

(H.B. 4243)
(Conference)
(Reconsidered)
(Reconsidered)

(No. 127)

(Approved May 31, 2004)

AN ACT

To amend Section 1 of Act No. 18 of October 30, 1975, as amended, to identify the paragraphs as subsections; add a new clause (5) and renumber the present clause (5) as (6), in order to exclude the requirement of having to submit copies of professional medical or health service contracts to the Office of the Comptroller; and to add new subsections (d) and (e) in order to establish that noncompliance with the provisions of this Section does not entail the annulment of the contracts, but the prohibition of making disbursements or requiring services until the contracts have been registered according to the law and regulations.

STATEMENT OF MOTIVES

The Supreme Court of the Commonwealth of Puerto Rico has issued a number of decisions dealing with the validity of contracts that, among other things, have not been registered with the Office of the Comptroller, pursuant to the provisions of Act No. 18 of October 30, 1975, as amended, henceforth, Act No. 18, and Act No. 81 of August 30, 1991, as amended, known as the “Autonomous Municipalities Act of the Commonwealth of Puerto Rico,” henceforth, the “Autonomous Municipalities Act.”

The most recent opinion to those effects is the opinion particularly rendered on the case *Las Marías Reference Laboratory Corp. v. Municipio de San Juan*, 2003 TSPR 121 (2003), whereby the Supreme Court resolved that the agreements that have not been registered and remitted to the Office of the Comptroller, as established in Section 1 of Act No. 18 and in Section 8.004 of the Autonomous Municipalities Act, are null and nondemandable and that compliance with the requirement for filing a contract with the Office of the Comptroller is a constitutive element of every municipal contract.

Section 1 of the aforementioned Act No. 18 provides that the departments, agencies, instrumentalities, offices and all other bodies as well as the municipalities of the Commonwealth of Puerto Rico, with no exception whatsoever, shall keep a registry of all contracts executed including amendments thereto, and that they shall remit a copy of said contracts to the Office of the Comptroller within fifteen (15) days following the date of the execution or amendment of the contract.

It is furthermore provided that this period shall be extended to thirty (30) days when the contract is executed outside of Puerto Rico; it being understood that a contract or an amendment to a contract is executed outside of Puerto Rico when it is executed by all parties appearing outside of Puerto Rico or when the last of these to sign the document does so outside of Puerto Rico.

We believe it important to include provisions in this legislation that will not only protect the public funds but also the ability of the government to maintain its credibility with the private sector as a contracting entity. Should the government lose this ability thousands of those services needed by our citizens would be endangered if certain fair and valid rules of the

game are not established under our body of laws. It is therefore important to maintain and support a system through which the interests of the contracting parties are protected and at the same time to establish responsibilities when executing any type of contract that does not impinge upon the public morals or order.

To those effects it is hereby clarified in this Act that noncompliance with the provisions of Section 1 of the aforementioned Act No. 18 shall not be cause for a competent court to declare the contract or juridical business in question null, but it shall indeed be sufficient to preclude the disbursement for the payment or the provision of services contained in said contract until the requirements of this Section 1 are complied with. This, according to what the Supreme Court of Puerto Rico established in the case *Municipio de Ponce v. Autoridad de Carreteras*, 2000 TSPR 194, which resolved that the consequences of noncompliance with the requirement of the cancellation of the contract pursuant to the provisions of Act No. 18, *supra*, is not the nullity of the contract but the lack of authorization for disbursing any payment whatsoever.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- To amend Section 1 of Act No. 18 of October 30, 1975, as amended, to identify the paragraphs as subsections; add a new clause (5) and renumber the present clause (5) as (6) of subsection (c); and to add new subsections (d) and (e) to read as follows:

“Section 1.-Copies of contracts, briefs and documents

(a) Government and municipal entities of the Commonwealth of Puerto Rico, with no exception whatsoever, shall keep a registry of all contracts executed, including amendments thereto, and shall remit a copy

thereof to the Office of the Comptroller within fifteen (15) days following the date of the execution or amendment of the contract. This period shall be extended to thirty (30) days when the contract is executed outside of Puerto Rico. When deeds for the acquisition or disposal of real property are executed, a copy of every writ and document connected to the negotiation shall also be sent to the Comptroller. The period of fifteen (15) or thirty (30) days, as applicable, shall be extended for fifteen (15) additional days, provided just cause is shown and it is so determined by the Office of the Comptroller. It shall be understood that a contract or amendment to a contract is executed outside of Puerto Rico when it is executed by all the appearing parties outside of Puerto Rico, or the last of these to sign the contract does so outside of Puerto Rico.

In the case whereby the Comptroller notifies any objection to the contract filed, the government entity shall have a term of thirty (30) days to correct the matter.

(b) The term 'government entity' shall include every department, agency, instrumentality, office and all other bodies of the Commonwealth of Puerto Rico, including every public corporation, its subsidiaries or any government entity with its own juridical personality, heretofore or hereafter created by law, with no exception whatsoever. The term 'municipal entity' refers to the municipalities of the Commonwealth of Puerto Rico, including the special municipal corporations and the consortiums.

(c) It shall not be necessary to submit to the Comptroller a copy of the following contracts:

- (1) Of personal services of a sporadic nature for a non-extendible term of less than six (6) months, and at a cost of less than two thousand (2,000) dollars.
- (2) Of personal services of a professional nature for a non-extendible term of one (1) year or less, and whose services do not constitute a position or employment and its cost does not exceed five thousand (5,000) dollars.
- (3) For works at a cost not to exceed two thousand (2,000) dollars.
- (4) Those executed through public auctions, excepting those that are connected to construction projects or works.
- (5) Of professional services with physicians and health professionals executed with government entities whose main objective is to provide medical services.
- (6) Any other type of contract that the Comptroller may, by regulations to that effect, determine not to be sent to him/her.

(d) Noncompliance with the provisions of Section 1 of this Act or with the equivalent provision related to contract registries included in Section 8.016 of Act No. 81 of August 30, 1991, as amended, known as the 'Commonwealth of Puerto Rico Autonomous Municipalities Act,' shall not in itself be cause for a competent Court to declare any legally

valid contract or juridical business null. However, no provision or consideration of services object of a contract may be demanded until the provisions of Section 1 of this Act have been complied with.

(e) Every contract subject to registration pursuant to Section 1 of this Act shall contain a clear and conspicuous notice that shall read as follows: ‘No provision or consideration of services object of this contract may be demanded until the same has been filed for registration with the Office of the Comptroller pursuant to the provisions of Act No. 18 of October 30, 1975, as amended.’”

Section 2.-This Act shall take effect immediately after its approval and shall apply to every government or municipal contract executed on or before the approval of this Act.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 127 (H.B. 4243) (Conference) (Reconsidered) (Reconsidered) of the 7th Session of the 14th Legislature of Puerto Rico:

AN ACT to amend Section 1 of Act No. 18 of October 30, 1975, as amended, to identify the paragraphs as subsections; add a new clause (5) and renumber the present clause (5) as (6), in order to exclude the requirement of having to submit copies of professional medical or health service contracts to the Office of the Comptroller; and to add new subsections (d) and (e) in order to establish that noncompliance with the provisions of this Section does not entail the annulment of the contracts, but the prohibition of making disbursements or requiring services until the contracts have been registered according to the law and regulations,

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

In San Juan, Puerto Rico, today 19th of May of 2005.

Luis E. Fusté-Lacourt
Director