



GOVERNMENT OF PUERTO RICO
PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY

Number: 9319

Date: October 27, 2021

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Department of State
Government of Puerto Rico

**REGULATIONS FOR THE ACQUISITION OF GOODS AND SERVICES IN THE
PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY**

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I. GENERAL AND INTRODUCTORY PROVISIONS

Article 1. Title

This regulation will be known as the "Regulation for the Acquisition of Goods and Services in the Fiscal Agency and Financial Advisory Authority of Puerto Rico" (hereinafter, the "Regulation").

Article 2. Legal Basis

The Regulation is established by virtue of the authority of Articles 5(d)(iv) and 6(f)(ix) of Law 2-2017, as amended, "Puerto Rico Fiscal Agency and Financial Advisory Authority Act" ("Law 2-2017"); Article 3 of Law 73-2019, as amended, "General Services Administration Act for the Centralization of Purchases of the Government of Puerto Rico 2019" ("Law 73-2019"), and Law 38-2019, as amended, "Uniform Administrative Procedures Act of the Government of Puerto Rico," as well as those other powers granted by law to the Authority.

Article 3. Purpose

This Regulation is adopted with the purpose of establishing the norms and procedures for the acquisition of goods and services of the Authority and to promote a healthy public administration in accordance with current laws and regulations on government procurement, including, but not limited to the provisions of Administrative Bulletin No. OE-2020-082 entitled "Executive Order of the Governor of Puerto Rico, Hon. Wanda Vázquez Garced, to adopt the *General Government Procurement Guidelines Applicable to All Executive Agencies*" ("OE 2020-082 ") (referred to in these Regulations as the "Guidelines "). In addition, [since the Authority is] an Exempt Entity [under] the provisions of Law 73-2019, this Regulation establishes the methods of bidding and exceptional purchases to be followed by the Authority when making purchases and bids of goods, works and non-professional services. Likewise, these Regulations will serve as the basis for amending, modifying and/or supplementing, from time to time and as necessary, the internal policies and procedures of the Authority for the purchase and contracting of goods and services, as defined below. The procedures will be carried out in the form, time, amounts and prices in consideration of the needs and the efficiency of the services provided by the Authority and in response to legitimate public purposes. These powers can be exercised inside and outside of Puerto Rico.

Article 4. Applicability

This Regulation will apply to all transactions for the acquisition of goods and services carried out by the Authority.

Article 5. Definitions

For purposes of this Regulation, the use of the singular will include the plural, the use of the plural will include the singular and the use of pronouns of any gender will include the others. The words and phrases listed below are short terms or concepts from the following definitions:

- 1) **Acquisition:** It will also mean purchase. Total amount of grouped related needs, whether they are goods, works, professional services or non-professional services that must be acquired in the same transaction or moment because for having the same purpose, common suppliers, or because it suits the public interest.
- 2) **Authority:** Fiscal Agency and Financial Advisory Authority of Puerto Rico.
- 3) **PRGSA:** General Services Administration of the Government of Puerto Rico.
- 4) **Goods:** Includes movable, complementary, substitute, consumer, capital goods or anything that is capable of moving by itself or by another force and that are consumable or not, such as, but not limited to the following: food, material and office equipment; construction material and equipment, means of land or air transport, land or sea area; school supplies; medical and scientific equipment; equipment, machinery and materials related to the processing of information by electronic means, the parts, accessories and materials necessary for their maintenance and repair, as well as all those elements necessary for the operation of the Authority.
- 5) **Certificate of Eligibility:** Certification issued by the PRGSA, proving compliance by a bidder, supplier or provider with the regulatory requirements for being in the Single Registry of Bidders and/or Single Registry of Professional Service Providers.
- 6) **Exceptional Purchase:** Acquisition that is exempt from being processed through the informal bid, formal bid, request for proposals, request for sealed proposals or request for qualifications procedures.
- 7) **Conflict of Interest:** Any situation that arises or may arise as a result of a transaction or event in which a person or official of the Government of Puerto Rico obtains or may obtain, directly or indirectly, any benefit, profit, advantage, earning or gain through their conduct or improper exercise of their influence or position.
- 8) **Quotation:** Price or offer presented by a proponent or supplier under the informal bid purchase method. The prices offered by the bidder will remain firm during the validity of the purchase order or contract issued by the Authority and will not be subject to change due to any kind of market increase.

- 9) **Executive Director:** Executive Director of the Authority.
- 10) **Specifications:** Set of essential characteristics of the goods, works and non-professional services, indicated as references for each item of a purchase, proposal or bid, as well as the physical, functional, aesthetic characteristics and/or the quality that describe the type of goods, works and non-professional services that are required. It will also comprise the set of stipulations on the method of installation, assembly or coupling in case of goods.
- 11) **Overspending:** Expenses for articles, supplies or services whose quoted prices are higher than those that are normally quoted in the market at the time of their acquisition or purchase or when there is a cheaper and equally durable substitute product, which can be used for the same purpose with the same result or effectiveness.
- 12) **Extravagant Spending:** Spending out of order and out of the ordinary, against reason, law or custom, that does not conform to the norms of utility and austerity of the times.
- 13) **Unnecessary Expense:** Expense for materials or services that are not essential or necessary for the entity to perform the functions that have been entrusted to it by law.
- 14) **Guidelines:** Executive Order of the Governor of Puerto Rico, Hon. Wanda Vázquez Garced, to adopt the General Government Procurement Guidelines Applicable to All Administrative Agencies, OE2020-082, dated November 16, 2020.
- 15) **Invitation to Bids:** Request for bids made in writing, publicly announced and/or by electronic means to potential bidders for the acquisition of goods, works and non-professional services. When the bidding method to be used is the informal purchase, an invitation to bid will not be issued.
- 16) **Board of Directors:** Board of Directors of the Puerto Rico Fiscal Agency and Financial Advisory Authority.
- 17) **Bid Board or Board:** Bid Board of the Authority.
- 18) **Financial Oversight and Management Board or FOMB:** Created by Public Law 114-187 called “Puerto Rico Oversight, Management, and Economic Stability Act” (known as “PROMESA”).
- 19) **Bidder:** Natural or legal person registered in the Single Registry of Bidders (RUL, by its Spanish acronym) of the PRGSA, available and interested in appearing and

submitting quotes, bids or proposals for goods, works, professional services and non-professional services in any procedure of proposals or bids of the Authority.

- 20) **Best Value:** The bid or proposal that represents the greatest benefit for the Authority; the bid or proposal of the bidder or proponent that best meets the requirements established in the quotation sheet (or similar document) or in the bid documents or proposal and in which it is established that the bidder or proponent offers the best good or service or has the ability to perform the work efficiently, considering all the criteria, such as: inspection, testing, quality, delivery, suitability for a particular purpose, goods or service guarantees and the terms of said guarantees, the life cycle of the goods to be acquired, discounts, economic impact in terms of job creation and fiscal impact on the Government of Puerto Rico. The best value will also take into consideration: the conditions and limitations of the guarantees of the parts and services of the product or service offered, as well as the time and place in which said guarantees are honored and performed and the fiscal impact. The criteria that will affect the price of the offer and that will be considered in the evaluation for the award will be objectively measurable, such as, discounts, transportation costs both in its original delivery and to execute its guarantees, and the cost of disposal of the equipment, once its useful life or use ends, among other criteria. The best value will not necessarily be the bid or proposal that represents the lowest cost or price.
- 21) **Purchasing Office of the Authority:** Also Purchasing Office. Purchasing area attached to the Administration Office of the Authority.
- 22) **Bid Documents or Bidding documents:** Document delivered to bidders interested in submitting bids. It contains the requirements and all the necessary information to assist the bidder in the preparation of their bid.
- 23) **Unique Registry of Bidders or RUL:** Electronic record maintained by the PRGSA of the natural or legal persons qualified and classified by the PRGSA to contract with the Government of Puerto Rico for the provision of goods, works and non-professional services.
- 24) **Unique Registry of Professional Service Providers:** Electronic record maintained by the PRGSA of qualified individuals or legal entities classified as providers of professional and consulting services to contract with the Government of Puerto Rico.

PRGSA Regulation: The Uniform Regulations for Purchases and Bids of Goods, Works and Non-Professional Services of the PRGSA, Regulation No. 9230 of November 18, 2020, adopted to implement Law 73-2019, as amended, known as the

“General Services Administration Act for the Centralization of Purchases of the Government of Puerto Rico 2019,” or to implement any other law applicable to the procedures for the acquisition of goods and services of the Authority.

25) **Non-professional Services:** Those services that are not offered by natural or legal persons with specialized knowledge or skills that are required to hold a university degree or license that accredits them as specialized professionals.

26) **Professional or Consulting Services:** Are those whose main service consists of the product of intellectual, creative or artistic work, or of the management of highly technical or specialized skills, or that are offered by a natural or legal person with specialized knowledge or skills to whom it is required to hold a university degree or license that certifies them as a specialized professional.

II. GENERAL PRINCIPLES IN THE ACQUISITION AND CONTRACTING OF NON-PROFESSIONAL GOODS AND SERVICES AND PROFESSIONAL AND CONSULTING SERVICES

Article 6. General Principles on Government Procurement and the Guidelines

The Guidelines, as defined herein, are adopted by reference and are made an integral part of these Regulations, with the exception of those sections that are inapplicable by virtue of any law. Every rule, guideline, procedure, policy or similar document that is promulgated must be entirely in harmony with the Guidelines, including the clauses that every contract must contain as established in Section 2.6.1 of the Guidelines, without limitation to professional and consulting service contracts, non-professional service contracts, lease contracts, among others.

Article 7. High Public Interest

Section 9 of Article VI of the Constitution of Puerto Rico provides that “[p]ublic property and funds shall only be disposed of for public purposes, for the support and operation of state institutions, and pursuant to law.” Likewise, the State has the obligation to promote a sound public administration. Therefore, the Authority recognizes that government procurement is in the highest public interest and will ensure the rigorous application of the provisions of the governing laws and regulations.

Article 8. Application of Laws, Regulations and Related Regulations

It is the duty of the personnel of the Authority that works with the contracting and acquisition of goods, non-professional services and professional or consulting services to know and implement the laws and regulations applicable to government procurement.

Article 9. General Requirements of the Government Obligation

In accordance with sound public administration, every government contract shall be made in writing, be prospective, and a copy thereof shall be sent to the Comptroller's Office within the period established by law. All contracting requires making sure that: (a) there is a real need for the service to be contracted or the good to be acquired, (b) the funds are used properly, (c) the applicable laws and regulations are carefully examined, (d) the contract, purchase order, service order or similar document is executed in writing, and (e) the necessary approvals are obtained in the Authority and other government entities, including, but not limited to, the FOMB.

No debt acknowledgment will be made to pay for goods, non-professional services and professional or consulting services whose procurement process has not complied with all the requirements established in this Regulation, in the internal policies and procedures of the Authority and in the applicable laws, executive orders, regulations and circular letters. The Authority will only honor the payment of goods, non-professional services, and professional or consulting services that are acquired and/or rendered during the term of a contract granted in accordance with the applicable laws, regulations and rules.

Article 10. Prohibition of Extravagant, Excessive or Unnecessary Expenses

In the acquisition of non-professional goods and services and of professional and consulting services, extravagant, excessive and unnecessary expenses will be avoided.

Article 11. Ethical Responsibility in Hiring and Acquisition

Every person, employee and official of the Authority who participates in the process of acquiring and contracting of goods, non-professional services, [and] professional and consulting services shall exercise their functions following the ethical parameters set forth in Law 1-2012, as amended, known as the "Puerto Rico Government Ethics Office Organic Act" ("Law 1-2012") and will not incur conflict of interest. In addition, personnel related to the government acquisition and procurement function at the Authority will follow the following principles:

- 1) The personnel of the Authority will be responsible for complying with the laws, regulations and procedures that regulate these activities.
- 2) All transactions and dealings with suppliers and/or contractors will be carried out in a strictly business relationship. The Authority's personnel shall refrain from entering into a business relationship with suppliers and/or contractors with whom they have a close personal and/or family relationship up to the fourth (4th) degree of consanguinity, or where there are conflicts of interest.

- 3) The personnel will not use the name of the Authority to obtain a price, credit or other personal benefit.
- 4) All Authority personnel related to purchasing and contracting functions, either directly or indirectly, may not request or accept any goods of economic value as payment to perform their employment functions, duties and responsibilities.
- 5) Data related to purchases, bids from suppliers and/or contractors or other confidential information of the Authority may not be disclosed under any circumstances.
- 6) Any attempted bribery by a supplier and/or contractor will be immediately reported to the following officials of the Authority: Chief Operations Officer, General Legal Counsel, and Comptroller.
- 7) Any breach of these rules will constitute sufficient cause to initiate the corresponding disciplinary action, including dismissal.

Likewise, according to Law 2-2018, as amended, known as the “Anti-Corruption Code for the New Puerto Rico”, it is the responsibility of the Authority to ensure compliance with the provisions of the Code of Ethics established in said statute. Pursuant to this obligation, the Authority has the power to carry out investigations to determine whether any contractor, supplier or applicant for economic incentives has acted in violation of the Code of Ethics established in Law 2-2018. Said investigative power will be exercised by any official designated by the Executive Director for such purposes.

Article 12. Contractor's Ethical Responsibility and Disabling Conduct

All contractors must comply with the provisions of the codes of ethics that govern their profession and with the laws that regulate ethics in government procurement.

For its part, Law 2-2018 provides who are the persons that are disqualified from contracting with the Government of Puerto Rico and in its Title III establishes the “Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Government of Puerto Rico Applicable to Natural and Legal Persons in the Contracting and Acquisition of Goods, Non-Professional Services, Professional and Consulting Services.”

On the other hand, Law 237-2004, as amended (“Law 237-2004”), includes additional ethical requirements for all contractors under a professional and consulting services contract.

Article 13. Preferential Policy

In the Authority's acquisition processes, the applicable preference policies will be complied with, including, but not limited to, those established in the following laws, to the extent applicable to the Authority: Law 14-2004, as amended, known as "Investment in Puerto Rican Industry Act"; Law 129-2005, as amended, known as the "Procurement Reserve Act of the Government of the Commonwealth of Puerto Rico"; Law 253-2006, known as the "Law of Multiple Selection Contracts in Procurement Processes"; Law 42-2018, as amended, known as the "Preference for Contractors and Local Construction Suppliers Act," Law 70-1992, as amended, known as "Puerto Rico Solid Waste Reduction and Recycling Act", among others (hereinafter, the "Preferential Laws").

Article 14. Restrictions Applicable During Electoral Ban

During the period between July 1 of each year in which the general elections are held and the date of inauguration of the new elected officials in said general elections, no expenses may be incurred in excess of fifty percent (50%) of the budget allocation for each item, it shall be understood that this refers to the amount of money authorized by the Legislative Assembly in Joint Resolutions for programs or activities of the Authority that constitute ordinary operating expenses. Likewise, formalizing contracts or other obligations that go beyond the election year six- (6)-month term, will be avoided. However, as interpreted by the Office of Management and Budget through its Circular Letter No. 93-11 of October 25, 2011, if due to the needs of the service or other legal considerations it is necessary to enter into a contract for a longer period, the contract must include a cancellation clause that allows any new official of the Authority, i.e., the Executive Director or other authorized representative of the Authority, to make such determination effective immediately, if he or she so determines.

Article 15. Signatures in Contracts, Purchase Orders, Service Orders and Similar Documents

The representation of the Authority in contractual transactions and the acquisition of goods and services will fall on those officials who have authority in law or to whom such power has been officially delegated by the competent authority.

As for the contracting party, in accordance with the instructions provided in the Guidelines, the Authority will request an identification from the person who signs the contract, purchase order, service order or similar document on behalf of the contracted party. In the case of the representative of a legal person, the document certifying that he or she is authorized to appear in such capacity (i.e., certificate of corporate resolution) must be requested.

Article 16. Bonds, Guarantees and Insurance

In the acquisition and contracting procedures, those insurances, bonds or guarantees that are necessary and convenient depending on the nature of the good or service to be acquired will be requested, such as: Performance Bond (“Performance Bond”), Bid Bond (“Bid Bond”), Payment Bond (“Payment Bond”), Policy of the Corporation of the State Insurance Fund, Employer's Liability Insurance (“Employer's Liability”), Commercial Public Liability Insurance (“Commercial General Liability”), Automobile Liability Insurance (“Automobile Liability”), Construction Insurance (“Builders Risk”), Pollution Liability Insurance (“Pollution Liability”), Installation Floater (“Installation Floater”), Professional Liability Insurance (“Professional Liability”), among others.

All bonds, insurance and guarantees received in the procurement and contracting procedures will be delivered to the Purchasing Office for safekeeping. The Purchasing Office will keep a record of the bonds, insurance and guarantees received as a control measure.

Article 17. Certifications and Documents for Government Procurement

As part of the process of acquisition of goods, non-professional services and professional or consulting services, all certifications and documents required for government procurement will be requested prior to the formalization of the obligation.

Pursuant to Article 42 of Law 73-2019, the Authority will recognize any valid eligibility certificate issued by the PRGSA. A current certification certifies compliance with any documentation requirements necessary for contracting with the Government.

Article 18. Clauses that Must Be Included in All Contracts

In addition to the mandatory clauses applicable by law, regulation or other legal provision to each contract, order or similar document, the Guidelines provide that certain clauses must be included in all contracts, regardless of whether they are for the acquisition of goods or non-professional services, or for professional and consulting services. The Authority will be responsible for including said clauses in its contracts.

Article 19. Prior Authorizations from Entities External to the Authority

Before executing a contract, purchase order, service order or similar document, prior authorizations must have been obtained from the pertinent entities, such as: Puerto Rico Innovation and Technology Service, Governor’s Chief of Staff, Office of Management and Budget, FOMB, as applicable to the Authority.

Article 20. System for Award Management (SAM)

Prior to a contracting or acquiring goods, non-professional services or professional and consulting services with federal funds or when required by law, regulation or other legal provision, the status of the contractor will be verified in the electronic portal of “System for Award Management” <https://www.sam.gov>. In these cases, the contractor must have a “DUNS Number” and be registered in said system or must submit evidence that he has started the process to be register in said system prior to contracting.

Article 21. Requirements for Contracting Telecommunication Services

For contracting and acquiring telecommunication services, the procedures of Law 75-2019, known as the “Puerto Rico Innovation and Technology Service Act” (“PRITS”; hereinafter, “Law 75-2019”) and of PRITS’ Circular Letter No. 2020-03 of August 31, 2020, as well as any subsequent amendments and other applicable laws, must be followed.

Article 22. FOMB Contract Review Policy

While an FOMB for Puerto Rico is constituted under PROMESA, all of the Authority’s contracting and acquisitions of non-professional goods and services, as well as professional and consulting services that are in the amount of \$10 million or more must be previously approved by the FOMB, as established in the “FOMB Policy: Review of Contracts” and as amended from time to time (hereinafter, the “FOMB Policy”).

In addition, for any contract, purchase order, service order and any similar document for the contracting and acquisition of any good, non-professional service or professional or consulting services, regardless of the amount or value, the contractor must be asked to submit the “Contractor Certification Requirement” that is included as an attachment in the FOMB Policy. Moreover, every contract, purchase order, service order and any similar document for the contracting and acquisition of any good and service, regardless of the amount or value, must include a clause that provides that the contractor declares and guarantees that the information included in the Certification is complete, accurate and true, and that any misrepresentation, inaccuracy or falseness in said Certification will lead to the nullity of the contract, purchase order and service order. Thus, the contractor will have the obligation to immediately reimburse the Authority for any amount, payment or benefit received by virtue of the contract.

Article 23. Applicability of the Provisions of the PRGSA Regulation to the Authority as an Exempt Entity

Law 73-2019 designates the Authority as an Exempt Entity. Although the Authority may establish its own regulations for purchases and bids of goods, works and non-professional services,

said regulations must include the methods of bidding and exceptional purchases provided in Law 73-2019 and the Regulations of the PRGSA. Before publication, this Regulation must be reviewed by the PRGSA, which will certify that these comply with the aforementioned.

Likewise, the Authority, being an Exempt Entity, must use the categories previously tendered by the PRGSA and the contracts executed by PRGSA.

The Executive Director will designate personnel who will serve as liaison between the Authority and the PRGSA to assist in the procurement and bid process.

The Authority will submit to the Administrator of the PRGSA, within the first ten (10) days of each month, a report, which includes the detail of all purchases and bids of goods, works and non-professional services made during the previous month. This report will include:

- 1) The good or service acquired;
- 2) The method of bidding or exceptional purchase used;
- 3) The selected supplier and/or the successful bidder;
- 4) Total amount of the transaction, and
- 5) A certification, signed by the Executive Director or his designated representative, establishing that the processes detailed therein were conducted pursuant to the applicable laws and regulations.

III. POWERS AND FACULTIES

Article 24. Powers of the Board of Directors and the Executive Director

The Executive Director is empowered to contract professional or consulting services up to two hundred thousand dollars (\$200,000.00). Any contracting of professional or consulting services in excess of this amount must be approved by the Board of Directors.

The Executive Director may authorize purchase orders, service orders and/or all those contracts and orders associated to the bidding methods for the acquisition of non-professional goods and services up to five hundred thousand dollars (\$500,000.00). Any purchase order, service order and/or any contract related to a bid process in a higher amount must be approved by the Board of Directors.

The Executive Director may approve those measures necessary for the implementation of these Regulations through an administrative order, circular letter, or memorandum. In addition,

the Executive Director may amend, modify and/or supplement the internal policies and procedures to ensure an efficient operation and administration of the functions of purchasing and contracting of goods and services and contracting of professional or consulting services.

The Board of Directors may modify such amounts from time to time depending on the circumstances and the needs of the Authority.

The Executive Director may delegate the authority conferred by these Regulations for purchases and contracts by establishing levels of authority and conditions for the approval of purchases and contracts, which will be observed by the authorized personnel.

IV. PURCHASING OFFICE OF THE AUTHORITY

Article 25. Duties and responsibilities of the Authority's Purchasing Office

The Purchasing Office will have the following powers and responsibilities:

- 1) Acquire the goods, non-professional services and professional or consulting services necessary for the effectiveness of the operations of the Authority.
- 2) Process, evaluate and award the acquisitions of non-professional goods and services and professional or consulting services, pursuant to the provisions of this Regulation.
- 3) Make all the informal purchases of the Authority.
- 4) Make the exceptional purchases of the Authority.
- 5) Prepare the Authority's Annual Acquisition Plan and submit it to the PRGSA following the procedure set forth in Law 73-2019, in the PRGSA regulations and in these Regulations.
- 6) Review the estimated needs and probable purchases included in the Annual Acquisition Plan on a quarterly basis and notify PRGSA of any changes made to the current and previously submitted acquisition plan.
- 7) Present to the Administrator of the PRGSA, within the first ten (10) days of each month, a report including the details of all purchases and bids of goods, works and non-professional services made during the previous month.
- 8) Issue the award notices for acquisitions of informal purchases and any other notice that is required by regulation or law.

- 9) Establish internal manuals to enforce its duties, functions and powers.
- 10) Appoint technical committees or evaluators that participate in the evaluation of the bids and offer their advice. Said committee will conduct its work under the same confidentiality rules that apply to the Purchasing Office.
- 11) Maintain records of purchases and acquisitions.
- 12) Maintain a record of the bonds, guarantees and insurance presented by the contractors or bidders.
- 13) Do not accept bids that contain prices in excess of the manufacturer's suggested retail price.
- 14) Make recommendations to the Executive Director on the adoption of rules, procedures and guidelines regarding the acquisition of goods and services.
- 15) Assist the Bid Board in its processes for the acquisition of goods and services, including, but not limited to the preparation of invitations and bidding documents.
- 16) Carry out and execute in whole or in part the processes delegated to it by the Bid Board.
- 17) Acquire goods and services directly from the PRGSA, when deemed appropriate by the Authority, following the procedures established by the PRGSA in its regulations.
- 18) Any other power or duty that is assigned to it by law or regulation.

These powers and responsibilities will be exercised by the Purchasing Office in accordance with the procedures established in these Regulations.

V. BID BOARD

Article 26. Creation and composition of the Bid Board

A Bid Board attached to the Authority is hereby created, which will be empowered to evaluate and award, through a uniform procedure, informal bids, formal bids, requests for proposals, requests for sealed proposals, and requests for qualifications for non-professional services. The Bid Board will be composed of one (1) Chairperson and two (2) permanent associate members appointed by the Board of Directors. The members of the Bid Board will hold their positions until otherwise provided by the Board of Directors.

The Bid Board will adopt a regulation that will establish the procedures that are necessary to guide and standardize its internal operation, including the forms that are necessary for its operations.

Article 27. Quorum of the Bid Board

A simple majority of the Bid Board will constitute a quorum for holding sessions and making decisions. All the resolutions of the Bid Board will be adopted by majority vote. The members may vote through electronic means.

Article 28. Seal

The Bid Board will adopt an official seal which will be kept by the Secretary of the Board. All determinations, communications and certifications issued by the Bid Board will be considered as official documents of the Bid Board, provided they are stamped with the official seal.

Article 29. Meetings

The meetings of the Bid Board will be called by the Chairperson or the Secretary, by delegation of the Chairperson.

Article 30. Powers and duties of the Bid Board

The Bid Board will have the following powers and duties:

- 1) Evaluate and award informal bids, formal bids, requests for proposals, requests for sealed proposals, and requests for qualifications.
- 2) Not accept bids that contain prices in excess of the manufacturer's suggested retail price.
- 3) Hold meetings according to an agenda.
- 4) Issue the legal bid award notices or resolutions in the matters before its consideration under the signature of the Chairperson.
- 5) Evaluate and adjudicate the matters submitted before its consideration, quickly and efficiently, safeguarding the procedural and substantive rights of the parties.
- 6) Maintain a complete file that documents the events that have taken place.

- 7) Allow the bidders to examine the files of the bids that have been duly awarded and provide a copy of it once the pertinent charge established by regulation is paid.
- 8) Appoint technical committees or evaluators who participate in the evaluation of the bids and give their advice. Said committee will conduct its work under the same confidentiality rules that apply to the Bid Board.
- 9) Consider requests for cancellation of bids.
- 10) Decide on the recommendations for the application of penalties or sanctions to bidders, contractors or suppliers for breach of their obligations or duties.
- 11) Review and approve the minutes of their meetings, which will be signed by the Secretary and the Chairperson of the Bid Board.
- 12) Maintain the confidentiality of all its meeting discussions. Prior to awarding a bid, the members of the Bid Board will not discuss the information related to a bid or its evaluation with people outside the Bid Board, except with the members of the technical or evaluating committee designated by the Bid Board for the particular bid.
- 13) Certify, in their files, the justifications for making an acquisition through the exceptional purchase mechanism.
- 14) Any other power or duty that, by law or by regulation, is assigned to it or is inherent to carry out the powers delegated to it.

Article 31. Powers and Duties of the Chairperson of the Bid Board

The Chairperson of the Bid Board shall have the following powers, functions and duties:

- 1) Represent the Bid Board in all those functions inherent to his position.
- 2) Call the sessions or meetings of the Bid Board.
- 3) Direct the processes of the Bid Board.
- 4) Advise the Board of Directors or the Executive Director in the preparation of bid regulations or suggest amendments thereto.
- 5) Prepare the calendar of sessions for bid openings.
- 6) Identify the need for specialized technical advice.

- 7) Enforce the procedure for conducting and awarding the bids in accordance with the applicable legislation and regulations.
- 8) Adopt an official seal.
- 9) Any other power, function or duty that is assigned by this Law or by regulation or that is inherent to carry out the powers of the position.

VI. PROFESSIONAL AND CONSULTING SERVICES

Article 32. Form of Acquisition of Professional and Consulting Services

In accordance with the nature of professional and consulting services, the current rule of law does not require that contracts be awarded through competitive methods or bidding mechanisms. However, when the Authority deems it necessary, it may use the mechanism of request for qualifications, as well as request service proposals, according to the process that is provided for it.

All professional and consulting service contracts must comply with the provisions of applicable laws and regulations, including Law 237-2004, as well as Circular Letter No. 1300-16-16 of the Department of the Treasury, issued on February 22, 2016, and the Guidelines, as well as those applicable laws and regulations.

The Executive Director or his or her delegate will adopt the internal policies and procedures that are necessary to implement the government procurement requirements for the acquisition of professional and consulting services.

Article 33. Exceptional Nature

All contracts of this type will be of an exceptional nature and should be used only when the Authority does not have internal resources, cannot use its internal resources or when the contractor's expertise, skill or experience is necessary to achieve the purposes that are the basis for the contract.

Article 34. Single Registry of Professional Service Providers

In light of Article 35 of Law 73-2019, only those individuals or legal entities that are part of the Single Registry of Professional Service Providers of the PRGSA may be contracted under a contract of this type. Regarding this requirement, the same exceptions as provided by the PRGSA through regulations, circular letter, memorandum or newsletter will apply. It is provided that it will

not be required to form part of the Single Registry of Professional Service Providers until such registry is established by the PRGSA.

Article 35. Fees

The fees that may be charged by contractors or consultants covered by professional or consulting service contracts will be based on the real market value of the services to be provided, and the fees will be established based on a reasonable framework.

Article 36. Licenses and Academic Preparation

Prior to the executing any professional or consulting service contract, the office or department that requests the formalization of a contract will request the contractor to certify that he or she has the licenses, studies, degrees, or academic preparation necessary to perform the tasks for which he or she is being retained. In the event that the contractor is a legal person, the office or department that requests the formalization of a contract will request that the authorized representative of the contractor certify that the natural persons who will provide the services possess the aforementioned qualifications and that the legal person has been organized in accordance with applicable laws, including those related to the profession of its members, partners and/or shareholders.

Article 37. Contingent Professional Service Contracts

Prior to executing contingent professional and consulting service [contracts], the provisions of the laws, regulations and circular letters must be observed, including Circular Letter No. 152-2018 of March 23, 2018, from the Office of Management and Budget and Circular Letter No. OC-19-11 of March 28, 2019, from the Office of the Comptroller or successor circular letters.

VII. NON-PROFESSIONAL GOODS AND SERVICES

Article 38. Acquisition of Goods and Services Through the PRGSA

When deemed convenient or when required by applicable laws and regulations, the Authority may purchase goods and services through the PRGSA. In these cases, the Purchasing Office of the Authority will follow the Regulations of the PRGSA, as well as any other procedure issued by the PRGSA for such purposes, in accordance with the laws applicable to the Authority.

Article 39. Bidding Methods

In accordance with Law 73-2019, the Authority is not obliged to make the acquisition of non-professional goods and services through the PRGSA, but must adopt the bidding and exceptional purchase methods that are contained in Articles 31 and 34 of said law, respectively.

These bidding methods are informal purchasing, informal bid, formal bid, request for proposals, request for sealed proposals, and request for qualifications. A favorable award in any bidding method does not bind the Authority until the purchase order or contract is executed, accordingly, pursuant to the other legal requirements that apply to the proposed transaction.

Article 40. Informal Purchase

This bidding method will be used when non-professional goods, works and services are acquired whose cost does not exceed fifteen thousand dollars (\$15,000.00). A minimum of three (3) quotes will be requested from bidders duly registered in the RUL, under the pertinent category. The minimum number of three (3) bidders will be subject to the existence of sufficient supplier firms for the good or service to be acquired.

Failure to obtain the minimum number of quotes will not be an obstacle to go on with the purchase; however, the reasons for not obtaining the three (3) quotes must be documented.

In the event that a quotation has been requested from a particular supplier and the supplier has not answered the request, it shall not be considered a “No Bid” quote unless the supplier confirms in writing their refusal to participate in the tender.

The quotes must be received on or before the date and time indicated in the request for quotes, and the quote registry will be filled out. The best value quote will be chosen taking into account all the circumstances and the best interests of the Authority. Once it is awarded, in the event the bid was made by telephone, the successful bidder must submit his or her signed written bid.

The informal bid method may be used for a complex acquisition whose cost does not exceed fifteen thousand dollars (\$15,000.00), when it is determined that said method serves the best interests of the Authority.

The procedure for processing an informal purchase is as follows:

- 1) The Purchasing Officer will request a minimum of three (3) quotes from suppliers or providers of goods or services duly registered in the RUL under the pertinent category.
- 2) Each supplier will be offered the specifications, terms and conditions, as well as the time they will have to submit their bids in order to be considered. The term established for submitting quotes will depend on the need for the service.
- 3) The Purchasing Office will determine the amount of the required performance bond, if any.

- 4) Quotes can be received by phone, email or any other available means of communication.
- 5) Failure to obtain the minimum number of quotes, as established, will not be an obstacle to go on with the purchase; however, the reasons for not obtaining the established minimum number of quotations must be documented.
- 6) In the event that a quotation has been requested from a particular supplier and the supplier has not answered the request, it shall not be considered a "No Bid" quote unless the supplier confirms in writing their refusal to participate in the process.
- 7) The supplier's obligation to answer if they are not interested in bidding in the process shall be established.
- 8) The quotes must be received on or before the date and time indicated on the quote sheet, and the quote registry will be filled out.
- 9) The Purchasing Officer will evaluate the quotes received and will select the best value bid taking into account all the circumstances and the best interests of the Authority.
- 10) Once the Purchasing Officer has selected the supplier, if the supplier has made an bid by telephone, the supplier must submit his or her signed written bid.
- 11) The Purchasing Officer will notify the successful bidder by telephone and send them the purchase order or service order by email, and will notify by telephone the non-professional suppliers of goods or services, whose quotes were requested, the reasons why their bids were rejected.

Article 41. Informal Bid

Section 41.1 Definition

This method of bidding will be used when non-professional goods, works and services are acquired whose cost exceeds fifteen thousand dollars (\$15,000.00), but does not exceed the amount of one hundred thousand dollars (\$100,000.00). The Bid Board will evaluate the bids and award the bid to the responsive bidder who has offered the best value.

The Authority shall justify conducting each informal bid process through the form established for these purposes. All documentation supporting such justification must be submitted together with the form and kept in the file. The justification must be signed by the Bid Board, the body that will certify that the processes were carried out in accordance with the provisions of the applicable laws and regulations and that no attempt has been made, through the informal bid

process, to split an acquisition to reduce the value of the aggregate purchase below the limit established for conducting a formal bid.

Section 41.2 Invitation to an Informal Bid; Announcement

- 1) The Purchasing Office will prepare the Invitation to an Informal Bid and the related bid documents within a period of fifteen (15) days, extendable for just cause or when it is in the best interest of the Authority, after the application is duly completed by the Authority. The call will be issued within fifteen (15) days, extendable for just cause or when it is in the best interest of the Authority, after the informal bid documents are duly prepared and have been reviewed and approved by the Bid Board.
- 2) The Bid Board will send the Invitation to an Informal Bid to all suppliers registered in the RUL under the category corresponding to the good or service to be acquired, at least fifteen (15) days before the deadline for submitting bids; said period may be less than fifteen (15) days, provided that the Bid Board considers that it serves the best interests of the Authority. When the informal bid involves federal participation, the invitation will be sent within the term established by the federal entity concerned. In addition, the Invitation to an Informal Bid will be published on the Authority's website. Evidence of sending the invitations to an informal bid to each bidder in the RUL, evidence of the invitation to informal bid published on the Authority's website will be kept in the file of the informal bid. The official date of the Invitation to an Informal Bid will be the date on which said invitation was published in the Authority's website.
- 3) When the number of bidders registered in the RUL under the category corresponding to the good or service to be acquired is less than three (3), the Bid Board will take the necessary steps to identify the suppliers or providers not registered in the RUL that provide the needed good or service in order to reach a minimum of three (3) suppliers or providers to send them an invitation for the informal bid. In the Invitation to the suppliers or providers identified in this way, they will be warned that their bid will be considered only if they submit all the required documents to the RUL within a term of five (5) business days. The Bid Board shall certify in writing if it only identifies a maximum of two (2) suppliers or vendors and shall proceed to conduct the informal bid.
- 4) The Bid Board may hold exclusive informal bids for preferential groups in order to comply with the provisions of the Preferential Laws.

Section 41.3 Basic Requirements of the Invitation to an Informal Bid

The Invitation to an Informal Bid must include the following:

- 1) Number of the informal bid;
- 2) Purpose of the informal bid;
- 3) Date of publication of the informal bid;
- 4) Conditions or requirements that the bidders must meet;
- 5) Specific instructions on where and how to obtain a copy of the bidding documents for the informal bid, including the physical address and the specific place where the bidding documents will be delivered and a telephone number and contact email. The cost of the copies, if any, will also be specified.
- 6) Copies of the bidding documents will be kept available so that any other supplier that is not part of the RUL can collect them;
- 7) Informal bidding documents may be published on the Authority's website or sent to bidders by email if they are free. They may also be delivered personally, if so determined by the Authority. The availability of the informal bid documents and their cost, if any, will be notified by electronic messaging to all suppliers registered in the RUL under the category corresponding to the good, work or non-professional service that is intended to be acquired, and will be published on the Authority's website. The notification must contain the dates, the time and the exact place for the collection of the informal bid documents. For each particular informal bid, all suppliers will be notified by the same means;
- 8) Date and time of the last day to collect the documents;
- 9) If it has been determined to hold a pre-bid meeting, the date, time and place will be indicated, stating whether attendance is compulsory;
- 10) Date, time, place and manner (in the case of electronic submission) in which the bids will be received;
- 11) If the bid must be submitted with a bid bond equivalent to the percentage (%) established in the informal bid documents, according to the type of good, work or service included in the invitation;
- 12) Date, time and place where the bids will be opened;

- 13) It will include the warning that the Authority may order the partial or total cancellation of the informal bid specifications regardless of the phase it is in, provided that it is before the contract is executed or a purchase order has been issued, when this serves the best interests of the Authority;
- 14) The warning that the Authority may amend any invitation or bidding document related to the informal bid when it serves the best interests of the Authority. In this case, the supplier will not have to pay again (if applicable) to obtain the amended informal bid documents;
- 15) Any notice required in the Preferential Laws.

Section 41.4 Contents of the Informal Bid Documents

All informal bid documents must be identified by their number, purpose and date of issue, and will include the invitation to a informal bid, the instructions, the specifications, and the terms and conditions of the informal bid.

All the necessary elements will be set down in the informal bid documents in order that the bidder can submit their bid by email or delivery to the Authority (as provided in the bid documents), as follows:

- 1) Clear and detailed descriptions of the characteristics of the goods, works and/or non-professional services that the Authority is interested in acquiring and the complete specifications of each one of them. If a specific brand is needed, the record of the informal bid will include a recommendation that justifies it;
- 2) Specific instructions regarding the manner in which bids will be submitted, including the deadline date and time for submitting them;
- 3) The terms and conditions that will govern the transaction. Said terms and conditions together with the specifications will constitute the basis of the contract or purchase order;
- 4) The terms and conditions of delivery and inspection required to award the informal bid;
- 5) Place, date and time in which the envelopes or e-mails containing bids will be opened and indications on the way in which they must be identified;
- 6) Special conditions or requirements that may affect the award process. For example, if it will be necessary to submit a product sample for evaluation and how the sample will be disposed of once the test is performed;

- 7) Evaluation criteria for the award of the informal bid;
- 8) Terms to file and/or submit a challenge to the invitation, the bid documents and/or the award;
- 9) Any certification or special documents that the bidders must submit as part of their Bid;
- 10) Discount rates including the percentage (%) discount for prompt payment, if any;
- 11) The warning that the Authority may order the partial or total cancellation of the informal bid document before or after the bid opening;
- 12) The warning that the Authority may amend any informal bid document up to two (2) business days before the bid opening when the amendment involves changes or additional requests that must be included in the bid or tender or (1) business day before the informal bid opening when the amendment does not affect the submission of bids;
- 13) Notification to the bidders that copies of the related documents will be available at the Authority in those situations in which the bid documents do not contain all the specifications of the goods, works or services that the Authority is interested in acquiring;
- 14) Any notice required in the Preferential Laws;
- 15) All certification or special documents that the bidders must submit as part of their bid;
- 16) Requirements of current regulations and applicable engineering and safety standards in those cases in which installing the equipment to be purchased is required;
- 17) The following warning will be included: "Notification of the award of this informal bid shall not constitute the formal agreement between the parties. It shall be necessary for the pertinent contract to be signed or for the Authority to issue a purchase order signed by the authorized person";
- 18) Notification to tenderers of the availability of additional related documents and where they can be obtained, and
- 19) Any additional criteria that the Authority deems necessary to include in the informal bid documents.

The Bid Board may, when necessary, request the Authority for technical advice from any external resource, employee or official of the Authority and/or the Government of Puerto Rico, with specialized knowledge in order to prepare the informal bid documents.

Section 41.5 Amendments to the Informal Bid Documents

The informal bid documents may be amended if any of the following conditions takes place:

- 1) When, in the opinion of the Bid Board, the terms provided therein are unreasonable;
- 2) When a substantial and insurmountable error is discovered in the bid documents;
- 3) When the Authority is interested in increasing or decreasing the terms or quantities, or changing conditions or specifications;
- 4) When the terms of the documents are reconsidered;
- 5) When it is in the best interest of the Authority.

The Bid Board may amend any informal bid documents up to two (2) business days before the bid opening when the amendment involves changes or additional requests that must be included in the bid or tender, or one (1) business day before the informal bid opening when the amendment does not affect the submission of bids.

The Bid Board will notify by email the Notice of Amendment to the bid documents to the suppliers called to the informal bid. In addition, the Notice of Amendment to the bid documents will be published on the Authority's website. All the amendments will form part of the informal bidding documents and those interested in applying will have to consider them when submitting their bids.

Section 41.6 Challenge to the Invitation to an Informal Bid (Call); Challenge to the Bid Documents

A. Contesting the Invitation to an Informal Bid (Call)

Any bidder interested in participating in the informal bid process may challenge the Invitation to Informal Bid, in writing, only when any of the procedures established in these Regulations have not been followed, or when it is considered that the term set for carrying out the study and preparation of the bid and the date to file the bid is not enough. The writing must contain the basis for which the invitation is contested, in addition, it must be signed by the bidder. The

objection letter must be notified by the bidder to the email address provided by the Authority in the Invitation to Informal Bid, within three (3) working days following the date on which the Authority sends the invitation by email to the bidders or from the date of publication of the Invitation on the Authority's website. If the date of sending the invitation by email to the bidders is different from the date of publication of the Invitation on the Authority's website, the term will be counted from the date of publication of the Invitation on the website of the Authority. The bidder must, in addition, within the term set forth above, notify via email a copy of the appeal to the bidders invited to the informal bid. The Authority will make the e-mails of the bidders available in order to allow proper notification. Any written challenge filed outside the term established herein will be rejected outright.

As a consequence of the submission of this appeal, the procedures in the challenged informal bid will be automatically paralyzed and the subsequent terms will be counted from the notification of the decision of the Bid Board, the body that will evaluate and resolve the challenge on its merits within the term of fifteen (15) working days from the date it was received, extendable for just cause or when it is in the best interest of the Authority.

As a consequence of the challenge submitted, the Bid Board may determine the following:

- 1) Dismiss the challenge and order that the procedures continue.
- 2) Amend the Invitation to an Informal Bid or issue a new one.
- 3) Cancel the Invitation to an Informal Bid.

The determination of the Bid Board will be notified to the appellant and to the bidders invited to the informal bid by email. If the bidder is not satisfied with this determination, he may apply for reconsideration, in accordance with the provisions of Article 52 of these Regulations.

B. Challenge to the Informal Bid Documents

If a bidder interested in participating in an informal bid does not agree with the final terms, instructions, specifications or conditions established in the informal bid documents, he may challenge them. The writing contesting the informal bid documents must be notified by the bidder to the email address provided by the Authority in the bidding documents, within three (3) working days following the date on which the Authority made the informal bid documents available. The bidder must, in addition, within the term set forth above, notify via email a copy of the appeal to the bidders invited to the informal bid. Any objection document filed outside the term established herein will be rejected outright.

The writing challenging the informal bidding documents must contain the following:

- 1) The number of the informal bid.
- 2) A detailed list indicating the specific parts, specifications and/or conditions established in the bidding documents whose terms are being challenged.
- 3) The grounds on which the challenge is based and any evidence that supports the outlined argument.
- 4) A clear indication of the remedy or action sought.
- 5) The signature of the bidder.

As a consequence of the submission of this appeal, the procedures in the contested informal bid will be automatically paralyzed and the subsequent terms will be counted from the notification of the determination of the Bid Board, the body that will evaluate and resolve the challenge on its merits within the term of fifteen (15) working days from the date it was received, extendable for just cause or when it is in the best interest of the Authority.

As a consequence of the challenge submitted, the Bid Board may determine the following:

- 1) Dismiss the challenge and order that the procedures continue.
- 2) Amend the documents or issue new ones.
- 3) Cancel the informal bid documents.

The determination of the Bid Board will be notified to the appellant and to the bidders invited to the informal bid by email. If the bidder is not satisfied with this determination, he may request the reconsideration procedure, in accordance with the provisions of Article 52 of these Regulations.

Section 41.7 Cancellation of the Informal Bid Documents

The Bid Board may cancel the informal bid documents, subject to the following:

A. Before the Bid Opening:

- 1) If any of the conditions that exempt the Authority from the informal bid process arise (exceptional purchases);

- 2) For any just cause determined by the Bid Board;
- 3) As a result of a challenge;
- 4) When the Bid Board determines that the cancellation of the informal bid documents is in the best interest of the Authority.
- 5) The cancellation will be notified by email to the bidders who have obtained the documents. In addition, a cancellation notice will be posted on the Authority's website.

B. After the Bid Opening:

The Bid Board may cancel the informal bid documents; after the bid opening has taken place, as long as a contract has not been executed or a purchase order has [not] been issued, when the Bid Board determines that the cancellation of the informal bid documents is in the best interest of the Authority. The cancellation notice will be notified by email to the bidders who have obtained the documents. In addition, the cancellation notice will be published on the Authority's website.

Section 41.8 Pre-bid Meetings

- 1) The Bid Board may hold pre-bid meetings not less than five (5) business days before the date set for the bid opening. The presence of a representative of the Authority authorized for such assignment and who has knowledge of the type of good or service to be acquired, will be required during these meetings.
- 2) The Secretary [of] the Bid Board or his or her authorized representative shall preside over the pre-bid meetings.
- 3) Any pre-bid meeting will have the purpose of clarifying to the bidders the doubts that may arise regarding the informal bid documents. Bidders will be advised that it is prohibited to have contact with the officials and employees of the Authority after the pre-bid meeting has concluded and while the members are in the process of evaluating the bids.
- 4) A period, a deadline and a method will be established for submitting written questions by potential bidders to the Bid Board.
- 5) Any written question submitted to the Bid Board for consideration will be answered within the term established for it. Both the question and the answer will be offered to the other bidders for their benefit and to add transparency to the process.

- 6) The individuals who participate in the pre-bid meeting will sign the attendance record. In the case of potential bidders, they must identify the natural or legal person they represent.
- 7) The official designated by the Bid Board will prepare a minute of the pre-bid meeting which will include, as a minimum, the following: (a) a list with the names of the participating persons and the natural or legal persons they represent, if applicable; (b) the matters discussed, the clarifications and the agreements reached at the meeting, and; (c) the date, time and place where the meeting was held.
- 8) The official designated by the Bid Board will send a copy of the minutes by email to the potential bidders who participated in the meeting at least two (2) working days before the bid opening. The original minutes will be included in the official record of the informal bid.
- 9) Any verbal or written bid submitted by the bidders in the pre-bid process will be deemed not submitted, will not appear in the files and will not be taken into consideration at the time of the award.
- 10) When it is established in the bid documents that the presence of the bidders at the pre-bid meetings is compulsory, a bidder's failure to appear will be sufficient reason for their disqualification.

Section 41.9 Submission of Bids for the Informal Bid

- 1) The bids must be endorsed (signed or initialed) by the bidder who appears registered in the RUL. If the bidder is not registered in the RUL, the bid must be endorsed by the person who will submit all the required documents to the RUL.
- 2) When a bidder who is not registered in the RUL appears at an informal bid process and submits a bid, the Bid Board shall not reject the bid due to the fact that said bidder is not registered in the RUL and will give said bidder five (5) working days, counted from the bid opening to submit all the required documents to the RUL. Any bidder that does not deliver the required documents will be disqualified.
- 3) Any bidder who is registered in the RUL, who has submitted a bid for an informal bid and is not eligible after the bid opening process, will be granted a non-extendable term of five (5) working days, counted from the bid opening, to submit the pertinent information or documents in the RUL. During said period, no award will be made. The Bid Board will be responsible for notifying the bidder, by telephone and email, of the term granted to update his records in the RUL. In the event that the bidder does not update said records in the RUL during the term provided, the bidder will be disqualified.

- 4) Bids may be received by the method established in the informal bid documents by the Bid Board.
- 5) The email to which the bids are attached or the envelope containing the bids, as the case may be, will be identified with the name, address and telephone number of the bidder and the number of the informal bid. The date and time of the bids submitted by email will be those printed in the document. In the event that the informal bid documents provide for personal delivery, once the envelope with the bid is received by the Authority, it will be marked with the exact date and time it was received, which will constitute the official delivery date of the bid. Personal deliveries of envelopes will be made at the Administration Office where they will be marked indicating the exact date and time they were received, which will constitute the official delivery date of the bid. Once opened according to the usual procedure, the personnel designated by the Bid Board will contact the bidder and return the envelope as received to comply with the provisions herein. The staff designated by the Bid Board will make a photocopy of the envelope or print the email receipt as evidence and will proceed to draw up a Minute.
- 6) The Bid Board will accept bids until the deadline date and time established for the submission of bids. If a natural event or special circumstance occurs that causes the headquarters of the Authority to close and prevents the receipt of bids on the deadline set forth in the informal bidding documents, the bids will be delivered on the day that the Authority resumes functions, at the time originally arranged, or at any other time that is notified in due course.
- 7) Each bidder shall have the right to submit a single bid for each property, work or non-professional service specified in each informal bid, unless otherwise indicated in the informal bid documents.
- 8) The tenderers will submit their bids in the official forms provided by the Authority, in original. In the event that they submit their bids by email, they must submit all the related documents to the Authority, in original.
- 9) Bidders may make photocopies of the official form if needed.
- 10) If needed, tenderers may add sheets to clarify or describe their bids in more detail.
- 11) Bids received outside the date and time established will be returned to the bidder, informing the bidder of his breach of the established conditions and his disqualification. The original envelope for delivering the bid or the electronic receipt will be retained and will become part of the bid file.

- 12) The bids submitted by the bidders will be part of the record of the informal bid in which they participated and will become the property of the Authority, regardless of whether the informal bid is canceled or awarded. However, confidential information constituting business secrets, or any other information protected by copyright laws, among other legal provisions, may not be disclosed by the Authority. For this reason, all information that constitutes confidential and protected information must be attached to the bid by the bidder on an individual sheet that must be titled "Confidential and Protected Information".
- 13) If the bidder offering a specific brand is the exclusive representative of said brand, said bidder will have the obligation to state it in the bid and submit the manufacturer's certification.
- 14) Every bid will remain under the custody of the Authority and under no circumstance will be opened until the date and time set for the bid opening.
- 15) If before the date of the bid opening process a tender is received in an envelope that is opened, broken into, damaged or unidentified, the personnel designated by the Bid Board will contact the concerned bidder so that he or she personally verifies the envelope and the documents it contains, places said documents in another duly identified sealed envelope, and formally submits the tender. The delivery date will be the original receipt date. The Bid Board will prepare a record of the incident and will attach the damaged, broken into or unidentified envelope, and the bidder will sign at the bottom of the record indicating the date and time of inspection of the envelope that was broken into, damaged or unidentified.
- 16) Bids must be made in dollars and cents, per item.
- 17) In the event that no bids are received, the Bid Board may issue a new call or make an exceptional purchase, subject to compliance with the procedures set forth in these Regulations.

Section 41.10 Registry of Bids Received

On the date established to receive the bids, the Bid Board will record the bids received in the Registry of Bids Received. Said Registry will remain in the custody of the Bid Board.

Section 41.11 Types of Bids

The Bid Board may accept or reject bids submitted by the bidders in accordance with the following:

- 1) **Basic bid:** It is the one in which the bidders write down the unit price of each of the items or lines for which they wish to quote. If the bidder records unit prices in some items and omits them in others, it will be understood that he is interested in making bids only in those items for which he makes the basic bid.
- 2) **Alternate bid:** A bidder may submit a basic bid and one or more alternate bids for non-professional goods or services of different prices, qualities or categories when these have been requested in the informal bidding documents and the other bidders have been given the same opportunity. The fact that alternate bids are requested does not oblige the Bid Board to accept them, even if they are lower in price than the basic bid, if it is deemed that it is not convenient for the Authority.
- 3) **"All or nothing" bid:** In addition to the basic bid, an "all or nothing" bid will be eligible. It consists of a bid of a lower price for a group of items or lines subject to the condition that all of them are awarded to the bidder. The total reduced price or the discount percentage (%) should be noted next to each item, indicating the phrase "all or nothing".
- 4) **Global price bid:** As a substitute for bids on an "all or nothing" basis, it will be permissible for bidders to quote on a lump sum basis. The bidder will note next to the sum of the lines for which he has quoted a reduced figure or will indicate a percent discount.
- 5) **Multiple bids by the same bidder:** A commercial company may not submit several bids for an informal bid, either in its own name, of any of its subsidiaries or branches, of some or more of its partners, agents, officials and entities to which they belong because each and every one of the bids will be declared void.

The Bid Board will not consider bids that add or eliminate specifications or conditions required in the informal bidding documents, or that alter, modify or vary them. Bids that contain phrases, paragraphs or ambiguous, incomplete, undefined comments or that reduce the certainty of the bid will not be considered either. As an exception, those minimal deviations that do not alter the basic concept of the specification, the condition or the term of the informal bid documents will be accepted, only if no bidder has offered a non-professional good or service that meets the required specifications and terms.

The Bid Board will consider the total bid price. However, every bid submitted must include the detail of the bid price: price per unit of the good or service (for each item), transportation costs, delivery, assembly, warranty, training, maintenance or services, replacements, among others.

Section 41.12 Corrections to Bids

Corrections to the bids, which arise as a result of errors, must be endorsed by the bidder with his signature or initials, otherwise, the bid for the corresponding item or items will be invalidated.

Section 41.13 Modifications to the Bids

Any modification that varies the terms of the previously submitted bid will be made by written communication sent to the email address established by the Bid Board for these purposes, duly identified with the following information:

- 1) Number of the informal bid;
- 2) Date;
- 3) Time set for the delivery of the bid;
- 4) Name and address of the supplier;
- 5) Information indicating the reasons for the modification of the bid.

Modifications submitted after the deadline established for the submission of bids will not be accepted.

Any modification of the bid will be opened on the date and time indicated for the informal bid opening, in conjunction with the original tender.

Section 41.14 Bid Withdrawal

- 1) The withdrawal of a bid may be made by means of a written request sent by email to the address established by the Bid Board for that purpose, at any time prior to the bid opening.
- 2) The tenderer will not be able to submit a substitute bid once his bid for a given purchase has been withdrawn.
- 3) No bidder may withdraw his bid after the informal bid opening.

Section 41.15 Bid Opening

- 1) Bids will be opened on the day and time set for opening. The bid opening will be open to the public and any interested person may attend it. In the event that the bid opening is carried out virtually, an electronic link will be provided to any interested person to access such event electronically.
- 2) The bid opening will be chaired by the Secretary of the Bid Board or his or her authorized representative.
- 3) The pertinent bidders and any interested private person may be present at said bid opening.
- 4) Tenderers must be in the room where the bid opening process will be held at the time indicated for the start. Those who arrive later will not be able to enter and will lose the opportunity to participate.
- 5) All the individuals who attend the bid opening will sign an attendance record, indicating the name of the natural or legal person they represent and the position they hold.
- 6) The Secretary of the Bid Board or his or her authorized representative who presides over the opening process will express aloud the number of the informal bid that is under consideration, the purpose of the same and the name of each of the bidders who have submitted bids. He or she will show all those present the emails or the sealed envelopes of the tenders. He or she will open them and verify that they contain all the documents required in the informal bid documents. Bid email receipts or envelopes will be retained in the informal bid record.
- 7) The Secretary of the Bid Board or his or her authorized representative who presides over the bid opening will initial and stamp each of the pages of each tender. In those cases in which it is anticipated that the bids will be voluminous, that many bidders will attend, the assistance of the personnel of the Authority will be required so that together with the Secretary of the Bid Board or his or her authorized representative who presides over the bid opening, they stamp the bids. Said document will form part of the informal bid file. In the event of electronic submission of bids, the pages will be [initialed] and stamped electronically.
- 8) The following information should be read aloud: (a) the number of the item or line for which the bid is being submitted; (b) the price per item; (c) the brand and model; (d) the warranty, if applicable, and (e) the delivery date if it is one of the conditions of the informal bid.

- 9) Once the bids have been opened and read in public, the Authority may not change the terms of the informal bid, nor will the bidders present be allowed to make a bid or make changes or modifications to it.
- 10) Any person present at the bid opening may examine the documents of the bids submitted after the Secretary of the Bid Board or his or her authorized representative who presides over the bid opening reads aloud, initials and stamps all the bids.
- 11) The Secretary of the Bid Board or his or her authorized representative who presides over the bid opening process will be responsible for drawing up a record of all incidents within a reasonable period of time in which he or she will certify under his or her signature the veracity of the statement. The minutes will contain the following information:
 - a. Number and subject of the informal bid;
 - b. Date, time and place of the opening;
 - c. Number of bids received;
 - d. How many bidders bid for one or more items and how many did not bid;
 - e. Name of the bidders who did not bid;
 - f. A copy of the attendance record signed by those attending the event must be made part of the Minutes; in the event that the bid opening takes place virtually, any attendance record generated by the virtual platform will be considered equivalent to the signature of the participants.
 - g. Certification of the person who presides over the bid opening, certifying compliance with the regulatory provisions concerning said act;
 - h. Any incident that occurred during the bid opening, and
 - i. Signature of the person who presided over the act.

Section 41.16 Summary of Bids

The Bid or Proposal Evaluation Committee will make the pertinent evaluations. Within the evaluation, a breakdown or summary of the bids made by all the bidders will be included in the form provided for this, which will include the following information, when appropriate:

- 1) Number of the Informal Bid;

- 2) Name of each bidder who submitted the bid;
- 3) Bid price;
- 4) Finding of whether or not [each bid] meets the specifications and conditions;
 - a. If it does not comply, the finding will point out which ones do not comply and why the specifications and conditions are not met.
 - b. When non-compliance with specifications and conditions of the process is exposed as a basis to disqualify or reject the bid, the basis for such determination must be clearly stated, together with the technical analysis that was carried out and all the documents that support the same.
- 5) The analysis of the economic aspects of the purchase must include an evaluation of the jobs, economic activity and the revenue received by the Authority from the different bids in accordance with the base of operations of each participating bidder. The local supplier will be considered preferred if it represents the best value for the Authority.
- 6) A recommended bidder for the award and for what reason, and the reasons why the other bids should be rejected, and
- 7) Date and signature of the person preparing the summary of bids.

Section 41.17 Award Rules

A. Bid Evaluation

The Bid Board will have a term of fifteen (15) working days, extendable for just cause or when it is in the best interest of the Authority, counted from the day of the bid opening, to examine and evaluate all bids and award the informal bid. In the process, the Bid or Proposal Evaluation Committee will assist the Bid Board in the evaluation of any informal bid.

B. Basic Evaluation Criteria

When evaluating the bids, the Bid Board, as well as the Bid or Proposal Evaluation Committee, will consider the criteria established in the informal bid documents, in addition to the following:

- 1) The accuracy with which the bidder has complied with the specifications, terms and conditions of the informal bid documents.
- 2) The quality of the goods, works and non-professional services offered and how they comply with the specifications and satisfy the established needs. In situations where

tests were carried out on samples supplied by the tenderer, the evaluation of the sample of the good will be included among the aspects of this quality criterion.

- 3) Whether the price is competitive and comparable with the prevailing market price. In addition, the established percentage (%) of preference will be applied if the person or entity has submitted a Resolution of the Board for Investment in the Puerto Rican Industry or any document accrediting preference, as provided in the Preferential Laws.
- 4) The recognized ability of the bidder to carry out non-professional works and services of the nature under consideration.
- 5) The economic responsibility of the bidder and the experience of the Authority with their fulfillment of previous contracts of the same or similar nature.
- 6) The closest delivery term, if this has been stated as one of the conditions.
- 7) The economic and financial capacity, as well as the trajectory and previous experience of the bidder to provide these services or goods and comply with the terms of delivery and guarantees of the product or service.
- 8) The specific period or terms applicable to each warranty, its limitations and conditions, the steps required to claim the warranty, which entity will provide the replacement service, correction or repair of the good or service.
- 9) If the bidder qualifies as a minority or women's company, or another company for which a preference must be granted under any applicable law.
- 10) Any other pertinent criteria that represent the best value for the Authority.

All these criteria will be tabulated and presented in a comparative way between bidders and this report will be part of the bid file.

C. Rejection of the Lowest Bid

The Bid Board may reject the lowest bid price when one or more of the following conditions takes place:

- 1) When there is knowledge and evidence that the bidder making the lowest bid has breached the terms of previous contracts executed by the Authority and/or with any entity of the Government of Puerto Rico and such breach is attributable to bidder. **No issues in dispute and pending adjudication in any forum will be considered.**

- 2) When the tests carried out on the product samples reflect a lower quality than the specifications of the informal bid documents.
- 3) When there is knowledge and reliable evidence that the bidder has breached the terms of contracts executed with other government entities.
- 4) When the bid does not meet the specifications, requirements and terms of the informal bid, or does not include the authorized signature or initials of the bidder.
- 5) When the Authority's or any Government of Puerto Rico agency or dependency's previous experience with the guarantee or the operation of the line item offered has not been satisfactory.
- 6) When the bid does not represent the best value for the Authority. The reasons why the lowest bid price is rejected will be detailed in writing and the document will be part of the informal bid file.

D. Delivery Term as Main Evaluation Criterion

- 1) Unless the informal bid documents state that delivering the requested items without delay will be considered the main criterion for the award, the bid that best meets the specifications, terms and conditions of the invitation to the informal bid, which is the lowest in price, cannot be rejected and awarded to a bidder who offers a higher price with an earlier delivery date.
- 2) In those cases in which a specific delivery date is not required in the informal bid documents, the bidders must indicate in their bid the term or date on which they will deliver the items or render the required non-professional service.
- 3) In exceptional situations in which, after the opening of the informal bid, the Authority becomes aware and consequently, it is determined that the delivery term may adversely affect the development of activities in the petitioning agency, this will be the main criterion to be considered when evaluating bids for award. The Bid Board will notify the bidders that the delivery term will be the main criteria for the award and will give them a term of twenty-four (24) hours to amend said delivery term. The justification for such action shall be recorded in writing and made part of the record of the specific informal bid.

E. Preference

The Bid Board will faithfully comply with the public policy of preferential purchases provided by Law.

- 1) **Law No. 14 of January 8, 2004, as amended, known as the “*Investment in Puerto Rican Industry Act*”.** To grant the Preference, the following conditions will be met:
 - a. The Bidder will establish a Preference by submitting the Resolution of the Investment Board, together with the bid price documents;
 - b. In the Resolution, [the Bidder] must mark the line or lines which have been granted the preference requested;
 - c. Preference requests that are not accompanied by the documents requested for Preference cases as established in the previous paragraphs will not be considered;
 - d. Preference requests will not be considered after the date and time established for the bid opening;
 - e. The Preference percent will be applied to the price offered for the product and the resulting price will be compared with the other prices to determine the lowest bids and the best value;
 - f. The Bid Board may hold exclusive informal bids for preferential groups protected under the provisions of Act No. 14 of January 8, 2004, as amended, known as the "Law for Investment in the Puerto Rican Industry", to comply with the reserved preferential percentage established in said law;

- 2) **Law No. 129-2005, known as the “*Procurement Reserve Act of the Government of the Commonwealth of Puerto Rico*”:** The Authority will assign a minimum of twenty percent (20%) of the total amount allocated to purchases of its general budget to be granted to micro, small and medium-sized companies, provided that the fiscal situation allows it, and it produces savings to the treasury. It will be observed that half of the aforementioned twenty percent (20%) be awarded to women entrepreneurs who own micro, small and medium-sized companies, provided that said award is beneficial to the treasury.

The Bid Board may hold exclusive formal bids for the preferential groups protected under the provisions of Act No. 129-2005 to comply with the reserved preferential percentage (%) established in said law.

- 3) **Law No. 253-2006, known as the “*Law of Multiple Selection Contracts in Procurement Processes*”.** The multiple selection contract will be adopted as one of

the options and purchase contracts that will be available and may be used in the acquisition of goods and services.

The multiple selection contract will not mean that the good bid of an informal bid or proposal will be awarded to all the bidders or proponents participating in the process, but to the bidders or proponents that represent the best value for the Authority. The multiple selection contract will be used when the Authority determines that this type of contract serves its best interests.

F. Discount for Prompt Payment

For purposes of awarding an informal bid, discounts for prompt payment will not be considered, except when this criterion has been established in the informal bid documents.

G. Award by Items

When it serves the best interests of the Authority, and is not contrary to what is indicated in the informal bidding documents, the Bid Board may:

- 1) For any bid, accept or decline any line item, groups of line items; or,
- 2) Award the informal bid encompassing several items.

H. Award to Single Bid

When the bid is received from a single bidder, the Bid Board may accept it as long as it conforms to the specifications and the price is competitive and comparable to the prevailing market price. The terms of this may also be negotiated.

If the specifications and price requirements are not met, the Bid Board will reject the bid and must issue a second call for the process, following the procedure established in these Regulations. Conducting an exceptional purchase process will be in order only if no bids are received as a result of said second call.

I. Bid Tie

Bids that have identical price, specifications and other conditions stipulated in the informal bid documents will be considered tied. For the award, the Bid Board must notify bidders with similar bids, by email, that they must notify the Bid Board, at the address established to that effect, new sealed bids within three (3) business days. On the day and time established, the emails and/or

envelopes will be opened in the presence of representatives of those bidders. The Bid Board will evaluate the bids and award the bid to the responsive bidder who has offered the best value for the Authority. At the discretion of the Bid Board, said appearance may be virtual and the new bids may be submitted by electronic means.

If a new tie occurs, the informal bid award will be divided among those bidders, if the parties accept the reduced award. Otherwise, the line item or line items that are tied will be canceled. The manner in which the tie is resolved must be recorded in the pertinent minutes.

In the event of a tie between local United States bidders and/or foreign countries bidders, preference will be given, first, to local bidders; secondly, to those of the United States and, thirdly, to those of foreign countries, taking into consideration the bids that represent the best value for the Authority.

J. General Rejection

Any or all bids for an informal bid may be rejected in the following situations:

- 1) Bidders do not meet any of the stipulated requirements, specifications or conditions.
- 2) The prices obtained are unreasonable or the terms are onerous.
- 3) When the bids show that the bidders control the market for the requested product, and it is deemed that they have agreed among themselves to quote excessive prices. In such case, the pertinent referral will be made to the Department of Justice.
- 4) Should any of the aforementioned circumstances occur, the Bid Board must issue a second call for the process. Conducting the exceptional purchase process will be in order only in the event that the bids received after said second call result again in the aforementioned circumstances. The Secretary of the Bid Board or his or her designated representative must draw up minutes of each process in which it sets out in detail the particular situation that occurred as a result of each call. Both minutes must be kept in the file, as a prerequisite to the exceptional purchase process.

K. Allowable Deviations

The Bid Board may accept minimal deviations in the specifications, terms and conditions of the bids received, as long as the following requirements are met:

- 1) No bidder offers the non-professional good or service with the required specifications;
- 2) The original purpose for which the informal bid is intended is not affected, and

- 3) The quoted price is competitive and comparable with prevailing the market price.

The Bid Board reserves the right to ignore any informality or minor difference in the terms and conditions if it fulfills the purpose for which they are requested and is beneficial to the Authority. Deviations may not substantially affect the quality, capacity or essential characteristics of the items or services requested. A memorandum explaining the permitted deviation must be included in the informal bid file.

L. Award

The Bid Board will evaluate the bids and how they meet the evaluation criteria established in the specifications, terms and conditions indicated in the informal bid documents.

The Bid Board will award the bid to the responsive bidder who has offered the best value.

M. Notice of the Award

Once a matter before the consideration of the Bid Board is awarded, the final determination will be notified through a Notice of Award. The Award Notice will be duly notified by U.S. certified return receipt requested mail or email to all parties that have the right to challenge such determination, i.e., to all bidders participating in the process. The award notice must include: (a) the names of the bidders who participated in the informal bid and a summary of their proposals; (b) the factors or criteria that were taken into account to award the informal bid; (c) defects, if any, in the proposals of the losing bidders, and (d) the availability and term to request reconsideration before the Authority or administrative review before the PRGSA Bid Review Board and judicial review, as established in Articles 52 of these Regulations.

Section 41.18 Examination of the Informal Bid File

The file of the informal bid will consist of the following documents:

- 1) The Invitation to the Informal Bid;
- 2) The informal bid documents, including amendments, if any;
- 3) The minutes of the pre-bid and award meetings of the Bid Board;
- 4) The minutes of the bid opening;
- 5) The bids submitted;

- 6) The award of the bid;
- 7) The award notifications to the bidders; and
- 8) Any other document that must be included by virtue of this Regulation or that is sent to the bidders, or that is essential for the evaluation of an informal bid.

Any individual interested in, and requesting to examine the aforementioned file may do so after notification of the final determination of the Bid Board on that particular informal bid. The file may be examined after the award has been notified.

In the cases in which an informal bid is canceled after the bid opening has taken place, any private person who requests it may examine said file, except for information that constitutes a business secret or protected information.

The right granted to private persons will always be subject to not affecting the services provided and the normal course of the work of the Authority. For this, it will be necessary to make a written request to the Bid Board, which will make arrangements for an authorized representative to be present during the examination of the documents, and will notify the pertinent day and time.

The Bid Board will allow the applicant to review the file within a term of no more than five (5) working days close to the application date.

The bids submitted by the bidders will be part of the record of the informal bid for which they were submitted and will become the property of the Authority, regardless of whether the informal bid is canceled or awarded.

Section 41.19 Deserted Informal Bid

The informal bid will be considered deserted when no bids are received on the date and time established for it in the informal bid documents. In the event that the informal bid is deserted, the Authority will hold a new bid. If the second bid is also deserted, an exceptional purchase may be made.

Section 41.20 Penalty for Late Delivery of Goods or in the Rendering of Non-professional Services (Penal Clause)

The bidder with whom the Authority enters into a contract or the bidder to whom a purchase order is issued shall be obliged to supply the personal property or service ordered in accordance with the delivery terms, specifications and other stipulated conditions. If the bidder breaches the

contract due to delay in the delivery of the personal property or non-professional service contracted, the Finance Office, when processing the payment, may make a discount of one half percent (1/2%) of the value of the unfulfilled contract for each working day of delay; provided that at no time the total amount to be discounted for damages may exceed ten percent (10%) of the amount of the contract for the corresponding item. In addition, the bid bond that guarantees the performance of the contract shall cover the payment of damages.

The amount to pay for delay in the delivery of the good, work or non-professional service in no way represents a penalty and does represent damages agreed between both parties to compensate the Authority for additional expenses and other setbacks.

Section 41.21 Penalties to the Bidder for Breach of Contract

The Authority, in the event of the breach of contracts and determination of lack of economic or other responsibility on the part of the contractors, may impose the penalties or measures it deems appropriate for the protection of the public interest, which are established below:

- 1) Confiscating the surety or bonds deposited in guarantee.
- 2) Making an exceptional purchase of the goods, works or non-professional services whose contracts have been breached, or their equivalent in the market, charging the difference of the price paid over the quoted price to the bidder who breached the contract, or claiming it from the bidder's guarantor.
- 3) Requesting PRGSA to remove the contractor from the Single Registry of Bidders.

Section 41.22 Contracts

Once the informal bid process is completed, executing the corresponding contract, or issuing the pertinent purchase order shall be in order, subject to the approvals established in these Regulations, including, but not limited to the provisions of Article 24.

Within twenty (20) days after the award has been notified, the Bid Board will issue a certification for the purposes of stating that no challenge has been filed as of that date, so that the Authority proceeds to execute the contract with the pertinent contractor.

In the event that the award of the informal bid in question has been contested, the Bid Board will notify the Purchasing Office immediately after the final resolution has been notified.

The Bid Board will be the permanent custodian of its files. In the event of the filing of an informal bid challenge, the files will be sent to the attention of the Bid Board which will be the provisional custodian of the requested files.

The bid or proposal of the successful bidder or proponent and the provisions of the informal bid documents shall constitute the basis of the contract between the parties or of the purchase or service order. Together with the other formal requirements of government contracts, they will constitute the contract file. Copies of the orders issued against said contract will be attached to said file. For each successful bidder, there will be a contract dossier.

Section 41.23 Supplementary Contract Documents and Other Documents Required for Government Procurement

- 1) Copy of the informal bid documents;
- 2) Original of the successful bid;
- 3) Copy of the Notice of Award;
- 4) Blueprints, drawings, designs or plans and other documents required in the call, which are a condition of the informal bid, and those provided in the "Standard Contract Documents for the Scheduling, Management, Design, Inspection, and Construction of Public Works in Puerto Rico Act" or "Standard Contracting Act", Law No. 218 of December 21, 2010, if applicable.
- 5) Certifications required in Article 17 of these Regulations.
- 6) Prior authorizations from entities external to the Authority, in accordance with Article 19 of these Regulations.
- 7) The additional documents needed to execute the contract, such as, policy, bonds, among others.

Section 41.24 Amendments to the Purchase Order or Contract; Modifying the Original Amount; Notification

The Purchasing Officer is responsible for notifying the Executive Director or his authorized representative of any amendments to previously issued purchase orders or previously awarded contracts that have the effect of increasing the value of the awarded purchase of goods, works and non-professional services. The notification of amendment must be properly documented and substantiated. The amendments must be authorized pursuant to these Regulations, including, but not limited to the provisions of Article 24.

Section 41.25 Master Contracts

The Authority may conduct any Informal Bid procedure aimed at executing master contracts under whose previously established terms and conditions purchase orders may be drawn up, should the need described therein be identified. Multi-year master contracts may be awarded.

The Executive Director or his authorized representative may authorize the amendment of master contracts to extend their validity for a maximum term of six (6) months. The amendments will be made in a writing titled "Amendment" and must bear the signatures of the parties.

Article 42. Formal Bid

Section 42.1 Definition

This bidding method will be used when non-professional goods, works and services are acquired whose cost exceeds the amount of one hundred thousand dollars (\$100,000.00). Said award will be made to the responsive bidder who has offered the best value.

The Authority shall justify conducting each formal bid process through the form established for these purposes. All documentation supporting such justification must be submitted together with the form and kept in the file. The justification must be signed by the Bid Board, the body that will certify that the processes were carried out in accordance with the provisions of the applicable laws and regulations.

Section 42.2 Invitation to a Formal Bid; Announcement

- 1) The Purchasing Office will prepare the Invitation to a Formal Bid and the related documents within a period of fifteen (15) working days, extendable for just cause or when it is in the best interest of the Authority, after the submission of the duly completed application by the Authority. Then, the Purchasing Office of the Authority must submit the Invitation and the related documents to the Bid Board for their review and authorization.
- 2) The Bid Board will review the Invitation to a Formal Bid and the related document(s) within fifteen (15) business days, after submission by the Purchasing Office.
- 3) The call will be issued within a term not to exceed fifteen (15) working days, extendable for just cause or when it is in the best interest of the Authority, after the formal bidding documents are prepared and have been reviewed and authorized by the Bid Board.

- 4) The Bid Board will send the Invitation to a Formal Bid to all bidders registered in the RUL under the category corresponding to the good or service to be purchased, at least fifteen (15) days before the deadline for submitting bids. However, said period may be reduced, but never to less than a five (5) business day period, if there are unusual circumstances and the Bid Board considers that this serves the best interests of the Authority, in which case, the Board must justify it in writing stating the reasons for it. Said justification will be in the file. When the formal bid involves federal participation, the invitation will be sent within the term established by the federal entity involved. In addition, the Invitation to a Formal Bid will be published on the Authority's website. Evidence of sending the invitations to formal bid in the RUL, of the invitation to formal bid published on the Authority's website will be kept in the file of the formal bid. The official date of the Invitation to a Formal Bid will be the date on which the Notice of Formal Bid was published through the Authority's website.
- 5) The Invitation to Formal Bid will be sent to all bidders registered in the RUL under the category corresponding to the good or service to be purchased, by email, to the address provided in the RUL. Failure to notify a bidder of the RUL will be sufficient cause for the cancellation of the formal bid, as long as the bid opening has not taken place.
- 6) When the number of bidders registered in the RUL under the category corresponding to the good or service to be acquired is less than three (3), the Bid Board will take the necessary steps to identify the suppliers or providers not registered in the RUL that provide the needed good or service in order to reach a minimum of three (3) bidders, suppliers or providers to send them an invitation for the formal bid. In the invitation to the suppliers or providers identified that are not registered in the RUL, they will be warned that their bid will be considered only if they submit all the required documents to the RUL within a term of five (5) business days. The Bid Board shall certify in writing if it only identifies a maximum of two (2) bidders, suppliers or vendors and shall proceed to conduct the formal bid.
- 7) The Bid Board may hold exclusive formal bids for preferential groups in order to comply with the provisions of the Preferential Laws.

Section 42.3 Basic Requirements of the Invitation to a Formal Bid

The Invitation to a Formal Bid must include the following:

- 1) Number of the formal bid;
- 2) Purpose of the formal bid;
- 3) Publication date of the formal bid;

- 4) Conditions or requirements that the bidders must meet;
- 5) Specific instructions on where and how to obtain a copy of the bidding documents for the formal bid, including the physical address and the specific place where the bidding documents will be delivered and a telephone number and contact email. The cost of the copies will also be specified, if any;
- 6) Copies of the formal bidding documents will be kept available so that any other supplier that is not part of the RUL can collect them;
- 7) Formal bidding documents may be published on the Authority's website or sent to bidders by email if they are free. They may also be delivered personally if so determined by the Authority. If personal delivery is determined, whether free or not, the availability of the formal bid documents and their cost, if any, will be notified by electronic messaging to all suppliers registered in the RUL under the category corresponding to the good, work or non-professional service that is intended to be acquired, and will be published on the Authority's website. The notification must contain the dates, the time and the exact place for the collection of the formal bid documents. For each particular formal bid, all suppliers will be notified by the same means;
- 8) Date and time of the last day to collect the documents;
- 9) If it has been determined to hold a pre-bid meeting, the date, time and place will be indicated, stating whether attendance is compulsory;
- 10) Date, time, place and manner (in the case of electronic submission) in which the bids will be received;
- 11) If the bid must be submitted with a bid bond equivalent to the percentage (%) established in the documents, according to the type of good, work or service included in the invitation;
- 12) Date, time and place where the bids will be opened;
- 13) It will include the warning that the Authority may order the partial or total cancellation of the formal bid documents regardless of the phase it is in, provided that it is before the contract is executed or a purchase order has been issued, when this serves the best interests of the Authority;
- 14) The warning that the Authority may amend any invitation or bidding documents for the formal bid when it serves the best interests of the Authority. In this case, the supplier

will not have to pay again (if applicable) to obtain the amended documents for the formal bid;

15) Any notice required in the Preferential Laws;

16) In the bids for construction works projects, the name of the project, the location of the project, the description of the project, the period within which the work must be executed and the service to be provided ("Scope of Work") will be stated. In addition, a Project Estimate will be included.

Section 42.4 Contents of the Formal Bid Documents

All formal bid documents must be identified by their number, purpose and date of issue, and will include the invitation to a formal bid, the instructions, the specifications, and the terms and conditions of the formal bid.

All the necessary elements will be set down in the formal bid documents in order that the bidder can submit their bid by email or delivery to the Bid Board (as provided in the bid documents), considering the requirements set out below:

- 1) Clear and detailed descriptions of the characteristics of the goods, works and/or non-professional services that the Authority is interested in acquiring and the complete specifications of each one of them. If a specific brand is needed, the record of the formal bid will include a recommendation that justifies it;
- 2) Specific instructions regarding the manner in which bids will be submitted, including the deadline date and time for submitting them;
- 3) The terms and conditions that will govern the transaction. Said terms and conditions together with the specifications will constitute the basis of the contract or purchase order;
- 4) Terms and conditions of delivery and required inspection that are essential for the award of the formal bid;
- 5) Place, date and time in which the envelopes or e-mails containing bids will be opened and indications on the way in which they must be identified;
- 6) Special conditions or requirements that may affect the award process. For example, if it will be necessary to submit a product sample for evaluation and how the sample will be disposed of once the test is performed;

- 7) Evaluation criteria for the award of the formal bid;
- 8) Terms to file and/or submit a challenge to the invitation, the documents and the award;
- 9) Any certification or special documents that the bidders must submit as part of their bid;
- 10) Discount rates including the percentage (%) discount for prompt payment, if any;
- 11) The warning that the Authority may order the partial or total cancellation of the formal bid documents before or after the bid opening;
- 12) The warning that the Authority may amend any formal bid documents up to two (2) business days before the bid opening when the amendment involves changes or additional requests that must be included in the bid or tender or (1) business day before the formal bid opening when the amendment does not affect the submission of bids;
- 13) Notification to the bidders that copies of the related documents will be available at the Authority or the Bid Board in those situations in which the bid documents do not contain all the specifications of the goods, works or services that the Authority is interested in acquiring;
- 14) Any notice required in Preferential Laws;
- 15) All certification or special documents that the bidders must submit as part of their bid;
- 16) Requirements of current regulations and applicable engineering and safety standards in those cases in which installing the equipment to be purchased is required;
- 17) The following warning will also always be included: "Notification of the award of this bid shall not constitute the formal agreement between the parties. It shall be necessary for the pertinent contract to be signed or for the Authority to issue a purchase order signed by the authorized person";
- 18) Notification to tenderers of the availability of additional related documents and where they can be obtained;
- 19) Any additional criteria that the Authority or the Bid Board deems necessary to include in the formal bid documents;

The Bid Board may, when necessary, request the Authority for technical advice from any external resource, employee or official of the Authority and/or the Government of Puerto Rico with specialized knowledge in order to prepare the formal bid documents.

Section 42.5 Amendments to the Formal Bid Documents

Amendments to the formal bid documents may be made only:

- 1) When, in the opinion of the Bid Board, the terms provided therein are unreasonable;
- 2) When a substantial and insurmountable error is discovered in the formal bid documents;
- 3) When the Authority is interested in increasing or decreasing terms or quantities, or changing conditions or specifications;
- 4) When the terms of the documents are reconsidered;
- 5) When it is in the best interest of the Authority.

The Bid Board may amend any formal bidding document up to two (2) business days before the bid opening when the amendment involves changes or additional requests that must be included in the bid or tender, or one (1) business day before the formal bid opening when the amendment does not affect the submission of bids.

All the amendments must be authorized by the Bid Board and [the Bid Board] will notify the suppliers called to the formal bid of the Notice of Amendment to the documents. In addition, the Notice of Amendment to the documents will be published on the Authority's website. All the amendments will form part of the formal bidding documents and those interested in bidding will have to consider them when submitting their bids.

Section 42.6 Challenge to the Invitation to a Formal Bid (Call); Challenge to the Bid Documents

A. Contesting the Invitation to a Formal Bid (Call)

Any bidder interested in participating in the formal bid process may challenge the Invitation to Bid, in writing, only when any of the procedures established in these Regulations have not been followed, or when it is considered that the term set for carrying out the study and preparation of the bid and the date to file the bid is not enough. The writing must contain the basis for which the invitation is contested, in addition, it must be signed by the bidder. The objection letter must be notified by the bidder to the email address provided by the Authority in the Invitation to Bid, within three (3) working days following the date on which the Authority sends the invitation by email to the bidders or from the date of publication of the Invitation on the Authority's website. If the date of sending the invitation by email to the bidders is different from the date of publication

of the Invitation on the Authority's website, the term will be counted from the date of publication of the Invitation on the website of the Authority. The bidder must, in addition, within the term set forth above, notify via email a copy of the appeal to the bidders invited to the formal bid. The Authority will make the e-mails of the bidders available in order to allow proper notification. Any written challenge filed outside the term established herein will be rejected outright.

As a consequence of the submission of this appeal, the procedures in the challenged formal bid will be automatically paralyzed and the subsequent terms will be counted from the notification of the decision of the Bid Board, the body that will evaluate and resolve the challenge on its merits within the term of fifteen (15) working days from the date it was received.

As a consequence of the challenge submitted, the Bid Board may determine the following:

- 1) Dismiss the challenge and order that the procedures continue.
- 2) Amend the Invitation to a Formal Bid or issue a new one.
- 3) Cancel the Invitation to a Formal Bid.

The determination of the Bid Board will be notified to the appellant and to the bidders invited to the formal bid by email. If the bidder is not satisfied with this determination, he may request its reconsideration, after notification of the award notice, in accordance with the provisions of Article 52 of these Regulations.

B. Challenge to the Formal Bid Documents

If a bidder interested in participating in a formal bid does not agree with the final terms, instructions, specifications or conditions established in the formal bid documents, he may challenge them. The writing contesting the formal bid documents must be notified by the bidder to the email address provided by the Authority in the documents, within three (3) working days following the date on which the Authority made the formal bid documents available. The bidder must, in addition, within the term set forth above, notify via email a copy of the appeal to the bidders invited to the formal bid. Any objection document submitted outside the term established herein will be rejected outright.

The writing challenging the formal bidding documents must contain the following:

- 1) The number of the formal bid.
- 2) A detailed list indicating the specific parts, specifications and/or conditions established in the bidding documents whose terms are being challenged.

- 3) The grounds on which the challenge is based and any evidence that supports the outlined argument.
- 4) A clear indication of the remedy or action sought.
- 5) The signature of the bidder.

As a consequence of the submission of this appeal, the procedures in the contested formal bid will be automatically paralyzed and the subsequent terms will be counted from the notification of the determination of the Bid Board, the body that will evaluate and resolve the challenge on its merits within the term of fifteen (15) working days from the date it was received.

As a consequence of the challenge submitted, the Bid Board may determine the following:

- 1) Dismiss the challenge and order that the procedures continue.
- 2) Amend the documents or issue new ones.
- 3) Cancel the formal bid documents.

The determination of the Bid Board will be notified to the appellant and to the bidders invited to the formal bid by email. If the bidder is not satisfied with this determination, he may request the reconsideration procedure, in accordance with the provisions of Article 52 of these Regulations.

Section 42.7 Cancellation of the Formal Bid Documents

The Bid Board may cancel the formal bid documents, subject to the following:

A. Before the Bid Opening:

- 1) If any of the conditions that exempt the Authority from the formal bid process arise (exceptional purchases);
- 2) For any just cause determined by the Bid Board;
- 3) As a result of a challenge;
- 4) When the Bid Board determines that the cancellation of the formal bid documents is in the best interest of the Authority.

The cancellation will be notified by email to the bidders who have obtained the documents. In addition, a cancellation notice will be posted on the Authority's website.

B. After the Bid Opening:

The Bid Board may cancel the formal bid documents after the bid opening has taken place as long as a contract has not been executed or a purchase order has [not] been issued, and it determines that the cancellation of the formal bid documents is in the best interest of the Authority. The cancellation notice will be notified by email to the bidders who have obtained the documents. In addition, the cancellation notice will be published on the Authority's website.

Section 42.8 Pre-bid Meetings

- 1) The Bid Board may hold pre-bid meetings not less than five (5) business days before the date set for the bid opening. The presence of an authorized representative of the Authority, with knowledge of the type of good or service to be acquired, will be required during these meetings.

The Secretary of the Bid Board or any representative authorized by the Bid Board shall preside over the pre-bid meetings.

- 2) Any pre-bid meeting will have the purpose of clarifying to the bidders the doubts that may arise regarding the Bid Documents. Bidders will also be advised that it is prohibited to have contact with members of the Authority and the Bid Board after the pre-bid meeting has concluded and during the bid evaluation process.
- 3) A period, a deadline and a method will be established for submitting written questions by potential bidders to the Bid Board.
- 4) Any written question submitted to the Bid Board for consideration will be answered within the term established for it. Both the question and the answer will be offered to the other bidders for their benefit and to add transparency to the process.
- 5) The individuals who participate in the pre-bid meeting will sign the attendance record book. In the case of potential bidders, they must identify the natural or legal person they represent.
- 6) The official authorized by the Bid Board will prepare a minute of the pre-bid meeting which will include, as a minimum, the following: (a) a list with the names of the participating persons and the natural or legal persons they represent, if applicable; (b) the matters discussed, the clarifications and the agreements reached at the meeting, and; (c) the date, time and place where the meeting was held.

- 7) The official authorized by the Bid Board will send a copy of the minutes by email to the potential bidders who participated in the meeting at least two (2) working days before the bid opening. The original minutes will be included in the official record of the formal bid.
- 8) Any verbal or written bid submitted by the bidders in the pre-bid process will be deemed not submitted, will not appear in the files and will not be taken into consideration at the time of the award.
- 9) When it is determined that the presence of the bidders at the pre-bid meetings is compulsory, a bidder's failure to appear will be sufficient reason for their disqualification.

Section 42.9 Submission of Bids for the Formal Bid

- 1) The bids must be endorsed by the bidder who appears registered in the RUL. If the bidder is not being registered in the RUL, the bid must be endorsed by the person who will submit all the required documents to the RUL.
- 2) When a bidder who is not registered in the RUL appears at a formal bid process and submits a bid, the Bid Board shall not reject the bid due to the fact that said bidder is not registered in the RUL and will give said bidder five (5) working days, counted from the bid opening to submit all the required documents to the RUL. Any bidder that does not deliver the required documents will be disqualified.
- 3) Any bidder who is registered in the RUL, who has submitted a bid for a formal bid and is not eligible after the bid opening process, will be granted a non-extendable term of five (5) working days, counted from the bid opening, to submit the pertinent information and documents in the RUL. During said period, no award will be made. The Bid Board will be responsible for notifying the bidder, by telephone and email, so that within the term granted the bidder updates their records in the RUL. In the event that the bidder does not update said records in the RUL during the term provided, the bidder will be disqualified.
- 4) Bids may be received by the method established in the formal bid documents by the Bid Board.
- 5) The email to which the bids are attached or the envelope containing the bids, as the case may be, will be identified with the name, address and telephone number of the bidder and the number of the formal bid. The date and time of the bids submitted by email will be those printed in the document. In the event that the formal bid documents provide for personal delivery, once the envelope with the bid is received by the

Authority, it will be marked with the exact date and time it was received, which will constitute the official delivery date of the bid. Personal deliveries of envelopes will be made at the Administration Office where they will be marked indicating the exact date and time they were received, which will constitute the official delivery date of the bid. Once opened according to the usual procedure, the personnel designated by the Bid Board will contact the bidder and return the envelope as received to comply with the provisions herein. The staff designated by the Bid Board will make a photocopy of the envelope or print the email receipt as evidence and will proceed to draw up a Minute.

- 6) The Bid Board will accept bids until the deadline date and time established for the submission of bids. If a natural event or special circumstance occurs that causes the headquarters of the Bid Board to close and prevents the receipt of bids on the deadline set forth in the formal bidding documents, the bids will be delivered on the day that the Bid Board resumes functions, at the time originally arranged, or at any other time that is notified in due course.
- 7) Each bidder shall have the right to submit a single bid for each property, work or non-professional service specified in each formal bid, unless otherwise indicated in the formal bid documents.
- 8) The tenderers will submit their bids in the official forms provided, in original. In the event that they submit their bids by email, they must submit all the related documents to the Bid Board, in original.
- 9) Bidders may make photocopies of the official form if needed.
- 10) If needed, tenderers may add sheets to clarify or describe their bids in more detail.
- 11) Bids received outside the date and time established will be returned to the bidder, informing the bidder of his breach of the established conditions and his disqualification. The original envelope for delivering the bid or the electronic receipt will be retained and will become part of the formal bid file.
- 12) The bids submitted by the bidders will be part of the record of the formal bid in which they participated and will become the property of the Authority, regardless of whether the formal bid is canceled or awarded. However, confidential information constituting business secrets, or any other information protected by copyright laws, among other legal provisions, may not be disclosed by the Bid Board or other government entity. For this reason, all information that constitutes confidential and protected information must be attached to the bid by the bidder on an individual sheet that must be titled "Confidential and Protected Information".

- 13) If the bidder offering a specific brand is the exclusive representative of said brand, said bidder will have the obligation to state it in the bid and submit the manufacturer's certification.
- 14) Every bid will remain under the custody of the Bid Board and under no circumstance will be opened until the date and time set for the bid opening.
- 15) If before the date of the bid opening process a tender is received in an envelope that is opened, broken into, damaged or unidentified, the Bid Board will contact the concerned bidder so that he or she personally verifies the envelope and the documents it contains, places said documents in another duly identified sealed envelope, and formally submits the tender. The delivery date will be the original receipt date. The Secretariat of the Bid Board will prepare a record of the incident and will attach the damaged, broken into or unidentified envelope, and the bidder will sign at the bottom of the record indicating the date and time of inspection of the envelope that was broken into, damaged or unidentified.
- 16) Bids must be made in dollars and cents, per item.
- 17) In the event that no bids are received, the Bid Board may issue a new call or make an exceptional purchase.

Section 42.10 Registry of Bids Received

On the date established to receive the bids, the Bid Board will record the bids received in the Registry of Bids Received. Said Registry will remain in the custody of the Bid Board.

Section 42.11 Types of Bids

The Bid Board may accept or reject bids submitted by the bidders in accordance with the following:

- 1) **Basic bid:** It is the one in which the bidders write down the unit price of each of the items or lines for which they wish to quote. If the bidder records unit prices in some items and omits them in others, it will be understood that he is interested in making bids only in those items for which he makes the basic bid.
- 2) **Alternate bid:** A bidder may submit a basic bid and one or more alternative bids for non-professional goods or services of different prices, qualities or categories when these have been requested in the bidding documents and the other bidders have been given the same opportunity. The fact that alternate bids are requested does not oblige

the Bid Board to accept them, even if they are lower in price than the basic bid, if it is deemed that it is not convenient for the Authority.

- 3) **"All or nothing" bid:** In addition to the basic bid, an "all or nothing" bid will be eligible. It consists of a bid of a lower price for a group of items or lines subject to the condition that all of them are awarded to the bidder. The total reduced price or the discount percentage should be noted next to each item, indicating the phrase "all or nothing".
- 4) **Global price bid:** As a substitute for bids on an "all or nothing" basis, it will be permissible for bidders to quote on a lump sum basis. The bidder will note next to the sum of the lines for which he has quoted a reduced figure or will indicate a percent discount.
- 5) **Multiple bids by the same bidder:** A commercial company may not submit several offers for a bid, either in its own name, of any of its subsidiaries or branches, of some or more of its partners, agents, officials and entities to which they belong because each and every one of the bids will be declared void.

The Bid Board will not consider bids that add or eliminate specifications or conditions required in the formal bidding documents, or that alter, modify or vary them. Bids that contain phrases, paragraphs or ambiguous, incomplete, undefined comments or that reduce the certainty of the bid will not be considered either. As an exception, those minimal deviations that do not alter the basic concept of the specification, the condition or the term of the formal bid document will be accepted, only if no bidder has offered a non-professional good or service that meets the required specifications and terms.

The Bid Board will consider the total bid price, however, every bid submitted must include the detail of the bid price: price per unit of the good or service (for each item), transportation costs, delivery, assembly, warranty, training, maintenance or services, replacements, among others.

Section 42.12 Corrections to Bids

Corrections to the bids, which arise as a result of errors, must be endorsed by the bidder with his signature or initials, otherwise, the bid for the corresponding item or items will be invalidated.

Section 42.13 Modifications to the Bids

Any modification that varies the terms of the previously submitted bid will be made by written communication sent to the email address established by the Bid Board for these purposes, duly identified with the following information:

- 1) Number of the formal bid;
- 2) Date;
- 3) Time set for the delivery of the bid;
- 4) Name and address of the supplier;
- 5) Information indicating the reasons for the modification of the bid.

Modifications submitted after the deadline established for the submission of bids will not be accepted.

Any modification of the bid will be opened on the date and time indicated for the formal bid opening, in conjunction with the original tender.

Section 42.14 Bid Withdrawal

- 1) The withdrawal of a bid may be made by means of a written request addressed to the Bid Board, submitted at any time prior to the bid opening.
- 2) The tenderer will not be able to submit a substitute bid once his bid for a given purchase has been withdrawn.

No bidder may withdraw his bid after the formal bid opening.

Section 42.15 Bid Opening

- 1) Bids will be opened on the day and time set for opening. The bid opening will be open to the public and any interested person may attend it. In the event that the bid opening is carried out virtually, an electronic link will be provided to any interested person to access such event electronically.
- 2) The bid opening will be chaired by the Secretary of the Board or by any member of the Board designated for it.

- 3) Members of the Bid Board, the pertinent bidders and any interested private person may be present at the bid opening. It will not be a requirement that the full Board be constituted for the bid opening.
- 4) Tenderers must be in the room where the bid opening process will be held at the time indicated for the start. Those who arrive later will not be able to enter and will lose the opportunity to participate.
- 5) All the individuals who attend the bid opening will [sign] an attendance record, indicating the name of the natural or legal person they represent and the position they hold.
- 6) The official of the Bid Board who presides over the opening process of the formal bid will express aloud the number of the bid that is under consideration, the purpose of the bid and the name of each of the bidders who have submitted bids. He or she will show all those present the emails or the sealed envelopes of the tenders, as established in the documents. He or she will open them and verify that they contain all the documents required in the formal bid documents. Bid emails or envelopes will be retained in the formal bid record.
- 7) The official presiding over the bid opening will initial and stamp each of the pages of each tender. In those cases in which it is anticipated that the bids will be voluminous or that many bidders or bidders will attend, the Secretariat of the Bid Board will request the assistance of the members of the Bid Board to assist it in stamping the bids. In the event of electronic submission of bids, the pages will be [initialed] and stamped electronically.
- 8) The following information should be read aloud: the number of the item or line for which the bid is being submitted, the price per item, the brand and model, the warranty, if applicable, and the delivery date if it is one of the conditions of the formal bid.
- 9) Once the bids have been opened and read in public, the Bid Board may not change the terms of the formal bid, nor will the bidders present be allowed to make a bid or make changes or modifications to it.
- 10) Any person present at the bid opening may examine the documents of the bids presented after the Secretary of the Board reads aloud, initiates and stamps all the bids.
- 11) The Secretary of the Bid Board or the official who presides over the bid opening process will be responsible for drawing up a record of all incidents within a reasonable period of time and will certify the veracity of the statement. The minutes will contain the following information:

- a. Number and subject of the formal bid;
- b. Date, time and place of the opening;
- c. Number of bids received;
- d. How many bidders bid for one or more items and how many did not bid;
- e. Name of the bidders who did not bid;
- f. A copy of the attendance record signed by those attending the event must be made part of the Minutes; in the event that the bid opening takes place virtually, any attendance record generated by the virtual platform will be considered equivalent to the signature of the participants.
- g. Certification of the person who presides over the bid opening, certifying compliance with the regulatory provisions concerning said act;
- h. Any incident that occurred during the bid opening, and
- i. Signature of the person who presided over the act.

Section 42.16 Summary of Bids

The Bid Evaluation Committee will make the pertinent evaluations. Within the evaluation, a breakdown or summary of the bids made by all the bidders will be included in the form provided for this, which will include the following information, when appropriate:

- 1) Number of the formal bid;
- 2) Name of each bidder who submitted the bid;
- 3) Bid price;
- 4) Finding of whether or not [each bid] meets the specifications and conditions;
 - a. If it does not comply, the finding will point out which ones do not comply and why the specifications and conditions are not met.
 - b. When non-compliance with specifications and conditions of the process is exposed as a basis to disqualify or reject the bid, the basis for such determination must be clearly stated, together with the technical analysis that was carried out and all the documents that support the same.

- 5) The analysis of the economic aspects of the purchase must include an evaluation of the jobs, economic activity and Government revenue produced by the different bids in accordance with the base of operations of each participating bidder. The local supplier will be considered preferred if it represents the best value for the Authority.
- 6) A recommended bidder for the award and for what reason, and the reasons why the other bids should be rejected, and
- 7) Date and signature of the person preparing the summary of bids.

Section 42.17 Award Rules

A. Bid Evaluation

The Bid Board will have a term of fifteen (15) working days, extendable for just cause or when it is in the best interest of the Authority, counted from the day of the bid opening, to examine and evaluate all bids and award the formal bid. In the process, the Bid Evaluation Committee and/or the Administration Purchasing Office may assist the Bid Board in the evaluation of any formal bid.

B. Basic Evaluation Criteria

When evaluating the bids, the Bid Board will consider the criteria established in the formal bid documents, together with the following:

- 1) The accuracy with which the bidder has complied with the specifications, terms and conditions of the formal bid documents.
- 2) The quality of the goods, works and non-professional services offered and how they comply with the specifications and satisfy the established needs. In situations where tests were carried out on samples supplied by the tenderer, the evaluation of the sample of the good will be included among the aspects of this quality criterion.
- 3) Whether the price is competitive and comparable with the prevailing market price. In addition, applying the percentage of preference established if the person or entity has submitted a Resolution of the Board for Investment in the Puerto Rican Industry or any document accrediting preference, as provided in the Preferential Laws.
- 4) The recognized ability of the bidder to carry out non-professional works and services of the nature under consideration.

- 5) The economic responsibility of the bidder and the experience of the Authority with their fulfillment of previous contracts of the same or similar nature.
- 6) The closest delivery term, if this has been stated as one of the conditions.
- 7) The economic and financial capacity, as well as the trajectory and previous experience of the bidder to provide these services or goods and comply with the terms of delivery and guarantees of the product or service.
- 8) The specific period or terms applicable to each warranty, its limitations and conditions, the steps required to claim the warranty, which entity will provide the replacement service, correction or repair of the good or service.
- 9) If the bidder qualifies as a minority or women's company, or another company for which a preference must be granted under any applicable law.
- 10) Any other pertinent criteria that represent the best value for the Authority.

All these criteria will be tabulated and presented in a comparative way between bidders and this report will be part of the bid file.

C. Rejection of Lowest Bid

The Bid Board may reject the lowest bid price when one or more of the following conditions takes place:

- 1) When there is knowledge and evidence that the bidder making the lowest bid has breached the terms of previous contracts granted by the Authority and such breach is attributable to bidder. No issues in dispute and pending adjudication in any forum will be considered.
- 2) When the tests carried out on the product samples reflect a lower quality than the specifications of the formal bid documents.
- 3) When there is knowledge and reliable evidence that the bidder has breached the terms of contracts executed with other government entities.
- 4) When the bid does not meet the specifications, requirements and terms of the formal bid, or does not include the authorized signature or initials of the bidder.
- 5) When the Authority's previous experience with the guarantee or the operation of the line item offered has not been satisfactory.

- 6) When the bid does not represent the best value for the Authority.

The reasons why the lowest bid price is rejected will be detailed in writing and the document will be part of the formal bid file.

D. Delivery Term as the Main Evaluation Criterion

- 1) Unless the formal bid documents state that delivering the requested items without delay will be considered the main criterion for the award, the bid that best meets the specifications, terms and conditions of the invitation to a formal bid, which is the lowest in price, cannot be rejected and awarded to a bidder who offers a higher price with an earlier delivery date.
- 2) In those cases in which a specific delivery date is not required in the formal bid documents, the bidders must indicate in their bid the term or date on which they will deliver the items or render the required non-professional service.
- 3) In exceptional situations in which, after the opening of the formal bid, the Authority becomes aware and consequently, it is determined that the delivery term may adversely affect the development of activities in the petitioning agency, this will become the main criterion to be considered when evaluating bids for award. The Bid Board will notify the bidders that the delivery term will be the main criteria for the award and will give them a term of twenty-four (24) hours to amend said delivery term. The justification for such action shall be recorded in writing and made part of the record of the specific formal bid.

E. Preference

The Bid Board will faithfully comply with the public policy of preferential purchases provided by Law.

- 1) **Law No. 14 of January 8, 2004, as amended, known as the “Investment in Puerto Rican Industry Act”**. To grant the Preference, the following conditions will be met:
 - g. The Bidder will establish a Preference by submitting the Resolution of the Investment Board, together with the bid price documents;
 - h. In the Resolution, [the Bidder] must mark the line or lines which have been granted the preference requested;

- i. Preference requests that are not accompanied by the documents requested for Preference cases as established in the previous paragraphs will not be considered;
 - j. Preference requests will not be considered after the date and time established for the bid opening;
 - k. The Preference percent will be applied to the price offered for the product and the resulting price will be compared with the other prices to determine the lowest bids and the best value;
 - l. The Bid Board may hold exclusive formal bids for preferential groups protected under the provisions of Act No. 14 of January 8, 2004, as amended, known as the "Law for Investment in the Puerto Rican Industry", to comply with the reserved preferential percentage established in said law;
- 2) **Law No. 129-2005, known as the "*Procurement Reserve Act of the Government of the Commonwealth of Puerto Rico*":** The Authority will assign a minimum of twenty percent (20%) of the total amount allocated to purchases of its general budget to be granted to micro, small and medium-sized companies, provided that the fiscal situation allows it, and it produces savings to the treasury. It will be observed that half of the aforementioned twenty percent (20%) be awarded to women entrepreneurs who own micro, small and medium-sized companies, provided that said award is beneficial to the treasury.

The Bid Board may hold exclusive formal bids for the preferential groups protected under the provisions of Act No. 129-2005 to comply with the reserved preferential percentage (%) established in said law.

- 3) **Law No. 253-2006, known as the "Law of Multiple Selection Contracts in Procurement Processes".** The multiple selection contract will be adopted as one of the options and purchase contracts that will be available and may be used in the acquisition of goods and services.

The multiple selection contract will not mean that the good bid of a formal bid or proposal will be awarded to all the bidders or proponents participating in the process, but to the bidders or proponents that represent the best value for the Authority. The multiple selection contract will be used when it is determined that this type of contract serves the best interests of the Authority.

F. Discount for Prompt Payment

For the purpose of awarding a formal bid, discounts for prompt payment will not be considered, except when this criterion has been established in the formal bid documents.

G. Award by Items

When it serves the best interests of the Authority, and is not contrary to what is indicated in the formal bidding documents, the Bid Board may:

- 1) For any bid, accept or decline any line item, groups of line items; or,
- 2) Award the formal bid encompassing several items.

H. Award to a Single Bid

When the bid is received from a single bidder, the Bid Board may accept it as long as it conforms to the specifications and the price is competitive and comparable to the prevailing market price. The terms of this may also be negotiated.

If the specifications and price requirements are not met, the Bid Board will reject the bid and must issue a second call for the process, following the procedure established in these Regulations. Conducting an exceptional purchase process will be in order only if no bids are received as a result of said second call.

I. Bid Tie

Bids that are identical in price, specifications and other conditions stipulated in the documents of the formal bid will be considered tied. For the corresponding award, the Bid Board must notify bidders with similar bids, by email, that they must appear before the Secretary of the Board and submit new sealed bids within three (3) business days. On the day and time established, the emails and/or envelopes will be opened in the presence of representatives of those bidders. The Bid Board will evaluate the bids and award the bid to the responsive bidder who has offered the best value for the Authority. At the discretion of the Chairman of the Bid Board, said appearance may be virtual and the new bids may be submitted by electronic means.

If a new tie occurs, the formal bid award will be divided among those bidders, if the parties accept the reduced award. Otherwise, the line item or line items that are tied will be canceled. The manner in which the tie is resolved must be recorded in the pertinent minutes.

In the event of a tie between local United States bidders and/or foreign countries bidders, preference will be given, first, to local bidders; secondly, to those of the United States and, thirdly,

to those of foreign countries, taking into consideration the bids that represent the best value for the Authority.

J. General Rejection

Any or all bids for a formal bid may be rejected in the following situations:

- 1) Bidders do not meet any of the stipulated requirements, specifications or conditions.
- 2) The prices obtained are unreasonable or the terms are onerous.
- 3) When the bids show that the bidders control the market for the requested product, and it is deemed that they have agreed among themselves to quote excessive prices. In such case, the pertinent referral will be made to the Department of Justice.
- 4) Should any of the aforementioned circumstances occur, the Bid Board must issue a second call for the process. Conducting the exceptional purchase process will be in order only in the event that the bids received after said second call result again in the aforementioned circumstances. The Bid Board must draw up minutes of each process in which it sets out in detail the particular situation that occurred as a result of each call. Both minutes must be kept in the file, as a prerequisite to the exceptional purchase process.

K. Allowable Deviations

The Bid Board may accept minimal deviations in the specifications, terms and conditions of the bids received, as long as the following requirements are met:

- 1) No bidder offers the non-professional good or service with the required specifications;
- 2) The original purpose for which the formal bid is intended is not affected, and
- 3) The quoted price is competitive and comparable with prevailing market price.

The Bid Board reserves the right to ignore any informality or minor difference in the terms and conditions if it fulfills the purpose for which they are requested and is beneficial to the Authority. Deviations may not substantially affect the quality, capacity or essential characteristics of the items or services requested. A memorandum explaining the permitted deviation must be included in the formal bid file.

L. Award

The Bid Board will evaluate the bids and how they meet the evaluation criteria established in the specifications, terms and conditions indicated in the formal bid documents.

The Bid Board will award the bid to the responsive bidder who has offered the best value.

M. Notice of the Award

Once the Bid Board makes the pertinent award, it will notify the final determination through a Resolution, which will include findings of fact and conclusions of law. The Award Notice or Resolution will be duly notified by U.S. certified return receipt requested mail or email to all parties that have the right to challenge such determination, i.e., to all bidders participating in the process. The award notice must include: (a) the names of the bidders who participated in the formal bid and a summary of their proposals; (b) the factors or criteria that were taken into account to award the formal bid; (c) defects, if any, in the proposals of the losing bidders, and (d) the availability and term to request reconsideration and judicial review, as established in Articles 52 of these Regulations.

The Bid Board must file a copy of the Resolution and proof of the notification.

Section 42.18 Examination of the Formal Bid File

The file of the formal bid will consist of the following documents:

- 1) The Invitation to the formal bid;
- 2) The formal bid documents, including amendments, if any;
- 3) The minutes of the pre-bid and award meetings of the Bid Board;
- 4) The minutes of the bid opening;
- 5) The bids submitted;
- 6) The award of the formal bid;
- 7) The award notifications to the bidders; and
- 8) Any other document that must be included by virtue of this Regulation or that is sent to the bidders, or that is essential for the evaluation of a formal bid.

Any individual interested in, and requesting to examine the aforementioned file may do so after notification of the Resolution containing the final determination of the Bid Board on that particular bid. The file may be examined after the award has been notified.

In the cases in which a formal bid is canceled after the bid opening has taken place, any private person who requests it may examine said file, except for information that constitutes a business secret or protected information.

The right granted to private persons will always be subject to not affecting the services provided and the normal course of the work of the Bid Board. For this, it will be necessary to make a written request to the Secretary of the Bid Board, who will make arrangements to be present, in person or through a representative, during the examination of the documents, and will notify the pertinent day and time.

The Secretariat of the Bid Board will allow the applicant to review the file within a term of no more than five (5) working days close to the application date.

The bids submitted by the bidders will be part of the record of the formal bid for which they were submitted and will become the property of the Authority, regardless of whether the formal bid is canceled or awarded.

Section 42.19 Deserted Formal Bid

The formal bid will be considered deserted when no bids are received on the date and time established for it in the formal bid documents. In the event that the formal bid is deserted, the Authority will hold a new bid. If the second bid is also deserted, an exceptional purchase may be made.

Section 42.20 Penalty for Late Delivery of Goods or in the Rendering of Non-professional Services (Penal Clause)

The bidder with whom the Authority enters into a contract or the bidder to whom a purchase order is issued shall be obliged to supply the personal property or non-professional service ordered in accordance with the delivery terms, specifications and other stipulated conditions. If the bidder breaches the contract due to delay in the delivery of the personal property or non-professional service contracted, the Finance Office, when processing the payment, may make a discount of one half percent (1/2%) of the value of the unfulfilled contract for each working day of delay; provided that at no time the total amount to be discounted for damages may exceed ten percent (10%) of the amount of the contract for the corresponding item. In addition, the bid bond that guarantees the performance of the contract shall cover the payment of damages.

The amount to pay for delay in the delivery of the good, work or non-professional service in no way represents a penalty and does represent damages agreed between both parties to compensate the Authority for additional expenses and other setbacks. The foregoing provision shall not apply to contracts for construction works projects.

Section 42.21 Penalties to the Bidder for Breach of the Contract

The Authority, in the event of the breach of contracts and determination of lack of economic or other responsibility on the part of the contractors, may impose the penalties or measures it deems appropriate for the protection of the public interest, which are established below:

- 1) Confiscating the surety or bonds deposited in guarantee.
- 2) Making an exceptional purchase of the goods, works or non-professional services whose contracts have been breached, or their equivalent in the market, charging the difference of the price paid over the quoted price to the bidder who breached the contract, or claiming it from the bidder's guarantor.
- 3) Requesting PRGSA to remove the contractor from the RUL.

Section 42.22 Contracts

Once the formal bid process is completed, executing the corresponding contract, or issuing the pertinent purchase order will be in order, subject to the approvals established in these Regulations, including, but not limited to the provisions of Article 24.

Within twenty (20) days after the award has been notified, the Bid Board will issue a certification for the purposes of stating that no challenge has been filed as of that date, so that the Authority proceeds to execute the contract with the pertinent contractor.

In the event that the award of the formal bid in question has been contested, the Bid Board will notify the Purchasing Office immediately after the final resolution has been notified.

The Bid Board will be the permanent custodian of its files. In the event of the filing of a formal bid challenge, the files will be sent to the attention of the Bid Board which will be the provisional custodian of the requested files.

The bid or proposal of the successful bidder or proponent and the provisions of the formal bid documents shall constitute the basis of the contract between the parties or of the purchase or service order. Together with the other formal requirements of government contracts, they will

constitute the contract file. Copies of the orders issued against said contract will be attached to said file. For each successful bidder, there will be a contract dossier.

Section 42.23 Supplementary Contract Documents and Other Documents Required for Government Procurement

- 1) Copy of the formal bid documents;
- 2) Original of the successful bid;
- 3) Copy of the Resolution where the formal bid was awarded;
- 4) Blueprints, drawings, designs or plans and other documents required in the call, which are a condition of the formal bid, and those provided in the "Standard Contract Documents for the Scheduling, Management, Design, Inspection, and Construction of Public Works in Puerto Rico Act" or "Standard Contracting Act", Law No. 218 of December 21, 2010, if applicable.
- 5) Certifications required in Article 17 of these Regulations.
- 6) Prior authorizations from entities external to the Authority, in accordance with Article 19 of these Regulations.
- 7) The additional documents needed to execute the contract, such as, policy, bonds, among others.

Section 42.24 Amendments to the Purchase Order or Contract; Modifying the Original Amount; Notification

The Purchasing Officer is responsible for notifying the Executive Director or his authorized representative of any amendments to previously issued purchase orders or previously awarded contracts that have the effect of increasing the value of the awarded purchase of goods, works and non-professional services. The notification of amendment must be properly documented and substantiated. Any amendment will be subject to the approvals contemplated in Article 24 of these Regulations.

Section 42.25 Master Contracts

The Authority may conduct any formal bid procedure aimed at executing master contracts under whose previously established terms and conditions purchase orders may be drawn up, should the need described therein be identified. Multi-year master contracts may be awarded.

The Executive Director or his authorized representative may authorize the amendment of master contracts to extend their validity for a maximum term of six (6) months. The amendments will be made in a writing titled "Amendment" and must bear the signatures of the parties.

Article 43. Request for Proposals and Request for Sealed Proposals

Section 43.1 Definition

This bidding method will be used to acquire goods, works and non-professional services described in Section 43.5 of these Regulations, which allow negotiation between the bidder and the Authority, while the received proposals are evaluated. The Request for Proposals or Request for Sealed Proposals ("RFP") enables negotiated purchase, and offers bidders the opportunity to review and modify their bids prior to awarding the bid. The Authority may request the bidders to submit their best and final offer. The RFP must contain the parameters that will be used for the award, including: the requirements, terms, conditions and factors to be considered in the evaluation for the award. The negotiation phase shall not create a vested right between the parties.

Section 43.2 Request for Proposals

This bidding method will be called request for proposals when the cost of the goods, works and non-professional services does not exceed the amount of one hundred thousand dollars (\$100,000.00). The invitation and the award are made by the Bid Board.

Section 43.3 Request for Sealed Proposals

This bidding method will be called request for proposals when the cost of goods, works and non-professional services exceeds the amount of one hundred thousand dollars (\$100,000.00) and the award is made by the Bid Board. As in the process of request for proposals, the invitation and the award are made by the Bid Board.

Section 43.4 Request for Information

The request for proposals or request for sealed proposals procedure may include a request for information ("RFI") from suppliers or service providers, at the discretion of the Bid Board, but said RFI shall not in any way oblige the Authority to process a request for proposals or request for sealed proposals.

An RFI may be conducted independently to obtain information about potential suppliers or service providers and to be able to compare them with each other. As deemed appropriate, a joint invitation may be issued to submit responses to a request for information and a request for proposals, or invitations may be issued separately.

Section 43.5 When Is the Request for Proposals or the Request for Sealed Proposals Appropriate

The request for proposals or request for sealed proposals procedure may be used when any of the following circumstances occur:

- 1) When the movable property to be acquired is highly sophisticated, specialized, technical or complex;
- 2) When the prices quoted in a bid are unreasonably high;
- 3) When the terms of the bids submitted in a bid are onerous for the Authority;
- 4) When there are few qualified suppliers; or
- 5) When the Bid Board, after being duly advised, determines that the negotiation with bidders permitted by said bidding method results in greater benefits for the Authority.

Section 43.6 Invitation for Request for Proposals or Request for Sealed Proposals

- 1) The Purchasing Office will prepare the documents for the Request for Proposals or Request for Sealed Proposals. The call will be made after the documents have been reviewed and authorized by the Bid Board, as appropriate.
- 2) The Bid Board, as the case may be, will send the Invitation for Request for Proposals or Request for Sealed Proposals to all bidders registered in the RUL, under the category corresponding to the non-professional good or service to be acquired, at least fifteen (15) days before the deadline for submitting proposals; said period may be less than five (5) business days, provided that the Bid Board considers that it serves the best interests of the Authority. When the Request for Proposals or Request for Sealed Proposals involves federal participation, the invitation will be sent within the term established by the federal entity involved. In addition, the Invitation for Request for Proposals or Request for Sealed Proposals will be published on the Authority's website.
- 3) Evidence of sending the invitation for Request for Proposals or Request for Sealed Proposals in the RUL, of the invitation for Request for Proposals or Request for Sealed Proposals published on the Authority's website will be kept in the proposal file. The official date of the Invitation for Request for Proposals or Request for Sealed Proposals will be the date on which said invitation was published on the Authority's website.
- 4) The invitation for Request for Proposals or Request for Sealed Proposals will be sent to all bidders registered in the RUL, under the category corresponding to the non-professional good or service to be acquired, by email to the address provided in the

RUL. Failure to notify a bidder of the RUL will be sufficient cause for the cancellation of the Request for Proposals or Request for Sealed Proposals, as long as the RFP opening has not taken place.

Section 43.7 Requirements of the Invitation for Request for Proposals Invitation or Request for Sealed Proposals

The Invitation for Request for Proposals or Request for Sealed Proposals must include the following:

- 1) Number of the Request for Proposals or Request for Sealed Proposals.
- 2) Purpose of the Request for Proposals or Request for Sealed Proposals.
- 3) Date of publication of the Request for Proposals or Request for Sealed Proposals.
- 4) Date, time and place where the proposals will be received.
- 5) Date, time and place where the proposals will be opened.
- 6) Specific instructions on where and how to obtain a copy of the documents of the Request for Proposals or Request for Sealed Proposals, including the physical address, the specific place where the documents will be delivered and a contact telephone number and email. The cost of the copies, if any, will also be specified.

Copies of the documents of the Request for Proposals or Request for Sealed Proposals will be kept available so that any other supplier that is not part of the RUL can collect them.

The documents of the Request for Proposals or Request for Sealed Proposals may be sent by email, if they are free. They may also be delivered personally, if so determined by the Authority. If personal delivery is determined, whether free or not, the availability of the bidding documents and their cost, if any, will be notified by electronic messaging to all suppliers included in the RUL, under the category corresponding to the good, work or non-professional service that is intended to be acquired, and will be published on the Authority's website. The notification must contain the dates, time and exact place to collect the bidding documents. For each particular bid, all suppliers will be notified by the same means:

- 1) Date and time of the last day to collect the documents.
- 2) If it has been determined that a pre-proposal meeting will be held, the date, time and place will be indicated, stating whether attendance is compulsory.

- 3) If the proposal must be submitted with a bid bond equivalent to the percentage established in the documents, according to the type of good, work or non-professional service included in the invitation.
- 4) It will include the warning that the Authority may cancel the documents of the Request for Proposals or Request for Sealed Proposals, even after the RFP opening has taken place, as long as a contract has not been executed or a purchase order has [not] been issued, if the cancellation of the bidding documents is in the best interest of the Authority.
- 5) The warning that the Authority may amend any invitation or informal bid documents shall be included, when it serves the best interests of the Authority. In this case, the supplier will not have to pay again (if applicable) to obtain the amended bid documents.
- 6) Any notice required in Preferential Laws.

Section 43.8 Content of the Documents of the Request for Proposals or Request for Sealed Proposals

The documents of the Request for Proposals and/or Request for Sealed Proposals must include at least the following:

- 1) Clear and detailed descriptions of the characteristics of the goods, works and/or non-professional services that the Authority is interested in acquiring and the complete specifications of each one of them. If a specific brand is necessary, the file will include a recommendation that justifies it;
- 2) An overview of the selection process;
- 3) The evaluation and selection criteria of the proposals;
- 4) The deadline, manner and place where the proposals must be submitted;
- 5) Specific instructions regarding the way in which the proposals or bids will be submitted, including the deadline date and time to submit them;
- 6) The terms and conditions that will govern the transaction. Said terms and conditions together with the specifications will constitute the basis of the contract or purchase order;
- 7) Terms and conditions of delivery and required inspection that are essential for the corresponding award;

- 8) Place, date and time in which the envelopes or emails containing the proposals or offers will be opened and indications on the way in which they must be identified;
- 9) Special conditions or requirements that may affect the award process. For example, if it will be necessary to submit a product sample for evaluation and how the sample will be disposed of once the test is performed;
- 10) Evaluation criteria for the award;
- 11) Terms to file and/or submit a challenge to the invitation, the documents and the award;
- 12) Any certification or special documents that the bidders must submit as part of their proposal or bid;
- 13) Discount rates including the percent (%) discount for prompt payment, if any;
- 14) The warning that the Authority may order the partial or total cancellation of the documents of the request for proposals or request for sealed proposals before or after the RFP opening;
- 15) The warning that the Authority may amend any document of the request for proposals or request for sealed proposals up to two (2) business days before the date established to deliver the sealed proposals when the amendment involves changes or additional requests that must be included in the proposal, or one (1) business day before the date established to deliver the proposals when the amendment does not affect the submission of the proposals;
- 16) Notification to bidders that copies of the related documents will be available at the Authority in those situations in which all the specifications of the goods, works or non-professional services that the Authority is interested in acquiring are not in the RFP documents;
- 17) Any notice required in Preferential Laws;
- 18) Any certification or special documents that the bidders must submit as part of their proposal or bid;
- 19) Requirements of current regulations and applicable engineering and safety standards in those cases in which installing the equipment to be purchased is required;
- 20) The following warning will always be included: "Notification of the award of this proposal shall not constitute the formal agreement between the parties. It shall be

necessary for the pertinent contract to be signed or for the Authority to issue a purchase order signed by the authorized individual";

- 21) The necessary warnings on the use of individual negotiation regarding the terms, conditions, quality, solution or prices, or combination of factors, to obtain what is most advantageous for the Authority; the fact that price will not necessarily be the most important factor in the award; the possibility that the award can be made without negotiation, and,
- 22) The warning that every bid and/or proposal submitted must include the specific price offered: price per unit of the non-professional good or service (for each item), transportation costs, delivery, assembly, warranty, training, maintenance or services, replacements, among others.
- 23) Any additional criteria that the Authority deems necessary to include in the documents of the request for proposals or request for sealed proposals.

Section 43.9 Amendments to the Documents of the Request for Proposals or Request for Sealed Proposals

Amendments to the documents may be made:

- 1) When, in the opinion of the Bid Board, the terms provided therein are unreasonable;
- 2) When a substantial and insurmountable error is discovered in the documents;
- 3) When there is an interest in increasing or decreasing terms or quantities, or changing conditions or specifications;
- 4) When the terms of the invitation or the documents are challenged;
- 5) When it is in the best interest and benefit of the Authority.

The Bid Board may amend any documents of the Request for Proposals or Request for Sealed Proposals sheet up to two (2) business days prior to the date established for the submission of proposals when the amendment involves changes or additional requests that must be included in the proposal, or one (1) business day prior to the date established for the submission of proposals when the amendment does not affect the submission of the proposals and bids.

The Bid Board will notify the Notice of Amendment to the bidders called to submit Request for Proposals or Request for Sealed Proposals. In addition, the Notice of Amendment will be

published on the Authority's website. All amendments will be part of the documents and those interested in bidding will have to consider them when submitting their proposals.

All amendments must be authorized by the Bid Board. All amendments will be part of the documents of the Request for Proposals or Request for Sealed Proposals, and those interested in bidding will have to consider them when submitting their proposals.

Section 43.10 Challenge to the Invitation for Request for Proposals or Request for Sealed Proposals; Challenge to the Documents of the Request for Proposals or Request for Sealed Proposals

A. Challenge to the Invitation for Request for Proposals or Request for Sealed Proposals (Call)

Any bidder interested in participating in the request for proposals or request for sealed proposals may challenge the Invitation to the competitive process, in writing, only when any of the procedures established in these Regulations have not been followed, or when it is considered that the term set to carry out the study and preparation of the bid and the date to file the bid is not enough. The writing must contain the basis for which the invitation is contested, in addition, it must be signed by the bidder. The objection letter must be notified by the bidder to the email address provided by the Authority in the Invitation for Request for Proposals or Request for Sealed Proposals, within three (3) working days following the date on which the Authority sends the invitation by email to the bidders or from the date of publication of the Invitation on the Authority's website. If the date of sending the invitation by email to the bidders is different from the date of publication of the Invitation on the Authority's website, the term will be counted from the date of publication of the Invitation on the website of the Authority. The bidder must, in addition, within the term set forth above, notify via email a copy of the appeal to the bidders invited to the formal bid. The Authority will make the e-mails of the bidders available in order to allow proper notification. Any written challenge filed outside the term established herein will be rejected outright. As a consequence of the submission of this appeal, the procedures in the challenged competitive procedure will be automatically paralyzed and the subsequent terms will be counted from the notification of the decision of the Bid Board, the body that will evaluate and resolve the challenge on its merits within the term of fifteen (15) working days from the date it was received, extendable for just cause or when it is in the best interest of the Authority.

As a result of the challenge, the Bid Board may determine the following:

- 1) Dismiss the challenge and order that the procedures continue.
- 2) Amend the Invitation for Request for Proposals or Request for Sealed Proposals, and issue a new one.

3) Cancel the Invitation for Request for Proposals or Request for Sealed Proposals.

The determination of the Bid Board will be notified to the appellant and to the bidders invited to the process of request for proposals or request for sealed proposals by email. If the bidder is not satisfied with this determination, he may request its reconsideration, after notification of the award notice, in accordance with the provisions of Article 52 of these Regulations.

B. Challenge to the Documents of the Request for Proposals or Request for Sealed Proposals

If a bidder interested in participating in a request for proposals or request for sealed proposals does not agree with the final terms, instructions, specifications or conditions established in the documents, he may contest them. The writing contesting the bidding documents must be notified by the bidder to the email address provided by the Authority in the documents, within three (3) working days following the date on which the Authority made the bid documents available. The bidder must, in addition, within the term set forth above, notify via email a copy of the appeal to the bidders invited to the formal bid. Any objection document submitted outside the term established herein will be rejected outright.

The writing challenging the bidding documents must contain the following:

- 1) The number of the procedure of request for proposals or request for sealed proposals.
- 2) A detailed list indicating the specific parts, specifications and/or conditions established in the documents whose terms are being challenged.
- 3) The grounds on which the challenge is based and any evidence that supports the outlined argument.
- 4) A clear indication of the remedy or action sought.
- 5) The signature of the bidder.

As a consequence of the submission of this appeal, the procedures in the contested process will be automatically paralyzed and the subsequent terms will be counted from the notification of the determination of the Bid Board, the body that will evaluate and resolve the challenge on its merits within the term of fifteen (15) working days from the date it was received.

As a consequence of the challenge, the Bid Board may determine the following:

- 1) Dismiss the challenge and order that the procedures continue.
- 2) Amend the documents or issue new ones.
- 3) Cancel the documents of the request for proposals or request for sealed proposals.

The determination of the Bid Board will be notified to the appellant and to the bidders invited to the competitive procedure by email. If the bidder is not satisfied with this determination, he may request the reconsideration procedure, in accordance with the provisions of Article 52 of these Regulations.

Section 43.11 Pre-proposal Meetings

The Bid Board may call one or more pre-proposal meetings to clarify doubts related to the Request for Proposals or Request for Sealed Proposals, not less than five (5) working days before the date set for the RFP opening.

Section 43.12 Request for Clarification

Proponents may request the clarification or interpretation of any requirement contained in the Request for Proposals and/or Request for Sealed Proposals, according to the following:

- 1) Before the five (5) days prior to the deadline established in the documents of the Request for Proposals or Request for Sealed Proposals to receive proposals or sealed proposals, potential proponents may request in writing to the Bid Board a clarification or interpretation of any aspect or exception, as the case may be, of any requirement established in the corresponding documents. The Bid Board will offer the corresponding answers within a term of three (3) days.
- 2) The Bid Board will not respond to verbal requests, except those made in a pre-proposal meeting.
- 3) The Bid Board will publish any pertinent clarification or interpretation on the Authority's website. In addition, it will notify said clarification or interpretation individually to each proponent.

Section 43.13 Delivery or Submission of Proposals

Proposals will be delivered in person or submitted on or before the deadline for submitting proposals, in accordance with the instructions established in the pertinent documents.

Proposals must be endorsed (signed or initialed) by the bidder who is registered in the RUL. If the bidder is not registered in the RUL, the proposal must be endorsed by the person who will submit all the required documents to the RUL.

When a bidder or proponent who is not registered in the RUL appears in a Request for Proposals or Request for Sealed Proposals process and submits a bid or proposal, the Bid Board shall not reject it due to the fact that said bidder is not registered in the RUL and will give said bidder five (5) working days, counted from the opening of the proposals, to submit all the required documents to the RUL. Any bidder or proponent that does not deliver the required documents will be disqualified.

Any bidder or proponent registered in the RUL who has submitted an bid or proposal and is not eligible at the time of opening the proposals will be granted a non-extendable term of five (5) working days, counted from the moment in which the proposals are opened, to submit the pertinent information or documents in the RUL. During said period, no award will be made. The Bid Board will be responsible for notifying the bidder or proponent, by telephone and email, of the term granted to update the bidder's or proponent's records in the RUL. In the event that the bidder does not update said records in the RUL during the term provided, the bidder will be disqualified.

Section 43.14 Modifications to the Submitted Proposal

Once the proposals have been submitted, the Bid Board may provide the bidder with a reasonable opportunity to submit any modification of price or cost, technical aspects or any other aspect of their proposal that may result from the discussions, once the best and final offer has been requested ("BAFO" or "best and final offer").

Section 43.15 Withdrawal of Proposals Submitted

- 1) The withdrawal of a proposal may be made by written request addressed to the Bid Board, submitted at any time prior to the RFP opening.
- 2) The proponent will not be able to submit a substitute proposal once their proposal for a specific purchase has been withdrawn.
- 3) No bidder may withdraw their bid after the RFP opening.

Section 43.16 Registry of Proposals Received

On the date established to receive the proposals, the Secretary of the Bid Board will record the proposals received in the Registry of Proposals Received. The Secretary of the Bid Board will be the custodian of said Registry.

Section 43.17 Opening of Proposals

The Bid Board will open the proposals on the date and time established for it. The opening process will be open to the public and any interested person may attend it, but the content of the proposals will not be read in public. In the event that the opening process is carried out virtually, an electronic link will be provided to any interested person to access such event electronically. At the time of opening the proposals, only the identity of the proponents will be announced. All proposals, evaluations, discussions and negotiations will be kept confidential during the evaluation and negotiation process until the contract is signed. During that period, only the members of the Purchasing Office, the Bid Board and the Bid and Proposal Evaluation Committee, in addition to the Executive Director or authorized representative, will have access to the proposals and the evaluation results.

The Bid Board, or its authorized representative, will preside over the opening process, and will be responsible for drawing up a record of all incidents within a reasonable period of time in which it will certify the veracity of the statement. The minutes will contain the following information:

- 1) Number and subject of the Request for Proposals or Request for Sealed Proposals;
- 2) Date, time and place of the RFP opening;
- 3) Number of proposals received;
- 4) Name of the bidders that submitted proposals;
- 5) A copy of the attendance record signed by those attending the event must be made part of the Minutes; in the event that the opening process takes place virtually, any attendance record generated by the virtual platform will be considered equivalent to the signature of the participants.
- 6) Certification of the person who presides over the RFP opening, regarding compliance with the regulatory provisions concerning said process;
- 7) Any incident that occurred during the RFP opening, and,

- 8) Signature of the person who presided over the RFP opening.

Section 43.18 Preliminary Evaluation of Proposals

The proposals will be evaluated in light of the Evaluation Criteria established in the corresponding documents. The Bid Board, with the help of the Bid and Proposal Evaluation Committee, may select one or more of the proposals that it considers best serves the interests of the Authority.

The Bid Board, with the help of the Bid or Proposal Evaluation Committee, may hold discussions and negotiate with bidders whose bids are within the established selection margins. It will be understood that a bid is within the established selection margin when it complies with the specifications, terms and conditions established in the documents.

Section 43.19 Receipt or Selection of a Single Proposal

When a single proposal is received or selected, the Bid Board, with the help of the Bid and Proposal Evaluation Committee, may negotiate the terms of the proposal if it complies with the provisions established in the documents and it is determined that said negotiation would benefit the Authority. Otherwise, the process will be canceled.

Section 43.20 Meetings with Proponents Whose Bids or Proposals are Within the Established Selection Margins

If the Bid Board has decided to hold discussions and negotiations, these will be conducted following the procedures indicated below:

- 1) No statement made or action taken by the Bid Board or the Bid and Proposal Evaluation Committee during said discussions and negotiations shall bind the Authority in any way.
- 2) Each bidder whose bids or proposals comply with the provisions established in the documents will be invited to attend one or more private meetings with the Bid Board or the Evaluation Committee to discuss any facet of their proposal and answer any specific questions provided in said invitation.
 - a. The content and extent of the discussions between the Bid Board or the Bid and Proposal Evaluation Committee and each bidder will be determined by the Bid Board or the Bid and Proposal Evaluation Committee based on the particular facts and circumstances of each proposal.

- b. The purpose of each meeting will be to clarify and ensure understanding of the contract requirements; improve the technical aspects of the proposal in an effort that allows them to meet the specifications and performance requirements and/or reduce the price; discuss the data that support the price and the pertinent details to each proposal that can improve it.
- 3) Bidders whose bids or proposals comply with the provisions established in the documents will be granted fair and equal treatment in terms of the opportunity to discuss and review the proposals. However, as the information that is discussed in said meetings may vary in relation to each proponent, the reviews or discussions will be based on facts and particular circumstances of each proposal.
- 4) The Bid Board, with the help of the Bid and Proposal Evaluation Committee, may: (a) establish the methods and itineraries to carry out and control the discussions; (b) guide the tenderer on deficiencies in his proposal so that he has the opportunity to satisfy the requirements; (c) attempt to clarify any uncertainties related to the proposal, and otherwise refine the terms and conditions of the proposal; (d) correct any errors that are deemed to exist, bringing them to the attention of the bidder, as soon as possible, without publishing information related to other proposals, or to the evaluation process; (e) provide the bidder with a reasonable opportunity to submit any modification of price or cost, technical or other modification of any other nature to his proposal that may result from the discussions; and (f) keep a record of the date, time, place, and purpose of the discussions and the people who attend them.
- 5) After each interview or meeting with any bidder, the Bid and Proposal Evaluation Committee will draw up a minute that will include all the important elements of the interview or meeting. The minute will be part of the record of the process.
- 6) The tenderer will put in writing any substantive verbal clarification to a proposal.
- 7) Discussions and negotiations may be carried out in whole or in part through written communications without personal meetings or interviews, at the discretion of the Bid Board or the Bid and Proposal Evaluation Committee. They may also be carried out through any electronic platform.
- 8) Oral or written discussions will not be required in those cases in which it is determined, based on the existence of a complete and open competition, or based on previous experience regarding the cost of the product or service, that the acceptance without discussion of the most favorable initial proposal will result in the best value for the Authority, provided that all bidders have been notified in the documents of the Request for Proposals or Request for Sealed Proposals about the possibility of the contract being awarded without discussions.

- 9) If discussions and negotiations take place, the Bid Board may request the bidders whose bids or proposals comply with the provisions established in the documents, to submit amendments to the Proposals ("Best and final offer" or "BAFO") that respond to the discussions and negotiations that take place.
- 10) The Bid Board or the Bid and Proposal Evaluation Committee will keep all discussions and negotiations confidential. No information regarding the proposals or their evaluations will be discussed with anyone other than the bidder who submitted them prior to the award of the contract.

Section 43.21 Cancellation of the Documents of the Request for Proposals or Request for Sealed Proposals

The Bid Board may cancel the documents of the Request for Proposals or Request for Sealed Proposals, subject to the following:

- 1) If any of the conditions that exempt the Authority from the request for proposals or sealed proposals process arise (exceptional purchases);
- 2) As a result of a challenge;
- 3) For any just cause determined by the Bid Board; or
- 4) When the Bid Board determines that the cancellation of the documents of the request for proposals or request for sealed proposals is in the best interest of the Authority.

The cancellation will be notified by email to the bidders who have obtained the documents. In addition, a cancellation notice will be posted on the Authority's website.

Section 43.22 Award

The Bid Board will award the proposal to the responsive bidder whose proposal represents the best value for the Authority.

Section 43.23 Notice of the Award

Once the Bid Board makes the pertinent award, it will notify the final determination through an Award Notice or Resolution. The Award Notice or Resolution will be duly notified by U.S. certified return receipt requested mail or electronic mail to all the parties that have the right to challenge such determination, i.e., to all the bidders participating in the process.

The award notice must include: (a) the names of the bidders participating in the Request for Proposals or Request for Sealed Proposals and a summary of their proposals; (b) the factors or criteria that were taken into account for the award of the proposal; (c) the defects, if any, that the proposals of the losing bidders had, and (d) the availability and term to request reconsideration and judicial review, as established in Articles 52 and 53 of these Regulations, respectively.

The Bid Board must file in the files a copy of the final determination on the award and the proof of notification.

Section 43.24 General Provision

In cases not provided for in this Article, the informal bid or formal bid procedure will be followed by analogy and as a guide in keeping with the amount of the purchase or acquisition.

Section 43.25 Master contracts

The Bid Board may hold any procedure for Request for Proposals and/or Request for Sealed Proposals in order to award master contracts, under whose previously established terms and conditions purchase orders may be drawn up if the need described there is identified. Multi-year master contracts may be awarded.

The Executive Director or authorized representative may authorize the amendment of master contracts to extend their validity for a maximum term of six (6) months. The amendments will be made in a writing titled "Amendment" and must bear the signatures of the parties.

Article 44. Request for qualifications

Section 44.1 Definition

This bidding method will be used to acquire goods, works or specialized services, involving highly technical and complex matters; through this method potential bidders are asked to submit their qualifications to participate in a tender process through a request for qualifications ("RFQ"). This mechanism will consist of a two-step process; in the first phase, proponents will be qualified ("RFQ"); in the second phase, a proposal will be awarded ("RFP"). Only qualified bidders will receive the documents for the request for proposals or request for sealed proposals.

After being duly advised, the Authority will determine whether to use the request for qualifications method in light of the particular circumstances of each case.

Section 44.2 Invitation to request qualifications or notice of qualifications

The Purchasing Office will prepare the Invitation for the Request for Qualifications or Notice of Qualifications. The call will be made after the corresponding invitation or notice is prepared, has been reviewed and authorized by the Bid Board.

The Bid Board will send the Invitation for Request for Qualifications or Notice of Qualifications to all bidders registered in the RUL under the category corresponding to the goods or service to be acquired, at least fifteen (15) days before the deadline established for receiving statements of qualifications. In addition, the Invitation for Request for Qualifications or Notice of Qualifications will be published on the Authority's website.

Section 44.3 Contents of the Invitation for Request for Qualifications or Notice of Qualifications

The Invitation for Request for Qualifications or Notice of Qualifications must include the following:

- 1) Number of the Request for Qualifications;
- 2) Purpose of the Request for Qualifications;
- 3) Date of publication of the Invitation for Request for Qualifications;
- 4) Date, time, place and manner (in the case of electronic submission) in which the qualifications statements must be presented or submitted;
- 5) If it has been determined that an orientation meeting will be held, the date, time and place will be indicated, stating whether attendance is compulsory;
- 6) General instructions;
- 7) Statement of Needs;
- 8) Nature of Work and/or Scope of Services;
- 9) General Performance Requirements (if applicable);
- 10) Evaluation criteria;
- 11) Selection process, and

- 12) Any other information that the Administration deems pertinent to include.

Section 44.4 Content of the Statement of Qualifications

The statement of qualifications must describe the potential proponent's experience in jobs or services of a nature equal or similar to those requested, and provide financial or other information, including the potential proponent's ability to secure the pertinent bonds, among other criteria, as requested in the corresponding Invitation for Request for Qualifications or Notice of Qualifications.

Section 44.5 Pre-qualification of Suppliers; First Phase

The Bid and Proposal Evaluation Committee will evaluate the statements of qualifications submitted by potential proponents in accordance with the evaluation criteria established in the Invitation for Request for Qualifications or Notice of Qualifications. In addition, the Committee will prepare a Summary of Qualifications containing the following:

- 1) Number of the Request for Qualifications;
- 2) Name of each potential proponent that submitted the pertinent statement of qualifications;
- 3) Finding of whether or not the potential bidder meets the evaluation criteria established in the pertinent Request for Qualifications or Notice of Qualifications and scoring;
- 4) Recommendation, based on each proponent's qualifications, on whether to receive or not the Request for Proposals; the recommendation must state which potential proponents were qualified and which were not;
- 5) Date and signature of the person preparing the Summary of Qualifications, and
- 6) Any other information necessary for the evaluation and selection of qualified proponents.

The Bid Board will not be obliged to determine the qualifications of the potential proponents in accordance with the provisions of the Summary of Qualifications, but will have independent criteria regarding their determination.

Section 44.6 Interviews with Potential Proponents

The Bid Board, with the support of the Bid and Proposal Evaluation Committee and the Purchasing Office, may conduct interviews with potential proponents prior to making qualification

determinations. The interviews will aim to clarify any information provided by the potential proponent in the statement of qualifications.

Section 44.7 Notice of Resolution on the Determination of Qualifications

The Bid Board, after the pertinent evaluation and pursuant to the evaluation criteria established in the Invitation, will determine which proponents are qualified and which are not.

The Bid Board will notify its determination on qualifications to all participants in the Request for Qualifications process, through a Resolution. Notification will be made by U.S. certified, return receipt requested mail or by email. The Determination on Qualifications will state the determination of the Bid Board on which proponents were qualified and which were not, in accordance with the evaluation criteria established in the Invitation.

Any party adversely affected by a decision of the Bid Board on the Determination of Qualifications may request reconsideration, after notice of award has been notified, in accordance with the provisions of Article 52 of these Regulations.

Section 44.8 Delivery of the Documents and Submission of Proposals; Second Stage

Only qualified proponents may receive the documents of the Request for Proposals. Qualified proponents will submit their proposals in accordance with the terms of the documents. The request for proposals process will be carried out in accordance with the provisions of Article 43 of these Regulations.

Article 45. Exceptional purchase

Section 45.1 Definition

All purchases that will be exempted from the bidding methods (informal purchases, informal bid, formal bid, request for proposals, request for sealed proposals and request for qualifications) will be known as exceptional purchases, as provided in Law 73-2019 and the PRGSA Regulation. In accordance with the provisions of Sections 45.2 and 45.3 of these Regulations, the reasons why the exceptional acquisition are in order without following the bidding methods must be justified in the file. For acquisitions of goods and services that do not exceed fifteen thousand dollars (\$15,000), the Purchasing Office will make the determination, while acquisitions that exceed that amount will require the approval of the Bid Board.

Section 45.2 Circumstances in Which an Exceptional Purchase Could Be Made

Exceptional purchases may be authorized:

- 1) When the minimum prices are set by law or competent government authority. The Authority will take official notice of the related legal provisions.
- 2) When the purchase is made from the Government of the United States of America, any of its states or through its agencies and instrumentalities or departments, quasi-public corporations, its subsidiaries and affiliates, or any government entity of the Government of Puerto Rico.
- 3) When using a supplier that has a contract with the PRGSA.
- 4) When there is only one source of supply and it is thus established by certification issued by the manufacturer stating that the company in Puerto Rico is the exclusive representative of the goods, or by certification issued by the designated official of the Authority's Purchasing Office or the Bid Board, as the case may be, stating that to the best of his or her understanding and personal knowledge, the entity is the only one that can provide the goods or service, as applicable.
 - a. When there is only one (1) bidder registered in the RUL or when there are several registered bidders, but there is only one (1) supplier willing to quote, the Purchasing Office or the Bid Board, as the case may be, will take the necessary steps to identify the suppliers or providers not registered in the RUL that provide the necessary goods or service and that meet the requirements of government bidders. The Purchasing Officer or the Bid Board, as the case may be, will request among them (bidder registered and non-registered suppliers or suppliers) a minimum of three (3) quotes and will select the bidder, supplier or provider that offers the best value. The same process will be followed in the event only two (2) suppliers or providers are identified. The Purchasing Officer or the Bid Board, as the case may be, will certify through a duly signed writing the existence of the particular circumstances.
 - b. With the exception of the provisions of subsection (a) above, the exceptional purchase will be in order only when the RUL is empty and there is only one (1) supplier or provider in the market that meets the requirements of the bidders of the Government of Puerto Rico. The Purchasing Officer or the Bid Board, as the case may be, will certify by means of a duly signed document that, having conducted the pertinent research in the market, it has been determined that the entity is the only one that can carry out the work, provide the goods or the service, as applicable. The letter must include details of the market research efforts that support said determination, as well as the sources consulted.

- 5) When there is an emergency situation in the Authority that generates unexpected, unforeseen and urgent needs that requires immediate action by the Authority, because the life, health or safety of the employees or citizens visiting its facilities is in danger, or because the situation involves suspending the services that are provided or affects them.

In this case, the nature of the administrative emergency, the cause of the emergency, the damage caused or the imminent damage must be stated in detail in a certification to be issued by the Purchasing Officer or the Bid Board, as the case may be. Said justification must have the signatures of the Executive Director or his authorized representative, and the Purchasing Officer. Prior to the authorization of said purchasing method, the Authority shall verify through inspection or other mechanisms the fact of the emergency that occurred in the Authority.

- 6) When the Governor has declared a state of emergency. In these cases, the applicable procedure established in Article 34 of Law 73-2019, the PRGSA Regulations, as well as any procedure established by means of an Executive Order, Circular Letter and/or Memorandum will be followed.
- 7) When government property can be damaged or lost.
- 8) When the validity of the funds is close to expiration and any opportunity to acquire the goods, works and non-professional services may be lost, thus adversely affecting the best interests of the Authority. Exceptional purchases may only be authorized in accordance with the provisions of this subsection when any of the following circumstances occur:
 - a. The request related to the need to acquire the goods, works or professional services must be duly completed and submitted to the Administration Office within a term of sixty (60) days prior to the expiration of the funds to be used for the acquisition;
 - b. The funds were assigned to the Authority less than sixty (60) days prior to the expiration of the funds that will be used for the acquisition;
 - c. When the need has been identified by the Authority within less than sixty (60) days prior to the expiration of the funds that will be used for the acquisition, it can be supported through the pertinent documentation that it does not constitute an expense included in the current budget and that the acquisition will be financed with a budget surplus.

However, if it is proven that the circumstance arose due to negligence, carelessness or lack of planning, the exceptional purchase will not be authorized.

- 9) When replacement parts, accessories, additional equipment or supplementary services are required for equipment whose repair or service is under contract.
- 10) When it is necessary to acquire the goods, works and non-professional services outside of Puerto Rico because there are no qualified suppliers in the local market; or the conditions offered in those markets represent a greater advantage than those of the local market. Exceptional purchases may only be authorized under the provisions of this subsection when there is only one source of supply and it is thus established by certification from the manufacturer that the company outside of Puerto Rico is the exclusive representative or the only one who produces the goods, or when the Purchasing Office or the Bid Board, as applicable, certify that, to the best of their understanding and personal knowledge, the entity is the only one that can provide the good or the non-professional service. Therefore, if there is more than one (1) supply source outside of Puerto Rico, the acquisition must be processed through the ordinary procurement mechanisms.
- 11) When no bids are received after requests for quotes, invitation to bid or request for proposals have been issued.
 - a. In the event that no bids are received once the corresponding bid opening has been held, the Purchasing Office or the Bid Board, as applicable, will issue a second call for the process.
 - b. The exceptional purchase process may proceed only if no bids are received as a result of the second call.
 - c. The purchase file will contain copies of the pertinent minutes that prove that no bids were received in both processes; only in these circumstances the Purchasing Officer or the Bid Board, as the case may be, may favorably recommend the exceptional purchase process.
- 12) When all the quotes, bids and/or proposals received are rejected because they do not comply with the specifications, conditions or because their price is unreasonable.
 - a. In the event that no bids are received once the corresponding bid opening has been held, the Purchasing Office or the Bid Board, as applicable, will issue a second call for the process.
 - b. The exceptional purchase process may proceed only if no bids are received as a result of the second call.

- c. The purchase file will contain copies of the pertinent minutes that prove that no bids were received in both processes; only in these circumstances the Purchasing Officer or the Bid Board, as the case may be, may favorably recommend the exceptional purchase process.

13) When the purchase is made under the terms of contracts or bidding processes conducted previously, as long as it is for the benefit of the Authority. In the event of a contract breach by the successful bidder that is awarded a particular bid, the alternate bidder may be contracted in accordance with the proposal submitted in the bidding process.

When the articles, materials, equipment, works or non-professional services to be acquired are of a specialized nature, or when buying a certain type or particular brand is desired, due to the good proven service that similar units have rendered, due to the economy involved in maintaining uniformity across multiple units or the superiority in the type and quality of the service that will be obtained in the purchased unit and its maintenance, all of which must be justified in writing in the requisition.

Section 45.3 Exceptional Purchase Evaluation

Any exceptional purchase must be recommended in writing by the Purchasing Officer or the Bid Board, as the case may be, and authorized in accordance with the provisions of Article 24 of these Regulations.

Neither the Purchasing Officer nor the Bid Board, as the case may be, may recommend or authorize, as exceptional purchases, those that involve different or additional circumstances to those described in Article 45.2 of these Regulations. The Purchasing Officer or the Bid Board, as the case may be, will ensure by any means (inspection, document requests, photographs and videos, certifications, among others), prior to issuing their recommendation and approval of each exceptional purchase, respectively, that the exceptional circumstances set forth exist and that it is not a subterfuge to evade the ordinary acquisition process. Likewise, they must specify in the certification the adverse impact on the services provided by the Authority should the exceptional purchase be denied.

The Purchasing Officer or the Bid Board, as applicable, will certify through a duly signed writing, the means by which they verified the existence of the exceptional circumstances set forth in the application. The Purchasing Officer or the Bid Board (as applicable) may deny the processing of any request for exceptional purchase, if it is understood that the circumstances set forth in said request have been caused by the administrative negligence of the Authority, because the request for goods, works and non-professional services has not been submitted in a timely manner. Said denial will be duly justified and will form part of the file.

Section 45.4 Procedure for Making Exceptional Purchases

Exceptional purchases will be made by the Purchasing Officer by direct purchase from the supplier or supplier of goods, works or non-professional services. At the discretion of the Purchasing Officer or the Bid Board (as applicable), quotes may be requested from suppliers or providers of goods or services as part of the exceptional purchase process.

The Purchasing Officer will ensure that the file contains the certifications described in Sections 45.2 and 45.3 of this Regulation, confirming the existence of the circumstances that justify the exceptional purchase, as well as the impact on the services provided by the Authority. The reasons why the purchase could not be made through any of the bidding methods established in these Regulations and why it is necessary to make the exceptional purchase, will be justified in writing. In addition, the impact on the services provided by the Authority if the exceptional purchase request is denied must be stated.

The acquisition of a good, work or service through an exceptional purchase will not be sufficient justification to acquire the same type or class of good, work or service as an exceptional purchase at a later time. The Purchasing Officer or the Bid Board (as applicable) must evaluate whether the conditions that justified the previous exceptional purchase are still in force before authorizing a new acquisition through exceptional purchase. Exceptional purchases will be limited to the quantities and duration that are absolutely necessary.

The Authority shall publish on its website any award of an exceptional purchase within thirty (30) days after the award.

VIII. OTHER MEANS OF ACQUISITION

Article 46. Donation

Section 46.1 Definition

A donation consists of the means by which the Authority acquires a thing, a service or a work through an act of generosity and willingness of the person who provides it free of charge. The Authority is empowered by Law 2-2017 to accept donations from any person. Donations will be accepted by the Executive Director or his authorized representative if he considers that they are beneficial for the Authority and/or the Government of Puerto Rico.

Section 46.2 Donations Received in Favor of the Authority

A. Conditional Donations

The Executive Director or his authorized representative may accept conditional donations as long as they serve the purposes assigned to the Authority by law.

- 1) The donor will prepare a letter informing the Authority of the donation and the use or purpose for which it is being made.
- 2) The Authority will receive the notification from the donor and will act as follows:
 - a. It will verify that the purpose of the donation is related to the functions and purposes assigned to the Authority by law. The Authority may not accept property for which there is no immediate or future use.
 - b. If the donation has a specific condition, the Authority will analyze whether it can meet the specification established by the donor.
 - c. It will evaluate, among others, the costs of the required installation, maintenance, insurance, technical personnel and authorizations involved in the acceptance of the donation and their impact on the Authority's budget. In cases of donation of used equipment, the equipment must be inspected prior to the acceptance of the donation in order to verify that it is in good condition or that the cost of repairing it is accessible.

If the Executive Director or his authorized representative determines that it is not appropriate to accept the donation, he will notify the donor, in writing, of the reasons why the donation was not accepted. If the Executive Director or his authorized representative decides to accept the donation, he will request the Secretary of the Treasury or his Authorized Representative, in the cases in which he is lawfully authorized to receive a donation, the authorization to accept and receive the good or goods that the donor wishes to donate. This will be done in accordance with the procedures established by the Secretary of the Treasury through memoranda, regulations, and circular letters.

B. Money Donations

In the cases of money donations in favor of the Authority, the value must be issued in favor of the Authority. Cash may not be accepted.

- 1) The value will be delivered to the official collector to proceed to issue an official receipt to the donor and to deposit it in a bank account of the Authority.
- 2) The procedure established will be completed through memoranda, regulations and circular letters issued by the Secretary of the Treasury.

C) Donations of Personal Property

If the donation is a personal property, the Authority will act as follows:

- 1) Issue to the donor the corresponding Receipt of Donated Property. The Authority will give the original to the donor, send a copy to the property manager, and retain a copy for the donor's file.
- 2) The surplus property inspector will assess the property and the property manager will assign and mark it with a property number.
- 3) The Authority will prepare the corresponding Fixed Assets Amendment Report to record the donated property in the books of the Department of the Treasury.
- 4) The Authority will send the pertinent duly completed forms to the Secretary of the Treasury.

Article 47. Trade-In and Exchange

Section 47.1 Definition

The trade-in consists of the purchase method in which used equipment is delivered as part of the payment. The exchange is when one property is exchanged for another, even if it is of a different nature. The value of the thing received is equal to or greater than the thing given. When the value of what is received is greater than that of the thing given, it will be offset by monetary payment, but that payment can never be greater than the value certified through an appraisal of the thing received.

Section 47.2 Procedure

- 1) Prior to acquiring property through the trade-in or exchange process, a request for this purpose will be submitted to the Purchasing Office or the Bid Board (depending on the amount of the acquisition). Said request will include the following:

- a. A description of the property or equipment to be exchanged or traded and the benefits of said transaction;
 - b. Proposal/bid of the supplier.
- 2) The Purchasing Office or the Bid Board (as the case may be) will refer this request to the Authority's Property Manager who will verify and provide the Purchasing Office or the Bid Board with the documentation corresponding to the property or equipment owned by the Authority that the Authority intends to trade.
- 3) An official from the Administration Office, or the person designated by the Executive Director, will verify all the documents. The property intended for trade-in or exchange will be inspected; if necessary, an appraisal will be ordered; and it will be determined whether the price offered by the supplier is in the best interest of the Authority.
- 4) All transactions made through the trade-in or exchange process must be authorized by the Executive Director and/or his authorized representative, or by the Board of Directors, subject to the limits established in Article 24 of these Regulations.
- 5) After the transaction is authorized:
 - a. A purchase order will be prepared that clearly reflects the amount of the credit obtained for the traded or exchanged property.
 - b. The Property Manager of the Authority will have the property delivered in trade-in or exchange removed [from the property records] using the form established for that purpose.
 - c. The Property Manager may deliver the property to the seller, in partial or total payment (exchange) for the property to be acquired, but always in the presence of a designated official who will validate the process.

Nothing in this Article may be construed to authorize avoiding the competitive procedures established in this Regulation in accordance with the value of the good to be acquired.

Article 48. Lease

Section 48.1 Definition

The lease can be for goods or services. In the leasing of goods, one of the parties agrees to give the other the enjoyment or use of a thing for a specified time and a certain price. In the leasing of services, one of the parties agrees to provide the other a service for a certain price.

In addition, the lease may be of real estate; the landlord temporarily transfers the use and enjoyment of the property to another person in exchange for the payment of rent.

Section 48.2 General Procedure

Leases of goods or services are made through the same procedures used for purchases, subject to the limitations established in this Regulation.

IX. ANNUAL ACQUISITION PLAN

Article 49. Presentation of the Annual Acquisition Plan

An Annual Acquisition Plan of the Authority will be submitted to the PRGSA following the procedure established by the PRGSA in the annual guide that said entity issues for these purposes. The Annual Acquisition Plan will contain an annual estimate of probable needs and purchases, which will be based on the purchases made during the previous fiscal year, but excluding unique purchases that were made in said period, to obtain specific items or products. Said plan must include a list of all goods, works and non-professional services deemed necessary and whose purchase is likely to be acquired during the fiscal year for which the plan is prepared.

The Annual Acquisition Plan must indicate the specific goods, works and non-professional services that are intended to be acquired. In addition, the plan must include the estimated value of the goods, works and non-professional services to be acquired, the expense line item, account number and the approximate date of the purchase or service.

The Annual Acquisition Plan must be submitted to the PRGSA on or before March 31 of each year. Law 73-2019 authorizes the PRGSA to impose administrative fines for non-compliance with the above.

The Authority shall not be obliged to bid for, buy and/or contract any goods or services included in the Annual Acquisition Plan. However, the Annual Acquisition Plan must include the most accurate and correct information possible.

Article 50. Quarterly Review of the Annual Acquisition Plan

The Authority shall be obliged to review the estimates of probable needs and purchases included in the Annual Acquisition Plan on a quarterly basis and must notify the PRGSA of any changes made to the Annual Acquisition Plan in effect. Law 73-2019 authorizes the PRGSA to impose administrative fines for non-compliance with the above.

Article 51. Confidentiality of the Annual Acquisition Plan

In accordance with Art. 26 of Law 73-2019, the Annual Acquisition Plan of the Authority is confidential, except when the information contained is necessary for official purposes. Any official or employee who unofficially and in contravention of this provision reveals the content of the Authority's Annual Acquisition Plan or any information related to the stated needs, may be dismissed from their position or employment subject to the personnel processes of the Authority.

X. REVIEW AND RECONSIDERATION PROCEDURE

Article 52. Procedure for Reconsideration and Administrative Review of Bids

Pursuant to Section 3.19 of Law 38-2017, as amended, known as the “Uniform Administrative Procedures Act of the Government of Puerto Rico,” the party adversely affected by a decision may, within twenty (20) days after the notification of the bid award has been deposited in the U.S. Mail or emailed, submit a motion for reconsideration before the Authority. In the alternative, said party may submit a request for review to the PRGSA Bid Review Board within twenty (20) days after the notification of the bid award has been deposited in the U.S. Mail or emailed. The agency or the PRGSA Bid Review Board must consider the motion or request within thirty (30) days after submission. The PRGSA Bid Review Board may extend said term only once, for an additional term of fifteen (15) calendar days. If upon consideration a determination is made, the term to file an appeal for judicial review will begin to run from the date that a copy of the notification of the decision of the agency or the Review Board on the motion is deposited in the U.S. Mail or emailed. If the agency or the PRGSA Bid Review Board fails to take any action on the motion for reconsideration or request for review within the pertinent term provided by Law 38-2017, it will be deemed that said motion or request has been denied outright, and the term for judicial review will begin to run from that date.

Article 53. Procedure for Judicial Review of Bids

In accordance with Section 4.2 of Law 38-2017, in cases of bid challenges, the party adversely affected by an order or final resolution of the Authority or of the PRGSA Bid Review Board, as the case may be, may submit a request for review before the Court of Appeals within twenty (20) days after a copy of the notification of the order or final resolution issued by the agency or by the PRGSA Bid Review Board has been filed in the records of this case, or within the applicable term of twenty (20) calendar days if the term established by Section 3.19 of Law 38-2017 has elapsed. The mere submission of a request for review under Section 4.2 of Law 38-2017 will not have the effect of staying the adjudication of the contested bid.

XI. SUPERVISION IN THE PERFORMANCE OF THE CONTRACTOR OR CONSULTANT

Article 54. Performance and Administration of the Contract, Order or Similar Document

It is the duty of the Authority to adequately supervise the tasks performed by contractors or consultants, so that they invoice for the work actually performed, deliver the agreed goods, and fully comply with the services, guarantees, quality, terms and conditions contracted. An adequate administration must include at least: (a) supervision of the work carried out by the contractor through meetings, logs or other means; (b) that the officials and employees of the Authority related to the project take part in its development, in such a way as to ensure that the agreed requirements are being met; (c) rigorous inspections of work completed and products delivered; (d) record of hours worked by the contractor, where applicable.

XII. PAYMENT OF CONTRACTED OR ACQUIRED SERVICES

Article 55. Payment of Contracted Goods and Services

The Authority shall maintain preliminary control of all its operations and, in turn, the accounting area shall maintain effective control over income, disbursements, funds, property, and other assets. Likewise, the expenses of the Authority will be made within the framework of utility and austerity.

In accordance with Circular Letter No. 1300-16-16 of the Department of the Treasury, before settling the last payment under the contract, the contractor or consultant must be asked to provide the certifications of debt issued by the Department of the Treasury. The last payment to be made under the contract will only be delivered if the Debt Certifications indicate that the contractor has no debt with the Department of the Treasury. For these purposes, the Authority will be responsible for including a clause in the contract where the contractor agrees to cancel any debt, which cannot be clarified with the Department of the Treasury, by withholding [from] the payments it is entitled to receive under the contract.

The Authority shall pay for goods and services rendered. As an exception, advance payments may be made subject to the provisions of Regulation No. 31 of June 21, 2007, of the Department of the Treasury, entitled "Advance Payment of Goods or Services of the Government of Puerto Rico," as well as any successor rule. This regulation contains the procedure, applicable conditions and the instances in which it is allowed to pay in this way.

XIII. PROCEDURE FOR NON-COMPLIANCE

Article 56. Responsibility of Offices and Departments

It will be the responsibility of the offices and departments of the Authority to supervise the performance and fulfillment of the contracts and acquisitions that they administer. The offices and departments will maintain a file of the project, service or purchase that is under their supervision and will include evidence of non-compliance. The Authority's office or department will make whatever attempts are necessary to achieve compliance by the contractor and evidence of such attempts will be kept. Likewise, the office or department must notify the accounting area of the Authority about any adjustment to be made in the invoice due to lack of compliance.

Article 57. Legal Advice of the Authority

The office or department of the Authority, having made the first attempts to achieve compliance by the contractor, will consult with [the Office of] Legal Advice about the action steps that would be appropriate to implement, depending on the nature of the agreement, the severity of the breach, among other factors.

XIV. FINAL AND MISCELLANEOUS PROVISIONS

Article 58. Relevant Laws and Regulations

- A. Law 2-2017 known as the “Puerto Rico Fiscal Agency and Financial Advisory Authority Act.”
- B. Law 73-2019, as amended, known as the “General Services Administration Act for the Centralization of Purchases of the Government of Puerto Rico 2019,” and its Regulations.
- C. Law 237-2004, as amended, known as the “Law to Establish Uniform Parameters in the Processes for Contracting Professional and Consulting Services for Government Agencies and Entities of the Commonwealth.”
- D. Act No. 18 of October 30, 1975, as amended, known as the “Contract Registration Act.”
- E. Law 80-2017, known as the “Act for Fair Competition in Telecommunications, Information and Paid Television Services in Puerto Rico.”

- F. Law 1-2012, as amended, known as the “Organic Law of the Office of Government Ethics of Puerto Rico.”
- G. Law 2-2018, as amended, known as the “Anti-Corruption Code for the New Puerto Rico”.
- H. Law 38-2017, as amended, known as the “Uniform Administrative Procedures Act of the Government of Puerto Rico.”
- I. Law 14-2004, as amended, known as the " Investment in Puerto Rican Industry Act."
- J. Act 129-2005, as amended, known as the “Procurement Reserve Act of the Government of the Commonwealth of Puerto Rico.”
- K. Law 253-2006, known as the “Law of Multiple Selection Contracts in Procurement Processes.”
- L. Law 42-2018, as amended, known as the “Preference for Contractors and Local Construction Suppliers Act”.
- M. Law 70-1992, as amended, known as the “Puerto Rico Solid Waste Reduction and Recycling Act.”
- N. Regulation No. 31 of June 21, 2007, of the Department of the Treasury, entitled “Advance Payment of Goods or Services of the Government of Puerto Rico.”
- O. Special Memorandum No. 2-2016, known as “Guidelines for Determining Whether the Services to be Rendered Constitute Positions or Contracts for Professional or Consulting Services,” promulgated by the Office of Administration and Transformation of Human Resources of the Government of Puerto Rico.
- P. Circular Letter of [the] Central Accounting [Area] of the Department of the Treasury No. 1300-35-07, known as "Guidelines to Determine if the Services to be [Rendered] constitute a Position or Professional Services."
- Q. Circular Letter No. 1300-16-16 of the Department of the Treasury issued on February 22, 2016.
- R. FOMB Policy: Review of Contracts, effective November 6, 2017, amended October 30, 2020.

- S. Circular Letter No. 2020-03 of August 31, 2020, of the Puerto Rico Innovation and Technology Service (“PRITS”).
- T. Circular Letter No. 152-2018 of March 23, 2018, of the Office of Management and Budget.
- U. Circular Letter No. OC-19-11 of March 28, 2019, of the Office of the Comptroller.
- V. Administrative Bulletin Number OE-2020-082 entitled "Executive Order of the Governor of Puerto Rico, Hon. Wanda Vázquez Garced, to adopt the *General Government Procurement Guidelines Applicable to All Executive Agencies*."

Article 59. Severability

The provisions of this Regulation are severable from each other. If any article, section, subsection, paragraph, word, sentence or part of this Regulation is declared unconstitutional, invalid or null by a court with competent jurisdiction, such declaration will not affect, impair or invalidate the remaining provisions and parts of this Regulation. In such case, its effect will be limited to the article, section, subsection, paragraph, word, sentence or specific part and it will not be understood that it affects or damages in any way its application or validity in any other instance of the Regulation.

Article 60. Repeal

This Regulation nullifies any other regulation, policy, procedure, regulation, circular letter, internal memorandum that is, in whole or in part, incompatible or in conflict with the provisions herein, to the extent pf that such incompatibility or conflict.

Article 61. Effectiveness

This Regulation shall become effective thirty (30) days after its filing with the Department of State.

Revised and approved in San Juan, Puerto Rico, on October 21, 2021, pursuant to authority granted by Resolution 2020-79 of the Board of Directors of the Fiscal Agency and Financial Advisory Authority of Puerto Rico.



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Executive Director