

(H.B. 2177)

(No. 84)

(Approved June 18, 2002)

AN ACT

To establish the Code of Ethics for contractors, suppliers of goods and services and applicants for economic incentives of the executive agencies of the Commonwealth of Puerto Rico which shall regulate the relationship of every natural or juridical person who wishes to do business with, provide services to, or apply for an economic incentive of the Commonwealth of Puerto Rico; to impose certain duties and grant certain powers to the Secretary of Justice; establish sanctions and penalties; and for other purposes.

STATEMENT OF MOTIVES

The People of Puerto Rico demand that its government operates honestly and transparently, and that government entities operate under standards of integrity, probity, transparency and efficiency.

In recent years, there was an increase in Puerto Rico of contracts with private service enterprises which the government, traditionally rendered to the citizenry as Benefactor State. This practice was attuned to the privatizing ideology adopted by the State to reduce government gigantism and open certain services to competition, under its monitoring. The privatization policy entails the transfer of duties and responsibilities, in a partial or complete manner, from the State to the private sector. This process requires the restructuring and liberalization of the regulatory and normative structure, among other things. Through privatization, the profitability of public resources will be increased and an agile and effective

public administration achieved. However, experience with privatization in Puerto Rico has not been wholly positive. The lack of prudence of some government officials and employees, along with the limited awareness of some private entrepreneurs, has caused financial chaos and inefficiency in the rendering of basic services that all citizens are entitled to.

Corruption and lack of ethics in government transactions has reached unexpected levels. As a result, hundreds of thousands and even millions of dollars of Federal and Commonwealth funds have been used to the advantage of private interests and unscrupulous officials who, failing to comply with their duties, violated the trust bestowed on them and the Constitutional mandate that "public properties and funds shall only be used for public purposes".

There is a need to stress as principal components of the public policy of the Commonwealth of Puerto Rico, the adequate and efficient use of public resources, and the eradication of corruption in the government, which practices lacerate the trust of Puerto Ricans in their government institutions. In order for said public policy to be effective, the active cooperation not only of all public servants, but also of former public servants and the citizenry, is needed.

To promote the fight against corruption, it is necessary to form an alliance between the State and the civil society. In order to achieve the proposed objectives, the Commonwealth of Puerto Rico deems it urgent and necessary to create and implement a Code of Ethics to govern the relationship of the government with its contractors, services suppliers and those entities that receive an economic incentive.

The Code of Ethics that is promulgated through this Act complements the provisions of Act No. 12 of July 24, 1985, as amended, known as the "Ethics

in Government Act", which establishes the norms of conduct applicable to former and current public servants. Through this Code, it is required that contractors, goods and services providers, and applicants for incentives, refrain from performing or assuming conduct that would directly or indirectly imply that former and current public servants are violating the provisions of the Ethics in Government Act.

This Act is approved with the purpose of contributing to the transparency, probity and integrity in the contracting processes for the furnishing of goods and services to the Government of the Commonwealth of Puerto Rico and its Municipalities, as well as to enhance the morale and increase the probability of preventing ethical problems, or in its defect, that they are identified and solved in a responsible and upright manner.

BE IT RESOLVED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Short Title

This Act shall be known as the "Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico".

Section 2.- Statement of Public Policy

It is the public policy of the Commonwealth of Puerto Rico to fight corruption in an energetic manner and return the trust in their government institutions to our people. The adoption of this code of ethics for contractors, suppliers and applicants for economic incentives of the executive agencies, responds to the need of confronting every possible act of corruption in the agencies and municipalities of the Commonwealth of Puerto Rico. With this Code, an additional dissuasive is established to stop any intent of conduct that is contrary to ethics and the norms of sound public administration.

The attainment of a transparent government administration, which is also effective, constitutes one of the essential purposes of the Commonwealth of Puerto Rico, thus, the creation of this code of ethics shall be a useful mechanism in the monitoring analysis of transactions between private enterprise and the Commonwealth.

Section 3.- Applicability

This Code regulates the conduct of contractors and suppliers of goods or services with the executive agencies of the Commonwealth of Puerto Rico, as well as that of the members of the entities that receive some sort of economic incentive from the government and the sectors to be affected by regulations promulgated by the executive agencies of the Commonwealth of Puerto Rico.

The acceptance of the norms established herein is an essential and indispensable condition so that they or their representatives may execute transactions or enter into agreements with the executive agencies.

Section 4.- Definitions

For the purposes of this Act, the following words and phrases shall have the meaning indicated herein:

- (a) Executive agencies: the bodies and entities of the Executive Branch of the Commonwealth of Puerto Rico, including public corporations, departments, agencies, municipalities and instrumentalities of the Commonwealth of Puerto Rico.
- (b) Conflict of interest: a situation in which the personal or financial interests of the public servant, of persons related to him/her, or of the contractor or suppliers is, or could reasonably be in contravention of the public interest.

- (c) Contract: pact, agreement or juridical business in which the parties are committed to give something, or do, or fail to do a specific act, and which is granted with the consent of the contracting parties, with regard to a certain object, subject of the contract, and by virtue of the cause that is established.
- (d) Contribution: any payment, gift, subscription, commission, grant, benefit, tip, loan, advance, bribe or any promise or agreement to grant it.
- (e) Public employee: a person who holds a position or is employed in the Commonwealth of Puerto Rico and is not vested with part of the Commonwealth sovereignty, includes regular or irregular employees, those with transitory appointments and those in a probationary period.
- (f) Former public servant: person who has served as a public official or employee in the executive agencies of the Commonwealth of Puerto Rico, in the legislative Branch, or in the Judicial Branch.
- (g) Official: person vested with part of the sovereignty of the State, and therefore intervenes in the development and implementation of public policy, and who holds office, or is employed by the Commonwealth of Puerto Rico.
- (h) Government: The Commonwealth of Puerto Rico, its corporations, instrumentalities and municipalities.
- (i) Income: includes profits, benefits and income derived from salaries, wages or compensation for personal services (including remuneration received for services rendered as an official or employee of the Commonwealth of Puerto Rico, of any state of the United States of America, or of any political subdivision thereof, or

of any agency or instrumentality of any of said entities) of any type and in any form they are paid, or of professions, trades, industries, businesses, commerce or sales, or of operations in properties, whether real or personal, that arise from the possession or use of the interest in said property; as well as those derived from the interest, revenues, dividends, benefit from partnerships, assets, or the operation of any business conducted for profit or use, and earnings or benefits and income derived from any source. Contributions made to political organizations or candidates pursuant to the authorization provided by the electoral laws in effect, shall not be deemed to be "income" or "gifts".

- (j) Person: a natural or juridical person, or groups of persons or associations, that wish to establish a contractual, commercial or financial relationship with the executive agencies, or that have perfected a contract with the State to render goods or services, as well as the entities that receive or are interested in receiving an economic incentive from the executive agencies of the government. It also includes natural or juridical persons that are or will be affected by any regulation established by the executive agencies of the Commonwealth of Puerto Rico.
- (k) Judicial Branch: The General Court of Justice and any office or dependency thereof.
- (l) Legislative Branch: includes the House of Representatives, the Senate of Puerto Rico, the Office of the Comptroller of Puerto Rico, the Office of the Ombudsman and any joint office or dependency attached to the legislative bodies.

- (m) Gift: payment or enrichment without equivalent consideration, or receiving one of a lesser value. A donation of lucrative value including, among others, money, goods or any object, economic opportunities, tips, grants, benefits, discounts or special considerations.
- (n) Public servant: comprises public officials and employees.
- (o) Family unit: includes the spouse of the public servant or former public servant, his/her dependent children, or those persons who share the legal residence of the public servant or former public servant, or whose financial affairs are under the “de jure” or “de facto” control of the public servant or former public servant.

Section 5.- Ethical Obligations and Responsibilities of contractors, purveyors of goods and services, and members of entities that receive economic incentives from the executive agencies and persons to be affected by regulations promulgated by executive agencies:

- (a) Every person shall adopt a professional and respectful relationship with the public officials and employees of the executive agencies, and shall require the same from them at all times.
- (b) Every person who, in his/her relationship with the executive agencies of the Commonwealth of Puerto Rico, participates in public biddings, submits quotations, wishes to enter into contracts with them, seeks or applies for the granting of any economic incentive, shall have the obligation to disclose all the information needed for the executive agencies to evaluate the transaction in detail, and make correct and informed decisions.
- (c) Every person shall observe the precepts and principles of excellence and honesty that cover his/her profession, in addition to the norms or

canons of ethics of the Association or College of which he/she is a member and that regulate his/her trade or profession in the relationship with their competitors as well as with the Commonwealth of Puerto Rico. In the case of persons who are not members of an Association or College, or in the case of associations and colleges that do not have a canon of ethics for their members, they shall observe the general principles of ethical conduct that are deemed reasonable in their profession or trade.

- (d) Every person shall quote on a basis of fair price for his/her services, considering experience, academic studies and technical skills; in agreements for the furnishing of goods, the quality of the goods shall be taken into consideration. The person shall have the obligation to perform their work within the established term established, shall guarantee the quality of the services and goods furnished, and to charge for his/her services upon presentation of an invoice whose correction shall be certified, that the services were rendered in full or that the goods were delivered within the established term, and that no compensation has been received for the same. All invoices for the payment of goods and services presented to the executive agencies shall contain the following certification: "Under penalty of absolute nullity, I certify that no public servant of the government entity is a party to or has an interest in the profits or benefits that are the product of the contract subject of this invoice, and to be a party to or have an interest in the profits or benefits of resulting from the contract, under this invoice a prior dispensation has been issued. The sole consideration to furnish the contracted goods or services subject of the contract is the payment agreed upon with the

authorized representative of the government entity. The amount that appears in the invoice is fair and correct. The work has been performed, the products have been delivered and the services rendered, and no payment has been received for them."

- (e) No person shall offer or deliver to the public servant or former public servant of the executive agencies, or members of his/her family unit, with which he/she wishes to establish or has established, a contractual, commercial or financial relationship, directly or indirectly, goods of monetary value, contributions, gifts, gratuities, favors, services, donations, loans or shares in any commercial entity or juridical business. In cases that refer to a former public servant, the preceding prohibition shall be extended for one (1) year from the date he/she ceases his functions in the executive agency. This obligation shall cover the period preceding and following the execution of the contract, business or transaction, as well as during the term thereof.
- (f) Every person shall collaborate with any investigation initiated by the government on business transactions, execution of contracts, or granting of government incentives in which he/she was a party thereto or that directly or indirectly benefited from it.
- (g) No person shall intervene in matters that could result in a conflict of interest or that could appear as such.
- (h) Every person is bound to denounce those acts that are in violation of this code that constitute acts of corruption, or that have the elements of the crimes of fraud, bribery, embezzlement or misappropriation of funds, and of which he/she has personal knowledge, that concern a contract, business or transaction between the government, and a

contractor or supplier of goods and services or participants of economic incentives. The complainants shall be protected under Act No. 426 of November 7, 2000, as amended, and Act No. 14 of April 11, 2001, as amended.

- (i) No person who has actively participated in political campaigns may establish negotiations with the Secretaries, Heads of Agency, Municipal Executives or Executive Directors of Public Corporations leading to the improper granting of advantages, privileges or favors for their benefit, or of any other person, represented by the former. Nor shall the services of persons who have actively participated in political campaigns be required for the abovementioned purposes.
- (j) No person shall use confidential information acquired in the course or as result of any negotiation that has been entrusted to him/her through a contract by the Commonwealth of Puerto Rico, for purposes foreign to the contracted endeavor, nor to obtain, directly or indirectly, any financial advantage or benefit for him/herself, for any member of his/her family unit, or any other person, business or entity.
- (k) No person shall request or obtain confidential information from a public servant or former public servant to obtain, directly or indirectly, any financial advantage or benefit for him/herself, or for any other natural or juridical person; nor for purposes foreign to those of the contracted endeavor.
- (l) No person shall accept or maintain contractual or business relations with a public servant or a member of his/her family unit that has the effect of impairing the independent criteria of the public official or employee in the performance of his/her official duties. It is hereby

prohibited for any person to accept or maintain contractual or business relations with former public servants during a term of one (1) year counting from the time they have ceased to hold office, if in the performance of their government duties they participated directly in transactions between the executive agencies and the person.

- (m) No person shall contract with executive agencies if there is any conflict of interests. Every person shall certify that he/she does not represent private interests in cases or matters that imply conflicts of interest, or of public policy, between the executive agency and the private interests he/she represents.
- (n) No person shall directly or indirectly request a public official or employee to represent his/her private interests, makes efforts or exerts influence to obtain a contract, the payment of a claim, a permit, license or authorization, or in any other matter, transaction, or proposal in which said person or his family unit has private interests, even when it concerns official actions of the public official or employee within the scope of his/her official authority.
- (o) No person shall induce a public servant or former public servant to fail to comply with the provisions of Act No. 12 of July 24, 1985, as amended, known as the "Commonwealth of Puerto Rico Ethics in Government Act".
- (p) Every person who has been convicted of a crime against the public treasury, public trust, or involved in the wrongful use of public funds or property shall be disqualified to contract or bid with any executive agency of the Commonwealth of Puerto Rico during the periods provided in Act No. 458 of December 29, 2000, as amended. Every contract shall include a cancellation clause in the event the

person who has contracted with the executive agencies is convicted in the Federal or Commonwealth jurisdiction for any of the crimes mentioned above. It shall be certified in the contracts that the person has not been convicted in the Federal or Commonwealth jurisdiction for any of said crimes. The duty to inform shall be of a continuous nature during all the stages of the contracting and execution of the contract.

Section 6.- Contracts

It shall be an indispensable requirement for every person to make a commitment to be governed by the provisions of this Code of Ethics. Said fact shall be stated in every contract between the executive agencies and contractors or suppliers of services, and in all applications for economic incentives provided by the government.

Section 7.- Procedure

It shall be the responsibility of every government agency of the Commonwealth of Puerto Rico to ensure compliance with the provisions of the Code of Ethics established herein.

Violations of the provisions of this Code shall be aired before the administrative forums of the executive agencies pursuant to the provisions of Act No. 170 of August 12, 1988, as amended, known as the "Commonwealth of Puerto Rico Uniform Administrative Procedures Act".

When the executive agency determines that the person has failed to comply with any of the obligations or duties imposed by the Code of Ethics, it shall require the person to show cause for which the agency should not initiate procedures leading to the imposition of the sanctions set forth in Section 9 of this Act, within a term of twenty (20) days from the receipt of the notice.

Upon compliance with the procedure typified by the administrative norm, the executive agency shall notify its decision to the person, who may request a reconsideration or resort to judicial review pursuant to Sections 3.15 and 4.2 of Act No. 170 of August 12, 1988, as amended, known as the "Commonwealth of Puerto Rico Uniform Administrative Procedures Act".

Section 8.- Publicity

The executive agencies are hereby directed to notify the Secretary of Justice of all orders or final resolutions issued for violations to the Code of Ethics for Contractors, Suppliers and Applicants of Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico, for their publication and registration in the Public Registry as reliable evidence of the penalty that is established for similar situations by Act No. 458 of December 29, 2000, as amended.

Section 9.- Sanctions

The failure to comply with the provisions of this Code of Ethics by any person shall be sufficient cause for the Commonwealth of Puerto Rico, through the Secretary of Justice, to claim up to three times the damage caused to the public treasury, pursuant to Act No. 36 of June 13, 2001, as amended.

Every person who incurs violations of this Code shall be disqualified to contract with any executive agency of the Commonwealth of Puerto Rico for a term of ten (10) years, counting from the date the order or final resolution is issued.

The sanctions imposed by this Act shall not exclude the imposition of any other sanction or disciplinary measure determined by the Association or Professional College of which the contractor is a member. Nor shall the

imposition of penal sanctions for participating in an act that constitutes a crime against public office or the treasury be impeded.

Section 10.- Code of Ethics for Contractors of the Judicial and Legislative Branches.

Within a year from the effectiveness of this Act, each body of the Legislative Branch and the Judicial Branch, as well as the Office of the Comptroller, the Office of the Ombudsman, and any office or dependency attached to the legislative bodies, shall approve a Code of Ethics for contractors, suppliers of goods and services, or amendments to the regulations in effect, to incorporate the principles enunciated herein, to protect the public interest, and pursuant to the public policy of the Commonwealth of Puerto Rico adopted hereby.

Section 11.- Separability Clause

If any provision, Section or part of this Act is declared unconstitutional by a judicial ruling, its remaining provisions shall not be affected or invalidated, and the effect of said judgment shall be limited to said provision, Section or part of the Act.

Section 12.- Effectiveness

This Act shall take effect immediately after its approval in order for all agencies and instrumentalities of the Government to be notified of the final text approved for this bill, so that the different government agencies may take measures with respect to the intention of this Act.

August 5, 2002

Elba Rosa Rodríguez-Fuentes, Esq., Director of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that she has duly compared the English and Spanish texts of Act No. 84 (H.B. 2177) of the 3rd Session of the 14th Legislature of Puerto Rico, entitled:

AN ACT to establish the Code of Ethics for contractors, suppliers of goods and services and applicants for economic incentives of the executive agencies of the Commonwealth of Puerto Rico which shall regulate the relationship of every natural or juridical person who wishes to do business with, provide services to, or apply for an economic incentive of the Commonwealth of Puerto Rico; to impose certain duties and grant certain powers to the Secretary of Justice; establish sanctions and penalties; and for other purposes,

and finds the same are complete, true and correct versions of each other.

Elba Rosa Rodríguez-Fuentes

