontractors' payment obligations.

13 (a) Performance by subcontractor entitles subcontractor to
14 payment.--Performance by a subcontractor in accordance with the
15 provisions of the contract shall entitle the subcontractor to
16 payment from the party with whom the subcontractor has
17 contracted. For purposes of this section, the contract between
18 the contractor and subcontractor is presumed to incorporate the
19 terms of the contract between the contractor and the government
20 agency.

21 (b) Disclosure of progress payment due dates.--A contractor
22 or subcontractor shall disclose to a subcontractor, before a
23 subcontract is executed, the due date for receipt of progress
24 payments from the government agency. Notwithstanding any other
25 provisions of this subchapter, if a contractor or a
26 subcontractor fails to accurately disclose the due date to a
27 subcontractor, the contractor or subcontractor shall be
28 obligated to pay the subcontractor as though the due dates
29 established in subsection (c) were met by the government agency.
30 This subsection shall not apply to a change in due dates because

1 of conditions outside of the contractor's control, including,
2 but not limited to, design changes, change orders or delays in
3 construction due to weather conditions.

4 (c) Payment.--When a subcontractor has performed in
5 accordance with the provisions of the contract, a contractor
6 shall pay to the subcontractor, and each subcontractor shall in
7 turn pay to its subcontractors, the full or proportional amount
8 received for each such subcontractor's work and material, based
9 on work completed or services provided under the subcontract, 14
10 days after receipt of a progress payment. Payment shall be made
11 under this section unless it is being withheld under section
12 3934 (relating to withholding of payment for good faith claims).

13 (d) Interest due when progress payment not timely.--If any
14 progress payment is not made to a subcontractor by the due date
15 established in the contract or in subsection (c), the contractor
16 shall pay to the subcontractor, in addition to the amount due,
17 interest as computed in section 3932(c) (relating to government
18 agency's progress payment obligations).

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

26 § 3934. Withholding of payment for good faith claims.

27 (a) When government agency may withhold payment.--The
28 government agency may withhold payment for deficiency items
29 according to terms of the contract. The government agency shall
30 pay the contractor according to the provisions of this

1 subchapter for all other items which appear on the application
2 for payment and have been satisfactorily completed. The
3 contractor may withhold payment from any subcontractor
4 responsible for a deficiency item. The contractor shall pay any
5 subcontractor according to the provisions of this subchapter for
6 any item which appears on the application for payment and has
7 been satisfactorily completed.

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

18 § 3935. Penalty and attorney fees.

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

1 withholding of payment for good faith claims).

2 (b) Attorney fees.--Notwithstanding any agreement to the
3 contrary, the prevailing party in any proceeding to recover any
4 payment under this subchapter may be awarded a reasonable
5 attorney fee in an amount to be determined by the Board of
6 Claims, court or arbitrator, together with expenses, if it is
7 determined that the government agency, contractor or
8 subcontractor acted in bad faith. An amount shall be deemed to
9 have been withheld in bad faith to the extent that the
10 withholding was arbitrary or vexatious.

11 § 3936. Contracts involving Federal aid.

12 If any provision of this subchapter conflicts with a Federal
13 statute or regulation or with conditions attached to the receipt
14 of Federal aid, this subchapter shall not operate to prevent
15 receipt of the Federal aid in accordance with any Federal
16 statute or regulation.

17 § 3937. Certain provisions unenforceable.

18 A provision in the contract making it subject to the laws of
19 another state or requiring that any litigation, arbitration or
20 other dispute resolution process on the contract occurs in
21 another state shall be unenforceable.

22 § 3938. Applicability.

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

25 (1) Section 3932 (relating to government agency's
26 progress payment obligations) shall not apply when the State
27 government unit's nonpayment on a particular project is
28 caused by the failure of the General Assembly to enact a
29 budget for the fiscal year of payment.

30 (2) Section 3932 shall not apply when a local government

1 unit's nonpayment on a particular project is caused by
2 failure of the Federal or State Government to pay funds due
3 and payable to the local government unit.

4 (3) Section 3932 shall not apply when government
5 agency's nonpayment on a particular project is caused by the
6 failure of the General Assembly to enact an operating budget
7 for the fiscal year of payment or a capital budget for the
8 capital project or by failure of the Federal, State or local
9 government to pay funds designated or to be designated for
10 the specific project.

11 (4) Nothing in this subchapter shall be construed to
12 require payment of interest penalties by the Federal or State
13 Government if the municipality is liable for such interest.

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

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

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

23 (3) A city of the first class that has entered into an
24 intergovernmental cooperation agreement under the act of June
25 5, 1991 (P.L.9, No.6), known as the Pennsylvania
26 Intergovernmental Cooperation Authority Act for Cities of the
27 First Class, for so long as any deficit-reducing bonds issued
28 by the authority pursuant to section 301(b)(1) of the act are
29 outstanding and payable.

30 (4) Any corporate entity or school district as defined

1 in the Pennsylvania Intergovernmental Cooperation Authority
2 Act for Cities of the First Class.

3 § 3939. Claims by innocent parties.

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

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

11 SUBCHAPTER E

12 FINAL PAYMENT

13 Sec.

14 3941. Final payment under contract.

15 3942. Arbitration.

16 § 3941. Final payment under contract.

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

1 the contract, to insure proper workmanship for a designated
2 period of time. The certificate given by the architect or
3 engineer shall list in detail each uncompleted item and a
4 reasonable cost of completion. Final payment of any amount
5 withheld for the completion of the minor items shall be paid
6 upon completion of the items in the certificate of the engineer
7 or architect.

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

20 § 3942. Arbitration.

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

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CHAPTER 41

PURCHASE OF SURPLUS FEDERAL PROPERTY

Sec.

4101. Contracts with United States.

4102. Bids and down payments.

§ 4101. Contracts with United States.

Any government agency may enter into a contract with the Federal Government for the purchase, lease or other acquisition, including the warehousing and distribution, of any surplus real or personal Federal property without complying with any requirement of law as to specifications, advertising, award of contract or approval by another government agency. However, any Commonwealth agency may only enter into a contract authorized by this section through the Department of General Services.

§ 4102. Bids and down payments.

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

CHAPTER 43

PUBLIC FACILITIES CONCESSIONS

Sec.

4301. Short title of chapter and general provisions.

4302. Definitions.

4303. Terms of contracts.

§ 4301. Short title of chapter and general provisions.

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

1 cited as the Public Facilities Concession Regulation 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 26, 1978 (P.L.1303, No.315), known as the
5 Public Facilities Concession Regulation Act, and codified in
6 this chapter:

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

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

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

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

1 public facilities.

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

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

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

16 § 4302. Definitions.

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

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

24 § 4303. Terms of contracts.

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

1 services, upon terms and conditions as may be appropriate.

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

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

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

10 CHAPTER 45

11 ANTIBID-RIGGING

12 Sec.

13 4501. Short title of chapter.

14 4502. Definitions.

15 4503. Prohibited activities.

16 4504. Civil action and damages.

17 4505. Suspension or debarment.

18 4506. Liability for increased costs.

19 4507. Noncollusion affidavits.

20 4508. Responsibility for enforcement.

21 4509. Investigation.

22 § 4501. Short title of chapter.

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

25 § 4502. 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 "Bid-rigging." The concerted activity of two or more persons
30 to determine in advance the winning bidder of a contract let or

1 to be let for competitive bidding by a government agency. The
2 term includes, but is not limited to, any one or more of the
3 following:

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

6 (2) Agreeing to submit identical bids.

7 (3) Agreeing to rotate bids.

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

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

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

14 (7) Agreeing not to submit bids.

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

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

22 § 4503. Prohibited activities.

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

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

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

1 prime contractor or proposed prime contractor for a
2 government agency.

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

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

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

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

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

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

28 (2) The net worth of the person.

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

30 (g) Civil action not barred.--A conviction or civil penalty

1 imposed under this section shall not bar a government agency
2 from pursuing additional civil action and administrative
3 sanctions.

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

11 § 4504. Civil action and damages.

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

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

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

27 (d) When cause of action arises.--The cause of action shall
28 arise at the time the government agency which entered into the
29 contract discovered, or should have discovered, the conduct
30 amounting to the unlawful offense. The action shall be brought

1 within four years of the date that the cause of action arose. No
2 civil action shall be maintained after the expiration of ten
3 years from the date the contract was signed by the parties.

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

8 § 4505. Suspension or debarment.

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

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

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

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

26 § 4506. Liability for increased costs.

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

1 regulations shall be liable to the government agency and to an
2 eligible contractor for increased costs incurred as a result of
3 replacing the excluded or ineligible person.

4 § 4507. Noncollusion affidavits.

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

1 § 4508. Responsibility for enforcement.

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

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

19 § 4509. Investigation.

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

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

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

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

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

21 Section 2. Section 2310 of Title 1 is amended to read:
22 § 2310. Sovereign immunity reaffirmed; specific waiver.

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

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

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

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

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

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

20 * * *

21 Section 4. This act is intended to provide a complete and
22 exclusive procedure to govern the procurement by Commonwealth
23 agencies of supplies, services and construction, including the
24 disposal of surplus supplies.

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

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

1 repealed:

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

7 Sections 478, 2401.1(19), 2403(b)(c) and (g), 2405, 2408(11),
8 2409, 2409.1, 2410, 2412 and 2413 of the act of April 9, 1929
9 (P.L.177, No.175), known as The Administrative Code of 1929.

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

12 Section 808 of the act of May 1, 1933 (P.L.103, No.69), known
13 as The Second Class Township Code.

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

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

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

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

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

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

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

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

19 Act of May 5, 1965 (P.L.40, No.34), entitled "An act
20 authorizing the Commonwealth through the Department of Property
21 and Supplies and its duly authorized bureau or agents, to enter
22 into contracts with the United States of America or any agency
23 thereof, for the acquisition, acceptance, receipt, warehousing
24 and distribution of surplus property of the United States of
25 America pursuant to the 'Federal Property and Administrative
26 Services Act of 1949,' particularly section 203(j) and (k), as
27 amended, and Federal regulations appertaining thereto."

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

30 Act of July 23, 1968 (P.L.686, No.226), entitled "An act

1 equalizing trade practices in public works procurement;
2 authorizing the purchase by the Commonwealth, its political
3 subdivisions, and all public agencies, of aluminum and steel
4 products produced in a foreign country, provided the foreign
5 country does not prohibit or discriminate against the
6 importation to, sale or use in the foreign country of supplies,
7 material or equipment manufactured in this Commonwealth;
8 establishing procedures for determining whether foreign
9 countries discriminate against supplies, materials or equipment
10 manufactured in this Commonwealth; and imposing penalties and
11 providing for relief for violation of this act."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Act of May 8, 1923 (P.L.161, No.120), entitled "An act
28 providing for and regulating the public printing and binding,
29 the editing for publication and the distribution of all
30 documents, reports, bulletins, and other publications for the

1 use of the Commonwealth, the several departments, boards,
2 commissions, and other agencies engaged in the legislative,
3 judicial, and administrative work of the State Government; the
4 sale of waste paper; the appointment of a director and other
5 employes; and repealing inconsistent and conflicting
6 legislation."

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

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

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

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

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

30 Section 4 of the act of November 20, 1968 (P.L.1075, No.329),

1 entitled "An act providing for the growth and development of
2 noncommercial educational television; creating the Pennsylvania
3 Public Television Network Commission as an independent
4 commission and defining its powers and duties."

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

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

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

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

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

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

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