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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 199

Session of  
1983

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INTRODUCED BY REIBMAN, LEWIS, O'PAKE, ANDREZESKI AND FISHER,  
FEBRUARY 4, 1983

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AS AMENDED ON SECOND CONSIDERATION, JULY 12, 1983

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AN ACT

1 Regulating contractors, subcontractors and suppliers in dealings  
2 with governmental agencies; making certain activities  
3 unlawful; and providing penalties.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Antibid-  
8 rigging Act.

9 Section 2. Definitions.

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

13 "Bid-rigging." The concerted activity of two or more persons  
14 to determine in advance the winning bidder of a contract let or  
15 to be let for competitive bidding by a governmental agency. It  
16 shall include, but not be limited to, any one or more of the  
17 following:

18 (1) Agreeing to sell items or services at the same

1 price.

2 (2) Agreeing to submit identical bids.

3 (3) Agreeing to rotate bids.

4 (4) Agreeing to share profits with a contractor who does  
5 not submit the low bid.

6 (5) Submitting prearranged bids, agreed upon higher or  
7 lower bids, or other complementary bids.

8 (6) Agreeing to set up territories to restrict  
9 competition.

10 (7) Agreeing not to submit bids.

11 "Governmental agency." The Commonwealth and any of its  
12 departments, boards, agencies, authorities and commissions, any  
13 political subdivisions, municipal corporations, home rule  
14 municipalities, school districts and any of their agencies,  
15 boards, commissions or authorities.

16 "Person." Any individual, partnership, corporation,  
17 association or other entity organized for the purpose of doing  
18 business as a contractor, subcontractor or supplier.

19 Section 3. Prohibited activities.

20 (a) Bid-rigging unlawful.--It shall be unlawful for any  
21 person to conspire, collude or combine with another in order to  
22 commit or attempt to commit bid-rigging involving:

23 (1) A contract for the purchase of equipment, goods,  
24 services or materials or for construction or repair let or to  
25 be let by a governmental agency.

26 (2) A subcontract for the purchase of equipment, goods,  
27 services or materials or for construction or repair with a  
28 prime contractor or proposed prime contractor for a  
29 governmental agency.

30 (b) Simultaneous bids.--Notwithstanding other provisions of

1 this act, it shall not be unlawful for the same person to  
2 simultaneously submit bids for the same work, or a portion  
3 thereof, as a proposed prime contractor and subcontractor.

4 (c) Fines and imprisonment.--Every person who violates this  
5 section commits a felony of the third degree and shall, upon  
6 conviction, be sentenced to pay a fine not to exceed \$1,000,000,  
7 if an entity other than an individual, or a fine not to exceed  
8 \$50,000, if an individual, or to serve a term of imprisonment  
9 for not more than three years, or both.

10 (d) Alternative civil penalty.--In lieu of criminal  
11 prosecution for violation of this section, the Attorney General  
12 may bring an action for a civil penalty. In this action, a  
13 person found by a court to have violated this section shall be  
14 liable for a civil penalty of not more than \$100,000.

15 (E) DISPOSITION OF FINES AND PENALTIES.--CRIMINAL FINES AND <—  
16 CIVIL PENALTIES COLLECTED UNDER SUBSECTIONS (C) AND (D) SHALL BE  
17 PAID INTO THE STATE TREASURY AND DEPOSITED IN THE APPROPRIATE  
18 FUND.

19 ~~(e)~~ (F) Factors to be considered in determining fines, <—  
20 imprisonment or civil penalties.--In determining the appropriate  
21 sanctions to be imposed for a violation of this section, the  
22 court shall consider at least the following three factors:

23 (1) The prior record and the number of previous  
24 violations.

25 (2) The net worth of the person.

26 (3) The size and amount of the contract involved.

27 ~~(f)~~ (G) Civil actions not barred.--Any conviction or civil <—  
28 penalty imposed under this section shall not bar the  
29 governmental agency from pursuing additional civil actions and  
30 administrative sanctions.

1       ~~(g)~~ (H) Limitation on prosecution.--No criminal prosecution     <—  
2 under this section shall be brought against a person who has  
3 been previously charged by information or indictment with a  
4 criminal violation of the Federal antitrust laws, based upon the  
5 same allegedly unlawful conduct upon which a criminal  
6 prosecution under this act could be based, where jeopardy has  
7 attached under the Federal prosecution.

8 Section 4. Civil action and damages.

9       (a) Government agency to have right of action.--Any  
10 governmental agency entering into a contract which is or has  
11 been the subject of activities prohibited by section 3 shall  
12 have a right of action against the participants in the  
13 prohibited activities to recover damages.

14       (b) Options.--The governmental agency shall have the option  
15 to proceed jointly and severally in a civil action against any  
16 one or more of the participants for recovery of the full amount  
17 of the damages. There shall be no right to contribution among  
18 participants not named defendants by the governmental agency.

19       (c) Measure of damages.--The measure of damages recoverable  
20 under this section shall be the actual damages, which damages  
21 shall be trebled plus the cost of suit, including a reasonable  
22 attorney's fee.

23       (d) When cause of action arises.--The cause of action shall  
24 arise at the time the governmental agency which entered into the  
25 contract discovered, or should have discovered, the conduct  
26 amounting to the offense declared to be unlawful by this act.  
27 The action shall be brought within four years of the date that  
28 the cause of action arose. No civil action shall be maintained  
29 after the expiration of 10 years from the date the contract was  
30 signed by the parties.

1 (e) Conviction to be dispositive of liability.--Any  
2 conviction under section 3 shall be dispositive of the liability  
3 of the participants with the only issues for trial being the  
4 fact of damage and amount of damages.

5 Section 5. Suspension or debarment.

6 (a) Maximum suspension or debarment.--A governmental agency  
7 proceeding under its rules and regulations to exclude or render  
8 ineligible a person from participation in contracts or  
9 subcontracts based upon conduct prohibited by section 3 shall  
10 limit the exclusion or ineligibility to a period not to exceed  
11 the following time periods:

12 (1) Three years in the case of a person found for the  
13 first time to have engaged in this conduct.

14 (2) Five years in the case of a person found to have  
15 engaged in this conduct for a second or subsequent time.

16 (b) Lists of persons excluded.--A governmental agency that  
17 lets a contract by competitive bidding shall maintain a current  
18 list of persons excluded or ineligible by reason of suspension  
19 or debarment for participation in contracts or subcontracts with  
20 that agency and shall furnish a copy of the list upon request to  
21 a person considering the submission of a bid as a prime  
22 contractor or as a subcontractor.

23 Section 6. Liability for increased costs.

24 A person who enters into a contract with a governmental  
25 agency, either directly as a contractor or indirectly as a  
26 subcontractor, during a period of suspension or debarment  
27 imposed upon that person by that agency under its rules and  
28 regulations shall be liable to the governmental agency and to an  
29 eligible contractor for increased costs incurred as a result of  
30 replacing the excluded or ineligible person.

1 Section 7. Noncollusion affidavits.

2 Noncollusion affidavits may be required by rule of any  
3 governmental agency from all bidders. Any such requirement shall  
4 be set forth in the invitation to bid. Failure of any bidder to  
5 provide a required affidavit to the governmental agency may be  
6 grounds for disqualification of his bid. Any required  
7 noncollusion affidavit shall state whether or not the bidder has  
8 been convicted or found liable for any violations of an act  
9 prohibited by State or Federal law in any jurisdiction involving  
10 conspiracy or collusion with respect to bidding on any public  
11 contract within the last three years. Any required noncollusion  
12 affidavit shall also state that a bidder's affidavit stating  
13 that the bidder has been convicted or found liable for an act,  
14 prohibited by State or Federal law in any jurisdiction,  
15 involving conspiracy or collusion with respect to bidding on any  
16 public contract within the last three years does not necessarily  
17 prohibit a governmental agency from accepting a bid from or  
18 awarding a contract to that bidder but may be a ground for  
19 administrative debarment or suspension in the discretion of a  
20 governmental agency, under the rules and regulations of that  
21 agency or otherwise by law on the basis of a lack of  
22 responsibility. The provisions of this section are in addition  
23 to and not in derogation of any other powers and authority of  
24 any governmental agency.

25 Section 8. Responsibility for enforcement.

26 (A) CRIMINAL PROSECUTION.--The Office of the Attorney  
27 General shall be responsible for investigating and prosecuting  
28 violations of section 3 and ~~civil actions arising under section~~  
29 ~~4. The Office of the Attorney General~~ may delegate the  
30 investigation and prosecution of violations of section 3

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1 relating to political subdivisions to the appropriate district  
2 attorney. Any delegation by the Attorney General to a district  
3 attorney may be rescinded at any time with or without cause.

4 (B) CIVIL ACTIONS.--THE OFFICE OF ATTORNEY GENERAL SHALL <—  
5 HAVE THE AUTHORITY TO BRING CIVIL ACTIONS UNDER SECTION 4 ON  
6 BEHALF OF THE COMMONWEALTH AND ANY OF ITS DEPARTMENTS, BOARDS,  
7 AGENCIES, AUTHORITIES AND COMMISSIONS. POLITICAL SUBDIVISIONS,  
8 MUNICIPAL CORPORATIONS, HOME RULE MUNICIPALITIES AND SCHOOL  
9 DISTRICTS SHALL HAVE THE RIGHT TO BRING A CIVIL ACTION UNDER  
10 SECTION 4. UPON THE FILING OF A COMPLAINT, A COPY THEREOF SHALL  
11 BE SERVED ON THE ATTORNEY GENERAL. THE PLAINTIFF, AT ANY TIME,  
12 MAY REQUEST THE ATTORNEY GENERAL TO ACT ON ITS BEHALF. THE  
13 ATTORNEY GENERAL, UPON DETERMINING THAT IT IS IN THE BEST  
14 INTEREST OF THE COMMONWEALTH, SHALL HAVE THE AUTHORITY TO  
15 INTERVENE ON BEHALF OF THE COMMONWEALTH IN SUCH ACTIONS.

16 Section 9. Investigation.

17 (a) Required attendance.--Whenever the Office of Attorney  
18 General believes that a person may be in possession, custody or  
19 control of documentary material or may have information relevant  
20 to the subject matter of a civil investigation for the purpose  
21 of ascertaining whether a person is or has been engaged in a  
22 violation of this act, he may require the attendance and  
23 testimony of witnesses and the production of books, accounts,  
24 papers, records, documents and files relating to the civil  
25 investigation; and, for this purpose, the Attorney General or  
26 his representatives may sign subpoenas, administer oaths or  
27 affirmations, examine witnesses and receive evidence during the  
28 investigation. A request for information shall state the subject  
29 matter of the investigation, the conduct constituting the  
30 alleged violation which is under investigation and the

1 provisions of this act applicable to the alleged violation. A  
2 request for documentary material shall describe the material to  
3 be produced with reasonable particularity so as to fairly  
4 identify the documents demanded, provide a return date within  
5 which the material is to be produced and identify the member of  
6 the Attorney General's staff to whom the material shall be  
7 given. In case of disobedience of a subpoena or the contumacy of  
8 a witness appearing before the Attorney General or his  
9 representative, the Attorney General or his representative may  
10 invoke the aid of a court of record of the Commonwealth, and the  
11 court may thereupon issue an order requiring the person  
12 subpoenaed to obey the subpoena or to give evidence or to  
13 produce books, accounts, papers, records, documents and files  
14 relative to the matter in question. Failure to obey an order of  
15 the court may be punished by the court as a contempt.

16 (b) Confidentiality.--No information or documentary material  
17 produced under a demand under this section shall, unless  
18 otherwise ordered by a court for good cause shown, be produced  
19 for inspection or copying by, nor shall the contents thereof be  
20 disclosed to, a person other than the Attorney General or his  
21 representative without the consent of the person who produced  
22 the information or material; except that the Attorney General or  
23 his representative shall disclose information or documentary  
24 material produced under this section or information derived  
25 therefrom to officials of a governmental agency affected by the  
26 alleged violation, for use by that agency in connection with an  
27 investigation or proceeding within its jurisdiction and  
28 authority, upon the prior certification of an appropriate  
29 official of the agency that the information shall be maintained  
30 in confidence other than use for official purposes. Under



1 reasonable terms and conditions as the Attorney General or his  
2 representative shall prescribe, the documentary material shall  
3 be available for inspection and copying by the person who  
4 produced the material or a duly authorized representative of  
5 that person. The Attorney General or his representative may use  
6 such documentary material or information or copies thereof as he  
7 determines necessary in the civil enforcement of this act,  
8 including presentation before any court. Material which contains  
9 trade secrets or other highly confidential matter shall not be  
10 presented except with the approval of the court in which a  
11 proceeding is pending after adequate notice to the person  
12 furnishing the material.

13 (c) Limitation on use.--No criminal prosecution under  
14 section 3 may be brought by either the Attorney General or a  
15 district attorney based solely upon information or documents  
16 obtained in a civil investigation under this section.

17 Section 10. Applicability.

18 This act shall apply to all contracts with governmental  
19 agencies entered into on or after the effective date of this  
20 act.

21 Section 11. Effective date.

22 This act shall take effect in 60 days.