

Act Concerning Offences Relating to the Submission of Bids to Government Agencies B.E. 2542 (1999)

Translation

Bhumibhol Adulyadej, Rex.

Given this 19th day of November B.E. 2542 (1999)

Being the 54th year of the present Reign.

His Majesty King Bhumibhol Adulyadej has been graciously pleased to proclaim that,
Whereas it is deemed expedient to have a law governing the offences relating to the submission of bids to government agencies.

Be it therefore enacted an act, with the advice and consent of the Parliament, as follows:

Section 1

This Act shall be called the "Act Concerning Offences Relating to the Submission of Bids to Government Agencies B.E. 2542 (1999)".

Section 2

This Act shall come into force on the date following the date of its publication in the Government Gazette.

Section 3

In this Act,

"Submission of bids" means the submission of an offer to be a person entitled to enter into a contract with government agencies relating to the purchase, contracting for works, exchange, lease, disposal of property, acquisition of a concession or any other rights.

"Government agencies" mean ministries, bureaus, departments, provincial administration authorities, local administration authorities, government enterprises or other government agencies or any other agencies which carry out government activities under the law and have received subsidies or money or seed property from the state.

"Holder of political position" means

- (1) Prime Minister
- (2) Minister
- (3) Member of the House of Representatives
- (4) Member of the Senate
- (5) Political officials other than (1) and (2) under the Political Civil Servants Act.
- (6) Political parliamentary officials under the Parliamentary Officials Rules Act.
- (7) Local administrator or member of a local assembly.

"CCC" means the Counter Corruption Commission

Section 4

Any persons who agree to collaborate in the submission of bids with an objective to provide a benefit to any person so as to be the person entitled to enter into a contract with state agencies by avoiding a fair price competition or by preventing the offer of other goods or services to government agencies or by taking advantage of government agencies in a manner which is not a normal course of business shall be liable to punishment by imprisonment for a term of one to three years or by a fine amounting to 50 percent of the amount of money representing the highest bid made between such co-offenders or of the amount of money of the contract entered into with a government agency, whichever amount is greater.

Any person who takes the burden of persuading other persons to agree to collaborate in the commission of offence as stipulated in the first paragraph shall be liable to punishment according to the first paragraph.

Section 5

Any person who gives, requests to give or undertakes to give money or property or any other benefits to other persons for the benefit of the submission of bids with the objective to induce such person to participate in any act which renders a benefit to any person to be the person entitled to enter into a contract with a government agency or to induce such person to submit the bid at such a high or low level that it could apparently be seen as not corresponding with the nature of the goods, services or rights to be granted or to induce such person not to participate in the submission of bids or to withdraw the submission of bids shall be liable to punishment by imprisonment for a term of one to five years and by a fine amounting to 50 percent of the amount of money representing the highest bid made between such co-offenders or of the amount of money of the contract entered into with a state agency, whichever amount is greater.

Any person who demands, accepts or agrees to accept money or property or any other benefits in order to perform an act under the first paragraph shall be deemed as a co-offender.

Section 6

Any person who compels other person to involuntarily participate in any act of the submission of bids or not to participate in the submission of bids or to withdraw the submission of bids or to necessarily submit the bids as required by the use of force to commit any act of violence against or threaten by any means whatever to cause fear of the injury to life, body, freedom, reputation or property of the threatened person or a third party to the extent that the compelled person submits to the same shall be liable to punishment by imprisonment for a term of five to ten years and by a fine amounting to 50 percent of the amount of money representing the highest bid made between such co-offenders or of the amount of money of the contract entered into with a state agency, whichever amount is greater.

Section 7

Any person who uses deceitful means or acts otherwise to the extent that the other person is deprived of the opportunity for a fair submission of bids or is caused to submit the bids by mistake shall be liable to punishment by imprisonment for a term of one to five years and by a fine amounting to 50 percent of the amount of money representing the highest bid made between such co-offenders or of the amount of money of the contract entered into with a state agency, whichever amount is greater.

Section 8

Any person who dishonestly submit the bid to a government agency with the knowledge that the offered bid is unusually low that it could apparently be seen as not corresponding with the nature of the goods, services or offers the return to the government agency higher than the benefits actually entitled to with the objective to prevent a fair price competition and such act renders proper compliance with the contract not possible shall be liable to punishment by imprisonment for a term of one to three years or by a fine amounting to 50 percent of the amount of money of the bid or of the amount of money of the contract entered into with a government agency, whichever amount is greater.

If the inability to properly comply with the contract under the first paragraph causes the government agency to shoulder additional costs in completing the arrangement according to the objective of the said contract, the offender must also compensate such government agency for the costs.

In the trial of the case of offences relating to the submission of bids to government agencies, the court shall also, upon request, determine the costs that the government must additionally shoulder for the government agency under the second paragraph.

Section 9

If the offence committed under this Act is in the interest of any juristic person, it shall be deemed that the managing partner, president, management or the person empowered to run the business of such juristic person or the person responsible for the operation of the juristic person on such matter are also co-principals in the commission of the offence unless it can be proven that they take no part in the commission of such offence.

Section 10

Any official of a government agency who has the power or duty to grant approval of, give consideration to or do any act relating to the submission of bids at any one time and who knows or there is a circumstantial evidence that he should know that there is a commission of offence under this Act in respect of the submission of bids at such time has committed malfeasance in office and shall be liable to punishment by imprisonment for a term of one to ten years and by a fine from twenty thousand Baht to two hundred thousand Baht.

Section 11

Any official of a government agency or any person assigned by a government agency who has dishonestly designed the specifications for price, conditions or return which constitute the basis for the submission of bids with an aim to prevent a fair competition in the submission of bids or to assist any bidder to be entitled to unfairly enter into a contract with a state agency or to prevent any bidder from having an opportunity to fairly compete in the submission of bids shall be liable to punishment by imprisonment for a term of five to twenty years or an imprisonment for life and by a fine from one hundred thousand baht to four hundred thousand Baht.

If the commission of offence under the first paragraph pertains to the person authorized by a state agency to take charge of such undertaking, such person shall be liable to two-thirds of the punishment prescribed in the first paragraph.

Section 12

Any official of a government agency who commits an offence under this Act or does any act with an aim to prevent a fair competition in the submission of bids to facilitate any bidder to be entitled to enter into a contract with a state agency has committed malfeasance in office and shall be liable to punishment by imprisonment for a term of five to twenty years or an imprisonment for life and by a fine from one hundred thousand Baht to four hundred thousand Baht.

Section 13

Any political officer, holder of political office, local administrator, member of local administrative council, member of a committee or member of a sub-committee in government agencies, who is a non-government officer and who violates this Act or does any act against the competent officials in government agencies having the power or duty to grant approval, consider or take any action relating to the submission of bids in order to induce or influence the acceptance of the submission of bids which is made in contravention of this Act shall be deemed to commit malfeasance in office and shall be liable to punishment by imprisonment for a term of seven to twenty years or an imprisonment for life or by a fine from one hundred forty thousand Baht to four hundred thousand Baht.

Section 14

The Counter Corruption Commission (CCC) has the power to investigate the facts in relation to an act which is an offence relating to the submission of bids to government agencies under this Act.

If there are circumstances apparent to the CCC or accusations or complaints that the purchase, contracting for works, exchange, lease, disposal of property, receipt of concession or any rights by the government agencies at any one time is in contravention of this Act, the CCC shall conduct an investigation of facts as soon as possible, and if it is of the opinion that there are valid grounds, the following actions shall be taken:

- (1) If the offender is a government officer or a person holding political position under the organic laws to the Constitution governing the prevention and

suppression of corruption, the CCC shall take action against such person under the relevant organic laws to the Constitution on prevention and suppression of corruption;

- (2) If the offender is a person other than the persons under (1), the CCC shall proceed to incriminate such person before the competent investigator for further legal proceeding. In taking action on this matter, the competent investigator shall base the conduct of the investigation on the investigation report prepared by the CCC;
- (3) In the event that the offence committed under this Act is an act by the government officer or the person holding political position under (1) and other person and the nature of the case is of the same and relevant offence irrespective of whether or not it is the principal, the user or supporter, if in the opinion of the CCC it is deemed appropriate that an investigation should be conducted for legal proceedings against all the persons involved at one time, the CCC shall be empowered to conduct an investigation of persons involved in the offence. Upon completion of the investigation, the report, documents and comments of the CCC shall be forwarded to the Office of the Attorney General for entering an action in the court which has jurisdiction over such offenders. In this regard, it shall be deemed that the report of CCC is the investigation file of the case under the Criminal Procedure Code. But if the CCC is of the opinion that the commission of offence should be investigated by the competent officer under the Criminal Procedure Code , the CCC shall then forward the result of the investigation to the competent investigator for further legal proceeding.

Actions taken by the CCC shall not be prejudicial to the rights of the injured person or the injured government agencies as a result of the commission of offence in the submission of bids to file complaints or make incrimination under the Criminal Procedure Code.

Section 15

In conducting the investigation for a criminal proceeding against the offender under this Act, the CCC shall have the following power:

- (1) to seek facts and gather evidence in order to know the facts or to establish the guilt and to bring the offender to justice;
- (2) to issue an order to the government officials, members of the staff or employees of the government agencies to do any or all acts necessary for the gathering and compiling of the evidence by the CCC or demand the delivery of related documents or evidence from any person or call any persons to give statement in the interests of the investigation;
- (3) to apply for an order of the court of jurisdiction to issue a warrant of entry into dwelling places, working places or any other places including vehicles of any persons during the time between the sunrise and the sunset or during the business hours for the purpose of conducting inspection, search, seizure or attachment of documents, property or any other evidence relevant to the investigation of facts; and if such action can not be completed within the said period of time, it may be continued until completion;
- (4) to apply for an order of the court of jurisdiction to issue a warrant for arrest and taking into custody of the accused whom in the course of investigation is found to be an offender or in respect of whom the CCC has resolved that the accusation has grounds in order to send him to the Office of the Attorney General for further legal proceeding;
- (5) to ask the police officer or investigator to execute the court warrant issued under (3) or under (4);
- (6) to set forth by publication in the Government Gazette the regulations governing the investigation and examination of the commission of offences under this Act and the co-ordination of work in instituting legal proceedings among the CCC, the competent investigator and the public prosecutor.

In the discharge of duties under this Act, the Chairman and members of the CCC shall be competent administrative officers or senior police officers and shall have the same duty and power as the competent investigator under the Criminal Procedure Code. And in the interests of investigation, members of the CCC shall have the power to appoint sub-committees or competent officers to exercise the power of the CCC. In this case, the appointed sub-committees or competent officers shall be competent investigators under the Criminal Procedure Code.

In the event that the investigation report is forwarded by the CCC to the Attorney General for legal proceedings, the power and duty in respect of the action relating to a prosecution order or a non-prosecution order of the public prosecutor under the Criminal Procedure Code, which are stipulated by the provisions as being that of the competent investigator, the National Police Bureau Commander or the provincial governor, shall be regarded as the power and duty of the Counter Corruption Commission (CCC).

SECTION 16

The Prime Minister shall have charge and control over the execution of this Act.

Countersigned by
Mr. Chuan Leekpai
Prime Minister

Remarks: The reason for the enactment of this Act is that the procurement of goods and services, either by the government method of purchasing or contracting for works or any other methods of each government agency, is financed by the government budget, loans, grants or revenue of government agencies, which are national revenue. Also, the granting of rights by the government for engaging in certain businesses in the form of concession or any other similar characteristics is carried out in the public interest, which are the affairs of the government. Accordingly, the procurement of goods and services as well as the granting of rights must be carried out on a clean, fair and liberally competed basis for maximum benefits of the Government. However, the procurement had been previously made by means of secret settlement of the submission of bids, and there were circumstances preventing actual competition to offer maximum benefits to state agencies. Such practice causes damage to the country. Furthermore, in certain cases, the persons holding political positions or government authorities also take part in or provide support to the commission of the offences, or neglect their duties. Consequently, the problem becomes more serious. Such practice, therefore, should be prescribed as offences in order to suppress it from recurrence. Also, the characteristics of the offences as well as the mechanism to penalize the persons holding political positions and government officials should be prescribed in order to create a more efficient suppression. It is therefore necessary to enact this Act.

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