

Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
Guaynabo, Puerto Rico

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RULE NO. 87

**STANDARDS FOR THE ACQUISITION OF NON-PROFESSIONAL SERVICES AND PUBLIC
BIDDING AT THE OFFICE OF THE COMMISSIONER OF INSURANCE OF PUERTO RICO**

Approved January 31, 2008

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Section 1. Legal Basis

This Rule is adopted and promulgated by virtue of the powers vested in the Commissioner of Insurance of Puerto Rico in Section 2.030(1) of the Puerto Rico Insurance Code, as amended, Public Law No. 77, enacted on June 19, 1957 and Public Law No. 170, enacted on August 12, 1988, as amended, known as the Uniform Administrative Procedures Act.

Section 2. Purpose

Reorganization Plan Number 3, enacted on June 22, 1994 (Plan No. 3), exempted the Treasury Department and its operational components as well as the Office of the Commissioner of Insurance (OCI), from the provisions of Public Law No. 164, enacted on July 23, 1974, as amended, known as the General Services Administration Act. Subsequently, on August 8, 2002, Public Law No. 133 was signed, amending the Puerto Rico Insurance Code to provide that the Commissioner of Insurance should be appointed by the Governor and that the position of Commissioner would not be under the Treasury Department. As a result of the foregoing, the OCI was exempted from the provisions of General Services Administration Act and was removed from the jurisdiction of the Treasury Department.

In view of this, the OCI needs to promulgate this Rule for the purpose of establishing the standards that will regulate the procedures for the acquisition of equipment, materials, products, non-professional services, and contracts for public works, as well as for bidding process itself.

Section 3. Scope

This **Rule** shall apply to the acquisition of equipment, materials, products, non-professional services and execution of public works and bidding proceedings at the OCI.

Section 4. Definitions

For the purposes of this Rule, these terms are defined as follows:

- A. Product:** Any merchandise acquired or that can be acquired.
- B. GSA:** General Services Administration of Puerto Rico.
- C. Goods:** An array of products needed to provide a service or to execute a project.

- D. Change in purchase order:** Official document processed by the General Services Division to authorize agreements that modify transactions covered by a purchase order.
- E. Case:** Any litigation or controversy that is before the consideration of any court, executive agency or any other government instrumentality, including the OCI, for the purpose of obtaining a decision.
- F. Certificate of Eligibility:** Certification issued by the GSA stating that a bidder complies with the necessary requirements to belong to the Sole Registry of Bidders.
- G. Commissioner:** Commissioner of Insurance of Puerto Rico.
- H. Purchase:** Method to acquire products, materials, equipment, public works or non-professional services in exchange for payment in legal currency or in exchange for property of similar or equal value.
- I. Purchase by written quotation:** Procedure to be used by the OCI to acquire goods, public works or non-professional services the value of which exceeds five hundred dollars (\$500), but is not over seven thousand five hundred dollars (\$7,500). This purchase requires that all offers be made in writing, whether delivered by fax or email, provided that they have an electronic signature, or by regular mail. Quotations must be obtained from a minimum of three (3) vendors.
- J. Purchase by oral quotation:** Procedure to be used by the OCI to acquire goods, public works or non-professional services the value of which does not exceed five hundred dollars (\$500.00). This kind of purchase may be arranged by telephone, personal visit or by fax. Quotations must be obtained from a minimum of three (3) vendors. It will only be necessary to obtain a written quotation from the vendor to which the purchase is awarded, before the goods are delivered, the services are provided or the public works are executed.
- K. Conflict of interest:** A situation in which the personal or economic interest of the official or employee or of persons that are related to such or to the contractor, is or could reasonably be in conflict with the public interest.
- L. Contractor:** Any person or group of persons, including bidders, that has established or is seeking to enter into a contractual relationship with the OCI for the sale of products, materials or equipment execute public works or that provides non-professional services.
- M. Contract:** Agreement, legal arrangement or transaction in which the parties undertake in writing to give something or to perform or cease to perform a given act, and that is executed with the consent of the contracting parties, with regard to the lawful object, matter and consideration agreed to in the contract.
- N. Emergency:** Unexpected and unforeseen need caused by calamitous circumstances beyond human control or any serious disruption of public order requiring immediate action, for any of the following reasons: (1) the life or health of one or more persons is threatened, (2) there is a risk of loss or harm to public property, (3) the operations of the OCI or of the

Government of the Commonwealth of Puerto Rico are at risk of suspension or being adversely affected. Furthermore, it shall be deemed that there is an emergency in any situation in which the Commissioner determines that losing the opportunity to acquire the products, materials or equipment could adversely effect the proper operation of the OCI.

- O. Employee:** Any person who holds a position or employment at the OCI that does not participate in the making and implementing of public policy. This includes regular, irregular, and trust public employees, those that provide services under contract, transitory appointees, and employees on probationary status.
- P. Specifications:** A set of essential features for the products, materials, and equipment that are intended to be acquired, or of the public works to be executed or services to be provided, public works or non-professional services that are intended to be acquired and that are specified as a reference for each line item in an invitation to bid, as well as the physical, functional, esthetic, and quality features with which they are described.
- Q. Performance Bond:** Security or amount of money required of a bidder to ensure fulfillment of a contractual obligation. The bond may be posted by insurance companies that are authorized by the OCI to transact insurance business in Puerto Rico or by submitting a manager's check, bank money order or postal money order.
- R. Bid Bond:** Provisional security that bidders must provide for the purpose of ensuring that the offer will be maintained throughout the bidding procedures. The bond may be posted by insurance companies that are authorized by the OCI to transact insurance business in Puerto Rico or by submitting a manager's check, bank money order or postal money order.
- S. Fractionation:** When with regard to the same location, product, service or project, during the same, relatively short period of time, more than one order is issued to one or several bidders, none of which exceeds the maximum authorized for Purchasing Officer of the General Services Division.
- T. Official:** Any person who holds a position or employment at the OCI who participates in making and implementing public policy.
- U. Bid Board:** The Bid Board of the Office of the Commissioner of Insurance of Puerto Rico. The Bid Board is an administrative body that studies, evaluates, and awards bids, whose functions are governed by this **Rule**. The members of the Board are appointed by the Commissioner of Insurance.
- V. Bidder:** Any natural or legal person that is registered in the Sole Registry of Bidders of the GSA or is interested in and available for participating in the bidding process.
- W. Winning Bidder:** Any natural or legal person to which one or more items in the bidding is awarded.
- X. Materials or supplies:** Articles necessary for providing services or executing a project, generally having a service life of not more than two years and which on being used may change in nature or be consumed. The unit cost generally is not more than \$100.
- Y. Open Market:** Special procedure for the acquisition of goods or non-professional services that is used when the acquisition of such is exempted by law or regulation from informal or

public bidding procedures. The procedure consists of requesting that a minimum of three (3) vendors, through any means of communication established in this **Rule**, submit written quotations indicating the price, specifications and conditions of the product or service to be provided. This procedure will also be used to acquire goods or receive services when a contractor refuses to fulfill the terms of an existing contract for acquiring such goods or providing such services, and the difference in cost, if any, will be charged to the contractor.

- Z. Pressing Need:** A situation of extraordinary urgency making it necessary to effect an immediate purchase, without obtaining the required quotations. This may arise in an emergency or under unforeseen circumstances or a combination of unforeseen circumstances that require making a purchase without delay in order to maintain the normal operations of the OCI and protect the public interest. Situations in which there is an urgent need to acquire goods or services due to a lack of reasonable planning will not be considered to be a pressing need.
- AA. Public works project:** Any construction, reconstruction, alteration, extension, improvement, repair, conservation or maintenance work on any structure.
- BB. OCI:** Office of the Commissioner of Insurance of Puerto Rico.
- CC. Requesting office:** Any operational division or purchasing office of the OCI.
- DD. Purchase order:** An official document issued by the General Services Division to request equipment, materials, goods, non-professional services or public works.
- EE. Line item:** Each of the goods, public works or services requested in a bid.
- FF. Person:** Natural or legal person or groups of persons or associations, including the bidders, that wish to enter into a contractual, commercial or financial relationship with the OCI, or that has executed a contract to deliver goods or provide services to the OCI, under the contractual obligations of the agreement between the parties.
- GG. Reasonable price:** In the case of goods and services that are regulated by the Department of Consumer Affairs, the price shall be set by the Department. If they are not regulated, it shall be the ordinary price paid for the goods or services in the market.
- HH. Vendor:** Person that provides products, materials, equipment, public works or non-professional services.
- II. Quorum:** This refers to the number of members of the Bid Board required to attend meetings so that the Board may be formally constituted and may make final decisions.
- JJ. Reception:** An area located in the main building of the OCI, designated for receiving documents and greeting visitors.
- KK. Gift:** Includes, among others, money, goods or any object, financial opportunity, gratuity, concession, benefit, discount or special attention.
- LL. Sole Registry of Bidders:** A registry of bidders created under Public Law No. 85, enacted on June 18, 2002. The registry lists the natural or legal persons that have been qualified by the GSA to enter into contracts with the Government after having fulfilled the

requirements established by the Administrator of that Office. The Registry shall be available at the GSA and on the GSA website.

MM. Schedule of line items: Items grouped together by general features or descriptions. Each schedule may be broken down into line items on the basis of specifications.

NN. Purchase Requisition: Document used by the divisions of the OCI to request the acquisition of a product, public works project or non-professional services.

OO. Judicial Review: The process through which a losing party in the final decision of the OCI Awards Procedures Division or the award of a bid may request judicial review in a Court of Appeals within ten (10) calendar days, to be counted from the date on which the notification of the final decision is entered in the record or from the date the Division refused to hear any request for review as provided in the Uniform Administrative Procedures Act. A request for review filed with the Court of Appeals will not have the effect of paralyzing the contested award. There will be no jurisdictional requirement that a request for reconsideration be filed with the Awards Procedures Division of the OCI in order to request Judicial Review.

PP. Non-professional Services: Services consisting of the fruits of labor which does not require specialized knowledge, skills or abilities.

QQ. Formal Bidding: Procedure used to purchase goods, public works and non-professional services the total value of which exceeds thirty-five thousand dollars (\$35,000), and is awarded by the Bid Board.

RR. Informal Bidding: A less rigid purchase procedure than formal bidding applied to purchases of goods, public works and non-professional services, with an estimated value of over seven thousand five hundred dollars (\$7,500), but not greater than thirty-five thousand dollars (\$35,000). This purchase will be awarded by the General Services Division with the approval of the Commissioner or the Commissioner's authorized representative.

SS. Transaction: An act performed by one or more persons to obtain the action and effect of negotiating or trading, purchasing and selling or exchanging products, merchandise or securities, to obtain gain, benefit, interest or return.

TT. Sole Bidder Available: The only natural or legal person that is willing to provide the goods, execute the public works project or provide the non-professional services that are requested at the time, under the conditions they are being requested.

UU. Sole Source of Supply: The existence of a single supplier.

VV. General Services Division: The division of the OCI responsible of the acquisition of goods and non-professional services. The division will be responsible for complying with the guidelines set forth in this Rule.

WW. Family Unit: Includes the spouse of the official, former official, employee or former employee, and the dependent children of such, or persons with which the legal residence is shared or whose finances are under the control of said official, former official, employee or former employee.

Section 5. General Provisions

- A. According to constitutional and statutory prohibitions of discrimination based on gender, the following shall be understood in the interpretation of this Rule:
 - i. The name of each position refers to both genders.
 - ii. When a woman holds a position, the title of the position will be indicated in the feminine gender.
- B. The respective funds must be assigned before a purchase order is issued.
- C. No products, materials or equipment may be acquired, or non-professional services received, or public works executed, without a purchase order or a duly executed contract.
- D. When it is more convenient and less costly for the OCI, annual contracts may be executed, and purchases may be made under such contract as the need arises.
- E. Purchase requisitions for a total estimated amount in excess of thirty-five thousand dollars (**\$35,000**) will be referred to the Bid Board, along with the required specifications, so that appropriate formal bidding may be held.
- F. No transaction will be effected in which there has been fractionation of the purchase for the purpose of making such purchase under different standards or at a level other than the appropriate level for the amount. Needs will be grouped together for making purchases, so that the transactions may be effected at a lower cost to the benefit of the public interest, in conformance with this Rule.
- G. The OCI may use the facilities or services provided by the GSA warehouse, print shop, and repair shop of the Motor Vehicle Repair Division, when making use of such facilities is more convenient, advantageous, and less costly.
- H. Employees to whom the function or supervision of purchases have been delegated, including the members and alternate members of the Bid Board, may not accept any special consideration, gratuities, lend money to, or borrow money from, commercial firms or individuals that offer services or supplies to the OCI. Employees may not provide privileged or confidential information regarding the resources or the deliberations of the Bid Board, or substitute or alter any written document or suppress such.
- I. General Services employees, members and alternate members of the Bid Board shall attend annual training related to the procurement and purchase processes in the Government. Attendance to these training sessions will be compulsory and a requirement for continuing to hold the position.
- J. Employees to whom the function or the supervision of purchases have been delegated, including the members and alternate members of the Bid Board, must reject any improper conduct exhibited by the vendors and contractors contrary to the Government Ethics Act,

including the offering of gratuities, privileges, commissions or favors. These employees also have the obligation to promptly report any such situation to the Commissioner.

- K. Any purchase procedure, including the forms related to such, may be in electronic media, provided there is no legal prohibition related to such use, and provided the necessary security measures are taken.
- L. If the OCI acquires a corporate credit card, the Office may use such to acquire urgently needed materials, equipment, and non-personal services at competitive prices and delivery terms that are satisfactory to the OCI, which cannot be acquired using normal payment terms or to make emergency purchases. The card may also be used for payment of travel, hotels, training session, and to make purchases through catalogues, magazines, bulletins, Internet, or other media for which the use of the card is more convenient. Purchases made with a corporate credit card will be governed by Regulation No. 26, "Reimbursements to Public Officials and Employees for Expenses Incurred and Paid with Private Funds for Public Purposes," approved by the Department of the Treasury, while OCI funds are under the custody of the Department of the Treasury. Otherwise, such purchases will be governed by any regulations as may be promulgated by the OCI in this regard and by applicable legal provisions.
- M. Purchase requisitions shall include specifications that will allow for competition among several vendors and brands, the specific purpose and use of the products, materials, equipment, public works or non-professional services requested and any other special feature that may require evaluation based on specific criteria. Requisitions will be submitted sufficiently in advance so that there will be no conflict between the reasonable time required for the notification, publication, study, award of the bid, and delivery of the products, materials or equipment, the execution of public works or providing non-professional services.
- N. When it is not possible to submit a purchase requisition containing specifications that will allow for broad competition, justification will be provided along with the purchase indicating the reasons that make it indispensable for the purchase of a given brand or given features in particular, so that if the reasons are justified, the purchase may be made as from a sole source of supply.
- O. The various support divisions of the OCI may be consulted in preparing specifications of purchases through formal bidding. In addition, such professional services as may be necessary may be retained or consultations may be made with the GSA. In such cases, prior approval should be obtained from the Commissioner or the Commissioner's designee.
- P. Purchase requisitions for goods, equipment, materials, non-professional services or the execution of public works shall be approved by the director of the division of origin or the authorized representative of the Commissioner. The Finance and General Services divisions will process the requisitions for authorization by the Commissioner or the Commissioner's authorized representative, if necessary. Purchase requisitions may be processed and approved electronically, in which case the necessary measures will be taken to ensure the security of the electronic medium to be used.
- Q. All requisitions will be processed by the Director of Finance, the Assistant Commissioner of the requesting division, and the Director of the General Services Division or the Director's authorized representative, regardless of the amount of the requisition. The Director of the

General Services Division or his or her authorized representative will be responsible for determining the mechanism for acquiring the goods or services. None of the requesting offices are authorized to process directly a purchase requisition with any other division except the General Services Division.

- R. All OCI employees that are authorized to request or approve the acquisition of equipment, materials, non-professional services, and the execution of public works, will do so according to need, usefulness, and austerity guidelines.
- S. Acquisition of goods, equipment, materials or non-professional services and authorization for the execution of public works will only be granted as may be strictly necessary for the activities for which they are to be acquired or executed.

Section 6. Responsibilities of the General Services Division

- A. Controlling purchase orders and contracts related to products, materials, equipment or non-professional services received and pending delivery, public works projects, and of the payments made on such orders and services.
- B. Annual planning of purchases, including purchases made through the bidding process, which shall be notified to the Bid Board. In addition the Division will establish operational procedures and draft such internal documents as may be necessary for appropriate planning of purchases.
- C. Maintaining a dossier for each vendor containing information on the experience the OCI has had with purchase orders and contracts previously awarded to the vendor. The dossier will include performance or non-performance, present and past, with regard to delivery or the proper functioning of products, materials, and equipment received or the quality of the non-professional services received and of the public works executed by the contractors and vendors of goods and non-professional services, including information on bidders who have failed to comply with the terms of any bidding. The latter information shall be shared with the Bid Board.
- D. Reviewing purchase requisitions to ensure they include the description or specifications of the goods or services; that they are duly authorized by the director of the respective requesting division, or the director's authorized representative, and that they include any other information that may be needed to continue with the purchase process.
- E. Receiving the aforementioned requisitions, obtaining the necessary authorization of funds and the appropriate approval signatures, whether manual or electronic.
- F. Requesting quotations from different vendors under informal bidding procedures.
- G. Completing a record of quotations for each purchase; summarizing the quotations received and certified by the Director of General Services.
- H. Preparing the purchase order and sending it to the vendors or contractors. The purchase order shall be explicit, clear, and specific with regard to the request. The purchase order shall contain among other things, the specifications of the thing to be acquired, the price, the

delivery terms, penalties for non-fulfillment, discounts for prompt payment, and be signed by the authorized employees. The order shall clearly state the name and position of the authorized employee. Before issuing a purchase order, request for quotations will be sent to each of the vendors that can comply with the required need, and the purchase order will be issued to the selected vendor.

- I. Ensuring that the total amount of the acquisition does not exceed the amount of approved funds.
- J. Establishing and implementing a system for monitoring the delivery of merchandise to ensure compliance with the negotiated delivery terms.
- K. Preparing the specifications for all purchases, including those made through formal bidding. However, when preparation of the purchase order requires specialized knowledge not available in the OCI, due to the nature of the purchase, the Assistant Commissioner for Administration will be advised of the situation, and the Assistant Commissioner will advise the Commissioner so that appropriate measures may be taken.
- L. With regard to acquisitions made by purchase order, vendors must submit along with the written quotation a document provided by the OCI certifying that the OCI gave the vendor copies of the Government Ethics Act and the Code of Ethics for Contractors, Vendors of Goods and Services, and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico. Vendors must certify that they have read these documents and that they will abide by their provisions.
- M. With regard to the execution of public works, the standards and guidelines issued by the Office of the Comptroller of Puerto Rico will be complied with, as well as applicable legislation, along with this Rule.
- N. Standards and guidelines to be followed are those of Public Law No. 85, enacted on June 18, 2002, under which the Sole Registry of Bidders for the Government was created, and Regulation No. 6526 on "Amendment to the Bidding Regulation of the General Services Administration," specifically Section 7, paragraph (12), which establishes the *Obligations of the Executive Agencies or Public Corporations of the Commonwealth*.

Any other function conferred by the Commissioner, through the Commissioner's Assistant for Administration.

Section 7. Types of Purchases

7.1. Purchase through Oral or Written Quotation or Informal Bidding

The OCI establishes the procedures related to the purchase process through oral or written quotation, or informal bidding, which include, but are not limited to, the following:

7.1.1. Purchase through Oral Quotation: when the total estimated amount of the purchase is not greater than five hundred dollars (**\$500**).

Purchases for a total amount not to exceed five hundred dollars (**\$500**) will be made through a request for oral quotations from three (3) vendors and it will only be necessary to obtain a written quotation from the vendor to whom the purchase is awarded before the goods are delivered, the services are provided or the public works are executed. The quotation must be signed by the vendor or the vendor's authorized representative and show the date of the offer, the terms under which the vendor undertakes to maintain the offer, a description of the thing offered, and the price, including the applicable discounts for prompt payment, if any, and any other information in particular that the Finance and General Services divisions may require for the particular kind of purchase.

The number of quotations to be obtained before the purchase may be less, subject to whether or not there are insufficient vendors, or such vendors are unknown, for the products, materials, equipment or non-professional services to be acquired or for the public works to be executed or that there is a pressing need for the goods or services. In cases in which the three quotations are not obtained, the reasons will be set forth in writing. These oral quotations must be recorded and certified by the purchasing officer and the officer's immediate supervisor in the record of quotations.

A dossier will be prepared containing written information on the oral quotations requested, indicating the date, the name of the employee requesting the quotation, and the name, telephone number, fax, and email of the person providing the quotation, as well as the amount of the quotation. This information will be corroborated by the General Services Division and duly noted in the dossier.

7.1.2. Purchase through Written Quotation: when the total estimated amount of the purchase is greater than five hundred dollars (\$500), but not greater than seven thousand five hundred dollars (\$7,500).

Purchases of products, materials, equipment, non-professional services or public works for a total estimated amount greater than five hundred dollars (\$500) and up to a maximum of seven thousand five hundred dollars (\$7,500), will be made through a request for written quotations from three (3) vendors before the goods are delivered, the services are provided or the public works are executed. The vendor will submit a signed written quotation as requested within two business days of the request. The number of quotations to be obtained before the purchase may be less if there are insufficient vendors, or such vendors are unknown, for the products, materials, equipment or non-professional services to be acquired or for the public works to be executed or that there is a pressing need for the goods or services. In cases in which the three quotations are not obtained, the reasons will be set forth in writing.

Written quotations may be requested by telephone and received subsequently by regular mail, email or fax. The quotations must be signed by the vendor or the vendor's authorized representative and show the date of the offer, the terms under which the vendor undertakes to maintain the offer, a description of the thing offered, and the price, including the applicable discounts for prompt payment, if any, and any other information in particular that the Finance and General Services divisions may require for the kind of purchase involved. The Purchase Officer will note the offers received on the form "Record of Quotations," record the name of the selected vendor, and award the purchase.

7.1.3. Purchase through Informal Bidding: when the total estimated amount is

greater than seven thousand five hundred dollars (\$7,500), but not greater than thirty-five thousand dollars (\$35,000).

A. Basic requirements of the Invitation and/or Informal Bidding

The invitation will include all the necessary information so that bidders may be able to submit under equal conditions an offer in a sealed envelope according to the following requirements:

- i. Complete specifications and/or clear description of the goods and/or services to be acquired.
- ii. Place, date and time limits for submitting the offers.
- iii. Required delivery terms.
- iv. Terms and conditions of the transaction.
- v. Information establishing that the procedure is incontestable.

B. Determination of bond in Informal Bidding

When the specifications for goods or services for purchases so warrant or it is in the public interest, bidders may be required to post any kind of bond similar such as that provided in Sections 11 and 19 of this Rule.

C. Filing of offers in Informal Bidding

- i. The quotations of the offers shall be duly signed by the bidder, and shall show the date of the offer, the terms under which the bidder undertakes to maintain the offer, a description of the thing offered, and the price, including the applicable discounts for prompt payment, if any, and any other information in particular that the Finance and General Services divisions may require for the kind of purchase involved.
- ii. The envelopes containing the offers shall be filed and be duly identified with the name of the bidder, the bid number, and the date and time of opening. The envelopes shall be sealed, and when the US Postal service or any other method of delivery is used, they will be received at the General Services Division until the date and time limit established for opening the bidding, which all interested bidders may attend.

D. Awarding of Informal Bidding

The Informal Bidding will be evaluated and awarded by the Purchase Officer of the General Services Division, reviewed by the Director, and authorized by the Commissioner or the Commissioner's authorized representative.

7.2. Open Market

This purchase procedure may be used, among others, further to holding formal or informal bidding, in which one or more of the following circumstances occur:

- A. All offers received are rejected.
- B. The prices quoted are too high.
- C. The terms of the offers are burdensome to the OCI.
- D. No offers were received.
- E. The offers received deviate substantially from the requirements of the OCI.
- F. Non-compliance by the bidder to whom the bid was awarded.
- G. When the purchase is exempted from formal bidding.

This kind of purchase will be processed in the same manner as required for purchases through Informal Bidding in the case of purchases in amounts above seven thousand five hundred dollars (**\$7,500**) and up to thirty-five thousand dollars (**\$35,000**).

The determination to make purchases above thirty-five thousand dollars (**\$35,000**) in the open market will be made by the Bid Board and the General Services Division will make the purchase.

7.3. Special Purchases

In the following cases it will not be necessary to hold formal or informal bidding:

- A. When the products, materials, equipment, public works or non-professional services to be acquired are contracted by the Purchases and Supplies Division of the GSA and the OCI deems it advisable to make purchases based on the prices stipulated in such contracts.
- B. When the prices are not subject to competition for reason of being regulated by law or government authority.
- C. When, to the best knowledge of the OCI, there is a sole source of supply.
- D. When it is necessary to make the purchase immediately due to an emergency situation, which circumstance should be set forth in writing in the purchase dossier.
- E. When there is a need for replacement parts, accessories, additional equipment or supplementary services for equipment under a repair or service contract.
- F. When the products, materials, equipment, public works or non-professional services to be acquired are of a specialized nature, or the purchase is for a given class or brand, due to proven good service of analogous units, the savings represented by maintaining uniformity in multiple units or because of the superiority of the kind and the quality of the service to be obtained for the purchase unit and its maintenance, all of which shall be justified in writing in the requisition.
- G. When the purchase must be made outside of Puerto Rico, because there are no known

qualified vendors in the local market that are able to provide the needed supplies or services or when the conditions offered in those markets are more advantageous than those of the local market.

- H. When the purchase is being made from the United States Government or an agency of the Government of the Commonwealth of Puerto Rico.

7.4. Trade-ins

Trade-ins are used to acquire new goods in exchange for a similar used item that has been previously appraised. The appraised value of the item that is traded-in is credited and the monetary difference is paid to the vendor. This modality may be used also for installment purchases. In this case, at the time of making the purchase the used item is traded-in and the appraised value is credited to the sales price. The difference may be paid in full or in installment payments previously determined and agreed to for a specific period of time. Only items that have been declared to be surplus may be traded-in.

7.5. Exchange

In this purchase modality an item may be given in exchange for an item of equal or similar value, without any further payment. In some cases, part of the payment may be made in kind, and the remainder in cash.

When it is decided to make an exchange, the following requirements will be met:

- A. The purpose and justification will be indicated;
- B. The items to be exchanged will be described and appraised; and
- C. Appropriate authorizations will be requested.

Exchanges may be made with items such as the following: transportation vehicles, printing equipment or machinery, macrophotography equipment, computers or other related equipment, office or reproducing equipment, and any other equipment used by the OCI.

7.6. Leases

When the OCI considers the possibility of acquiring office equipment other goods under lease with an option to buy or under a fixed-term lease, the following shall be complied with:

- A. The kind of lease the OCI decides to use should be justified in writing, showing the reasons for doing so.
- B. Under normal conditions, offers will be requested from a minimum of three (3) vendors.

- C. Offers shall be signed by the vendor or its authorized representative and show the date of the offer, the term for which the vendor undertakes to maintain the offer, a description of the thing offered, and the price, and any other information in particular that the General Services Division requires for the kind of purchase involved.
- D. Offers in writing may be received by mail, by hand, and by fax. They may also be received through the Internet by email- provided they have an electronic signature.

7.7. Formal Bidding

This purchase procedure is used when the purchases are valued at an estimated total in excess of thirty-five thousand dollars (\$35,000) and the Bid Board participates. This process is carried out as provided in this Rule and requires, among other things, invitations to bid made by the most appropriate means, for the purpose of offering the opportunity to participate to the greatest number of bidders.

Bidders should offer prices and terms that strictly comply with the requested specifications and the special conditions established for each bidding procedure.

Section 8. Bid Board

8.1. Creation and Responsibility

The Bid Board is constituted under this **Rule**, and its members will be appointed by the Commissioner. The Bid Board has the responsibility of studying, evaluating, and awarding formal bids. Furthermore, the Board will adopt the necessary internal governance procedures to ensure uniformity, including the forms that may be necessary for this purpose. The Commissioner will designate a person to provide administrative support for the Bid Board in the exercise of its functions. In making this designation, the Commissioner will consider that the designee's duties and functions are not related to the purchase process, among other factors.

8.2. Composition of the Bid Board

The Bid Board is composed of three (3) employees of the OCI: an employee of the Examination Division, who will act as Chair; an employee of any of the support units that is not related to the General Services Division, who will act as Secretary; and an attorney.

In addition, two (2) alternate members will be appointed by the Commissioner to substitute for the permanent members of the Bid Board in the event of absence. The alternate members will participate in all meetings of the Bid Board, but will not have the right to speak or vote, unless they are substituting for a permanent member, in which case they have all the powers of the permanent member being substituted. Furthermore, an alternate member may be appointed as a permanent member after completing his or her term.

If the Chair of the Bid Board should need to be absent, and his or her absence were for a lengthy period of time, the Commissioner may appoint any permanent member of the Bid Board other than the Secretary as Chair *pro tempore*. Absence shall be a situation in which the permanent member of the Bid Board cannot attend one or more meetings of the Board that require quorum

for evaluating the bid proposals, discussing specifications or conditions of a bid or making any final decision, for reasons of illness, regular vacation, prolonged absence due to official travel or a special assignment from the Commissioner.

All members of the Bid Board must be full-time employees of the OCI.

8.3. Terms

The permanent and alternate members of the Bid Board will hold their positions for the following terms:

- Chair: four (4) years
- Secretary: three (3) years
- Counsel: two (2) years
- Alternate member: two (2) years
- Alternate member: one (1) year

8.4. Substitution of Members

The permanent and alternate members of the Bid Board will perform their duties until their successors are appointed and assume their respective positions. However, no member may hold a position for more than two consecutive terms.

8.5. Seal

The Bid Board will adopt an official seal. There will be a presumption of regularity with regard to all decisions, communications, and certifications of the Bid Board, which when marked with the official seal will be recognized as official documents of the Bid Board. The Secretary will have custody of the seal.

8.6. Constitution of Quorum

A majority of two permanent members of the Bid Board will constitute quorum and agreements will be by a majority.

8.7. Meetings

Meetings of the Bid Board are called by the Chair or by the Secretary by delegation of the Chair.

8.8. Pre-bid Meeting

The Bid Board has the power to hold a pre-bid meeting for the purpose of providing potential bidders with a detailed orientation. In the meeting questions will be answered and any doubts will be clarified and the following will be applicable:

- A. Any clarification that the Bid Board deems necessary with regard to specifications included in the invitation to bid will be retroactive to the date of the invitation.
- B. The Bid Board has the power to determine whether attendance by potential bidders to such meetings will be compulsory, as a requirement for participating in the formal bidding process. It is further provided that when attendance is not compulsory, the bidders will be advised that if they do not attend the meeting they will not be able to raise any of the matters discussed at the meeting in any proceeding to contest the bidding, since the absence of the bidder will be deemed to be a waiver of that right.
- C. A pre-bid meeting may be held whenever the division making the request deems that there is any special condition regarding the goods, public works project or service the division seeks to acquire. The pre-bid meeting will vary from purchase to purchase depending on the specific needs of the requesting division and will be held for the purpose of having the interested parties clarify the instructions, specifications or conditions, as well as examining the details of the purchase. The pre-bid meeting will be held at least five (5) business days before the deadline for submitting proposals.

8.9. Cancellation of Formal Bids

The Bid Board may cancel a formal bidding process at any stage of the bidding even after awarding the bid, if it determines that there is an error in the specifications or that the requirements established in this Rule have not been complied with. It may also cancel formal bidding if it determines that such cancellation would be in the best interests of the OCI. In such an event, the following will be done:

- A. When the cancellation is before the Opening of the bids, the Secretary of the Bid Board will make arrangements with the media liaison of the OCI for the publication of a notice regarding such cancellation in the same newspaper where the notice of the bidding was published and on the Internet page of the OCI. The cancellation will also be notified in writing to all bidders who have submitted proposals before the cancellation, and it is further provided that their proposals will be returned to them unopened, along with the letter notifying the cancellation.
- B. When the cancellation is after the Opening of the bids, the Secretary of the Bid Board will notify all parties of the determination, in writing.

All notifications of cancellation will be made in writing and shall be sent by certified mail, return receipt requested, or delivered in person with a receipt, and indicate the reasons for the cancellation and the legal remedy available for review of such decision, as provided in the Uniform Administrative Procedures Act, *supra*. Copies of the letters of notification of cancellation sent to the vendors will be kept in the bid dossier.

8.10. Bonds and Security

All bonds and security received by the Bid Board, as a part of formal bidding the process will be delivered to the Finance Division for custody and eventual disposition, as provided in this Rule. The Finance Division will keep a register of the bonds and security received as a control measure for such.

8.11. Responsibilities of the Secretary of the Bid Board

The Secretary of the Bid Board shall maintain a minutes book in which there will be a record of all matters, agreements, and recommendations related to every meeting that is held. This includes the grounds for decisions made by the Bid Board, including awarding bids, especially when the offer that is accepted is not the best in price. In addition, the Secretary will ensure that formal bidding be held in a manner providing for the participation of the greatest possible number of qualified bidders that are representative of the sources of the supplies and services or public works projects that are sought.

The Secretary of the Bid Board will draft all of the notifications of the Bid Board according to the agreements reached, and according to the provisions of this Rule, and will send such to the General Services Division to be processed.

The Secretary of the Bid Board will have custody of the offers received, with the exception of bonds and security, and will establish a system for controlling the active bidding dossiers in a manner that will guarantee the purity of the proceedings and the confidentiality of privileged information. The Secretary will also control the dossiers of inactive bids.

The Secretary will administer and have official custody of the documents and dossiers of the Board. The documents of the Bid Board will be referred to a dead file at the closing of each year, and after the corresponding report is prepared, these will be retained for a period of six (6) years, to be counted from the date on which they were sent to the dead file or the date of intervention by the Comptroller, whichever occurs first. The dossiers of cases before the consideration of the Bid Board or the Court of Appeals will be kept active until the decisions are final, and they will then be referred to the dead file. When the term established for the retention of the documents has expired, the Secretary may dispose of such as provided in Public Law No. 5, enacted on December 8, 1955, as amended, known as the "Administration of Public Documents Act."

Section 9. Invitation to Formal Bidding

9.1. Notice of the Invitation

Invitations to bid for purchases for estimated amounts of more than thirty-five thousand dollars (\$35,000) will be notified through a published Notice of Bidding for at least two (2) days, in a newspaper of general circulation in Puerto Rico, ten (10) days before the deadline for submission

of bids, and will also be published in the OCI Internet page. However, when it is decided to use the Sole Registry of Bidders, it will not be necessary to publish notice of bidding. In these cases, the notice will be made by invitation to certified bidders sent by the GSA. The bidding will be announced on the OCI Internet page in all cases.

Evidence of the delivery of the invitations to bid will be kept in the bid dossier.

9.2. Minimum Period for Delivery of Invitations

The date of publication or sending invitations to bid will be sufficiently in advance of the date on which the bidding will be held.

It will be deemed that the invitations have been sent sufficiently in advance when they have been sent not less than ten (10) calendar days before the date of the bid, and the following should also be taken into consideration:

- A. A margin of two (2) calendar days for the invitations to reach the addressee.
- B. A margin of two (2) calendar days for the offers sent by the bidders to be received at the OCI.
- C. In the case of purchase requisitions with highly technical specifications, the time that is reasonably required by the bidders to analyze and submit an offer. This period of time will be no less than five (5) calendar days.

9.3. Determination of Dates and Times

The Chair of the Bid Board or its authorized representative will set the date and time for closing the submission of bids and the exact date, time, and place where the offers of the bidders will be opened.

9.4. Preparation of the Invitations

The General Services Division will prepare the formal invitations to bid, complying with the requirements established in this Rule, and will submit such to the Bid Board for review and approval. Once they are approved, the Secretary of the Board Bids will prepare the request and ask the person designated as media liaison at the OCI to make arrangements for the publication of the notice on the date set by the Bid Board or, when there is no notice, to process the invitations by letter.

9.5. Content of the Notice of Bidding

In the case of formal bids notified by notice in a newspaper and in the OCI Internet page, the notice shall contain, among other information, the following:

- A. Number of the bid.
- B. Purpose of the bid.
- C. Date of publication of the bid.
- D. Date, time, and place where offers will be received.
- E. Date, time, and place where offers will be opened.
- F. Specific instructions of where to find or how to obtain a copy of the invitation to bid, including the physical address and telephone number, and specific place where the invitations will be distributed.
- G. Date and time of the last day on which the invitations may be obtained.
- H. If it has been decided to hold a pre-bid meeting, the date, time, and place will be indicated, as well as whether attendance is compulsory.
- I. It will be indicated that all proposals must be submitted along with a bid bond equivalent to ten per cent (10%) of the proposal, the form of payment, and to whom the payment should be made.
- J. If it is decided that the invitations will not be sent by mail, it will be so noted.
- K. The following notice will be provided in uppercase letters:

THE OFFICE OF THE COMMISSIONER OF INSURANCE RESERVES THE RIGHT TO CANCEL A BID OR PART OF SUCH BEFORE OR AFTER THE BID IS AWARDED IF THE OFFICE DEEMS IT NECESSARY FOR THE PROTECTION OF THE BEST INTERESTS OF THIS INSTITUTION.

Section 10. Requirements of the Invitation to Bid

- A. The invitation to bid must contain:
 - i. Complete specifications and a clear description of the goods, equipment, materials and non-professional services being sought or public works to be executed.
 - ii. A clear indication of the terms and the conditions of delivery and inspections required, when these are essential for awarding a bid.
 - iii. The date, time, and place where the envelopes with the offers will be opened.
 - iv. How and where the offers are to be sent or submitted.
 - v. A notice that the Bid Board has the power to make a visual inspection of the warehouse facilities or offices of the bidder, as well as of the equipment sold or services provided to previous clients, that may be similar to that required by the OCI.

- vi. Specific instructions regarding the manner in which the offers are to be submitted, as well as the terms and conditions of the transaction. These instructions, specifications, and any special conditions will be part of the contract and will be strictly complied with.
 - vii. All the necessary elements for the bidders to be able to make offers.
 - viii. The terms for contesting the call for bids and the awarding of bids.
 - ix. The bid and performance bonds, and any other that may be required.
- B. Bids that are subject to special conditions or restrictions shall contain a notice to that effect, clearly specifying the conditions, to allow for proper processing and evaluation of the bid.
 - C. Bids in which the bidders are required to submit certification or special documents as part of the offer shall contain a notice to that effect.
 - D. Only one offer from each bidder will be accepted for each bid. If the same firm wishes to submit several offers for the same bid, on its own behalf or on behalf of any of its subsidiaries or branches, or any or several of its partners, agents or officers, each and every one of such offers will be declared to be void.
 - E. When installation of equipment is required, the specifications shall include a clause to the effect that the work to be performed shall comply with current standard engineering and safety regulations and standards.
 - F. Discounts for prompt payment that are acceptable to the OCI shall be specified, as well as the shortest period of time considered necessary to make the payment conditions acceptable.
 - G. References to specific brands of products, materials and equipment will be made only as a guide to assist potential bidders in determining the class and type of products, materials and equipment being procured. In these cases, the potential bidders may quote prices for other brands that comply with the specifications stated in the invitation to bid.
 - H. An invitation to bid may be extended for the acquisition of specific brands when justified by past experience or for any other reason that such brands best suit the needs of the OCI. A report by the Bid Board stating the reasons for this kind of invitation shall be included in the bidding dossier.
 - I. When it is deemed to be in the best interests of the OCI, quotations may be requested for the total amount of the purchase for a schedule or group of line items in a given industry, but the specifications will not be so restrictive as to hinder competition in any manner.
 - J. The timeframe set for the delivery of the products, materials, equipment, public works or non-professional services shall be reasonable, in accordance with the facilities available to local industry, provided that this does not conflict with the needs of the OCI.
 - K. When processing payment for bidders who are awarded the purchase contract, or any part thereof, according to the terms of delivery, specifications and other conditions and special instructions, the OCI will deduct an amount for each consecutive day of delay in the

delivery. The amount to be deducted per day will be set in the conditions and special instructions for the bid. The amount will be established according to the urgency of the products or services for the OCI, the availability of such on the market, the expenses and inconveniences that such could cause to the OCI, and any other factor that may be considered relevant. The amount to be established will be no less than one percent (1%) nor greater than five percent (5%) of the amount of the payment. Likewise, the performance bond for the contract will be used to pay for any damages occasioned by the delay. The amount to be paid for the delay in the delivery of merchandise will in no way be considered to be a penalty, but rather as compensation for damages agreed to by the parties, to compensate the OCI for additional expenses and the inconveniences that may have been caused to the OCI.

- L. When not all of the specifications for the products, materials, equipment, public works or non-professional services to be acquired are included in the invitation to bid, whether because the invitation was made through the press or the Internet or for any other reason, copies of the relevant documents will be available to potential bidders at the OCI and it will be so indicated in the invitation.
- M. Any invitation to bid may be cancelled by notifying the bidders, as provided in Section 8.9 of this Rule.
- N. Any invitation to bid may be amended by notifying the respective bidders before the date and the time set for opening the bidding.
- O. When bidding is announced that requires specifying the cost per unit of the products, materials or equipment that are requested, the announcement will include a reasonable estimate of the total amount of such that the OCI intends to acquire. The bid and performance bonds that are required in such cases will be for the estimated amount of the purchase. In these cases, the estimate will not be compulsory for the OCI.

Section 11. Filing of Offers in Formal Bids

Bidders' offers must be delivered at the reception desk of the OCI in envelopes made of paper, cardboard or other sturdy material, sealed so that they can be opened without tearing or causing any marks and addressed to the Secretary of the Bid Board. The offers will be accepted from the date shown on the notice of bidding or in the letter of invitation, until the date and time indicated as the deadline for receiving the offers or the date and time for opening and reading the offers that have been received, whichever is earliest. The offers that are received will be held in the custody of the Secretary of the Board.

The sealed envelopes with the offers filed by the bidders will be marked with the official seal of the OCI, indicating the date and the time of receipt. All offers that are filed will be held in the custody of the Secretary of the Bid Board until the date and time set for opening the offers.

The sealed envelopes will not be opened, under any circumstances, until the date and time set for the opening, and if any should be opened in error, the person who opens such shall:

- A. Immediately reseal the envelope without examining its contents, and ensure that all

documents that were originally inside the envelope remain inside it.

- B. Sign his or her name and write his or her position on the outside of the envelope.
- C. Give the envelope to the Secretary of the Bid Board, who will write an explanation of the situation on the envelope, including the date and time when the envelope was opened and will sign the envelope.
- D. The Secretary of the Bid Board will make a note of the incident in the minutes book.

Before any offer is submitted there should be a bid bond posted equivalent to ten percent (10%) of the total amount of the proposal as a guarantee that the offer will be maintained during the entire bidding process. This bond shall be posted by an insurance company authorized by the Commissioner of Insurance to transact insurance in Puerto Rico, or by submitting a manager's check, a postal money order, or a bank money order made out to the Secretary the Treasury (unless otherwise indicated in the bidding notice). Bonds posted by losing bidders, subsequently to the awarding of the bid, shall be returned by the Finance Division as provided in **Section 23** of this **Rule**. Cash or personal checks will no be accepted as bond.

In purchases of equipment, the bidder should provide information in the bidder's offer showing that the equipment being offered has the necessary support in Puerto Rico in terms of service and maintenance, and that the parts and materials used by the bidder may be readily acquired in the local market. The bidder will also indicate the following:

- A. The annual cost of the on-site service and maintenance contract that would enter into effect after the service guarantee period has expired.
- B. The services included in the maintenance contract will be provided within a delay of not more than one day (24 hours) between the time of the request for the service and the time the service is provided, except in cases in which a longer delay is justified to the satisfaction of the OCI.
- C. Any expense incurred by the OCI due to unjustified delay in the repair of equipment will be reimbursed by the vendor.

Section 12. Types of Offers in Formal Bids

Alternative offers will be accepted, that is to say, a principal offer and one or several alternative offers for products, materials, equipment, public works or non-professional services of a similar quality and at different prices, when a provision to such effect has been included in the invitation to bid.

Bidders will provide quotations based on the unit price for each of the items for which they wish to bid, which constitutes the basic offer.

In addition to the basic offer, an offer on an **all-or-nothing** basis will be admissible, and prices may be conditioned on such, for one or more line items, a group of line items or all of the line items. Unless the bidder indicates the contrary in its offer, the additional **all-or-nothing** offer will not prevent the OCI from accepting individual prices contained in the basic offer as per unit prices.

Lump sum quotations will be admitted in substitution for all-or-nothing offers.

A bidder may offer to reduce the lump sum price quoted, on the basis of per unit prices, provided that all the line items quoted are awarded to such bidder.

Unless a bidder indicates the contrary in its offer, the Bid Board may consider and accept the individual line items of any offer, disregarding the lump sum price, if the Board deems it to be in the public interest.

No offers will be accepted on the basis of estimated prices that could vary at the time of invoicing after the bid has been awarded, unless the invitation to bid included a provision or clause establishing the conditions under which changes in prices would be accepted.

Under no circumstances may the officials and employees of the OCI and its operational components intervene directly or indirectly with the bidders in the preparation and the delivery of the offers nor in any manner advise, suggest, or influence the award of the bids.

All documents comprising the bidders' offers shall be signed in permanent ink by the bidder or the bidder's authorized representative. The bidder shall initial any correction, erasure or strikethrough made on the documents included with the offer. It is further provided, that if such initials are not written and the correction, erasure or strikethrough were related to its offer, the offer may not be considered. It is understood that the foregoing shall only be applicable to the offer for the line item in particular and will not void the remainder of the offer for other line items, unless it is an all-or-nothing or lump sum offer.

Unsigned offers may be accepted, if before the bids are opened, the affected bidder or the bidder's authorized representative submits a letter or other signed document justifying the absence of such signature and accepts the corresponding responsibility.

An unsigned offer may also be accepted, if the offer is accompanied by a document or letter signed by the bidder making direct reference to the proposal.

No bid containing more than five (5) strikethroughs will be accepted, regardless of whether they have been initialed.

Section 13. Deliveries in Formal Bids

When a specific delivery date is not required, bidders must indicate in their offers the term or the date on which delivery will be made of the products, materials, equipment, public works or the non-professional services requested.

Section 14. Withdrawal of Offers in Formal Bids

The withdrawal of an offer that has been filed may be made by written request, at any time before the opening of the bidding.

Withdrawal of offers subsequent to the opening of any bidding shall be conditioned on whether it may be determined unquestionably that the offer was made in error and cannot be sustained as a reasonable offer.

The bidder may not file a substitute offer once an offer for a given bid has been withdrawn.

When subsequent to the Opening of a formal bidding a bidder insists on the withdrawal or the cancelation of its offer or refuses to accept the purchase order that has been issued, without establishing reasons of merit, it shall be considered that the bidder is in breach of contract, the bidder's bond will be forfeited and other sanctions may be applied as well as seeking such other remedy as the Commissioner may deem pertinent, in conformance with the provisions of Section 26 of this Rule.

Section 15. Modifications of Offers in Formal Bids

Offers may be modified only before the opening, through written communication in a sealed envelope duly identified with the number of the bid, the date, the time scheduled for the opening and the name and the address of the bidder, and filed with the Secretary of the Bid Board.

The reasons for the modification of the offer shall be indicated in the written communication.

Modifications of the offers will be inadmissible if they are filed after the date and time scheduled for the opening of the bidding. All modifications of offers will be opened on the date and the time scheduled for the opening of the original bidding.

Section 16. Late Filing in Formal Bids

No bid will be taken into account that is received after the date and the time established as the deadline for submitting bids.

Offers received through the Internet or by fax will not be taken into in consideration, except when previously authorized by the OCI in the invitation to bid.

Offers received, after the deadline will be returned unopened to the bidder with an explanatory letter.

Section 17. Opening of Formal Bids

On the day scheduled for the opening of the offers all those who are present will be required to sign an attendance log, and indicate the name of the firm or corporation represented and the position held.

17.1. Opening Procedures

Bids will be opened following these steps, among others:

- A. Once the quorum of the Bid Board is established, the Chair or the Chair's authorized

representative will introduce him or herself and declare the bidding to be opened at the time, date and place indicated on the invitation to bid and:

- i. indicate the number of the bidders whose offers are going to be opened,
 - ii. indicate the subject of the bid, and
 - iii. identify the persons present and the bidder represented by each.
- B. The Chair will check the envelopes and:
- i. verify that each is sealed,
 - ii. read the name of the file on each of the envelopes, and
 - iii. check them against the list of envelopes received.
- C. The Chair will open the envelopes of the offers in the presence of the attendees.
- D. The Chair will read the following information in each offer for the line items
- i. Number of the item for which the quotation is being made.
 - ii. Price offered for the item.
 - iii. Date of delivery offered, where appropriate.
 - iv. Mark and model offered, when appropriate.

The Chair of the Bid Board will determine the manner in which the interested parties may examine any document related to the bid submitted by the bidders, after the offer contained in such document has been opened and read, without interrupting the normal course of the proceedings. No written document may be submitted to evaluate or question the offers made by the other bidders.

Once all the attendees at the Opening have examined the offers, the session will be closed.

All information related to the bidding will be retained by the OCI and will be part of the purchase dossier.

Section 18. Obligations of the Secretary of the Bid Board Subsequent to the Opening

Subsequent to the Opening, and no later than two (2) business days after the Opening, the Secretary of the Bid Board has the obligation to prepare a Record of Opening containing the following information:

- A. Number and subject of the bidding.

- B. Date, time and place of the opening
- C. Number of offers received.
- D. Number of bidders that provided quotations for one or more line items, or the number that did not provide quotations.
- E. A copy of the Attendance Record of the Opening.
- F. Certification by the person who was supervising the Opening that the information that was read publicly was the information required under the Rule.
- G. The initials of the Secretary on all offers.
- H. A report on any incident that may have occurred during the Opening.

The Record of Opening shall be signed by the person supervising the Opening.

If the proceedings of the Opening were recorded, the recording will be kept intact under the custody of the Secretary of the Bid Board for at least six (6) months, unless the bid in question were under review by the Awards Procedures Division of the OCI or a Court, in which case, it shall be preserved until a final decision is rendered in the matter.

Once the Record of Opening is completed and signed, the Secretary of the Bid Board will keep the Record in the bidding dossier.

Section 19. Award of Formal Bids by the Bid Board

In the awarding of formal bids, consideration will be given to the provisions of Public Law No. 14, enacted on January 8, 2004, known as "Investment in Puerto Rican Industry Act" and Public Law No. 109, enacted on July 12, 1985, known as the "Materials of Puerto Rican Origin for Public Works and Public Buildings Act," as amended, which establish a certain preference in the purchase of goods, provisions, supplies, equipment, and materials produced, manufactured or assembled in Puerto Rico. This preference should be claimed by the bidders, by making the appropriate identification in their proposals, which shall be indicated in the invitation to bid.

The award of the formal bids shall be made to the bidder or bid documents, taking into consideration factors such as the following, among others: that the price or cost is reasonable, competitive, and comparable to market prices, the quality offered, the specifications submitted, the discounts offered for prompt payment, the financial responsibility of the bidder, the delivery or execution time offered, previous time and experience of the bidder in Puerto Rico with regard to the products, materials, equipment, public works or non-professional services that are the subject of the bid, and the experience obtained with the bidders in previous contracts with regard to fulfillment of the terms of the contracts.

The Bid Board shall award the formal bids within (15) business days from the opening of the bids. When specialized knowledge is required for awarding the bid, the term for awarding the bid may be extended up to twenty (20) business days. In this case, the reason for the extension shall be noted in the book of minutes kept by the Bid Board. In addition, the Commissioner may authorize an extension of time, based

on a well-grounded request from the Bid Board.

The Bid Board may reject the best offer in price when the Board has knowledge and there is evidence that the bidder who is making the offer has not satisfactorily fulfilled prior contracts with any Government instrumentality. The Board may also reject such a bid when it does not comply strictly with the specifications, special conditions, requirements, and terms of the bid or the quality offered is lower than that which was requested.

The term of delivery will be considered an important factor in deciding the award in favor of a bidder who has offered goods according to the specifications and general conditions and whose prices are reasonable.

The Bid Board may accept or reject any line item or schedule or group of line items in any offer or several offers, as well as order amounts that are less than those established, according to the best interests of the OCI, provided that the offer has not been otherwise conditioned by the bidder. The award may also be made by grouping line items when it is deemed advisable and advantageous to the public interest.

When an offer is received only from a single bidder, it may be accepted by the Bid Board, provided that it is considered to be fair and reasonable.

Two or more offers will be deemed to be tied when they are identical in prices specifications, and other conditions stipulated in the invitation to bid. If there is a tie between the best offers, the Bid Board may:

- A. Decide the tie based on the experience with the bidders on previously awarded contracts with any Government instrumentality.
- B. Award the bid by a drawing in the presence of the bidders who are tied. If the representatives of the bidders are not present, the drawing may be done in the presence of impartial witnesses.
- C. In exceptional cases the bid may be awarded in equal shares, provided that written approval is obtained for such.
- D. Announce at that time a new bid process in which only the tied bidders will participate.

All winning bidders must submit evidence of having acquired a performance bond equivalent to fifteen percent (15%) of the total of the proposal, as a guarantee of performance of the contract. This bond shall be posted by an insurance company authorized by the Commissioner of Insurance of Puerto Rico, or by submitting a manager's check, bank money order or postal money order made out to the Secretary of the Treasury (unless otherwise provided). No cash or personal checks will be accepted as bond. This bond shall be submitted no later than the date of the signing of the contract or the issue of the purchase order.

The award of a formal bid will not be binding for the OCI until the contract is executed or the purchase order is issued and notified.

Section 20. Refusal of Offers in Formal Bids

Any or all offers in a bid may be refused, during any stage of the process, before the issue of a purchase order, under any of the following circumstances:

- A. Failure by one or more bidders to comply with any of the requirements, specifications or stipulated conditions.
- B. It is deemed that competition has been insufficient.
- C. The prices obtained are unreasonable.
- D. There are insufficient funds available to pay for the products, materials, equipment, public works or non-professional services of the offer with the lowest price.
- E. The offers show that the bidders control the market of the product being requested, and have agreed among each other to quote unreasonable high prices.
- F. Unforeseen circumstances.

In these cases, notification of the decision will be made as provided in Section **8.9** of this **Rule**.

In the cases set forth in this section, the bidders will be subject to the penalties established in **Section 26** of this **Rule**. In addition, if necessary, the OCI will use one of the following alternatives, as the OCI may deem more beneficial and appropriate given the particular circumstances:

- A. Notify new bidding.
- B. Purchase in the open market as provided in this **Rule**.

The Bid Board may excuse or waive any informality or minor deviations in the offers received, such as deviations from the specifications, terms and conditions, that are not in conflict with the use, operation, and quality of the products, materials, equipment, public works or non-professional services, provided that it be for the benefit of the public interest. The Board shall set forth in writing the reasons for this course of action.

Section 21. Notification of Award of Formal Bids

Awards of formal bids will be notified in writing to all bidders that participate in the bid. The award of a bid shall specify the reasons in which the final decision was based and shall include, in a concise manner, the following information:

- A. Names of the bidders and a summary of their proposals.
- B. The factors or criteria that were taken into consideration to award the bid.
- C. Deficiencies, if any, in the proposals of the bidders that were not selected.
- D. The period and deadline to request reconsideration from the Awards Procedures Division of the OCI or a judicial review as provided in the Uniform Administrative Procedures Act, as amended.
- E. In the certification, the name and address of the persons (natural or legal) who were notified

of the bid award as parties in said bidding.

- F. It should be indicated that requesting reconsideration from the OCI is not essential for requesting judicial review, but if said reconsideration is requested then strict compliance of the requirements indicated in Section 22 of this Rule must be ensured.

The awards must also be published on the OCI webpage.

The notifications can be delivered personally with an acknowledgement of receipt or through certified mail, return receipt requested.

Section 22. Contest of Formal Bids

Any bidder that, based on reasonable objections, does not agree with any notice of formal bid or award, may contest said notice of formal bid or award. To do so, the following requirements must be met:

- A. Any contest must be issued in writing and well-grounded.
- B. Contest of the notice of the bidding shall be filed by means of a request for reconsideration no later than five (5) business days from the date the notice of bid was published. An original and two (2) copies of the contest shall be filed with the Award Procedures Division of the OCI.
- C. Contest of the award of the bid shall be filed by means of a request for reconsideration filed with the Awards Procedures Division of the OCI with an original and two (2) copies, or by requesting judicial review no later than ten (10) calendar days from the date of the award of the bid in accordance with the procedures provided for in the Uniform Administrative Procedures Act, as amended.
- D. The ruling on the contested notice or award will be issued in accordance with the procedures established in the Uniform Administrative Procedures Act, as amended.
- E. Any request for reconsideration of the award of notices, contests, or reconsiderations shall be filed in writing and the following requirements are essential to the request:
 - i. The subject and the requested remedy and the bid number must be included in the heading.
 - ii. A detailed description of the facts, including, when applicable, the specific line item or items for which reconsideration of the award is being requested.
 - iii. Specific reasons and arguments on which the request for reconsideration of notice or the award is based, including the necessary documentary evidence that indicates and substantiates that the allegations are valid and true.
 - iv. Clear description of the specific remedy or action requested.
 - v. Certification stating that a copy of the request for reconsideration has been delivered to each of the concerned parties and to the Bid Board.
 - vi. Signature of the appellant or authorized representative.
- F. The Awards Procedures Division shall review the request for reconsideration within ten (10) calendar days of receiving the request. If any decision is issued with regard to said request, the term in which the bidder may request a judicial review will begin on the date in which the copy of the notification is filed.
- G. If the Awards Procedures Division does not take any action regarding the request for

reconsideration within ten (10) calendar days of receiving the request, it shall be deemed that the request was refused in its entirety, and the term for judicial review will begin to be counted as of that date.

- H. These terms will be specified in the invitation to bid.
- I. The Bid Board shall be notified of any appeal, including appeals filed with the Court of Appeals or the Supreme Court of Puerto Rico. The notification shall be addressed to the Bid Board and filed with the OCI.

Section 23. Disposal of Security in Formal Bids

Once the Bid Board issues a notification of the award of bids, the Finance Division will dispose of security as follows:

- A. The security provided by the losing bidders will be returned to them through certified mail, return receipt requested within thirty (30) calendar days following the notification of the award.
- B. If the winning bidder does not appear within fifteen (15) calendar days of the date appointed to award the contract, the securities will be withheld to cover the monetary difference with the amount quoted by the second lowest bidder.

Section 24. Purchase Orders and Invoicing

- A. Once the bid takes place or the corresponding quotations are requested in the open market, as the case may be, and in accordance with the provisions provided in this Rule, the purchase of the products, materials, equipment, public works or non-professional services requested may be made.
- B. If the receiving officer officially receives the ordered merchandise and subsequently determines that such merchandise was received in poor condition or does not comply with the specifications or any of the contractual terms, the receiving officer must immediately apprise the purchasing officer assigned by the OCI of the situation, specifying the circumstances for which said officer did not adequately review the merchandise before receiving it officially. Furthermore, the officer must:
 - a. Notify the vendor that the merchandise must be retrieved, and that the OCI will not be responsible for any losses or damages that the rejected merchandise may incur if said merchandise is retrieved promptly.
 - b. File the corresponding claim with the firm or firms involved and take such measures as may be deemed necessary, taking into account the provisions of this Rule.
- C. All invoices for the payment of goods or services submitted to the OCI shall contain the following certification:

Under penalty of absolute invalidation, I hereby certify that none of the civil servants or employees of the Office of the Commissioner are a party to or have any interest in the profits or benefits resulting from the contract or transaction referred to in this invoice, and if they are a party to or have any interest in the profits or benefits resulting from this contract, a waiver was previously granted. The only consideration for providing the goods or services is the payment agreed to with the Foci's authorized representative. The invoiced amount is true and

correct. The work has been completed, the products have been delivered, or the services have been provided and no compensation has been received for such.

Section 25. Discounts for Prompt Payment

Discounts for prompt payment will be encouraged. The Finance Division shall ensure that such are used.

Purchasing documents that entail the award of a discount for prompt payment shall be stamped with the word "Discount" so that the payment is processed during the term established in the award.

In purchase orders that entail the award of a discount, the discount period shall be calculated from the date in which the final installment of products, materials, equipment, public works or non-professional services requested is delivered, inspected, and accepted, the services are rendered, the public works finished and accepted, and the corresponding certified invoices for payment of the contractor are filed. The payment date shall be the date on the check that is issued.

Section 26. Penalties against Bidders for Breach of Contract

In the event of a breach of the contract resulting from the award in a formal bidding process, when it is deemed that the winning bidder shows a lack of financial responsibility or other type of responsibility, and due to such winning bidder's breach of the awarded contract and obligations of the agreement, the Commissioner, in order to protect the public interest, may impose any penalty or measure deemed necessary including, among others, the following:

- A. Confiscate the bond or bonds deposited as security.
- B. Purchase products, materials, equipment, or non-professional services with any other supplies vendor, or have another vendor execute the public works, charging the difference between the cost paid and the quoted cost to the contractor that failed to comply with the contract or to the contractor's surety.
- C. Cancel other orders issued in favor of the contractor that are pending delivery if it deemed that there is a possibility that such orders will not be fulfilled.
- D. Refrain from requesting costs and providing awards to bidders that are indebted to the Government for contract non-compliance.
- E. Notify the GSA of the breach of contract.
- F. Deduct from any pending payment or through any other means, the amount owed for breach of the contract.

Section 27. Sanctions

Contractors or vendors of goods, equipment, materials, public works or non-professional services that do not comply with Public Law No. 84, enacted on June 18, 2002, as amended, known as: **Code of Ethics for Contractors, Vendors of Goods and Services, and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico**, is reason enough for the OCI, through the Secretary of Justice and in accordance with **Public Law No. 36** enacted on June 13, 2001, as amended, to claim up to three times the amount of the damages.

Contractors or vendors that commit any violation to the Code of Ethics for Contractors, Vendors of Goods and Services, and Applicants for Economic Incentives of the Commonwealth of Puerto Rico will not be able to contract or provide goods or services to any executive agency during a ten (10) year period

as of the date the order or final resolution is issued.

The sanctions herein imposed do not preclude the imposition of any other sanctions or disciplinary measure determined by the professional association in which the contractor is a member. Also, such sanctions do not prevent the imposition of criminal sanctions for participating in a criminal act that will affect public funds or government administration.

27.1. Violations, Contest, and Appeals

Violations to the provisions of the **Code of Ethics for Contractors, Vendors of Goods and Services, and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico** shall be addressed in the OCI's administrative forum as provided for in said Code and following the procedures established in Uniform Administrative Procedures Act.

- A. Any contractor or vendor of goods or services who was notified of not complying with any of the obligations or duties imposed by the Awards Procedures Division of the OCI within **twenty (20) calendar days** from the date the notification was received.
- B. Contests must be submitted in writing and must clearly state the alleged reasons why the OCI should not initiate the procedures for implementing sanctions, and must be carried out in accordance with the procedures established by the Uniform Administrative Procedures Act.
- C. The decision in the contested bid shall be issued in accordance with the procedure established by the Uniform Administrative Procedures Act.
- D. The decision will be notified to the contractor or vendor, who may request a reconsideration or judicial review in accordance with the Uniform Administrative Procedures Act.

27.2. Notification

The OCI will notify the Secretary of Justice of any final judgment, order or decision with regards to violations to the **Code of Ethics for Contractors, Vendors of Goods and Services, and Applicants for Economic Incentives of the Commonwealth of Puerto Rico**, so that said judgment, order or decision is published and recorded in the Public Registry established by **Public Law No. 458, enacted on December 29, 2000**, as amended.

Section 28. Severability Clause

If any of the provisions of this **Rule** is found to be invalid by a Court of competent jurisdiction, said decision will not affect the validity of the remaining provisions of this Rule.

Section 29. Relationship with other Standards

The provisions of this **Rule** should not be interpreted separately, but in relation to the Constitution of the Commonwealth of Puerto Rico, the Puerto Rico Civil Code, the Puerto Rico Uniform Commercial Code, Political Code of Puerto Rico, the Penal Code of Puerto Rico, the Ethics in Government Act, as amended, the Puerto Rico Government Accounting Act, as amended, the E-Government Act, as amended, the rules and guidelines for the acquisition of goods, public works, and non-professional services issued by the

Office of the Comptroller of Puerto Rico, the standards that regulate matters of commerce and public corporations in the Executive Branch, the common and accepted local, interstate, and international commerce practices, as well as any other law related to government commerce, and the interpretations of such laws by the Puerto Rico Supreme Court and the United States of America Supreme Court. In addition, the guidelines and rules issued by the General Services Administration that are applicable to Executive Agencies.

Section 30. Effective Date

The provisions stipulated in this **Rule** will be effective thirty (30) days from filing in the State Department of the Commonwealth of Puerto Rico, as provided in Public Law No. 170, enacted on August 12, 1988, as amended, known as the Uniform Administrative Procedures Act.

Dorelisse Juarbe-Jiménez
Commissioner of Insurance

Date of approval: January 31, 2008

Date of filing in the Department of State:

Date of filing in the Legislative Library: