

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1375 Session of
1991

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TIGUE, HERSHEY AND SCHEETZ, MAY 13, 1991

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, MAY 13, 1991

AN ACT

1 Relating to debarment from bidding on governmental contracts.

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

4 Section 1. Short title.

5 This act shall be known and may be cited as the Bid Debarment
6 Act.

7 Section 2. Definitions.

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

11 "Entity." Any association, corporation, limited partnership,
12 partnership or other business or nonprofit organization.

13 "Political subdivision." As defined in 1 Pa.C.S. § 1991
14 (relating to definitions). The term shall also include municipal
15 authorities.

16 "Secretary." The Secretary of Community Affairs of the

1 Commonwealth.

2 "Substantial interest." An individual directly involved in
3 the day-to-day management of a business serving as a director,
4 limited partner, officer, partner or proprietor, or an
5 individual or an entity directly involved in the day-to-day
6 management of a business and owning more than 10% of the number
7 of shares of voting stock or more than 20% of the total number
8 of shares of stock.

9 Section 3. Criminal record.

10 All bids submitted by any individual or entity to supply
11 goods and services to a political subdivision shall contain a
12 sworn statement by the bidder listing all convictions of or
13 pleas of guilty or nolo contendere to any crime enumerated in
14 section 4(b) within three years prior to the date of the
15 statement by the individual or entity and by every individual or
16 entity having a substantial interest in the business of the
17 bidder, said statement to be dated no more than one week prior
18 to the date set for the opening of bids.

19 Section 4. Debarment.

20 (a) Prohibition on accepting bids.--No bid shall be accepted
21 by a political subdivision from any individual who or entity
22 which has been convicted of or has pleaded guilty or nolo
23 contendere, to any crime enumerated in subsection (b) for acts
24 or omissions arising out of supplying goods and services to a
25 political subdivision, nor shall any bid be accepted from any
26 entity in which such an individual or entity has a substantial
27 interest.

28 (b) Crimes.--The following crimes shall be the basis of
29 debarring an individual or entity pursuant to subsection (a):

30 (1) 18 Pa.C.S. § 911 (relating to corrupt

1 organizations).

2 (2) 18 Pa.C.S. Ch. 39 (relating to theft and related
3 offenses) wherein the victim is a municipality.

4 (3) 18 Pa.C.S. § 4108 (relating to commercial bribery
5 and breach of duty to act disinterestedly), wherein any
6 participant to the crime was a municipal employee.

7 (4) 18 Pa.C.S. Ch. 47 (relating to bribery and corrupt
8 influence).

9 (c) Reports.--Upon the conviction of any individuals or
10 entities of any crimes enumerated in subsection (b) for acts or
11 omissions arising out of supplying goods and services to a
12 political subdivision, reports shall be filed with the
13 Department of Community Affairs which shall maintain such
14 reports in a directory available for public inspection and
15 copying for a period of three years or until a rehabilitation
16 determination is made pursuant to this act.

17 Section 5. Rehabilitation.

18 (a) Acceptance of bids.--Notwithstanding section 4, a bid
19 may be accepted from an individual or an entity and crimes
20 enumerated in section 4(b) are not required to be reported
21 pursuant to section 3, if the individual or entity has
22 affirmatively demonstrated rehabilitation by a preponderance of
23 the evidence to the secretary or if the individual or entity has
24 severed any direct or indirect relationship with individuals
25 convicted of such crimes or any individuals responsible for the
26 conviction of an entity of such crimes. A finding of
27 rehabilitation shall not be found unless, in the case of an
28 individual who is making the bid, the individual has paid any
29 fines or made any restitution and has been discharged from
30 prison for the commission of the crime. In determining whether

1 an entity or individual has affirmatively demonstrated
2 rehabilitation, the secretary shall consider and base the
3 determination on the following factors:

4 (1) The nature and responsibilities of the position a
5 convicted individual would hold.

6 (2) The nature and seriousness of the offense.

7 (3) The circumstances under which the offense occurred.

8 (4) The date of the offense.

9 (5) The age of the individual when the offense was
10 committed.

11 (6) Whether the offense was an isolated or repeated
12 incident.

13 (7) Any social conditions that may be contributed to the
14 offense.

15 (8) In the case of an individual, any evidence of
16 rehabilitation, including good conduct in prison or in the
17 community, counseling or psychiatric treatment received,
18 acquisition of additional academic or vocational schooling,
19 successful participation in correctional work release
20 programs or the recommendation of persons who have or have
21 had the applicant under their supervision.

22 (9) The rehabilitation of an entity shall be established
23 if the entity demonstrates the existence and utilization of
24 formal management controls, including the discharge of
25 individuals convicted of crimes set forth in section 4(b), to
26 minimize and prevent the occurrence of the crime for which
27 the entity or individual has been convicted, pleaded guilty
28 or nolo contendere. Such controls may include, without
29 limitation, auditing programs to help ensure the adequacy of
30 internal systems to achieve, maintain and monitor compliance

1 with applicable laws and standards or compliance auditing
2 programs to help ensure full compliance with applicable laws.

3 (10) The best interests of the Commonwealth.

4 (11) Such other factors as the secretary may deem
5 relevant.

6 (b) Petitions.--The secretary shall review petitions for
7 rehabilitation and issue decisions regarding rehabilitation
8 pursuant to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and
9 procedure of Commonwealth agencies). The secretary may appoint a
10 hearing examiner to conduct a hearing and issue a preliminary
11 decision regarding a petition to the secretary.

12 Section 6. Findings and decisions.

13 (a) Preliminary bid and final decisions.--The secretary
14 shall issue a preliminary decision within 30 days of a petition
15 by an individual or entity pursuant to this act. Within 10 days
16 of the receipt of a preliminary decision, the petitioner may
17 file exceptions to the decision. The secretary shall review
18 exceptions filed and issue a final decision within 20 days of
19 the receipt of any exceptions. In the event that timely
20 exceptions are not filed to a preliminary decision, the decision
21 shall be deemed final. Failure by the secretary to issue a
22 timely preliminary or final decision shall constitute a finding
23 of rehabilitation until such time as a decision is rendered by
24 the secretary. Unless a final order not subject to appeal
25 denying a rehabilitation petition or revoking a prior
26 rehabilitation order has been entered, any bid accepted by a
27 political subdivision shall be deemed valid and may be accepted
28 subject to the laws of this Commonwealth. In the event a
29 contract is awarded to a bidder which has filed a rehabilitation
30 petition or the appeal of an order revoking a rehabilitation

1 petition, and such bidder is subsequently debarred, the contract
2 shall be terminated within 60 days of any final order denying
3 the petition.

4 (b) Finding of facts.--The secretary's decision shall
5 include findings of fact and conclusions as they relate to the
6 factors contained in section 5.

7 (c) Revocation of declarations.--The secretary may revoke a
8 declaration of rehabilitation if, after the secretary makes a
9 decision:

10 (1) The basis for the decision no longer exists.

11 (2) The individual, entity or entity in which the entity
12 has a substantial interest has been convicted of any
13 additional crime enumerated in section 4(b).

14 Section 7. Appeal.

15 An appeal taken by the entity or person from the decision by
16 the secretary shall not act as an automatic supersedeas of the
17 debarment required under section 4 or reinstatement of the
18 debarment under section 5.

19 Section 8. Effective date.

20 This act shall take effect in 90 days.