

(H. B. 1571)  
(Reconsidered)  
(Reconsidered)

**(No. 253)**

(Approved November 30, 2006)

## **AN ACT**

To declare the Public Policy of the Commonwealth with respect to multiple award contracts, provide the duties of public entities by virtue of said public policy, temper procurement regulations and adopt other related norms.

### **STATEMENT OF MOTIVES**

It is sustained that a fundamental principle of our economic development as a people rests upon the collective interest in promoting the growth and development of the Puerto Rican Goods and Services Industry with the creation of more and better jobs as a consequence of the economic activity generated by the different components of said local industry.

For such purpose, the Legislature has reiterated its volition that public instrumentalities grant procurement preference to the products and services offered by local industry through various legislative measures.

In practice, however, said principle requires the most favorable and appropriate procurement conditions in order to foster a highly participatory environment that is flexible and fair for local bidders offering their products or services to the different entities of the governmental framework. It is certain that only under said conditions shall the referred principle of economic development become palpable and

effective in the regular processes for the procurement of goods and services by government agencies.

To this end, the highly useful and participatory procurement mechanism known as multiple award contract arises, which was previously adopted in our jurisdiction under the Procurement Program of the General Services Administration, and previously consigned in the repealed “Uniform Procurement Standards Act.” Under said procurement modality, it is allowed for several bidders, rather than only one bidder, to be simultaneous beneficiaries of an award for acquisition or procurement to render the service or supply the goods. The procurement regulations of the General Services Administration provide that multiple award contracts shall be granted to several bidders at the same time, so that the procuring agencies are able to issue purchase orders for the item and bidder that more adequately meets the specifications required by them [sic.] Furthermore, certain circumstances under which this procurement mechanism may proceed are specified in said regulations, which provide that the same shall proceed given one of three possibilities: 1) when the magnitude of the demand implies that it cannot be satisfied by one single bidder, 2) when the variety of models requested does not allow for the selection of one single model for general use, or 3) when the budgetary capacity of the agency allows for variety.

It being understood that multiple award contracts arise as one of the procurement instruments that may be available to public entities due to its high flexibility and the participation aspects of this procurement modality, it thus becomes one of the various array of options and procurement instruments that the government of Puerto Rico has available at the time of the evaluating and awarding its purchases or acquisitions.

Likewise, the formal incorporation of this procurement mechanism to the government procurement processes represents an effective alternative under certain

situations that require simultaneous awards to several bidders when so warranted by the public interest and when the adequate budgetary circumstances allow for it or when appropriate and advisable according to the specifics of the demand or variety of the product.

By virtue of the above stated, this Legislature deems it necessary to formally incorporate the multiple award contract mechanism into the government procurement processes by establishing the Public Policy with respect to this procurement modality, providing the duties of government entities in this respect, tempering procurement regulations of the public entities to the mandate set forth herein and adopting other related standards.

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1.- Public Policy of the Commonwealth of Puerto Rico

It shall be the public policy of the Commonwealth of Puerto Rico that its agencies, instrumentalities, public corporations and other institutional bodies shall promote that their goods and services procurement processes be within the framework of procurement conditions and mechanisms that allow the local industry to offer their goods and services under flexible, fair and highly participatory circumstances.

By virtue thereof, it is hereby declared as the public policy of the Commonwealth within the regulatory framework of the procurement processes of all its entities, to consider and include the multiple award contract mechanism as one of the additional procurement instruments to be utilized, thus allowing its adoption and use when the circumstances of the adjudication and the best interests of the adjudicating entity recommend its use and implementation.

Section 2.- Obligation of the Agencies, Public Corporations and other Government Instrumentalities upon Adopting their Procurement Processes

It is herein provided that the agencies, instrumentalities, public corporations and other entities of the Commonwealth of Puerto Rico shall have the following duties and responsibilities:

- a. To adopt the multiple award contract as one of the options and procurement contracts that shall be available and may be used for the acquisition of goods and services.
- b. To temper their procurement regulations and other regulatory provisions with the mandate consigned in this Act.
- c. To avail themselves of the orientation, advice and technical support of the General Services Administration, the Industrial Development Company, or the Office of Management and Budget to ensure the most adequate adoption of this mechanism in their procurement processes, and the most sensible implementation and use of this procurement modality.
- d. To train and instruct their procurement officers in the management, use and adoption of this procurement mechanism.
- e. To apply and make use of the multiple award procurement mechanism solely when the circumstances of the acquisition or the product or service to be acquired justify its use with respect to the best administrative, fiscal and operational interests of the adjudicating entity, and protecting the legal and jurisprudential norms that govern the goods and services procurement processes of the government, by means of strict free competition, transparency, integrity and participation fairness criteria.
- f. To take the necessary administrative measures so that the adoption of multiple award contracts do not impair the flow, agility and effectiveness of the procurement processes, ensuring that the bidders, procurement officers and participants in the procurement process have knowledge of and understand this procurement mechanism.

- g. To establish in a clearly transparent manner any regulations to be established in accordance with this Act and attuned with the best practices of sound government administration, among other requirements, that multiple award contracts shall apply solely and exclusively under the following circumstances:
  - i) when the demand is of such magnitude that it cannot be handled by a single contractor;
  - ii) when the variety of types and models of the required item does not allow for the selection of a single model type for general use; and
  - iii) when variety is allowed for within the budget capacity of the agency.
- h. To adopt all measures necessary or convenient to ensure the most faithful and correct implementation of the mandate contained within this Act.

### Section 3.- Duties of the General Services Administration

For purposes of use and implementation, it shall be the duty of the General Services Administration to:

- a. Adopt, with the assistance and advice of the Industrial Development Company, the model contracts that shall be the reference and operational guidelines for the public entities in the use and implementation of this procurement mechanism.
- b. Adopt, with the assistance and advice of the Industrial Development Company, the Office of Management and Budget, and any other public entities, the guidelines and parameters for the use of this mechanism so that its implementation protects the public resources used and the best interests of the Commonwealth, and which may be upheld in legal, ethical and administrative terms.
- c. Adopt or modify the necessary regulations for faithful compliance with the duties imposed by this Act.

d. Take all measures necessary or convenient to comply with the aforementioned duties and to enforce the remaining provisions of this Act.

#### Section 4.- Duties of the Industrial Development Company

For purposes of use and implementation, it shall be the duty of the Industrial Development Company to exercise the powers conferred to it by virtue of the Puerto Rican Industry Investment Act so as to facilitate, support and assist public entities in the use, implementation and adoption of multiple award.

#### Section 5.- Procurement Regulations of Compelled Public Entities

It shall be the duty of the agencies, instrumentalities, public corporations and other entities compelled under the provisions of this Act to adopt or modify their procurement regulations or other regulatory provisions necessary to temper their procurement processes to the mandate consigned under this Act.

#### Section 6.- Interpretation

It shall be construed that the provisions of this Act shall be interpreted in the most liberal manner possible in favor of the use, availability and implementation of the multiple awards mechanism referred to in this Act, for the convenience of government agencies and the public interest. At the same time, it shall be construed that the experience, a precedents and knowledge gained through the application of this procurement mechanism in the General Services Administration and any other government entities shall constitute a supplementary source of interpretation of this Act.

Moreover, none of the provisions or parts of this Act shall be construed, under any circumstances, to limit or restrict the powers and full prerogatives of public entities to implement or use procurement mechanisms other than the multiple award contract, nor shall it be understood as limiting the discretion or internal

powers of each entity to determine the specific manner and form in which the same incorporates the purchasing mechanism to its procurement processes.

#### Section 7.- Separability Clause

Should any section, provision, paragraph, subsection or part of this Act be declared unconstitutional by any competent court, it shall be understood that the remaining provisions shall continue to be valid and in effect.

#### Section 8.- Effectiveness

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 253 (H.B. 1571)  
(Reconsidered) (Reconsidered) of the 4<sup>th</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to declare the Public Policy of the Commonwealth with respect to provide the duties of public entities by virtue of said public policy, temper procurement regulations and adopt other related norms,

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

In San Juan, Puerto Rico, today 14th of December of 2007.

Francisco J. Domenech  
Director