

**Act on Offences Relating to the Submission of Bids to State Agencies,
B.E. 2542 (1999)**

BHUMIBOL ADULYADEJ, REX.

Given on the 19th Day of November B.E. 2542;

Being the 54th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on offences relating to the submission of bids to State agencies;

Be it therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the “Act on Offences Relating to the Submission of Bids to State Agencies, B.E. 2542 (1999)”.

Section 2. This Act shall come into force as from the day following the date of its publication in the Government Gazette.*

Section 3. In this Act:

“bid” means the submission of a proposal with the object of acquiring the right to enter into a contract with a State agency pertaining to a purchase, hire, exchange, lease, asset disposal, concession or receipt of other rights;

“State agency” means a Ministry, Sub-Ministry, Department, provincial administration, local administration, State enterprise or other State agencies or agencies exercising functions of the State under the law and receiving contributions or investment properties from the State;

“political position holder” means:

- (1) Prime Minister;
- (2) Minister;
- (3) member of the House of Representatives;
- (4) Senator;
- (5) other political officials other than (1) and (2) under the law on rules of political officials;

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(6) National Assembly officials of the political division under the law on rules of National Assembly officials;

(7) local administrators and members of the local assembly.

“NCCC” means the National Counter Corruption Commission.

Section 4. Any person who bids in collusion with others with the object of conferring a benefit to any such persons in the form of a right to enter into a contract with a State agency, by avoiding fair competition or by creating barriers to the offer of other products or services to a State agency or by acquiring an advantage over a State agency in a manner which is not congruous with normal business practice, shall be liable to imprisonment for a term not exceeding three years and a fine of fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.

Any person who assumes the role of persuading others to participate in the commission of an offence prescribed in paragraph one shall be liable to the penalties under paragraph one.

Section 5. Any person who gives, offers to give or undertakes to give moneys or properties or other benefits to another person for the purpose of a bid, with the object of inducing others to participate in any activity which confers a benefit to any person in the form of a right to enter into a contract with a State agency, or to induce such person to submit a higher or lower bid that is apparently inconsistent with the properties of the product, service or receivable right, or to induce such person to participate in a bid or withdrawal of a bid, shall be liable to imprisonment for a term from one year to five years and a fine of fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.

Any person who demands, receives or consents to the receipt of moneys or properties or other benefits in connection with the commission of an act under paragraph one shall be deemed as a joint offender.

Section 6. Any person who coerces another person to participate in a bid or not participate in a bid or withdraw a bid or bid as directed, by use of force or any form of threat to incite fear of endangerment to life, body, liberty, reputation or properties of the threatened person or a third party, and as a result thereof the threatened person submits to such coercion, shall be liable to imprisonment for a term from five years to ten years and a fine of fifty percent of the highest bid price

submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.

Section 7. Any person who by deceit or other means constitutes a cause for another person's inability to bid fairly or for such person to bid under a misunderstanding shall be liable to imprisonment for a term from one year to five years and a fine of fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.

Section 8. Any person who fraudulently submits a bid to a State agency knowing that the bid price submitted is unusually low such that it is apparently inconsistent with the properties of the product or service, or offers beneficial consideration to the State agency that is much higher than entitled, with the objective of creating a barrier to fair competition, and such act constitutes a cause for an inability to perform properly under a contract, shall be liable to imprisonment for a term from one year to three years and a fine of fifty percent of the bid price or the value of the contract that has been entered into with the State agency, whichever is the higher.

In the case where an inability to perform properly under a contract under paragraph one causes the State agency to incur additional costs in connection with the completion of the objectives of such contract, the offender shall also indemnify the State agency for such expenses.

In the trial and adjudication of cases relating to the submission of bid to a State agencies, if requested, the Court shall also determine the additional costs borne by the State for the State agency under paragraph two.

Section 9. In the case where the commission of an offence under this act is made for the benefit of any juristic person, the managing partner, managing director, executives or authorised personnel in the operation of such juristic person's business or a person responsible for the operations of the juristic person on such matter shall also be deemed as joint principal offenders, unless it can be proven that he/she had no awareness of the commission of such offence.

Section 10. Any official of a State agency having the power or duty to approve, consider or perform any function in relation to a bid on any occasion, and who knows or should have known from the apparent circumstances that an offence under this Act was committed in the bid on such occasion, having failed to act in such manner as to abort proceedings relating to the bid on such occasion, shall have

committed an offence of misfeasance in office and shall be liable to imprisonment for a term from one year to ten years and a fine from twenty thousand baht to two hundred thousand baht.

Section 11. Any official of a State agency or any person entrusted by a State agency who fraudulently designs, fixes the price, prescribes conditions or determines benefits that would form the standard in the bid process with the object of preventing fair bid competition, or in order to assist any bidder in unfairly obtaining the right to enter into a contract with a State agency, or in order to prevent other bidders from fairly competing in the bid process, shall be liable to imprisonment for a term from five years to twenty years or life imprisonment and a fine from one hundred thousand baht to four hundred thousand baht.

Section 12. Any official of a State agency who commits an offence under this Act, or commits any act with the purpose of preventing fair competition by favouring any bidder as the person entitled to enter into a contract with a State agency, shall have committed the offence of misfeasance in office and shall be liable to imprisonment for a term from five years to twenty years or life imprisonment and a fine from one hundred thousand baht to four hundred thousand baht.

Section 13. A political position holder or member of a committee or sub-committee in a State agency, not being an official in the State agency, who commits an offence under this Act or commits any act on officials in the State agency having the power or duty to approve, consider or perform any function in relation to a bid in order to induce or compel the acceptance of a bid that involves an offence under this Act, shall be deemed as having committed an offence of misfeasance in office and shall be liable to imprisonment for a term from seven years to twenty years or life imprisonment and a fine from one hundred and forty thousand baht to four hundred thousand baht.

Section 14. The NCCC shall have the power to investigate facts relating to acts which are offences relating to the submission of bids to State agencies under this Act.

In the case where circumstances appear to the NCCC or a petition has been filed that a purchase, hire, exchange, lease, asset disposal, concession or grant of any rights of a State agency on any occasion involves an act which constitutes an offence under this Act, the NCCC shall expediently conduct an investigation, and if the NCCC considers that there is substance in the case, the following proceedings shall be taken:

(1) in the case where the offender is a State official or political position holder under the organic law on counter corruption, the NCCC shall instigate proceedings on such person pursuant to the organic law on counter corruption;

(2) in the case of persons other than (1), the NCCC shall file a complaint against such person to the investigation officer in order to take further proceedings; the fact-finding investigation report of the NCCC shall form the basis of proceedings taken by the investigation officer;

(3) in the case where the commission of an offence under this Act is an act of a State official or political position holder under (1) or other persons in connected cases of identical offences, whether as a principal, agent provocateur or aid and abettor, if the NCCC considers it appropriate to conduct an investigation for further proceedings on all such related persons at one time, the NCCC shall have the power to conduct an investigation of the persons related to the commission of the offence, and upon completion, a documentary report and opinion shall be submitted to the Office of the Attorney-General in order for a case to be filed at the court which has competent jurisdiction over such offenders; in this regard, the report of the NCCC shall be deemed as an investigation file under the law on criminal procedure; however, if the NCCC considers it appropriate for the investigation of such offence to be taken by an investigation officer under the law on criminal procedure, the NCCC shall submit the result of fact-finding investigation to the investigation officer who will take further proceedings.

Proceedings of the NCCC shall not abrogate the rights of persons or State agencies that have suffered losses as a result of an offence in the bid to file petitions or complaints under the law on criminal procedure.

Section 15. In an investigation for criminal proceedings against an offender under this Act, the NCCC shall have the following powers:

(1) to search for facts and compile evidence in order to acquire facts or prove an offence as well as to instigate legal proceedings to implicate the offender;

(2) to issue an order for government officials, officers or employees of State agencies to perform as necessary for the compilation of evidence by the NCCC, or summon documents or evidence relating to any person, or summon any person to give a testimony for the purpose of the investigation;

(3) to file motions at the court of competent jurisdiction for a warrant to enter a place of residence, place of business or other places, including vehicles belonging to any person, between sunrise and sunset or during business hours in order to examine, search, seize or attach documents, properties or other evidence relating to the matter which is subject to the factual inquiry, and if not completed within such time period, those acts may be continued until completion;

(4) to file motions at the court of competent jurisdiction for an arrest warrant and detention of an alleged offender who appears to be an offender during the factual inquiry or in relation to whom the NCCC resolves that there is substance in the allegations in order that he/she be sent to the Office of the Attorney-General for further proceedings;

(5) to request a police officer or investigation officer to comply with court warrants issued under (3) or (4);

(6) to prescribe rules by publication in the Government Gazette on matters relating to the investigation and inquiry of commission of offences under this Act and coordinate legal proceedings taken by the NCCC, investigation officer and State attorney.

In the exercise of functions under this Act, the President and members of the NCCC shall be administrative officials or senior police officers and shall have identical powers and duties to the investigation officer under the Criminal Procedure Code, and for the benefit of investigations, the NCCC shall have the power to appoint a sub-committee or competent official to exercise the functions of the NCCC. The appointed sub-committee or competent official shall be an investigation officer under the Criminal Procedure Code.

In the case where the NCCC submits an investigation report to the Office of the Attorney-General for further legal proceedings, in relation to proceedings leading to the issue of an order of prosecution or non-prosecution vested in the State attorney under the Criminal Procedure Code, the provisions prescribing powers and duties of the investigation official, National Police Commander or provincial governor shall be deemed as powers and duties of the NCCC.

Section 16. The Prime Minister shall have charge and control of the execution of this Act.

Countersigned by:

Chuan Leekpai
Prime Minister

NB:- The reasons for promulgating this Act are as follows. Whereas the procurement of products and services, whether by means of purchase or hire or other methods, of all State agencies are processes which expend budgetary appropriations, loans, financial assistance or revenues of the State agency, which are State funds, and the fact that the grant of rights to operate certain activities through concessions or other similar cases by the State are activities undertaken in the interest of the public, which are functions of the State; therefore, the procurement of such products and services as well as grant of rights must be conducted in a fair and just manner and by means of free competition for the greatest benefit to the State. However, operations in the past have experienced bid collusions and various circumstances, which were not true competitions to present the greatest benefit to the State agency and have incurred loss to the nation. Moreover, in some cases, political position holders or State officials were involved in or promotes the commission of an offence or fails to exercise their powers and duties, which worsened this problem. It is therefore appropriate that such acts are prescribed as offences in order to suppress such acts as well as prescribe offences and procedures for implicating political position holders and State officials so as to enhance the efficiency of such suppression measures. It is thus expedient to enact this Act.