

**JOINT STATE GOVERNMENT COMMISSION  
STAFF REPORT**

**SENATE BILL 1625, PR.'S NO. 2008 (1994)**

**CONTAINING THE PROPOSED  
COMMONWEALTH PROCUREMENT CODE**



**General Assembly of the Commonwealth of Pennsylvania**

**APRIL 1994**



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# JOINT STATE GOVERNMENT COMMISSION, 1994

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## INTRODUCTION

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Senate Bill 1625, Pr.'s No. 2008 (Commonwealth Procurement Code), implements a recommendation made by the Commission's Task Force and Advisory Committee on Government Service Efficiency contained in its 1993 report, Governing for Results: A Vision for the Future. Senate Bill 1625 was introduced on March 22, 1994 by Task Force Chairman Senator Earl M. Baker and the other Senate members of the task force. The legislation was recommended to the task force by the advisory committee's subcommittee on procurement, chaired by James M. Marsh of Philadelphia.

Senate Bill 1625 proposes the Commonwealth Procurement Code as Part I of Title 62 of the Pennsylvania Consolidated Statutes (Procurement). Part I applies to Commonwealth agency contracts for supplies, services and construction. Senate Bill 1625 also proposes, as Part II of Title 62, a codification of existing procurement-related statutes applying to both Commonwealth agencies and political subdivisions.

Development of this legislation actually began in 1981 when a Commission Task Force and Advisory Committee on Commonwealth Procurement Law was established. The advisory committee was also chaired by Mr. Marsh. A thorough study of Pennsylvania procurement law and comparison with the American Bar Association's Model Procurement Code led that task force and advisory committee to conclude that much of the Commonwealth's procurement law was sound and adequate; however, they recommended some changes in the structure for procurement policymaking and administration, improvements in procurement procedures, policies relating to small and disadvantaged businesses and ethical standards.

The 1983 Commission report, Proposed Commonwealth Procurement Code, details the recommendations of that task force and advisory committee which resulted in legislation being introduced in 1983 (House Bill 1291, Pr.'s No. 1524). Legislation incorporating the Commonwealth Procurement Code was reintroduced in 1985 (House Bill 676, Pr.'s No. 765) and again in 1987 (House Bill 988, Pr.'s No. 1085).

Senate Bill 1625 is a refinement of those earlier efforts.

In summary, Senate Bill 1625:

- Requires with certain limited exceptions that all Commonwealth agency contracts be awarded by either

competitive sealed bidding or competitive sealed proposals in situations where the bidding procedure is impractical.

- Provides competitive selection procedures for obtaining the services of accountants, clergy, physicians, lawyers and dentists and separate competitive selection procedures for architect and engineer services.
- Provides a procedure to resolve bid protests at the purchasing agency level with appeals to the Commonwealth Court instead of so-called taxpayers' suits initiated in Commonwealth Court.
- Provides that any decision to deviate from or make an exception to any code requirement for competition must be supported by written findings signed by the appropriate official in each instance.
- Declares Commonwealth policy to assist small and disadvantaged businesses in doing business with Commonwealth agencies and provides implementing procedures.
- Establishes ethical standards for public employees and those doing business with Commonwealth agencies.
- Increases the Commonwealth's ability to deal with collusive bidding, price fixing and other improper practices.
- Centralizes within the Department of General Services the day-to-day procurement of supplies, services, and most construction for Commonwealth agencies.
- Creates a Commonwealth Procurement Policy Office consisting of the Secretaries of General Services, Transportation and Budget, to promulgate regulations under the Code governing the procurement and management of supplies, services and construction for Commonwealth agencies.
- Consolidates Commonwealth procurement law into Title 62 of the Pennsylvania Consolidated Statutes. Part I applies only to

Commonwealth agencies and Part II applies generally to Commonwealth agencies and political subdivisions.

- Fosters efficiency and professionalism in Commonwealth procurement and minimizes the opportunities for corruption and favoritism.

This report provides a summary of the proposed code and source notes for all sections contained in SB 1625 with official comments. The comments may be utilized in determining the intent of the General Assembly; Martin Estate, 365 Pa. 280, 74 A.2d 120 (1950).

# **SUMMARY OF PROPOSED COMMONWEALTH PROCUREMENT CODE**

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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 recommended by the American Bar Association, but is tailored to Pennsylvania's political and administrative situation.

The eight chapters of Part II codify present Pennsylvania law applying to both State and local agencies.

## General Provisions of the Proposed Commonwealth Procurement Code

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 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 agreements with litigation consultants (§ 103). Leases of personalty are included within the definition of "supplies" (§ 103).

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, Transportation and Budget. The Department of General Services is responsible for providing administrative support for the policy office (§ 311). The policy office is to promulgate regulations for the implementation of the code (§§ 301 and 312).

The chapter also implements the recommendation of the subcommittee 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 of General Services 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. Subchapter D sets forth the procurement related powers and duties of the State Treasurer and the Board of Commissioners of Public Grounds and Buildings.

#### Source Selection and Contract Formation

Chapter 5 requires with certain exceptions that all Commonwealth agency procurement contracts be awarded by competitive sealed bidding (§ 512).

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 that 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 supplies and services furnished by persons with disabilities (§ 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 receiving a contract. The decision of the head of a purchasing agency to debar or suspend may be appealed to the Commonwealth Court (§ 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 fair, nondiscriminatory specifications.

### Procurement of Construction, Architect and Engineer 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). Sections 903 through 905 set out the requirements for bid security and payment and performance bonds. In addition, the policy office may promulgate regulations permitting or requiring the inclusion, in construction contracts, of clauses relating to adjustments in price and time of performance (§ 906).

Section 908 provides the selection procedure for architect and engineer services. The Departments of Transportation and Environmental Resources may establish their own selection committees and procedures (§ 908(c)). All other Commonwealth agencies must use the selection

committee appointed by the Secretary of General Services (§ 908(d)) and must comply with the procedures set forth in section 908(e).

#### Modification and Termination of Contracts for Supplies and Services

Chapter 11 contains provisions authorizing the policy office to promulgate regulations permitting or requiring the inclusion of certain clauses in contracts for the procurement of supplies and services (§ 1101). For example, these contract clauses may provide for adjustments in price, time of performance and termination. 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.

This 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 establishes a procedure to resolve protests of solicitations or awards at the purchasing agency level (§ 1711). This section substitutes for the present practice of a disappointed bidder instituting a taxpayer's suit. Chapter 17 also provides a "pre-claim" procedure in order to facilitate the resolution of contract controversies prior to the filing of a claim with the Board of Claims pursuant to the act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Claims Act (§ 1712).

#### Intergovernmental Relations

Chapter 19 provides methods for cooperative procurement of supplies, services or construction with one or more Federal, State or local agency, including any council of governments or area governments (§ 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.

### 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 prohibited from attempting to influence an employee to breach an ethical standard (§ 2302(b)) and in fact any such attempt by a nonemployee is also a breach. Any suspected breach must 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.

The emphasis throughout the code is on competition and openness with the ultimate objective being procurement of the most suitable supply and service at the best possible price consistent with the required demands of quality and timely delivery.



## SOURCE NOTES AND COMMENTS

### 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 or lease of real property (see definition of "supplies" in § 103) and the investment of funds by any Commonwealth agency. See § 102(a).

### 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: Real property is excluded from the definition of "supplies," while installment purchases of personal property are included.

### 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:

- (1) Information to which the bidder or offeror has a right of nondisclosure pursuant to section 533(b).
- (2) 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.
- (3) Information resulting from the audit of books and records by the purchasing agency pursuant to section 552.

**Section 107. Reciprocal limitations**

Source: The act of November 28, 1986 (P.L.1465, No.146), known as the Reciprocal Limitations Act (73 P.S. § 1645.1 et seq.).

Comment: This section is a codification of the act of November 28, 1986 (P.L.1465, No.146), known as the Reciprocal Limitations Act.

**Section 108. Recycled materials**

Source: New.



Comment: This section references the procurement-related responsibilities of Commonwealth agencies as provided for in sections 1504 and 1505 of the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act.

### **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 MPC § 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: Paragraphs (1) through (4) derived from MPC § 2-204(3) and paragraph (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 326. State Treasurer**

Source: Subsection (a) derived from section 2409(o) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929 (71 P.S. § 639(o)). Subsection (b) derived from section 2408(11) of the Administrative Code (71 P.S. § 638(11)).

**Section 327. Board of Commissioners of Public Grounds and Buildings**

Source: Subsection (a) derived from section 2413(a) of the Act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929 (71 P.S. § 643(a)); subsection (b) derived from 4 Pa. Code 69.7; subsection (c) is new; and subsection (d) derived from section 2407 of the Administrative Code (71 P.S. § 637).

**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: Subsections (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 § 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).

Comment: 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) (73 P.S. § 1601 et seq.), which applies to construction contracts. Section 512(f) applies to all types of contracts, and the act of 1974 is repealed insofar as it relates to Commonwealth agencies.

**Section 513. Competitive sealed proposals**

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

**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.

**Section 515. Sole source procurement**

Source: MPC § 3–205 and 4 Pa. Code § 69.7.

**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: Salaried Commonwealth agency employees are excluded from the application of the section.

**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 a 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. Supplies and services furnished by persons with disabilities**

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).

Comment: The language of the source statute (section 2409.1 of The Administrative Code of 1929) is modernized. For example, the term "persons with disabilities" is employed for the term "handicapped" and the term "visually impaired" is used instead of the term "blind."

**Section 521. Cancellation of invitations for bids or requests 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 State Treasurer, Auditor General, General Counsel and 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), (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 the 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 the 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.

**Section 562. Anticompetitive 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.

**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.



**Section 902. Selection of method of construction contracting**

Source: New.

**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 the 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 the 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 and engineer services**

Source: Subsection (a) derived from MPC § 5–501(1); subsection (b) derived from MPC § 5–501(2) and section 2401.1(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 2401.1(19) of The Administrative Code of 1929 (71 P.S. § 631.1(19)).

Comment: Subsection (c) continues the existing practice of the Departments of Transportation and Environmental Resources with respect to the establishment of their own selection committees and procedures.

**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 property are defined in section 103 as "supplies," regulations promulgated under paragraph (1) should provide procedures 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 article III, section 24 of the Constitution of Pennsylvania.

**Section 1701. Definitions**

Source: New.

**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).

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

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Source: MPC § 9-103.

Comment: This section provides a "pre-claim" procedure in order to facilitate the resolution of contract controversies prior to the filing of a claim with the Board of Claims pursuant to the act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Claims Act. 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 Chapter 39 (construction contracts over \$50,000)).

**Section 1721. Function of Board of Claims**

Source: New.

Comment: This section is included to reference the existence of the Board of Claims and to acknowledge the procurement-related function of the Board.

**Section 1722. (Reserved)**

Source: Not applicable.

Comment: This section is reserved in the event that the Legislature determines in the future to codify, into 62 Pa.C.S., the act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Claims Act.

**Section 1723. (Reserved)**

Source: Not applicable.

Comment: See comment to section 1722.

**Section 1724. (Reserved)**

Source: Not applicable.

Comment: See comment to section 1722.

**Section 1725. Hearings, decisions and awards**

Source: This section is derived generally from the act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Claims Act (72 P.S. § 4651-1 et seq.)

**Section 1726. Appeals**

Source: MPC § 9-510(1).

Comment: 42 Pa.C.S. § 763(a)(1) gives the Commonwealth Court jurisdiction over appeals pursuant to 2 Pa.C.S. § 702 (relating to appeals). 2 Pa.C.S. § 101 (definitions) 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. For the date interest accrues and its rate in the case 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 Intergovernmental Cooperation Act (53

P.S. § 481 et seq.), and article 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**

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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**

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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).

Comment: Sections 3301 and 3302 codify with one exception the act of October 26, 1972 (P.L.1017, No.247). Since section 1712 provides for a "pre-claim" procedure to resolve contract controversies with the head of the purchasing agency, the last sentence of 1972 Act No. 247 is not codified. That sentence reads as follows:

In the event of a dispute between the awarding agency and the successful bidder, arbitration procedures may be commenced under the applicable terms of the contractor's contract, or, if the contract contains no such provision for arbitration, the then obtaining rules of the American Arbitration Association.

**Section 3302. Additional work**

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

Comment: See comment to section 3301.

**Section 3501. Condition precedent to release of bond**

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

Comment: This section codifies the act of June 10, 1947 (P.L.493, No.223).

**Section 3701. Contract provisions prohibiting discrimination**

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

Comment: This section codifies the act of July 18, 1935 (P.L.1173, No.382).

**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).

Comment: This section codifies the act of June 25, 1895 (P.L.269, No.182).

**Section 3703. Contract provision requiring residents to be employed**

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

Comment: This section codifies the act of July 19, 1935 (P.L.1321, No.414).

**Section 3711. Short title of subchapter and general provisions**

Source: Sections 1, 3, 2 and 7 of the act of March 3, 1978 (P.L.6, No.3), known as the Steel Products Procurement Act, respectively (73 P.S. § 1881, 1883, 1882 and 1887).

Comment: Subchapter B is a codification of the act of March 3, 1978 (P.L.6, No.3), known as the Steel Products Procurement Act.

**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. Requirement of contract provision**

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 and general provisions**

Source: Subsection (a), new; subsections (b) and (c) derived from sections 1 and 11 of the act of July 23, 1968 (P.L.686, No.226), referred to as the Trade Practices Act (71 P.S. §§ 773.101 and 773.111).

Comment: Subchapter C is a codification of the act of July 23, 1968 (P.L.686, No.226), referred to as the Trade Practices Act. Section 12 of the act of July 23, 1968 (P.L.686, No.226), referred to as the Trade Practices Act regarding severability is not codified since the issue of severability is covered by 1 Pa.C.S. § 1925 (constitutional construction of statutes).

**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 for aluminum and steel products made in the United States**

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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. Requirement to list 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. Procedure to determine 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 country listed on foreign registry docket**

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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 3731. Short title of subchapter and general provisions**

Source: Sections 1, 4 and 7 of the act of April 4, 1984 (P.L.193, No.40), known as the Motor Vehicle Procurement Act (73 P.S. §§ 1891, 1894 and 1897).

Comment: Subchapter D is a codification of the act of April 4, 1984 (P.L.193, No.40), known as the Motor Vehicle Procurement Act.

**Section 3732. Definitions**

Source: Section 2 of the act of April 4, 1984 (P.L.193, No.40), known as the Motor Vehicle Procurement Act (73 P.S. § 1892).

**Section 3733. Police power**

Source: Section 3 of the act of April 4, 1984 (P.L.193, No.40), known as the Motor Vehicle Procurement Act (73 P.S. § 1893).

**Section 3734. Contract provisions**

Source: Section 5 of the act of April 4, 1984 (P.L.193, No.40), known as the Motor Vehicle Procurement Act (73 P.S. § 1895).

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

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Source: Section 6 of the act of April 4, 1984 (P.L.193, No.40), known as the Motor Vehicle Procurement Act (73 P.S. § 1896).

**Section 3736. Penalty**

Source: Section 8 of the act of April 4, 1984 (P.L.193, No.40), known as the Motor Vehicle Procurement Act (73 P.S. § 1898).

### Section 3741. Preference

Source: New.

Comment: This section references certain duties of government agencies regarding recycled oil products set forth in the act of April 9, 1982 (P.L.314, No.89), known as the Pennsylvania Used Oil Recycling Act.

### Section 3901. Application of chapter

Source: Subsection (a), new; subsection (b) is derived from section 10 of the act of November 26, 1978 (P.L.1309, No.317), referred to as the Public Works Contract Regulation Law (73 P.S. § 1630).

Comment: This chapter is a codification 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 et seq.) Two changes have been made. First, section 9 (provision for arbitration) is not codified. See comment to section 3301. For the second change, see the comment to section 3908. Furthermore, section 11 of the Public Works Contract Regulation Law is not codified since it is a transitional provision. Section 11 provided:

All rights, duties and obligations arising under any contract awarded pursuant to an invitation for bids issued prior to the effective date of this act shall continue to be governed by the provisions of the law in effect at the time of the execution of such contract by all of the parties thereto. This act shall not operate to permit any contracting body to increase any retention provisions or to increase the time for awarding public contracts as contained in its standard contract documents in effect on the effective date of this act.

**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).

Comment: Subsection (b) establishes the legal rate of interest as a "floor" for interest payable to a contractor. The current legal rate of interest is 6 percent. See section 202 of the act of January 30, 1974 (P.L.13, No.6).

**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 the act of May 5, 1965 (P.L.40, No.34) (71 P.S. § 1570.3).

Comment: This chapter is a codification of the act of April 12, 1945 (P.L.220, No.99) and the act of May 5, 1965 (P.L.40, No.34). 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 and general provisions**

Source: Sections 1, 2, 3, 6 and 7 of the act of November 26, 1978 (P.L.1303, No.315), known as the Public Facilities Concession Regulation Act (69 P.S. §§ 2501, 2502, 2503, 2506 and 2507).

Comment: This chapter is a codification of the act of November 26, 1978 (P.L.1303, No.315), known as the Public Facilities Concession Regulation Act.

**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).

**Section 4501. Short title of chapter**

Source: Section 1 of the act of October 2, 1983 (P.L.176, No.45), known as the Antibid–Rigging Act (73 P.S. § 1611).

Comment: This chapter is a codification of the act of October 2, 1983 (P.L.176, No.45), known as the Antibid–Rigging Act.

**Section 4502. Definitions**

Source: Section 2 of the act of October 2, 1983 (P.L.176, No.45), known as the Antibid–Rigging Act (73 P.S. § 1612).

**Section 4503. Prohibited activities**

Source: Section 3 of the act of October 2, 1983 (P.L.176, No.45), known as the Antibid–Rigging Act (73 P.S. § 1613).

**Section 4504. Civil action and damages**

Source: Section 4 of the act of October 2, 1983 (P.L.176, No.45), known as the Antibid–Rigging Act (73 P.S. § 1614).

**Section 4505. Suspension or debarment**

Source: Section 5 of the act of October 2, 1983 (P.L.176, No.45), known as the Antbid–Rigging Act (73 P.S. § 1615).

**Section 4506. Liability for increased costs**

Source: Section 6 of the act of October 2, 1983 (P.L.176, No.45), known as the Antbid–Rigging Act (73 P.S. § 1616).

**Section 4507. Noncollusion affidavit**

Source: Section 7 of the act of October 2, 1983 (P.L.176, No.45), known as the Antbid–Rigging Act (73 P.S. § 1617).

**Section 4508. Responsibility for enforcement**

Source: Section 8 of the act of October 2, 1983 (P.L.176, No.45), known as the Antbid–Rigging Act (73 P.S. § 1618).

**Section 4509. Investigation**

Source: Section 9 of the act of October 2, 1983 (P.L.176, No.45), known as the Antbid–Rigging Act (73 P.S. § 1619).



