

(H. B. 1064)
(Reconsidered)

(No. 237)

(Approved August 31, 2004)

AN ACT

To establish uniform parameters in the procedures for contracting professional or consulting services for government agencies and entities in the Commonwealth of Puerto Rico, and for other purposes.

STATEMENT OF MOTIVES

In the last few years, a bitter debate has been taking place concerning the professional or consulting services contracts granted by the Government of the Commonwealth of Puerto Rico. Controversies about this type of contract have always revolved around the political party affiliation of the contractor.

As a matter of fact, during some government administrations a large number of contracts have been centered among a small group of professionals. Some of these contracted firms whose main offices are located outside of Puerto Rico earn high fees in proportion to the influence they may have in both the Legislative and Executive branches of the U. S. Government.

The Comptroller of Puerto Rico, in a letter addressed to public officers containing an attached manual on the requirements to be included in the professional or consulting services contracts granted by government entities, indicates that the procedures for selecting a good service shall be fair to the contracted party, to the contracting government entity, and above all, to the people.

The purpose of this Act is to consolidate in a single statute the requirements for the professional or consulting services contracts granted by government entities to individuals and private entities for their professional or consulting services.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.-For the purposes of this Act, the following words shall have the meaning indicated below:

- A. Contract - Professional or consulting services contract.
- B. Contractors - Any natural or juridical person to whom a government entity has granted, or is about to grant, a professional services contract.
- C. Government Entity - The departments, agencies, public corporations, instrumentalities and municipalities of the Commonwealth of Puerto Rico. Expressly excluded are the Judiciary and the Legislative Branches.
- D. Professional or Consulting Services – are those whose primary purpose consists in providing intellectual, creative or artistic products or in the management of highly technical or specialized skills.

Section 2.-The contracts for professional or consulting services shall be especially perfected and used solely when the government entity lacks or is unable to use the internal resources to be contracted, or when the expertise, skills or experience of the contractor are needed to achieve the purposes for which the same is contracted. Any contracting procedure executed between a government entity and a contractor shall take into account the real need for the services to be contracted as well as the financial situation and the budget of the contracting government entity.

Section 3.-Any contract executed between a government entity and a contractor shall meet the following requirements:

- A. The execution of a professional or consulting services contract between a contractor and the Government shall be prospective. The government entities shall pay solely for the services rendered.
- B. The legal provision that authorizes the government entity to grant contracts shall be formalized in writing and included in the text of the

contract.

- C. The contract shall include the full name of the contractor as registered in the Vital Statistics Registry or in the Department of Vital Statistics of his/her place of origin. When contracting a juridical person, its full name as it appears in the Register of Corporations or Partnerships of the Department of State or of the Department of the Treasury, as the case may be, must be included and the person appearing as its representative must be identified.
- D. The contract must include a detailed description of the personal information of the contractor. As part of the description of the contractor, the contract shall indicate the civil status, legal age, domicile and profession of the contractor. If the contractor is a corporate entity, a certified copy of its articles of incorporation issued by the Department of State must be included.
- E. The contract shall indicate the social security number of the party to be contracted. When contracting a juridical person, the employer social security number shall be included. When the contracting party is foreign and does not have a social security number, its passport or visa number shall be used.
- F. The contract shall establish the dates of its execution and of its effectiveness. As a general rule, government entities may not grant contracts that cover more than a fiscal year so as not to encumber future budgets. A contract may cover two fiscal years, but it shall be limited to twelve months and include a clause specifying that it shall terminate with the close of the year and that it shall be extended for twelve calendar months, provided the parties agree and that there are funds available in the appropriate budgetary item. As an exception, multi-annual government

contracts shall be allowed when the service can be obtained more efficiently and economically and when they are essential to guarantee the public service.

- G. The contract shall indicate precisely which services or duties are required by the government. The contracted services must be described in detail in the contract text.
- H. It is necessary to establish in the contract the maximum amount to be paid to achieve an adequate fiscal control.
- I. The contract shall establish the manner of payment, that is, whether the invoice shall be based upon fees per hour, or by tasks or finished phases, or by means of a lump sum after the services to be rendered have been completed, among others.
- J. The invoice shall be specific, itemized and accompanied by a report detailing the services rendered and the hours worked in the rendering of said services. The invoice submitted shall include a certification indicating that the services were rendered and have not yet been paid for. It shall also indicate that no public servant of the contracting entity is a party to or has any interest in the profits or benefits product of the contract object of said invoice, and that if having been a party to or having had an interest in the profits or benefits product of the contract, the invoice shall specify whether a dispensation has been issued in that regard.

Section 4.-The fees that may be collected by the contractors shall be limited as follows:

- A. The fees to be paid to the contractor shall be based on the real market value of the services to be rendered. The contracting government entity shall fix the fees within reason.
- B. In all contracts executed between the government entity and the

contractor, the real need for the contracted services, the financial condition and the budget of the government entity shall be considered.

Section 5.-All government entities shall see to it that when a contract is granted the special laws and regulations that apply are complied with, according to the kind of services to be contracted. Pursuant to the above, the following mandatory clauses shall be made part of the contract:

- A. The contractor shall certify that it has filed income tax returns during the last five tax years prior to the year in which the contract is to be executed and that it does not have outstanding tax debts with the Commonwealth of Puerto Rico of any sort, or that it is under a payment plan whose terms and conditions are being complied with.

In those contracts whose payment for services exceeds \$16,000 per year, it shall be necessary to include the following certifications in the contract:

- (1) Two certifications issued by the Treasury Department, one on the absence of tax debts or the existence of a payment plan and the other certifying that income tax returns have been filed in the last five years.
- (2) A certification from the Municipal Revenues Collection Center on the absence of any tax debt or the existence of a payment plan.
- (3) A certification from the Department of Labor and Human Resources on the payment of unemployment insurance, temporary disability, or social security, as applicable.
- (4) A negative debt certification from the Child Support Administration. This requirement shall only apply if the contractor is an individual.

The contract shall include a clause stating that said documents have been attached to the contract or that the party has been granted a reasonable term to obtain said documents.

- B. The contract shall identify the legal provision authorizing the execution of the contract.
- C. No public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.
- D. No executive agency may execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect economic interest during the last four (4) years prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice.
- E. No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. The contracting described in this subsection may only be established without having to request and obtain authorization from the Governor as follows:
 - 1. In contracts valued at three thousand (3,000) dollars or less which occur only once in any fiscal year.
 - 2. In lease, permutation, purchase and sale, loans, and mortgage

insurance contracts or those of any other nature which pertain to a housing unit and/or a lot provided or to be financed and whose financing is insured or guaranteed by a government agency.

3. In service, loan, guarantee and incentive programs sponsored by government agencies.

In the cases specified in clauses (2) and (3) of this subsection, the contracting agency shall authorize the transactions provided that the following requirements concur:

- a. When dealing with contracts, loans, insurance, guarantees or transactions available to any qualified citizen.
 - b. When the standards for eligibility are of general application.
 - c. When the public officer or employee complies with all the standards of eligibility and he/she is not, directly or indirectly given preferential treatment different from that given to the general public.
- F. No public officer or employee who has the power to approve or authorize contracts shall evaluate, consider, approve or authorize any contract between an executive agency and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.
- G. No public officer or employee may execute or authorize a contract with any private person or knowing that such a person is in turn the representative of particular interests in cases or issues involving conflict of interest or public policy between the contracting government agency and the particular interests represented by said private person. For these

purposes, every government agency shall require that any private person with whom it executes a contract include a contractual clause in which said private person certifies that he/she is not involved in any conflict of interest or of public policy, pursuant to the facts described in this subsection.

- H. No executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after two (2) years have elapsed from the time said person has ceased working as such. The Governor may issue a dispensation regarding the applicability of this provision provided that said dispensation is for the benefit of the public service. This prohibition shall not apply to contracts for services rendered *ad honorem*.
- I. A clause shall be included to provide for the corresponding withholdings established in the Internal Revenue Code.
- J. The budgetary item from which the fees of the contractor shall be paid shall be indicated therein.
- K. A clause to provide that the contracted person is not duty bound to pay child support, or if so, that said person is up to date or has a payment plan to such effects.
- L. A clause indicating that the contracting government entity may rescind the contract by giving notice thirty (30) days prior to its being rescinded, or within a lesser term, depending upon the services to be contracted.
- M. A clause indicating that the agency may annul the contract immediately in cases of negligence, dereliction of duties or noncompliance by the contractor.
- N. The contract shall contain a clause stating that, if required, the necessary dispensation has been obtained from any government entity and that said

dispensation shall become part of the contracting record.

- Ñ. The contractor shall certify in the professional services contract that he/she has not been convicted for offenses against public integrity, as defined in the Penal Code, or of embezzlement of public funds, and that he/she has not been found guilty of any such type of offense in the Courts of the Commonwealth of Puerto Rico, the Federal Courts or any Courts of any jurisdiction of the United States. Should the contractor be found guilty of the aforementioned offenses, the professional or consulting services contract shall be rescinded.
- O. In contracts with individuals, a clause shall be included indicating that the contractor receives no payments or compensation for regular services rendered under a designation from any other public entity, except those authorized by Law.
- P. In professional contracts, a clause shall be included, under which the contractor accepts being knowledgeable of the rules of ethics of his/her profession and assumes responsibility for his/her own actions.

Section 6.-This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 237 (H.B. 1064) (Reconsidered) of the 7th Session of the 14th Legislature of Puerto Rico:

AN ACT to establish uniform parameters in the procedures for contracting professional or consulting services for government agencies and entities in the Commonwealth of Puerto Rico, and for other purposes,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 19th of September of 2005.

Francisco J. Domenech
Director