

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 441 Session of
1989

INTRODUCED BY GODSHALL, S. H. SMITH, COY, MRKONIC, TIGUE,
DISTLER, ROBBINS, GLADECK, MERRY, CIVERA, DEMPSEY, PHILLIPS,
NOYE, CARLSON, HERMAN, STABACK, ALLEN, McVERRY, HESS, FARGO,
GEIST, DeLUCA, NAHILL, JOHNSON, GIGLIOTTI, HALUSKA, REBER,
YANDRISEVITS, TRELLO, VROON, BUNT, McHALE, OLASZ, TRICH,
RAYMOND, CORNELL, WAMBACH, FLICK, VEON, G. SNYDER, HECKLER,
MARSICO AND J. H. CLARK, FEBRUARY 14, 1989

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 28, 1989

AN ACT

1 ~~Amending the act of February 1, 1966 (1965 P.L.1656, No.581),~~ <—
2 ~~entitled "An act concerning boroughs, and revising, amending~~
3 ~~and consolidating the law relating to boroughs," restricting~~
4 ~~certain persons from bidding on contracts.~~
5 RELATING TO DEBARMENT FROM BIDDING ON GOVERNMENTAL CONTRACTS. <—

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

8 ~~Section 1. Section 1402 of the act of February 1, 1966 (1965~~ <—
9 ~~P.L.1656, No.581), known as The Borough Code, is amended by~~
10 ~~adding subsections to read:~~

11 ~~Section 1402. Regulation of Contracts. * * *~~

12 ~~(g) No person who or entity which, as a contractor or~~
13 ~~subcontractor, supplied goods or services to a government or~~
14 ~~government instrumentality and has been convicted of, or has~~
15 ~~pleaded guilty or nolo contendere to, a Federal or State crime~~
16 ~~involving fraud upon a government or a government~~

~~instrumentality for acts or omissions arising out of the
supplying of goods or services, and no entity in which that
person or entity has a substantial interest, may bid on a
contract for a period of three years after such conviction or
plea. For purposes of this subsection, the following words and
phrases shall have the following meanings:~~

~~(1) "Crime" means any criminal act committed after the
effective date of this amendatory act for which the maximum
possible penalty exceeds a fine of three hundred dollars (\$300)
or exceeds imprisonment for ninety days.~~

~~(2) "Entity" means any association, corporation, limited
partnership, partnership, or other business or nonprofit
organization.~~

~~(3) "Fraud" includes, but is not limited to:~~

~~(i) A misrepresentation of a material fact that is not made
honestly and in good faith.~~

~~(ii) A promise, representation or prediction as to the
future that is not made honestly and in good faith.~~

~~(iii) An intentional failure to disclose a material fact.~~

~~(iv) A fictitious or pretended purchase or sale of a
security.~~

~~(v) The gaining, through the sale of a security, of an
underwriting or promotion fee or profit or a selling or managing
fee or profit that is so gross or exorbitant as to be
unconscionable. This includes a scheme, device or artifice to
obtain such a profit, fee or commission.~~

~~(vi) A scheme, device or artifice to defraud a prospective
or actual customer, client or subscriber of securities, money or
property.~~

~~(4) "State" means the District of Columbia and any~~

1 ~~possession, state, territory or trusteeship of the United~~
2 ~~States.~~

3 ~~(5) "Substantial interest" means serving as a director,~~
4 ~~limited partner, officer, partner or proprietor, or owning more~~
5 ~~than ten percent of the number of shares of voting stock or more~~
6 ~~than twenty percent of the total number of shares of stock.~~

7 ~~(h) The borough may require the following information to be~~
8 ~~submitted with the bid: a sworn statement by the bidder and, if~~
9 ~~the affiant is an entity, by every person or entity having a~~
10 ~~substantial interest therein, listing all Federal and state~~
11 ~~convictions of, and pleas of guilty or nolo contendere to, any~~
12 ~~crime within three years prior to the date of the statement,~~
13 ~~said statement to be dated no more than one week prior to the~~
14 ~~date set for the opening of bids.~~

15 ~~Section 2. This act shall take effect in 60 days.~~

16 SECTION 1. SHORT TITLE.

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17 THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE BID DEBARMENT
18 ACT.

19 SECTION 2. DEFINITIONS.

20 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
21 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
22 CONTEXT CLEARLY INDICATES OTHERWISE:

23 "ENTITY." ANY ASSOCIATION, CORPORATION, LIMITED PARTNERSHIP,
24 PARTNERSHIP OR OTHER BUSINESS OR NONPROFIT ORGANIZATION.

25 "SECRETARY." THE SECRETARY OF COMMUNITY AFFAIRS OF THE
26 COMMONWEALTH.

27 "SUBSTANTIAL INTEREST." AN INDIVIDUAL DIRECTLY INVOLVED IN
28 THE DAY-TO-DAY MANAGEMENT OF A BUSINESS SERVING AS A DIRECTOR,
29 LIMITED PARTNER, OFFICER, PARTNER OR PROPRIETOR, OR AN
30 INDIVIDUAL OR AN ENTITY DIRECTLY INVOLVED IN THE DAY-TO-DAY

1 MANAGEMENT OF A BUSINESS AND OWNING MORE THAN 10% OF THE NUMBER
2 OF SHARES OF VOTING STOCK OR MORE THAN 20% OF THE TOTAL NUMBER
3 OF SHARES OF STOCK.

4 SECTION 3. CRIMINAL RECORD.

5 ALL BIDS SUBMITTED BY ANY INDIVIDUAL OR ENTITY TO SUPPLY
6 GOODS AND SERVICES TO A GOVERNMENT OR GOVERNMENT INSTRUMENTALITY
7 SHALL CONTAIN A SWORN STATEMENT BY THE BIDDER LISTING ALL
8 CONVICTIONS OF OR PLEAS OF GUILTY OR NOLO CONTENDERE TO ANY
9 CRIME ENUMERATED IN SECTION 4(B) WITHIN THREE YEARS PRIOR TO THE
10 DATE OF THE STATEMENT BY THE INDIVIDUAL OR ENTITY AND BY EVERY
11 INDIVIDUAL OR ENTITY HAVING A SUBSTANTIAL INTEREST IN THE
12 BUSINESS OF THE BIDDER, SAID STATEMENT TO BE DATED NO MORE THAN
13 ONE WEEK PRIOR TO THE DATE SET FOR THE OPENING OF BIDS.

14 SECTION 4. DEBARMENT.

15 (A) PROHIBITION ON ACCEPTING BIDS.--NO BID SHALL BE ACCEPTED
16 BY ANY GOVERNMENT OR GOVERNMENT INSTRUMENTALITY FROM ANY
17 INDIVIDUAL WHO OR ENTITY WHICH HAS BEEN CONVICTED OF OR HAS
18 PLEADED GUILTY OR NOLO CONTENDERE, TO ANY CRIME ENUMERATED IN
19 SUBSECTION (B) FOR ACTS OR OMISSIONS ARISING OUT OF SUPPLYING
20 GOODS AND SERVICES TO A GOVERNMENT OR GOVERNMENT
21 INSTRUMENTALITY, NOR SHALL ANY BID BE ACCEPTED FROM ANY ENTITY
22 IN WHICH SUCH AN INDIVIDUAL OR ENTITY HAS A SUBSTANTIAL
23 INTEREST.

24 (B) CRIMES.--THE FOLLOWING CRIMES SHALL BE THE BASIS OF
25 DEBARRING AN INDIVIDUAL OR ENTITY PURSUANT TO SUBSECTION (A):

26 (1) 18 PA.C.S. § 911 (RELATING TO CORRUPT
27 ORGANIZATIONS).

28 (2) 18 PA.C.S. CH. 39 (RELATING TO THEFT AND RELATED
29 OFFENSES) WHEREIN THE VICTIM IS A MUNICIPALITY.

30 (3) 18 PA.C.S. § 4108 (RELATING TO COMMERCIAL BRIBERY

1 AND BREACH OF DUTY TO ACT DISINTERESTEDLY), WHEREIN ANY
2 PARTICIPANT TO THE CRIME WAS A MUNICIPAL EMPLOYEE.

3 (4) 18 PA.C.S. CH. 47 (RELATING TO BRIBERY AND CORRUPT
4 INFLUENCE).

5 (C) REPORTS.--UPON THE CONVICTION OF ANY INDIVIDUALS OR
6 ENTITIES OF ANY CRIMES ENUMERATED IN SUBSECTION (B) FOR ACTS OR
7 OMISSIONS ARISING OUT OF SUPPLYING GOODS AND SERVICES TO A
8 GOVERNMENT OR GOVERNMENT INSTRUMENTALITY, REPORTS SHALL BE FILED
9 WITH THE DEPARTMENT OF COMMUNITY AFFAIRS WHICH SHALL MAINTAIN
10 SUCH REPORTS IN A DIRECTORY AVAILABLE FOR PUBLIC INSPECTION AND
11 COPYING FOR A PERIOD OF THREE YEARS OR UNTIL A REHABILITATION
12 DETERMINATION IS MADE PURSUANT TO THIS ACT.

13 SECTION 5. REHABILITATION.

14 (A) ACCEPTANCE OF BIDS.--NOTWITHSTANDING SECTION 4, A BID
15 MAY BE ACCEPTED FROM AN INDIVIDUAL OR AN ENTITY AND CRIMES
16 ENUMERATED IN SECTION 4(B) ARE NOT REQUIRED TO BE REPORTED
17 PURSUANT TO SECTION 3, IF THE INDIVIDUAL OR ENTITY HAS
18 AFFIRMATIVELY DEMONSTRATED REHABILITATION BY A PREPONDERANCE OF
19 THE EVIDENCE TO THE SECRETARY. A FINDING OF REHABILITATION SHALL
20 NOT BE FOUND UNLESS, IN THE CASE OF AN INDIVIDUAL WHO IS MAKING
21 THE BID, THE INDIVIDUAL HAS PAID ANY FINES OR MADE ANY
22 RESTITUTION AND HAS BEEN DISCHARGED FROM PRISON FOR THE
23 COMMISSION OF THE CRIME. IN DETERMINING WHETHER AN ENTITY OR
24 INDIVIDUAL HAS AFFIRMATIVELY DEMONSTRATED REHABILITATION, THE
25 SECRETARY SHALL CONSIDER AND BASE THE DETERMINATION ON THE
26 FOLLOWING FACTORS:

27 (1) THE NATURE AND RESPONSIBILITIES OF THE POSITION A
28 CONVICTED INDIVIDUAL WOULD HOLD.

29 (2) THE NATURE AND SERIOUSNESS OF THE OFFENSE.

30 (3) THE CIRCUMSTANCES UNDER WHICH THE OFFENSE OCCURRED.

1 (4) THE DATE OF THE OFFENSE.

2 (5) THE AGE OF THE INDIVIDUAL WHEN THE OFFENSE WAS
3 COMMITTED.

4 (6) WHETHER THE OFFENSE WAS AN ISOLATED OR REPEATED
5 INCIDENT.

6 (7) ANY SOCIAL CONDITIONS THAT MAY BE CONTRIBUTED TO THE
7 OFFENSE.

8 (8) IN THE CASE OF AN INDIVIDUAL, ANY EVIDENCE OF
9 REHABILITATION, INCLUDING GOOD CONDUCT IN PRISON OR IN THE
10 COMMUNITY, COUNSELING OR PSYCHIATRIC TREATMENT RECEIVED,
11 ACQUISITION OF ADDITIONAL ACADEMIC OR VOCATIONAL SCHOOLING,
12 SUCCESSFUL PARTICIPATION IN CORRECTIONAL WORK RELEASE
13 PROGRAMS OR THE RECOMMENDATION OF PERSON WHO HAVE OR HAVE HAD
14 THE APPLICANT UNDER THEIR SUPERVISION.

15 (9) THE REHABILITATION OF AN ENTITY SHALL BE ESTABLISHED
16 IF THE ENTITY DEMONSTRATES THE EXISTENCE AND UTILIZATION OF
17 FORMAL MANAGEMENT CONTROLS, INCLUDING THE DISCHARGE OF
18 INDIVIDUALS CONVICTED OF CRIMES SET FORTH IN SECTION 3(B), TO
19 MINIMIZE AND PREVENT THE OCCURRENCE OF THE CRIME FOR WHICH
20 THE ENTITY OR INDIVIDUAL HAS BEEN CONVICTED, PLEADED GUILTY
21 OR NOLO CONTENDERE. SUCH CONTROLS MAY INCLUDE, WITHOUT
22 LIMITATION, AUDITING PROGRAMS TO HELP ENSURE THE ADEQUACY OF
23 INTERNAL SYSTEMS TO ACHIEVE, MAINTAIN AND MONITOR COMPLIANCE
24 WITH APPLICABLE LAWS AND STANDARDS OR COMPLIANCE AUDITING
25 PROGRAMS TO HELP ENSURE FULL COMPLIANCE WITH APPLICABLE LAWS.

26 (10) THE BEST INTERESTS OF THE COMMONWEALTH.

27 (11) SUCH OTHER FACTORS AS THE SECRETARY MAY DEEM
28 RELEVANT.

29 (B) PETITIONS.--THE SECRETARY SHALL REVIEW PETITIONS FOR
30 REHABILITATION AND ISSUE DECISIONS REGARDING REHABILITATION

1 PURSUANT TO 2 PA.C.S. CH. 5 SUBCH. A (RELATING TO PRACTICE AND
2 PROCEDURE OF COMMONWEALTH AGENCIES). THE SECRETARY MAY APPOINT A
3 HEARING EXAMINER TO CONDUCT A HEARING AND ISSUE A PRELIMINARY
4 DECISION REGARDING A PETITION TO THE SECRETARY.

5 SECTION 6. FINDINGS; DECISION.

6 (A) PRELIMINARY BID; FINAL DECISIONS.--THE SECRETARY SHALL
7 ISSUE A PRELIMINARY DECISION WITHIN 30 DAYS OF A PETITION BY AN
8 INDIVIDUAL OR ENTITY PURSUANT TO THIS ACT. WITHIN 10 DAYS OF THE
9 RECEIPT OF A PRELIMINARY DECISION, THE PETITIONER MAY FILE
10 EXCEPTIONS TO THE DECISION. THE SECRETARY SHALL REVIEW
11 EXCEPTIONS FILED AND ISSUE A FINAL DECISION WITHIN 20 DAYS OF
12 THE RECEIPT OF ANY EXCEPTIONS. IN THE EVENT THAT TIMELY
13 EXCEPTIONS ARE NOT FILED TO A PRELIMINARY DECISION, THE DECISION
14 SHALL BE DEEMED FINAL. FAILURE BY THE SECRETARY TO ISSUE A
15 TIMELY PRELIMINARY OR FINAL DECISION SHALL CONSTITUTE A FINDING
16 OF REHABILITATION UNTIL SUCH TIME AS A DECISION IS RENDERED BY
17 THE SECRETARY. ANY BID ACCEPTED BY ANY GOVERNMENT OR GOVERNMENT
18 INSTRUMENTALITY SHALL BE DEEMED VALID AND MAY BE ACCEPTED
19 SUBJECT TO THE LAWS OF THIS COMMONWEALTH.

20 (B) FINDING OF FACTS.--THE SECRETARY'S DECISION SHALL
21 INCLUDE FINDINGS OF FACT AND CONCLUSIONS AS THEY RELATE TO THE
22 FACTORS CONTAINED IN SECTION 5.

23 (C) REVOCATION OF DECLARATIONS.--THE SECRETARY MAY REVOKE A
24 DECLARATION OF REHABILITATION IF, AFTER THE SECRETARY MAKES A
25 DECISION:

26 (1) THE BASIS FOR THE DECISION NO LONGER EXISTS.

27 (2) THE INDIVIDUAL, ENTITY OR ENTITY IN WHICH THE ENTITY
28 HAS A SUBSTANTIAL INTEREST HAS BEEN CONVICTED OF ANY
29 ADDITIONAL CRIME ENUMERATED IN SECTION 4(B).

30 SECTION 7. APPEAL.

1 AN APPEAL TAKEN BY THE ENTITY OR PERSON FROM THE DECISION BY
2 THE SECRETARY SHALL NOT ACT AS AN AUTOMATIC SUPERSEDEAS OF THE
3 DEBARMENT REQUIRED UNDER SECTION 4 OR REINSTATEMENT OF THE
4 DEBARMENT UNDER SECTION 5.
5 SECTION 8. EFFECTIVE DATE.
6 THIS ACT SHALL TAKE EFFECT IN 90 DAYS.