



SENATE BILL No. 771

July 21, 1993, Introduced by Senator EHLERS and referred to the Committee on Appropriations.

A bill to simplify, clarify, and modernize the law governing procurement by this state; to prescribe the powers and duties of certain state departments, boards, and officers; to create certain boards and prescribe their powers and duties; to allow political subdivisions and other local public agencies of this state to adopt and adapt the provisions of this act; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE 1

1
2 Sec. 101. This act shall be known and may be cited as the
3 "Michigan procurement code for goods and services".

4 Sec. 102. (1) This act shall be construed and applied to
5 promote its underlying purposes and policies.

6 (2) The underlying purposes and policies of this act are:

1 (a) To simplify, clarify, and modernize the law governing
2 procurement by this state.

3 (b) To permit the continued development of procurement poli-
4 cies and practices.

5 (c) To make as consistent as possible the procurement laws
6 among the various jurisdictions.

7 (d) To provide for increased public confidence in the proce-
8 dures followed in public procurement.

9 (e) To ensure the fair and equitable treatment of all per-
10 sons who deal with the procurement system of this state.

11 (f) To provide increased economy in the procurement activi-
12 ties of this state and to maximize to the fullest extent practi-
13 cable the purchasing value of public funds of this state.

14 (g) To foster effective broad based competition within the
15 free enterprise system.

16 (h) To provide safeguards for the maintenance of a procure-
17 ment system of quality and integrity.

18 Sec. 103. This act requires all parties involved in the
19 negotiation, performance, or administration of contracts of this
20 state to act in good faith.

21 Sec. 104. (1) Except as otherwise provided by law, this act
22 applies only to contracts solicited or entered into by a state
23 agency on or after January 1, 1995. In addition, the director of
24 the department of management and budget may provide that the pro-
25 curement of anything other than goods or services, as defined
26 under this act, that are described or authorized in the
27 management and budget act, Act No. 431 of the Public Acts of

1 1984, being sections 18.1101 to 18.1594 of the Michigan Compiled
2 Laws, may be procured under the same terms and conditions as pro-
3 vided in this act.

4 (2) All political subdivisions and other local public agen-
5 cies of this state are authorized to adopt all or any part of
6 this act and its accompanying rules and to adapt all or any part
7 of this act and its accompanying rules to the subdivision's or
8 agency's individual circumstances.

9 Sec. 105. Notwithstanding any other provision of this act,
10 the procurement of goods and services is subject to the prefer-
11 ences, conditions, and requirements described in sections 261,
12 261a, 261b, 268, 275, and 293 to 297 of the management and budget
13 act, Act No. 431 of the Public Acts of 1984, being sections
14 18.1261, 18.1261a, 18.1261b, 18.1268, 18.1275, and 18.1293 to
15 18.1297 of the Michigan Compiled Laws.

16 Sec. 106. If any provision of this act or any application
17 of this act to any person or circumstances is held invalid, the
18 invalidity shall not affect other provisions or application of
19 this act that can be given effect without the invalid provision
20 or application, and the provisions of this act are declared to be
21 severable.

22 Sec. 107. Written determinations required by this act shall
23 be retained in the appropriate official contract file of the
24 office of the chief procurement officer or the purchasing
25 agency.

1 Sec. 108. The words defined in sections 109 to 112 shall
2 have the meanings set forth in those sections when those words
3 appear in this act, unless either of the following is true:

4 (a) The context in which the word is used clearly requires a
5 different meaning.

6 (b) A different definition is prescribed for a particular
7 article, section, or provision.

8 Sec. 109. (1) "Business" means any corporation, partner-
9 ship, individual, sole proprietorship, joint stock company, joint
10 venture, or any other private legal entity.

11 (2) "Change order" means a written order signed by the pro-
12 curement officer, directing the contractor to make changes that
13 the changes clause of the contract authorizes the procurement
14 officer to order without the consent of the contractor.

15 (3) "Chief procurement officer" means the person holding the
16 position created in section 201 as the head of the office of the
17 chief procurement officer of this state.

18 (4) "Contract" means all types of state agreements, regard-
19 less of what they may be called, for the procurement or disposal
20 of goods or services.

21 (5) "Contract modification" means any written alteration in
22 specifications, delivery point, rate of delivery, period of per-
23 formance, price, quantity, or other provisions of any contract
24 accomplished by mutual action of the parties to the contract.

25 (6) "Contractor" means any person having a contract with a
26 state agency.

1 Sec. 110. (1) "Data" means recorded information, regardless
2 of form or characteristic.

3 (2) "Designee" means a person duly authorized by the chief
4 procurement officer.

5 (3) "Employee" means an individual drawing a salary from a
6 state agency, whether elected or not, and any noncompensated
7 individual performing personal services for any state agency.

8 (4) "Goods" means anything purchased other than services or
9 real property, including, but not limited to, supplies, equip-
10 ment, materials, and printing.

11 (5) "Grant" means the furnishing by this state of assist-
12 ance, whether financial or otherwise, to any person to support a
13 program authorized by law. It does not include an award whose
14 primary purpose is to procure an end product, whether in the form
15 of goods or services. A contract resulting from such an award is
16 not a grant but a procurement contract.

17 Sec. 111. (1) "Person" means an individual, partnership,
18 corporation, association, governmental entity, or other legal
19 entity.

20 (2) "Procurement" means buying, purchasing, renting, leas-
21 ing, or otherwise acquiring any goods or services. It also
22 includes all functions that pertain to the obtaining of any goods
23 or services, including description of requirements, selection and
24 solicitation of sources, preparation and award of contract, and
25 all phases of contract administration.

26 (3) "Procurement officer" means any person acting within the
27 limits of his or her authority duly authorized by the chief

1 procurement officer to enter into and administer contracts and
2 make written determinations with respect to the contracts.

3 (4) "Purchasing agency" means any state agency that is
4 authorized by this act or rule, or by way of delegation from the
5 chief procurement officer, to enter into contracts.

6 Sec. 112. (1) "Rule" means a rule that has been promulgated
7 pursuant to the administrative procedures act of 1969, Act
8 No. 306 of the Public Acts of 1969, being sections 24.201 to
9 24.328 of the Michigan Compiled Laws.

10 (2) "Services" includes, but is not limited to, professional
11 services, general labor services, medical practitioner services,
12 direct human services, insurance, travel, utilities, third party
13 financing, and leases of real property excluding the purchase of
14 real property or a permanent interest in real property. Services
15 does not include employment agreements or collective bargaining
16 agreements.

17 (3) "State agency" means a department, board, commission,
18 office, agency, authority, or other unit of state government.
19 State agency does not include any of the following:

20 (a) An institution of higher education or a community or
21 junior college described in sections 4, 5, 6, and 7 of article
22 VIII of the state constitution of 1963.

23 (b) The legislative branch of this state.

24 (c) The judicial branch of this state.

25 (4) "Using agency" means any state agency of this state that
26 utilizes any goods or services procured under this act.

7

8 Sec. 201. There is created an office of the chief procure-
9 ment officer, headed by the chief procurement officer. The
10 office of the chief procurement officer is created in the depart-
11 ment of management and budget and is a classified civil service
12 position. The chief procurement officer shall report to the
13 director of the department of management and budget.

14 Sec. 202. (1) The chief procurement officer shall serve as
15 the central procurement officer of this state.

16 (2) The chief procurement officer shall have the authority
17 and responsibility to promulgate rules consistent with this act.

18 (3) Consistent with the provisions of this act, the chief
19 procurement officer may adopt operational procedures governing
20 the internal functions of the office of the chief procurement
21 officer.

22 (4) Except as otherwise specifically provided in this act,
23 the chief procurement officer shall do all of the following:

24 (a) Procure or supervise the procurement of all goods and
25 services needed by state agencies.

26 (b) Exercise general supervision and control over all
27 inventories of goods belonging to state agencies.

1 (c) Sell, trade, or otherwise dispose of surplus goods
2 belonging to state agencies.

3 (d) Establish and maintain programs for the inspection,
4 testing, and acceptance of goods and services.

5 Sec. 203. (1) The chief procurement officer may delegate
6 procurement authority to procurement officers, designees, or
7 state agencies.

8 (2) The chief procurement officer may authorize a state
9 agency to purchase goods and materials for the purpose of main-
10 taining inventories. The chief procurement officer shall place a
11 dollar or quantity limitation to insure inventories are main-
12 tained at acceptable levels. Appropriation accounts shall be
13 charged upon the basis of actual usage. Any state agency so
14 authorized shall conduct periodic inventories as directed by the
15 chief procurement officer of all goods and materials under their
16 control. Obsolete, damaged, or spoiled goods and materials shall
17 be charged to the proper appropriation account during the fiscal
18 year it is determined that obsolescence, damage, or spoilage has
19 occurred.

20 Sec. 204. Except as otherwise provided by law, the follow-
21 ing goods and services need not be procured through the office of
22 the chief procurement officer, but shall nevertheless be procured
23 by the appropriate purchasing agency subject to the requirements
24 of this act and the rules promulgated by the chief procurement
25 officer:

26 (a) Works of art for museum and public display.

1 (b) Published books, maps, periodicals, and technical
2 pamphlets but not the printing of these items.

3 (c) Proprietary computer software.

4 (d) Fresh fruits and vegetables.

5 Sec. 205. The chief procurement officer shall cooperate
6 with the state budget office and the auditor general in the prep-
7 aration of statistical data concerning the procurement, usage,
8 and disposition of all goods and services, and employ the trained
9 personnel that are necessary to carry out this function. All
10 using agencies shall furnish the reports that the chief procure-
11 ment officer requires concerning usage, needs, and stocks on
12 hand, and the chief procurement officer has authority to pre-
13 scribe forms to be used by the using agencies in requisitioning,
14 ordering, and reporting of goods and services.

15 Sec. 206. The chief procurement officer or a procurement
16 officer may appoint advisory groups to assist with respect to
17 specifications or procurement in specific areas, and with respect
18 to any other matters within the authority of the chief procure-
19 ment officer.

20 Sec. 207. The chief procurement officer or a designee may,
21 either alone or in cooperation with other states, the federal
22 government, municipalities or other units of local government, or
23 other persons do any of the following:

24 (a) Conduct or participate in procurement education and
25 training programs for state employees and others, including per-
26 sons not employed by the state.

1 (b) Conduct research into existing and new methods of
2 procurement.

3 (c) Establish and maintain a state procurement library.

4 ARTICLE 3

5 Sec. 301. As used in this article:

6 (a) "Cost-reimbursement contract" means a contract under
7 which a contractor is reimbursed for costs that are allowable and
8 allocable pursuant to the contract terms and the provisions of
9 this article, and a fee, if any.

10 (b) "Established catalog price" means the price included in
11 a catalog, price list, schedule, or other form that meets any of
12 the following requirements:

13 (i) Is regularly maintained by a manufacturer or
14 contractor.

15 (ii) Is either published or otherwise available for inspec-
16 tion by customers.

17 (iii) States prices at which sales are currently or were
18 last made to a significant number of any category of buyers or
19 buyers constituting the general buying public for the goods or
20 services involved.

21 (c) "Invitation for bids" means all documents, whether
22 attached or incorporated by reference, utilized for soliciting
23 bids.

24 (d) "Purchase description" means the words used in a solici-
25 tation to describe the goods or services to be purchased, and
26 includes specifications attached to, or made a part of, the
27 solicitation.

1 (e) "Request for proposals" means all documents, whether
2 attached or incorporated by reference, utilized for soliciting
3 proposals that may include a listing of evaluation criteria that
4 will be used to make an award under this act.

5 (f) "Responsible bidder or offeror" means a person who has
6 the capability in all respects to perform fully the contract
7 requirements.

8 (g) "Responsive bidder" means a person who has submitted a
9 bid or a proposal that conforms in all material respects to the
10 invitation for bids or request for proposals and otherwise meets
11 the requirements of this act.

12 Sec. 302. (1) Except as provided in section 304, and as
13 otherwise provided by law, all state contracts shall be awarded
14 by competitive bidding.

15 (2) Invitation for bids, request for proposals, single- and
16 multi-step bidding, and sealed bid competitive negotiations are
17 appropriate forms of competitive bidding.

18 Sec. 303. (1) When an invitation for bids or request for
19 proposals is issued, it shall include a purchase description, and
20 all contractual terms and conditions applicable to the
21 procurement.

22 (2) Public notice of the invitation for bids or requests for
23 proposals shall be given a reasonable time before the date set
24 forth in the notice for the opening of bids as determined by the
25 chief procurement officer or a procurement officer.

26 (3) Bids and proposals having a value of \$25,000.00 or more
27 shall be opened publicly in the presence of 1 or more witnesses

1 at the time and place designated in the solicitation. The amount
2 of each bid and proposal, if applicable, and other relevant
3 information as may be specified by the chief procurement officer
4 or a procurement officer, together with the name of each respon-
5 sive bidder, shall be recorded. The record and each bid and pro-
6 posal shall be open to public inspection only when the award rec-
7 ommendation is made.

8 (4) Bids and proposals shall be evaluated based on the
9 requirements set forth in the invitation for bids and request for
10 proposals, which may include criteria to determine acceptability
11 such as inspection, testing, quality, workmanship, delivery, and
12 suitability for a particular purpose. Those criteria that will
13 affect the bid or proposal price and be considered in evaluation
14 for award shall be objectively measurable, such as discounts,
15 transportation costs, and total or life cycle costs. The invita-
16 tion for bids and request for proposals shall set forth the eval-
17 uation criteria to be used. The award shall be made to the
18 responsive bidder whose bid or proposal is determined in writing
19 to be the most advantageous to this state based on price and the
20 evaluation criteria stated in the invitation for bids or requests
21 for proposals. No criteria may be used in bid or proposal evalu-
22 ation that are not set forth in the invitation for bids or
23 request for proposals.

24 (5) Correction or withdrawal of inadvertently erroneous bids
25 or proposals before or after award, or cancellation of awards or
26 contracts based on a mistake, shall be permitted as determined by
27 the chief procurement officer or a procurement officer. After

1 bid or proposal opening, a change in price or other provisions
2 that are prejudicial to the interest of the state or fair compe-
3 tition shall not be permitted. Except as otherwise provided by
4 law or rule, all decisions to permit the correction or withdrawal
5 of bids or proposals, or to cancel awards or contracts based on a
6 mistake, shall be supported by a written determination made by
7 the chief procurement officer or a procurement officer.

8 (6) The contract shall be awarded with reasonable promptness
9 by written notice to the responsive bidder whose bid or proposal
10 was determined to be the most advantageous to this state.

11 (7) If it is impractical to adequately describe a purchase
12 description to address a unique service requirement that could
13 result in an award based on providing a technical solution and
14 competitive pricing, a request for information may be issued
15 inviting the business community to offer input into the develop-
16 ment of a formal request for proposal. The request for informa-
17 tion shall not include any type of pricing information. The
18 information gathered from the business community may be utilized
19 along with other internal information in the development of a
20 formal request for proposal.

21 Sec. 304. (1) When the chief procurement officer determines
22 that it is in this state's best interest to use a form of pro-
23 curement other than competitive bidding, the office of purchas-
24 ing, except as provided in subsections (2) and (3), may utilize
25 an alternate form of procurement. The reasons for using an
26 alternative form of procurement shall be documented and made part
27 of the procurement file.

1 (2) The use of a cost-plus-a-percentage-of-cost contract is
2 prohibited.

3 (3) A cost-reimbursement contract may be used only when a
4 determination is made in writing by the chief procurement officer
5 that a cost-reimbursement contract is likely to be less costly to
6 this state than any other type of contract or that it is imprac-
7 ticable to obtain the goods or services required except under a
8 cost-reimbursement contract.

9 Sec. 305. The chief procurement officer or designee shall
10 make all discretionary decisions concerning the solicitation,
11 award, amendment, cancellation, and appeal of contracts under
12 this act.

13 Sec. 306. Notwithstanding any other provision of this act,
14 the chief procurement officer, a designee, or agency official may
15 make or authorize others to make emergency procurements when
16 there exists a threat to public health, welfare, or safety under
17 emergency conditions as determined by the chief procurement
18 officer. However, emergency procurements shall be made with as
19 much competition as is practicable under the circumstances. The
20 agency official or procurement officer shall make a written
21 determination of the basis for the emergency and for the selec-
22 tion of the particular contractor shall be part of the procure-
23 ment file and shall be provided to the chief procurement officer
24 or designee for review and final determination, which final
25 determination shall be documented and made part of the procure-
26 ment file.

1 Sec. 307. An invitation for bids, a request for proposals,
2 or other solicitation may be canceled, or any or all bids or
3 proposals may be rejected in whole or in part as may be specified
4 in the solicitation, when it is in the best interests of the
5 state as determined by the chief procurement officer. The rea-
6 sons for the cancellation or rejection shall be documented by the
7 procurement officer and made part of the procurement file.

8 Sec. 308. A written determination of nonresponsibility of a
9 bidder or offeror shall be made by the chief procurement officer
10 or designee. The unreasonable failure of a bidder or offeror to
11 promptly supply information in connection with an inquiry with
12 respect to responsibility is grounds for a determination of non-
13 responsibility with respect to the bidder or offeror.

14 Sec. 309. (1) The office of the chief procurement officer
15 or designee may limit a solicitation to prequalified vendors to
16 meet statutory or licensing requirements applying to the solici-
17 tation or when the time necessary to verify vendor qualifications
18 would jeopardize timely award of contracts.

19 (2) A prospective supplier may be prequalified for a partic-
20 ular type of goods or services by the chief procurement officer
21 or designee. Solicitation mailing lists of potential contractors
22 shall include, but shall not be limited to, prequalified
23 suppliers.

24 Sec. 310. (1) Except as provided in subsection (3), a con-
25 tractor shall submit cost or pricing data and shall certify that,
26 to the best of the contractor's knowledge and belief, the cost or
27 pricing data submitted is accurate, complete, and current as of a

1 mutually determined specified date before the date of either of
2 the following:

3 (a) The pricing of any contract awarded by competitive bid-
4 ding where the total contract price is expected to exceed an
5 estimated amount established by the chief procurement officer.

6 (b) The pricing of any change order or contract modification
7 that is expected to exceed an estimated amount established by the
8 chief procurement officer.

9 (2) A contract, change order, or contract modification under
10 which a certificate is required shall contain a provision that
11 the price to this state, including profit or fee, shall be
12 adjusted by the chief procurement officer to exclude any signifi-
13 cant sums by which this state finds that the price was increased
14 because the contractor-furnished cost or pricing data was inaccu-
15 rate, incomplete, or not current as of the date agreed upon
16 between the parties.

17 (3) The requirements of subsections (1) and (2) do not apply
18 to contracts in which 1 or more of the following are true:

19 (a) The contract price is based on adequate price
20 competition.

21 (b) The contract price is based on established catalog
22 prices or market prices.

23 (c) The contract prices are set by law or rule.

24 (d) The chief procurement officer determines in writing that
25 the requirements of this section may be waived, and the reasons
26 for the waiver are stated in that writing.

1 Sec. 311. (1) Except as provided in subsection (2) and as
2 otherwise provided by law, a contract for goods or services may
3 be entered into for any period of time considered to be in the
4 best interest of this state provided the term of the contract and
5 conditions of renewal or extension, if any, are included in the
6 solicitation and funds are available for the first fiscal period
7 at the time of contracting. Payment and performance obligations
8 for succeeding fiscal periods are subject to the availability and
9 appropriation of funds for the payment and performance
10 obligations.

11 (2) The chief procurement officer, a procurement officer, or
12 a designee shall not enter into lease purchases or installment
13 purchases for periods exceeding the anticipated useful life of
14 the items purchased or leased.

15 Sec. 312. The chief procurement officer or designee, at
16 reasonable times, may inspect the part of the plant or place of
17 business of a contractor or any subcontractor that is related to
18 the performance of a contract awarded or to be awarded by this
19 state.

20 Sec. 313. The chief procurement officer or designee, at
21 reasonable times and places, may audit the books and records of
22 any person who receives a contract, change order, or contract
23 modification for which cost or pricing data is required. The
24 contractor shall maintain the books and records that relate to
25 the cost or pricing data for 3 years from the date of final pay-
26 ment under the contract, unless a shorter period is otherwise

1 authorized in writing by the chief procurement officer or
2 designee.

3 Sec. 314. If collusion or other anticompetitive practices
4 are suspected among any bidders or offerors, a notice of the rel-
5 evant facts shall be transmitted by the chief procurement officer
6 to the attorney general.

7 Sec. 315. All procurement records shall be retained and
8 disposed of pursuant to records retention guidelines and sched-
9 ules approved by the attorney general. All retained documents
10 shall be made available to the attorney general or a designee
11 upon request and proper receipt for the documents.

12 Sec. 316. (1) The office of the chief procurement officer
13 shall maintain a record of all contracts entered into under this
14 act for a minimum of 5 years. The record shall contain all of
15 the following:

16 (a) Each contractor's name.

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

18 (c) A listing of the goods or services procured under each
19 contract.

20 (d) Any other information the chief procurement officer or
21 designee considers necessary.

22 (2) The record described in subsection (1) is available for
23 public inspection as provided by law.

24 ARTICLE 4

25 Sec. 401. As used in this article, "specification" means
26 any description of the physical or functional characteristics, or
27 of the nature of goods or services. It may include a description

1 of any requirement for inspecting, testing, or preparing goods or
2 services for delivery.

3 Sec. 402. The chief procurement officer or designee shall
4 prepare, issue, revise, maintain, and monitor the use of specifi-
5 cations for goods and services required by state agencies.

6 Sec. 403. (1) The chief procurement officer or designee
7 shall obtain expert advice and assistance, when appropriate, from
8 personnel of using agencies in the development of specifications
9 and may delegate in writing to a using agency the authority to
10 prepare and utilize its own specifications.

11 (2) The chief procurement officer or designee shall deliver
12 specifications to promote overall economy for the purposes
13 intended and encourage competition in satisfying this state's
14 needs.

15 ARTICLE 5

16 Sec. 501. The chief procurement officer or designee may
17 permit or require the inclusion of clauses providing for adjust-
18 ments in prices, time of performance, or other contract provi-
19 sions that shall be stated in the contract.

20 ARTICLE 6

21 Sec. 601. (1) The office of the chief procurement officer
22 may enter into a cooperative purchasing agreement with 1 or more
23 other states or public entities for the purchase of goods and
24 services, including, but not limited to, recycled goods necessary
25 for state programs.

26 (2) The office of the chief procurement officer shall
27 provide assistance to any city, village, county, township, school

1 district, intermediate school district, nonprofit hospital,
2 institution of higher education, community or junior college, or
3 the legislative or judicial branch of this state for purchasing
4 services on a fee basis. Fees collected for the provision of
5 that assistance are appropriated for the additional expenses
6 incurred.

7 ARTICLE 8

8 Sec. 801. As used in this article:

9 (a) "Excess goods" means any goods other than expendable
10 goods having a remaining useful life but that are no longer
11 required by the using agency in possession of the goods.

12 (b) "Expendable goods" means all tangible goods other than
13 nonexpendable goods.

14 (c) "Goods" means all goods, as that term is defined in
15 section 110, that are owned by this state.

16 (d) "Nonexpendable goods" means all tangible goods having an
17 original acquisition cost of over \$100.00 per unit and a probable
18 useful life of more than 1 year.

19 (e) "Surplus goods" means any goods other than expendable
20 goods no longer having any use to this state. Surplus goods
21 include obsolete goods, scrap materials, and nonexpendable goods
22 that have completed their useful life cycle.

23 Sec. 802. Except as otherwise provided by law, the chief
24 procurement officer is responsible for all of the following:

25 (a) The management of goods during their entire life cycle.

26 (b) The sale, lease, or disposal of surplus goods by public
27 auction, competitive bidding, donation, or other appropriate

1 method determined by the chief procurement officer. However, an
2 employee of the owning or disposing agency shall not be entitled
3 to purchase surplus goods unless acquired by public auction.

4 (c) Transfer of excess goods.

5 Sec. 803. Except as otherwise provided by law, the chief
6 procurement officer shall allocate proceeds from the sale, lease,
7 or disposal of surplus goods.

8 ARTICLE 9

9 Sec. 901. (1) A bidder, offeror, or contractor who is
10 aggrieved in connection with the solicitation or award of a con-
11 tract may protest to the chief procurement officer. The protest
12 shall be submitted in writing within 14 days after the aggrieved
13 person knows or should have known of the facts giving rise to the
14 grievance.

15 (2) The chief procurement officer shall have the authority,
16 before the commencement of an action in court concerning the con-
17 troversy, to settle and resolve a protest of an aggrieved bidder,
18 offeror, or contractor concerning the solicitation or award of a
19 contract.

20 (3) If the protest is not resolved, the chief procurement
21 officer shall issue a decision in writing regarding the protest
22 within 180 days after the protest is submitted to the chief pro-
23 curement officer. The written decision shall state the reasons
24 for the action taken.

25 (4) The office of the chief procurement officer shall imme-
26 diately mail or otherwise furnish a copy of the decision under

1 subsection (3) to the protestant and any other intervening
2 party.

3 (5) A decision under subsection (3) is final and
4 conclusive.

5 (6) If the chief procurement officer fails to issue a writ-
6 ten decision required under subsection (3) within 180 days after
7 the protest is submitted to the chief procurement officer, then
8 the protestant may proceed as if an adverse, final, and conclu-
9 sive decision has been received.

10 Sec. 902. (1) After reasonable notice to the person
11 involved and reasonable opportunity for that person to be heard,
12 the chief procurement officer has the authority to debar a person
13 for cause from consideration for award of contracts. The chief
14 procurement officer shall not debar a person for a period of more
15 than 3 years without a right to a reinstatement hearing. The
16 chief procurement officer has authority to suspend a person from
17 consideration for award of contracts if there is probable cause
18 for debarment. The chief procurement officer shall not suspend a
19 person for a period exceeding 3 months.

20 (2) A person may be debarred or suspended for any of the
21 following reasons:

22 (a) Conviction for commission of a criminal offense as an
23 incident to obtaining or attempting to obtain a public or private
24 contract or subcontract, or in the performance of a contract or
25 subcontract.

26 (b) Conviction under state or federal statutes of
27 embezzlement, theft, forgery, bribery, falsification or

1 destruction of records, receiving stolen property, or any other
2 offense indicating a lack of business integrity or business hon-
3 esty that currently, seriously, and directly affects responsibil-
4 ity as a state contractor.

5 (c) Conviction under state or federal antitrust statutes
6 arising out of the submission of bids or proposals.

7 (d) Violation of 1 or more of the following contract provi-
8 sions, of a character that is regarded by the chief procurement
9 officer to be so serious as to justify debarment action:

10 (i) Failure to perform pursuant to the specifications or
11 within the time limit provided in the contract.

12 (ii) A recent record of failure to perform or of unsatisfac-
13 tory performance pursuant to the terms of 1 or more contracts.
14 However, failure to perform or unsatisfactory performance caused
15 by acts beyond the control of the contractor shall not be consid-
16 ered to be a basis for debarment.

17 (e) If an officer or owner of a 25% or greater share of a
18 business does anything described in this subsection.

19 (f) Any other cause the chief procurement officer determines
20 to be so serious and compelling as to affect responsibility as a
21 state contractor.

22 (3) The chief procurement officer shall issue a written
23 decision to debar or suspend. The written decision shall do both
24 of the following:

25 (a) State the reasons for the action taken.

26 (b) Inform the debarred or suspended person involved of that
27 person's rights to judicial review as provided in this act.

1 (4) The office of the chief procurement officer shall
2 immediately mail or otherwise furnish a copy of the decision
3 under subsection (3) to the debarred or suspended person and any
4 other party intervening.

5 (5) A decision under subsection (3) is final and
6 conclusive.

7 Sec. 903. (1) Before the commencement of an action in a
8 court, the chief procurement officer has authority to settle and
9 resolve a controversy between this state and a contractor that
10 arises under, or relates to, a contract between this state and a
11 contractor.

12 (2) If a controversy is not resolved by mutual agreement,
13 the chief procurement officer shall promptly issue a decision in
14 writing. The written decision shall do both of the following:

15 (a) State the reasons for the action taken.

16 (b) Inform the contractor of the right to judicial review as
17 provided in this article.

18 (3) The office of the chief procurement officer shall imme-
19 diately mail or otherwise furnish a copy of the decision under
20 subsection (2) to the contractor.

21 (4) The decision under subsection (2) is final and
22 conclusive.

23 (5) If the chief procurement officer fails to issue a writ-
24 ten decision required under subsection (2) within 180 days after
25 written request for a final decision, or within a longer period
26 as may be agreed upon by the parties, then the contractor may

1 proceed as if an adverse, final, and conclusive decision has been
2 received.

3 Sec. 904. Sections 905 and 906 apply where it is determined
4 administratively, or upon judicial review, that a solicitation or
5 award of a contract is in violation of law.

6 Sec. 905. If before an award of a contract it is determined
7 that a solicitation or proposed award of a contract is in viola-
8 tion of law, then the solicitation or proposed award shall be
9 canceled or revised to comply with the law.

10 Sec. 906. If after an award of a contract it is determined
11 and documented in the procurement file that a solicitation or
12 award of a contract is in violation of law, then 1 of the follow-
13 ing shall applies:

14 (a) If the person awarded the contract has not acted fraudu-
15 lently or in bad faith, 1 of the following shall occur:

16 (i) The contract may be ratified and affirmed, if it is
17 determined by the chief procurement officer that doing so is in
18 the best interests of this state.

19 (ii) The contract may be terminated and the person awarded
20 the contract shall be compensated for the actual expenses reason-
21 ably incurred under the contract before the termination.

22 (b) If the person awarded the contract has acted fraudu-
23 lently or in bad faith, 1 of the following shall occur:

24 (i) The contract may be declared null and void by the chief
25 procurement officer.

26 (ii) The contract may be ratified and affirmed by the chief
27 procurement officer if such action is in the best interests of

1 this state, without prejudice to the state's rights to damages as
2 may be appropriate.

3 Sec. 907. (1) The circuit court has jurisdiction over an
4 action between this state and a bidder, offeror, or contractor,
5 to determine whether a solicitation or award of a contract is
6 pursuant to the constitution, statutes, rules, and the terms and
7 conditions of the solicitation.

8 (2) The circuit court shall have jurisdiction over an action
9 between this state and a person who is subject to a suspension or
10 debarment proceeding, to determine whether the debarment or sus-
11 pension is pursuant to the constitution, statutes, and rules.

12 (3) The circuit court shall have jurisdiction over an action
13 between this state and a contractor, for any cause of action
14 relating to the contract.

15 Sec. 908. (1) An action under section 907(1) shall be ini-
16 tiated as follows:

17 (a) Within 30 days after the aggrieved person knows or
18 should have known of the facts giving rise to the action.

19 (b) Within 14 days after receipt of a final administrative
20 decision pursuant to section 901(3).

21 (2) An action under section 907(2) shall be commenced within
22 6 months after receipt of the decision of the chief procurement
23 officer.

24 (3) The statutory limitations on an action commenced pursu-
25 ant to section 907(3) concerning actions on a contract or for
26 breach of contract shall be filed within 12 months after receipt
27 of the decision of the chief procurement officer.

1 Sec. 909. This act shall take effect January 1, 1995.

2 Sec. 910. This act shall not take effect unless Senate Bill

3 No. 772 of

4 the 87th Legislature is enacted into law.