

No. 2002-142

AN ACT

HB 2674

Amending Titles 62 (Procurement) and 67 (Public Welfare) of the Pennsylvania Consolidated Statutes, further providing for application of part, for definitions, for public access to procurement information, for reciprocal limitations, for procurement responsibility, for Board of Commissioners of Public Grounds and Buildings, for method of source selection and for competitive sealed bidding; providing for competitive electronic auction bidding; further providing for competitive sealed proposals, for small procurements, for sole source procurement, for multiple awards, for competitive selection procedures for certain services, for selection procedure for insurance and notary bonds, for cancellation of invitations for bids or requests for proposals, for debarment or suspension, for security and performance bonds, for printing, for anticompetitive practices, for bid or proposal security and for contract performance security and payment bonds; providing for letters of intent, for procurement of right-of-way acquisition assistance services, for protests of solicitations or awards and for contract controversies; further providing for compliance of public procurement units and for mass transportation; providing for procurement limits for mass transportation authorities, for time for awarding contract and for medical assistance hearings and appeals; and making repeals.

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

Section 1. Section 102(e) of Title 62 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding a subsection to read:

§ 102. Application of part.

(e) Application to medical assistance [providers] *provider agreements and participating provider agreements*.—Nothing in this part shall apply to medical assistance provider agreements [entered into] *administered* by the Department of Public Welfare [under the medical assistance programs] *or to participating provider agreements entered into by the Department of Health*.

(f.1) *Application to loans*.—*This part does not apply to loans. For the purpose of this part, a loan is the disbursement of funds by the Commonwealth to any person where the principal amount disbursed is required to be repaid to the Commonwealth, with or without interest, under an agreement.*

Section 2. The definition of “contract” in section 103 of Title 62 is amended and the section is amended by adding definitions to read:

§ 103. Definitions.

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the

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

“Bidder.” A person that submits a bid in response to an invitation for bids.

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“Contract.” A type of written agreement, regardless of what it may be called, for the procurement or disposal of supplies, services or construction[.] and executed by all parties in accordance with the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

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“Contractor.” A person that has entered into a contract with a Commonwealth agency.

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“Invitation for bids.” All documents, including those either attached or incorporated by reference, used for soliciting bids.

“Medical assistance provider agreement.” A written agreement by a licensed or qualified provider of medically related services to participate in the medical assistance program administered by the Department of Public Welfare.

“Offeror.” A person that submits a proposal in response to a request for proposals.

“Participating provider agreement.” A written agreement between the Department of Health and a licensed or qualified provider of medically related services which was approved by the Office of the Budget and the Department of General Services and was awarded on a noncompetitive basis.

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“Request for proposals.” All documents, including those either attached or incorporated by reference, used for soliciting proposals.

“Responsible bidder.” A bidder that has submitted a responsive bid and that possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

“Responsible offeror.” An offeror that has submitted a responsive proposal and that possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

“Responsive bid.” A bid which conforms in all material respects to the requirements and criteria in the invitation for bids.

“Responsive proposal.” A proposal which conforms in all material respects to the requirements and criteria in the request for proposals.

“Sealed bid.” A bid whose contents are not disclosed until the bid opening time. Bids are typically submitted in sealed envelopes to meet this requirement, but electronic submission is not prohibited so long as the

purchasing agency has the electronic capability to maintain the confidentiality of the bid until the bid opening time.

“Sealed proposal.” A proposal whose contents are not disclosed until the proposal receipt date. Proposals are typically submitted in sealed envelopes to meet this requirement, but electronic submission is not prohibited so long as the purchasing agency has the electronic capability to maintain the confidentiality of the proposal until the proposal receipt date.

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Section 3. Sections 106, 107(e) and (g), 301(c), 326, 501, 511 and 512(g) and (h) of Title 62 are amended to read:

§ 106. Public access to procurement information.

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

(b) *Exceptions.*—

(1) *Financial information of a bidder or offeror which was requested in an invitation for bids or request for proposals to demonstrate its economic capability to fully perform the contract requirements and which is contained in a sealed bid, sealed proposal or prequalification document and an unsuccessful proposal shall be confidential. The financial information or an unsuccessful proposal may only be disclosed by a Commonwealth agency if:*

(i) *the information or proposal is disclosed to a consultant who is retained by the Commonwealth and who has signed a confidentiality agreement;*

(ii) *the information or proposal is used to defend the Commonwealth's interests in a legal action; or*

(iii) *the information or proposal is disclosed under a court order.*

(2) *If a Commonwealth agency terminates a contract for default, rejects a bidder or offeror on the grounds that the bidder or offeror is not responsible or suspends or debars a person, the bidder, offeror, contractor or person shall, upon written request, be provided with a copy of the information contained in the file of the bidder, offeror, contractor or person maintained by the department and the Office of the Budget under the contractor responsibility program.*

§ 107. Reciprocal limitations.

* * *

(e) *Prohibition.*—For [public contracts] *all contracts for construction or supplies* exceeding the amount established by the department for small procurements under section 514, no Commonwealth agency shall specify for, use or procure any supplies which are produced, manufactured, mined,

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

* * *

(g) Inclusion in invitation for bids or request for proposals.—In all invitations for bids and requests for proposals for the procurement of supplies exceeding the amount established by the department for small procurements under section 514, all Commonwealth agencies shall include a list of all the states that have been found by the department to have applied a preference favoring in-state supplies, bidders or offerors and the amount of the preference. All invitations for bids, requests for proposals and notices issued for the purpose of securing bids or proposals for **[public contracts as issued by any Commonwealth agency] contracts for construction or supplies** exceeding the amount established by the department for small procurements under section 514 shall include a list of all states that have been found by the department to have applied a preference for in-state bidders or offerors and the amount of the preference. All invitations for bids, requests for proposals and notices issued for the purpose of securing bids or proposals for contracts for construction or supplies **[as issued by any Commonwealth agency]** exceeding the amount established by the purchasing agency for small procurements under section 514 shall also include a list of all states that apply a prohibition against certain supplies and shall inform potential bidders or offerors that they are prohibited from using supplies from those states. If a bid or proposal discloses that the bidder or offeror is offering supplies from a state which prohibits the use of out-of-state supplies, the bid or proposal shall be rejected.

* * *

§ 301. Procurement responsibility.

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

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

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

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

(iii) *Owner-controlled insurance programs for bridge, highway, dam, airport, railroad or other heavy or specialized construction.*

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

(3) Published books, maps, periodicals [and], technical pamphlets, *compact discs, video and audio reproductions, subscriptions and professional memberships.*

(4) Perishable food stuffs.

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

* * *

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

No lease of real estate for use by an executive or independent agency and no sole source procurement of supplies, *except for computer software updates under \$50,000*, for an executive or independent agency for which the department acts as the purchasing agency shall be valid or effective unless, upon review, it is approved by the Board of Commissioners of Public Grounds and Buildings. Where the board is reviewing a proposed sole source lease or procurement being submitted pursuant to section 515 (relating to sole source procurement), approval of the lease or procurement shall require the unanimous vote of the board. Where the board is reviewing a proposed non-sole source lease, the lease shall be approved when one member of the board votes to approve the lease. All votes shall take place at a public meeting.

§ 501. Definitions.

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

“Established catalog price.” The price included in a catalog, price list, schedule or other form that:

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

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

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

[“Invitation for bids.” All documents, including those either attached or incorporated by reference, used for soliciting bids.]

“Life cycle cost.” The total cost of the supply in terms of purchase cost, installation cost, maintenance cost, energy cost, supply cost and other costs.

“Procurement description.” The words used in a solicitation to describe the supplies, services or construction to be procured. The term includes specifications attached to or made a part of the solicitation.

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

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

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

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

§ 511. Methods of source selection.

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

Section 512.1 (relating to competitive electronic auction bidding).

Section 513 (relating to competitive sealed proposals).

Section 514 (relating to small procurements).

Section 515 (relating to sole source procurement).

Section 516 (relating to emergency procurement).

Section 517 (relating to multiple awards).

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

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

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

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

§ 512. Competitive sealed bidding.

* * *

(g) Award.—The contract shall be awarded within 60 days of the bid opening by written notice to the lowest responsible [and responsive] bidder [whose bid meets the requirements and criteria set forth in the invitation for bids] or all bids shall be rejected except as otherwise provided in this section. Extensions of the date for the award may be made by mutual written consent of the contracting officer and the lowest responsible [and responsive] bidder. Within 30 days of the bid opening the contracting officer shall, if bid security was required by the invitation for bids, return the bid security to all but the lowest and next-to-lowest **responsible** bidders then under consideration for contract award.

(h) Multistep sealed bidding.—When it is considered impractical to prepare initially a procurement description to support an award based on

price, an invitation for bids may be issued requesting the submission of unpriced [offers] *bids*, to be followed by an invitation for bids [limited to those bidders whose offers have been qualified under the criteria set forth in] *requesting priced bids from responsible bidders of the first solicitation.*

Section 4. Title 62 is amended by adding a section to read:

§ 512.1. Competitive electronic auction bidding.

(a) *Conditions for use.*—*If the purchasing agency determines in writing that use of competitive electronic auction bidding is in the best interests of the Commonwealth, a contract for supplies or services, but not construction, may be entered into by competitive electronic auction bidding.*

(b) *Invitation for bids.*—*An invitation for bids shall be issued and shall include a procurement description and all contractual terms, whenever practical, and conditions applicable to the procurement, including a notice that bids will be received in an electronic auction manner.*

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

(d) *Auctions.*—*Bids shall be accepted electronically at the time and in the manner designated in the invitation for bids. During the auction a bidder's price shall be disclosed to other bidders. Bidders shall have the opportunity to reduce their bid prices during the auction. At the conclusion of the auction, the record of the bid prices received and the name of each bidder shall be open to public inspection.*

(e) *Withdrawal of bids.*—*After the auction period has terminated, withdrawal of bids shall be permitted as provided in section 512(f)(2).*

(f) *Award.*—*The contract shall be awarded within 60 days of the auction by written notice to the¹ lowest responsible bidder, or all bids shall be rejected except as otherwise provided in this section. Extensions of the date for the award may be made by mutual written consent of the contracting officer and the lowest responsible bidder.*

Section 5. Sections 513(f), (g) and (h), 514 and 515 of Title 62 are amended to read:

§ 513. Competitive sealed proposals.

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(f) *Discussion with responsible offerors and revision of proposals.*—*As provided in the request for proposals, discussions and negotiations may be conducted with responsible offerors [who submit proposals determined to be reasonably susceptible of being selected for award] for the purpose of clarification [to assure full understanding of and responsiveness to the solicitation requirements and for the purpose] and of obtaining best and*

¹"to be the" in enrolled bill.

final offers. [Offerors] *Responsible offers* shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(g) [Award of contract] *Selection for negotiation*.—The responsible offeror whose proposal is determined in writing to be the most advantageous to the purchasing agency, taking into consideration price and all evaluation factors, shall be selected for contract negotiation.

(h) *Contract negotiation*.—After selection, the purchasing agency shall proceed to negotiate a contract with the selected offeror.]

§ 514. Small procurements.

If the procurement is not the subject of a Statewide requirements contract between the purchasing agency and a contractor, the head of the purchasing agency may authorize in writing procurements without formal bid procedures, not exceeding the amount established by the purchasing agency. The [department] *head of the purchasing agency* may authorize procurement of the supply or service on a no-bid basis for procurements which do not exceed the amount established by the [department] *head of the purchasing agency* for small, no-bid procurements. The [department] *head of the purchasing agency* may authorize procurement on a no-bid basis for construction projects that do not exceed a total construction cost of \$10,000. The amount of \$10,000 shall be adjusted annually by the department to reflect the annual percentage change in the Composite Construction Cost Index of the United States Department of Commerce occurring in the one-year period ending December 31 of each year. Procurement requirements shall not be artificially divided so as to constitute a small procurement under this section. Small procurements shall be made in accordance with the requirements of the written authorization and this section. Records of all small procurements shall be transmitted to the purchasing agency.

§ 515. Sole source procurement.

A contract may be awarded for a supply, service or construction item without competition [when] *if* the contracting officer first determines in writing that one of the following conditions exists:

- (1) Only a single contractor is capable of providing the supply, service or construction.
- (2) A Federal or State statute or Federal regulation exempts the supply, service or construction from the competitive procedure.
- (3) The total cost of the supply, service or construction is less than the amount established by the department for small, no-bid procurements under section 514 (relating to small procurements).
- (4) It is clearly not feasible to award the contract for supplies or services on a competitive basis.
- (5) The services are to be provided by attorneys or litigation consultants selected by the Office of General Counsel, the Office of

Attorney General, the Department of the Auditor General or the Treasury Department.

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

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

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

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

(10) The contract for supplies or services is in the best interest of the Commonwealth.

The written determination authorizing sole source procurement shall be included in the contract file. With the exception of small procurements under section 514 and emergency procurements under section 516 (relating to emergency procurement), if the sole source procurement is for a supply, *except for computer software updates under \$50,000*, for which the department acts as purchasing agency, it must be approved by the Board of Commissioners of Public Grounds and Buildings prior to the award of a contract.

Section 6. Section 517(c) and (e) of Title 62 are amended and the section is amended by adding a subsection to read:

§ 517. Multiple awards.

* * *

(c) Public notice.—Public notice of the invitation for bids *or request for proposals* shall be given in the same manner as provided in section 512(c) (relating to competitive sealed bidding).

* * *

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

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

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

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

(f) Selection.—A Commonwealth agency may select a contractor from the bidders or offerors awarded contracts under subsection (e) to furnish

the supply, service or construction based upon best value or return on investment.

Section 7. Sections 518(a), (d) and (e), 519(e) and (f), 521, 531, 533(a)(3), 535, 562, 902(a), (b) and (d) and 903(e) of Title 62 are amended to read:

§ 518. Competitive selection procedures for certain services.

(a) Conditions for use.—The services of accountants, clergy, physicians, lawyers, dentists and other **[personal] professional** services which are not performed by other Commonwealth employees shall be procured in accordance with this section except as authorized under section 514 (relating to small procurements), 515 (relating to sole source procurement) or 516 (relating to emergency procurement).

* * *

(d) Discussions.—The contracting officer may conduct discussions with any *responsible* offeror **[who has submitted a proposal]** to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(e) Award.—Award shall be made to the *responsible* offeror determined in writing by the contracting officer to be best qualified based on the evaluation factors set forth in the request for proposals. Fair and reasonable compensation shall be determined through negotiation. If compensation cannot be agreed upon with the best qualified *responsible* offeror, then negotiations will be formally terminated with the **[selected]** offeror. If proposals were submitted by one or more other *responsible* offerors **[determined to be qualified]**, negotiations may be conducted with the other *responsible* offeror or *responsible* offerors in the order of their respective qualification ranking. The contract may be awarded to the *responsible* offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.

§ 519. Selection procedure for insurance and notary bonds.

* * *

(e) Discussions with responsible offerors and revision to proposals.—Discussions and negotiations may be conducted with responsible offerors **[who submit proposals determined to be reasonably susceptible of being selected for award. Offerors]**. *Responsible offerors* shall be accorded fair and equal treatment with respect to any opportunity for discussion, negotiation and revision of proposals. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

(f) Award.—Award shall be made to the *responsible* offeror whose proposal is determined in writing by the department to be the most advantageous to the Commonwealth based on criteria determined by the department, including the coverage offered and the cost of the premium.

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

An invitation for bids, a request for proposals or other solicitation may be canceled, or any or all bids or proposals may be rejected, *at any time prior to the time a contract is executed by all parties* when it is in the best interests of the Commonwealth. Bids may be rejected in part when specified in the solicitation. The reasons for the cancellation or rejection shall be made part of the contract file.

§ 531. Debarment or suspension.

(a) Authority.—After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the head of a purchasing agency, after consultation with the head of the using agency, shall have authority to debar a person from consideration for the award of contracts. The decision to debar shall be based upon substantial evidence that a cause for debarment or suspension under subsection (b) has occurred. In making the decision of whether to debar a **[contractor] person**, the head of the purchasing agency shall take into consideration the seriousness of any violation and any mitigating factors. A debarment may be for a period of not more than three years. The head of the purchasing agency may suspend a person from consideration for an award of contracts for a period of up to three months if there is probable cause for debarment.

(b) Causes for debarment or suspension.—The causes for debarment or suspension include:

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

(2) Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by a **[contractor or any affiliate, officer, employee or other individual or entity] person** associated with:

(i) obtaining;

(ii) attempting to obtain; or

(iii) performing a public contract or subcontract.

The **[contractor's] person's** acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

(3) Violation of Federal or State antitrust statutes.

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

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

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

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

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

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

(10) Three or more occurrences where a **[contractor] person** has been declared ineligible for a contract.

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

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

(ii) Offering unbalanced bids.

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

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

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

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

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

(12) Any other act or omission indicating a lack of skill, ability, capacity, quality control, business integrity or business honesty that seriously and directly affects the present responsibility of a **[contractor] person** as determined by the purchasing agency.

(c) Decision.—After the **[contractor] person** has been given notice of the potential debarment and the opportunity to be heard, the head of a purchasing agency shall issue a written decision. The decision shall:

(1) State the reasons for the action taken.

(2) Inform the **[contractor] person** involved of the right to judicial review as provided in subsection (e).

(d) Notice of decision.—A copy of the decision under subsection (c) shall be **[delivered by registered mail] sent, with delivery confirmed**, to the **[contractor] person**, any other party intervening or any interested party that has provided written notice to the purchasing agency of that party's interest in the decision under subsection (c).

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

(f) Effect of suspension or debarment.—Suspension or debarment of a **[contractor, vendor or other] person** shall automatically prohibit all Commonwealth agencies from awarding any contract to **[such contractor,**

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

§ 533. Security and performance bonds.

(a) Contract for supplies or services.—

* * *

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

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§ 535. Printing.

No contract for printing shall be entered into with any [contractor] *person* until the purchasing agency is satisfied that the [contractor] *person* is the owner or lessee of machinery and equipment necessary to properly and promptly perform any orders issued to the [contractor] *person* under the proposed printing contract.

§ 562. Anticompetitive practices.

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

§ 902. Bid or proposal security.

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

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

* * *

(d) Withdrawal of bids *and proposals*.—After the bids *or proposals* are opened, they shall be irrevocable for the period specified in the invitation

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

§ 903. Contract performance security and payment bonds.

* * *

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

Section 8. Title 62 is amended by adding sections to read:

§ 906. *Letters of intent.*

Before a contract for construction is effective, the head or a deputy of the purchasing agency may issue binding letters of intent to contract. A bidder or offeror receiving a letter of intent may rely on the letter to prepare to start work to the extent authorized by the letter and incur costs in preparation for performance of the contract. No work on the construction site shall be commenced and no payment shall be made to the bidder or offeror until the contract is fully executed. If the contract is not fully executed, the bidder or offeror shall be entitled to reimbursement for its actual expenses reasonably incurred pursuant to the letter prior to notification from the purchasing agency not to proceed. Reimbursement shall not include any loss of anticipated profit, loss of use of money or administrative or overhead costs.

§ 907. *Procurement of right-of-way acquisition assistance services.*

Right-of-way acquisition assistance services to be provided in conjunction with the planning, development, design, construction, alteration or repair of bridges and highways by the Department of Transportation shall be procured in accordance with section 905 (relating to procurement of design professional services).

Section 9. Section 1701 of Title 62 is amended to read:

§ 1701. Definitions.

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

“Board.” *The Board of Claims established in section 1721 (relating to Board of Claims).*

“Claimant.” *A [person filing] contractor or Commonwealth agency that files a claim with the [Board of Claims] board.*

“Respondent.” *A contractor or Commonwealth agency against which a claim filed with the board is asserted.*

Section 10. Section 1702(b) of Title 62 is amended to read:

§ 1702. Sovereign immunity.

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(b) Exception.—The General Assembly under section 11 of Article I of the Constitution of Pennsylvania does hereby waive sovereign immunity as a bar to claims against Commonwealth agencies [arising under this chapter] brought in accordance with sections 1711.1 (relating to protests of solicitations or awards) and 1712.1 (relating to contract controversies) and Subchapter C (relating to Board of Claims) but only to the extent set forth in this chapter.

Section 11. Section 1711 of Title 62 is repealed.

Section 11.1. Title 62 is amended by adding sections to read:

§ 1711.1. *Protests of solicitations or awards.*

(a) *Right to protest.*—A bidder or offeror, a prospective bidder or offeror or a prospective contractor that is aggrieved in connection with the solicitation or award of a contract, except as provided in section 521 (relating to cancellation of invitations for bids or requests for proposals), may protest to the head of the purchasing agency in writing.

(b) *Filing of protest.*—If the protestant is a bidder or offeror or a prospective contractor, the protest shall be filed with the head of the purchasing agency within seven days after the aggrieved bidder or offeror or prospective contractor knew or should have known of the facts giving rise to the protest except that in no event may a protest be filed later than seven days after the date the contract was awarded. If the protestant is a prospective bidder or offeror, a protest shall be filed with the head of the purchasing agency prior to the bid opening time or the proposal receipt date. If a bidder or offeror, a prospective bidder or offeror or a prospective contractor fails to file a protest or files an untimely protest, the bidder or offeror, the prospective bidder or offeror or the prospective contractor shall be deemed to have waived its right to protest the solicitation or award of the contract in any forum. Untimely filed protests shall be disregarded by the purchasing agency.

(c) *Contents of protest.*—A protest shall state all grounds upon which the protestant asserts the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.

(d) *Response and reply.*—Within 15 days of receipt of a protest, the contracting officer may submit to the head of the purchasing agency and the protestant a response to the protest, including any documents or information he deems relevant to the protest. The protestant may file a reply to the response within ten days of the date of the response.

(e) *Evaluation of protest.*—The head of the purchasing agency or his designee shall review the protest and any response or reply and may request and review such additional documents or information he deems necessary to render a decision and may, at his sole discretion, conduct a hearing. The head of the purchasing agency or his designee shall provide to the protestant and the contracting officer a reasonable opportunity to review and address any additional documents or information deemed

necessary by the head of the purchasing agency or his designee to render a decision.

(f) Determination.—Upon completing an evaluation of the protest in accordance with subsection (e), the head of the purchasing agency or his designee shall issue a written determination stating the reasons for the decision. The determination shall be issued within 60 days of the receipt of the protest unless extended by consent of the head of the purchasing agency or his designee and the protestant. The determination shall be the final order of the purchasing agency. If the head of the purchasing agency or his designee determines that the solicitation or award of the contract was contrary to law, he may enter an order authorized by section 1711.2 (relating to solicitations or awards contrary to law).

(g) Appeal.—Within 15 days of the mailing date of a final determination denying a protest, a protestant may file an appeal with Commonwealth Court. Issues not raised by the protestant before the purchasing agency are deemed waived and may not be raised before the court.

(h) Record of determination.—The record of determination for review by the court shall consist of the solicitation or award; the contract, if any; the protest; any response or reply; any additional documents or information considered by the head of the purchasing agency or his designee; the hearing transcript and exhibits, if any; and the final determination.

(i) Standard of review.—The court shall hear the appeal, without a jury, on the record of determination certified by the purchasing agency. The court shall affirm the determination of the purchasing agency unless it finds from the record that the determination is arbitrary and capricious, an abuse of discretion or is contrary to law.

(j) Remedy.—If the determination is not affirmed, the court may enter any order authorized by 42 Pa.C.S. § 706 (relating to disposition of appeals), provided that, if the court determines that the solicitation or award of a contract is contrary to law, then the remedy the court shall order is limited to canceling the solicitation or award and declaring void any resulting contract.

(k) Stay of procurement during pendency of protest.—In the event a protest is filed timely under this section and until the time has elapsed for the protestant to file an appeal with Commonwealth Court, the purchasing agency shall not proceed further with the solicitation or with the award of the contract unless and until the head of the purchasing agency, after consultation with the head of the using agency, makes a written determination that the protest is clearly without merit or that award of the contract without delay is necessary to protect substantial interests of the Commonwealth.

(l) Applicability.—This section shall be the exclusive procedure for protesting a solicitation or award of a contract by a bidder or offeror, a

prospective bidder or offeror or a prospective contractor that is aggrieved in connection with the solicitation or award of a contract. The provisions of 2 Pa.C.S. (relating to administrative law and procedure) shall not apply to this section.

§ 1711.2. Solicitations or awards contrary to law.

If the head of a purchasing agency or his designee determines that a solicitation or award of a contract is contrary to law, the following apply:

(1) If the determination is made prior to the execution of a contract, the remedies are limited to cancellation of the solicitation or proposed award or revision of the solicitation or proposed award to comply with the law.

(2) If the determination is made after the execution of a contract and the person awarded the contract has not acted fraudulently or in bad faith:

(i) the contract may be ratified and affirmed, provided it is determined by the head of the purchasing agency or his designee that doing so is in the best interest of the Commonwealth;

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

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

(3) If the determination is made after the execution of a contract and the person awarded the contract has acted fraudulently or in bad faith:

(i) the contract may be ratified and affirmed, provided it is determined by the head of the purchasing agency or his designee that doing so is in the best interest of the Commonwealth and without prejudice to the right of the Commonwealth agency to damages as may be appropriate.

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

(iii) the contract may be declared void.

Section 11.2. Section 1712 of Title 62 is repealed.

Section 12. Title 62 is amended by adding a section to read:

§ 1712.1. Contract controversies.

(a) Right to claim.—A contractor may file a claim with the contracting officer in writing for controversies arising from a contract entered into by the Commonwealth.

(b) Filing of claim.—A claim shall be filed with the contracting officer within six months of the date it accrues. If a contractor fails to file a claim or files an untimely claim, the contractor is deemed to have

waived its right to assert a claim in any forum. Untimely filed claims shall be disregarded by the contracting officer.

(c) Contents of claim.—A claim shall state all grounds upon which the contractor asserts a controversy exists.

(d) Determination.—The contracting officer shall review a claim and issue a final determination in writing regarding the claim within 120 days of the receipt of the claim unless extended by consent of the contracting officer and the contractor. If the contracting officer fails to issue a final determination within the 120 days unless extended by consent of the parties, the claim shall be deemed denied. The determination of the contracting officer shall be the final order of the purchasing agency.

(e) Statement of claim.—Within 15 days of the mailing date of a final determination denying a claim or within 135 days of filing a claim if no extension is agreed to by the parties, whichever occurs first, the contractor may file a statement of claim with the board.

(f) Applicability.—The provisions of 2 Pa.C.S. (relating to administrative law and procedure) shall not apply to this section.

Section 12.1. Subchapter C of Chapter 17 of Title 62 is repealed.

Section 12.2. Chapter 17 of Title 62 is amended by adding a subchapter to read:

SUBCHAPTER C BOARD OF CLAIMS

Sec.

1721. Board of Claims.

1722. Powers and duties of board.

1723. Employees and hearing panel members.

1724. Jurisdiction.

1725. Procedure.

1726. Payment of awards and costs.

§ 1721. Board of Claims.

(a) Establishment.—There is hereby established an independent administrative board to be known as the Board of Claims. Administrative services for the board shall be provided by the Department of the Auditor General.

(b) Composition.—The board shall consist of three members appointed by the Governor by and with the advice and consent of a majority of the elected members of the Senate. One member shall be an attorney and another shall be a registered civil engineer. The third member of the board shall be a citizen and resident of this Commonwealth. The attorney shall serve as chairman of the board.

(c) Term.—A member of the board shall be appointed for a term of eight years. In the event a vacancy shall occur during a term of office, the Governor shall appoint a successor who shall hold office for the remainder

of the unexpired term. A member of the board may be removed by the Governor for inefficiency, neglect of duty or malfeasance in office.

(d) Compensation.—A member of the board shall receive an annual compensation as fixed by the Executive Board, subject to the annual cost-of-living adjustment provided for in section 3(e) of the act of September 30, 1983 (P.L.160, No.39), known as the Public Official Compensation Law. A member of the board shall be entitled to all necessary travel and other expenses incurred by him in the discharge of his official duties. A member shall hold no other public position to which a salary is attached.

§ 1722. Powers and duties of board.

The board shall do all of the following:

(1) Employ administrative, professional, clerical and other personnel as is necessary for the orderly administration of the board.

(2) Make, execute and deliver contracts and other instruments as is necessary.

(3) Establish and maintain a principal office in Harrisburg and such other offices within this Commonwealth as are necessary.

(4) Adopt an official seal.

(5) Appoint three separate hearing panels consisting of two individuals. For each hearing panel, one individual shall be an attorney and the other shall be a licensed engineer. The attorney shall serve as chairperson.

(6) Establish, by regulation, rules governing practice before the board consistent, except as may be provided by this part, with the Pennsylvania Rules of Civil Procedure and the Pennsylvania Rules of Evidence.

(7) Arbitrate claims before it in accordance with this subchapter.

(8) Catalog and publish all opinions of the board.

§ 1723. Employees and hearing panel members.

(a) Employees.—Employees of the board shall, for the purposes of 71 Pa.C.S. Pt. XXV (relating to retirement for State employees and officers), be considered a State employee. Employees of the board shall be reimbursed for all necessary travel and other expenses incurred in the discharge of official duties.

(b) Hearing panel members.—Individuals appointed to hearing panels in accordance with section 1722 (relating to powers and duties of board) shall receive a per diem for the time actually devoted to the business of the board. The per diem rate shall be fixed by the Executive Board, but no panel member shall be paid more than \$25,000 per diem compensation in any calendar year.

§ 1724. Jurisdiction.

(a) Exclusive jurisdiction.—The board shall have exclusive jurisdiction to arbitrate claims arising from all of the following:

(1) A contract entered into by a Commonwealth agency in accordance with this part and filed with the board in accordance with section 1712.1 (relating to contract controversies).

(2) A written agreement executed by a Commonwealth agency and the Office of Attorney General in which the parties expressly agree to utilize the board to arbitrate disputes arising from the agreement.

(3) Unless otherwise provided by law, a contract entered into by a Commonwealth agency involving real property interests in which the Commonwealth agency is the respondent.

(b) Concurrent jurisdiction.—The board shall have concurrent jurisdiction to arbitrate claims arising from all of the following:

(1) A contract entered into by a Commonwealth agency in accordance with this part in which the Commonwealth agency is the claimant.

(2) Unless otherwise provided by law, a contract entered into by a Commonwealth agency involving real property interests in which the Commonwealth agency is the claimant.

(c) Limitations.—The board shall have no power and exercise no jurisdiction over a claim asserted under subsection (a)(1) unless it is filed with the board in accordance with section 1712.1. The board shall have no power and exercise no jurisdiction over a claim asserted against a Commonwealth agency under subsection (a)(2) or (3) unless the claim was filed with the board within six months after it accrued. The board shall have no power and exercise no jurisdiction over claims for payment or damages to providers of medical assistance services arising out of the operation of the medical assistance program established by the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

(d) Nonmonetary relief.—Nothing in this section shall preclude a party from seeking nonmonetary relief in another forum as provided by law.

§ 1725. Procedure.

(a) Statement of claim.—The board shall accept a statement of claim filed in accordance with section 1724 (relating to jurisdiction). The statement of claim shall be signed and verified. Prior to accepting a statement of claim, the board shall require a claimant to prove that the respondent was mailed a copy of the statement of claim. If the respondent is a Commonwealth agency, upon accepting a statement of claim the board shall deliver one copy to the Attorney General.

(b) Response.—Within 30 days of a statement of claim being filed, the respondent shall file with the board a response to the averments of the claimant's statement of claim. The response shall be signed and verified. Prior to accepting a response, the board shall require a respondent to prove that the claimant was mailed a copy of the response.

(c) Listing.—

(1) After the pleadings are complete, the board shall list the case for hearing before the board at the earliest available date, but not earlier than 30 days after the pleadings are complete. All cases shall, as far as practicable, be listed for hearing in the order of the date of the filing of

the respective statements of claim. The board shall provide the parties with 30 days' written notice of the time and place of the hearing.

(2) If a decision by the board is unlikely to be made within 60 days from the date of the hearing, the board may refer the case, together with all pleadings, to the hearing panel where the non-Commonwealth party resides. The hearing panel shall list the case for hearing at the earliest available date after receipt of the case from the board. All cases shall, as far as practicable, be listed for hearing in the order of the date of the filing of the respective statements of claim. The hearing panel shall provide the parties with 30 days' written notice of the time and place of the hearing.

(d) Hearing.—

(1) The board shall hold the hearing at the place and time determined by the board. All hearings shall be public. All matters before the board shall be governed by rules established by the board. The board shall have power to issue subpoenas requiring the attendance and giving of testimony of witnesses or the production of any book, paper, documentary or other evidence and to order the interpleader or impleader of other parties whenever necessary for a complete determination of any claim or counterclaim.

(2) If the matter was referred to a hearing panel, the hearing panel shall hold the hearing at the place and time determined by the panel. All hearings shall be public. All matters before the hearing panel shall be governed by rules established by the board. The hearing panel shall have power to issue subpoenas requiring the attendance and giving of testimony of witnesses or the production of any book, paper, documentary or other evidence and to order the interpleader or impleader of other parties whenever necessary for a complete determination of any claim or counterclaim.

(e) Decision.—

(1) After considering the pleadings and the testimony given at the hearing before it, the board shall file a written opinion either dismissing the claim of the claimant or ordering an award in favor of the claimant. If the board orders an award, the board shall order an amount which the claimant is legally entitled to receive. The board in dismissing any claim or ordering any award shall dispose of all costs of the proceedings by providing for the payment of costs by the claimant or the respondent or by providing that the costs shall be shared by the parties in proportion as the board in its discretion shall direct. Costs shall include witness fees and expenses. The board shall, under the seal of the board, immediately notify the parties involved of the entry of a final order.

(2) If the hearing was before a hearing panel, the hearing panel shall make its recommendation or recommendations to the board within 30 days of the hearing. After considering the hearing panel's recommendation, the board shall file a written opinion either dismissing

the claim of the claimant or ordering an award in favor of the claimant. If the board orders an award, the board shall order an amount which the claimant is legally entitled to receive. The board in dismissing any claim or ordering any award shall dispose of all costs of the proceedings by providing for the payment of costs by the claimant or the respondent or by providing that the costs shall be shared by the parties in proportion as the board in its discretion shall direct. Costs shall include witness fees and expenses. The board shall, under the seal of the board, immediately notify the parties involved of the entry of a final order.

(f) Appeals.—Within 30 days of a final order being entered, a party may file an appeal with Commonwealth Court in accordance with 42 Pa.C.S. § 763 (relating to direct appeals from government agencies).

(g) Copies.—The board may not charge the Commonwealth for copies of documents filed with the board or for copies of transcripts and exhibits. § 1726. Payment of awards and costs.

If an award against the purchasing agency was ordered, the amount of the award shall be paid to the non-Commonwealth party by the purchasing agency from funds appropriated against the contract out of which the claim arose, and any costs assessed against the Commonwealth agency shall be paid by the purchasing agency from funds or appropriations to the agency. If an award against the non-Commonwealth party was ordered, the amount of the award shall be deducted from whatever balance may be due the party on the contract out of which the claim arose. An amount in excess of any deduction remaining unsatisfied shall be paid by the non-Commonwealth party to the purchasing agency.

Section 13. Subchapter D of Chapter 17 of Title 62 is repealed.

Section 14. The definition of “local public procurement unit” in section 1901 of Title 62 is amended to read:

§ 1901. Definitions.

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

* * *

“Local public procurement unit.” A political subdivision, public authority, *tax-exempt, nonprofit* educational[,], *or public* health [or other] institution [and, to the extent provided by law, any other entity, including a council of governments or an area government, which expends public funds for the procurement of supplies, services and construction, any nonprofit corporation operating a charitable hospital and any] *or organization*, nonprofit fire company, nonprofit rescue company, [and] nonprofit ambulance company[.] *and, to the extent provided by law, any other entity, including a council of governments or an area government, which expends public funds for the procurement of supplies, services and construction.*

* * *

Section 15. Section 1908 of Title 62 is amended to read:

§ 1908. Compliance of public procurement units.

Where the public procurement unit or external procurement activity administering a cooperative purchase complies with the requirements **[of this part,] governing its procurement of supplies, services and construction**, any public procurement unit participating in the purchase shall be deemed to have complied with **[this part] the requirements governing its procurement of supplies, services and construction**. Public procurement units may not enter into a cooperative purchasing agreement for the purpose of circumventing this part.

Section 16. The definition of "small business" in section 2102 of Title 62 is amended to read:

§ 2102. Definitions.

* * *

"Small business." A business in the United States which is independently owned, is not dominant in its field of operation and **[meets the criteria established by the Department of General Services, by regulation, for qualification as a small business. The department, through regulation, shall have the authority to establish the maximum number of persons a company may employ to qualify as a small business, which number shall not exceed 50 persons] employs 100 or fewer employees**.

Section 17. The definitions of "motor vehicle" and "North America" in section 3732 of Title 62 are amended to read:

§ 3732. Definitions.

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

"Motor vehicle." **[A vehicle which is self-propelled except one which is propelled solely by human or animal power. The term includes those vehicles designed primarily for use in construction or agriculture or road maintenance such as tractors and earth-moving equipment. The term does not include vehicles used primarily for grass cutting.] A passenger car or a truck as those terms are defined under 75 Pa.C.S. § 102 (relating to definitions)**.

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

* * *

Section 18. The heading of Subchapter C of Chapter 37 of Title 62 is amended to read:

SUBCHAPTER C
MASS TRANSPORTATION [VEHICLES]

Section 19. Title 62 is amended by adding a section to read:

§ 3742. Procurement limits for mass transportation authorities.

(a) General rule.—Notwithstanding any other provision of law to the contrary and subject to the conditions in subsection (b), a local transportation organization as defined in 74 Pa.C.S. § 1301 (relating to definitions) which is a recipient of Federal funds for transportation purposes is permitted, at the option of its governing board, to use the “simplified acquisition procedures” of section 31 of the Office of Federal Procurement Policy Act (41 U.S.C. § 427) for procurement up to the “simplified acquisition threshold” as that term is defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. § 403).

(b) Conditions.—

(1) A proposed purchase of contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified acquisition procedures permitted by subsection (a).

(2) In using simplified acquisition procedures, a local transportation organization shall promote competition to the maximum extent practicable.

(3) The simplified acquisition procedures used by a local transportation organization shall comply with the Federal Acquisition Regulations concerning simplified acquisition procedures described in 48 CFR Ch. 1 Pt. 13.

Section 20. Section 3911 of Title 62 is amended by adding a subsection to read:

§ 3911. Time for awarding contract.

(e) Contract negotiation.—When the amount of the bid submitted by the lowest responsive and responsible bidder for a Department of General Services construction contract exceeds the verifiable contract allocation established by the Department of General Services for the contract, the department may, prior to awarding the contract, negotiate the price, work items and time requirements for the contract with the lowest responsive and responsible bidder to bring the bid within the established contract allocation.

Section 20.1. Title 67 is amended by adding chapters to read:

CHAPTER 1
PRELIMINARY PROVISIONS

Sec.

101. Definitions.

§ 101. Definitions.

The following words and phrases when used in this¹ chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Department.” The Department of Public Welfare of the Commonwealth.

“Secretary.” The Secretary of the Department of Public Welfare of this Commonwealth.

CHAPTER 11 MEDICAL ASSISTANCE HEARINGS AND APPEALS

Sec.

1101. Definitions.

1102. Hearings before the bureau.

1103. Supersedeas.

1104. Subpoenas.

1105. Determinations, review, appeal and enforcement.

1106. Regulations.

§ 1101. Definitions.

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

“Bureau.” The Bureau of Hearings and Appeals of the Department of Public Welfare.

“Hearing.” A proceeding commenced in accordance with this chapter by a provider concerning an adjudication of the department relating to the administration of the program. The term includes an action relating to a provider’s enrollment in, participation in, claims for payment or damages under or penalties imposed under the program.

“Program.” The medical assistance program established by subarticle (f) of Article IV of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

“Provider.” A person that is approved or was approved by the department to participate in the program or that seeks approval to provide medical assistance services under the program.

§ 1102. Hearings before the bureau.

(a) General rule.—A provider that is aggrieved by a decision of the department regarding the program may request a hearing before the bureau in accordance with this chapter.

(b) Filing.—

(1) Except as provided in paragraph (2), a provider must file a request for a hearing with the bureau in accordance with all of the following:

¹“the” in enrolled bill.

- (i) The request must be in writing.
- (ii) The request must be filed with the bureau:
 - (A) within 30 days of the date of the notice of the departmental action; or
 - (B) if notice was given by mail, within 33 days of the date of the notice of the departmental action.
- (iii) If the request was filed by first-class mail, the United States postmark appearing upon the envelope in which the request was mailed shall be considered the filing date. The filing date of a request filed in any other manner or bearing a postmark other than a United States postmark shall be the date on which the request is received in the bureau.

(2) Paragraph (1) does not apply in the following cases:

- (i) In a nunc pro tunc hearing under subsection (c).
- (ii) To the extent set forth in the standing order of the bureau issued under subsection (g).
- (iii) To the extent modified by regulations promulgated under section 1106 (relating to regulations).

(c) Hearings nunc pro tunc.—The bureau, upon written request and for good cause shown, may grant leave for the filing of requests for hearing nunc pro tunc pursuant to the common law standards applicable in analogous cases in courts of original jurisdiction.

(d) Amendment.—A request for a hearing may be amended as of right within 90 days after the date of filing of the request.

(e) Adjudication.—

(1) The bureau shall hold hearings and conduct adjudications regarding timely filed requests for hearing in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

(2) Notwithstanding paragraph (1), in holding hearings and conducting adjudications, the bureau shall do all of the following:

- (i) Act independently of employees or public officials of the department whose actions are subject to review before the bureau.
- (ii) Not engage in ex parte communications concerning a hearing with any party to the hearing.
- (iii) Promptly adjudicate timely filed requests for hearing.
- (iv) Establish deadlines for interim and final actions by the bureau and parties to any proceeding before the bureau.
- (v) Allow reasonable and necessary discovery in the form of interrogatories, requests for the production of documents, expert reports, requests for admissions and depositions of witnesses and designees of parties, subject to case management plans and limitations as necessary to facilitate the prompt and efficient issuance of adjudications.

(vi) Consider and, when appropriate, grant applications by affected parties to consolidate hearings involving substantially similar or materially related issues of law or fact.

(vii) Conduct de novo review of all factual and legal issues raised by a provider in the request for hearing based upon evidence presented to the bureau.

(viii) Except as prohibited by statute or regulation, index and publish at reasonable costs determinations issued by the bureau and final orders issued by the secretary adjudicating requests on or after the effective date of this section. By July 1, 2003, the bureau shall make the determinations, final orders and index available electronically without cost to the public.

(f) Mediation.—The bureau may establish programs and procedures to promote the settlement of matters subject to its jurisdiction or to narrow issues subject to dispute through the use of mediation and arbitration.

(g) Standing order.—By July 1, 2003, the bureau shall, after receiving comment by interested parties, issue a standing order establishing rules governing practice before the bureau. The standing order shall be published in the Pennsylvania Bulletin. The standing order of the bureau shall be effective until modified by regulation.

§ 1103. Supersedeas.

(a) Not automatic.—A request for hearing filed pursuant to this chapter shall not act as an automatic supersedeas. The bureau may, however, grant a supersedeas upon good cause shown.

(b) Criteria.—The bureau, in granting or denying a supersedeas, shall be guided by relevant judicial precedent. Among the factors to be considered are:

- (1) irreparable harm to the petitioner;
- (2) likelihood of the petitioner prevailing on the merits; and
- (3) likelihood of injury to the public or other parties.

(c) Prohibition.—A supersedeas shall not be issued if injury to the public health, safety or welfare exists or is threatened during the period when the supersedeas would be in effect.

(d) Conditions.—In granting a supersedeas, the bureau may impose conditions which are warranted by the circumstances, including the filing of a bond or other security.

§ 1104. Subpoenas.

Consistent with section 1102(e)(2)(v) (relating to hearings before the bureau), the bureau may issue subpoenas compelling the attendance of witnesses, records and papers. The bureau may enforce its subpoenas in Commonwealth Court. Commonwealth Court, after a hearing, may make an adjudication of contempt or may issue another appropriate order.

§ 1105. Determinations, review, appeal and enforcement.

(a) Determinations.—The bureau shall issue a determination adjudicating contested issues of fact and law and any appropriate order,

decree or decision. A determination not appealed in accordance with subsection (b) shall be the final determination of the bureau and shall be binding upon the department and the provider who brought the appeal.

(b) Review.—

(1) A party that is aggrieved by a determination of the bureau may request review of the determination by the secretary within 30 days of the issuance of the determination.

(2) If the secretary fails to act upon a request within 30 days of receipt of the request for review, the request for review shall be deemed denied.

(3) If the secretary grants review, the secretary shall enter a final order within 180 days of the date of the order granting review. The secretary may affirm, reverse or modify the determination of the bureau or may waive compliance with program requirements to promote fairness and the proper administration of the program.

(4) If the secretary grants review but fails to act within 180 days of the date of the order granting the review, the determination of the bureau shall be deemed approved by the secretary.

(c) Appeals.—A provider aggrieved by a final determination of the bureau or a final order of the secretary may petition for judicial review in accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

(d) Enforcement.—Final determinations, orders, decrees or decisions of the department, the bureau or the secretary shall be subject to enforcement by Commonwealth Court.

§ 1106. Regulations.

(a) Authority.—By July 1, 2004, the bureau, through the department, shall promulgate regulations establishing rules of procedure as may be necessary to carry out the provisions of this chapter.

(b) Advisory committee.—The bureau shall establish an advisory committee, including individuals experienced in proceedings before the bureau and other administrative agencies, to provide assistance and guidance in the development and modification of regulations which may be promulgated under this section.

Section 21. (a) The following acts and parts of acts are repealed:

(1) Section 2403(h) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(2) The act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Claims Act.

(3) Section 2 of the act of October 2, 2002 (P.L.812, No.118), entitled "An act amending the act of May 20, 1937 (P.L.728, No.193), entitled, as amended, 'An act providing for the creation of a Board of Claims arising from contracts with the Commonwealth; providing for and regulating the procedure in prosecuting claims before such board; defining the powers of the board; and fixing the compensation of members and employees thereof;

providing that the awards of such board shall be final; providing for the payment of awards; and authorizing an appropriation,' further providing for compensation for members of the Board of Claims and its hearing panels, for the jurisdiction of the hearing panels and for authority to resolve protests of solicitations or awards; and making a repeal."

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

Section 9.1 of the act of April 6, 1956 (1955 P.L.1414, No.465), known as the Second Class County Port Authority Act.

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

Section 21.1. A member of the Board of Claims as of the effective date of this act shall continue to serve as a member of the board until the member's present term expires or until a successor has been appointed and qualified.

Section 21.2. Any claim filed and not finally resolved under the act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Claims Act, prior to the effective date of this act shall be disposed of in accordance with the Board of Claims Act.

Section 22. This act shall take effect as follows:

(1) The following provisions shall take effect upon publication in the Pennsylvania Bulletin of the standing order under 67 Pa.C.S. § 1102(g):

- (i) The amendment of 62 Pa.C.S. § 1701.
- (ii) The repeal of 62 Pa.C.S. Ch. 17 Subch. C.
- (iii) The addition of 62 Pa.C.S. Ch. 17 Subch. C.
- (iv) Section 21(a)(2) of this act.
- (v) Sections 21.1 and 21.2 of this act.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 3rd day of December, A.D. 2002.

MARK S. SCHWEIKER