A BILL FOR AN ACT

To establish procedures for competitive bidding on public contracts of the National Government, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

Section 1. Short title. This act is known and may be cited as the "Public Contracts Act."

Section 2. Definitions.

(1) "Citizen bidder" means:

(a) Until the termination of the Trusteeship, any business in which an interest is owned by a citizen of the Trust Territory of the Pacific Islands; and

(b) Upon termination of the Trusteeship, any business in which an interest is owned by a citizen of the Federated States of Micronesia.

(2) "Contracting officer" means the official in charge of letting a contract for a National Government agency.

(3) "Lowest responsible bidder" means the lowest bidder whose offer adequately responds in quality, fitness, and capacity to the particular requirements of the proposed work called for by the contract.

(4) "National Government agency" means any branch, department, office, division, board, bureau, commission, committee, institution, or authority of the National Government of the Federated States of Micronesia.

Section 3. Contracts—Competitive bidding required. All contracts for construction projects involving $20,000 or more or for the purchase of personal property involving $50,000 or more made on behalf of any National Government agency shall be let by free and open competitive bidding, by sealed bid, to the lowest responsible bidder in accordance with the provisions of this act.
Section 4. Citizen-bidder preference. Citizen bidders who qualify to bid under the provisions of this act shall receive preference over noncitizen bidders in determining the award of the contract. Citizen bidders shall be subject to all standards and qualifications as set out in this act. Absent a qualified citizen bidder, noncitizen bidders shall be considered pursuant to the provisions of this act.

Section 5. Emergencies. In case of emergency affecting public health, safety, or convenience so declared in writing by the President upon application by the head of any National Government agency setting forth the nature of the emergency and the danger to the public health, safety, or convenience caused by delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. Such action and the reasons therefor shall immediately be made public by the awarding authority.

Section 6. Qualifications of bidders. Before any prospective bidder may be entitled to submit a bid for the performance of a contract covered by section 3 of this act, he shall, not less than 10 calendar days prior to the date designated for opening bids, give written notice to the contracting officer of his intention to bid, and such officer shall satisfy himself of the prospective bidder's financial ability to perform the work intended and of his experience and competence in performing similar work. Whenever it appears to the contracting officer that the prospective bidder is not fully qualified and able to perform the intended work, the contracting officer shall refuse to receive or consider any bid offered by the prospective bidder. Upon being determined not to be
fully qualified, a prospective bidder may appeal this determination
within 10 days after notice of disqualification in accordance with the
administrative procedures act, title 17, chapter 1, of the Code of the
Federated States of Micronesia.

Section 7. Advertisement for bids. Publication of a call for sealed
bids shall include posting of notice for at least 10 days in the immigra-
tion office and in one other prominent public place in each State in the
Federated States of Micronesia, the use of radio and newspaper media when
considered appropriate by the contracting officer, and any other means
he may consider feasible. The notice shall state in clear terms the
project that is to be bid on.

Section 8. Bid-Opening, rejection. The time of opening sealed bids
shall not be less than 30 days after the final publication. All bids shall
be sealed and delivered to the contracting officer and, in the presence of
all bidders who attend, shall be opened by him at the hour and place as
stated in the advertisement and may be inspected by any bidder. Any bid which
does not comply with the requirements of the advertisement shall be rejected.
If two or more bids are the same and the lowest, the contracting officer
may accept the one he chooses. If no bids are received, the contracting
officer may have the project done without further compliance with this act.

Section 9. Bids-Information. All bids on construction project contracts
shall include the name of each person or firm to be engaged by the bidder
as a joint contractor or subcontractor in the performance of the con-
struction project contract. The bid shall also indicate the nature and
scope of the work to be performed by such joint contractor or subcontractor.
Section 10. Written contract awarded to lowest responsible bidder. All contracts shall be in writing and shall be executed by the National Government agency which is authorized to let contracts in its own name and shall be made with the lowest responsible bidder. If the lowest bid is rejected, the contracting officer may, at his discretion, award the contract to the lowest remaining responsible bidder or advertise anew for bids pursuant to section 7 of this act. In each instance the officer, at his discretion, after determining the lowest responsible bidder, may negotiate with that bidder, and that bidder only, to reduce the scope of work and to award the contract at a price which reflects the reduction in the scope of work.

Section 11. Effect of restraint of competition. Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding shall render the bids of such bidders void. Each bidder shall accompany his bid with a sworn statement that he has not been a party to such an agreement.

Section 12. Effect of advance disclosure of terms of bid. Any disclosure in advance of the terms of a bid submitted in response to an advertisement for bids shall render the proceedings void and require advertisement and award anew.

Section 13. Assignment of contracts. No contracts awarded to the lowest responsible bidder shall be assignable by the successful bidder without written consent of the awarding authority.

Section 14. Institution of legal actions. Any citizen taxpayer
in the Federated States of Micronesia or any bona fide unsuccessful bidder on a particular contract shall be empowered to bring a civil action in the Federated States of Micronesia Supreme Court to enjoin execution of any contract entered into in violation of this act.

Section 15. Regulations. The President may issue regulations to implement this act in accordance with the provisions of the Administrative Procedures Act, title 17, chapter 1, of the Code of the Federated States of Micronesia.

Section 16. Effective date. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 11-2-82

Introduced by: Hiroshi Ismael