

(H. B. 906)

(No. 129)

(Approved October 7, 2005)

AN ACT

To create the “Government of the Commonwealth of Puerto Rico Procurement Reserve Act,” to establish the public policy regarding the procurement of goods from small and medium-size businesses operating with local capital and to establish eligibility requirements.

STATEMENT OF MOTIVES

The strengthening of our economy and the creation of jobs are fundamental objectives of the public policy of the Commonwealth of Puerto Rico. In order to achieve these objectives, various legislative initiatives geared towards the local economic development have been introduced and enacted by the Executive Branch and the Legislature.

Act No. 14 of January 8, 2004, as amended, known as the “Puerto Rican Industry Investment Act,” replaced the former “Preference Act,” Act No. 42 of August 5, 1989, which established a new government approach on the matter of government procurement.

The aforementioned Act replaced the 1961 and 1977 legislation, based on the same principle for strengthening and updating the preferential system. Government procurement preference laws are mechanisms which allow the main participants of the local economy to be effectively involved in the government procurement market and to stimulate the creation of jobs as well as local investments. These measures recognize that the government is an important component of the Puerto Rican economic structure. In addition to

being a regulator of economic processes, the government sector is a consumer of the goods and services offered by the private sector.

However, a large number of legislative measures relative to preferential reserves have been geared towards elements for the production of acquired goods, obviating the very important sector that comprises the small and medium-size retailers and distributors in the local market. The truth is that there is very little participation of small and medium-size businesses operating with Puerto Rican capital in the procurement and the contracting of services by the Government of the Commonwealth of Puerto Rico. This approach to the economic development of Puerto Rico is fundamental if we intend to promote our economy and support our best resource, the human capital.

The present legislation is based on the model employed by the federal government for acquiring products and services from certain productive sectors of the United States economy. In the federal sector, “set aside programs” have been very successful in helping thousands of businesses to increase their sales and create jobs.

From the point of view of the Island’s economic development, it is no longer sustainable for the local government not to preferentially sponsor small and medium-size businesspersons who are able to offer goods and services. To such effects, this Legislature deems it necessary to approve this measure so as to replace the preferential reserve legislation geared towards the production of acquired goods, as an efficient strategy for economic development and the creation of jobs.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Title

This Act shall be known as the “Government of the Commonwealth of Puerto Rico Procurement Reserves Act.”

Section 2.- Statement of Public Policy

It shall be the public policy of the Commonwealth of Puerto Rico:

- a) To establish a Reserve Program which requires that the Government of the Commonwealth of Puerto Rico and its instrumentalities make reasonable efforts to set aside fifteen (15) percent of the Commonwealth contracts for eligible small and medium-size businesses. This percentage is of general application for all agencies.
- b) This Act shall only apply to the procurement of goods and services and not to construction or related contracts.

Section 3.- Definitions

- a) The following terms and words used in this Act shall have the following meaning:
 1. Commonwealth Government or Agency: means the Commonwealth of Puerto Rico, its departments, agencies, instrumentalities, dependencies, municipalities, and public corporations.
 2. Procurement: the means through which the Government acquires an article or service, whether through formal or informal bidding, the open market, by contracting, or special procedure.
 3. Reserve: means the percentage of the Commonwealth Government contracts set aside for small businesses.

4. Small and medium-size businesses: means those businesses with less than twenty-five employees and whose gross income does not exceed five million (5,000,000) dollars.
5. Articles: means merchandise, goods, supplies, materials, and equipment.
6. Bidding Limit: means the dollar limit imposed by all agencies to establish when public notices on biddings are required.
7. Register: means a list of small businesses authorized by the Department of Economic Development and Commerce to participate in the small business program.
8. Secretary: means the Secretary of the Department of Economic Development and Commerce.

Section 4.- Eligibility Requirements for Small and Medium-Size Businesses.

- A. In order to qualify as a small or medium-size business, the following requirements shall be met:
 1. Be an independent business whereby at least fifty-one (51) percent of its capital is owned by its managers.
 2. Be incorporated or registered to do businesses in Puerto Rico and have its main place of business in Puerto Rico defined as such when fifty-one (51) percent or more of its employees work in Puerto Rico, as shown in the unemployment statement; or when fifty-one (51) percent or more of its business activities are conducted

in Puerto Rico as shown in the income tax return payment.

3. The enterprise or business must have less than twenty-five (25) full-time employees without including:
 - a. Part-time or temporary employees contracted for less than ninety (90) days, if these are common to the industry;
 - b. Consultants under contracts unrelated to the goods and services for which the business wishes to be deemed as an eligible small business.
4. The gross income of the business shall not exceed five million (5,000,000) dollars.
 - a. The gross income of a business that has been operating for three (3) or more years, means the profits for those three (3) years divided by three (3).
 - b. In the case of businesses with less than three (3) years, the income shall be the income generated within the term of its operations divided by the number of weeks and multiplied by fifty-two (52).
 - c. The Department of Economic Development and Commerce may limit the participation in this program to the businesses whose individual owners have a personal worth which does not exceeds five million (5,000,000) dollars of personal worth.

- d. The eligibility is determined by the Department of Economic Development and Commerce through a sworn statement of businesspersons to the effect that they comply with the parameters established for their eligibility.
 - e. Small businesses shall be registered under the following categories:
 - a. Small businesses whose gross income does not exceed five hundred thousand (500,000) dollars;
 - b. Small businesses whose gross income does not exceed five million (5,000,000) dollars;
5. The Regulations to be promulgated shall provide for special cases and for exemptions from some of these conditions.

Section 5.- Obligation to Furnish Information and Penalties.

- A. When any business is declared a small business on the basis of false information knowingly furnished by the business and the latter has been awarded a contract, the Secretary, after giving notice and an opportunity to respond, shall:
- 1. Fine the business for the difference between the contract and the costs that the Commonwealth would have incurred if the percentages granted by this Act were not been granted;
 - 2. Fine the business for not more than ten (10) percent of the total amount of the contract; and
 - 3. Declare the business as ineligible for contracting with the Commonwealth for a period of not less than three (3) months nor of more than twenty-four (24) months.

- B. Any business or enterprise declared a small business by the Department of Economic Development and Commerce shall immediately notify the Department of Economic Development and Commerce about any circumstance that affects its eligibility under this Act.

Section 6.- Registration

A. Procedure

1. Any business wishing to become registered as a small business shall submit an application to the Department of Economic Development and Commerce following the regulations to be established therefor by the Department.
2. As part of the application submitted to the Department of Economic Development and Commerce, the business shall document its place of business, independent status, number of employees, and gross income.
3. Upon the approval of the application by the Department of Economic Development and Commerce, the latter shall remit a written notification to the business and include the same in the list of authorized small businesses.
4. The agencies shall use this list to verify the eligibility of the business in the Reserve Program and to oversee the compliance of the goals set.

B. Time

1. A business may at any time request to be classified as small business and be included in the register of vendors.
2. In order to be eligible for a contract under the Reserve Program, the business shall be registered as such by the

Department of Economic Development and Commerce, at the opening of the bidding.

Section 7.- Challenge

The Department of Economic Development and Commerce shall establish through regulations the procedure for challenging the classification of a small business by any other business in the register of authorized vendors or by any other interested business.

Section 8.- Reserve Program, Operations

1. Every Commonwealth Agency shall establish and administer a reserve program which provides at least fifteen (15) percent of the value of the contracts to be awarded to small businesses, as follows:
 - a. At least seven and a half (7.5) percent shall be awarded to small businesses whose gross income is under five hundred thousand (500,000) dollars;
 - b. At least an additional seven and a half (7.5) percent shall be awarded to small businesses whose gross income is under five million (5,000,000) dollars; and
2. The percentages shall be determined on the basis of the total value of all Reserve contracts, compared to the total value of all contracts awarded by the agency during the fiscal year.
3. Every agency shall designate specific contracts for every Reserve category.
4. Every agency shall establish by-laws and keep a register to record and inform its efforts in the attainment of the objectives of this program.

- a. The agency shall review the schedule of possible contracts and establish a method for determining which contracts shall be awarded as part of its Reserve Program.
 - b. The designation of a contract as a reserve contract shall be made before the publication of the Call for Bids.
5. When the agency has determined that a contract is suitable for the Reserve Program, it shall limit the invitation to small businesses duly registered, thus rejecting any offer from unregistered businesses.

Section 9.- Planning, Reports, and Review

1. In order to comply with the reserve program on that year, every agency shall remit its plan to the Secretary of the Department of Economic Development and Commerce at least sixty (60) calendar days prior to each fiscal year. The Department of Economic Development and Commerce shall provide assistance in the drafting thereof to those agencies that so request.
2. The plan shall include a list of all purchases scheduled for bidding during the year, as well as:
 - a. The name of the products or services covered under the contract;
 - b. The expiration date of the contract in effect and estimated date of the public bidding;
 - c. The term of the contract;

- d. The estimated value of the contract or the current amount spent on account of the contract in effect; and
 - e. The contracts intended to be reserved by the agency for all three small business categories.
- 3. Every agency shall identify the products and services usually procured without public bidding, which may be included in the Reserve Program.
- 4. Copy of the procurement plan shall be available for review during the regular business hours of each agency.
- 5. The Department of Economic Development and Commerce shall review the plans and determine whether the same are reasonably designed to achieve the fifteen (15)-percent objective in procurement from small businesses.
- 6. Each agency shall prepare a quarterly and an annual report which shall be remitted to the Department of Economic Development and Commerce, to include:
 - a. The total number and value of the contracts announced and awarded, including a list of businesses benefited therefrom and the amounts of the contracts; and
 - b. A description of the steps taken to encourage the participation of potential candidates.
- 7. The Secretary of the Department of Economic Development and Commerce and the Secretary of the Treasury shall review these reports and provide recommendations for the Governor.

Section 10.- Exemptions

In those cases whereby Federal Laws or regulations allow for or require a procedure other than that established in this statute, the contracting agency shall follow the federal procedures but shall be bound required to issue a written statement describing the applicable federal laws and regulations.

Section 11.- This Act shall take effect ninety (90) days after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 129 (H.B. 906) of the 2nd Session of the 15th Legislature of Puerto Rico:

AN ACT to create the “Government of the Commonwealth of Puerto Rico Procurement Reserve Act,” to establish the public policy regarding the procurement of goods from small and medium-size businesses operating with local capital and to establish eligibility requirements,

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

In San Juan, Puerto Rico, today 8th of December of 2006.

Francisco J. Domenech
Director