

(H. B. 2836)

(No. 344)

(Approved September 2, 2000)

AN ACT

To amend Sections 7.010 and 8.016 of Act No. 81 of August 30, 1991, as amended, known as the “Autonomous Municipalities Act of the Commonwealth of Puerto Rico of 1991”, in order to provide that the municipalities shall not enter contracts with private organizations that provide training services until the competent municipal authority certifies in writing that there are no competent and qualified municipal employees or officials nor government agencies or entities that are engaged in providing low-cost training that can offer the required services; to expressly establish that the municipalities shall contract the services of a duly qualified external auditor who shall be responsible for the annual auditing of municipal financial statements, at least ninety (90) days before the close of the fiscal year to be evaluated, who shall receive guidance by the personnel of the Office of the Comptroller prior to initiating the contracted work and judge the reliability and correctness of said financial statements, and compliance with the provisions of the Single Audit Act of 1984, Public Law 98-502, as amended, with the recommendations of the Comptroller and the correction of the deficiencies indicated in the previous reports; and for other purposes.

STATEMENT OF MOTIVES

Section 7.010 of Act No. 81 of August 30, 1991, as amended, known as the “Autonomous Municipalities Act of the Commonwealth of Puerto Rico”, provides in its pertinent part, that the inspection of each municipal budget shall include “the task of ensuring the legality and purity of the fiscal operations that arise in the execution of the budgets, as well as that of ensuring that said operations are performed within the amounts authorized”.

Subsequently, the abovementioned Section establishes that the supervision and control of the operations of each municipality shall include, among others, the annual auditing of the financial statements prepared by external auditing firms duly qualified to give opinions on the reliability and correctness of said statements and their compliance with the provisions of the Single Audit Act of 1984, PL 98-502, as amended.

Although we have cited references in the Autonomous Municipalities Act to the function of external auditors in the supervision of municipal fiscal operations, there is no express requirement that external auditing services be contracted. Nor is there any reference in the above-cited Act on limitations or conditions that those individuals contracted to render these services must meet.

Furthermore, Section 8.016 of the Autonomous Municipalities Act, *supra*, establishes limitations to the capacity to contract delegated thereto by the Legislature in subsection (n) of Section 2.001 of said Act. Even when Section 8.016 makes reference to general prohibitions, it reserves those of a special nature only for contracts for the execution of public works and improvements.

Regarding advisory contracts and the efficient use of public funds, the Management and Budget Office has indicated a significant reduction in the disbursement of public funds (\$1,827,000) as the result of the use of competent and qualified employees to train other employees in the central government. The announced reduction is of nine percent, which is equivalent to \$1,827,000 in savings. Likewise, savings of \$242,000 were identified on account of a one percent reduction in the contracts for services currently offered by other available government purveyors such as the Center for Advanced Studies In Public Administration of the University of

Puerto Rico and the Central Labor Advisory and Human Resources Administration Office.

On the contracting of external auditing, the Office of the Comptroller has publicly recommended making the regulations applicable to Authorized Public Accountants (CPA) who audit municipalities, more strict. These recommendations include establishing time limits to contract external auditing firms, to provide that CPAs receive advice from the personnel of the Office of the Comptroller prior to initiate their work, and to require that every auditor shall render judgment on the compliance with the recommendations of the Comptroller and the correction of the deficiencies indicated in their previous reports.

We deem it is prudent to revise the provisions on general and special contracts included in Section 8.016, opcit, in order to delineate the limits and conditions that we consider it is proper to establish on advisory contracts and external auditing. We act in answer to the pressing need of safeguarding the efficient use of municipal funds and sound public administration.

Pursuant to the above, we also amend Section 7.010 of the Autonomous Municipalities Act, *supra*, to establish that reports rendered by external auditors shall give their opinion on the compliance with the recommendations of the Comptroller and the correction of the deficiencies indicated in their previous reports.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 7.010 of Act No. 81 of August 30, 1991, as amended, is hereby amended to read as follows:

“Section 7.010.- Supervision and Control of Budget

The Mayor, as the chief executive officer of the municipality, and the Chairperson of the Municipal Assembly, as its administrative head, shall be

responsible for supervising the performance of the budget approved for the Executive and Legislative Branches, as pertinent, and of all fiscal operations related to the same. The control of each budget shall include, the task of ensuring the legality and purity of the fiscal operations that arise in the execution of the budgets, that is, that said operations are performed within the authorized amounts. The supervision and control of the operations of each municipality shall be carried out at the following five levels:

- (a) ...
- (e) The auditing of the financial statements prepared each year by external auditing firms duly qualified and contracted pursuant to the provisions of Section 8.016 of this Act to give opinions on the reliability and correctness of said financial statements and compliance with the provisions of the Single Audit Act of 1984, P.L. 98-502, as amended. The reports rendered by the external auditors shall also give their opinion on the compliance of the recommendations of the Comptroller and the correction of the deficiencies found in the previous reports.

The Mayor shall submit the reports rendered by the auditors on the matter, to the Assembly and the Commissioner within the term established by him/her through regulations.

Said reports shall be placed in at least two (2) places in public view and access, in the City Hall, Internal Revenue Collector's Office, Judicial Centers, or any other place that is accessible to the general public for at least fifteen (15) days following its delivery to the Mayor and the Assembly. The above shall not impair the right of the citizens to examine said documents in the place they are filed after their term of publication has expired.”

Section 2.- Section 8.016 of Act No. 81 of August 30, 1991, as amended, is hereby amended to read as follows:

“Section 8.016.-On Contracts

The municipality may contract whatever professional, technical, and advisory services that are necessary to carry out municipal activities, programs, and operations or to comply with any other public end authorized by this Act, or by any other applicable statute. Nevertheless, any contract executed or subscribed in contravention to the provisions of this Section shall be null and ineffective, and the public funds invested in its administration or execution shall be recovered in behalf of the municipality through the proper action filed to such effect.

The municipality shall not grant any contract in which any of the Assemblypersons, officers, or employees have, directly or indirectly, any pecuniary interest, unless authorized by the Governor of Puerto Rico, upon the recommendation of the Secretary of Justice and of the Commissioner.

Likewise, no assemblyperson, municipal official or employee shall lend or borrow money, nor accept donations or gifts from any contractor who is providing services or supplies to the municipality.

Furthermore, any contract that is executed or subscribed in contravention to the following special provisions shall be null:

(a) Contracts for training services.

No contracts shall be subscribed with private entities for the performance of training services until the competent municipal authority certifies in writing that there are no competent and qualified municipal employees or officials nor government agencies or entities engaged in providing low-cost training services, such as the University of Puerto Rico or the Central

Labor Advisory and Human Resources Administration Office, that may offer the required services.

(b) Contracts for auditing services.

The municipality shall contract the services of an external auditor duly qualified and certified as certified public accountant, who shall receive orientation by the personnel of the Office of the Comptroller and shall be responsible for the annual auditing of the municipal financial statements.

The report on the municipal financial statement, which shall be prepared by the external auditor contracted by the municipality shall pass judgment on the reliability and correction of said financial statements and compliance with the provisions of the Single Audit Act of 1984, Public Law 98-502, as amended, with the recommendations of the Comptroller and the correction of the deficiencies found in his/her previous reports.

(c) Contracts for the performance of public works and improvements.

The contracts for the performance of public works and improvements shall not be signed until:

- (1) The contractor gives evidence before the municipality of the payment of the corresponding State Insurance Fund policy and the corresponding municipal license.
- (2) Delivers the bond issued to guarantee the payment of wages and the materials used in the work, and
- (3) Delivers or deposits any other performance bond required by the Bidding Board.

Every contract for the construction or improvement of public works shall provide for the withholding of ten percent (10%) of each partial payment, until the work is completed, is inspected, and accepted by the municipality, and until the contractor gives evidence that he/she has been relieved from all obligations as an employer.

The municipalities shall keep a record of all contracts granted, including the amendments thereto, and shall remit a copy of them and the deeds for the acquisition and disposition of assets to the Office of the Comptroller of Puerto Rico, pursuant to Sections 97et seq. of Title 2 of the Laws of Puerto Rico and its Regulations.”

Section 3.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No.344 (H.B. 2836) of the 7th Session of the 13th Legislature of Puerto Rico:

AN ACT to amend Sections 7.010 and 8.016 of Act No. 81 of August 30, 1991, as amended, known as the “Autonomous Municipalities Act of the Commonwealth of Puerto Rico of 1991”, in order to provide that the municipalities shall not enter contracts with private organizations that provide training services until the competent municipal authority certifies in writing that there are no competent and qualified municipal employees or officials nor government agencies or entities that are engaged in providing low-cost training that can offer the required services;,

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

In San Juan, Puerto Rico, today 8th of March of 2005.

Luis Fusté-Lacourt
Director

