

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

**SENATE BILL**  
**No. 199**

Session of  
1983

---

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

---

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF  
REPRESENTATIVES, AS AMENDED, SEPTEMBER 27, 1983

---

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

1 following:

2 (1) Agreeing to sell items or services at the same  
3 price.

4 (2) Agreeing to submit identical bids.

5 (3) Agreeing to rotate bids.

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

8 (5) Submitting prearranged bids, agreed upon higher or  
9 lower bids, or other complementary bids.

10 (6) Agreeing to set up territories to restrict  
11 competition.

12 (7) Agreeing not to submit bids.

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

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

21 Section 3. Prohibited activities.

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

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

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

1 governmental agency.

2 (b) Simultaneous bids.--Notwithstanding other provisions of  
3 this act, it shall not be unlawful for the same person to  
4 simultaneously submit bids for the same work, or a portion  
5 thereof, as a proposed prime contractor and subcontractor.

6 (c) Fines and imprisonment.--Every person who violates this  
7 section commits a felony of the third degree and shall, upon  
8 conviction, be sentenced to pay a fine not to exceed \$1,000,000,  
9 if an entity other than an individual, or a fine not to exceed  
10 \$50,000, if an individual, or to serve a term of imprisonment  
11 for not more than three years, or both.

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

17 (e) Disposition of fines and penalties.--Criminal fines and  
18 civil penalties collected under subsections (c) and (d) shall be  
19 paid into the State Treasury and deposited in the appropriate  
20 fund.

21 (f) Factors to be considered in determining fines,  
22 imprisonment or civil penalties.--In determining the appropriate  
23 sanctions to be imposed for a violation of this section, the  
24 court shall consider at least the following three factors:

25 (1) The prior record and the number of previous  
26 violations.

27 (2) The net worth of the person.

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

29 (g) Civil actions not barred.--Any conviction or civil  
30 penalty imposed under this section shall not bar the

1 governmental agency from pursuing additional civil actions and  
2 administrative sanctions.

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

10 Section 4. Civil action and damages.

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

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

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

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

1 after the expiration of 10 years from the date the contract was  
2 signed by the parties.

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

7 Section 5. Suspension or debarment.

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

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

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

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

25 Section 6. Liability for increased costs.

26 A person who enters into a contract with a governmental  
27 agency, either directly as a contractor or indirectly as a  
28 subcontractor, during a period of suspension or debarment  
29 imposed upon that person by that agency under its rules and  
30 regulations shall be liable to the governmental agency and to an

1 eligible contractor for increased costs incurred as a result of  
2 replacing the excluded or ineligible person.

3 Section 7. Noncollusion affidavits.

4 Noncollusion affidavits may be required by rule of any  
5 governmental agency from all ~~bidders~~ PERSONS. Any such <—  
6 requirement shall be set forth in the invitation to bid. Failure  
7 of any ~~bidder~~ PERSON to provide a required affidavit to the <—  
8 governmental agency may be grounds for disqualification of his  
9 bid. Any required noncollusion affidavit shall state whether or  
10 not the ~~bidder~~ PERSON has been convicted or found liable for any <—  
11 ~~violations of an~~ act prohibited by State or Federal law in any <—  
12 jurisdiction involving conspiracy or collusion with respect to  
13 bidding on any public contract within the last three years. Any  
14 required noncollusion affidavit shall also state that a ~~bidder's~~ <—  
15 PERSON'S affidavit stating that the ~~bidder~~ PERSON has been <—  
16 convicted or found liable for ~~an~~ ANY act, prohibited by State or <—  
17 Federal law in any jurisdiction, involving conspiracy or  
18 collusion with respect to bidding on any ~~public contract within~~ <—  
19 ~~the last three years does not necessarily prohibit a~~  
20 ~~governmental agency from accepting a bid from or awarding a~~  
21 ~~contract to that bidder but may be a ground for administrative~~  
22 ~~debarment or suspension in the discretion of a governmental~~  
23 ~~agency, under the rules and regulations of that agency or~~  
24 ~~otherwise by law on the basis of a lack of responsibility. The~~  
25 ~~provisions of this section are in addition to and not in~~  
26 ~~derogation of any other powers and authority of any governmental~~  
27 ~~agency.~~ PUBLIC CONTRACT WITHIN THE LAST THREE YEARS, DOES NOT <—  
28 PROHIBIT A GOVERNMENTAL AGENCY FROM ACCEPTING A BID FROM OR  
29 AWARDED A CONTRACT TO THAT PERSON, BUT MAY BE A GROUND FOR  
30 ADMINISTRATIVE SUSPENSION OR DEBARMENT IN THE DISCRETION OF A

1 GOVERNMENTAL AGENCY UNDER THE RULES AND REGULATIONS OF THAT  
2 AGENCY, OR, IN THE CASE OF A GOVERNMENTAL AGENCY WITH NO  
3 ADMINISTRATIVE SUSPENSION OR DEBARMENT REGULATIONS OR  
4 PROCEDURES, MAY BE A GROUND FOR CONSIDERATION ON THE QUESTION  
5 WHETHER SUCH AGENCY SHOULD DECLINE TO AWARD A CONTRACT TO THAT  
6 PERSON ON THE BASIS OF A LACK OF RESPONSIBILITY. THE PROVISIONS  
7 OF THIS SECTION ARE IN ADDITION TO AND NOT IN DEROGATION OF ANY  
8 OTHER POWERS AND AUTHORITY OF ANY GOVERNMENTAL AGENCY.

9 Section 8. Responsibility for enforcement.

10 (a) Criminal prosecution.--The Office of the Attorney  
11 ~~General shall be responsible for investigating and prosecuting~~ <—  
12 ~~violations of section 3 and may delegate the investigation and~~ <—  
13 ~~prosecution of violations of section 3 relating to political~~  
14 ~~subdivisions to the appropriate district attorney. Any~~  
15 ~~delegation by the Attorney General to a district attorney may be~~  
16 ~~rescinded at any time with or without cause.~~ GENERAL AND THE <—  
17 DISTRICT ATTORNEYS OF THE SEVERAL COUNTIES SHALL HAVE CONCURRENT  
18 JURISDICTION FOR THE INVESTIGATION AND PROSECUTION OF VIOLATIONS  
19 OF SECTION 3.

20 (b) Civil actions.--The Office of Attorney General shall  
21 have the authority to bring civil actions under section 4 on  
22 behalf of the Commonwealth and any of its departments, boards,  
23 agencies, authorities and commissions. Political subdivisions,  
24 municipal corporations, home rule municipalities and school  
25 districts shall have the right to bring a civil action under  
26 section 4. Upon the filing of a complaint, a copy thereof shall  
27 be served on the Attorney General. The plaintiff, at any time,  
28 may request the Attorney General to act on its behalf. The  
29 Attorney General, upon determining that it is in the best  
30 interest of the Commonwealth, shall have the authority to

1 intervene on behalf of the Commonwealth in such actions.

2 Section 9. Investigation.

3 (a) Required attendance.--Whenever the Office of Attorney  
4 General believes that a person may be in possession, custody or  
5 control of documentary material or may have information relevant  
6 to the subject matter of a civil investigation for the purpose  
7 of ascertaining whether a person is or has been engaged in a  
8 violation of this act, he may require the attendance and  
9 testimony of witnesses and the production of books, accounts,  
10 papers, records, documents and files relating to the civil  
11 investigation; and, for this purpose, the Attorney General or  
12 his representatives may sign subpoenas, administer oaths or  
13 affirmations, examine witnesses and receive evidence during the  
14 investigation. A request for information shall state the subject  
15 matter of the investigation, the conduct constituting the  
16 alleged violation which is under investigation and the  
17 provisions of this act applicable to the alleged violation. A  
18 request for documentary material shall describe the material to  
19 be produced with reasonable particularity so as to fairly  
20 identify the documents demanded, provide a return date within  
21 which the material is to be produced and identify the member of  
22 the Attorney General's staff to whom the material shall be  
23 given. In case of disobedience of a subpoena or the contumacy of  
24 a witness appearing before the Attorney General or his  
25 representative, the Attorney General or his representative may  
26 invoke the aid of a court of record of the Commonwealth, and the  
27 court may thereupon issue an order requiring the person  
28 subpoenaed to obey the subpoena or to give evidence or to  
29 produce books, accounts, papers, records, documents and files  
30 relative to the matter in question. Failure to obey an order of



1 the court may be punished by the court as a contempt.

2 (b) Confidentiality.--No information or documentary material  
3 produced under a demand under this section shall, unless  
4 otherwise ordered by a court for good cause shown, be produced  
5 for inspection or copying by, nor shall the contents thereof be  
6 disclosed to, a person other than the Attorney General or his  
7 representative without the consent of the person who produced  
8 the information or material; except that the Attorney General or  
9 his representative shall disclose information or documentary  
10 material produced under this section or information derived  
11 therefrom to officials of a governmental agency affected by the  
12 alleged violation, for use by that agency in connection with an  
13 investigation or proceeding within its jurisdiction and  
14 authority, upon the prior certification of an appropriate  
15 official of the agency that the information shall be maintained  
16 in confidence other than use for official purposes. Under  
17 reasonable terms and conditions as the Attorney General or his  
18 representative shall prescribe, the documentary material shall  
19 be available for inspection and copying by the person who  
20 produced the material or a duly authorized representative of  
21 that person. The Attorney General or his representative may use  
22 such documentary material or information or copies thereof as he  
23 determines necessary in the civil enforcement of this act,  
24 including presentation before any court. Material which contains  
25 trade secrets or other highly confidential matter shall not be  
26 presented except with the approval of the court in which a  
27 proceeding is pending after adequate notice to the person  
28 furnishing the material.

29 (c) Limitation on use.--No criminal prosecution under  
30 section 3 may be brought by either the Attorney General or a

1 district attorney based solely upon information or documents  
2 obtained in a civil investigation under this section.

3 Section 10. Applicability.

4 This act shall apply to all contracts with governmental  
5 agencies entered into on or after the effective date of this  
6 act.

7 Section 11. Effective date.

8 This act shall take effect in 60 days.