

(S. B. 2330)

(No. 428)

(Approved September 22, 2004)

### **AN ACT**

To amend Sections 1, 3 and 7 of Act No. 458 of December 29, 2000, as amended, to provide that any natural or juridical person who wishes to participate in the award of bids or the granting of a contract with any government agency or instrumentality, public corporation or municipality shall submit a sworn statement indicating if he/she has been convicted or plead guilty to any crime listed under Section 3 of the aforementioned Act in Puerto Rico, the United States or in any other country.

### **STATEMENT OF MOTIVES**

On September 29, 2000, Act No. 458 was approved to provide that a Head of a government agency or instrumentality, public corporation or municipality, shall not award any bid or contract whatsoever for services or for the sale or delivery of goods to a natural or juridical person who has been convicted or has plead guilty of committing certain crimes which constitute fraud, embezzlement or misappropriation of public funds in a state or Federal forum or in any other jurisdiction of the United States of America. The approval of said Act was justified by the strengthening of the fight against corruption, because it is an additional mechanism to guarantee and protect the integrity and optimal use of the fiscal resources of the State.

Subsequently, on July 29, 2001, the text of said Act was amended by the approval of Act No. 84 in order to apply its provisions to the Legislative and Judicial Branches, and to increase the term of the prohibition for the execution of contracts.

On the other hand, in Section 7 of said Act No. 458 it is provided that the Court of First Instance shall notify the Secretary of Justice of any conviction for the crimes listed under said Act and that, in turn, the latter shall establish and keep a register of natural or juridical persons convicted or who have plead guilty of committing said crimes. Undeniably, upon analyzing this provision, the following faults have been found: first, there is no way to establish a procedure to compel the federal courts and those of other jurisdictions of the United States to notify the sentences imposed in their respective jurisdictions, which limits the data banks of the government at the time of awarding bids or formalizing contracts; second, the burden of verifying the criminal record of the natural or juridical person falls upon the Head of the government agency or instrumentality, public corporation or municipality, although it is obvious that such information is often inaccessible; and third, criminal records in other countries are not taken into account. Furthermore, there is always the risk of inadvertently formalizing contracts with natural or juridical persons who have direct or indirect legal ties with another person who has been previously convicted, thus evading the intention of the government to formalize contracts solely with persons or corporations of proven and obvious honesty.

For said reason, any person who wishes to participate in an auction or to formalize a contract with the government shall have the responsibility to report to the government agency or instrumentality, public corporation or municipality if he/she has been convicted or has plead guilty of committing any crime listed under Section 3 of the referred Act, whether in Puerto Rico, the United States or in any other country. Furthermore, in the case that the report is affirmative, said person shall also specify the crime or the crimes for which he/she has been found guilty or has made the corresponding guilty plea.

Finally, in order to promote an adequate mechanism to allow the government

to enforce the provisions of the Act and to ensure a better use of public funds, the Legislature of the Commonwealth of Puerto Rico deems it essential to approve this Act.

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

Section 1.- Sections 1, 3 and 7 of Act No. 458 of December 29, 2000, as amended, are hereby amended to read as follows:

“Section 1.- It is hereby provided that a Head of Government agency or instrumentality, public corporation or municipality, or of the Legislative or Judicial Branches shall not award any bids or contract whatsoever for services or for the sale or delivery of goods to a natural or juridical person who has been convicted or plead guilty in a Federal or state forum, in any other jurisdiction of the United States, or in any other country, for the commission of those crimes that constitute fraud, embezzlement or misappropriation of public funds listed in Section 3 of this Act.

...

Section 3.- The crimes for whose conviction the prohibition set forth in this Act shall apply, are the following:

- (1) aggravated misappropriation, in all its modalities;
- (2) extortion;
- (3) construction fraud;
- (4) fraud in the execution of construction works;
- (5) fraud in the delivery of goods;
- (6) undue intervention in the processes of awarding bids or in government operations;
- (7) bribery, in all its modalities;
- (8) aggravated bribery;
- (9) offer to bribe;

- (10) undue influence;
- (11) crimes against public funds;
- (12) preparation of forged documents;
- (13) presentation of forged documents;
- (14) forgery of documents;
- (15) possession and transfer of forged documents.

For the purposes of the Federal jurisdiction, that of the states and territories of the United States, or of any other country, the prohibition set forth in this Act shall apply in cases of convictions for crimes whose constitutive elements are equivalent to those of the above stated crimes.

...

Section 7.- The Court of First Instance shall notify the Secretary of Justice of any conviction that falls within the crimes listed in Section 3 of this Act. The Secretary of Justice shall establish and keep a register of all natural and juridical persons who have been convicted or plead guilty of said crimes.

Furthermore, any natural or juridical person who wishes to participate in the award of bids or in any granting of contracts with any government agency or instrumentality, public corporation or municipality for the rendering of services or the sale or delivery of goods shall submit a statement sworn before a notary public stating if he/she has been convicted or has plead guilty of the commission of any of the crimes listed under Section 3 of this Act, or if he/she is under investigation in any legislative, judicial or administrative procedure, whether in Puerto Rico, the United States or any other country, in order to participate in the awarding or granting of any bids or contract, respectively. If the information were affirmative, the crimes for which he/she was found guilty or entered a guilty plea shall be stated therein.”

Section 2.- This Act shall take effect immediately after its approval.

**CERTIFICATION**

I hereby certify to the Secretary of State that the following Act No. 428 (S.B. 2330) of the 7<sup>th</sup> Session of the 14<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend Sections 1, 3 and 7 of Act No. 458 of December 29, 2000, as amended, to provide that any natural or juridical person who wishes to participate in the award of bids or the granting of a contract with any government agency or instrumentality, public corporation or municipality shall submit a sworn statement indicating if he/she has been convicted or plead guilty to any crime listed under Section 3 of the aforementioned Act in Puerto Rico, the United States or in any other country,

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

In San Juan, Puerto Rico, today 28<sup>th</sup> of July of 2005.

Francisco J. Domenech  
Director