

**Proposed
Commonwealth
Procurement Code**

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION

Harrisburg, Pennsylvania

June 1983

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Joint State Government Commission, 1983-84

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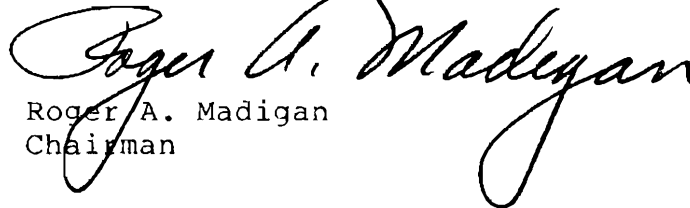
June 10, 1983

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present this report of the Task Force on Commonwealth Procurement Law. The recommendations of the task force, ably chaired by Representative Terrence F. McVerry, are incorporated in legislation which has been introduced in the House of Representatives by members of the task force.

The Commission wishes to express its appreciation to members of the advisory committee, under the leadership of James M. Marsh, and to officials and employees of the Commonwealth who participated by sharing their expertise--including Chief Administrative Judge Fred C. Pace of the Board of Claims and his staff, in particular, Legal Counsel Nathan H. Waters Jr.; Deputy Attorney General David DeVries; and Chief Counsel Anthony P. Krzywicki and Assistant Department Counsel Gary Ankabrandt of the Department of General Services.

Respectfully submitted,

A handwritten signature in cursive script that reads "Roger A. Madigan". The signature is written in dark ink and is positioned above the printed name and title.

Roger A. Madigan
Chairman

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Summary of Recommendations

The Task Force and Advisory Committee on Commonwealth Procurement Law recommend the enactment of legislation which would:

- Consolidate Commonwealth agency procurement law into Title 62 of the Pennsylvania Consolidated Statutes. Part I would apply only to Commonwealth agencies and Part II would apply generally to Commonwealth agencies and political subdivisions.
- Create a Commonwealth Procurement Policy Office consisting of the secretaries of General Services, Environmental Resources and Transportation to set policy and promulgate regulations governing the procurement and management of supplies, services and construction for Commonwealth agencies.
- Centralize within the Department of General Services the day-to-day procurement of supplies, services and construction for Commonwealth agencies.
- Require with certain exceptions that all Commonwealth agency contracts be awarded by competitive sealed bidding but authorize negotiations based on competitive sealed proposals for situations where the bidding procedure is impractical.
- Provide selection procedures for the services of accountants, clergy, physicians and dentists and separate selection procedures for architect, engineer and land surveying services.
- Codify the law relating to the Board of Claims and add appeals on bid protests to the board's jurisdiction eliminating the need for taxpayers' suits in Commonwealth Court.

- Declare Commonwealth policy to assist small and disadvantaged businesses in doing business with Commonwealth agencies and provide implementing procedures.
- Establish general ethical standards for public employees and those doing business with Commonwealth agencies.
- Provide that any decision to deviate from or make an exception to any code requirement must be supported by written findings signed by the appropriate official in each instance.
- Foster efficiency and professionalism in Commonwealth procurement and minimize the opportunities for corruption and favoritism.
- Increase the Commonwealth's ability to deal with collusive bidding, price fixing and other improper practices.

I. Introduction

The General Assembly of Pennsylvania in 1981 House Resolution No. 93 directs the Joint State Government Commission to organize a legislative task force to study Commonwealth procurement law and practice in light of the provisions of the Model Procurement Code which would be beneficial and adaptable to the needs of the Commonwealth. Pursuant to the authorizing resolution, the Commission appointed a task force chaired by Representative Terrence F. McVerry and an advisory committee chaired by James M. Marsh to assist the task force.

The Model Procurement Code, drafted over a five-year period in the mid-1970s by the American Bar Association's Coordinating Committee on a Model Procurement Code, provides

(1) the statutory principles and policy guidance for managing and controlling the procurement of supplies, services and construction for public purposes; (2) administrative and judicial remedies for the resolution of controversies relating to public contracts; and (3) a set of ethical standards governing public and private participants in the procurement process.¹

The coordinating committee for the model code included several Pennsylvanians. James M. Marsh served as a vice chairman of the coordinating committee and chairman of the

1. ABA, The Model Procurement Code for State and Local Governments, at vi (February 1979). In addition to the code itself, the ABA coordinating committee published in August 1980 proposed implementing regulations. A Model Procurement Ordinance for local governments has been prepared as well.

Substantive Committee on Contract Modifications and Terminations and Louis F. Del Duca, also a vice chairman of the coordinating committee, served as the chairman of the Substantive Committee on Ethics in Public Contracting. Two other members of the advisory committee, Theodore Adler and Robert W. Cunliffe, were active members of the national drafting committee.

Nine states have adopted the model code as of June 1983. Because of the differences in the administrative structures of the various state governments, adoption of the code in its entirety is impractical in most states. The chart in appendix B, p. 43, shows the extent to which the procurement law of each of the nine states incorporates the model code (the recommended legislation for Pennsylvania is also included).

A thorough study of Pennsylvania law and comparison with the Model Procurement Code led the task force and advisory committee to conclude that much of the Commonwealth's procurement law is sound and adequate; however, they recommend some changes in the structure for procurement policymaking and administration, improvements in procurement procedures, policies relating to small and disadvantaged businesses and ethical standards. It was further decided to codify existing Commonwealth procurement law into Title 62 of the Pennsylvania Consolidated Statutes with the recommendations incorporated.

Chapter II of this report provides background information and a summary of the proposed Commonwealth Procurement Code, and Chapter III supplies the official source notes and comments. Tables in appendix A cross reference the model code and existing Pennsylvania law with the proposed Commonwealth Procurement Code. Included in appendix C is a summary table of Pennsylvania statutory law relating to municipal procurement, which was prepared by the staff of the Joint State Government Commission at the request of the task force and advisory committee.

II. Summary of Proposed Code

Part I of Title 62 of the Pennsylvania Consolidated Statutes applies to Commonwealth agency contracts for supplies, services and construction, including the disposal of Commonwealth agency supplies. Entitled the Commonwealth Procurement Code, Part I is structured in much the same fashion as the Model Procurement Code. Each of the 12 chapters generally covers the same subject matter as the corresponding model code article. The seven chapters of Part II include Pennsylvania law applying to both State and local agencies which does not fit into the Model Procurement Code format. The general procurement provisions in Part II have been codified from present Pennsylvania law without substantive changes.

General Provisions

Chapter 1 provides that the Commonwealth Procurement Code (Part I of Title 62) generally applies to "every expenditure of funds other than the investment of funds by the Commonwealth agencies under any contract. . . ." (§ 102(a)). This includes the disposal of supplies (§ 102(b)). Political subdivisions are not covered by the code but may adopt any part of the code (§ 102(c)).

As a result of several important exclusions and inclusions, the definitions of "services" and "supplies" deserve special mention. Among the services specifically excluded are employment agreements and legal services (§ 103). Leases of realty and personalty are included within the definition of "supplies" (§ 103). Except for real property leases, real property is excluded from the definition of "supplies" and from the other provisions of the code.

The chapter also makes procurement information and records available to the public through Pennsylvania's "right to know" law (§ 106).

Procurement Organization

Chapter 3 sets forth the basic organizational structure for Commonwealth agency procurement. The Commonwealth Procurement Policy Office is created consisting of the secretaries of General Services, Environmental Resources and Transportation. The Department of General Services is responsible for providing administrative support for the policy office (§ 311). This is in keeping with the decision of the task force and advisory committee to incorporate the model code into the present Pennsylvania administrative structure as much as possible. The policy office is to formulate procurement policy and promulgate regulations for the implementation of that policy (§§ 301 and 312).

The chapter also implements the recommendation of the task force and advisory committee to centralize procurement within one agency; the day-to-day supervision of procurement is to be performed by the Department of General Services. The department is the purchasing agency for every Commonwealth agency unless an exception is made (§ 301). Emergency procurements need not be made through the department (§ 301(b)). Commonwealth agencies may also procure certain supplies, services and construction independently, e.g., heavy or specialized construction, art work and published books (§ 301(c) and (d)). Nevertheless, the Commonwealth agency must use the procedure set forth in the code.

Subchapter C sets forth the powers and duties of the department relating to procurement. This list together with regulations promulgated by the policy office are in lieu of the more detailed provisions of Article XXIV of The Administrative Code of 1929. Item 5 on the list in section 321 provides for a Procurement Information Office similar to the present office established under section 478 of The Administrative Code. Unless reestablished by the General Assembly, the present office terminates June 30, 1983.

Source Selection and Contract Formation

Chapter 5 requires with certain exceptions that all Commonwealth agency procurement contracts be awarded by competitive sealed bidding (§ 512). Bids may be modified or withdrawn prior to bid opening (§ 512(f)). The procedure for modification or withdrawal is based on present Pennsylvania regulations (4 Pa. Code § 69.4(f)) but does not incorporate the

withdrawal of bid procedure contained in the act of January 23, 1974 (P.L. 9, No. 4), which applies to construction contracts. Under the proposed legislation, section 512(f) applies to all types of contracts, and the act of 1974 is repealed insofar as it relates to Commonwealth agencies.

When it is not "practicable or advantageous to the Commonwealth" to contract through competitive sealed bidding, the purchasing agency may enter into a contract by competitive sealed proposals (§ 513). This procedure allows for discussion with offerors and revision of the proposals based on the discussion (§ 513(f)). A committee of employees selects the most appropriate proposal (§ 513(g)).

Commonwealth agencies with the authorization of the Department of General Services may make small purchases in the field without using formal bid procedures (§ 514). This procedure is included to facilitate purchases which do not justify the administrative time and expense of bidding. Provision is also made for sole source procurement (§ 515), emergency procurement (§ 516), multiple awards (§ 517), competitive selection for certain professional services (§ 518) and procurement of handicapped-made supplies and services (§ 520). A separate section specifies the procedure for procuring insurance and bonds (§ 519).

Subchapter D provides the procedure for the debarment or suspension of a person from the awarding of contracts. The decision of the head of a purchasing agency to debar or suspend may be appealed to the Board of Claims (§ 531). Section 534 has been included to give purchasing agencies authority to require bid security and performance bonds for supply contracts.

Subchapter G includes a section declaring the Commonwealth policy that collusive bidding is unlawful and that the Commonwealth has the same remedies available to it in Commonwealth courts as it does in Federal courts (§ 562).

Specifications

Chapter 7 outlines the duties of the policy office and Department of General Services in the preparation of specifications. Section 706 requires that specifications prepared for construction contracts include the minimum wages which may be paid by the contractor or subcontractor to laborers and mechanics.

Procurement of Construction, Architect, Engineer and Land Surveying Services

Chapter 9 provides that construction contracts must be awarded by competitive sealed bidding under section 512 or, if bidding is not "practicable or advantageous," by competitive sealed proposals under section 513 (§ 902(a)). The "Separation Act," which requires separate specifications for certain construction items, has been incorporated (§ 902(b)). Sections 903 through 905 set out the requirements for bid security and payment and performance bonds. In addition, the policy office may promulgate regulations requiring the inclusion in construction contracts of clauses relating, but not limited, to adjustments in prices and time of performance (§ 906).

Section 908 provides the selection procedure for architect, engineer and land surveying services. The departments of Transportation and Environmental Resources may establish their own selection committees (§ 908(c)). All other Commonwealth agencies must use the selection committee appointed by the policy office (§ 908(d)). All three selection committees must comply with the procedures set forth in subsection (e).

Modification and Termination of Contracts for Supplies and Services

Chapter 11 contains provisions authorizing the policy office to promulgate regulations requiring the inclusion of certain clauses in contracts for the procurement of supplies and services (§ 1101). Section 1101 is comparable to section 906, which provides authority for the requirement of certain clauses in construction contracts.

Cost Principles

Chapter 13 directs the policy office to promulgate regulations enunciating cost principles to be used in determining the allowability of incurred costs for the purpose of cost-reimbursement contracts.

Supply Management

Chapter 15 provides authority for the policy office to promulgate regulations governing the management of supplies. Since leases of personal and real property are defined as "supplies" in section 103, the management of supplies includes the leasing of Commonwealth property (§ 1502(1)).

The chapter also directs the policy office to promulgate regulations controlling the disposal of surplus supplies (§ 1502(2)) defined as supplies "no longer having any use to any Commonwealth agency" (§ 1501).

Legal and Contractual Remedies

Chapter 17 codifies the law relating to the Board of Claims. The board continues its jurisdiction over contract controversies and certain claims brought under The Fiscal Code (act of April 9, 1929, P.L. 343, No. 176). In addition, the board has jurisdiction over bid protests, debarments and suspensions (§ 1724).

While the procedure before the board is basically unchanged, a few modifications have been made. Commonwealth agency counterclaims exceeding the amount of the original claim are allowed. Awards of the board may be certified as judgments of a court of record to aid in the enforcement of its decisions (§ 1725). Sovereign immunity is expressly waived in section 1702(b) as to claims against the Commonwealth arising under this chapter. This includes protests of solicitations or awards under section 1711 and contract controversies under section 1712. The protest or controversy first goes to the head of the purchasing agency in an attempt to resolve the problem prior to litigation. In the case of bid protests, the decision of the head of the purchasing agency may be appealed to the Board of Claims within 14 days (§ 1711(e)). Decisions relating to contract controversies may be appealed to the board within 60 days (§ 1712(e)).

Board of Claims decisions may be appealed to the Commonwealth Court within 30 days of the certification of the decision (§ 1726).

Interest is payable at the statutory rate applicable to judgments (presently 6 percent) from the date the claim is filed with the head of the purchasing agency. Since claims

under The Fiscal Code go directly to the board, the interest in those cases runs from the date the claim is filed with the board (§ 1751). Section 1507 of The Fiscal Code, added by the act of December 13, 1982 (P.L. 1155, No. 266), covers the date interest accrues and its rate where the Commonwealth agency has not made prompt payment.

Intergovernmental Relations

Chapter 19 provides methods for cooperative procurement of supplies, services or construction with one or more Federal, State or local agencies, including any council of governments or area government (§ 1902). This includes cooperative use of supplies or services (§ 1904), joint use of facilities (§ 1905) and cooperation in the use of personnel, information and technical services (§ 1906).

Small and Disadvantaged Businesses

Chapter 21 enunciates the Commonwealth policy of assisting small and disadvantaged businesses in learning how to do business with Commonwealth agencies (§ 2101). The Department of General Services is directed to implement the policy. Section 2104 provides a list of programs to aid in the implementation by the department. The department may adjust bonding requirements (§ 2105) and establish offices (§ 2106) to assist small and disadvantaged businesses.

Representative David P. Richardson Jr. submitted a proposal based on Article 21 (Assistance to Minority Businesses) of the South Carolina Consolidated Procurement Code that would supplement Chapter 21 principally by providing for the designation of certain contracts for negotiation with minority businesses. The advisory committee concluded that Chapter 21, based on the Model Procurement Code, provides a framework for encouraging small and disadvantaged business participation in Commonwealth agency procurement. While the committee encourages further legislative consideration of this concept, it feels that the policy questions raised by the South Carolina statute were beyond the scope of this study and the committee's expertise.

Ethics in Public Contracting

Chapter 23 requires that "public employees discharge their duties impartially so as to assure fair competitive access to Commonwealth agency procurement" and that "those doing business with the Commonwealth agencies observe high standards of honesty and integrity" (§ 2301). Employees are directed not to make improper use of confidential information and to avoid any conflict of interest (§ 2302(a)). Nonemployees are directed not to influence an employee to breach the ethical standard set out in subsection (a) (§ 2302(b)). Any suspected breach should be reported to the State Ethics Commission and Attorney General (§ 2303).

In addition, section 2311 makes it a breach of ethical standards and unlawful for any employee to require that any bond be furnished by a particular surety company or particular agent or broker.

III. Sources and Comments

This chapter provides the source notes for each section of the proposed legislation and where pertinent the official comments of the Advisory Committee on Commonwealth Procurement Law. Since the proposed Commonwealth Procurement Code (Part I of Title 62 of the Pennsylvania Consolidated Statutes) incorporates the format and many basic concepts of the Model Procurement Code, the commentary supplied for the model code will generally be helpful in the application of the Pennsylvania act. Of course the commentary must be read in light of the differences between the model and the Commonwealth codes.

Section 101. Short title of part

Source: New.

Section 102. Application of part

Source: Model Procurement Code (hereinafter: MPC)
§ 1-104.

Comment: This code does not apply to employment agreements, including collective bargaining agreements (see definition of "services" in § 103), the purchase of real property (see definition of "supplies" in § 103) and the investment of funds by any Commonwealth agency.

Section 103. Definitions

Source: MPC §§ 1-301 and 4-101; definitions of "Commonwealth agency," "executive agency" and "independent agency" derived from 2 Pa.C.S. § 101.

Comment: Other than leases, real property is excluded from the definition of "supplies."

Section 104. General principles of law otherwise applicable

Source: MPC § 1-102.

Section 105. Determinations

Source: MPC § 1-201.

Section 106. Public access to procurement information

Source: MPC § 1-401.

Comment: This section provides public access to all procurement records required to be retained under Sections 563 and 564, except for information to which the bidder or offeror has a right of nondisclosure pursuant to Section 533(b) or information resulting from an inspection of the plant or place of business of a contractor or subcontractor by the purchasing agency pursuant to Section 551 or from the audit of the books and records of any person who submits cost or pricing data or the books and records of a contractor or subcontractor by the purchasing agency pursuant to Section 552.

Section 107. Reciprocal limitations

Source: Section 523 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. § 203).

Section 301. Procurement responsibility

Source: Subsection (a) generally derived from MPC §§ 2-102, 2-204(1) and 2-301; subsection (b), new; subsection (c) derived from MPC § 2-302; and subsection (d) derived from § 2-303.

Comment: Subsection (a) delineates the responsibilities of the policy office and the Department of General Services in Commonwealth agency procurement. Subsection (a) also sets forth the general rule that the Department of General Services is the principal purchasing agency for all Commonwealth agencies. Subsections (b) through (d) are exceptions to this general rule. Subsection (b) authorizes a Commonwealth agency to act as its own purchasing agent when making an emergency procurement. Subsection (c) authorizes a Commonwealth agency to procure services listed in Section 518 without going through the Department of General Services. In the case of the procurement of supplies, services and construction listed in subsection (d), a Commonwealth agency may act as its own purchasing agent but must adhere to the procedures set forth in this code.

Section 311. Composition and administrative support

Source: Subsections (a) and (c) generally derived from MPC § 2-101(2) (alternative B) and (3), respectively; subsection (b), new.

Comment: Section 206 of the act of April 9, 1929, (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. § 66), provides that a department head shall carry out his duties such as those required by this subchapter "personally, by deputy or by the duly authorized agent or employee of the department."

Section 312. Powers and duties

Source: MPC § 2-102.

Section 313. Procurement regulations

Source: MPC § 2-401.

Section 321. Powers and duties

Source: Section 321(1) through (4) derived from MPC § 2-204(3) and (5) generally derived from Section 478 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. § 180-8).

Section 331. Collection of data concerning public procurement

Source: MPC § 2-501.

Section 332. Advisory groups

Source: MPC § 2-502.

Section 501. Definitions

Source: MPC § 3-101; definition of "life cycle cost" derived from 4 Pa. Code § 69.1.

Section 511. Methods of source selection

Source: MPC § 3-201.

Section 512. Competitive sealed bidding

Source: Section 512(a), (b), (c), (d), (e) and (h) derived from MPC § 3-202(1), (2), (3), (4), (5) and (8), respectively; subsection (g) derived from MPC Section 3-202(7) and Section 2 of the act of November 26, 1978 (P.L. 1309, No. 317), referred to as the Public Works Contract Regulation Law (73 P.S. § 1622); and subsection (f) derived from 4 Pa. Code § 69.4(f).

Section 513. Competitive sealed proposals

Source: Section 513(a), (b), (c) and (f) derived from MPC § 3-203(1), (2), (3) and (6), respectively; subsection (d) derived from 4 Pa. Code § 69.6(d); subsection (g) derived from 4 Pa. Code § 69.1 (definition of "committee") and § 69.6(f); and subsection (e) derived from MPC § 3-203(5) and 4 Pa. Code § 69.6(e).

Section 514. Small purchases

Source: MPC § 3-204 and 4 Pa. Code § 69.9.

Comment: The purpose of this section is to facilitate purchases in the field which do not justify the administrative time and expense of competitive sealed bidding. Requirements contract means a master contract which the Department of General Services presently enters into pursuant to Section 2409 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. § 639) to meet the requirements of all the administrative agencies for certain supplies.

Section 515. Sole source procurement

Source: MPC § 3-205.

Section 516. Emergency procurement

Source: MPC § 3-206 and 4 Pa. Code § 69.8.

Comment: In the case of a declaration of a state of emergency by the Governor, the procedure set forth in this section may be dispensed with pursuant to 35 Pa.C.S. §§ 7308 and 7313(20).

Section 517. Multiple awards

Source: 4 Pa. Code § 69.5.

Comment: This section provides a statutory basis for a present procedure utilized by the Department of General Services.

Section 518. Competitive selection procedures for certain services

Source: MPC § 3-207.

Comment: Professional legal services are exempted out of the code in the definition of "services" in Section 103.

Section 519. Selection procedure for insurance and bonds

Source: New.

Comment: This section is modeled after Section 518. Section 2404.1 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. § 634.1), designates the Secretary of General Services as the licensed insurance broker for the purpose of contracting for all insurance and surety bonds for any department, board, agency or commission of this Commonwealth and the General State Authority, the State Public School Building Authority or any other State authority or commission created by law.

Section 520. Handicapped-made supplies and services

Source: Section 2409.1 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. § 639.1).

Section 521. Cancellation of invitations for bids or requests for proposals

Source: MPC § 3-301.

Section 531. Debarment or suspension

Source: MPC §§ 9-102 and 9-507(2).

Comment: The 30-day time period in subsection (e) was chosen to be consistent with the time period for appeals from Commonwealth agencies to Commonwealth Court. See comment to § 1726.

Section 532. Prequalification of bidders and offerors

Source: MPC § 3-402.

Section 533. Responsibility of bidders and offerors

Source: MPC § 3-401.

Comment: The reference to Section 563 is to emphasize that in any case the information furnished under this section shall be made available to the General Counsel or Attorney General upon request.

Section 534. Bid security and performance bonds

Source: Subsection (a) generally derived from Section 2409(g), (h), (j) and (k) of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. § 639(g), (h), (j) and (k)); subsection (b), new.

Comment: The purpose of this section is to provide purchasing agencies with discretionary authority to require bid security and performance bonds for supply contracts. Generally, this section parallels Sections 903 and 904 relating to bid security and performance bonds for construction contracts. Without jeopardizing his bid for want of responsiveness, a bidder may provide bid security in an amount greater than required by the advertisement to avoid revealing the amount of his bid.

Section 535. Cost or pricing data

Source: MPC § 3-403.

Section 541. Restrictions on contracts

Source: MPC § 3-501.

Comment: As provided in the definition of "contract" in Section 103, all contracts must be in writing.

Section 542. Approval of accounting system

Source: MPC § 3-502.

Section 543. Multiterm contracts

Source: MPC § 3-503.

Section 551. Right to inspect plant

Source: MPC § 3-601.

Section 552. Right to audit records

Source: MPC § 3-602.

Section 561. Finality of determinations

Source: MPC § 3-701.

Comment: While Section 1725(h) provides that proceedings before the Board of Claims are de novo, the board must use the standard set forth in this section when reviewing one of the listed determinations.

Section 562. Anti-competitive practices

Source: MPC § 3-702.

Comment: The purpose of this section is to enunciate the policy of the Commonwealth that collusive bidding practices are in fact illegal.

Section 563. Retention of procurement records

Source: MPC § 3-703.

Section 564. Record of certain actions

Source: MPC § 3-704.

Section 701. Purpose and scope

Source: MPC §§ 4-205 and 4-206.

Section 702. Duties of policy office

Source: MPC § 4-201.

Section 703. Duties of department

Source: MPC § 4-202.

Section 704. Exempted items

Source: MPC § 4-203.

Section 705. Relationship with using agencies

Source: MPC § 4-204.

Comment: Section 2801-A(j) of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. 716(j)), requires that the Pennsylvania Historical and Museum Commission approve or disapprove the design and proposed location of any historical monuments, cooperate in the care or restoration of historical sites and be consulted on the design and proposed location of any project which may affect the preservation or development of a historical site.

Section 706. Wage specifications

Source: Subsection (a), new; subsection (b) derived from Section 522 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. § 202).

Section 901. Definitions

Source: MPC § 5-101.

Comment: See for practice of "architecture" Sections 6, 7 and 8 of the act of July 12, 1919 (P.L. 933, No. 369), relating to the regulation of the practice of architecture (63 P.S. §§ 21, 22 and 23); see for

"professional engineering" and "land surveying" 1 Pa.C.S. § 1991 and Section 2 of the act of May 23, 1945 (P.L. 913, No. 367), known as the "Professional Engineers Registration Law" (63 P.S. § 149).

Section 902. Selection of method of construction contracting

Source: Subsection (a), new; subsection (b) derived from the act of May 1, 1913 (P.L. 155, No. 104), referred to as the Separation Act (71 P.S. § 1618).

Comment: Subsection (b) is expressly limited to construction of public buildings and continues the long-standing practice of treating heating, ventilating and air conditioning in one contract.

Section 903. Bid security

Source: Subsection (a) derived from MPC § 5-301(1) and Section 2408(8) of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. § 638(8)); subsection (b) derived from Section 2408(8) of The Administrative Code of 1929 (71 P.S. § 638(8)); and subsections (c) and (d) derived from MPC § 5-301(3) and (4), respectively.

Comment: Without jeopardizing his bid for want of responsiveness, a bidder may provide bid security in an amount greater than required by the advertisement to avoid revealing the amount of his bid.

Section 904. Contract performance and payment bonds

Source: Subsection (a)(1) derived from MPC § 5-302(1)(a) and Section 3(a)(1) of the act of December 20, 1967 (P.L. 869, No. 385), known as the "Public Works Contractors' Bond Law of 1967" (8 P.S. § 193(a)(1)); subsection (a)(2) derived from MPC § 5-302(1)(b) and Section 3(a)(2) of the Public Works Contractors' Bond Law of 1967 (8 P.S. § 193(a)(2)); subsection (b) derived from Sections 3(a) and 5 of the Public Works Contractors' Bond Law of 1967 (8 P.S. §§ 193(a) and 195); subsections (c) and (d) derived from

MPC § 5-302(2) and (3), respectively; and subsection (e) derived from MPC § 5-302(4) and Section 4 of the Public Works Contractors' Bond Law of 1967 (8 P.S. § 194).

Comment: A requirement that obligees be joined is not included in subsection (e) because the subject is covered by Pa.R.C.P. No. 2227, compulsory joinder.

Section 905. Bond forms and copies

Source: Subsection (a) derived from MPC § 5-303(1); subsections (b) and (c) derived from Section 6(a) and (b), respectively, of the act of December 20, 1967 (P.L. 869, No. 385), known as the "Public Works Contractors' Bond Law of 1967" (8 P.S. § 196(a) and (b)); and subsection (d) derived from MPC § 5-303(2) and Section 6(c) of the Public Works Contractors' Bond Law of 1967 (8 P.S. § 196(c)).

Section 906. Contract clauses and their administration

Source: MPC § 5-401.

Section 907. Fiscal responsibility

Source: MPC § 5-402.

Section 908. Architect, engineer and land surveying services

Source: Subsection (a) derived from MPC § 5-501(1); subsection (b) derived from MPC § 5-501(2) and Section 2401(19) of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. § 631.1(19)); subsection (c), new; and subsections (d) and (e) derived from MPC § 5-501(3) and (4) and Section 2401(19) of The Administrative Code of 1929 (71 P.S. § 631.1(19)).

Comment: The policy office shall appoint the selection committee. However, the Department of Transportation and Department of Environmental Resources may use their own selection committees as long as the regulations establishing these selection committees and their procedures are approved by the policy office.

Section 1101. Contract clauses and their administration

Source: MPC § 6-101.

Section 1301. Cost principles regulations required

Source: MPC § 7-101.

Section 1501. Definitions

Source: MPC § 8-101.

Section 1502. Supply management regulations required

Source: MPC § 8-201.

Comment: Since leases of personal and real property are defined in Section 103 as "supplies," regulations promulgated under paragraph (1) should provide procedure for the leasing of Commonwealth property which is under the supervision of a Commonwealth agency. Regulations promulgated under paragraph (2) may provide for the exchange or trade-in of surplus supplies as presently provided for by Sections 1 and 2 of the act of April 7, 1925 (P.L. 189, No. 137) and Section 2405 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. § 635).

Section 1503. Proceeds from sale or disposal of surplus supplies

Source: New.

Comment: This section is included to conform with the constitutional requirements of Section 24, Article III, of the Constitution of Pennsylvania.

Section 1701. Definitions

Source: New.

Comment: Person as defined in 1 Pa.C.S. § 1991 includes "a corporation, partnership, and association, as well as a natural person."

Section 1702. Sovereign immunity

Source: New.

Section 1711. Authority to resolve protests of solicitations or awards

Source: MPC § 9-101.

Comment: This section substitutes for the present practice of a disappointed bidder instituting a taxpayer's suit. See Ogden Foods Inc. v. State Farm Products Show Commission, 11 Pa. Commonwealth Ct. 435, 315 A.2d 329 (1974) and American Totalisator v. Seligman, 27 Pa. Commonwealth Ct. 639, 367 A.2d 756 (1976). Also, the Board of Claims decision in Herre Brothers, Inc. v. Department of General Services, Board of Claims Docket No. FC-206-81 (June 11, 1982) to the extent that it recognizes damages other than those set forth in subsection (g) and Subchapter D of this chapter is specifically rejected.

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

Source: MPC § 9-103 and Sections 4 and 6 of the act of May 20, 1937 (P.L. 728, No. 193), referred to as the Board of Claims Act (72 P.S. §§ 4651-4 and 4651-6).

Comment: The \$300 threshold in present law is incorporated in subsection (e). The time period in subsection (e) is 60 days in order to provide sufficient time to prepare the claim required under Section 1725(b). For claims arising out of failure to make prompt payment, see Section 1507 of the act of April 9, 1929 (P.L. 343, No. 176), known as "The Fiscal Code,"

added by the act of December 13, 1982 (P.L. 1155, No. 266) (72 P.S. § 1507). Section 1507 does not apply to any "public contracts" subject to the act of November 26, 1978 (P.L. 1309, No. 317), referred to as the Public Works Contract Regulation Law (73 P.S. 1621 et seq.) (see 62 Pa.C.S. Ch. 39).

Section 1721. Composition

Source: Section 1 of the act of May 20, 1937 (P.L. 728, No. 193), referred to as the Board of Claims Act (72 P.S. § 4651-1).

Comment: Section 207.1 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" (71 P.S. § 67.1), provides that the Governor shall appoint the members of the Board of Claims with the advice and consent of a majority of the members elected to the Senate.

Section 1722. Hearing panels

Source: Section 1 of the act of May 20, 1937 (P.L. 728, No. 193), referred to as the Board of Claims Act (72 P.S. § 4651-1).

Comment: The hearing panels have been subject to sunset provisions. See the act of December 15, 1982 (P.L. 1307, No. 294). Such a sunset provision has not been included herein.

Section 1723. Administrative matters

Source: Sections 1, 2.1 and 3 of the act of May 20, 1937 (P.L. 728, No. 193), referred to as the Board of Claims Act (72 P.S. §§ 4651-1, 4651-2.1 and 4651-3).

Section 1724. Jurisdiction

Source: Subsection (a) derived from MPC § 9-505; subsection (b) derived from Sections 4 and 6 of the act of May 20, 1937 (P.L. 728, No. 193), referred to as the Board of Claims Act (72 P.S. §§ 4651-4 and 4651-6); and subsection (c), new.

Comment: Subsection (a) grants the Board of Claims jurisdiction for de novo review of decisions of the head of a purchasing agency relating to bid protests, debarments and contract disputes. Subsection (b) continues by reference the jurisdiction of the Board of Claims over certain claims under Article X of The Fiscal Code (72 P.S. § 1001 et seq.). In connection with subsection (c), the Board of Claims Act (72 P.S. § 4651-1 et seq.) provided for the board's jurisdiction over claims against the Commonwealth while Part I of this title limits its applicability to contracts involving Commonwealth agencies. While there have been no reported cases of claims being upheld involving the legislative and judicial branches of the Commonwealth government, subsection (c) is included to leave open the question of the authority of the board to hear claims against the Commonwealth other than those arising out of contracts with Commonwealth agencies. No court has ruled on the constitutionality of the 1937 statutory grant of authority.

Section 1725. Procedure

Source: Subsection (a) generally derived from Section 8 of the act of May 20, 1937 (P.L. 728, No. 193), referred to as the Board of Claims Act (72 P.S. § 4651-8); subsection (d) derived from Sections 5 and 6 of the Board of Claims Act (72 P.S. §§ 4651-5 and 4651-6); subsection (g) derived from Section 7 of the Board of Claims Act (72 P.S. § 4651-7); subsection (h) derived from MPC §§ 9-506(3), 9-507(3) and 9-508(3) and Section 8 of the Board of Claims Act (72 P.S. § 4651-8); subsection (i) derived from Section 9 of the Board of Claims Act (72 P.S. § 4651-9); subsection (j), new; subsection (k) derived from MPC § 1-401 and Section 10 of the Board of Claims Act (72 P.S. § 4651-10); and subsection (l) derived from MPC § 9-503 and Section 10 of the Board of Claims Act (72 P.S. § 4651-10).

Comment: Subsection (a) is a continuation of present law and practice. Title 2 supplements this section by providing for practice and procedure before the Board of Claims including representation of parties, trials and records, evidence and cross-examinations, briefs and

oral arguments, contents and service of adjudications and notice to the Office of the Attorney General. Subsection (c) reverses the present practice of not allowing a counterclaim in an amount exceeding the amount of the claim. This is to alleviate the time and expense involved in having proceedings in two separate forums arising out of the same contract. Subsection (j) is added to authorize certification of awards of the Board of Claims by a court of record in order to aid in the enforcement of its decisions.

Section 1726. Appeals

Source: MPC § 9-510(1).

Comment: Section 763(a)(1) gives the Commonwealth Court jurisdiction over appeals pursuant to 2 Pa.C.S. § 702 (relating to appeals). Title 2 defines "person" as including Commonwealth agencies. Pa.R.A.P. No. 1512(a) provides for appeal to the Commonwealth Court from a quasi-judicial order within 30 days after entry of the order.

Section 1741. Applicability

Source: MPC § 9-201.

Section 1742. Remedies prior to an award

Source: MPC § 9-202.

Section 1743. Remedies after the award

Source: MPC § 9-203.

Section 1751. Interest

Source: MPC § 9-301.

Comment: The legal rate of interest is 6 percent. See 42 Pa.C.S. § 8101 (relating to interest on judgments) and Section 202 of the act of January 30, 1974 (P.L. 13, No. 6) (41 P.S. § 202). Interest under this section runs from the date the claim was filed with the head of

the purchasing agency except in the case of The Fiscal Code claims filed under Section 1724(b) and the claims brought under Section 1724(c) which are filed directly with the Board of Claims. For the date interest accrues and its rate in the cases of the Commonwealth agency's failure to make prompt payment, see Section 1507 of The Fiscal Code (72 P.S. § 1507) (see also comment to Section 1712).

Section 1901. Definitions

Source: MPC § 10-101; also see the act of July 12, 1972 (P.L. 762, No. 180), referred to as the Inter-governmental Cooperation Act (53 P.S. § 481 et seq.), and Art. IX, §§ 5, 6 and 7 of the Pennsylvania Constitution.

Comment: For what constitutes a "political subdivision" used in the definition of "local public procurement unit," see 1 Pa.C.S. § 1991.

Section 1902. Cooperative purchasing authorized

Source: MPC § 10-201.

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

Source: MPC § 10-202.

Section 1904. Cooperative use of supplies or services

Source: MPC § 10-203.

Section 1905. Joint use of facilities

Source: MPC § 10-204.

Section 1906. Supply of personnel, information and technical services

Source: MPC § 10-205.

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

Source: MPC § 10-206.

Section 1908. Compliance of public procurement units

Source: MPC § 10-207.

Section 1909. Review of procurement requirements

Source: MPC § 10-208.

Section 1910. Contract controversies

Source: MPC § 10-301.

Section 2101. Policy

Source: MPC § 11-201.

Section 2102. Definitions

Source: MPC § 11-101.

Section 2103. Regulations

Source: MPC § 11-101.

Section 2104. Duties of department

Source: MPC § 11-202.

Section 2105. Bonding and progress payments

Source: MPC § 11-203.

Section 2106. Business assistance offices

Source: MPC § 11-204.

Section 2107. Report to policy office and General Assembly

Source: MPC § 11-205.

Section 2108. Compliance with Federal requirements

Source: MPC § 11-301.

Section 2301. Policy

Source: MPC § 12-201.

Section 2302. General standards of ethical conduct

Source: MPC § 12-202.

Section 2303. Reporting of breaches of ethical standards

Source: New.

Comment: For pertinent enforcement provisions, see Section 9 of the act of October 4, 1978 (P.L. 883, No. 170), referred to as the State Ethics Act (65 P.S. § 409) and Section 8 of the act of July 19, 1957 (P.L. 1017, No. 451), known as the "State Adverse Interest Act" (71 P.S. § 776.8).

Section 2311. Bonds

Source: Section 8 of the act of December 20, 1967 (P.L. 869, No. 385), known as the "Public Works Contractors' Bond Law of 1967" (8 P.S. § 198).

Section 3101. Application of part

Source: New.

Section 3102. Definitions

Source: New; "government agency" defined in an identical way in 2 Pa.C.S. § 101 and 42 Pa.C.S. § 102.

Section 3301. Invitations for bids and requests for proposals

Source: Act of October 26, 1972 (P.L. 1017, No. 247) (53 P.S. § 1611).

Section 3302. Additional work

Source: Act of October 26, 1972 (P.L. 1017, No. 247) (53 P.S. § 1611).

Section 3303. Arbitration of disputes

Source: Act of October 26, 1972 (P.L. 1017, No. 247) (53 P.S. § 1611).

Section 3501. Condition precedent to release of bond

Source: Act of June 10, 1947 (P.L. 493, No. 223) (8 P.S. § 23).

Section 3701. Contract provisions prohibiting discrimination

Source: Act of July 18, 1935 (P.L. 1173, No. 382) (43 P.S. § 153).

Section 3702. Contract provision requiring United States citizens to be employed

Source: Act of June 25, 1895 (P.L. 269, No. 182) (43 P.S. §§ 151, 152).

Section 3703. Contract provision requiring residents to be employed

Source: Act of July 19, 1935 (P.L. 1321, No. 414) (43 P.S. § 154).

Section 3711. Short title of subchapter

Source: Section 1 of the act of March 3, 1978 (P.L. 6, No. 3), known as the "Steel Products Procurement Act" (73 P.S. § 1881).

Section 3712. Definitions

Source: Section 6 of the act of March 3, 1978 (P.L. 6, No. 3), known as the "Steel Products Procurement Act" (73 P.S. § 1886).

Section 3713. Required contract provisions

Source: Section 4 of the act of March 3, 1978 (P.L. 6, No. 3), known as the "Steel Products Procurement Act" (73 P.S. § 1884).

Section 3714. Payments under contracts

Source: Section 5 of the act of March 3, 1978 (P.L. 6, No. 3), known as the "Steel Products Procurement Act" (73 P.S. § 1885).

Section 3721. Short title of subchapter

Source: New.

Section 3722. Definitions

Source: Section 2 of the act of July 23, 1968 (P.L. 686, No. 226), referred to as the Trade Practices Act (71 P.S. § 773.102).

Section 3723. Unlawful acts

Source: Section 3 of the act of July 23, 1968 (P.L. 686, No. 226), referred to as the Trade Practices Act (71 P.S. § 773.103).

Section 3724. Preference

Source: Section 4 of the act of July 23, 1968 (P.L. 686, No. 226), referred to as the Trade Practices Act (71 P.S. § 773.104).

Section 3725. Listing discriminating countries

Source: Section 5 of the act of July 23, 1968 (P.L. 686, No. 226), referred to as the Trade Practices Act (71 P.S. § 773.105).

Section 3726. Determining discrimination

Source: Sections 6 and 7 of the act of July 23, 1968 (P.L. 686, No. 226), referred to as the Trade Practices Act (71 P.S. §§ 773.106 and 773.107).

Section 3727. Foreign registry docket

Source: Sections 8 and 9 of the act of July 23, 1968 (P.L. 686, No. 226), referred to as the Trade Practices Act (71 P.S. §§ 773.108 and 773.109).

Section 3728. Aluminum or steel products from a discriminating country

Source: Section 10 of the act of July 23, 1968 (P.L. 686, No. 226), referred to as the Trade Practices Act (71 P.S. § 773.110).

Section 3741. Preference

Source: New.

Section 3901. Application of chapter

Source: New.

Section 3902. Definitions

Source: Section 1 of the act of November 26, 1978 (P.L. 1309, No. 317), referred to as the Public Works Contract Regulation Law (73 P.S. § 1621).

Section 3903. Time for awarding contract

Source: Section 2 of the act of November 26, 1978 (P.L. 1309, No. 317), referred to as the Public Works Contract Regulation Law (73 P.S. § 1622).

Section 3904. Time for executing contract

Source: Section 3 of the act of November 26, 1978 (P.L. 1309, No. 317), referred to as the Public Works Contract Regulation Law (73 P.S. § 1623).

Section 3905. Release of successful bidder

Source: Section 4 of the act of November 26, 1978 (P.L. 1309, No. 317), referred to as the Public Works Contract Regulation Law (73 P.S. § 1624).

Section 3906. Retainage

Source: Section 5 of the act of November 26, 1978 (P.L. 1309, No. 317), referred to as the Public Works Contract Regulation Law (73 P.S. § 1625).

Section 3907. Payment of retainage to subcontractors

Source: Section 6 of the act of November 26, 1978 (P.L. 1309, No. 317), referred to as the Public Works Contract Regulation Law (73 P.S. § 1626).

Section 3908. Final payment under contract

Source: Sections 7 and 8 of the act of November 26, 1978 (P.L. 1309, No. 317), referred to as the Public Works Contract Regulation Law (73 P.S. §§ 1627 and 1628).

Section 3909. Arbitration

Source: Section 9 of the act of November 26, 1978 (P.L. 1309, No. 317), referred to as the Public Works Contract Regulation Law (73 P.S. § 1629).

Section 4101. Contracts with United States

Source: Section 1 of the act of April 12, 1945 (P.L. 220, No. 99) (71 P.S. § 1570.1) and Section 1 of the act of May 5, 1965 (P.L. 40, No. 34) (71 P.S. § 1570.3).

Comment: This section should be read with 40 U.S.C. § 484 and 50 App. U.S.C. § 1622 relating to the disposal of surplus Federal property.

Section 4102. Bids and down payments

Source: Section 2 of the act of April 12, 1945 (P.L. 220, No. 99) (71 P.S. § 1570.2).

Section 4301. Short title of chapter

Source: Section 1 of the act of November 26, 1978 (P.L. 1303, No. 315), known as the "Public Facilities Concession Regulation Act" (69 P.S. § 2501).

Section 4302. Definitions

Source: Section 4 of the act of November 26, 1978 (P.L. 1303, No. 315), known as the "Public Facilities Concession Regulation Act" (69 P.S. § 2504).

Section 4303. Terms of contracts

Source: Section 5 of the act of November 26, 1978 (P.L. 1303, No. 315), known as the "Public Facilities Concession Regulation Act" (69 P.S. § 2505).

Appendix A

Cross Reference Tables

The following tables list provisions of the Model Procurement Code or present Pennsylvania law and the provisions of Title 62, Procurement, which generally are derived from or cover the same subject matter as the corresponding model code or Pennsylvania law provisions. An asterisk (*) indicates the provision is not incorporated or the concept is not included in the proposed legislation.

Table A

MODEL PROCUREMENT CODE

Model Procurement Code	Pa.C.S. Title 62	Model Procurement Code	Pa.C.S. Title 62
Section	Section	Section	Section
1-101	*	2-301	301(a)
1-102	104	2-302	301(c)
1-103	*	2-303	301(d)
1-104	102	2-401	313
1-105	*	2-501	331
1-106	*	2-502	332
1-107	*	2-503	*
1-108	*	2-601	*
1-109	*		
1-201	105	3-101	501
1-301	103	3-201	511
1-401	106, 1725(k)	3-202(1)	512(a)
		3-202(2)	512(b)
2-101(1)	*	3-202(3)	512(c)
2-101(2) (alt. B)	311(a), 311(c)	3-202(4)	512(d)
2-101(3)	311(a), 311(c)	3-202(5)	512(e)
2-102	301(a), 312	3-202(6)	*
2-201	*	3-202(7)	512(g)
2-202	*	3-202(8)	512(h)
2-203	*	3-203(1)	513(a)
2-204(1)	301(a)	3-203(2)	513(b)
2-204(2)	*	3-203(3)	513(c)
2-204(3)(a)	321(1)	3-203(4)	*
2-204(3)(b)	321(2)	3-203(5)	513(e)
2-204(3)(c)	321(3)	3-203(6)	513(f)
2-204(3)(d)	321(4)	3-203(7)	*
2-205	*	3-204	514

Table A Model Procurement Code--continued

Model Procurement Code	Pa.C.S. Title 62
Section	Section
3-205	515
3-206	516
3-207	518
3-301	521
3-401	533
3-402	532
3-403	535
3-501	541
3-502	542
3-503	543
3-601	551
3-602	552
3-701	561
3-702	562
3-703	563
3-704	564
4-101	103
4-201	702
4-202	703
4-203	704
4-204	705
4-205	701
4-206	701
5-101	901
5-201	*
5-301(1)	903(a)
5-301(2)	*
5-301(3)	903(c)
5-301(4)	903(d)
5-302(1)(a)	904(a)(1)
5-302(1)(b)	904(a)(2)
5-302(2)	904(c)
5-302(3)	904(d)
5-302(4)	904(e)
5-302(5)	*
5-303(1)	905(a)
5-303(2)	905(d)
5-401	906
5-402	907
5-501(1)	908(a)
5-501(2)	908(b)
5-501(3)	908(d)
5-501(4)	908(e)
6-101	1101
7-101	1301
8-101	1501
8-201	1502
8-301	*
9-101	1711
9-102	531
9-103	1712
9-201	1741
9-202	1742
9-203	1743

Model Procurement Code	Pa.C.S. Title 62
Section	Section
9-301	1751
9-401	*
9-402	*
9-501	*
9-502	*
9-503	1725(1)
9-504	*
9-505	1724(a)
9-506(1)	*
9-506(2)	*
9-506(3)	1725(h)
9-506(4)	*
9-507(1)	*
9-507(2)	531
9-507(3)	1725(h)
9-507(4)	*
9-508(1)	*
9-508(2)	*
9-508(3)	1725(h)
9-508(4)	*
9-509	*
9-510(1)	1726
9-510(2)	*
9-511	*
10-101	1901
10-201	1902
10-202	1903
10-203	1904
10-204	1905
10-205	1906
10-206	1907
10-207	1908
10-208	1909
10-301	1910
11-101	2102, 2103
11-201	2101
11-202	2104
11-203	2105
11-204	2106
11-205	2107
11-301	2108
12-101	*
12-201	2301
12-202	2302
12-203	*
12-204	*
12-205	*
12-206	*
12-207	*
12-208	*
12-209	*
12-301	*
12-302	*
12-303	*
12-401	*
12-402	*

Table B

PENNSYLVANIA STATUTORY LAW

The Administrative Code of 1929 Act of April 9, 1929 (P.L. 177, No. 175)	Purdon's Title 71	Pa.C.S. Title 62
Section	Section	Section
478	180-8	321(5)
507	187	301, 514
508	188	301, 703, 1502
510	190	301, 1502, 1503
511	191	1502, 1503
515	195	321(1)
522	202	706(b)
523	203	107
709(i)	249(i)	301, 312
709(j) as much as reads: "to determine the number and type of automobiles to be purchased by the Department of Property and Supplies, acting either on its own behalf or as purchasing agency for any other department, except the Department of the Auditor General and the Treasury Department or for any board or commission, and"	249(j)	301, 312
2003(f) 2401.1 (1) through (3) (5) through (8)	513(f)	1502, 1904
2401.1(9) 2401.1(10) 2401.1(11) 2401.1(19)	631.1 (1) through (3) (5) through (8) 631.1(9) 631.1(10) 631.1(11) 631.1(19)	321(1) 703 321(4) 321(1) 908(b)(d)(e)

The Administrative Code of 1929 Act of April 9, 1929 (P.L. 177, No. 175)	Purdon's Title 71	Pa.C.S. Title 62
Section	Section	Section
2402(d)	632(d)	321(1)
2402(i)(j)(n)	632(i)(j)(n)	1502(2)
2403(a)	633(a)	703
2403(b)(c)	633(b)(c)	321(1)
2403(d)	633(d)	321(2)
2403(e)	633(e)	321(1)
2403(f)	633(f)	321(2)
2403(g)	633(g)	514
2403(h)	633(h)	1902
2405	635	321(3), 1502(2)
2406(g)	636(g)	1502(2), 1503
2408	638	512, 513, 903, 904
2409	639	512, 513, 534
2409.1	639.1	520
2410	640	512, 513, 534
2412	642	532
2413	643	512, 513

Board of Claims Act Act of May 20, 1937 (P.L. 728, No. 193)	Purdon's Title 72	Pa.C.S. Title 62
Section	Section	Section
1	4651-1	1721, 1722, 1723
2.1	4651-2.1	1723
3	4651-3	1723
4	4651-4	1712, 1724(b)
5	4651-5	1725(d)
6	4651-6	1712, 1724(b), 1725(b), (c), (d), (e), (f)
8	4651-8	1725(a), (h)
9	4651-9	1725(i)
10	4651-10	1725(k), (l)
11	*	*

Table B Pennsylvania Statutory Law--continued

Public Works Contractors' Bond Law of 1967 Act of December 20, 1967 (P.L. 869, No. 385)		
Section	Purdon's Title 8	Pa.C.S. Title 62
1	191	*
2	192	*
3(a)(1)	193(a)(1)	904(a)(1), 904(b)
3(a)(2)	193(a)(2)	904(a)(2), 904(b)
3(b)	193(b)	904(a)
3(c)	193(c)	563
4	194	904(e)
5	195	904(b)
6(a)	196(a)	905(b)
6(b)	196(b)	905(c)
6(c)	196(c)	905(d)
8	198	2311
9	199	*
10	200	*
11	201	*
12	202	*

Trade Practices Act Act of July 23, 1968 (P.L. 686, No. 226)		
Section	Purdon's Title 71	Pa.C.S. Title 62
1	773.101	*
2	773.102	3722
3	773.103	3723
4	773.104	3724
5	773.105	3725
6	773.106	3726
7	773.107	3726(b)
8	773.108	3727(a)
9	773.109	3727(b)
10	773.110	3728
11	773.111	*
12	773.112	*
13	773.113	*

Steel Products Procurement Act Act of March 3, 1978 (P.L. 6, No. 3)		
Section	Purdon's Title 73	Pa.C.S. Title 62
1	1881	3711
2	1882	*
3	1883	*
4	1884	3713
5	1885	3714
6	1886	3712
7	1887	*
8	*	*
9	*	*

Public Facilities Concession Regulation Act Act of November 26, 1978 (P.L. 1303, No. 315)		
Section	Purdon's Title 69	Pa.C.S. Title 62
1	2501	4301
2	2502	*
3	2503	*
4	2504	4302
5	2505	4303
6	2506	*
7	2507	*
8	*	*
9	*	*

Table B Pennsylvania Statutory Law--continued

Public Works Contract Regulation Law Act of November 26, 1978 (P.L. 1309, No. 317)	Purdon's Title 73	Pa.C.S. Title 62
Section	Section	Section
1	1621	3902
2	1622	512(g), 3903
3	1623	3904
4	1624	3905
5	1625	3906
6	1626	3907
7	1627	3908(a)
8	1628	3908(b)
9	1629	3909
10	1630	*
11	1631	*
12	*	*
13	*	*

Miscellaneous Statutes	Purdon's Title	Pa.C.S. Title 62
Section	Section	Section
Act of June 12, 1879 (P.L. 170, No. 187)		
§ 1	71 P.S. § 1611	512(c), 513(c)
§ 2	71 P.S. § 1612	512, 513
§ 3	71 P.S. § 1613	534
§ 4	71 P.S. § 1614	563, 564
§ 5	71 P.S. § 1616	301, 321
§ 6	46 P.S. § 123	301, 321
§ 7	46 P.S. § 124	*
§ 8	46 P.S. § 125	*
§ 10	*	*
Act of June 25, 1895 (P.L. 269, No. 182)		
§ 1	43 P.S. § 151	3702
§ 2	43 P.S. § 152	3702
Separation Act Act of May 1, 1913 (P.L. 155, No. 104)		
§ 1	71 P.S. § 1618	902(b)
§ 2	*	*

Miscellaneous Statutes	Purdon's Title	Pa.C.S. Title 62
Section	Section	Section
Act of May 24, 1917 (P.L. 260, No. 141)		
§ 1	71 P.S. § 1617	512, 513, 543
§ 2	*	*
Act of May 8, 1923 (P.L. 161, No. 120)		
§ 1	71 P.S. § 1631	*
§ 2	71 P.S. § 1632	321
§ 3	71 P.S. § 1633	321
§ 4	71 P.S. § 1634	321, 543, 703
§ 5	71 P.S. § 1635	512(c), 513(c)
§ 6	71 P.S. § 1636	512, 513, 534
§ 7	71 P.S. § 1637	512(g)
§ 8	71 P.S. § 1638	534
§ 9	71 P.S. § 1639	321
§ 10	71 P.S. § 1640	321, 703
§ 11	71 P.S. § 1641	1101
§ 12	71 P.S. § 1642	321
§ 13	71 P.S. § 1643	321, 1502, 1503
§ 14	71 P.S. § 1644	1502, 1503
§ 15	71 P.S. § 1645	301, 311, 321
§ 16	71 P.S. § 1646	*
§ 17	71 P.S. § 1647	2302(a)
§ 18	71 P.S. § 1648	563, 564
§ 19	71 P.S. §§ 1649, 1650	*
§ 20	*	*
§ 21	*	*
Act of April 7, 1925 (P.L. 189, No. 137)		
§ 1	71 P.S. § 635	1502(2)
§ 2	71 P.S. § 635	1502(2)
§ 3	71 P.S. § 1601	1502(2)
§ 4	71 P.S. § 1602	1502(2)
Act of June 23, 1931 (P.L. 1181, No. 321)		
§ 1	8 P.S. § 146	904
§ 2	8 P.S. § 147	*
§ 3	8 P.S. § 148	*
§ 4	*	*
The First Class Township Code Act of June 24, 1931 (P.L. 1206, No. 331)	§ 1809	
	53 P.S. § 56809	3701

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Table B Pennsylvania Statutory Law—continued

Miscellaneous Statutes	Purdon's Title	Pa.C.S. Title 62
Section	Section	Section
The Second Class Township Code		
Act of May 1, 1933 (P.L. 103, No. 69), § 808	53 P.S. § 65808	3701
Act of July 18, 1935 (P.L. 1173, No. 382), § 1	43 P.S. § 153	3701
Act of July 19, 1935 (P.L. 1321, No. 414), § 1	43 P.S. § 154	3703
The Game Law		
Act of June 3, 1937 (P.L. 1225, No. 316) § 1401(w) as much of the third sentence as reads: "direct, without prior confirmation of the Department of General Services" § 1401(w) Penultimate sentence	34 P.S. § 1311.1401(w) 34 P.S. § 1311.1401(w)	301 514
Act of April 12, 1945 (P.L. 220, No. 99), § 1	71 P.S. § 1570.1	4101
§ 2	71 P.S. § 1570.2	4102
§ 3	*	*
§ 4	*	*
State Highway Law		
Act of June 1, 1945 (P.L. 1242, No. 428), § 404	36 P.S. § 670-404	512, 513, 904
§ 404.1	36 P.S. § 670-404.1	532
§ 405	36 P.S. § 670-405	512(c), 513(c)
§ 405.1	36 P.S. § 670-405.1	903
Act of June 10, 1947 (P.L. 493, No. 223), § 1	8 P.S. § 23	3501
State Public School Building Authority Act		
Act of July 5, 1947 (P.L. 1217, No. 498), § 10	24 P.S. § 791.10	512, 513, 904, 2108, 3711
Public School Code of 1949		
Act of March 10, 1949 (P.L. 30, No. 14), § 754	24 P.S. § 7-754	3703
§ 755	24 P.S. § 7-755	3701

Miscellaneous Statutes	Purdon's Title	Pa.C.S. Title 62
Section	Section	Section
The General State Authority Act		
Act of March 31, 1949 (P.L. 372, No. 34), § 11	71 P.S. § 1707.11	512, 513, 904, 2108
Act of May 5, 1965 (P.L. 40, No. 34), § 1	71 P.S. § 1570.3	4101
§ 2	*	*
The Borough Code		
Act of February 1, 1966 (1965 P.L. 1656, No. 581), § 1408	53 P.S. § 46408	3701
The Pennsylvania Higher Educational Facilities Authority Act		
Act of December 6, 1967 (P.L. 678, No. 318), § 12	24 P.S. § 5512	512, 513, 904, 2108
Act of November 20, 1968 (P.L. 1075, No. 329), § 4	71 P.S. § 1188.4	512, 513, 515, 3711
Act of October 26, 1972 (P.L. 1017, No. 247), § 1	53 P.S. § 1611	3301, 3302, 3303
§ 2	*	*
Act of January 23, 1974 (P.L. 9, No. 4), § 1	73 P.S. § 1601	*
§ 2	73 P.S. § 1602	512(f)
§ 3	73 P.S. § 1603	*
§ 4	73 P.S. § 1604	*
§ 5	73 P.S. § 1605	*
§ 6	73 P.S. § 1606	*
§ 7	73 P.S. § 1607	*
§ 8	73 P.S. § 1608	*
§ 9	*	*
30 Pa.C.S. § 521(a)(12) as much as reads: "direct" and "in any amount, without prior confirmation of the Department of General Services,"	30 Pa.C.S.A. § 521(a)(12)	301

Comparison of State Procurement
Law with Model Code

The table on the following page, including those states that have adopted the Model Procurement Code in substantial measure, is intended to provide an overview of state law on procurement as it approximates corresponding articles in the Model Procurement Code (MPC). No attempt is made to contrast each section within the MPC articles with the corresponding provisions found in the state law; however, those differences worthy of notation are highlighted by footnote.

FOOTNOTES

Arkansas

1. Sections on cost or pricing data and cost-reimbursement contracts have been repealed.
2. A separate body of law and entity (state building service) governs real estate and construction of buildings; such activities are exempted from Arkansas purchasing law.
3. The Arkansas equivalent to MPC Art. 8 (supply management) is found in Arkansas regulations on purchasing (section 55).
4. There is no board of appeals for those seeking second opinions on procurement matters; determinations on appeal are made by the director of state purchasing and are within his sole discretion.

Colorado

1. Colorado law includes a section urging the incorporation of energy efficiency, value analysis and life-cycle cost concepts within proposed specifications when feasible. (Colo. Rev. Stat. § 24-104-206 (Supp. 1981)).
2. Unlike the MPC, Colorado includes a separate treatment for architectural and engineering contracts clauses and their administration.

COMPARISON OF STATE PROCUREMENT LAW WITH MODEL CODE

Adopting states	Model Procurement Code articles											
	Art. 1 General provisions	Art. 2 Procurement organization	Art. 3 Source selection and contract formation	Art. 4 Specifications	Art. 5 Procurement of construction, arch., eng. and land surveying services	Art. 6 Modification and termination of contracts for supplies and services	Art. 7 Cost principles	Art. 8 Supply management	Art. 9 Legal and contractual remedies	Art. 10 Inter-governmental relations	Art. 11 Assistance to small and disadvantaged businesses: Federal assistance	Art. 12 Ethics
ARKANSAS	I	S	S ¹	S	2	I		I ³	S ⁴	S		
COLORADO	I	S	I	I ¹	I ²	I	I	S	S	S		D
INDIANA	S	S	S	I		I	S		D ¹			
KENTUCKY	I	S	I	S	S	S	I		S			
LOUISIANA	I	S	I ¹	I ²		I			S	I		S
MARYLAND	I	S	I	S	D ¹	D ²	S		S			I
PENNSYLVANIA (proposed)	I	D	I	I	I	I	I	I	D	I	I	D
SOUTH CAROLINA	I	D	I	I	S	I	I	S	S	S ¹	S	S
UTAH	I	D	I	I	I	I ¹			I ²	S		
VIRGINIA	S	D ¹	D ²	S ³	S ⁴	S ⁵			D ⁶		D ⁷	S

I (Identical): Respective state law is only editorially different from the corresponding MPC article.

S (Similar): Respective state law treats the subject matter of the corresponding MPC article comparably.

D (Different): While addressing the same subject matter of the corresponding MPC article, the respective state law differs considerably in content.

NOTE: A cell left blank means respective state law does not directly address the subject matter of the corresponding MPC provision; treatment of the matter may appear elsewhere within the state's statutory structure.

Indiana

1. Judicial review of determinations made regarding certain segments of the procurement process is explicitly denied under Indiana law; such determinations are deemed final and conclusive when made.

Louisiana

1. MPC § 3-203 (competitive sealed proposals) is omitted. The Louisiana Code includes a section on the direct purchase of insurance (La. Rev. Stat. Ann. §§ 1631-1633 (West Supp. 1982)); provisions for the acquisition of housing space are also included (La. Rev. Stat. Ann. §§ 1641-1643 (West Supp. 1982)).

2. In addition to the sections on specification, the Louisiana Code provides for escalation clauses affecting bids.

Maryland

1. Because of the Transportation Selection Board's involvement in the procurement of architectural and engineering services, Maryland's equivalent to MPC Art. 5 is taken up with its creation and the regulations governing its activity, therefore making Maryland's treatment of the subject significantly different than MPC Art. 5.

2. The treatment of the modification and termination of contracts in Maryland's code is less elaborate than the MPC offers. (Md. Ann. Code, Art. 21, § 5-101 (1957); MPC Art. 5).

South Carolina

1. MPC § 10-301 (contract controversies) is omitted.

Utah

1. Utah incorporates an equivalent to MPC Art. 6 into the section on contract clauses (Utah Code Ann. § 63-56-40 (Interim Supp. 1981)), the Utah equivalent to MPC § 5-401.

2. Utah follows the MPC in creating a procurement appeals board; the proposed Commonwealth Procurement Code creates no such body.

Virginia

1. Virginia procurement organization is skeletal, basically designating the Division of Purchasing and Supply as the exclusive purchasing agent of the state. Although the director of the division is answerable to the Department of General Services, he is left to his discretion regarding procurement and its infrastructure.

2. Virginia's Art. 2 (contract formation and administration) is the coarse equivalent of MPC Art. 3. While retaining substantial similarities with the provisions of MPC Art. 3, the following notes indicate that Va. Code Art. 2 (Supp. 19__) is a conglomerate of several articles contained in the MPC.

3. The equivalent of MPC Art. 4 (specifications) has been incorporated into Va. Code Art. 2 (Supp. 19__) as § 11-50 and is substantially similar with the same.

4. The equivalent to MPC Art. 5 (procurement of construction, architect, engineer and land surveying services) has been incorporated into Va. Code Art. 2 (Supp. 19__).

5. The equivalent to MPC Art. 6 (modification and termination of contracts for supplies and services) has been incorporated into Va. Code Art. 2 (Supp. 19__).

6. Under current Virginia law, a bidder or offeror must appeal to an appeal board set up by the procuring agency or, if no such board is available, directly to the courts.

7. The equivalent to MPC Art. 11 (assistance to small and disadvantaged businesses) is treated in one paragraph and incorporated into Va. Code Art. 2 § 11-48 (Supp. 19__).

Political Subdivision Statutory Procurement Law

This appendix provides an overview of Pennsylvania political subdivision statutory procurement law. Local procurement law has been organized into ten subject categories and the statutory law on each subject is summarized with appropriate citations for each type of political subdivision.

<u>Political subdivision</u>	<u>Threshold requiring advertising and competitive bidding</u>
First Class City (Includes First Class County) Ch. 17 Philadelphia Code 351 Pa. Code § 8.8-200 et seq.	Over \$2,000 (351 Pa. Code § 8.8-200)
Second Class City - Act of March 7, 1901 P.L. 20, No. 14 (53 P.S. § 23301 et seq.)	Over \$4,000 (53 P.S. § 23308.1)
Third Class City - Act of June 23, 1931 P.L. 932, No. 317 (53 P.S. § 36901 et seq.)	Over \$4,000 (53 P.S. § 36901)
Borough - Act of February 1, 1966 P.L. (1965) 1656, No. 581 (53 P.S. § 46401 et seq.)	Over \$4,000 (53 P.S. § 46402)
Incorporated Town - Act of May 27, 1953 P.L. 244, No. 34 (53 P.S. § 53201 et seq.)	Over \$4,000 (53 P.S. § 53202)
First Class Township - Act of June 24, 1931 P.L. 1206, No. 331 (53 P.S. § 56801 et seq.)	Over \$4,000 (53 P.S. § 56802)
Second Class Township - Act of May 1, 1933 P.L. 103, No. 69 (53 P.S. § 65801 et seq.)	Over \$4,000 (53 P.S. § 65802)
Municipal Authority - Act of May 2, 1945 P.L. 382, No. 164 (53 P.S. § 312)	Over \$4,000 (53 P.S. § 312)
Parking Authority - Act of June 5, 1947 P.L. 458, No. 208 (53 P.S. § 351)	Over \$4,000 (53 P.S. § 351)
Second Class County - Act of July 28, 1953 P.L. 723, No. 230 (16 P.S. § 5001 et seq.)	Over \$4,000 (16 P.S. §§ 5001 and 5704.1) Over \$1,000 for bridge maintenance (16 P.S. § 5722)
Third through Eighth Class County Act of August 9, 1955, P.L. 323, No. 130 (16 P.S. § 1801 et seq.)	Over \$4,000 (16 P.S. §§ 1802 and 2670)
School District - Act of March 11, 1949 P.L. 30, No. 14 (24 P.S. § 7-751 et seq.)	Over \$4,000 (24 P.S. §§ 7-751 and 8-807.1)

<u>Political subdivision</u>	<u>Method of advertising</u>
First Class City	Procurement Department to advertise once a week for two weeks in one of three newspapers having largest paid circulation in the city and other newspapers the department deems necessary. (351 Pa. Code § 8.8-200)
Second Class City	Invitations for bids issued by reasonable notice. (53 P.S. § 23308.1)
Third Class City	Advertise three times, each on a different day in not more than two newspapers. (53 P.S. §§ 35109 and 36901)
Borough	Due notice in one newspaper of general circulation in borough at least three times at intervals of not less than three days if a daily newspaper or once a week for two consecutive weeks if a weekly newspaper. (53 P.S. § 46402)
Incorporated Town	Due notice in one newspaper of general circulation, published or circulating in the county where the town is located; same daily/ weekly number of times as for borough (53 P.S. § 53202); permits publication of contract notices in trade journals. (53 P.S. § 53207)
First Class Township	Notice by Secretary of Board of Township Supervisors published in one newspaper of general circulation in the county in which the township is located; same daily/weekly number of times as for borough; to contain plans and specifications or state where on file. (53 P.S. § 56802)
Second Class Township	Due notice in one newspaper of general circulation, published or circulating in the county where the township is located; same daily/weekly number of times as for borough. (53 P.S. § 65802)
Municipal Authority	Advertising/due public notice in a newspaper of general circulation published in the municipality where the authority has its principal office; if none is there, then in the county where the office is; notice may be waived where the authority determines an emergency. (53 P.S. § 312)
Parking Authority	Same as for municipal authority, but no waiver of notice. (53 P.S. § 351)
Second Class County	Notice in newspaper; same daily/weekly number of times as for borough. (16 P.S. § 5001)
Third through Eighth Class County	Notice in newspaper; same daily/weekly number of times as for borough; notice may be waived if commissioners declare an emergency. (16 P.S. § 1802) Notice of bridge repair or design to contain description and if it adjoins another county, advertise in both counties. (16 P.S. § 2670)
School District	Construction contracts: In one newspaper printed in the county unless the matter affects only the school district--then publish in newspaper printed in the school district--if none, then one generally circulating; if an emergency, solicit bids from at least three responsible bidders--Secretary of Education to approve. (24 P.S. §§ 1-106 and 7-751) Purchases: Notice once a week for three weeks in not less than two newspapers of general circulation--if none in district, in at least five public places. (24 P.S. § 8-807.1)

Political subdivision

Method of accepting bids/awarding contracts

First Class City	Contract to be awarded to lowest responsible bidder in writing--form approved by the city solicitor--opened publicly and tabulated in the presence of a representative of the city controller at time specified in notice--can reject all. (351 Pa. Code § 8.8-200) All purchases to be made through Procurement Department. (351 Pa. Code § 8.8-202) Prospective bidders must qualify as responsible. (§§ 17-100 and 17-101 Philadelphia Code)
Second Class City	Bids are filed with the city controller; opened at time and place designated in the notice; figures are to be announced to persons present; awarded to lowest responsible bidder. (53 P.S. § 23308.1)
Third Class City	Bids are not to be opened until at least ten days after first advertisement; acceptance by public announcement at meeting where bids are received or at subsequent meeting named then; a third meeting may be called where bids must be accepted or rejected; awarded to lowest responsible bidder. (53 P.S. § 36901)
Borough	Bids are not to be opened until at least ten days after first advertisement; acceptance by public announcement at meeting where bids are received, or at subsequent meeting named then; a third meeting may be called if at least five days notice thereof is given in a newspaper; to lowest responsible bidder. (53 P.S. § 46402)
Incorporated Town	Same as for borough. (53 P.S. § 53202)
First Class Township	Awarded to lowest responsible bidder; bids not to be opened until at least ten days after first advertisement; all plans and specifications to be on file at least ten days in advance of opening bids; if opening and reading are to be done at an open meeting of the township supervisors, the contract is awarded there; if no meeting is held, subsequent ones may be held if they are advertised at least six days in advance. (53 P.S. § 56802)
Second Class Township	Same as for borough. (53 P.S. § 65802)
Municipal Authority	Authority is to accept the lowest bid, quality and material being equal, but retains the right to reject any or all bids or to select a single item from any bid. (53 P.S. § 312)
Parking Authority	Same as for municipal authority. (53 P.S. § 351)
Second Class County	To lowest responsible bidder; acceptance of bids by county controller who opens them publicly; all figures are announced publicly by the chief clerk and referred to appropriate departments for tabulation without the presence of the commissioners. (16 P.S. § 5001) If constructing a jail or courthouse, the court of common pleas must approve the contract. (16 P.S. § 5515) If constructing a hospital, must submit plans to Secretary of Health. (16 P.S. § 5311)
Third through Eighth Class County	To lowest responsible bidder; bids are to be received in a sealed envelope by the comptroller or chief county clerk; bids not to be opened until at least ten days after first advertisement; acceptance at meeting where bids are opened, but can have subsequent meetings; must accept or reject bids by third meeting. (16 P.S. § 1802) If constructing or altering a building, plans and specifications must be approved by court of common pleas. (16 P.S. § 2315) Plans and specifications for hospital must be submitted to Secretary of Health. (16 P.S. § 2379)

Political subdivision

Method of accepting bids/awarding contracts (cont.)

School District Construction contracts: To lowest responsible bidder. (24 P.S. § 7-751)
Purchases: May reject any or all bids or may select a single item from any bid; to accept lowest responsible bid. (24 P.S. § 8-807.1)

Exceptions to competitive bidding and advertising

First Class City Unique articles and professional services. (351 Pa. Code § 8.8-200)

Second Class City Purchases made at public sale or pursuant to tariffs on file with Pennsylvania PUC; contracts for personal or professional services; contracts with political subdivisions, the Commonwealth, U.S. Government or their agencies or authorities; patented/copyrighted personal property. (53 P.S. § 23308.1)

Third Class City Maintenance, repairs or replacements for water, electric light or other public works; improvements, repairs or maintenance of any kind by city employees (except for construction materials for street improvements); patented or copyrighted materials or equipment; contracts involving insurance policies, surety company bonds, made for public utility service under tariffs on file with Pennsylvania PUC, made with political subdivisions, county, Commonwealth or Federal Government; for personal or professional services. (53 P.S. § 36901)

Borough Same as for third class city. (53 P.S. § 46402)

Incorporated Town Same as for third class city. (53 P.S. § 53202)

First Class Township Same as for third class city: For all service contracts of over one year, if taxpayers owning property valued at 60 percent or more of the total property valuation of the township sign and file with the Secretary of the Board of Supervisors a written protest to the contract, it will not be let. (53 P.S. § 56802)

Second Class Township Same as for third class city. (53 P.S. § 65802)

Municipal Authority Work done by authority employees or by labor supplied under an agreement with a Federal or State agency; patented or manufactured goods. (53 P.S. § 312)

Parking Authority Same as for municipal authority. (53 P.S. § 351)

Second Class County Same as for third class city (16 P.S. § 5001); purchases of road machinery. (16 P.S. § 5934)

Third through Eighth Class County Same as for third class city, but "personal or professional services" means all medical, legal, registered architects, engineers, CPAs or other personal service involving professional expert advice. (16 P.S. § 1802)

School District Maintenance by own personnel if under \$5,000. (24 P.S. § 7-751) Water, light and heat. (24 P.S. § 7-773) Insurance. (24 P.S. § 774) Supplies: Maps, music, globes, charts, educational films, filmstrips, prepared transparencies and slides, prerecorded magnetic tapes or disc taping, textbooks, games, toys, prepared kits, flannel board materials, flash cards, models, projectors and teacher demonstrative devices necessary for school use. (24 P.S. § 8-807.1)

Political subdivision

Contracts under threshold

First Class City

Second Class City

Director of Department of Supplies may obtain oral bids or may compare specific prices in seller's literature. (53 P.S. § 23308.1)

Third Class City

Made by note or written memorandum signed by officer or employee. (53 P.S. § 36901) Expenditures that seem reasonably likely to exceed \$500 over a 60-day period to have council approval. (53 P.S. § 36904)

Borough

Incorporated Town

For contracts between \$750 and \$4,000 (but not excepted ones), town council to solicit written bids and no contract to be awarded unless at least three bids are received; catalogue or circular of firm prices are acceptable bids. (53 P.S. § 53203.1)

First Class Township

Second Class Township

Municipal Authorities

Parking Authority

Second Class County

Third through Eighth
Class County

Contracts are awarded by note or memorandum in writing, signed by the county commissioners or their agents; copy to be filed with controller or chief clerk. (16 P.S. § 1801)

School District

For construction contracts under \$5,000: Work may be done by board's maintenance crew or by contract after soliciting bids from at least three responsible bidders; no competitive bids needed for contracts under \$4,000. (24 P.S. § 7-751) Purchases under \$4,000 may be done through authorized purchasing agent. (24 P.S. § 8-807.1)

Political subdivision

Separation act

First Class City	Separate specifications are to be prepared for plumbing, heating, ventilating and electrical work and separate bids solicited/contracts awarded. Act of May 1, 1913, P.L. 155, No. 104 (53 P.S. § 1003)
Second Class City	Separate specifications are to be prepared for plumbing, heating, ventilating and electrical work and separate bids solicited/contracts awarded. Act of May 1, 1913, P.L. 155, No. 104 (53 P.S. § 1003)
Third Class City	Separate specifications prepared for plumbing, heating, ventilating, electrical work, elevators and moving stairs; if air conditioning is desired, ventilating and heating are treated as one; separate bids solicited/contracts awarded. (53 P.S. § 36909)
Borough	Separate specifications prepared for plumbing, heating, ventilating and electrical work; separate bids solicited/contracts awarded. (53 P.S. § 46405)
Incorporated Town	Separate specifications prepared for plumbing, heating, ventilating and electrical work; separate bids solicited/contracts awarded. (53 P.S. § 53205)
First Class Township	Separate specifications prepared for plumbing, heating, ventilating and electrical work; separate bids solicited/contracts awarded. (53 P.S. § 56805)
Second Class Township	Separate specifications prepared for plumbing, heating, ventilating and electrical work; separate bids solicited/contracts awarded. (53 P.S. § 65804)
Municipal Authority	Separate specifications are to be prepared for plumbing, heating, ventilating and electrical work and separate bids solicited/contracts awarded. Act of May 1, 1913, P.L. 155, No. 104 (53 P.S. § 1003)
Parking Authority	Separate specifications are to be prepared for plumbing, heating, ventilating and electrical work and separate bids solicited/contracts awarded. Act of May 1, 1913, P.L. 155, No. 104 (53 P.S. § 1003)
Second Class County	Separate specifications prepared for plumbing, heating, ventilating and electrical work; separate bids solicited/contracts awarded. (16 P.S. § 5517)
Third through Eighth Class County	Separate specifications prepared for plumbing, heating, ventilating, electrical work, elevator and moving stairs; if air conditioning, treat heating and ventilating as one; separate bids solicited/contracts awarded. (16 P.S. § 2317)
School District	Separate specifications prepared for plumbing, heating, ventilating and lighting systems; separate bids solicited/contracts awarded. (24 P.S. § 7-751)

Political subdivision

Bonds*

First Class City	Bid bond required. (351 Pa. Code § 8.8-200) Performance bond to be posted within ten days of award of contract. (351 Pa. Code § 8.8-200) Labor and materialmen's bond for contracts over \$1,000. (§ 17-103 Philadelphia Code)
Second Class City	
Third Class City	Bid bond of 10 percent of the bid; performance bond within 20 days of contract award--council may shorten time period to ten days; mandatory for labor and materials contracts; not so for vehicles or equipment contracts; council may require other types (53 P.S. § 36901); labor and materialmen's bond of 50-100 percent of the contract for those over \$1,500. (53 P.S. § 36907)
Borough	Except for amount of bid bond, same as for third class city. Bid and performance bond. (53 P.S. § 46402) Labor and materialmen's bond. (53 P.S. § 46406)
Incorporated Town	Performance bond: 50 percent of contract price within 20 days of award--council may shorten time period to 10 days. (53 P.S. § 53202) Labor and materialmen's bond of 50-100 percent of contract price for those over \$1,500. (53 P.S. § 53206)
First Class Township	Same as for incorporated town. Performance Bond. (53 P.S. § 56802) Labor and materialmen's bond. (53 P.S. § 56804)
Second Class Township	Same as for Incorporated town. Performance Bond. (53 P.S. § 65802) Labor and materialmen's bond. (53 P.S. § 65803)
Municipal Authority	No improvement, construction or repair without performance bond; may establish regulations for labor and materialmen's bonds. (53 P.S. § 312)
Parking Authority	Same as for municipal authority. (53 P.S. § 351)
Second Class County	Performance bond of 50 percent of contract price within 60 days of award (16 P.S. § 5001); labor and materialmen's bond for contracts over \$500--to be 50 percent or more of contract price. (16 P.S. § 5518)
Third through Eighth Class County	Bid bond of 10 percent of the bid; performance bond of 50 percent of amount of contract within 30 days--commissioners may shorten the time period--not mandatory for vehicles or equipment. (16 P.S. § 1802) Labor and materialmen's bond of 50-100 percent of contract price for those over \$1,500. (16 P.S. § 2318)
School District	Labor and materialmen's bond for contracts over \$500 of 50-100 percent of the contract price. (24 P.S. § 7-756)

*The Public Works Contractors' Bond Law, act of December 20, 1967, P.L. 869, No. 385 (8 P.S. 191 et seq.), applies to all political subdivisions and all construction projects over \$5,000. Any of these provisions are repealed insofar as they are inconsistent with the 1967 act.

Political subdivision

Contract clause and preference provisions

First Class City	Prohibits discrimination; requires contracts for leasing real property and for personal property supplied or services rendered for over four years to reserve a right to terminate at the option of the city at any time after four year time period runs. (351 Pa. Code § 8.8-200) Requires minimum wages be paid and first class workmen and mechanics used. (§ 17-107 Philadelphia Code) Requires 15 percent of all contracts be awarded to minority-owned businesses and 10 percent to female-owned businesses. (§ 17-503 Philadelphia Code)
Second Class City	Construction contracts must comply with the Steel Products Procurement Act. (53 P.S. § 23308.1) Council may require printing firms to qualify themselves as responsible bidders by showing they pay employees the "prevailing wage rate" in the community. (53 P.S. § 23310)
Third Class City	All contracts must comply with the Steel Products Procurement Act. (53 P.S. § 36901) All contracts must comply with the Workmen's Compensation Act. (53 P.S. § 36910)
Borough	Mandatory compliance with the Steel Products Procurement Act. (53 P.S. § 46402) Mandatory compliance with the Workmen's Compensation Act. (53 P.S. § 46410) Mandatory anti-discrimination provisions. (53 P.S. § 46408) Option to require minimum wages be paid. (53 P.S. § 46407)
Incorporated Town	Mandatory compliance with the Steel Products Procurement Act. (53 P.S. § 53202) Mandatory compliance with the Workmen's Compensation Act. (53 P.S. § 53208)
First Class Township	Mandatory compliance with the Steel Products Procurement Act. (53 P.S. § 56802) Mandatory compliance with the Workmen's Compensation Act. (53 P.S. § 56806) Mandatory anti-discrimination provisions. (53 P.S. § 56809) Option to require minimum wages be paid. (53 P.S. § 56808)
Second Class Township	Mandatory compliance with the Steel Products Procurement Act. (53 P.S. § 65802) Mandatory compliance with the Workmen's Compensation Act. (53 P.S. § 65805) Mandatory anti-discrimination provisions. (53 P.S. § 65808) May require minimum wages be paid. (53 P.S. § 65807)
Municipal Authority	Mandatory compliance with the Steel Products Procurement Act. (53 P.S. § 312)
Parking Authority	Mandatory compliance with the Steel Products Procurement Act. (53 P.S. § 351)
Second Class County	Mandatory compliance with the Steel Products Procurement Act. (16 P.S. § 5001) Mandatory compliance with the Workmen's Compensation Act. (16 P.S. § 5519) May require printing firms to show compliance with prevailing wage rate. (16 P.S. § 5002)
Third through Eighth Class County	Mandatory compliance with the Steel Products Procurement Act. (16 P.S. § 1802) Mandatory compliance with the Workmen's Compensation Act. (16 P.S. § 2319)
School District	For construction contracts: Mandatory compliance with the Steel Products Procurement Act. (24 P.S. § 7-751) Requirement that competent workmen be employed. (24 P.S. § 7-752) May require minimum wages be paid. (24 P.S. § 7-753) Requirement that workmen be residents of the Commonwealth at least 90 days before hired. (24 P.S. § 7-754) Mandatory anti-discrimination provisions. (24 P.S. § 7-755)

Political subdivision

Disposition of surplus property

First Class City	Unserviceable personal property turned over to the Procurement Department for disposition. (351 Pa. Code § 8.8-203) Procurement Department to assume control of property not claimed within one year and keep in safe storage; if it is likely to spoil or storage and maintenance too expensive, may sell. (§ 17-302 Philadelphia Code)
Second Class City	
Third Class City	Council must approve of disposal--estimate value of goods; if value less than \$200, notice to be posted for at least 10 days on city hall bulletin board, describing and itemizing property, bids submitted to city clerk--sell for best price available; if value over \$200, entire lot advertised once in one paper--sale to best responsible bidder--bids opened 10 days after advertisement--can sell by auction, but need notice; not mandatory if property to be traded in or exchanged for new. (53 P.S. § 36917)
Borough	
Incorporated Town	
First Class Township	
Second Class Township	
Municipal Authority	
Parking Authority	
Second Class County	Any personal property valued at under \$500 to be sold at private sale; at public sale under conditions set by commissioners if valued over \$500; buildings valued under \$1,000, commissioners can dispose of as they please; if valued over \$1,000, must get court of common pleas approval. (16 P.S. § 5511)
Third through Eighth Class County	Need resolution of commissioners in fourth-eighth class counties to sell personal property or surplus farm products; commissioners to estimate value: If under \$200--notice posted at courthouse--sell at best price attainable; If over \$200--advertise in one newspaper of general circulation--sale to highest and best bidder--bids not opened until 10 days after advertisement. (16 P.S. § 1805) If want to destroy, move, convert, give to charity, land and buildings, must get court of common pleas approval. (16 P.S. § 2311)
School District	

Ethical considerations

First Class City	Sets standards for Board of Ethics. (§ 20-606 Philadelphia Code) No city council member or any city employee may have a financial interest in a city contract; he must make public disclosure and disqualify himself from any further official action involving those contracts in which he has a conflict of interest. (§§ 20-607, 20-608 Philadelphia Code)
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Political subdivision

Ethical considerations (cont.)

Second Class City	Architects or engineers, who prepare plans, specifications, estimates cannot bid on contracts; exception for those who prepared only preliminary plans. (53 P.S. § 23308.2) No one contracting with city to render personal or professional services shall share with any city employee any portion of fees paid by city except under following terms or conditions: Full disclosure, approval, only for work actually performed, not at a rate in excess of that commensurate for similar services. (53 P.S. § 23308.1)
Third Class City	Architects or engineers employed by city cannot bid on any public work. (53 P.S. § 36912) Official who has a personal interest in any city expenditure over \$300 in any year must notify council; contract must be approved by at least four council members; if interested official a council member cannot vote; exception for official who is an employee of contract-holder in a capacity with no possible influence. (53 P.S. § 36905) Same fee-splitting provisions as for second class city. (53 P.S. § 36901)
Borough	Architects or engineers cannot bid on contracts; exception if only prepared preliminary plans. (53 P.S. § 46411) No official shall have any personal interest in expenditures over \$1,000 in any given year--if councilman or mayor--inform council and refrain from voting; exception for noninfluential employee. (53 P.S. § 46404) Same fee-splitting provisions as for second class city. (53 P.S. § 46402)
Incorporated Town	Architect or engineer employed by town cannot bid; neither can any Commonwealth or other political subdivision architect or engineer. (53 P.S. § 53209) No official to have an interest in any expenditure over \$500--if a councilman or council president--inform council and refrain from voting; exception for noninfluential employee. (53 P.S. § 53204)
First Class Township	Architects, engineers, officers or employees of township cannot directly or indirectly bid on any public work contract--if a commissioner, must tell others and refrain from voting; exception for noninfluential employee. (53 P.S. § 56807) Same fee-splitting provisions as for second class city. (53 P.S. § 56802)
Second Class Township	Architects or engineers prohibited from bidding on contracts. (53 P.S. § 65806) No township official to be interested in any contract over \$300--if a supervisor, must tell others and refrain from voting--exception for noninfluential employee; same fee-splitting provisions as for second class city. (53 P.S. § 65802)
Municipal Authority	Any personal interest nullifies contract. (53 P.S. § 312)
Parking Authority	Any personal interest nullifies contract. (53 P.S. § 351)
Second Class County	Architects or engineers cannot bid on contracts; exception if only prepared preliminary plans. (16 P.S. § 5001.1) Same fee-splitting provisions as for second class city. (16 P.S. § 5001)
Third through Eighth Class County	No rewards, gratuities or percentages paid to officials. (16 P.S. § 1603) No elected or appointed official to have a personal interest in any contract. (16 P.S. § 1806) May not directly or indirectly purchase property at tax sale or municipal claim sale. (16 P.S. § 1806) Architects or engineers prohibited from bidding. (16 P.S. § 2320)
School District	No architect or engineer or school official to be interested; exception for architect or engineer who only does preliminary plans. (24 P.S. § 7-751.1) No employee of district to act as agent for school books or supplies. (24 P.S. § 8-808) No bribes. (24 P.S. §§ 8-809, 8-810) Same fee-splitting provisions as in second class city. (24 P.S. § 7-751)