

PUERTO RICO  
**FISCAL AGENCY  
& FINANCIAL ADVISORY**  
AUTHORITY



GOVERNMENT FINANCING CONTRACTS REGULATION OF 2023  
(Amending and replacing the Government Financing Contracts Regulation of  
2011)

APPROVED BY THE BOARD OF DIRECTORS OF THE PUERTO RICO FISCAL  
AGENCY AND FINANCIAL ADVISORY AUTHORITY THROUGH RESOLUTION  
NUMBER 2023-107 OF NOVEMBER 8, 2023

# GOVERNMENT FINANCING CONTRACTS REGULATION OF 2023

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COMMONWEALTH OF PUERTO RICO  
PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY  
SAN JUAN, PUERTO RICO  
GOVERNMENT FINANCING CONTRACTS REGULATION OF 2023

**Article 1. Legal Basis.**

This Regulation is adopted pursuant to Law No. 2 of January 18, 2017, as amended, known as the “Puerto Rico Fiscal Agency and Financial Advisory Authority Act” (“Act 2-2017”), which authorizes the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) to act as Fiscal Agent and Financial Advisor of the Commonwealth of Puerto Rico, its agencies, public corporations, municipalities and instrumentalities, and Law No. 265 of September 3, 2003, known as the “Act for Regulating Certain Government Financing and Personal Property Leasing Contracts” (“Act 265-2003”).

**Article 2. Purpose.**

Pursuant to Article 5 of Act 2-2017, AAFAF, as fiscal agent and financial advisor of the Government of Puerto Rico, including, but not limited to, its public corporations, instrumentalities, commissions, boards and political subdivisions, adopts and promulgates this Regulation, which amend and replace Regulation No. 8071 of September 7, 2011, known as the “Government Financing Contracts Regulations of 2011.” The purpose of this Regulation is to establish the rules that will govern the process for approving the execution or assignment of any lease contract or financial lease contract subject to the provisions of Act 265-2003.

In addition, this Regulation will satisfy the requirement established in Section 1.8 of the “Government of Puerto Rico Debt Management Policy” dated March 9, 2022.

**Article 3. Definitions.**

For purposes of this Regulation, the following terms will have the meaning stated below:

- a. AAFAF: Puerto Rico Fiscal Agency and Financial Advisory Authority.
- b. Certification of Compliance: Certification submitted to AAFAF by the contracting

Government Entity through which the chief executive officer and the internal (or external) legal counsel of the Government Entity certify that (i) the contractual and purchasing requirements of such Government Entity have been met; (ii) the Financing Contract incorporates the clauses required by Article 8 of this Regulation; and (iii) the resources identified in the Certification issued by the Office of Management and Budget of the Commonwealth of Puerto Rico (“OMB”) will be the ones used to meet the pertinent payments under the Financing Contract.

- c. OMB Certification: Written document issued by the OMB (i) taking notice of the Financing Contract, (ii) certifying that the Government Entity has sufficient funds to make the pertinent payments under the Financing Contract for the current fiscal year, and (iii) undertaking to include, in the budget of the Commonwealth of Puerto Rico, the amount necessary to meet the pertinent payments for the term of the Financing Contract.
- d. Lease Contract: An agreement under which the lessor assigns to the lessee the right to use and enjoy personal property of the lessor, for a specific term, in exchange for certain previously stipulated periodic payments.
- e. Financial Lease Contract: A Lease Contract that complies with or contains one of the following requirements:
  - i. Ownership of the personal property leased is transferred to the lessee upon conclusion of the lease term;
  - ii. It contains a purchase option for the leased property at a value substantially lower than the fair market value of said property at the time the option is exercised;
  - iii. The term is equal to or greater than seventy-five percent (75%) of the useful life of the personal property leased, or;
  - iv. The present value of the minimum payments, excluding administrative expenses, is equal to, or greater than ninety percent (90%) of the fair market value of the leased personal property.
- f. Financing Contract: Any Lease Contract or Financial Lease Contract that commits the budgetary resources of the Government Entity for a period of more than one (1) fiscal year and any other type of personal property financing contract that commits the budgetary resources of a Government Entity beyond the current fiscal year and that involves the payment of interest by the Government Entity.
- g. Government Entity: The Commonwealth of Puerto Rico and all of its departments, instrumentalities, agencies, boards, commissions, public corporations and municipalities.

- h. Private Entity: Any natural or juridical person that is not a Government Entity.
- i. Maximum Interest: Maximum interest rate allowed for Financing Contracts as established by AAFAF from time to time and published in the webpage (<https://www.aafaf.pr.gov/press-room/#resourcesassets>).
- j. Register of Approval and Assignment of Financing Contracts: A register maintained by AAFAF under Article 9 of this Regulation.
- k. Application: Application for Approval of Contract and Application for Approval of Assignment.
- l. Application for Approval of Contract: It includes the following documents related to the proposed Financing Contract: (i) form entitled Application for Approval of Execution of Personal Property Financing Contract and Summary of Terms (see Attachment 1); (ii) the Certification of Compliance; (iii) the OMB Certification; (iv) a copy of the proposed Financing Contract; and (v) a Private Entity Proposal.
- m. Application for Approval of Assignment: It includes the following documents related to the Financing Contract to be assigned: (i) form entitled Application for Approval of Assignment of Personal Property Financing Contract (see Attachment 2); (ii) a copy of the Financing Contract to be assigned; and (iii) a copy of the proposed assignment contract.

#### **Article 4. Contracts and Assignments Subject to Approval; Exemptions.**

- a. Any Financing Contract executed by any Government Entity must be approved by AAFAF prior to execution.
- b. The following Financing Contracts are exempted from this requirement:
  - i. Financing Contracts whose full repayment source does not come from General Fund budget allocations (e.g., to be repaid in full through an allocation of federal funds or the Government Entity's own funds). In such case, the Government Entity shall ensure that the interest rate does not exceed the applicable Maximum Interest and that the Financing Contract contains the clauses indicated in Article 8 (a) and 8 (b) (ii) and (iii) of this Regulation;
  - ii. Financing Contracts whose principal does not exceed \$50,000, provided that the aggregate principal amount of all Financing Contracts executed by the Government Entity with the leasing or financial Private Entity does not exceed

\$100,000 for the current fiscal year. In such case, the Government Entity shall ensure that the interest does not exceed the applicable Maximum Interest and that the Financing Contract contains the clauses indicated in Articles 8(a) and 8 (b) (i), (ii) and (iii) of this Regulation.

- c. Any assignment of a Financing Contract must be approved by AAFAF prior to its execution. Any assignment to the parent company, a subsidiary, or affiliate of the Private Entity is exempted from this requirement.
- d. Each Government Entity shall be responsible for keeping complete records and a register including the documentation that demonstrates that the Financing Contract is exempted from AAFAF's approval requirement under Article 4(b).

#### **Article 5. Prohibitions.**

- a. No Government Entity may execute a Financing Contract without obtaining the prior written approval of AAFAF, except as provided in Article 4(b).
- b. Any Financing Contract executed by a Government Entity without the prior written approval of AAFAF, in violation of Article 4(a) of this Regulation, will be voidable.
- c. No Financing Contracts may be assigned, sold, or otherwise transferred without the prior written approval of AAFAF, except as allowed under Article 4(c); this prohibition will form part of the contract so that all the contracting parties and third parties may be fully aware of and comply with the same.
- d. Any automatic assignment clause in a Financing Contract is expressly prohibited and will be considered as not included therein for all legal purposes.

#### **Article 6. Approval Process.**

- a. Application:
  - i. Each Government Entity must submit to AAFAF an Application for Approval of Contract prior to the execution of a Financing Contract.
  - ii. Any contracting Private Entity that proposes to assign a Financing Contract duly executed by a Government Entity shall submit to AAFAF an Application for Approval of Assignment prior to the assignment thereof.

- b. Submission: All Applications must be sent to AAFAF by email at [arrendamientos@aafaf.pr.gov](mailto:arrendamientos@aafaf.pr.gov). The submission will not be deemed to have been made in accordance with this Regulation if the Application lacks any of the required documents or if these are not duly completed.
- c. Processing Fee: All Applications must be accompanied by a \$300.00 payment to cover AAFAF's processing fees. AAFAF will begin reviewing an Application upon receipt of this payment plus all required documents as stated in this Regulation.
- d. Decision: AAFAF will have forty-five (45) calendar days to evaluate the Application, which must include all the documents required in this Regulation plus the processing fee, and notify in writing its approval or denial.
- e. Tacit Approval: If AAFAF does not approve or deny a duly completed Application containing all required documents, as well as the processing fee, within the evaluation period of forty-five (45) calendar days from the final filing date, such Application will be deemed to have been tacitly approved. Any request for additional information required by AAFAF for the evaluation of the Application automatically interrupts the term of forty-five (45) calendar days, which will start to run again once the Government Entity submits the additional information required.
- f. Denial: If an Application is denied, AAFAF shall provide a written justification of its decision to the applicant Government Entity, and will make recommendations, if it so deems necessary.
- g. Reconsideration: If the Application is denied, the Government Entity may submit a petition for reconsideration within ten (10) calendar days after the date of acknowledgment of receipt of the notice denying the Application. If AAFAF agrees to entertain the petition for reconsideration, either by sending a notification to that effect or by requesting additional information, AAFAF will have thirty (30) additional calendar days, from the date of such notification or the date on which the additional information is received, to grant or deny said petition for reconsideration.
- h. Changes in the scope of the contract after its approval: Any modification to the terms of a proposed Financing Contract after approval of the Application by AAFAF and prior to the execution of said Financing Contract will render the approval of the Application null and void. In the event that the Government Entity is interested in making modifications to the Financing Contract after the Application has been approved, but prior to the execution of the Financing Contract, the Government Entity must submit the proposed modified Financing Contract for approval by AAFAF in accordance with the procedures established in this article.

**Article 7. Evaluation Criteria for Application for Approval of Contract and Application for Approval of Assignment.**

- a. AAFAF shall, relying solely on the information provided by the Government Entity, evaluate each Application for Approval of Contract in accordance with the following criteria or information:
  - i. the interest rate of the contract may not be higher than the Maximum Interest;
  - ii. the term of the contract must not be longer than the useful life of the personal property (if the term of the contract is longer than the useful life of the personal property, the Government Entity shall justify in writing the contract on the basis of the criteria it deems appropriate);
  - iii. the personal property can be identified and returned to the lessor;
  - iv. the Government Entity's justification for leasing rather than purchasing;
  - v. the payment breakdown, divided into principal, interest and other non-operational charges, if applicable;
  - vi. the Government Entity's compliance with contractual and purchasing requirements imposed by law, regulation or order; and
  - vii. the inclusion of the clauses required under Article 8 of this Regulation.
  
- b. The criteria that AAFAF will use to evaluate the Applications for Approval of Assignment will be the following:
  - i. evidence of representations made by the assignee Private Entity that it is duly authorized to do business in the Commonwealth of Puerto Rico; and that it complies with all legal requirements for assignment of contracts to which a Government Entity of the Commonwealth of Puerto Rico is a party.

**Article 8. Contractual Clauses or Required Information; Exempt Financing Contracts.**

- a. Any Financing Contract signed by a Government Entity must include the information required by Article 5 of the Personal Property Lease Act, Law 76 of August 13, 1994, as amended, including Financing Contracts that are exempt from the AAFAF's prior approval requirement under Article 4(b). The above required information is included as Attachment 3.
  
- b. In addition to including the clauses required by Article 8(a), any Financing Contract executed by the Government Entity must include the clauses set forth in subparagraphs (i) through (iv) of this subsection (b). Financing

Contracts that are exempt from AAFAF's prior approval requirement under Article 4(b)(i) must include the clauses set forth in subparagraphs (ii) and (iii) of this subsection (b) while Financing Contracts exempt from the requirement of AAFAF's prior approval under Article 4(b)(ii) must incorporate the clauses set forth in subparagraphs (i), (ii) and (iii) of this subsection (b):

- i. Lack of Budgetary Appropriation. Notwithstanding the provisions of this Financing Contract, in the event that the Legislative Assembly does not allocate funds or allocates insufficient funds to the contracting Government Entity to meet any payment commitment under a Financing Contract in fiscal years after the execution of the Financing Contract, said contract will be terminated and the Government Entity will be released from all payment responsibility, without the imposition of charges, interest or penalties, provided that the contracting Government Entity (1) has carried out all the processes that are in order for the Legislative Assembly of the Commonwealth of Puerto Rico to approve sufficient budget allocations to meet its payment obligation during a given year, and (2) returns the personal property to the lessor at the end of the fiscal year for which it had sufficient budget allocations to meet its payment obligation.
- ii. Assignment. The rights acquired under this Financing Contract may not be assigned without the prior written authorization of AAFAF, but it will not be necessary to obtain said prior written authorization if the rights acquired under this Financing Contract are ceded and/or assigned in favor of a parent company, subsidiary or affiliate of the assignor Private Entity. If the rights acquired under this Financing Contract are ceded and/or assigned without the prior authorization of AAFAF, such cession and/or assignment will be voidable, as provided for in Law No. 265 of September 3, 2003.
- iii. NOT A DEBT OF THE COMMONWEALTH OF PUERTO RICO. THE OBLIGATIONS INCURRED UNDER THE PROVISIONS OF THIS FINANCING CONTRACT MUST NOT BE CONSIDERED OBLIGATIONS OF THE COMMONWEALTH OF PUERTO RICO FOR THE PAYMENT OF WHICH THE GOOD FAITH, CREDIT AND POWER TO LEVY TAXES OF THE COMMONWEALTH OF PUERTO RICO ARE PLEDGED.
- iv. Approval of the Puerto Rico Fiscal Agency and Financial Advisory Authority. Pursuant to Law No. 265 of September 3, 2003, this Financing Contract may not be executed without first obtaining the written approval of AAFAF, except in the case of an exempt contract. Any Financing Contract executed by a Government Entity without having obtained the prior approval of AAFAF will be voidable.

## **Article 9. Register.**

During the life of all Financing Contracts submitted to AAFAF to approve its execution, AAFAF shall maintain a file system with the documents related to the execution or assignment of any Financing Contract, including: (i) Application for Approval of Personal Property Financing Contract or Application for Approval of Assignment of Personal Property Financing Contract, as applicable, and (ii) approval letter issued by AAFAF.

## **Article 10. Information Requirement**

Government Entities shall submit to AAFAF, on an annual basis, no later than September 30 of each year, a report detailing all Financing Contracts in effect at the close of June 30 of each fiscal year, including contracts exempt from approval by AAFAF pursuant to Article 4(b) of this Regulation. The Government Entity shall use the format entitled Annual Report – Personal Property Financing Contracts, which is included as Attachment 4.

## **Article 11. Severability.**

The declaration of invalidity or nullity of any of the provisions of this Regulation will not affect the validity of the remaining provisions.

## **Article 12. Effectiveness.**

This Regulation will take effect once it is filed with the Department of State of Puerto Rico and is duly published pursuant to the provision of Section 4(d) of Act 265-2003.

## **Article 13. Recommendation and Approval.**

Approved in San Juan, Puerto Rico, by Resolution No. 2023-107 of November 8, 2023, issued by the Board of Directors of the Puerto Rico Fiscal Agency and Financial Advisory Authority.