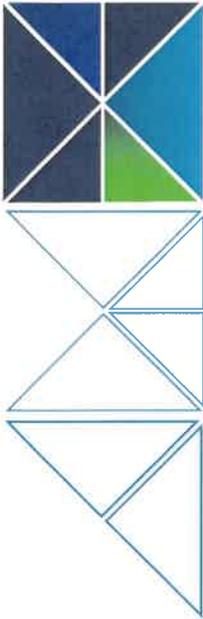


Number: 9734

Date: February 9, 2026



*Approved:* Rosachely Rivera Santana  
Secretary of State  
Department of State  
Government of Puerto Rico



**Uniform Regulation Governing  
the Procurement, Awards and  
Contracting of Nonprofessional  
Goods, Works, and Services**  
of the General Services  
Administration of the  
Government of Puerto Rico

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## **TITLE I - FUNDAMENTAL PRINCIPLES**

### **CHAPTER I - GENERAL PROVISIONS**

#### **Article 1.1 - Title**

This Regulation will be known as the Uniform Regulation for Governing the Procurement, Awards, and Contracting of Nonprofessional Goods, Works, and Services of the General Services Administration of the Government of Puerto Rico.

#### **Article 1.2 - Authority**

The General Services Administration (acronym in Spanish, ASG, or Administration) issues this Regulation under the powers conferred in paragraph of Articles 11(j), 25, and 32 of Act No. 73-2019, “General Services Administration Act for the Centralization of the Procurement of the Government of Puerto Rico of 2019” (“Act No. 73-2019”), as well as Chapter II of Act No. 38-2017, “Uniform Administrative Procedure Act of the Government of Puerto Rico (Act No. 38-2017”).

It is also issued under the preferential procurement policies including Act No. 14-2004, the “Investment in Puerto Rican Industry Act”; Act No. 129-2005, the “Procurement Reserves of the Government of the Commonwealth of Puerto Rico Act”; Act No. 253-2006, “Multiple Selection Contracts in Procurement Processes Act”; and Act No. 42-2018, “Preference for Local Construction Contractors and Providers Act” and any other that in the future may be enacted.

#### **Article 1.3 – Purpose and Executive Summary**

This Regulation is adopted for the purpose of establishing the procedures and the substantive norms that govern the procurement of goods, works, and nonprofessional services established in Act No. 73-2019. Likewise, the regulation seeks to define the principles and general standards to ensure the efficient and responsible use of public funds by promoting full and open competition.

This will permit the obtention of more competitive prices for the benefit of the Government of Puerto Rico, ensuring the Best Value in procurement, within a framework of transparency that stimulates the economic development of Puerto Rico.

In addition, this Regulation has the purpose of standardizing the duties, responsibilities, and powers of the officials and participants that intervene in any manner in the procurement processes of the public entities under their jurisdiction. Therefore, this Regulation establishes the procedures, requirements, and authorizations that are necessary for effective government procurement.

Furthermore, the application of preferential statutes is regulated and all the phases of the procurement process and its stages, from the planning phase to the contractual phase, thereby ensuring transparency, equity, and regulatory compliance in each process.

The Uniform Regulations for the Procurement, Awards, and Contracting of Goods, Works, and Non-Professional Services of the Puerto Rico General Services Administration are adopted pursuant to the authority vested in the Administrator of the ASG and the obligation of our agency to establish uniform rules for processes under Act No. 73-2019.

#### **Cost-Benefit Analysis:**

The new Uniform Regulations for Procurement and Awards do not alter the bidding methods or the monetary thresholds used to determine how government purchases are processed. It does not entail any additional expenses for the Government or its entities. On the contrary, by streamlining and expediting the processes prior to awarding contracts, it will generate savings for the public treasury and require less time investment from participating officials.

#### **Article 1.4 - Scope and Applicability**

The provisions of this Regulation will be applicable to all procurement processes of goods, works and nonprofessional services effected by the Government Entities and Exempt Entities, as defined in Act No. 73-2019. All Government Entities have the obligation to carry out their buyers and

bidding processes for the procurement of goods, works and nonprofessional services through the ASG, without any exception whatsoever.

Exempt Entities will not have the obligation to effect procurement through the ASG. However, Exempt Entities will adopt the processes established in this Regulation for the different bidding methods, as well as for making their exceptional purchases. In addition, Exempt Entities must abide by the centralized contracts executed by the ASG, under categories that have previously undergone bidding, as well as all procurement for the recovery and reconstruction of Puerto Rico. Therefore, when a centralized contract awarded by the ASG is in place, the Exempt Entities will be prevented from carrying out an independent procurement procedure for the goods, works or nonprofessional services covered by the centralized contract.

The provisions contained in this Regulation will also be applicable to all employees or officials of the Government of Puerto Rico, as well as any person or entity, that participates directly or indirectly in the ASG procurement process of goods, works, and nonprofessional services. Likewise, they will be applicable to the persons of any Government Entity or Exempt Entity, as well as of the Legislature, the University of Puerto Rico, the Municipalities, the Judicial Branch and any other organism, when these voluntarily submit to ASG jurisdiction and the processes established in this Regulation.

The provisions of this Regulation will govern the procurement processes of goods, works and nonprofessional services, regardless of whether the funds that are used are from the state or the federal government. However, in such circumstances in which a law, code, regulation, guidance, regulation or any procedure established by the federal government or any agreement with the federal government or any of its entities, should require a procedure that differs from what is established in this Regulation, that procedure will prevail. In such circumstances, and when necessary, the Administrator will issue written instructions to the Auxiliary Administration of Procurement, the Bid Board of the ASG, the Bid Board of the respective Exempt Entity or the Bid Review Board (“Review Board”), as applicable. These instructions will set forth the process to be followed under applicable federal statutes or regulations for the respective procurement.

In construction work projects, as defined in Act No. 73-2019, the Regulation will be interpreted jointly with the provisions of Act No. 218-2010, “Uniform Documents for the Contracting of Scheduling, Management, Design, Inspection, and Construction of Public Works in Puerto Rico Act”. In addition, the provisions of the Puerto Rico Construction Code and other applicable regulations will be observed.

Furthermore, as defined in Act No. 73-2019 and this Regulation, the distinction between professional and nonprofessional services is an interpretative determination that will be made on a case-by-case basis. Previous determinations made by the ASG, a competent court or an administrative forum regarding the nature of a particular procurement or contracting will be persuasive in so far as they present similar facts.

The determination will evaluate whether a procurement constitutes a professional or nonprofessional service using factors such as the contracting requirements, principal functions, budget item, time management of the professional to be contracted, compliance of the companies with federal wage and withholding standards, required continuous training, evaluations, among others.

Without constituting an exhaustive list, the following activities will be considered nonprofessional services: surveillance and security, temporary employment (office staffing services), pest control, landscaping, office cleaning and maintenance, technology licenses (including subscriptions for information systems or digital platforms), basic technological services (such as hardware installation, routine preventive maintenance, basic technical support, data entry, installation of standard software without programming, and device configuration); structural repair and maintenance; road infrastructure improvements and repairs; banking services; equipment leasing; vehicle rentals; communication and telecommunication services; call center operations; customer or subscriber service; billing and collection services; and insurance contracts unrelated to the provision of medical or health services, among others. The ASG, pursuant to the authority granted under Act No. 73-2019 and these Regulations, may determine that additional activities beyond those enumerated herein shall also be considered nonprofessional services.

On the other hand, professional services are those that require an academic degree, a professional license issued by the State and in any case intellectual or artistic skills. This includes, among others, activities such as: medicine, law, accounting, consulting, engineering, land surveying, architecture, public relations, advertising, communications, financial advisory, and specialized technological support services (such as software and application (app) development, cybersecurity consulting, design and management of complex networks, advanced firewall and server configuration, data analysis and artificial intelligence, advanced UX (“User Experience”) and UI (“User Interface”) design, systems architecture, and platform integration).

When Government and Exempt Entities anticipate the need to procure goods, works and services that are of a mixed nature, they must, before contracting the professional services, obtain the ASG’s authorization to ensure that the appropriate procedures are being followed. Any such requests must be signed, exclusively, by the Nominating Authority of the Requesting Entity, who must certify that the proposed transaction does not constitute a subterfuge to avoid the competitive procurement procedures established under Act No. 73-2019.

In reviewing requests involving procurements of a mixed nature, ASG shall determine which category constitutes the principal service of the contract. In making this determination, ASG shall consider the primary purpose of the procurement, the relative scope, cost, and functional importance of the professional and nonprofessional components, and whether the professional services are ancillary or incidental to the nonprofessional services, or vice versa.

Where ASG determines that the nonprofessional services constitute the principal service, the procurement shall be subject to the competitive procedures required under Act No. 73-2019.

Conversely, where ASG determines that the professional services constitute the principal service and the nonprofessional components are merely ancillary, the procurement may proceed in accordance with the legal framework applicable to professional services. Nevertheless, if a centralized contract exists under which the nonprofessional services may be acquired, the Requesting Entity must carry out the nonprofessional procurement through a separate purchase order through the ASG platforms.

### **Article 1.5 - Administrative Rules**

The Administrator will promulgate administrative orders, circular letters, guidelines for standard procedures, among other directives for the purpose of enumerating, clarifying, supplementing and implementing the processes established in this Regulation. These regulatory documents will serve the purpose of ensuring the effective implementation of the provisions set forth in this regulation, to establish specific guidelines for their implementation and address any operational or procedural matter that may arise during the course of the implementation. In addition, the Administrator may update and modify these documents according to service needs, changes in applicable legislation or new regulatory provisions related to government procurement and contracting.

### **Article 1.6 - Interpretation**

The provisions of this Regulation shall be interpreted in a comprehensive manner as provided in Act No. 73-2019, as well as the provisions of any other law, regulation, executive order and any other rule that may be adopted under that Law or any other statute that may replace it.

The words and phrases used in this Regulation shall be interpreted according to the context and their commonly accepted meaning. Expressions in the present tense also include the future tense, those used in the male gender include the female gender and conversely, except in cases in which such an interpretation would be absurd or inappropriate. Likewise, the use of the singular includes the plural and conversely.

Any mention of days shall be interpreted as referring to business days, unless otherwise expressly indicated.

If any discrepancy should arise between the versions in Spanish and English of this Regulation, the version in Spanish shall prevail.

## **Article 1.7 - Definitions**

The words and phrases used in this Regulation shall have the same meaning they have in Act No. 73-2019, except for those that are specifically defined in this Article. Those that are only used in a particular Article of this Regulation, or those that for greater clarity require a specific definition, will be defined in the respective Article.

1. **Award** - Act of evaluating the offers or proposals received in response to a bid packet or a request for proposal in order to award the bid to the bidder that best meets the criteria, specifications, conditions and terms established, in other words, the bidder that offers the best value.
2. **Administrator** – Chief Procurement Official and Administrator of the General Services Administration of the Government of Puerto Rico.
3. **Purchase** - It is the act of obtaining some good or service through a transaction.
4. **Goods** - Includes movable, supplemental, substitute, chattel, capital assets or everything that is susceptible of moving by itself or through another force and that is fungible or not, such as, but not limited to the following: food, office materials and equipment, construction material and equipment, land or air means of transportation, land or maritime area, school materials, medical and scientific equipment, equipment, machinery and materials related to the processing of information through electronic means, the pieces, accessories and materials necessary for their maintenance and repair, as well as all those elements necessary for the operation of the Government of Puerto Rico
5. **Collusion** – Agreement between several bidders or proponents, with or without the participation of public officials or employees, for the purpose of restricting competition, manipulating bidding or quotation processes, price fixing, sidestepping legal restrictions or committing fraud to the detriment of the public interest.
6. **Evaluation Committee** – A committee constituted by the Administrator or the authorized representative thereof, for a particular bidding process, whose principal function will be to evaluate compliance by the bidders with the requirements established in the bid package and issue a non-binding recommendation to the Bid Board or the Assistant Administrator for Procurement.

7. **Exceptional Purchase** - Any procurement that is exempt from being processed through the formal or informal bid procedure, request for proposals, or request for qualifications.
8. **Conflict of Interest** - Any situation in which the personal or financial interest is or could reasonably be in conflict with the public interest. Any situation that arises or could arise as a consequence of a transaction or event in which any person, whether or not an employee (including Contractors) or official of the Government of Puerto Rico, obtains or could obtain, directly or indirectly, any benefit, use, advantage, profit or income by reason of his or her acts or undue exercise of his or her influence or position.
9. **Contractor** – A proponent or bidder who has been awarded a bid for any goods, works, or nonprofessional service through the issue of a Purchase Order and/or contract, with any public entity.
10. **Contract** – Obligation in writing and agreed upon by virtue of a legal provision that so requires, between any public entity and a bidder or proponent that ensures the procurement of goods, works or services, according to minimum current standards for public contracting. Each contract shall set forth the terms under which the bidder or proponent will offer the goods, works or services under the bid.
11. **Quotation** – Offer of prices and conditions, submitted in writing, on the goods, works, or nonprofessional services, by the Bidder in response to a request by the Auxiliary Administration for Procurement. This request may be made by telephone, email, or any other available means of communication, although if the offer is made by telephone the prevailing bidder shall submit its offer in writing.
12. **Evaluation Criteria** – Criteria set forth in the bidding notice of a public bidding which are used to evaluate, classify, and recommend offers or proposals for the award of the bid. This also includes the criteria set forth in a request for qualifications.
13. **Statement of Qualifications** – Document in which the potential proponent states its capability for offering certain goods or rendering certain services in response to a Request for Qualifications.
14. **Disqualification** – Action through which the Assistant Administrator for Procurement or the Bid Board, excludes a Bidder from a public bidding process due to the noncompliance with one or more compulsory conditions, terms or specifications for participating in a process. The disqualification action of a bidder will deprive the bidder of its status as a

participating bidder for the subsequent bidding events and as a consequence any offer, proposal or statement of qualifications that has been filed will not be considered or evaluated in the process.

15. **Excluded Entity** – For the purposes of this Regulation this refers to the Legislative Assembly, the Judicial Branch, the University of Puerto Rico, the municipalities and any other entity whose procurement does not fall under the jurisdiction of the GSA under Act No. 73-2019.
16. **Exempt Entity** – An entity that does not have the obligation to conduct its procurement through the ASG, but that must carry out its bidding processes under the bidding methods established in Act No. 73-2019 and must abide by previously bid categories and contracts executed by the ASG.
17. **Government Entity** - Entity that has the obligation to conduct its procurement of goods, works and nonprofessional services through the ASG and for such process must submit a request through the means established by the Administration.
18. **Requesting Entity** – This refers to any public entity that processes a procurement of goods, works, and nonprofessional services through the means provided by the ASG.
19. **Specifications** - Group of essential characteristics of goods, works or nonprofessional services, used as a reference for each level of quotation, bid or proposal: physical, functional, aesthetic or required quality characteristics, that the goods, works and nonprofessional services are described with.
20. **Bid Board** – Bid Board of the ASG or of any Exempt Entity, appointed or constituted to hold public biddings and that pursuant to Act 73-2019 acts as an administrative entity for the study, evaluation, and award of formal bids, sealed requests for proposals, and requests for qualifications. The internal operations of each Bid Board will be carried out according to Act No. 73-2019, the enacting legislation of each Exempt Entity, and this Regulation.
21. **Bid Review Board** – An independent entity, for administrative purposes assigned to the ASG, with jurisdiction to review administrative appeals regarding the determinations or awards made by the ASG Bid Board, the Auxiliary Administration for Procurement or the Bid Board of the Exempt Entities, with such exceptions and limitations as may be provided in current legislation.

22. **Bidder** – Natural or legal person registered in the Sole Registry of Bidders of the ASG, that is available and interested in attending and submitting quotations, offers, or proposals in any bidding process held by the Government of Puerto Rico.
23. **Prevailing Bidder** – Bidder to whom the bid is awarded for one or more items in a competitive process or to which a Purchase Order and/or a contract is awarded.
24. **Unsuccessful Bidder** – Participating bidder whose offer or proposal did not represent the Best Value for the government. Only an unsuccessful bidder may administratively appeal an award before the Bid Review Board.
25. **Participating Bidder** – Bidder that prior to the award has participated in the events that are a compulsory requirement for bidding and that on the date and time set as the deadline for the delivery of an offer or proposal, has submitted such within the announced deadline. A bidder that fails to meet any of the necessary requirements or formalities, and that knows or should have known of its noncompliance shall no longer be considered a participating bidder.
26. **Best and Final Offer** – Process through which the ASG Bid Board, the Auxiliary Administration for Procurement or the Bid Board of an Exempt Entity request from the participating bidders a final offer with the best price that that they are willing to offer, prior to issuing a notice or resolution of award.
27. **Best Value** – Comprehensive evaluation of all circumstances, specifications, and other relevant factors regarding one or more offers, proposals, or quotations, for the purpose of ensuring that the procurement of goods, works and services adequately meet the needs of the Government of Puerto Rico.
28. **Open Market** - Modality of the Informal Bid in which a Request for Quotations is sent to all bidders enrolled in the RUL under the appropriate category. The bid is awarded to the bidder representing the Best Value for the Government of Puerto Rico.
29. **Micro Purchase** - Informal Purchase Modality used for the procurement of goods, works and nonprofessional services whose cost does not exceed five thousand dollars (\$5,000.00).
30. **Negotiation** – When permitted, this represents a dynamic and collaborative process between the ASG and/or an Exempt Entity, and a bidder or proponent to reach a mutually acceptable understanding regarding the terms and conditions of a bid or contract.

31. **Obligation of Funds** – Encumbrance and reservation of budgetary appropriations for an amount of money to cover the cost of the procurement of goods, works, and nonprofessional services.
32. **Works** - Any construction, reconstruction, alteration, extension, improvement, repair, conservation or maintenance of any structure.
33. **Offer or Proposal** – Document that a bidder or proponent submits in response to public bidding and according to the minimum requirements provided in the bidding notice or request for quotations.
34. **Purchase Order** - Obligation entered into by any Public Entity and a Bidder or proponent to ensure the procurement of goods, works, or nonprofessional services and that includes, among other information, a requisition number; a request number; the requesting entity; the vendor to whom it is addressed; a description of the requested goods, works, or services, the amount and source of the public funds to be disburse.
35. **Office of Special Investigations** – Division of the ASG empowered by the Administrator to monitor, investigate, intervene, and recommend sanctions for the Government Entities and Exempt Entities during the course of the processes contemplated in Act No. 73-2019.
36. **Change order** – The result of a request for modification submitted by a Requesting Entity or a bidder or proponent in which the Administration authorizes a variation of the scope, terms, or conditions of a buyer that was previously bid or quoted.
37. **Public Entities** – Refers to a any department, agency, instrumentality, public corporation, office or division of the Executive Branch, the Legislature, or the Judicial Branch of the Government of Puerto Rico.
38. **Items** – Itemized list of the specifications of each one of the goods, works, or services that requested in public a bid.
39. **Drawings** – Graphical representation of a design, which along with the specifications allows for the construction of construction works.
40. **Bidding Notice** - Document authorized by the Administrator and published by the means that for such purposes may be designated, through which the terms, conditions, instructions, specifications, and evaluation criteria are established, as well as any other detail that may be necessary to inform and advise the bidders that are interested in drafting

and submitting offers, proposals, or presentations in the Ordinary Informal Bid, Formal Bid, and Request for Proposals bidding methods.

41. **Sole Registry of Bidders (RUL)** – A registry managed by the ASG containing the information of natural or legal persons that have been evaluated and authorized to tender bids in the procurement processes for goods, works, and nonprofessional services and enter into contractual obligations with the Government of Puerto Rico.
42. **Registry of Professional Services Providers (RUP)** – A registry managed by the ASG in containing the information of natural or legal persons that are authorized to provide professional services to the Government of Puerto Rico.
43. **Sole Registry of Bids (RUS)** – An electronic registry of the Government of Puerto Rico, located in the ASG website, where documents related to the processes of holding and awarding public bids are published and available.
44. **Repetition of Bidding** – A public bid that is repeated when in the original process offers or proposals were not received or when all that are received are rejected. The repetition will retain the same number of the original public bid with the addition of the letter “R” and a sequential number indicating the number times that it has been repeated.
45. **Requisition** – Refers to a request that after being duly processed and approved by the ASG is ready for the obligation of funds and the issue of a Purchase Order or contract.
46. **Administrative Review** – An appeal submitted by an unsuccessful bidder, as defined in this regulation, before the Bid Review Board, challenging an award or other final determination made by the ASG Bid Board, the Auxiliary Administration for Procurement or the Bid Board of the Exempt Entities.
47. **Nonprofessional service** - Services that are not provided by a natural or legal person that have specialized knowledge or skills, who is required to have a college degree or license certifying such as a specialized profession.
48. **Professional Service** - Services that are provided by a natural or legal person that has the specialized knowledge or skills, who is required to have a college degree or license certifying such as a specialized professional or whose principal contribution is the product of intellectual, creative, or artistic work or the management of highly technical or specialized skills.

49. **Request** – Document submitted in the format and through the means designated by the ASG, through which a Requesting Entity identifies a need to acquire certain goods, works, and nonprofessional services and for which there are no internal resources.
50. **Request for Quotations** – The means through which one or more bidders are requested to submit a proposal for providing goods, works, and services stating the price and other pertinent information, on or before a given date.
51. **Request for Qualifications (RFQ)** – A procurement method based on a request issued by the ASG or a Exempt Entity, for specialized or highly technical matters, through which the possible proponents provide a statement of the goods, works, or services that may satisfy the needs of the Government of Puerto Rico. The prevailing proponents will be the sole participants of the RFP that is issue according to those same specifications.
52. **Request for Information (RFI)** – Refers to a non-binding mechanism through which the ASG, using the RUL, RUP or any other source, requests certain information from interested persons or entities.
53. **Request of Proposals (RFP) and/or Request for Sealed Proposals (Sealed RFP)** - A request that allows for a negotiated procurement, the modification and updating of the proposals of the proponents while these are being evaluated and that enables the Bid Board or the Auxiliary Administration for Procurement to request a best and final offer. When the amount of the bid exceeds two hundred fifty thousand dollars (\$250,000.00) it will be named a Request for Sealed Proposals or Sealed RFP.
54. **Formal Bid** - Bidding method that does not allows negotiated procurement and that will be used when the amount of the purchase exceeds two hundred fifty thousand dollars (\$250,000.00).
55. **Ordinary Informal Bid** – An Informal Bid Process that does not allow a negotiated procurement and that will be used when the amount of the purchase is equal to or less than two hundred fifty thousand dollars (\$250,000.00).
56. **Reverse Bid** - Modality of the Informal Bid through which a competitive, virtual, and simultaneous process is held in which interested bidders submit one or more decreasing offers for the purpose of achieving a more competitive price for the Government of Puerto Rico.

57. **Sole Source** – This refers to circumstances in which there is only one vendor available that is previously enrolled in the RUL, according to the particular market for each good or service under the category for which it is being acquired.
58. **Emergency or extraordinary circumstances** – This refers to those circumstances that arise when the President of the United States or the Governor of Puerto Rico have issued an executive order or other type of official notification declaring the existence of an emergency or major disaster. Additionally, procurements and their associated procedures related to these circumstances may respond to situations involving public health, safety or the conservation of government resources duly declared by an Entity’s Nominating Authority.

## **CHAPTER II - GUIDING PRINCIPLES**

The guiding principles are those that are considered applicable to all processes related to government procurement and contracting of goods, works, and nonprofessional services, regardless of the competitive or non-competitive method used for such transactions.

All parties that participate in the processes of the procurement of goods, works, and nonprofessional services are responsible for knowing and implementing the regulations that are applicable to government contracting.

### **Article 2.1 - High public interest**

Article VI, Section 9 of the Constitution of Puerto Rico provides that “Public property and funds shall only be disposed of for public purposes, for the support and operation of state institutions, and pursuant to law.” By virtue of this provision, and in fulfillment of the duty of the Government of Puerto Rico to further an efficient and responsible public administration, the ASG recognizes that government contracting is of the highest public interest, and therefore it will ensure the enforcement of the provisions that govern public procurement.

## **Article 2.2 - Ethical Responsibility**

### **Article 2.2.1 - Officials**

All employees and officials that intervene and/or participate directly or indirectly in the process of procurement of goods, works and nonprofessional services, will exercise their functions following the ethical parameters set forth in Act No. 1-2012, the “Organic Act of the Office of Government Ethics of Puerto Rico”.

In the exercise of their functions, they will avoid engaging in conflicts of interests and will act with integrity, objectivity, and transparency. Likewise, all personnel related to procurement functions will abide by the following guiding principles:

1. Compliance with laws, regulations, circular letters, internal manuals, bulletins, and any other mechanism for the regulation of public procurement.
2. All transactions and relations with vendors and/or contractors will be of a strictly commercial nature. Personnel will not use the name of the ASG or the Government to obtain prices, credit, or other personal benefit.
3. No official that participates directly or indirectly in functions related to procurement and/or contracting may request or accept under any circumstances, goods or benefits that have financial value in exchange for performing, failing to perform or influencing the functions, duties, and responsibilities inherent to their positions.
4. Under no circumstances will information be disclosed that is related to confidential aspects of the procurement, offers of vendors and/or Contractors, or other information classified as confidential by the ASG, as defined in Article 2.7.1.
5. Any attempted bribery by a bidder shall be reported immediately to the ASG Office of Special Investigations and if necessary to the appropriate authorities.

Any noncompliance with these guidelines will constitute sufficient cause to initiate the appropriate disciplinary action, including dismissal and referral to the pertinent authorities.

### **Article 2.2.2 - Bidder and Conduct leading to Disbarment**

All bidders must abide by the provisions of the codes of ethics that govern their professions and with the laws that regulate ethics in government contracting. In particular, Act No. 2-2018, the Anticorruption Code for the New Puerto Rico, establishes the clauses for disbarment from contracting with the Government of Puerto Rico and in its Title III provides the Code of Ethics for Contractors, Vendors, and Applicants for Financial Incentives from the Government of Puerto Rico. This applies to both natural and legal persons involved in the contracting and procurement of goods, works, and nonprofessional services. It will be their responsibility to ensure compliance with all other rules that govern government contracting and those arising from this regulation, subject to the sanctions, fines, and penalties established in this Regulation and in Act No. 73-2019.

### **Article 2.3 - Principle of Competition**

The guiding principle for the procurement and contracting to be carried out under Act No. 73-2019 and this Regulation is the healthy competition between providers and vendors, to ensure that the Government of Puerto Rico obtains goods and services of the highest quality and at the Best Value, within a framework of transparency and accountability. As a norm, it is fundamental that in the drafting of bidding packets, requests, and specifications objective criteria be considered, above all, so that there can be free competition and equality of conditions.

Under any circumstances that constitute or show indications of constituting monopolistic, anti-competitive, fraudulent conduct or collusion, the ASG will proceed according to federal and state prescriptive standards and make appropriate referrals to the pertinent authorities. In addition, such conduct will be subject to the fines and penalties established in this Regulation.

### **Article 2.4 - Best practices**

Nationally and internationally recognized best practices for government buyers will be followed at all times during the bidding and procurement processes provided for in this Regulation. The ASG is authorized to implement such practices through internal rules or regulations.

In addition, all procurement awards will be public. These will be accessible to the general public through the ASG website. Bidding meetings held in competitive processes, including, but not limited to, opening acts, will be broadcast live and stored for no less than six (6) months.

### **Article 2.5 - Preferential Procurement Policies**

All ASG procurement processes will be in compliance with applicable preferential policies, according to current state and federal statutes. These will include, but are not limited to, the provisions of the following laws, as far as such are applicable: Act No. 14-2004, the Investment in Puerto Rican Industry Act; Act No. 129-2005, Government Procurement Reserve Act of the Commonwealth of Puerto Rico; Act No. 253-2006, Multiple Selection Contracts in Procurement Processes Act; Act No. 42-2018, Preference for Local Construction Contractors and Providers Act; Act No. 70-1992, Puerto Rico Solid Waste Authority Act, and any other similar legislation that may be duly approved by the Legislature or the Congress. Public entities will be responsible for compliance with each of the preferential policies. The ASG will oversee and facilitate the execution of public policy according to the powers granted by law and this Regulation.

The ASG reserves the authority to foster compliance with preferential policies by holding biddings and other acquisition methods, limiting participation to natural or legal persons that are duly enrolled in the RUL, whose circumstances comply with one or more of the preferential criteria.

### **Article 2.6 - Best Value**

The Best Value is the central criterion for the awarding of a bid as defined in Article 1.7 of this Regulation. For the relevant purposes under Act No. 73-2019 and this Regulation, the bid notice must prescribe the evaluation methods that will be used. This includes the criteria used to rank, rate or score offers, quotations or proposals, as the weighting that will be afforded to the same. For all requests for proposals, the weighting of the criteria must adhere to one of the following alternatives:

1. Technical and financial factors received equal weight;
2. Technical factors receive greater weight than financial factors;
3. Financial factors received greater weight than technical factors; or
4. Any other configuration that is deemed by the ASG to be more consistent with the proposed acquisition, the selection of which has been duly documented in the procurement's file.

The offer, quote or proposal that is selected will be the one which represents the highest ranking, rating or scoring based on the established criteria and with a holistic review of all the circumstances in order to ensure that it best responds to the needs of the Government of Puerto Rico.

Technical factors can encompass but are not limited to quality, prior experience, delivery term and other factors that are prescribed directly in the notice. For purchases of commodities, the primary factors are cost and delivery term.

When the delivery term is the determining factor, the offer or proposal with the most convenient delivery term will be selected as the principal criterion for the award, even though the price may be higher than those of the other offers or proposals, provided that it is not excessive or unreasonable. This is subject to such an offer meeting all of the established terms and conditions. Delivery term can be used as the sole determinant only in the cases of purchases of commodities.

For the delivery term to be used as a determining factor it is necessary for this to be disclosed in the Bid Notice or Request for Quotations. Should it be concluded after the publication of the Invitation and Bid Notice or the Request for Quotations that there are documented reason that would require the delivery term to be used as a determining factor, the Auxiliary Administrator of Procurement or the Bid Board, as needed, are authorized to provide a term of no more than twenty four (24) hours, for the participating bidders to submit an updated delivery term, should they be interested in doing so.

## **Article 2.7 - Prohibitions**

### **Article 2.7.1 - Confidentiality of Information**

All of the following will be deemed to be confidential: information requested, gathered and/or generated by the ASG in the performance of its functions in the preparing of the bid notice, the bidding documents per se prior to publication, the proponents' offers prior to the opening, information and reports of authorized personnel prior to the award, and work product documents. In addition, this includes, but is not limited to, requests for of information (RFI), proposals, offers, interviews with bidders or proponents not related to ongoing processes, documents related to the preparation of specifications, ASG internal communications and those with other public entities, among others.

### **Article 2.7.2 - Prohibition of Disclosing Information Considered Confidential**

All information contained in the offers or proposals will be treated as being confidential and will not be disclosed outside of the evaluation process until the award of the bid. Offers or proposals that are received will be the property of the Government of Puerto Rico and will not be returned to the bidders. Confidential commercial information and intellectual property will be treated as confidential and will not be disclosed, except as required by law or regulation. Only authorized personnel will have access, and any compulsory disclosure will be notified to the Bidder. All employees, officials and/or contractors that participate directly or indirectly in the procurement process must maintain the confidentiality of the information that they become aware of and violation of the confidentiality of such could entail the imposition of sanctions.

Copyrighted information, patents, or business secrets will not be disclosed without the consent of the Bidder, unless the Government obtains the necessary rights or it is permitted by law. The persons with access to this information must avoid the undue use of such.

However, the ASG will not be responsible for the unauthorized disclosure of confidential information contained in the offers or proposals, in the event that such disclosure is required by

law, regulation, or court order. Bidders will be responsible for adequately identifying and marking as "confidential" any information that they consider to be sensitive, and they must take the necessary steps to protect it as such.

### **Article 2.7.3 - Blackout Period**

Communications *ex parte* are categorically prohibited outside of the mechanisms contemplated in the procurement methods, among officials, employees or consultants of the ASG or of the Exempt Entities, including the members of the Evaluation Committee, and one or more bidders, on matter included in a bid that is pending award. This prohibition will be in effect during all phases prior to and subsequent to the publication of a bid and before the notice or resolution of an award.

Communications that are excepted from this prohibition are those that should be effected in the course of public meetings, interviews with proponents, requests for information and any other procedure that may be required by the Administrator or the authorized representative thereof. In the event that technical assistance is required, the employee in charge of such assistance will only address the questions that are submitted, which shall be duly documented.

The five (5) members of the Bid Board, in effect, the President and remaining associate members, buyers, liaisons and specialists involved in the procurement process may not communicate with and/or attend any type of meetings with lobbyists. This is not limited to those that are registered in the Registry of Lobbyists of the Government of Puerto Rico, when these represent a natural or legal person with an interest in the outcome of a process that is pending award and are proposing to discuss such matters.

### **Article 2.8 - Information Systems**

All public procurement processes must be effected through the ASG authorized information systems. The ASG will have an information system through which, as a general rule, all procurement processes, bids, Requests for Proposals and any other mechanism established in this regulation will be effected. Governmental or Exempt Entities that have an information system that

is different from that of the ASG shall obtain prior authorization. ASG officials will be designated to have access to those external systems. In addition, the ASG must have an alternative procedure that may be used by the procurement system in the event of an emergency or event beyond the control of the Administration.

#### **Article 2.9 - Exclusive Access**

The ASG will be the sole entity with access to documents and information systems in the public procurement process. This is for the purpose of ensuring the confidentiality of the information, reducing the risk of fraud or disclosure of information that may directly affect the acquisition processes.

The ASG will be the only entity with the power to designate the authorized personnel with access to the procurement information systems.

### **CHAPTER III - AUTHORIZED OFFICIALS IN THE PROCUREMENT PROCESS**

#### **Article 3.1 - Administrator and Chief Procurement Officer**

The Administrator will be the Chief Procurement Officer of the Government of Puerto Rico and will be appointed by the Governor with the advice and consent of the House of Representatives and the Senate of Puerto Rico.

The Administrator will have the following powers and duties, in addition to those conferred by Act 73-2019 or any other applicable laws<sup>1</sup>:

1. Advising the Governor, government officials and the Legislature of Puerto Rico with regard to the public policy that under this Act and any other applicable statute that the Administration has been charged with implementing;

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<sup>1</sup> 3 L.P.R.A. § 9832f

2. Establishing the necessary regulations and controls for the use and conservation of public property under the custody of the Administrator, according to the applicable provisions of law or regulations;
3. Coordinating the services and programs covered by this Act;
4. Creating the necessary conditions to achieve more opportunities for collaborative action and the comprehensive coordination of the services of the Administration in coordination with other government entities of the Government of Puerto Rico;
5. Establishing the internal organization of the Administration in consultation with the Office of Management and Budget;
6. Planning, directing, and supervising the operations of the Administration;
7. Appointing Administration staff in compliance with the provisions of Act No. 8, February 4, 2017, the Administration and Transformation of Human Resources in the Government of Puerto Rico Act or any superseding legislation, as well as the rules and regulations approved by virtue of such;
8. Delegating to subordinate officials and authorizing such to further delegate to other officials any function or power granted to them, except the power to appoint personnel and draft rules and regulations;
9. Obtaining services by contracting technical, professional, or highly specialized personnel, or of any other kind, that may be necessary to perform the functions of the Administration;
10. Adopting, amending, and repealing regulations to comply with the provisions of this Act and any other applicable laws;
11. Setting and collecting rates, fees, and other charges for bidding and contract management services, among others services provided to Government Entities, Exempt Entities, and Municipalities that request the services of the Administration.
12. Collecting a fair and reasonable rate for the services that are provided, including charges for the administration of contracts, among others, to private natural or legal persons, to provide the financial resourced that will be directed exclusively to defray the cost of the implementation of advanced technological processes and/or programs for the operations and functions of the Administration.

Administrative fees will be assessed to cover the administrative costs associated with developing, establishing and managing a contract. Fees will be set as follows:

- a. Determine total operating expenses to be recovered by administrative fees
  - b. Forecast customer demand for goods and services
  - c. Set fees at levels that will recover operating costs based on forecasted customer consumption
  - d. Monitor financial operating results throughout the year to determine if the administrative fees are generating revenue at level needed to recover cost; and take corrective action if necessary
13. Taking possession of all abandoned or unclaimed moveable property on the sites of the government buildings and use, transfer or in any other manner dispose of such property according to regulations that may be adopted for such purpose and in compliance with the applicable state and federal legislation;
  14. Performing all acts as may be convenient or necessary to effectively achieve the objectives of the public policy set forth in this Act;
  15. Executing contracts and other instruments necessary for the exercise of the Administrator's powers.
  16. Performing the functions assigned in Act 70-1992, the Puerto Rico Solid Waste Authority Act, insofar as such do not contravene the provisions this Act;
  17. Acquiring, leasing, subleasing, selling, purchasing, donating, or providing the moveable or real property that may be necessary to comply with this Act and/or with other applicable laws and regulations. The Administrator may not receive donations to be used by the agency from entities enrolled in the RUL, that have a personal or pecuniary interest in bids, or that could imply a potential conflict of interest. The Administrator must ensure that the gifts and donors are fully vetted for conflicts of interest. Conflicts of interest could include relationships with contractors, procurement activity, and personal interests of state employees.
  18. Representing the Administration at acts and activities that so require;
  19. Adopting an official seal of the Administration of judicial notice will be taken;

20. Overseeing and ensuring that the Administration and the Bid Board do not accept bids that contain prices that exceed the manufacturer's suggested retail price;
21. Imposing fines on any Government Entity, Exempt Entity, employee and/or public official that without just legal cause fails to comply with, ignores, or impairs the provisions of this Act Ley or the regulatory provisions that the Administrator may implement under the powers conferred hereby;
22. Complying with and observing all mandates, directives, rules, regulations or laws that contain provisions directed at promoting the development of SMEs; and
23. Engaging in any other kind of activity directed at compliance with the provisions of this Act and the regulations to be implemented.
24. All such provisions established by law and/or regulation that may delegated to the Administrator.

In addition, the Administrator will be a member ex officio of the Bid Board but may only vote in the event of a tie in the voting of the ordinary members of the Bid Board.<sup>2</sup>

The Administrator and Chief Procurement Officer may delegate their duties to one or more authorized representatives, except for those prohibited by Act No. 73-2019. Additionally, they will have the authority to approve purchase orders and contracts for services rendered, provided that there are available funds to cover the payment for received goods, completed works, and nonprofessional services. Furthermore, they may cancel purchase orders in protection of the public interest when extraordinary circumstances and proper justification are present. In this case the Administrator shall notify the concerned entity in writing or electronically about the cancellation.

### **Article 3.2 - Bidding Official**

The Bidding Official is responsible for directing purchases and bidding for goods, works, and nonprofessional services and the supervision of the Auxiliary Administration for Procurement. The functions of the Bidding Official include establishing category plans for centralized or master

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<sup>2</sup> 3 L.P.R.A. § 9836d

contracts, among others, in coordination with the Administrator. The Bidding Official must ensure that the procurement processes proceed according to Article 24 of Act No. 73-2019. In addition, the Bidding Official will be responsible for the preparation and review of the specifications of all the goods, works, and nonprofessional services that may be acquired. The Bidding Official will also oversee the implementation of bidding strategies established by the Administrator and/or the authorized representative thereof, as well as establishing the metrics and parameters for bidding processes in coordination with the Bid Board and the Assistant Administrator for Procurement.

With regard to the contracting phase subsequent to the competitive processes, the Bidding Official will provide advice to the Office of Legal Affairs on contracts, agreements, or binding compacts between a contractor and the Administration, for the acquisition of goods, works and nonprofessional services, to ensure that the contracts adequately reflect the specifications and rules of competition established for all the procurement methods, including the prices of the goods, works or nonprofessional services to be acquired.

### **Article 3.3 - Bid Board**

The Bid Board will perform its functions in compliance with this Regulation and any other applicable legal provisions.

The Bid Board is comprised of four (4) associate members and a President. In addition, the Administrator will be a member ex officio, as established in Article 50 of Act No. 73-2019, but may only vote in the event of a tied vote of the members of the Bid Board.

When the bid or Request for Proposals is for a Government Entity or Exempt Entity, the nominating authority of such entity may designate an official or employee of that agency to act as a member of the Bid Board for the evaluation of the offers or proposals, but without the right to vote on the award.

The secretary of the Bid Board will have the following duties:

1. In coordination with the President of the Board, the secretary will prepare the agenda and the calendar of the meetings of the Bid Board.
2. Calling the meetings of the Bid Board.
3. Certifying quorum in the meetings of the Bid Board.
4. Certifying the agreements and the awards when these are made, as well as any other document of the Bid Board.
5. Taking minutes of the meetings of the Bid Board and preparing certification of the agreements and the awards.
6. Drafting certifications, agreements, minutes, resolutions, awards and reports for the approval of the chair of the Bid Board.
7. Notifying the Bid Board resolutions on awards and agreements to the interested parties.
8. Drafting and submitting reports and documents as requested by the President of the Bid.
9. Returning Bid Bonds to bidders upon completion or cancellation of a process.
10. Keeping records of all the correspondence received and sent by the Bid Board.
11. Answering Bid Board correspondence, as instructed.
12. Holding in custody the formal bid offers and sealed proposals until the Opening Act.
13. Receiving, holding in custody, and ensuring the appropriate processing of the files of the formal bids and sealed proposals.
14. Receiving and holding in custody the statements of qualifications submitted by potential proponents related to a Request for Qualifications.
15. Holding in custody all the information contained in the books, records, files, and documents of the Bid Board.
16. Holding in custody the Bid Board seal.
17. Drafting and submitting to the Administration a monthly basis a report on bids that are held, indicating which were awarded and which were declared deserted including with the report copies of the resolutions. This document will be signed by the President and the Secretary of the Bid Board.
18. Performing any other functions that may be assigned by the President of the Bid Board under this Regulation.

### **Articles 3.3.1 - Operational Aspects of the Bid Board**

1. The distribution of the bids and sealed requests for proposals will be grouped by member and by agency. That is to say, each member will direct the bidding process of each group of agencies assigned to it. The assignment of each group will be done annually by administrative order as agreed by the Administrator or the Authorized Representative thereof and the President of the Bid Board. The following criteria will be taken into consideration:
  - a. Number of Agencies
  - b. Volume of bids or request for sealed proposals by agencies
  - c. Annual number of centralized bids or requests for sealed proposals.
  - d. Annual number of centralized bids for master contracts
2. The Bid Board is authorized to issue an internal regulation on its internal functions as a board, such as for example, for calling meeting, quorum according to the provisions of law, among others, provided that such does not contravene the provisions of this regulation or any other that may be applicable, including personnel regulations.
3. All bid or request for sealed proposals processes will be governed by Chapter VI, Article 6.1.2 of this Regulation, in addition to any other related provision that is applicable to requests for sealed proposals.

### **Article 3.4 - Assistant Administrator for Procurement**

This official is in charge of processing procurements for the entire Government of Puerto Rico, including the centralized or multiple selection contracts and other functions established in this Regulation<sup>3</sup>. The Assistant Administrator has the duty to ensure compliance with the standards of transparency, free competition, quality, and Best Value, among others. The functions of this

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<sup>3</sup> Except for the award of Formal Bids which will be done by the Bid Board.

official will be evaluated according to the job description, duty sheets, and any rules issued by the Administrator.

### **Article 3.5 - Director of Government Procurement**

The Director of Government Procurement will direct the unit or the units of the Auxiliary Administration for Procurement that that may be assigned to them. The Director will be supervised by the Assistant Administrator for Procurement, who in turn reports to the Bidding Official. The Director will oversee regulatory compliance with bidding methods and the modalities that they supervise. The Director's functions will be evaluated according to the respective job description, duty sheet, and any rules issued by the Administrator.

### **Article 3.6 - Supervisor of Government Procurement**

The Supervisor of Government Procurement will report to the director of the unit to which the supervisor is assigned and will directly the supervise the assigned staff. The Supervisor's functions will be the respective job description, duty sheet, and any rules issued by the Administrator.

### **Article 3.7 - Procurement and Government Bid Specialist**

This official will be in charge of implementing the processes of bids, requests for proposals and/or any oversight and operational function that may be delegated to them. As such, this official has a strategic, specialized, and technical role, focused on the formulation and development of bid documents, specifications, and the evaluation of purchases and bidding for the large-scale acquisition of goods, works, and services. This role involves applying bidding methods and ensuring compliance with the laws, regulations, and procedures that govern public procurement in Puerto Rico.

In order for that official to be appointed or designated as a Buyer, it will be an indispensable requirement that they satisfactorily complete and pass a specific training program.

The Specialist's functions will be evaluated according to the job description, the duty sheet, and any rules issued by the Administrator.

### **Article 3.8 - Government Buyer**

The Buyer will be a duly authorized employee of ASG, that has the express power to carry out procurement processes officially representing the entity. This employee performs professional and clerical duties focused on assisting in the management, evaluation, and awarding of routine purchases, as well as purchases made through centralized contracts, in compliance with the laws, regulations, and procedures governing public procurement in Puerto Rico.

In the specific case of Exempt Entities, as well as all entities which have delegations as provided in this Regulation, the Nominating Authority will have the power to designate one or more employees to perform the functions of a Buyer. For such a designation to be valid, the employee that is selected must obtain formal and express authorization issued by the Administrator.

For an official to be appointed or designated as a Buyer it will be an indispensable requirement that he or she satisfactorily complete and training specific program.

The Buyer will have the obligation to complete a minimum of six (6) annual credits in continuing education programs related to topics that are fundamental for the performance of a buyer's functions.

In the case of an Exempt Entity or a Government Entity that has a delegation by virtue of this Regulation, the ASG will evaluate the request for authorization. This authorization will have a limited term and must be renewed annually.

The Buyer's functions will be evaluated according to the job description, the duty sheet, and any rules issued by the Administrator.

### **Article 3.9 - Assistant Government Buyer**

The Assistant Government Buyer assists and participates with the Buyers and Specialists in the processes established by the Administration. The functions of the Assistant Government Buyer functions will be evaluated according to the job description, the duty sheet and any rules issued by the Administrator.

### **Article 3.10 - Procurement Liaison**

The Procurement Liaison will be formally designated by the Nominating Authority of the Governmental Entity to which the person belongs. This designation will be subject to obtaining express authorization from the Administrator or the authorized representative thereof. To be designated as Procurement Liaison the employee must satisfactorily complete initial training.

In addition, the Procurement Liaison must complete specific course. If an Alternate Procurement Liaison is designated the person must meet the same requirements, without any exception whatsoever.

The appointment of the Procurement Liaison will have an effective term of one (1) calendar year from the date of the appointment and renewal may be requested.

The Procurement Liaison will perform functions similar those of the Buyer, although limited to the procurement methods authorized by the ASG for the position. All purchases under a contract or through any other method made by a Procurement Liaison will be processed as authorized by the ASG. Likewise, the persons that have managed or authorized the purchase outside of established channels will be subject to the fines, sanctions and penalties set forth in Act No. 73-2019.

### **Article 3.11 - Receiving Official**

Receiving Officials will oversee the receipt, inspection, and acceptance of goods, works, and services in their respective entities, regardless of the procurement method used.

To support the functions of the Receiving Official, the Nominating Authority of each entity may designate one or more Assistant Receiving Officials. These employees may assist in the performance of the assigned responsibilities and when so determined by the Nominating Authority, may act in substitution of the Receiving Official, provided that they have the required training and authorization. All appointments must be formalized according to the requirements established by the ASG.

### **Article 3.12 - Evaluation Committee**

Subject to the provisions herein, in any procurement process an Evaluation Committee may be constituted to evaluate the compliance of qualifications, proposals, and technical aspects of the offers submitted by the bidders.

The Evaluation Committee may engage in interviews and conversations with proponents and bidders subject to the limitations and prohibitions established in this Regulation. In addition, the Evaluation Committee must submit a Report with its recommendations to the Bid Board or the Assistant Administrator for Procurement, who will not have the obligation to accept the recommendations of the Evaluation Committee, although they must support and justify their reasons.

The members of an Evaluation Committee will be appointed by the Administrator or the authorized representative thereof, at their discretion, for any bidding method and/or other procurement processes established in this Regulation. Any Government Entity or Exempt Entity may recommend members for the evaluation committee. Members may be natural or legal persons that

are not employees or public officials, subject to the applicable regulations and criteria that the Administration may deem necessary.

### **Article 3.13 - Bid Review Board**

The Bid Review Board will be of a semi judicial nature and will have the power to review any administrative appeals of the determinations or awards made by the Auxiliary Administration for Procurement, by the Bid Board of the ASG or by the Bid Board of the Exempt Entities.

The President of the Bid Review Board may request that Administrator appoint the administrative officials that may be necessary for the effective operation of the Bid Review Board.

The Bid Review Board will adopt regulations, the provisions of which will be aligned with the provisions herein and which will establish the procedures that are necessary to guide and standardize internal operations, including the forms that may be necessary for its operations. The provisions of this Regulation will be complementary to the provisions of the Regulations of the Bid Review Board as provided in Act No. 73-2019.

The Bid Review Board shall have jurisdiction to hear all appeals of the award of any informal or formal bid, request for proposals or request for sealed proposals of any Government Entity or Exempt Entity. In addition, the Review Board will have jurisdiction to hear any appeal on any determination on qualifications in request for qualifications processes. This jurisdiction will be limited to what is expressly established in Act No. 73-2019.

The Bid Review Board will not have jurisdiction to address determinations related to informal purchases, exceptional purchases, open market, and other procurement modalities established in this regulation.

### **Article 3.14 - Record of Authorizations**

The ASG will be responsible for keeping an official record of all authorizations and appointments issued to the following officials: Director, Supervisor, Specialist, Buyer, Procurement Liaison, and Receiving Official.

In addition, the ASG may establish the electronic applications or standardized forms that are necessary to facilitate the recording, renewal, and updating of the appointments according to the provisions of this Regulation.

### **Article 3.15 - Responsibility for Authorized Participation**

Governmental or Exempt Entities will be responsible for ensuring that the officials that participate in the procurement and contracting processes provided for in this Regulation have an appropriate authorization or appointment that is current and duly registered. Likewise, they must notify in a timely manner any expiration, revocation, or modification of the authorization that have been issued.

## **TITLE II - STRATEGIC PLANNING**

### **CHAPTER IV - MARKET STUDIES**

The ASG will adopt as part of its strategic planning the preparation of those reports provided by law, as well as any other mechanism that may be necessary for the analysis, planning, and execution of Government Procurement.

### **Article 4.1 - Reports**

#### **Article 4.1.1 - Analysis of Government Expenditure Annual Report**

The Administration will analyze government expenditure for purchases immediately upon the closing of each fiscal year and will prepare a Report on Government Expenditure for Purchases.

The report must include itemization of the purchases by category, the expenses for transactions that were effected, and the total amount of the related government expenditure for the period in question. In addition, the report shall be published on the Administration website and forwarded to the Legislature, within ninety (90) days of the closing of the fiscal year.

#### **Article 4.1.2 - Annual Report**

During the fiscal year the Administrator will submit a Report to the Governor, the Office of Management and Budget, the Office of the Inspector General of Puerto Rico and the Legislature, along with the Expense Budget for the Administration. Each Report will contain all the information related to operations, income, expenses, studies, and investigations during the previous fiscal year. Likewise, when it is deemed necessary or upon request, the Administrator will submit any other special report that may be warranted or requested by the Governor or the Legislature. The Office of the Inspector General of Puerto Rico will perform a pre-intervention in the operations and processes of the Administration, and likewise, the fiscal operations of the agency will be audited and examined by the Office of the Comptroller at least every two (2) years, if so, required by law.

#### **Article 4.1.3 - Annual Procurement Plan**

The Annual Plan is a reference list of goods, works, or nonprofessional services in which the entities plan their procurement or contracting for a fiscal year. Each entity will be responsible for a quarterly review of the Annual Procurement Plan.

Specific instructions regarding the presentation and content of the Annual Procurement Plan will be communicated by the ASG annually through a bulletin or other method of communication to the Governmental and Exempt Entities. At a minimum, the Annual Procurement Plan will specifically contain the following information:

1. Goods, works, and nonprofessional services
2. Expense item
3. Value estimate

4. Account number
5. Approximate date of acquisition
6. Any other information that the Administration may specify

All Government and Exempt Entities must submit an Annual Procurement Plan to the ASG. These reports will be evaluated by the ASG for the preparation of the Annual Plan of the Government of Puerto Rico, which will be available to the public.

Government and Exempt Entities will not have the obligation to put up for bid, purchase, or contract anything included in the Annual Procurement Plan. However, the information included must be as precise and exact as possible. The entities must notify the Administration of any change to the current Plan that was previously submitted. The Annual Procurement Plan must be considered by the Administration in the preparation of centralized Bids or Requests for Proposals.

#### **Article 4.2 - Request for Information (RFI)**

At any time, there being no obligation to engage in a bidding process, information may be requested from vendors or service providers. A Request for Information (“RFI”) does not constitute a bidding method. It may be used for planning purposes, such as for example, to determine whether there are one or more vendors in the market that can provide or offer a particular good and/or service, to estimate prices and capabilities or the different ways in which the required service can be provided, to draft specifications, or investigate the kinds of goods or services available in the market to fulfill a particular need.

The RFI does not constitute a commitment by the ASG nor does it create any obligation whatsoever with the vendors or providers that respond to the request. The ASG and the Exempt Entities will be the sole entities authorized to issue an RFI.

#### **Article 4.2.1 - Content of the RFI**

An RFI should include a general guide to guide the possible vendors or service providers regarding the needs that could give rise to a future procurement through any of the procurement methods established in this Regulation.

In addition, the date, the place or the available means of delivery of the required information shall be specified. If necessary, it will be indicated whether a meeting will be called to exchange information, submit samples, or make clarifications, none of which will imply any obligation for the ASG. Likewise, the vendors or services providers will be advised to take the necessary measures for the protection of any confidential information that constitutes commercial secrets or is protected by law.

#### **Article 4.2.2 - Notice**

At the discretion of the ASG, an RFI may be sent to bidders that are registered in the Office of Registries under the corresponding category or to external persons or entities, according to the information that is being sought. Likewise, an RFI may be published on the ASG website or in any other medium authorized by the ASG.

#### **Article 4.2.3 - Response to the RFI**

The information received in response to an RFI may not be used for evaluation or award purposes in any bidding method. Likewise, such information may not be disclosed to persons unauthorized, nor used for purposes other than those established in this Regulation.

#### **Article 4.3 - Other Mechanisms**

The ASG must be at the forefront as concerns the projection of the future needs of public entities. For this, the mechanisms that may be used include, but are not limited to such, public and private forums, market searches through analysis of studies in other jurisdictions., carrying out and

participating in exhibitions (industry activities, conventions, symposia, among others), studies of technology that offer solutions for procurement processes (E-Procurement), cost analysis, risk analysis in the market with the support of entities that work with these subjects, among others.

#### **Article 4.4 - Records**

Any natural or legal person that is interested in participating in the government processes for contracting goods, works, and nonprofessional services of the Government of Puerto Rico, shall register in the Sole Registry of Bidders (“RUL”), subject to the requirements and exceptions established in the regulation for the Registry. In the case of technology services provider, these shall be registered in the of Technology Providers Registry (“RPT”), as provided in applicable regulations. In the case of professional services, these shall be registered in the Sole Registry of Providers (“RUP”) as set forth in in Act No. 73-2019.

In addition, the ASG will validate the certification of eligibility in the *System for Award Management* (SAM) website, when required.

### **TITLE III COMMENCEMENT OF THE GOVERNMENT PROCUREMENT PROCESS**

#### **CHAPTER V - REQUESTS AND REQUISITION FOR THE PROCUREMENT OF GOODS, WORKS, OR NONPROFESSIONAL SERVICES**

##### **Article 5.1 - Request**

The procurement procedure commences when the Requesting Entity, identifies the need for a good, works, or nonprofessional service for the execution of its functions and meeting its operational objectives. To take the steps to fulfill the need, the Requesting entity will submit a request for the good, works, or services using the means authorized by the ASG. Not all requests become requisitions. When the Entity deems that it does not have the internal resources to satisfy the need, it will identify the funds that are necessary for these and will receive the necessary

endorsements according to the internal operations of the Government Entity. A digital file will be created, identified with a control number, for follow-up and control at all stages.

The Administration may use and gather information from computerized market study systems as part of its strategic planning.

### **Article 5.2 - Content of the Request**

The request shall contain the following elements:

1. The specific purpose and use of the requested goods, works, or services;
2. A detailed description of the goods, works, or services that will facilitate the preparation of the specifications and allow for establishing competition among several vendors;
3. Recommended specifications, that will include technical parameters or suggested requirements for the acquisition;
4. The terms and conditions that the Requesting Entity has for the acquisition, including, but not limited to, the place of delivery, the contact person, and the required conditions of delivery, or in the case of services, the modality and conditions for the rendering of such, as the case may be;
5. Certification of the availability of funds;
6. Statement of the need to execute a contract for a term, suggesting the or duration of such term. In addition, it should be established, as may be required, whether the purchase should be provided by a sole Bidder under an individual contract or if several bidders are required through a multiple selection or centralized contract.
7. Certification of compliance with applicable preferential statutes.
8. Any other required document or certification.

The request will be made in the form that the ASG establishes for that purpose and will be processed through the mechanisms established by the ASG.

### **Article 5.3 - Requisition**

Once the request has been completed and ready for the issue of a Purchase Order and/or contract it will be processed as a requisition once there is an assigned budget. The request may be returned or amended. The requisition form will be the one established by the ASG.

In the case of Exceptional Purchases, once the request is made, the process to be followed is set forth in Chapter 9.

## **TITLE IV - COMPETITIVE PROCESSES IN PUBLIC PROCUREMENT**

### **CHAPTER VI - METHODS OF ACQUISITION**

#### **Article 6.1 - General Responsibilities of the ASG and Exempt Entities**

The provisions of this Chapter will apply to all bidding methods, except when the provision indicates expressly the exclusive application to a specific bidding method.

In general, the responsibility of the ASG and the Exempt Entities are the following:

1. To review and corroborate the accuracy of all of the details of the Request for the Procurement of Goods, Works or Nonprofessional services (amount, description of the product, signature(s), etc.), before initiating the procurement process. To verify, in addition, if the requesting entity submitted all the required documentation with the Request for the Procurement of Goods, Works, or Services.
2. To request, if necessary, that the Requesting Entity provide additional information, changes, corrections, and variations to the request received, or to send reasonable specifications so that it may indicate whether they are in accord with the requested good, works, or nonprofessional service. The Auxiliary Administration for Procurement, in that email, will provide the Requesting Entity with reasonable time for it to provide the requested information by email. The acquisition process will resume when the Requesting

Entity provides the requested information. If the response is not provided within the required term, it will be deemed that the request was withdrawn and the Auxiliary Administration for Procurement will return all the related documents to the Requesting Entity due to inaction.

3. To verify the request for a purchase or service to prevent the fragmentation of the procurement for the purpose of eluding the application of the criteria for the total value of the goods, works, or nonprofessional services to be acquired.
4. To verify whether there is a contract currently in effect at the Administration with a provider or vendor of the requested good or service, in which case the purchase in question will be made from such.
5. To verify the availability of funds before commencing the purchase process, contract or service order.
6. To verify that the request received meets the requirements established in applicable laws, regulations, or standards.

#### **Article 6.1.2 - General Standards for Formal Bids, Informal Bids, Requests for Proposals and Requests for Qualifications**

The ASG and the Bid Board shall comply with the general standards for evaluation or award for formal or informal bids, requests for proposals and requests for qualifications processes, as applicable.

1. Clear, comprehensible, and objective specifications should be established, that are not based exclusively on the judgment or vision of any public official or employee or external consultant, and that are based on s objective criteria of quality, functionality, durability, and best performance of the product or service to be acquired or contracted.
2. No compliance with materials, kind of product, service or conditions, that are exclusive to a brand, company, or provider, may be demanded without justification, to the detriment of other vendors or bidders, including Puerto Rican bidders or manufacturers.

3. When delivery of samples of the products to be acquired is demanded or requested, there should be an inspection or objective analysis of the samples of all the bidders. All participating bidders will have a reasonable opportunity and be notified to be present at such an inspection, whether at the pre-bid or any other meeting, prior to the award. Bidders will have the opportunity to make and observations on the samples of other bidders in a reasonable and timely manner.
4. When the noncompliance with specifications, conditions or terms of the process is raised as the basis for disqualifying or rejecting the offer, the basis for such determination should be clearly set forth in the notice of award, along with the technical analysis that was carried along with all of the supporting documents for such.
5. To require that all Bidders fulfill their duty to honor the guarantee for the Government, if any, regardless of whether the purchase was made through a distributor.
6. It will specify that the guarantee for the product or service shall clearly state what is included and what is not included, showing transportation costs, if any. Furthermore, this must be certified in the case of products, by the local or non-local manufacturer and as well as by the representative or distributor, guaranteeing to the Government Entity the replacement of parts or products, services and labor under terms that are clearly set forth in the Bidder's offer and that are subsequently included in the contract entered into with the prevailing Bidder.
7. All necessary measures will be adopted to ensure the transparency, prudence, correction, reasonability, and objectivity of the evaluation and award of bids or other methods of acquisition.
8. Compliance with preferential policies will be observed and it will be ensured that the specifications that are developed are not bound in an exclusive manner to any model, product, or service of any brand, product line, or company, produced or located in or outside of Puerto Rico without justification whatsoever. Likewise, no official, employee, contractor or consultant, who is charged with recommending, preparing, or reviewing the specifications, may tie, bind, or condition the specifications any model, brand, or product, and shall be limited to establishing the requirements for quality, safety, and objective characteristics of the product or service, that is to be selected and contracted, in a manner

that will foster free competition between bidders and an equal opportunity for all bidders, so that their product may be selected if it meets such requirements and characteristics.

9. All Bidders will be requested to provide a precise and detailed description of the goods, works, or services that are the subject of their offer, including the guarantees and terms of delivery, if any. It will not be accepted that the bidders or contractors include generic or ambiguous descriptions in the delivery terms or the guarantees for their products and services in their bid, request for proposals and contracting of purchases of products or services. In that regard, all Bidders and contractors, as applicable, must include in a clear and detailed manner, the specific period or the applicable terms of each guarantee, their limitations and conditions, the steps required to make a claim under the guarantee, a clear description of what entity will provide the replacement, rectification, correction, or repair service for the product or the service and the delivery terms of the product or service. Any offer that fails to comply with the above, will be deemed not to have been submitted and the such may not be favored in the award of the bid or proposal. Likewise, under no circumstances may the provisions of this paragraph be omitted in the process of contracting for the purchase of goods, works, or nonprofessional services.

### **Article 6.1.3 - Bonds and Insurance**

In the Ordinary Informal Bid, Formal Bid, and Request for Proposals procurement procedures, it will be compulsory to require such insurance, bonds or guarantees that may be necessary and convenient depending of the nature of the good or service to be acquired, such as a Performance Bond, Bid Bond, Payment Bond, State Insurance Fund Corporation Policy (Workers' Compensation), Employer's Liability, Commercial General Liability, Automobile Liability, Builders Risk, Pollution Liability, Installation Floater, Professional Liability, among others.

All the Bonds, insurance and guarantees that are received in the procurement procedures will be delivered to the ASG for their custody and will be governed by the provisions set forth in Chapter XV.

## **Article 6.2 – Protest of the Bid Notice**

If a Bidder that is seeking to participate in an Ordinary Informal Bid, Formal Bid, Request for Proposals, Requests for Sealed Proposals, or a Request for Qualifications, as the case may be, disagrees with the final terms, instructions, specifications, or conditions established in the bid notice, the Bidder may file through the electronic means established by the Administration or personally with the Bidding Official a written appeal, within three (3) business days following the date on which the Bid Packet is made available. Any appeal of the bid packet filed outside of the term set forth here will be rejected outright. A copy of the appeal that is filed shall be notified to the invited bidders.

An Appeal of the Bid Notice, in writing, must contain the following:

1. The number of the Bid or Request for Proposals,
2. A detailed statement of the specific parts, specifications and/or conditions established in the Bid Notice that are the subject of the appeal.
3. The basis for the appeal being brought and any evidence that supports the argument being raised.
4. A clear indication of the remedy or action being sought.
5. The signature of the Bidder.

As a consequence of the filing of the appeal, there will be an automatic stay of the Ordinary Informal Bid, Formal Bid, Request for Proposals, or Request for Qualifications proceedings. The subsequent terms will be counted on from the notice of the decision of the Bidding Official who evaluated the appeal and resolved such on its merits within five (5) business days from the date of receipt of the notice.

The determination of the Bidding Official will be notified to the appellant and the invited bidders through the electronic means established by the Administration.

If the Bidder disagrees with the Bidding Official's determination, the Bidder may request administrative review before the Review Board, after receiving the notice or resolution of the award, in accordance with the provisions of Chapter VIII of this Regulation.

### **Article 6.3 - Submission of Offers or Proposals**

The submission of offers on Bids, Requests for Proposals and Sealed Requests for Proposals will be through the electronic means established by the ASG. The Administration may include a requirement that the bid documents be submitted on paper.

#### **Article 6.3.1 - Ratification of the Offers or Proposals**

The offers or proposals must be signed and each page must be initialized by any of the persons authorized in the RUL on behalf of the Bidder.

#### **Article 6.3.2 - Identification of Offers or Proposals**

All offers, regardless of the means of submission, whether in person or electronically, will be duly identified with the following:

1. Number of the bidding process;
2. Name, address, and telephone number of the Bidder; and
3. Any other information that is established in the bid notice.

#### **Article 6.3.3 - Inadequate Identification**

Any offer or proposal received without identification according to the provisions of Article 6.3.2 will be processed as regular correspondence. In such cases, if the offer or proposal has been submitted physically, it may be opened according to the regular procedure for handling correspondence. Once it is opened according to the regular procedure for physical correspondence, the Assistant Administrator for Procurement, the secretary of the Bid Board, or the authorized representative thereof, as needed, will contact the Bidder to return the envelope as it was received so that the Bidder may comply with the requirements established herein.

In any of the cases described above, the date and time of the original receipt will not be considered valid for the purposes of compliance with the deadline for submission of the offer or proposal. This does not apply in the case of processing by electronic means.

#### **Article 6.3.4 - Acceptance of the Offers or Proposals**

Offers or proposals will only be accepted up to the date and time established as the deadline in the bid notice. In the case of offers or proposals sent electronically, the official date and time of receipt will be what is shown in the receipt data in the system. For in person delivery, the exact date and time will be stamped on the envelope or package. The evidence of electronic receipt or the stamped envelopes or packages will be kept in the official records of the process.

In the event of a natural occurrence or special circumstances that cause of the ASG or the Bid Board headquarters to close, thereby preventing the receipt of offers or proposals on the deadline established in the bid notice, the offers or proposals will be submitted when the ASG resumes its functions, at which time it will be duly notified.

#### **Article 6.3.5 - Responsibility for Delivery Outside of Term**

The ASG will not assume any responsibility for a Bidder's loss of opportunity by submitting an offer or proposal within the term established in the procurement process in question. It will be the exclusive responsibility of the Bidder to ensure compliance with all of the submission requirements, including adequate identification, the use of the correct means of submission and strict compliance with the deadline set forth in the conditions of the bid packet or the bid notice.

The ASG will not be liable for errors or omissions that are attributable to the Bidder, to third parties, or technical, logistic, or administrative failures that prevent the timely submission of the offer or proposal.

### **Article 6.3.6 - Noncompliance of the Submission Term**

Offers or proposals that are submitted beyond the date and time established in the bid packet will not be accepted. Evidence of the date and time of receipt will be recorded in the bid process files.

In the case of a physical submission, this will be returned to the Bidder and the Bidder will be advised of their disqualification from participation in the bid process due to the failure to meet the submission requirements established in the bid notice.

### **Article 6.3.7 - Limitations on Submission of Offers or Proposal**

Each Bidder shall have the right to submit a single offer or proposal for each public bid, unless otherwise indicated in the bid packet. Submission of several offers or proposals under different legal entities, subsidiaries, or affiliates, with the consequence of obtaining an undue advantage, will be sufficient cause for outright disqualification. However, this does not include circumstances under which the bid packet allows for a Bidder or proponent to tender through several legal entities and submit offers or proposals for different items in industries where this may be necessary for the benefit of the public interest and as such is not expressly prohibited in the applicable regulations.

### **Article 6.3.8 - Use of Official Forms**

Bidders must submit their offers or proposals using the official forms provided by the ASG. If necessary, the bidders may photocopy the official form.

If the offers or proposals are submitted electronically, the electronic copies of the documents will be considered as official for the bidding process. If an original signed document is requested, it will be accepted according to the provisions of the bid notice.

Bidders may add pages to clarify or describe their offers or proposals in greater detail. However, this does not mean they may alter the offer form.

### **Article 6.3.9 - Bidders as Exclusive Representatives of Brands**

When the Bidder is the exclusive representative of the specific brand that it is offering, the Bidder has the obligation to notify it in its offer or proposal and submit the manufacturer's certification.

### **Article 6.3.10 - Custody of the Offers or Proposals before the Opening Act**

Offers or proposals that have been submitted will be under the custody of the Auxiliary Administration for Procurement and the Bid Board, as the case may be, and under no circumstances will be opened until the date and time set for the Opening Act in the case of Bids, Requests for Proposals, and Requests for Sealed Proposals.

### **Article 6.3.11 - Handling of Open or Deteriorated Envelopes or Packages**

If before the date of the Opening Act an offer or proposal is received in an open, tampered, or deteriorated envelope or package, the Assistant Administrator for Procurement or the authorized representative thereof, or the secretary of the Bid Board, as the case may be, will contact the Bidder so that it may:

1. Personally verify the envelope or package and the documents it contains;
2. Formally submit the offer or proposal under seal.

In such case, the date of submission will be the date of the original receipt.

A record will be drafted on the documented details of the condition of the envelope or package, which will be attached to the offer. The Bidder will certify the date and time of inspection, to ensure the transparency of in the process. Otherwise, the offer will not be accepted.

### **Article 6.3.12 - Record of the Offers or Proposals Received**

All the offers or proposals received on the date and time established will be registered by the Auxiliary Administration for Procurement or by the Bid Board, as the case may be, in the Record of Offers or Proposals by the means the ASG may establish for that purpose.

### **Article 6.3.13 - Correction to the Offers by the Bidder**

Corrections to the offers or proposals, which may arise as a consequence of apparent errors, will be certified by the Bidder or proponent by signing or initialing such, before the deadline for submission of offers for the Opening Act. If this requirement is not met, the offer or the proposal will be invalidated for the respective item or items, except that the bid notice or other applicable ASG rules expressly provide for an exception.

### **Article 6.3.14 - Modifications to Offers Prior to the Opening Act**

Any modification that alters the terms of the offer or proposal that was previously submitted must be made in writing and submitted to the Assistant Administrator for Procurement or the Bid Board, as the case may be, provided that the time and date deadlines established in the bid notice have not passed. These will be submitted and delivered in the same manner as the original offer or proposal, as established in the bid notice. Likewise, they will be duly identified with the information required for the original offer or proposal and visibly include the word "Modification."

No changes to the offers or proposals will be accepted if submitted after the time and date deadlines established for submission.

### **Article 6.3.15 - Opening of the Modified Offer or Proposal**

All modifications of offers or proposals will be opened on the date and time and at the place set for the Opening Act of the process, along with the original offer or proposal.

### **Article 6.3.16 - Withdrawal of the Offer or Proposal**

The withdrawal of an offer or proposal may be requested in writing and addressed to the Auxiliary Administration for Procurement or the Bid Board, as the case may be, at any time prior to the Opening Act. Once an offer or proposal for a given bid has been withdrawn, the Bidder may not submit a substitute offer. Under no circumstances will the withdrawal of an offer or proposal be admitted after the Opening Act.

### **Article 6.4 - Kinds of Offers**

The Auxiliary Administration for Procurement or the Bid Board may accept or reject offers submitted by bidders according to the provision of this regulation.

#### **Article 6.4.1 - Basic Offer**

The Basic Offer is an offer in which the bidders state as a price per unit for each of the items or lines for which they seek to submit a quotation. If the Bidder states prices per unit for one item and omits them in another, it will be understood that the Bidder is only interested in making an offer only for such items for which the Basic Offer was made.

#### **Article 6.4.2 - Alternate Offer**

A Bidder may submit a Basic Offer and one or several alternatives for goods or nonprofessional services from different prices, qualities, or categories when these have been requested in the quotation sheet or the bid packets of formal bids, ordinary informal bids, and SRFP. This opportunity must have been offered to all other bidders. The fact that a request has been made for alternate offers in no manner will obligate the Auxiliary Administration for Procurement or the Bid Board to accept such, even when they are for a price that is lower than the Basic Offer, if it is considered that they does not represent the best interests of the Government of Puerto Rico.

### **Article 6.4.3 - "All or Nothing" Offer**

As an alternative to the Basic Offer, an "all or nothing" offer will be admissible. This consists of an offer of a price for a group of items or lines, subject to the condition that all of these will be awarded to the Bidder and is so specified in the bid notice.

### **Article 6.4.4 - Lump Sum Offer**

It will be admissible for bidders to make Lump Sum bids. The Bidder will note next to the amount for the lines being quoted a reduced figure or a percentage discount if such is required in the bid notice.

### **Article 6.4.5 - Other Considerations regarding Offers**

The Auxiliary Administration for Procurement or the Bid Board will not consider the offers that add or eliminate specifications or conditions that are required in the quotation sheet or bid notice, or that alter, modify, or vary such. Offers that contain phrases, paragraphs, or comments that are ambiguous, incomplete, or undefined or that diminish the certainty of the offer will not be considered. As an exception, minimum deviations that do not alter the basic concept of the specification, the conditions, or the terms will be accepted, only if no Bidder has offered a good or nonprofessional service that does not meet the required specifications and terms.

The total price of the offer will be considered, but all offers must include breakdown of the price offered: price per unit of the good or service (if item), transportation costs, delivery, assembly, guarantee, training, maintenance or services, replacements, among others, if required in the bidding notice.

### **Article 6.5 - Evaluation and Award**

The Administration and the Bid Board must abide by the Evaluation and Award Standards established in this Regulation for the implementation of the Bids and Requests.

### **Article 6.5.1 - Internal Guidelines for the Evaluation**

The Administrator or the Representative Authorized thereof may formulate and implement detailed guidelines that precisely define the valuation procedure for the offers, as well as the standards and criteria for awards. These guidelines will be the operational tools that will ensure that the evaluation and selection process is carried out under the principles of transparency, impartiality and efficiency. The guidelines may also include methodologies for assigning points, the consideration of technical and economic factors, and any other criterion necessary to ensure a fair and justified award.

### **Article 6.5.2 - Evaluation of Offers or Proposals**

The ASG will evaluate the offers or proposals received according to the Evaluation Criteria set forth in the bid notice, according to the established specifications, terms, and conditions with a view to obtain the Best Value.

The Evaluation Committee, if such has been constituted, or the official assigned to the acquisition process, may assist the Assistant Administrator for Procurement or the authorized representative thereof, or the Bid Board, in the evaluation process of the offers or proposals. The Committee may also participate in any procedure authorized by the ASG that may be deemed necessary for the evaluation.

In addition, the ASG will provide a reasonable term for the Requesting Entity to evaluate the offers or proposals. However, the evaluation by the Requesting Entity will not be indispensable for the award process.

### **Article 6.5.3 - Basic Evaluation Criteria**

In the evaluation of the offers or proposals, the ASG will consider the criteria set forth in the bid packet documents, such as the following:

1. Compliance of the offers or proposals with the specifications, terms, and conditions established in the bid packet.
2. The quality of the goods, works, and services offered or proposed and how these comply with the specifications and satisfying the needs established in the bid packet, and if samples for such have been submitted.
3. The reasonability of the price;
4. If according to the applicable regulations for the process, the Bidder meets the requirements for preference according to any current state or federal statute, in which case such preference will be afforded.
5. The recognized experience of the Bidder or its representatives in doing work of an equal or simile nature or of its components.
6. The delivery term, if such was specified as one of the conditions.
7. Economic and financial capacity;
8. The terms and conditions of the guarantee, as applicable.
9. Any other pertinent criterion that represents Best Value as defined in Article 1.7 of this Regulation.

#### **Article 6.5.4 - Permissible Deviations**

The Auxiliary Administration for Procurement or the Bid Board, as applicable, may accept minimal deviations in the offers or proposals received, provided that such deviations do not affect the purpose of the process nor substantially alter the essential quality, capacity, or characteristics of the good, works, or service, and that the price offered is reasonable according to the market. Deviations that will not be considered minimal are those that imply changes in price after submission of the offer, modifications to the basic terms and conditions, or uncurable defects that compromise the validity of the offer or proposal such as, but not limited to, the untimely submission of a bond.

### **Article 6.5.5 - Award by Item**

The Auxiliary Administration for Procurement or the Bid Board, as the case may be, may accept or reject any item or groups of items of any offer or proposal, or issue an award grouping several items if such had been advised in the bid notice or when such is in the best interests of the Government of Puerto Rico.

### **Article 6.5.6 - Award of sole Offer**

When an offer is received from a single Bidder, the Auxiliary Administration for Procurement or the Bid Board, as the case may be, may proceed to evaluate and issue an award, provided that such offer is in accordance with the specifications and the price is competitive and comparable to the prevailing market price.

In these cases, the Auxiliary Administration for Procurement or the Bid Board, as needed, may negotiate with the sole Bidder for the purpose of optimizing the terms and conditions of the offer, to ensure that the award is the Best Value for the Government of Puerto Rico.

### **Article 6.5.7 - Tied Offers**

It will be deemed that that there is a tie when two or more offers received in a Formal Bid or an Ordinary Informal Bid and SRFP are identical with regard to price, specifications, and other conditions stipulated in the bid packet, and that upon evaluation are found to be the Best Value.

In such cases, the Auxiliary Administration for Procurement or the authorized representative thereof, or the Bid Board, as the case may be, will notify the tied bidders so that within no more than three (3) business days to be counted from the notice, the Bidder may appeal before the Assistant Administrator for Procurement or the authorized representative thereof, or before the Bid Board or an authorized representative, as the case may be, for the purpose of submitting a new offer.

New offers must maintain prices that are equal to or lower than those of the original offer. The new offers will be opened on the date and time that is called for the opening

New offers will be subsequently evaluated, and the award will be made to the responsive Bidder that has offered the Best Value for the Government of Puerto Rico.

In the event that the tie persists in the second round, the same procedure will be repeated until the tie is broken and the award may be made according to the criteria set forth in this Regulation.

#### **Article 6.5.8 - Outright Rejection**

All offers or proposals may be rejected in any of the following situations:

1. When none of the offers or proposals meet any of the minimum requirements, specifications, terms, or conditions established in the bid notice;
2. When the prices obtained in all the offers or proposals that were submitted are unreasonable or the terms are overburdensome; or
3. When none of the offers are the Best Value for the Government of Puerto Rico.

#### **Article 6.5.9 - Deserted Bidding**

For Bid and Request where no offers or proposals are received on the date and time established for such in the bid notice it will be deemed that the bid is deserted.

When the bid process is deserted, the official that is directing the process will prepare a certification of such. After the second attempt, an exceptional purchase may be made according to the provisions of Chapter IX.

#### **Article 6.5.10 - Repetition of Bidding**

If a bid is considered to be deserted, the number of bidders must be expanded to satisfy the needs of the entities. In the case of centralized bids, the Auxiliary Administration for Procurement or the Bid Board, as the case may be, at request of the Requesting Entity, may hold a Repeat Bid (R1), and issue a second call for bids.

#### **Article 6.5.11 - Mathematical Errors**

In the event of a mathematical discrepancy between the total cost indicated in the table of offers and the actual amount of the price by item of the offers received, the cost by item will prevail if the difference between both amounts is not greater than zero point five percent (0.5%). This rule will only be applied if the offer continues to be the Best Value, regardless of which of the two amounts is used.

#### **Article 6.6 - Resolution and Notice**

The award of all Ordinary Informal Bid, Formal Bid, and RFP processes will be made in a resolution and notified to all participating Bidders.

All notices or resolutions of an award must be forwarded to the Administrator for review, prior to being notified.

#### **Article 6.6.1 - Notice of Award**

The notice of award for the bidding process will be made appropriately through email to all participating bidders. Notice will be made simultaneously and by the same method for all parties.

### **Article 6.6.2 - Content of the Notice of Award**

The notice of award must be duly justified and include the factual and legal basis, so that any forum where an appeal is brought may review such and thereby determine whether the decision was arbitrary, capricious, or unreasonable.

The notice shall include:

1. the names of the participating bidders, as defined in the Article 1.7, in the process and a short summary of their offers or proposals;
2. the factors or criteria that were taken into account for the award;
3. the defects, if any, of the offers or proposals of the unsuccessful bidders, and;
4. the availability and the term to seek administrative review before the Bid Review Board and judicial review before the Court of Appeals.

### **Article 6.7 - Provisions for Works/Construction**

In addition to the provisions for the award of Requests, Ordinary Informal Bids, and Formal Bids, works projects must also comply with the following:

#### **1. Design, Bid, and Build (DBB)**

The Requesting Entity already has a design or has retained a design firm. The ASG will hold the bid exclusively for the construction stage. The designer may take part in the Evaluation Committee along with the Requesting Entity.

#### **2. Design and Build (DB)**

In this process, according to regulations on mixed services, the bid will foresee that a single contractor will design and build. Preferably this will be done through the Request for Proposals (RFP) mechanism.

### **3. Construction Order**

Applicable to small works with a cost of less than \$50,000.00.

#### **Article 6.7.1 - Management Model for Works**

As a general rule, a cost estimate will be requested to initiate the bid for works. However, this process may be initiated without a cost estimate under the following conditions:

1. The estimate for the works is \$10,000.00 or less.
2. The works are urgent, they are immediate repairs, or they are essential for operational continuity, duly certified by the Requesting Entity.
3. The project worksheet (PW) includes a statement of emergency.
4. There is a contract currently in effect with an authorized provider that execute the works under the same contractual terms, further to confirmation of budgetary availability.

#### **Article 6.7.2 - Kinds of Works**

##### **1. Small Works**

For works under \$50,000.00, including complex repairs made by Contractors the following will be the process:

- a) Once the case has been evaluated, dates for the site visit and compulsory pre-quotation meeting will be set in accordance with Article 7.1 of this Regulation.
- b) The ASG Buyer will define the clauses, terms, and conditions in coordination with the Requesting Entity, including the request for bonds, guarantees or other provisions according to available funds and the characteristics of the project.
- c) The date for the submission of offers may be changed as an outcome of the pre-quotation meeting.

## 2. Ordinary Informal Bids for Works

For works with a cost of more than \$50,000 and less than \$250,000.00. the process will be the established in the Article 7.2.1 of this regulation and the same steps as those established for formal bid will be followed; for the bids or the process established SRFP in Articles 7.4 and 7.5. the site visit and the pre-bid or pre-offer meetings may be on the same day, since both are compulsory activities. However, certification of the visit may be authorized according to the provisions of the article below.

## 3. Formal Bid / Sealed SRFP

For works that are over \$250,000.00, the process will be the established in Article 7.3 of this Regulation and will the same steps as those established for formal bids; in the case of bids or the process for Sealed SRFP, this will be as provided in Article 7.4. The site visit and the pre-bid or pre-proposal meetings may be on the same day, since both are compulsory activities. However, certification of the visit may be authorized according to the provisions of the article below.

### **Article 6.8 - Bid Notice for Works**

In addition to what is provided for ordinary processes, bid notices for works must include:

1. Name of the project
2. Location of the project
3. Scope of Work.
4. Term for the completion of the works
5. Bid notices for works must include a section on signage:
  - a. For works that require signage, the contractor will provide and install a 4' x 8' sign or a sign with the applicable measurements. The design and information to be shown on the sign will be provided by the project manager. The sign must include the logos of the Requesting Agency, the ASG, and the Government of Puerto Rico.

## **Article 6.8.1 - On-Site Inspections**

### **1. Established Date:**

The bid notice shall clearly state the date, time, and address of the on-site inspection.

### **2. Simultaneous Site Visit and Meeting:**

The pre-bid or pre-offer meeting and the site visit may be on the same date, if so stipulated in the bid notice. These will be compulsory.

### **3. No Site Visit Required:**

When a site visit is not part of the bid process and the bid notice so allows, the Bidder must certify that the scope of the works, drawings, measurements, and other technical aspects were verified within in the past three (3) months.

## **Article 6.8.2 - Tables of Offers: Itemized vs. Lump Sum**

### **1. Itemized Offers**

Itemized submissions may be made when:

- a) The project includes a detailed breakdown by components or technical phases.
- b) Greater budgetary control and follow-up is required during implementation.
- c) The works are susceptible to Change Orders or require unit reference prices.
- d) There is a complete and approved design that comparison by item.
- e) Transparency sought for cost estimates and implementation.

## **2. Lump Sum Offers**

The lump sum modality may be used when:

- a. The scope of the project is clearly defined and does not require complex technical breakdown.
- b. The works are simple, repetitive, or rapidly executed.
- c. The contractor can assume responsibility for the total cost without the need for adjustments.
- d. The entity seeks administrative agility and a lower oversight load.
- e. The works may be completed in a single phase.

An informative breakdown may be required for the lump sum to validate technical and financial consistency.

However, for competitive purchases, agencies should use a cost bid sheet that includes estimated volumes of each unit type, if the procurement includes multiple types of goods and services.

A lump-sum payment approach should only be used if the agency can clearly and fully describe the entirety of the deliverable in the scope of work. (i.e., what exactly will the state receive in exchange for the lump sum payment).

## **3. Selection Criteria**

The selection of any itemized or lump sum modality may be at the request of the entity or according to the opinion of the ASG authorized official, in coordination with the technical team of the Requesting Entity, before the publication of the bid packet, taking into account:

- a. The level of definition of the project
- b. Technical complexity
- c. Identified risks
- d. Estimated cost
- e. Conditions of funding

### **Article 6.8.3 - Amendments to the Bid Packet for Works**

In the case of works projects, amendments to the bid notice may be made within the following lengths of time:

1. Five (5) business days before Opening Act, when the amendment implies changes or additional requests that must be included in the offer or,
2. One (1) business day before the Opening Act, when the amendment does not affect the submission of the offers or proposals.

### **Article 6.9 - Centralized Bids and Request for Proposals**

Centralized Bid sand Requests for Proposals refer to the ASG processes to execute centralized contracts that arise from the needs submitted by all of the entities in their plans or according to data gathered from the processes established in the Section III of this Regulation. The objective of this approach is to optimize the procurement of goods and services, by reducing costs and guaranteeing transparency and efficiency in the procedures. These processes will be implemented for Formal Bids, Ordinary Informal Bids, and SRFP.

The terms for awards established in Article 7.4.9 of this Regulation will not be applicable for this kind of bidding, since these are procedures that depend on the complexity of the good or service to be acquired. Instead of applying traditional award procedures, additional criteria and conditions will be adopted, there will be interagency coordination, and specific contractual frameworks will be applied.

Likewise, the ASG may establish monitoring and follow-up mechanisms to ensure fulfillment of the centralized contracts, to ensure quality and efficiency in the use of public resources as provided in Chapter XIII. These contracts will be multiannual pursuant to legislation that allows for such and may be amended according to the provisions of Article 12.4.

### **Article 6.10 - Cancellation and Notice**

The Administrator or the authorized representative thereof may cancel any method of acquisition, in whole or in part, before or after the award, when it is deemed necessary for the protection of the best interests of the Government of Puerto Rico. After the process is canceled, the Auxiliary Administration for Procurement or the Bid Board, as needed, will forward a Notice of Cancellation to the bidders on the digital platform or by any other means authorized by the ASG. In addition, the Notice of Cancellation will be published in the RUS and on the ASG webpage.

### **Article 6.11 - Implementation of Preferential Laws**

The Administration may order exclusive competitive processes for preferential groups as provided by law, provided that conditions exist for doing so.

## **CHAPTER VII - METHODS OF BIDDING**

### **Article 7.1 - Informal Purchase**

The informal purchase is the bidding method that will be used when the Requesting Entity requests the procurement of goods, works, and nonprofessional services, the total cost of which does not exceed fifty thousand dollars (\$50,000.00).

In all cases, informal purchases and micro purchases will be effected by the Auxiliary Administration for Procurement and must comply with the principles of transparency, efficiency and sound administration of the public funds. In addition, they must ensure the selection of vendors according to criteria of reasonability in costs and compliance with applicable regulations.

The Administrator or the authorized representative thereof may use the informal bid method for complex purchases when the cost does not exceed fifty thousand dollars (\$50,000.00) or amount established by law, when it is determined that such method is in best interests of the Government of Puerto Rico.

The process for the informal purchase will be the following:

1. The Requesting Entity must complete the request for the goods, works, or nonprofessional services to be acquired as provided in Article 5.2.
2. Once the Requesting Entity completes the request, the Auxiliary Administration for Procurement will request three (3) quotations through the system established by the ASG.
3. The vendors selected for the quotation must be in one of the services categories described in the request in the RUL.
4. In cases where the minimum number of quotations cannot be obtained, as required, this will not be an obstacle to conducting the purchase.
5. The quotations will be received solely through the means established by the ASG on or before the date indicated and will be requested according to Article 6.1.

#### **Article 7.1.1 - Micro Purchase**

This is a simplified procurement method for purchases of a lesser amount. The micro purchase will apply to those procurements, the cost of which does not exceed five thousand dollars (\$5,000.00).

The following is the process for processing a micro purchase:

1. The Requesting Entity will submit the request along with a quotation to the ASG. The quotation must address the real and immediate need of the Requesting Entity, in addition to showing fair and reasonable prices, based on market research.
2. When a quotation is not included in the requisition submitted by the Requesting Entity, the Auxiliary Administration for Procurement will be responsible for initiating a search for at least one (1) quotation through a Request for Quotations to an eligible Bidder that is duly enrolled in the RUL under the category of the proposed acquisition. This quotation will be included in the file. The ASG will have no obligation to use the quotation that is submitted.
3. The Auxiliary Administration for Procurement will review the criteria and analyze the reasonability of the price in the quotation under consideration.

4. The micro purchase mechanism may not be used to acquire goods, works, or services that are under the centralized contracts of the ASG.

The Bidding Official reserves the right to evaluate of requests that have been previously submitted by the Requesting Entities to ensure that different bidders are included, provided that the line will allow for such, with a view no to select the same providers for all requests.

No purchase will be awarded to a Bidder that is not active and eligible in the RUL. It will be indispensable requirement for the use of the micro purchase mechanism that the Bidder be duly registered in the RUL and under the category of to the good or service that is to be acquired.

## **Article 7.2 - Informal Bid**

The Bid Informal will apply for the acquisition of goods, works, and nonprofessional services, the cost of which exceeds fifty thousand dollars (\$50,000.00), but does not exceed two hundred and fifty thousand dollars (\$250,000.00). Informal Bids will be carried out in two different processes: an Ordinary Informal Bid and a Reverse Informal Bid. However, the procedures for works projects will be as provided in Chapter VI, particularly Article 6.7.

Informal bids may adopt the Open Market mechanism, provided that such is authorized by the Bidding Official with the approval of the Administrator. It will be sufficient for the Administrator and the Bidding Official to approve the Open Market process on a single occasion for the mechanism to be used as it may be regulated.

The Assistant Administrator for Procurement or the authorized representative thereof will evaluate the offers and make the award by selecting the responsive Bidder that offers the Best Value.

### **Article 7.2.1 - Ordinary Informal Bid**

#### **1. Invitation and Bid Packet**

Ordinary informal bids will commence with the publication of the Invitation and the Bid Notice.

The invitation and Bid Notice will include all the terms, conditions, instructions, specifications, and any other necessary details to assist the bidders in the preparation of their offers, proposals, or submissions. This document will govern the bidding process and will also include the evaluation elements that are necessary for the selection of the Bidder.

## **2. Content of the Invitation and Bid Packet**

At a minimum, the invitation and Bid notice shall include the following:

- a. The number of the process, purpose, and date of publication.
- b. Means, date and time of the deadline for the bidders to submit questions.
- c. Date, time, and place of the site visit, and compulsory attendance, as applicable.
- d. Place, means, date and time deadline for submitting the offers.
- e. Date and time for notice of the summary of offers submitted.
- f. Evaluation criteria for the award, as appropriate.
- g. Specifications, which will describe in a clear, comprehensible, and objective manner the goods, works, or nonprofessional services to be acquired.
  - i. In no case may the specifications be based exclusively on the subjective evaluation of an official, public employee, or external consultant. Specifications must be based on objective criteria such as quality, functionality, durability, and optimal performance of the requested product or service. In cases in which applicable federal regulations establish specific requirements related to the specifications that differ from the provisions of this Regulation, the provisions established by such federal regulation shall prevail.
- h. Terms and conditions.
- i. The obligation to post a bond and the amount thereof.
- j. Special conditions or requirements that could affect the award process.
- k. Terms and instructions for submitting a request for administrative review of the award.
- l. Any special certifications or documents that the bidders must submit as part of the offer or proposal.
- m. Kinds of discounts, including the percentage (%) of a prompt payment discount, if any.

- n. Notice of any special provision according to applicable laws and regulations, including this Regulation.
- o. When a site visit is necessary, the date, time, and place will be stated.
- p. Any notice required in applicable preferential statutes.
- q. In situations in which the Bid notice does not include all of the specifications, or any other related documents, the bidders will be advised of the availability of such and where such may be obtained.
- r. Requirements of current engineering and safety regulations and applicable standards for such cases where installation of the acquired equipment is required.
- s. The Bid notice must include a provision that requires that each Bidder, in any process, to specify the offer includes the provision of an environmentally safe and sustainable good. In addition, it must be indicated whether the cost of disposal is included. If disposal or the cost thereof is not provided for, the Bidder must propose alternative means of disposal within the respective cost estimate.
- t. Any additional criterion that the Auxiliary Administration for Procurement may deem necessary to include in the Bid notice.

### **3. Amendments to the Invitation and the Bid Notice**

- a. All amendments must be authorized by the Assistant Administrator for Procurement.
- b. The Bid Notice/Invitation may be amended upon the discovery of a substantial and error and that cannot be rectified in such or when it may be necessary to modify the terms, conditions, specifications, or scope of the work.
- c. The Bid Notice may be amended within the following terms:
  - i. Up to two (2) business days before the Opening Act, when the amendment implies changes or additional items that must be included in the offer or proposal or,
  - ii. One (1) business day before the Opening Act when the amendment does not affect the submission of the offers or proposals.
- d. The Auxiliary Administration for Procurement will notify the bidders that have been invited of any amendment made to the Bid Notice through a Notice of Amendment.

#### **4. Questions and Clarification Process**

The Bid Notice shall establish that all questions will be submitted in writing during the term that is established in the Bid Notice, which will not be more than five (5) days from the date of the publication. This term may be extended for three (3) additional days for just cause.

Any question submitted in writing will be answered within the term that may be established, which will be no more than three (3) business days from the day after the date of the question. Answers or clarifications will be shared with the other bidders to ensure the transparency of the process.

#### **5. Receipt and Notice of Offers**

- a. Offers must be submitted, registered, and evaluated, as provided in Chapter VI of this Regulation.
- b. Once received, the Specialist will have up to two (2) days to open the offers and send a Summary of the Offers received to all the participating bidders.
- c. The summary shall contain:
  - i. Number and matter of the process;
  - ii. Date, time and place of the opening;
  - iii. Number of offers or proposals received;
  - iv. Names of the bidders that submitted offers or proposals;
  - v. A copy of the record of the participants' offers;
  - vi. Certification of the official that presided Opening Act regarding compliance with regulatory provisions for that Act;
  - vii. Any incident that occurred during the Opening Act; and,
  - viii. Signature of the official that presided the Act.
  - ix. That offers that do not meet basic requirements will be automatically rejected.
  - x. That there will be one (1) business day in which to observe the offers submitted by others, without copies or anything that may be considered confidential.

## **Article 7.2.2 - Reverse Informal Bid**

The Reverse Informal Bid is a process in which the bidders compete in real time, submitting descending financial offers with regard to initial reference price. The objective of this is to obtain the best contract conditions.

The Reverse Bid will be used when the characteristics of the good or service to be acquired are standardized and objectively comparable, so that the decision on the award may be principally based on the price.

During the bidding, the bidders may improve their offers within the term that has been set, and the offers submitted according to the terms and conditions established in the Bid Notice will be considered valid.

The bid will be awarded to the Bidder that has submitted the lowest offer, provided that it is admissible and meets the technical, legal, and administrative requirements.

The Reverse Bid process is the following:

1. Description of the good or service:
  - a. The good or service to be acquired must be specified, and be standardized and objectively comparable, as stated in the above article.
  - b. This includes technical characteristics and clear requirements, that ensure equal conditions for all bidders.
2. Request for bids:
  - a. The request for bids will be published through the established electronic channels for all bidders that are enrolled in the RUL under the respective code or codes. The ASG must ensure that all potential bidders have access to the information three (3) days in advance of the date of the competition.

3. Record of bidders:
  - a. Interested parties must register in the electronic platform designated for the bid, provide the required documentation, and accept the terms and conditions of the Bid Notice.
4. Competition:
  - a. The electronic bid will begin on the stipulated date and time.
  - b. The system presents the bidders with the initial reference price, based on which they must make their descending offers.
5. Submission of Offers:
  - a. Bidders may make offers continually and in real time, improving their previous financial offer.
  - b. The system will show, in real time, the lowest offers that have been submitted, without identifying the bidders.
6. Automatic Closing:
  - a. When the term stipulated for the bid has elapsed, the system will automatically close the bidding.
  - b. The Bidder that has submitted the lowest offer meeting all the established requirements will be issued a preliminary award.
7. Evaluation:
  - a. Before the final award, compliance with the conditions and requirements of the Bid Notice will be verified, to ensure that the select offer meets all standards
8. Resolution and Notice:
  - a. A resolution will be issued and the outcome of the bid will be formally notified to the successful bidder and the other participating bidders, as provided in Article 7.4.10 of this Regulation.

### **Article 7.2.3 - Open Market**

The Open Market mechanism will be used for the procurement of specific and detailed goods or services, without being subject to a minimum or determined number of Requests for Quotations.

Once the Bidding Official authorizes this mechanism, with the endorsement of the Administrator, the following process must be carried out:

1. The Auxiliary Administration for Procurement must forward an open Request for Quotation to all bidders enrolled in the RUL under the corresponding category of the good or service to be procured.
2. The open request for quotation must include the following:
  - a. All goods or services with specific information, including the required specifications of that which is to be procured so that the bidder can respond accordingly.
  - b. The quotation submission deadline for all bidders seeking to participate in the procedure. This term will depend on the particular needs of the Requesting Entity but will not exceed five (5) business days from the date the open request for quotation is sent, except in extraordinary circumstances, provided that these are authorized by the Assistant Administrator for Procurement.
3. Once the deadline has passed, the bids received will be evaluated and the contract will be awarded to the responsive bidder who has offered the best value according to the basic evaluation criteria listed in Chapter VI of this Regulation.
4. Failure to respond by bidders will be considered a “No Bid.”

The Assistant Administrator for Procurement or the authorized representative thereof may include any other evaluation criteria deemed necessary; however, any additional evaluation criteria should align to best value requirements as defined in Article 2.6 of this Regulation.

### **Article 7.3 - Formal Bid**

Bidding method used when procuring goods, works, and nonprofessional services with a cost exceeding two hundred fifty thousand dollars (\$250,000.00) or another amount established in accordance with Act No. 73-2019. The Bid Board will evaluate the bids and award the bid to the responsive bidder that offered the best value. It shall be subject to the provisions of Chapter VI.

### **Article 7.3.1 - Invitation**

Each Formal Bid process must include an Invitation, issued by the secretary of the Board or the authorized representative thereof, in accordance with the provisions of this article. The invitation must comply with the following:

1. Bid identification number, purpose and date of publication;
2. Conditions or requirements that bidders must meet;
3. If the process requires a pre-bid meeting, the date, time, place, or means for holding the meeting must be indicated. It must also expressly be stated if attendance to the meeting is compulsory.
4. Date, time, and place of on-site inspection, and the compulsory assistance thereto, as applicable.
5. Method and date and time limit for bidders to submit questions.
6. Details of the date and time limit for submitting the offer.
7. Date, time, and physical place or authorized digital media where the bids will be opened.
8. Any other element or information that, in the opinion of the ASG, needs to be included to ensure the adequate processing of the bid and the fulfillment of its purposes.
9. If the bid notice is not contained in a single document, the invitation must include clear and detailed instructions on the procedure for obtaining the bid notice for the bid, including the street or email address where they will be available, the corresponding contact number, and the method by which they will be delivered, as applicable. Any costs associated with the bid notice must be specified in the Invitation. Additionally, if the bid notice is not available in electronic format, the method and means of obtaining the bid notice must be indicated.

## Article 7.3.2 – Bid Notice

### 1. Content of the Bid Notice:

- a. The invitation.
- b. The bid number and purpose;
- c. Method and date and time limit for bidders to submit questions.
- d. Date, time, and place of on-site inspection, and the compulsory assistance thereto, as applicable.
- e. Method and date and time limit for bidders to submit offers. It must specify where to physically submit the bid notice or, if submitting electronically, provide the filing procedure and platform. A reasonable period of time will be granted from the date of publication of the call for bids, or from the date the bidder receives the invitation, until the deadline for the submission of offers or proposals, so that interested bidders have sufficient time to properly analyze the bid notice and prepare their submissions as required.
- f. When an on-site inspection is necessary, the date, time, and place must be indicated.
- g. The place, date, and time of the Opening Act.
- h. Evaluation criteria for the award, as applicable.
- i. The specifications, which must clearly, comprehensively, and objectively describe the goods, works, or nonprofessional services to be acquired.
  - i. Under no circumstances may specifications be based solely on the subjective assessment of a government official, public employee, or external consultant. Specifications must meet objective criteria, such as quality, functionality, durability and optimal performance of the required product or service. In the event that applicable federal regulations establish specific requirements related to specifications that differ from the provisions of this Regulation, the provisions established by the federal regulations shall prevail.
- j. Terms and conditions.
- k. The obligation to post any bond and its amount, insurance, or guarantee.
- l. The special conditions or requirements that may affect the award process.

- m. The terms and instructions for submitting an administrative review for the bid notice and the award.
- n. Any certification or special document that the bidders must submit as part of their bid or proposal.
- o. The type of discounts, including the percentage (%) of the prompt payment, if any.
- p. Any notice warranted by applicable law and regulations, including this Regulation.
- q. Any notices required by applicable Preferential Laws.
- r. In situations where the bid notice fails to include all specifications or any other related documents, bidders will be notified of their availability and the location where they can be obtained.
- s. Requirements under current regulations and applicable engineering and safety standards in cases where installation of the equipment being purchased is required.
- t. All bid notices must include a provision requiring each bidder, in any process, to specify whether their offer includes the disposal of the goods in an environmentally safe and sustainable manner. They must also indicate whether the disposal cost is included. If disposal and its cost are not included, the bidder must propose disposal alternatives with the corresponding estimated cost.
- u. Any additional criteria that the Bid Board, at its discretion, deems necessary to include in the specifications.

**2. Notices required in the bid notice:**

- a. Notice stating that all submitted offers must include an itemized list of the offered price, including: the unit price of the goods or services (for each item) and the cost of transportation, delivery, assembly, warranty, training, maintenance or services, replacements, among other costs, according to the bidding tables.
- b. Notice stating that the process does not and will not in any way constitute a formal agreement between the parties, nor will it grant any rights to the winning bidder, even if a notice of award has been issued. A purchase order must be issued and the corresponding contract must be signed by the authorized person, or the ASG must issue a purchase order in favor of the authorized person.

- c. By submitting a duly completed offer, the bidder agrees to all the terms and conditions set forth in the Bid Notice. The obligations, duties, and limitations under federal and state compulsory provisions duly disclosed herein, and those that may arise from competent authorities are binding regulations that shall under no circumstances be considered grounds for refusing to enter into a contract to provide the goods, works, or nonprofessional services solicited herein.
- d. The ASG reserves the right to cancel the process at any time if it deems it necessary to protect the best interest of the Government.

These notices shall be made an integral part of the Bid Notice and shall be agreed to by the bidders in order to participate in the bidding process.

The ASG may also include in the Bid Notice any other notices deemed necessary to ensure the clarity and transparency of the bidding process.

### **3. Amendments to the Bid Notice**

- a. The bid notice may be amended if any material and irreparable error is discovered therein, or if its terms, conditions, specifications, scope of work, or other circumstances warrant modification.
- b. All amendments must be authorized by the Assistant Administrator for Procurement as applicable and approved by the Administrator or the authorized representative thereof.
- c. The Bid Notice may be amended within the following terms:
  - i. Up to two (2) business days prior to the Opening Act, if the amendment entails additional changes or solicitations that must be included in the offer or proposal; or,
  - ii. One (1) business day prior to the Opening Act, if the amendment does not affect the submission of offers or proposals.

- d. The Bid Board must issue a Notice of Amendment to the proponents who were invited to submit a Request for Proposal or a Sealed Request for Proposal. The Notice of Amendment must also be published in the Single Bid Registry (RUS) and on the Administration's website. All amendments shall be made a part of the bid notices, and those interested in bidding must take them into consideration when submitting their proposals.

### **Article 7.3.3 - Pre- Bid**

#### **1. Pre-bid provisions**

- a. The Bid Board may hold one or more pre-bid meetings to clarify questions related to the Formal Bid, no less than five (5) business days prior to the date scheduled for the opening act, except when duly certified and documented emergency or extraordinary circumstances arise and it is authorized by the Bidding Official.
- b. Pre-bid meetings may be held on the same day as the on-site inspections, provided that this is in the best interests of the Government.
- c. Anyone arriving after the start of the pre-bid will not be able to participate, unless there is unanimous agreement among the attendees.

#### **2. Presiding Pre-Bids**

Pre-bids may be presided by a member of the Bid Board or authorized representative thereof.

Minutes shall be drawn up of any incidents that occurred during the pre-bid, which shall include:

- a. the number and purpose of the process under consideration;
- b. the name of each person who participated, and
- c. the name and questions asked by participants
- d. a certification by the official who presided the pre-bid meeting attesting to compliance with the relevant regulatory provisions;
- e. any event that occurred during the Opening Act; and

- f. the signature of the official who presided the Opening Act.

#### **Article 7.3.4 - On Site Inspections**

1. The date, time, place, and method for on-site inspections must be clearly indicated in the bid notice.
2. Inspections may be conducted simultaneously with the pre-bid or by certification issued by the bidder who visited the site.
3. Inspections may be conducted by a member of the Board or an authorized representative thereof.
4. A report of the on-site inspection must be drafted. In the event that the inspection is conducted simultaneously with the pre-bid, it should be specified that the report will be made a part of the minutes.
5. In the case of works, the inspection must be conducted in accordance with Article 6.8.1.

#### **Article 7.3.5 - Opening Act**

##### **1. Opening Act provisions**

- a. The Opening Act will be public, and bidders and other interested parties may attend.
- b. All participants must register, indicating their name and the name of the bidder they represent, if any.
- c. Anyone arriving after the start of the Opening Act will not be able to participate, unless there is unanimous agreement among the attendees.
- d. Once the bids have been opened and read in public, the Bid Board may not modify the terms of the bidding method, nor will bidders in attendance be allowed to submit new bids or make changes to bids already submitted.
- e. Anyone attending an Opening Act held in person may examine the documents of the submitted bids after all bids have been read out loud, initialed, and sealed.

## **2. Presiding the Opening Acts**

The Opening Act will be presided by the person who has the power to award the contract, or by a representative authorized for that purpose. In cases where the Opening Act is presided by the Bid Board, it will not be necessary for all the Board members to be present in order to conduct the opening act.

## **3. Opening Act Procedure**

- a. The official presiding must state out loud the following at the Opening Act:
  - i. the number and purpose of the process under consideration;
  - ii. the name of each bidder who has submitted bids or proposals, and
  - iii. the date and time of the bids received and will show them to those present, as established in the bid notice.
- b. The bids will be opened and checked to ensure that each one contains all the documents required in the Bid Notice.
- c. The cover page and bidding form (table, catalog) for each bid or proposal must be initialed and stamped. If there is a high volume of bids or the number of bidders is considerable, the Bid Board members, or the Bid Official acting on their behalf, may be called upon to assist in the bidding process.
- d. Whoever presides over the Opening Act of any Bid shall also read the following out loud:
  - i. the number of the item or line for which bids are being submitted;
  - ii. the price per item;
  - iii. the brand and model;
  - iv. the warranty, if applicable, and
  - v. the delivery date if it is one of the conditions established in the bid packet.

#### **4. Inactive Bidder**

Any bidder who, at the time of the Opening Act, is not active or eligible in the RUL, will have a non-extendable period of five (5) business days, from the Opening Act, to meet the requirements established by the Registry Office and be registered.

The bidder will be solely responsible for updating their information and submitting the applicable documentation within the established term. Failure to do so will result in the disqualification of the bid.

#### **Article 7.3.6 - Opening Act**

Following the Opening Act, minutes recording all incidents that occurred during the Opening Act must be prepared. The official who presided over the process must certify these minutes by signing them, attesting to the accuracy of the information contained therein. The minutes must contain the following:

1. The bid number and purpose;
2. The date, time, and place of the opening;
3. The number of bids or proposals received;
4. The name of the bidders who submitted bids or proposals,
5. A copy of the attendance record of the participants;
6. A certification by the official who presided the Opening Act attesting to compliance with the relevant regulatory provisions;
7. Any event that occurred during the Opening Act; and
8. The signature of the official who presided over the Opening Act.

#### **Article 7.4 - Request for Proposals or Sealed Requests for Proposals**

The bidding method to be used to acquire goods, works, and nonprofessional services that allows for negotiation between the bidder and the Administration while the received proposals are

evaluated. The Request for Proposals (RFP) or Sealed Request for Proposals (SRFP) allows for negotiated purchasing and gives proponents the opportunity to review and modify their proposals before the contract is awarded. Bidders may be asked to submit their best and final offer (BAFO). The RFP or SRFP must contain the parameters or criteria used for awarding the contract. That is, the requirements, terms, and conditions, as well as the factors to be considered in the evaluation for the corresponding award. The negotiation phase creates no vested rights between the parties.

Under this bidding method, a Request for Proposals will be issued when the cost of goods, works, and nonprofessional services does not exceed two hundred and fifty thousand dollars (\$250,000.00) and the award is made by the Auxiliary Administration for Procurement with the approval of the Bidding Official. The Auxiliary Administration for Procurement is responsible for issuing the invitation.

Under this bidding method, a Sealed Request for Proposals will be issued when the cost of goods, works, and nonprofessional services does not exceed two hundred and fifty thousand dollars (\$250,000.00) and the award is made by the Bid Board. The Bid Board is responsible for issuing the invitation.

Under this bidding method, it shall be called a Sealed Request for Proposals when the cost of goods, works, and nonprofessional services exceeds the amount of two hundred and fifty thousand dollars (\$250,000.00), and the award is made by the Bid Board. The invitation shall be issued by the secretary of the Bid Board.

#### **Article 7.4.1- When the Request for Proposals Procedure Should be Used**

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 and/or terms of the bids submitted in an bidding procedure are unreasonable or onerous for the Government of Puerto Rico;
3. When there are few qualified vendors, or;
4. When the prices and/or terms of the bid offers are unreasonable or burdensome for the Government of Puerto Rico;

#### **Article 7.4.2 - Request for Proposals or Sealed Request for Proposals**

1. Basic Requirements of the Invitation for Request for Proposals:
  - a. Process number
  - b. Purpose of the Request for Proposals
  - c. Publication date
  - d. Date, time and place for receipt of proposals
  - e. Date, time and place for opening proposals
  - f. If necessary, the invitation shall include specific instructions on where and how to obtain the bid notice of the Request for Proposals or Sealed Request for Proposals, including the street address, the specific location where the bid notice are to be delivered, and a contact telephone number. The cost of the bid notice, if any, must also be specified.
2. The Auxiliary Administration for Procurement or the Secretary of the Bid Board, as applicable, must forward the Invitation to all bidders enrolled in the RUL under the corresponding category of the good or service to be procured. As a general rule, invitations must be submitted fifteen (15) days before the deadline for submitting proposals. This period may be reduced if the awarding entity certifies and documents emergency or extraordinary circumstances which would require a shorter time frame. When the RFP requires federal involvement, the invitation must be sent within the time frame set by the corresponding federal agency, if applicable.

3. The RFP record must contain evidence of the release of the invitation and its publication in the RUS and on the Administration's website. The official date of the RFP Invitation will be the date on which the invitation was published in the RUS.
4. The Invitation for Request for Proposals or Sealed Request for Proposals will be sent to all bidders enrolled in the RUL under the codes corresponding to the goods or services being procured, via email to the address provided in the RUL. Failure to notify a bidder on the RUL will be sufficient cause for canceling the Request for Proposals or Sealed Request for Proposals, provided that the Opening Act has not yet taken place.

#### **Article 7.4.3 - RFP and SRFPP Bid Notice**

##### **1. Content of the bid notice:**

- a. If a pre-proposal meeting has been scheduled, the date, time, and place must be indicated, specifying whether attendance is compulsory.
- b. The deadline, method, and place for submitting proposals
- c. Place, date, and time when the envelopes or emails containing the proposals or bids will be opened, and instructions on how they should be identified.
- d. Specific instructions regarding how proposals or bids must be submitted, including the due date and time for submission;
- e. Indications on whether the bid must be submitted with a bond, the amount thereof, insurance, guarantee.
- f. Clear and detailed descriptions of the characteristics of the goods, works, and/or nonprofessional services sought to be procured, and the full specifications of each of them. If a specific brand is necessary, the record must include a recommendation justifying this.
- g. The criteria for evaluating and selecting bids.
- h. An overview of the selection process.
- i. Any notice warranted by Preferential Laws.

- j. The terms and conditions that will govern the transaction. These terms and conditions, along with the specifications, will be the basis of the Contract or Purchase Order.
- k. Required terms and conditions of delivery and inspection that are essential for the corresponding award.
- l. Special conditions or requirements that may affect the award process. For example, whether a product sample must be submitted for evaluation and how the sample will be disposed of once testing is complete.
- m. Terms for filing a protest of the bid invitation, notice, and award.
- n. Any certification or special document that the bidders must submit as part of their bid or proposal.
- o. Type of discounts, including the percentage (%) for prompt payment, if any.
- p. If there is additional information not included in the bid notice, where it will be available must be specified.
- q. Any certification or special document that the bidders must submit as part of their bid or proposal.
- r. Requirements under current regulations and applicable engineering and safety standards in cases where installation of the equipment being purchased is required.

## **2. Notices Required in the Bid Notice:**

- a. Notice stating that all submitted offers must include an itemized list of the offered price, including: the unit price of the goods or services (for each item) and the cost of transportation, delivery, assembly, warranty, training, maintenance or services, replacements, among other costs, according to the bidding tables.
- b. The Administrator may cancel all or part of the Request for Proposals or Sealed Request for Proposals, even after the opening act has taken place, provided that no contract has been formally entered into and no purchase order has been issued, if the cancellation of the bid notice is in the best interest of the Government of Puerto Rico.

The reasons for cancellation shall be made part of the procurement file. Among other factors, this may include lack of responsiveness or serious proposals, significant errors in the bid notice and/or accompanying documents or verified significant changes in circumstances. An agency's request to cancel a particular pending process or an award, will not constitute a valid reason when the basis of the request is the preference for another bidder or offeror than the one selected by the Bid Board or the Assistant Administrator for Procurement.

- c. Notice stating that the process does not and will not in any way constitute a formal agreement between the parties, nor will it grant any rights to the winning bidder, even if a notice of award has been issued. A purchase order must be issued and the corresponding contract must be signed by the authorized person, or the ASG must issue a purchase order in favor of the authorized person.
- d. By submitting a duly completed offer, the bidder agrees to all the terms and conditions set forth in the Bid Notice. The obligations, duties, and limitations under federal and state compulsory provisions duly disclosed herein, and those that may arise from competent authorities are binding regulations that shall under no circumstances be considered grounds for refusing to enter into a contract to provide the goods, works, or nonprofessional services requested herein.
- e. The necessary notices regarding the use of individual negotiation on terms, conditions, quality, solution, or prices, or a combination of factors, to obtain the most favorable outcome for the Government of Puerto Rico; the fact that price will not necessarily be the most important factor in the award; the possibility that the award may be made without negotiation; and that by submitting a duly completed offer, the bidder agrees to all the terms and conditions set forth in the Bid Notice. The obligations, duties, and limitations under federal and state mandatory provisions duly disclosed herein, and those that may arise from competent authorities are binding regulations that shall under no circumstances be considered grounds for refusing to enter into a contract to provide the goods, works, or nonprofessional services solicited herein.
- f. The ASG reserves the right to cancel the process at any time if it deems it necessary to protect the best interest of the Government.

These notices shall be integral part of the Bid Notice and bidders must accept them in order to participate in the process.

### **3. Amendments to the Bid Notice**

- a. The Bid Notice may only be amended if the following occurs:
  - i. a substantial and irreparable error is found;
  - ii. its terms, conditions, specifications or scope of work must be modified;
  - iii. an increase or decrease of the terms or quantities or a change in conditions or specifications is sought;
  - iv. the Requesting agency submits amendments;
  - v. or if any other circumstance warrants its amendment.

Amendments to the bid notice are allowed to clarify or change the requirements of the solicitation. The amendment should occur before the bid or proposal due date and should provide sufficient time for potential applicants to acknowledge and accommodate the amendment in its proposal. Otherwise, the due date should be adjusted accordingly.

Amendments of sufficient magnitude and substance may require the cancellation and reissuance of the solicitation.

- b. All amendments must be authorized by the Auxiliary Procurement Administrator, as applicable, and approved by the Administration or its authorized representative thereof.
- c. The Bid Notice may be amended within the following terms:
  - i. Up to two (2) business days prior to the Opening Act, if the amendment entails additional changes or solicitations that must be included in the offer or proposal; or,
  - ii. One (1) business day prior to the Opening Act, if the amendment does not affect the submission of offers or proposals.

- d. The Auxiliary Administration for Procurement or the Bid Board, as applicable, must issue a Notice of Amendment to the proponents who were invited to submit a Request for Proposal or a Sealed Request for Proposal. The Notice of Amendment must also be published in the RUS and on the Administration's website. All amendments shall be made a part of the bid notice, and those interested in bidding must take them into consideration when submitting their proposals.

#### **Article 7.4.4 - Pre-Proposal Meetings**

##### **1. Pre-proposal provisions**

- a. The Auxiliary Administration for Procurement or the Bid Board, as applicable, may hold one or more pre-proposal meetings to clarify questions related to the Bid Notice, no less than five (5) business days prior to the date scheduled for the opening act, except when the Government deems it otherwise in its best interest and it is authorized by the Bid Official.
- b. Pre-proposal meetings may be held on the same day as the on-site inspections, provided that this is in the best interests of the Government.
- c. Anyone arriving after the start of the pre-proposal will not be able to participate, unless there is unanimous agreement among the attendees.

##### **2. Presiding Pre-Proposal Meetings**

- a. Pre-proposal meetings may be presided by a member of the Bid Board or an authorized representative thereof.
- b. Minutes shall be drawn up of any incidents that occurred during the pre-proposal, which shall include:
  - i. the number and purpose of the process under consideration;
  - ii. the name of each person who participated, and
  - iii. the name and questions asked by participants

- iv. a certification by the official who presided the pre-proposal meeting attesting to compliance with the relevant regulatory provisions;
- v. any incident that occurred during the Opening Act; and
- vi. the signature of the official who presided the Opening Act.

#### **Article 7.4.5 - On Site Inspections**

1. The date, time, place, and method for on-site inspections must be clearly indicated in the bid notice.
2. Inspections may be conducted simultaneously with the pre-proposal or by certification issued by the bidder who visited the site.
3. Pre-bids may be presided by a member of the Bid Board or an authorized representative thereof.
4. A report of the on-site inspection must be drafted. In the event that the inspection is conducted simultaneously with the pre-proposal, it should be specified that the report will be made a part of the minutes.

#### **Article 7.4.6 - Opening of Proposals**

##### **1. Opening Act Provisions**

- a. The Auxiliary Administration for Procurement or the Bid Board, as applicable, will conduct the opening of the proposals on the date and time established by such.
- b. The opening act will be open to the public and anyone interested may attend, but the content of the proposals will not be read in public.
- c. When the proposals are opened, only the identity of the proponents will be announced.
  - i. All proposals, evaluations, discussions, and negotiations will remain confidential during the evaluation and negotiation process until the contract is signed. During this period, only members of the Auxiliary Administration for Procurement, the Bid Board, and the Bid and Proposal Evaluation Committee, in addition to the Administrator, will have access to the proposals and the results of the evaluation.

## **2. Presiding Opening Acts**

1. The Assistant Administrator for Procurement or the secretary of the Bid Board (or their respective authorized representatives), who will preside over the opening act shall be responsible for drawing up the minutes of all incidents within twenty-four (24) hours, certifying the accuracy of the information provided.

## **3. Opening Act Minutes**

1. Minutes must be drafted for every opening act.
2. The minutes must contain the following information:
  - i. The number and subject matter of the Request for Proposal or Sealed Request for Proposals;
  - ii. The date, time, and place of the opening;
  - iii. Number of proposals received;
  - iv. The name of the bidders who submitted proposals;
  - v. A copy of the attendance record signed by the attendees of the opening must be made a part of the Minutes;
  - vi. A certification by the official who presided the opening act attesting to compliance with the relevant regulatory provisions;
  - vii. Any event that occurred during the Opening Act; and
  - viii. The signature of the person who presided over the Opening Act.

## **Article 7.4.7 - Evaluation**

1. Preliminary Evaluation
  - a. Proposals will be evaluated based on the Evaluation Criteria listed in the corresponding bid packet. The Auxiliary Administration for Procurement or the Bid Board, as applicable, with the assistance of the Bid and Proposal Evaluation Committee, if

established, may select one or more of the proposals deemed to best represent the interests of the Government of Puerto Rico.

- b. The Auxiliary Administration for Procurement or the Bid Board, as applicable, with the assistance of the Bid or Proposal Evaluation Committee, if established, or the Purchasing and Bid Specialist assigned to the procurement process, may hold discussions and negotiate with proponents whose bids are within the established selection parameters. An offer shall be deemed to be within the established selection parameters when it meets the requirements set forth in the bid packet for this purpose.

#### **Article 7.4.8 - Meetings with Proponents whose Proposals are within the Established Selection Parameters**

If the Auxiliary Administration for Procurement or the Bid Board has decided to hold discussions and negotiations, these shall be conducted in accordance with the following procedures:

1. No statement made or action taken by the Administration, the Bid Board, the Bid or Proposal Evaluation Committee, or the Purchasing and Bid Specialist assigned to the procurement process during such discussions and negotiations shall be binding on the ASG in any way.
  - a) Each bidder whose proposals comply with the provisions set forth in the bid packet must be invited to attend one or more private meetings with the Assistant Administrator for Procurement or the Bid Board and the Bid or Proposal Evaluation Committee or the Purchasing and Bid Specialist assigned to the procurement process to discuss any aspect of their proposal and answer any specific questions posed in said invitation.
  - b) The content and scope of discussions between the Auxiliary Administration for Procurement or the Bid Board and the Bid or Proposal Evaluation Committee or the Purchasing and Bid Specialist assigned to the procurement process and each bidder shall be determined by the Auxiliary Administration for Procurement or the Bid Board and the Bid or Proposal Evaluation Committee or the Purchasing and Bid

Specialist assigned to the procurement process based on the particular facts and circumstances of each proposal.

- c) The purpose of each meeting will be to clarify the contract requirements and ensure that they are understood; improve the technical matters of the proposal so that they meet the specifications and performance requirements and/or reduce the price; discuss the data supporting the price and any details relevant to each proposal that could improve it.
2. Bidders whose bids or proposals meet the provisions set forth in the bid notice will be treated fairly and equally with regard to the opportunity to discuss and review proposals. However, since the information discussed at these meetings may vary depending on each proponent, reviews or discussions will be based on the specific facts and circumstances of each proposal.
  3. The Auxiliary Administration for Procurement or the Bid Board, with the assistance of the Bid or Proposal Evaluation Committee or the Purchasing and Bid Specialist assigned to the procurement process may:
    - i. Establish methods and schedules for conducting and monitoring discussions.
    - ii. Advise the bidder on deficiencies in their proposal so that they have the opportunity to meet the requirements
    - iii. Attempt to clarify any concerns related to the proposal and otherwise refine the terms and conditions thereof.
    - iv. Correct any errors that may be identified, bringing them to the attention of the bidder as soon as possible, without publishing information related to other proposals or the evaluation process.
    - v. Provide the bidder with reasonable opportunity to submit any price, cost, technical, or other modification to the proposal that may result from the discussions.
    - vi. Keep a record of the date, time, place, and purpose of the discussions and the people who attend them.

4. After each interview or meeting with any bidder, minutes must be taken, including all important elements of the interview or meeting. The minutes must be made a part of the bid process record.
5. The bidder must put in writing any substantive verbal clarification of a proposal.
6. Discussions and negotiations may be conducted in whole or in part through written communications without personal meetings or interviews, at the discretion of the Auxiliary Administration for Procurement or the Bid Board. They may also be conducted via any electronic platform.
7. Verbal or written discussions are not required in cases where it is determined, based on the existence of full and open competition or accurate prior cost experience with the product or service, that acceptance without discussion of the most favorable initial proposal would result in the best value to the Government of Puerto Rico, provided that all bidders have been notified in the Request for Proposals or Sealed Request for Proposals of the possibility that the contract may be awarded without discussion.
8. If discussions and negotiations take place, the Auxiliary Administration for Procurement or the Bid Board may request bidders whose bids or proposals comply with the provisions set forth in the Bid Packet to submit amendments to their Proposals, which may be a best and final offer (BAFO) in response to the discussions and negotiations that take place.
9. The Auxiliary Administration for Procurement the Bid Board, the Bid or Proposal Evaluation Committee, and the Purchasing and Bid Specialist assigned to the procurement process shall keep the negotiations and matters discussed confidential. No information relating to the proposals or their evaluations shall be discussed with anyone other than the bidder who submitted them prior to the award of the contract.

#### **Article 7.4.9 - Award**

The Auxiliary Administration for Procurement, with the approval of the Bid Official or the Bid Board, as applicable, will award the contract to the responsive bidder whose proposal represents the best value to the Government of Puerto Rico.

The corresponding award must be made within fifteen (15) days from the Opening Act. The fifteen (15) day period set forth herein may be extended with the written authorization of the Administrator, in the event that the proposal involves specialized and/or highly technical goods or services. This deadline may also be extended if the scheduling of meetings or negotiations with the proponents so warrants. This term does not apply to centralized processes.

#### **Article 7.4.10 - Notice of the Award**

Once the Auxiliary Administration for Procurement, with the approval of the Bid Official or the Bid Board, as applicable, has granted the award, the final decision is notified by issuing a Resolution. The Resolution must be duly notified by email to all parties entitled to protest the decision, i.e., all proponents participating in the process. The notice of award must include:

1. the names of the proponents participating in the Request for Proposals or Sealed Request for Proposals and a summary of their proposals;
2. the factors or criteria that were taken into account in awarding the proposal;
3. any defects in the proposals of the unsuccessful bidders, and
4. the availability and deadline for seeking administrative review and judicial review.

The Auxiliary Administration for Procurement or the Bid Board, as applicable, must file a copy of the final resolution and proof of notice in the bid record.

## **Article 7.5 - Request for Qualifications (“RFQ”)**

The RFQ is divided into two distinct and consecutive phases. The first phase consists of the qualification of the proponents. Then, the second phase consists of an SRFP or bid, in which only the proponents who qualified in the initial phase may participate. This second phase is governed by the provisions of Chapter VI of this Regulation.

The Bid Board is responsible for conducting the invitation, evaluation, and award process, regardless of the cost of the goods, works, or nonprofessional services to be purchased.

Participation in this process is aimed at ensuring that only the most qualified proponents with the appropriate experience are selected to submit proposals in the subsequent bidding process, ensuring transparency, efficiency, and compliance with the technical standards required for the procurement.

### **Article 7.5.1 - Invitation for the Request for Qualifications**

The Purchasing and Bid Specialist shall prepare the Invitation for Request for Qualifications. The call is made after the corresponding invitation has been reviewed by the Bidding Official and authorized by the Bid Board.

The Secretary of the Bid Board must forward the Invitation for the Request for Qualifications to all bidders enrolled in the RUL under the code corresponding to the good or service to be procured, at least fifteen (15) days prior to the deadline established for receiving statements of qualifications. The Invitation for Request for Qualifications must also be published in the RUS, as well as on the Administration's website.

#### **1. Content of the Invitation**

The Invitation for Request for Qualifications must include:

- a. Bid number;

- b. Purpose;
- c. Date of publication of the Invitation for Request for Qualifications;
- d. Date, time, place, and method (in the case of electronic submission) for submitting or filing statements of qualifications;
- e. If an orientation meeting has been scheduled, the date, time, and place must be indicated, specifying whether attendance is compulsory.
- f. General Instructions;
- g. Statement of Needs;
- h. Nature of Work and/or Scope of Services;
- i. General Performance Requirements (if applicable);
- j. Evaluation Criteria;
- k. Selection Process; and
- l. Any other information that Administration deems relevant to include.

#### **Article 7.5.2 - Statement of Qualifications**

The Statement of Qualifications (SOQ) is the document that potential proponents submit in response to an RFQ. In this document, the potential proponent describes their experience in work or services of the same or similar nature as those requested. In addition, the proponent must provide their financial information or other relevant information and show their capacity to obtain and post bonds when required, among other criteria that may be requested in the RFQ.

#### **Article 7.5.3 - First Phase; Pre-Qualification Phase**

The Bid Board, with the support of the Evaluation Committee, if constituted, evaluates the Statements of Qualifications submitted by potential proponents in accordance with the evaluation criteria set forth in the RFQ. A Summary of Qualifications will then be drawn up, which must include the following:

1. Bid number.
2. Name of each potential proponent who submitted the corresponding Statement of Qualifications;
3. Statement indicating whether the potential proponent meets the evaluation criteria established in the RFQ, as well as a recommendation indicating the potential proponents who qualified and not qualified to receive the corresponding RFP Bid Packet.
4. Date and signature of the person who drafted the Summary of Qualifications; and
5. Any other information necessary for the evaluation and selection of qualified proponents.

If the Evaluation Committee drafted the Summary of Qualifications, the Bid Board will have the authority to decide whether to accept its conclusions and can reach its own decision on the qualifications of potential proponents based on the information contained in the Summary of Qualifications.

#### **Article 7.5.4 - Discussions with Potentials Proponents**

The Bid Board, with the assistance of the Evaluation Committee, if constituted, may conduct interviews with potential proponents, either in person or in writing, prior to making determinations on qualifications. The purpose of the interviews is to clarify any information provided by the potential proponent in the Statement of Qualifications.

#### **Article 7.5.5 - Notice of Determination of Qualifications; Notice**

Upon completing the corresponding evaluation and in accordance with the established evaluation criteria, the Bid Board shall then determine which bidders meet the qualification requirements. To this end, a resolution is issued and sent to all potential proponents who participated in the first phase of the process.

The notice is issued by the digital platform authorized by the ASG or by any other means established in the Invitation. This Notice must clearly and precisely indicate the proponents that

have been deemed qualified to proceed to the second phase of the process, as well as those that do not meet the established requirements, according to the defined evaluation criteria.

Any party adversely affected by the Qualification Determination may request an administrative review before the Review Board in accordance with the provisions of Chapter VIII of this Regulation.

#### **Article 7.5.6 - Second Phase; Delivery of the Bid Packet and Submission of Proposals**

Given that access to the RFP or bid packet is limited exclusively to qualified bidders in the first phase, publication is not necessary. Qualified proponents must submit their proposals in accordance with the terms established in the bid packet and Chapter VII of this Regulation.

### **CHAPTER VIII - REVIEW**

#### **Article 8.1 - Administrative Review**

The Administrative Review procedure must be conducted pursuant to the provisions of Act No. 73-2019. Filing a petition for administrative review will not result in a stay of the bid award process. The award process will only be stayed by a court order or resolution from the competent administrative body.

#### **Article 8.2 - Notice of the Administrative Review**

The petitioner must immediately send a copy of the request by certified mail with a return receipt requested or by email to the Assistant Administrator for Procurement or the Bid Board, as applicable. The petitioner must also simultaneously notify the bidder who was awarded the contract and all participating bidders who have been notified of the final decision.

Strict compliance with this requirement is required. The petitioner must certify to the Bid Review Board in the Administrative Review document that the petitioner has complied with this requirement.

### **Article 8.3 - Content of the Request for Administrative Review**

The request for administrative review must contain the following:

1. Information about the parties and their attorneys, if they have legal counsel.
2. Reference to the notice of award for which review is requested.
3. Copy of the Notice of Award or Determination of Qualifications, as applicable, including evidence of the date on which it was notified.
4. Copy of their bid or proposal or Statement of Qualifications, as applicable
5. A true and concise account of the relevant facts and procedural events.
6. A detailed description of the reasons and grounds for requesting an Administrative Review of the determination being appealed. The petitioner must clearly identify and specify each of the items in the Notice of Award or Determination of Qualifications that is being disputed, as applicable.
7. Certification of Notice, as provided for in Article 7.4.10.
8. The Review Board may include, by regulation, any additional elements deemed necessary for the adequate administrative review of the filed petition.

Failure to comply with the content requirements established for the Administrative Review request may result in the denial of the request.

### **Article 8.4 - Notice of the Determination**

Once the Review Board issues its decision on a matter under consideration, in writing by certified mail or email, the Board must notify the Requesting bidder or legal counsel thereof, if any; the Auxiliary Administration for Procurement, or the corresponding Bid Board, as the case may be, and all bidders participating in the process.

The determination of the Review Board must provide the grounds and reasons supporting its determination. The determination must also notify the adversely affected party of the availability and deadline for filing an application for judicial review with the Court of Appeals.

#### **Article 8.5 –Judicial Review**

The party adversely affected by a determination of the Review Board may file a request for judicial review with the Court of Appeals in accordance with the provisions of the section on judicial review of Act No. 73-2019. A mere filing of a request for judicial review under this Section will not stay the award of the disputed public bid.

### **TITLE V - NON-COMPETITIVE PROCUREMENT PROCESSES**

#### **CHAPTER IX - EXCEPTIONAL PURCHASES**

Purchases that due to their specific characteristics or circumstances are exempt from being processed through the bidding methods set forth in this Regulation shall be considered exceptional purchases.

The use of exceptional purchases is strictly limited and is only permitted in cases where conventional bidding methods are not feasible. Particularly, exceptional purchases are authorized only and exclusively if one or more of the circumstances identified below occurs.

#### **Article 9.1 - Criteria for Exceptional Purchases**

A Requesting Entity may request authorization to conduct an Exceptional Purchase in any of the circumstances established by law.

1. When minimum prices are set by law or by a competent government entity. In such cases, diversity in the selection of bidders should be promoted, provided that the nature of the

item allows for it. The primary purpose of this is to avoid selecting the same vendors for all these purchases. The ASG 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 offices or departments, quasi-public corporations, their subsidiaries and affiliates, or any government entity of the Government of Puerto Rico, provided that such purchase represents the best value and is in the best interest of the Government of Puerto Rico.
3. When using a vendor that has a contract with the ASG. When the ASG has carried out a procurement in favor of another entity, another public organism may request the use of the same, for which the Administration will concede such a request, if and when the terms, conditions and prices in that contract represent the best value.
4. When there is a sole source of supply and the manufacturer certifies that their company in Puerto Rico is the exclusive representative of the goods or the Auxiliary Administration for Procurement certifies that, to their knowledge and belief, the entity is the sole provider of the goods or services, as applicable.
  - a. This certification must include:
    - i. Manufacturer's certification;
    - ii. Documentation provided by the bidder showing that the bidder is the manufacturer of the goods or the sole provider of service
    - iii. Verification and certification that there is only one (1) bidder enrolled in the RUL for the good or service in question, and that the amount exceeds the limits established for micro purchases This circumstance must be recorded in the record by an entry made by the Director of the Registry Office or the authorized representative thereof.
5. When an emergency situation occurs within a Government Entity that results in unexpected, unforeseen, and pressing needs requiring immediate action from the Nominating Authority, either because the life, health, or safety of employees or citizens visiting its facilities is in danger, or because it involves the suspension or disruption of the services provided:

- a. It is essential to provide a detailed description of the nature of the administrative emergency, the events that caused it, and the harm that has been caused or is imminent.
6. When the governor or president of the United States has declared a state of emergency. In this case, the purchase will be processed in accordance with the procedures established by law.
7. When government property may be damaged or lost.
8. When the funds are about to expire and any opportunity to acquire the goods, works, and nonprofessional services may be lost, adversely affecting the best interests of the Government of Puerto Rico. Exceptional purchases under this subsection will only be authorized if any of the following circumstances apply:
  - a. The Requisition for the procurement of goods, works, or nonprofessional services has been submitted by the Requesting Entity to the ASG, duly completed, at least sixty (60) days prior to the expiration of the funds to be used for the purchase, and it is not feasible to conduct any of the bidding methods provided for in this Regulation within the remaining period of time;
  - b. The need has been identified by the Requesting Entity within a period at least sixty (60) days prior to the expiration of the funds to be used for the purchase, and it can be confirmed, through the corresponding documentation, that said expense is not part of the current budget, and that the purchase will be funded with a budget surplus, and it is not feasible to conduct any of the bidding methods provided for in this Regulation within the remaining period of time.
9. When spare parts, accessories, additional equipment, or supplementary services are required for equipment for which repair or service is under contract and it is not feasible to use any of the bidding methods provided for in this Regulation. Supplementary services include those activities related to the maintenance, repair or refurbishment of equipment in which only a particular provider is duly qualified or licensed to exclusively provide such services.
10. When the goods, works, and nonprofessional services must be purchased outside of Puerto Rico because there are no qualified vendors in the local market or because the conditions offered in those markets are more advantageous than those in the local market.

- a. This circumstance may be used for collaboration agreements that may be entered into by the Administration.
  - b. In all other circumstances applicable to this variant, exceptional purchases will only be authorized when there is a sole source of supply and this is certified by the manufacturer as the exclusive representative or sole producer of the goods, or when the Auxiliary Administrator for Procurement certifies that, to the best of their knowledge, the entity is the only one that can provide the goods or render the service, as applicable. Therefore, if there is more than one source of supply outside of Puerto Rico, the purchase must be processed through the standard bidding procedures.
11. When, after two (2) calls for requests for quotations, bids, or proposals for the goods, works, or services to be acquired, no bids are received and/or when all quotations, bids, or proposals received are rejected for failing to comply with the specifications or conditions, or because their price is unreasonable.
12. When the purchase is conducted under the terms of previously executed contracts or bids, provided that it is beneficial to the ASG.
  - a. These circumstances may also use contracts executed by the ASG for other entities.
13. When the items, materials, equipment, works, or nonprofessional services to be acquired are of a specialized nature, or when purchasing a particular type or brand is sought due to the proven good service that units of the same or similar nature have provided, due to the savings involved in maintaining uniformity in multiple units, or due to the superior type and quality of service that will be obtained in the purchased unit and in its maintenance, all of which must be justified in writing in the Requisition.

## **Article 9.2 - Required Elements of the Request**

All requests for processing exceptional purchases must meet the requirements established in Section III of this Regulation, must include an explanatory document issued by the corresponding office of the Requesting Entity. In this document, the Requesting Entity must explain the reasons for which the acquisition could not be made using any of the established bidding methods and

justify the need to resort to the exceptional purchase mechanism, as provided for in Chapter IX of this Regulation.

The document must also include a clear explanation of the impact that denial of the request would have on the services offered by the Requesting Entity, and it must also expressly certify that the circumstances described are not a subterfuge to avoid the ordinary procurement process.

The document must be signed by the director or manager of the corresponding office of the Requesting Entity and by the Nominating Authority of said entity. It should be noted that under no circumstances will the Auxiliary Administration for Procurement process requests that do not bear the signature of the corresponding Nominating Authority. The delegation of the Nominating Authority's signature for these purposes will not be accepted.

### **Article 9.3 - Evaluation of the Request for Exceptional Purchase**

All requests for exceptional purchases must be thoroughly evaluated to ensure that purchases made under this method truly serve the public interest and are not a subterfuge to avoid following the normal procurement process.

All exceptional purchases must be accompanied by a written recommendation issued by the Assistant Administrator for Procurement or the authorized representative thereof, who must evaluate the exception applicable to the purchase in question. If it is concluded that the request meets the regulatory requirements, a favorable recommendation will be issued to the Bid Official. However, the Bid Official is not bound to accept this recommendation and will exercise their professional judgment when determining whether or not to authorize the exceptional purchase.

The Assistant Administrator for Procurement and the Bidding Official, when conducting their respective reviews, may request such documentation, photographic, videographic and other information as may be necessary to validate the existence of the circumstances for an exceptional purchase.

If it is proven that any of the scenarios was caused by negligence, omission, carelessness, or lack of planning by the Requesting Entity, the ASG reserves the right to impose penalties and/or fines in accordance with Act No. 73-2019.

#### **Article 9.4 - Limitations to Exceptional Purchases**

The purchase of goods, works, or nonprofessional services through an exceptional purchase will not, in itself, be sufficient justification for purchasing the same type or class of goods, works, or services on a future occasion through the same mechanism. In these cases, the Assistant Administrator for Procurement must evaluate whether the conditions that justified the previous exceptional purchase still apply. The Requesting Entity must also justify in writing the continued need to resort to an exceptional purchase, providing documentary evidence to support such a request. Any exceptional purchase must be strictly limited to the necessary quantities and the time period required to address the situation that prompted the exception. Under no circumstances shall this mechanism be used to meet recurring or foreseeable needs that may be met through the ordinary procurement procedures set forth in this Regulation.

#### **Article 9.5 - Procedure for Exceptional Purchases**

Exceptional purchases must be processed by the official authorized by the ASG for such purposes. These purchases must be made directly from the bidder offering the required goods, works, or nonprofessional services. However, at the discretion of the Assistant Administrator for Procurement, and when necessary to assess the reasonableness of costs, multiple sources of information may be used or multiple quotations may be requested from different bidders, without this being considered a competitive process subject to the provisions of Section II of this Regulation.

#### **Article 9.6 - Term Contracts**

As a general rule, term contracts may not be executed using the exceptional purchase procedure. Only purchase orders corresponding to authorized exceptional purchases are permitted in cases

where a competitive process would not otherwise be warranted. However, in extraordinary circumstances and with the express authorization of the Administrator, term contracts may be executed for exceptional purchases, provided that the identified need and the particular circumstances of the purchase warrant such action.

Term contracts may not be executed for a term longer than one (1) year in the following exceptional purchases: i) when a government entity is facing an emergency situation that creates unexpected, unforeseen, and urgent needs requiring immediate action by the Appointing Authority, due to a threat to the life, health, or safety of employees or citizens visiting its facilities, or if the situation could result in the suspension or disruption of the services provided; ii) when the Governor has declared a state of emergency; iii) when government property may be damaged or lost; iv) when the expiration date of funds is approaching and the opportunity to acquire goods, works, or nonprofessional services may be lost, adversely affecting the best interests of the Government of Puerto Rico; v) when spare parts, accessories, additional equipment, or supplementary services are needed for equipment currently under a repair or service contract.

## **CHAPTER X - OTHER METHODS OF ACQUISITION**

By virtue of the powers granted to the ASG, it is recognized that procurements made by the Government of Puerto Rico may be carried out through methods other than the bidding mechanisms established in Act 73-2019. This includes the authority to receive donations of property, exchanges or payments in kind, subscriptions under contracts previously negotiated by entities recognized in government procurement, and any other legitimate method recognized by regulation.

### **Article 10.1 - Collaborative Agreements**

The ASG shall have the authority to join contracts previously established by other jurisdictions or entities. This may be done under the authority granted by Act No. 73-2019 to the ASG Administrator for the procurement of goods, works, and services, and to establish processes and

negotiations with jurisdictions outside of Puerto Rico, including, but not limited to, the Federal General Services Administration and the National Association of State Procurement Officials.

The ASG may establish collaborative agreements that allow it to enter into contracts that these entities have already established with vendors in which the terms, conditions, and costs extend to the ASG, provided that this represents a benefit for the Government. To determine whether a collaborative agreement is beneficial to the Government, the Administrator shall consider, among others, the following criteria: (a) the presence of verifiable economic savings compared to the prices or conditions that could be obtained through the bidding methods established in Act No. 73-2019 and these Regulations; (b) the efficiency in time and resources that the collaborative agreement provides for the timely satisfaction of governmental needs, reducing delivery terms and administrative costs; (c) the quality, reliability, and capacity of the supplier to meet the required specifications, evaluating its performance history and certifications; (d) the extent to which the agreement contributes to standardization, interoperability, or operational strengthening of governmental entities; and (e) access to innovation and best practices, including advanced technologies or specialized services.

Once the agreement has been established by the ASG, the Government Entities and Exempt Entities may procure the contemplated goods, works, and services through an exceptional purchase under said provisions. The ASG will retain documentary evidence supporting its determination of being beneficial to the Government, which will form part of the administrative file of the corresponding collaborative agreement.

#### **Article 10.2 - Trade In or Exchanges**

Trade-In or exchange procedures shall be governed by the provisions of the Surplus Property Regulation of the General Services Administration or any legal provision that supersedes it. For the procurement of goods or services through an exchange, the Requesting Entity shall be required to request the Administrator's authorization to agree to an exchange of goods or services through trade-in or exchange.

### **Article 10.3 - Donation**

Donations shall be governed by the provisions of the Act No. 57- 1958, Act to Authorize the Governor and Agencies to Accept, Use, and Manage Donations or any law that supersedes it, and the circular letters of the Department of the Treasury adopted in accordance with said act.

### **Article 10.4 - Vehicle Leases**

Any motor vehicle lease must be executed in accordance with the provisions of the Regulation for the Management and Control of Motor Vehicles and Other Forms of Transportation of the Government of Puerto Rico or any legal provision that may supersede it.

### **Article 10.5 - Assignment, Transfer, or Possession**

The Government of Puerto Rico may acquire property through the assignment of title, in accordance with the provisions of current state regulations at the time of the transaction.

The Government of Puerto Rico may also acquire goods through the transfer of new or used property carried out by the Federal Government, subject to the procedures established by relevant Laws and Regulations for that purpose.

The ASG may transfer property or materials that have been designated as surplus, or goods acquired as provided in the Surplus Property Regulation of the General Services Administration, Act 73-2019, and the Advisory Board Regulation for the Federal Surplus Property Program.

### **Article 10.6 - Installment Purchase**

A procurement shall be considered an installment purchase wherein something is acquired to be used immediately and for which payments are made at fixed terms in parts or installments.

Installment purchases are appropriate when, at the Administrator's discretion, they are for the benefit of the Government and are in the Government's best interests. These purchases must comply with the requirements in the procurement request, as provided in this Regulation.

Should an interest-rate apply to the installment purchase, these shall be governed by the Act to Regulate Certain Government Movable Property Financing and Leasing Agreements or any other superseding legislation.

#### **Article 10.7 - Procurement from Cooperatives**

Government Entities and Exempt Entities may acquire goods, works, and services from entities organized as cooperatives in accordance with the Puerto Rico General Cooperative Associations Act or any superseding legislation. In the event that there is more than one cooperative offering the same goods, work, or service, the entities interested in making the acquisition should conduct a competitive process in which an opportunity will be provided for all qualifying cooperatives to participate. This shall qualify as an exclusive bidding process for groups subject to the preferential procurement policies.

In the case of Government Entities, procurement from cooperatives under this article shall be processed as exceptional purchases.

### **TITLE VI - POST-AWARD PROCESSES**

#### **CHAPTER XI - TYPES OF OBLIGATIONS**

For the purposes of all procurement conducted under Act No. 73-2019, purchase orders, contracts, or similar documents that state an intent to procure a certain good, work, or nonprofessional service through the use of public funds shall be considered as duly assumed obligations. All purchase orders or contracts must be established in writing.

## **Article 11.1 - Purchase Orders and Contracts; When is it Appropriate to Award a Contract**

All government procurement of goods, works, and nonprofessional services shall be formalized through the issuance of a purchase order. Therefore, the issuance of a purchase order is an essential requirement for the existence of an obligation for acquisitions under these Regulations, regardless of whether a contract is also awarded, in accordance with the provisions later in this Article.

The following acquisitions will only require the issuance of a purchase order (without a supplementary contract):

1. The purchase of movable, complementary, substitutive, consumable, or capital goods, or any item that is capable of being moved by itself or by another force and that is fungible. In these purchase orders, the goods are acquired in a single transaction, and delivery must be verified only once.
2. The acquisition of nonprofessional services that are not recurring, that is, those that are completed in a single event or occasion.

Conversely, the execution of a contract accompanying the purchase order will be required for the following acquisitions:

1. The acquisition of construction works.
2. The acquisition of recurring nonprofessional services, that is, those that require continuity or are rendered on more than one occasion or in more than one event.

However, the ASG, or a public entity, may enter into contracts accompanying purchase orders even for acquisitions of goods or non-recurring nonprofessional services, whenever deemed appropriate to define in greater detail the goods, works, or services to be acquired and the terms and conditions under which they will be provided.

No contract entered into in accordance with the provisions of this Article may include services, goods, terms, or conditions different from those awarded or established by the ASG.

In the case of centralized contracts, an obligation will not be considered to exist until a purchase order is issued and subsequently a contract is executed, if necessary.

#### **Article 11.1.1 - Content of Purchase Orders**

All purchase orders must contain the following information:

1. Requesting Entity
2. Successful Bidder
3. Requested goods or services
2. Source of funds to be disbursed
3. Delivery deadline
4. Authorizations required under this Regulation or any other applicable regulations

#### **Article 11.1.2 - Purchase Orders in Construction Works**

For any kind of construction work, the issuance of a purchase order before the work begins shall be mandatory, except with the Administration's express prior authorization. In exceptional cases, and with proper technical and administrative justification, a contract may be signed in place of issuing a purchase order, as long as the work is in line with established procedures. Once the construction work has been awarded, the contracting agency shall proceed to execute a contract with the chosen contractors.

### **CHAPTER XII - CONTRACTS**

#### **Article 12.1 - Execution of the Contract**

Contracts for nonprofessional-services involve the contracting of services consisting principally of work for which specialized skills or knowledge supported by a college degree or license granting professional accreditation are not required. This category includes, but is not limited to, services such as the following: surveillance and security, office staffing services, pest control, office

cleaning and maintenance, landscaping, technology licenses (including subscriptions for information systems or digital platforms), basic technology services (such as hardware installation, routine preventive maintenance, basic technical support, data entry, installation of standard software (without programming), and device configuration), structural maintenance and repairs, road infrastructure improvements and repairs, banking services, equipment leasing, vehicle leasing, communication or telecommunication services, call centers, customer or client care services, billing or collection services, insurance policies not related to the provision of medical or health-related services among others. For this type of contracting, the recurrence or continuity of a service, in other words, whether a service will be provided on more than one occasion or event, shall be considered.

In any procurement that requires the execution of a contract between the ASG, a Government Entity, an Exempt or participating entity, and a bidder, the contract must be executed after the notice of award and once the Performance and/or Payment Bond, as applicable, has been posted.

For procurements carried out in favor of any government entity, the execution, custody, and recording of the contract shall be carried out by the department, agency, instrumentality, or public corporation that will receive the goods, work, or nonprofessional services.

Additionally, not Government Entity with a dispensation or an Exempt Entity may carry out a procurement process that results in multiannual contracts. That is, the ASG is the only Entity authorized to execute multiannual contracts. Nonetheless, Government Entities and Exempt Entities may execute multiannual contract as a result of the terms established in a centralized contract by the ASG, provided that the relevant fiscal entities provide their authorization.

#### **Article 12.2 - Drafting of Contracts**

The successful bidder's offer or proposal, along with all of the provisions contained in the Bid Notice and its attachments, shall constitute the basis for the contract between the parties. When drafting a contract, no requests to modify the prices, terms, or conditions as established in the Bid

Notice shall be accepted. Depending on the nature of the goods, works, or services to be provided, all contracts must contain all of the clauses, prohibitions, and limitations required by law.

All contracts for work or construction projects shall also include a clause that establishes:

1. The contractor's obligation to comply with the current Puerto Rico Building Code;
2. The obligation that the Government Entity, which is managing the contract, has to monitor the contractor's compliance with the provisions of the aforementioned Code;
3. The contractor's obligation to comply with the control measures, safety measures, and environmental provisions required by applicable state and federal laws.

### **Article 12.3 - Refusal to Execute Contracts**

As stipulated in the Bid Notice, a bidder's refusal to execute a contract duly required as a result of an Award Notice or Resolution may lead to the imposition of sanctions, including debarment from the RUL. The ASG shall also be authorized to begin the process to enforce the Performance Bond. Submitting an offer or proposal implies an informed acceptance of all of the terms and conditions that shall be established in a subsequent contract.

### **Article 12.4 - Amendments to Contracts**

Under the provisions of the Bid Notice, the ASG may authorize amendments to a determined entity's contracts or purchase orders that have been executed as part of a bidding process. Nonetheless, the Nominating Authority of the Petitionary Entity must have requested ASG authorization, and a purchase order must have been duly processed, before the entity can proceed to amend its contract. Requests for amending previously quoted prices shall require that the bidder submit evidence justifying the reasons why the prices should be modified. Once the request has been approved, an amendment with prospective effect shall be executed.

## **CHAPTER XIII –CENTRALIZED CONTRACTS**

### **Article 13.1 - Nature of Centralized Contracts**

Centralized Contracts are the agreements that the ASG will execute with the successful bidders or proponents in a procurement whose purpose is to provide goods, work, or nonprofessional services to the Government Entities, Exempt Entities, and Participating Entities. Centralized contracts are not finalized until a purchase order and contract, as applicable, has been issued. Purchase orders and/or contracts under a centralized contract shall be issued by the Requesting Entities for the line item and the bidder that most adequately meets the specifications. If multiannual services or goods are acquired, a purchase order must be issued each fiscal year for the amount of each year's obligation, ensuring that the funds remain obligated.

The use of centralized contracts shall be mandatory for all Government Entities and Exempt Entities, subject to the instructions for use established by the ASG.

### **Article 13.2 - Instructions for Use**

For all centralized contracts, the ASG must prepare and publish, for the benefit of all buyers and liaisons, instructions for use whose purpose is to provide general guidelines regarding the operation of the bidding process and the general rules for the appropriate use for each contract.

### **Article 13.3 - Quoted Prices**

The Bid Board and the Assistant Administrator for Procurement must provide the Office of Legal Affairs, in the format determined for said purpose by the Administration, the awarded goods and services and the prices determined in the bidding process or procurement. The buyers and liaisons must use the corresponding information to process the contract requests and requisitions.

In the event that the prices that had previously been quoted are subject to any amendment authorized by the ASG, the Assistant Administrator for Procurement must make the corresponding changes based on the internal guidelines established by the Administration.

#### **Article 13.4 - Effective Term of Contracts**

Contracts shall be executed for an effective term stated in the Bid Notice. The ASG shall have the authority to extend the term of contracts when they approach expiration. When considering an extension to the effective term of a contract attention should be given to whether this step is in the best public interest. An amendment may be executed to extend the contract for a term that may not exceed the original term stated in the Bid Notice.

An extension will be considered to be in the best public interest when, after a thorough evaluation, the ASG determines that:

1. Termination of the contract would affect the provision of essential services or the continued operation of a Government Entity or an Exempt Entity;
2. The extension represents a more efficient and cost-effective use of public funds than initiating a new procurement process; or
3. There are no alternatives that would meet the need under more favorable conditions for the government.

The ASG will identify and state under which factor the best public interest is established.

#### **CHAPTER XIV - MODIFICATIONS**

##### **Article 14.1 - Change Orders and/or Modifications**

Any Change Order request shall be submitted by an authorized official from the Requesting Entity to the ASG. To this end, it is required that the request be sent to the ASG before any goods, works, or services that are part of said Change Order are delivered. Once submitted, the request shall suspend the procurement process related to the Change Order until the ASG issues its authorization.

In cases in which the Change Order modifies the obligation of funds, the order shall be referred by the Assistant Administrator for Procurement for the corresponding budgetary procedure before continuing the process.

## **Article 14.2 - Change Orders for Construction Works**

### **Article 14.2.1 - Change Orders in Itemized Works**

For itemized works, the change orders must follow the process established for the evaluation of additional or modified unit prices. These changes must:

1. Be within the original scope of the works, or
2. Be considered as hidden damages that were not identified in the original design, but which were revealed during the execution of the work.

Itemized changes must be approved by the Administration, and the entity must justify the new unit prices, quantities, or additional works, always within the available budget or with proper justification for a modification of the financing and in accordance with the requirements established for these purposes by the ASG.

### **Article 14.2.2 - Change Orders in Lump Sum Works**

For lump sum works, change orders must be processed with greater control because the contractor has assumed the total risk of the costs. However, these changes may include:

1. Hidden damages: If they arise during the execution of the work, they must be properly justified, and the request for a modification of costs must be reasonable.
2. Additional work beyond the original scope: In these cases, a price adjustment must be agreed upon based on the unit fees previously approved in the contract or, in their absence, a new agreement that reflects the additional cost.
3. All lump sum change orders must be validated by the Administration before their execution, with the appropriate documentation explaining the necessity and justifying the change.

In all cases involving change orders, consistency must be maintained within the scope of the original work, and changes must not deviate the project from its primary objective, nor create extraordinary costs without justification.

## **Article 14.2.3 - Procedure for Evaluation of Change Orders**

### **1. Technical and Financial Evaluation**

All change orders must be evaluated from both technical and financial points of view. The entity must present justification, certification, and availability of funds.

### **2. Completion Term**

When change orders affect the original completion term, these must be formally approved and documented through the issuance of a modification of the contract that establishes the new delivery dates.

## **Article 14.3 - Amendments to the Purchase Order; Increase of Original Amount**

The Nominating Authority of the Requesting Entity shall be required to justify to the Administrator the need for any proposed amendment to previously issued purchase orders or previously executed contracts that would increase the value of the awarded bid for goods, works, and nonprofessional services. The amended request must be properly documented and supported. This does not apply to purchase orders or contracts that abide by the previously offered prices in a competitive procedure for a centralized contract.

When a process is carried out by the ASG in favor of a Requesting Entity, and a proposed amendment to the value of the award would increase the cost by 25% or more, the Nominating Authority must provide a detailed rationale explaining why a new procurement process should not be initiated. The Administrator shall conduct a thorough review of the justification, considering the following criteria:

- Unforeseeable circumstances: Is the price change due to circumstances not reasonably foreseeable at the time of contract execution and not the fault of the provider?

- **Necessity:** The extent to which the proposed amendment is essential for the completion of the project or service.
- **Cost-Benefit Analysis:** An evaluation of the financial implications of the amendment compared to the benefits it would provide.
- **Market Conditions:** Consideration of current market conditions and pricing trends that may affect the justification for the amendment.
- **Options for price change:** If a competitively bid contract included options for price changes that are consistent with the terms specified in the original contract.
- **Compliance with Regulations:** Assurance that the proposed amendment aligns with existing procurement regulations and policies.
- **Non-Competitive Justification:** Justification for price increase amendments must include:
  - 1.Explanation of why competition is not feasible
  - 2.Market research demonstrating limited alternative sources
  - 3.Justification that the amended price is fair and reasonable
  - 4.Explanation tying the amendment to the contract needs and scope.

In any case, the ASG reserves the right to require that the proposed amendment is processed through the corresponding procurement method in accordance with this Regulation. Amendments that increase the value of the purchase order or contract cannot alter the original scope of procurement; if they do, a new procurement must be initiated.

## **TITLE VI - OTHER PROVISIONS**

### **CHAPTER XV - BONDS**

#### **Article 15.1 - Required Bonds**

When required by the goods, works, or nonprofessional services to be procured, the Administrator or their Authorized Representative may request several types of bonds from offerors, bidders, or proponents, with the purpose of ensuring compliance with the obligation incurred. In cases where

posting of a bond is mandatory, it will always be specified in the bid notice or in the quotation sheet. Bonds that are not in compliance with the requirements established in the bid packet or the quotation sheet will not be accepted. Failure to comply with these requirements shall entail the rejection of the offer or proposal or the cancellation of the award.

### **Article 15.2 - Form and Content of the Bond**

The bond must be posted in favor of the individual or entity that has been established in the bid notice or in the quotation sheet in one of the following forms:

1. Certified check,
2. Money orders or cashier's check, or an
3. Insurance bond issued by an insurance company authorized by the Insurance Commissioner of Puerto Rico.

All bonds must specify the bid or procurement under which the bond was requested, with its alphanumeric identifier; the bidder or proponent in favor of whom the bond is posted; its scope, and a description of the goods, works, and services being guaranteed.

### **Articles 15.3 - Kinds of Bond**

#### **Article 15.3 - Bid Bond**

Bidders may be required to post a bid bond to guarantee their offer or proposal. The amount of the bond shall not exceed fifteen percent (15%) of the bid price or quoted price, unless a different amount is established in the bid notice or the quotation sheet. In the case of works, the bid bond shall be five percent (5%). For centralized or multiple selection contracts where it is not possible to determine the total bid or quoted amount, a fixed amount shall be established which shall not exceed fifteen percent (15%) of the estimated administrative expense.

When an offer is amended and the amendment entails an increase in the original offer price, it shall be the bidder's obligation to adjust the bond in accordance with the new amount. Otherwise, their

original offer will remain in force, and the amendment will not be considered. The designated official must notify the bidder within two (2) business days after the offer has been amended so that they can adjust the bond. The bidder will be notified of the five (5) calendar days they will be granted to comply with said notification. If the bidder fails to adjust the bond, the cost of their original offer will be considered, not as amended. In the case of a BAFO or "Best and Final Offer," a five (5)-day period shall be granted to adjust the bond.

Once the bidder provides the information and the documents guaranteeing the bond adjustment have been received, the designated personnel shall register it and make it part of the file.

If an Annual Bid Bond is submitted, the bidder must submit a certification stating that the amount for each bid is available and covers the process. If not, another bond must be posted to cover the remaining amount. This requirement must be specified in the bid notice. No annual bid bonds will be accepted for public works or for centralized processes.

### **1. Performance Bond**

If the posting of a performance bond before the Administration has been required, the bidder shall have a term that will not exceed ten (10) business days from the resolution of the award to post the bond. This bond will secure the performance of the centralized contract, requiring entity contract, or purchase order, as applicable. The amount of the bond shall be set in the bid notice or request for quotation. This bond shall be reimbursed upon the expiration of the contract term or when the corresponding purchase order has been fulfilled.

### **2. Payment Bond**

Those who are required by the ASG to post a payment bond shall have a term of no more than ten (10) business days following the resolution of the award to post said bond. This bond guarantees that the individuals who have provided labor or materials to the contractor will receive the unpaid amounts the contractor owes them for labor or materials provided in compliance with the work that is the subject of the contract or purchase order.

When a purchase order or contract is amended and the amendment entails an increase in the original offer price, it shall be the bidder's obligation to adjust the bond in accordance with the new amount. Otherwise, their original offer will remain in force, and the amendment will not be considered. The designated official must notify the bidder within two (2) business days after the offer has been amended so that they can adjust the bond. The bidder will be notified of the five (5) calendar days they will be granted to comply with said notification. If the bidder fails to adjust the bond, the cost of their original offer will be considered, not the amended one.

### **3. Advance Payment Bond**

An advance payment bond requirement must be notified to the Requesting Entity in the purchase order or other document, only when an advance payment is requested and when the payment amount exceeds ten thousand dollars (\$10,000.00), or in accordance with the amount established by the Department of Treasury. This shall be required for one hundred percent (100%) of the advance payment and within the stipulated term. If the provider fails to meet its commitment, it shall be the agency's responsibility to bring a claim against the bond.

### **Article 15.4 - Custody and Return of a Bond**

All bonds, guarantees, and insurance received as part of the procurement procedures shall be delivered to the ASG for their custody. The Administrator or their authorized representative shall authorize any of its departments to handle the custody and conservation of bonds.

When the contract is executed or the purchase order is issued, as applicable, the Administration shall return all posted bid bonds, including that of the successful bidder who has been awarded the bid.

A bidder or proponent may request the reimbursement of a performance, payment, or advance bond upon submission of supporting documentation, provided to the ASG by the Requesting Entity, certifying that the work or service was successfully provided or that the bid or contracting for which the bond was posted has been completed.

### **Article 15.5 - Effect of Failing to Post Required Bonds**

Bonds for an amount that is less than the amount required in the Bid Notice shall not be accepted. A bidder's refusal to post the Performance Bond or the Payment Bond, or any other bond required in its entirety, or failure to do so within the prescribed term, shall enable the ASG to enforce the Bid Bond and award the contract to the next bidder, if applicable. It may also entail the imposition of the fines, penalties, and sanctions provided in Act No. 73-2019 and this Regulation.

## **CHAPTER XVI - PROCUREMENT BY EXCLUDED ENTITIES**

### **Article 16.1 - Request to Use Awarded Bids of the ASG**

The Municipalities and Excluded Entities under Act No. 73-2019 may participate in centralized contracts and other procurements previously tendered and administered by the ASG only when an authorization has been requested and obtained from the ASG Administrator. Requests shall be evaluated on a case-by-case basis and will only include the contract in which they have requested to participate.

### **Article 16.2 - Use of ASG Tools**

All Municipalities or Excluded Entities that have been authorized to use contracts managed by the ASG must process all purchase orders through the technological tools or other means provided by the ASG for such purposes.

### **Article 16.3 - Compliance with ASG Rules**

All Participating Excluding Entities that are authorized to use an ASG contract must comply with all the guidelines arising from Act No. 73-2019, or from its regulations, in all matters relating to the procurement in which they are participating.

## **CHAPTER XVII - COMPLIANCE BY EXEMPT ENTITIES**

### **Article 17.1 - Use of Centralized Contracting**

Pursuant to the provisions of Act No. 73-2019, Exempt Entities are required to use all centralized contracts administered by the ASG while they are in force. The publication, holding, and award of bids by Exempt Entities when ASG bids exist for the same goods, works, or services is strictly prohibited, subject to sanctions, fines, penalties, and referrals to the respective authorities.

### **Article 17.2 - Approval of Regulations for Procurement and Bids**

In accordance with their duty to use the bidding methods and best practices recognized by Act No. 73-2019, Exempt Entities must submit their Procurement and Bid Regulations to the ASG for their approval. The Administrator will establish, by means of a circular letter, administrative bulletin, or administrative order, the process that Exempt Entities shall follow to submit their regulations, as well as the time limit for doing so. Furthermore, any amendment to a Regulation approved by the ASG must also be submitted for approval before being adopted.

Failure to submit these regulations or amendments thereto for approval shall constitute a violation of Act No. 73-2019 and shall entail the invalidation of all similar regulations or rules that may be adopted in violation of this Regulation, or that was adopted prior to the approval of this Regulation and continues to be used without the ASG's approval, in contravention of this Regulation, in addition to the imposition of administrative fines. Likewise, any purchase made by an Exempt Entity under a Regulation that has not been approved by the ASG will be null and void.

## **CHAPTER XVIII - OVERSIGHT**

### **Article 18.1 - Office of Special Investigations**

Pursuant to the powers vested in the ASG under Act No. 73-2019, the Administrator may delegate to one or more agency officials the authority to receive reports from whistleblowers, issue requests for information, issue subpoenas, conduct investigations, and impose fines.

In particular, it is provided that the ASG Office of Special Investigations (OSI) shall have the authority to monitor, investigate, and intervene with Government Agencies, Exempt Entities, and Participating Excluded Entities in order to enforce compliance with the provisions of Act No. 73-2019 and this Regulation.

The OSI shall have the power to issue reports with its recommendations to the Administrator and to establish corrective action plans whose compliance shall be mandatory for all entities under its jurisdiction. The Administrator may establish internal regulations to assign the OSI the powers that may be necessary for the performance of ASG oversight functions.

#### **Article 18.2 - Responsibilities of Government Entities, Exempt Entities, and Participating Excluded Entities**

All Exempt Entities shall avail themselves of the categories previously tendered and the contracts awarded by the Administration. The Administrator shall designate the staff members who will serve as liaison with Exempt Entities in order to assist them with the purchase and bidding procedures. Exempt Entities shall submit the Administrator, within the first ten (10) days of each month, a report detailing all the purchases and bids for goods, works, and nonprofessional services conducted during the previous month. This report shall include: the procured good or service, the bidding or exceptional purchase method used, the selected provider and/or successful bidder, the total amount of the transaction, and a certification under the corresponding appointing authority, stating that the processes stated therein were conducted in accordance with the appropriate regulatory and legal provisions.

Personnel from the Administration's Office of Special Investigation shall conduct quarterly audits to Exempt Entities whereby they will verify that the purchase and bidding processes for goods, works, and nonprofessional services were conducted in accordance with the provisions of their respective regulations. The Office of Special Investigations shall issue a report to the Administrator detailing the findings of the audit within thirty (30) days after the end of the audited quarter. A copy of the report shall also be sent to the appointing authority of the corresponding Exempt Entity, who shall implement, if required, a corrective action plan to address the deficiencies identified by

the Office of Special Investigations, if any. The corrective action plan shall be implemented by the Exempt Entity within fifteen (15) days following the notification of the report. The Administrator may impose an administrative fine of not less than one thousand dollars (\$1,000.00) and not more than five thousand dollars (\$5,000.00) to any Exempt Entity that fails to implement the corrective action plan within the term provided herein.

### **Article 18.3 - Responsibilities of Officials, Employees, and Bidders**

All officials and employees of Government Entities, Exempt Entities, and Participating Excluded Entities must faithfully observe the rules, principles, and procedures established herein. In addition, all bidders and proponents participating in government procurement processes shall have a duty to abstain from facilitating any procurement that deviates from the provisions of Act No. 73-2019.

### **Article 18.4 - Fines and Sanctions**

The Administrator will have the power to issue administrative fines to any natural or legal person that:

1. Violates the provisions of this regulation, in which case the administrative fines will not be less than one thousand (1,000) dollars nor exceed five thousand (5,000) dollars for by each infraction, and it shall be deemed that each day the violation subsists will be considered an independent violation;
2. Failure to abide by any resolution, order, or decision issued by the Administrator, in which case the administrative fines will be no less than one thousand (1,000) dollars nor exceed twenty thousand (20,000) dollars for each infraction, and it shall be deemed that each day the violation subsists will be considered an independent violation;
3. If there has been willful misconduct in the commission or continuation of acts in violation of this regulation, the Administrator, in the exercise of his or her discretion, may impose

an additional administrative fine of up to a maximum of fifty thousand (50,000) dollars, for each violation.

## **CHAPTER XIX - NONCOMPLIANCE**

### **Article 19.1 - Penalties to the Bidder for Breach of Contract**

In the event of breach of contract and the determination of the lack of financial responsibility or of any other kind by a prevailing Bidder or proponent, the Administrator may impose the penalties or measures that it may deem appropriate for the protection of the public interest, including debarment from the RUL or the RUP.

### **Article 19.2 - Forfeiture of Bond**

The Performance Bond or any other bond required may be forfeited if by the time established in the bid packet the contractor has not delivered the goods, has not fulfilled their guarantees, or has not fulfilled the obligations under the contract, for causes that are imputable to the vendor. In addition, the contractor will be financially responsible for the difference in the price that may be awarded in a second instance or of the price obtained in an exceptional purchase. If the bond fails to cover any excess, the remaining balance will be claimed from that contractor.

In the case of the Payment Bond, this may be forfeited at any time after the agreed upon payment date, if the Bidder should owe any sum to any person that has provided labor or materials for the fulfillment and completion of the contracted work.

### **Article 19.3 - Alternate Procurement**

In the event of noncompliance by a Bidder regarding a Purchase Order or previously awarded contract, the ASG or the Requesting Entity, as applicable, may acquire the goods, works, or services through the mechanism of an exceptional purchase from another vendor or contractor that offers equivalent products or services available on the market.

Should the price of the new acquisition be higher than that originally agreed upon on with the provider that has failed to comply, the difference may be claimed from the Bidder responsible for the noncompliance. Likewise, the entity may initiate the appropriate procedures to claim such difference to the guarantor or insurer, according to the terms of the bond or guarantee submitted in the original contracting process.

This measure may be taken without prejudice to any other legal, administrative or contractual actions as may be warranted against the non-complying provider or contractor.

#### **Article 19.4 - Debarment from the RUL**

In the event of a contractual breach, the Administrator of the ASG is authorized to initiate an action through which the Bidder that has failed to fulfill the obligations that it has assumed, or that violates the terms and conditions of a Purchase Order issued to it, may be debarred from the RUL. This debarment will be effected according to the procedure established in applicable regulations.

#### **Article 19.5 - Penalty for Late Delivery; Penalty Clause**

Bidders with whom the ASG or any Government Entity execute a contract or to whom a Purchase Order is issued must provide the good or service ordered according to the delivery terms, specifications, and other stipulated conditions.

In the event of noncompliance with the Purchase Order or contract by of the Bidder due to a delay in the delivery of the contracted good or service, the Government Entity at the time of processing payment may discount half a percent (0.5%) of the value of the contract for each business day of the delay; at no time will the amount discounted for this penalty exceed ten percent (10%) of the amount of the contract for the item in question. Likewise, the performance bond that guarantees the fulfillment of the contract will be liable for any damages.

The amount to be paid for the delay in the delivery of the good or service is a penalty that is covenanted to compensate the Government of Puerto Rico for additional expenses and other inconveniences.

The above will not apply to construction work project contracts. In those cases, the penalty for late delivery of the construction work project will be as follows:

<b>Price in the Original Contract</b>	<b>Daily Charge</b>
\$0.00 - \$99,999.99	\$300.00
\$100,000.00 - \$499,999.99	\$400.00
\$500,000.00 - \$999,999.99	\$800.00
\$1,000,000.00 - \$1,999,999.99	\$1,000.00
\$2,000,000.00 - \$4,999,999.99	\$2,000.00
\$5,000,000.00 - \$9,999,999.99	\$3,000.00
\$10,000,000.00 - \$19,999,999.99	\$4,000.00
\$20,000,000.00 - \$29,999,999.99	\$5,000.00
\$30,000,000.00 - \$39,999,999.99	\$6,000.00
\$40,000,000.00 - \$49,999,999.99	\$7,000.00
\$50,000,000.00 or over	\$8,000.00 or figure agreed on in the contract

## **CHAPTER XX - DELEGATIONS**

### **Article 20.1 - Delegations to Government Entities**

Government Entities may submit a formal written request signed by the respective Nominating Authority to the Administrator for the delegation of the functions set forth in this Regulation for the procurement of one or several goods, works, and/or nonprofessional services, for a specific period of time, subject to the following:

1. The written request will set forth the justification supporting the request.
2. The Administrator will have the power to grant or deny the request that was submitted, considering the best interests of the Government of Puerto Rico.
3. If the delegation is approved, the entity will be responsible for ensuring compliance with the provisions of this Regulation, as well as any other legal provision currently in effect related to the acquisition processes.

4. If the delegation is granted, the entity will submit a monthly report to the ASG of acquisitions that have been made.
5. The Administrator reserves the right to revoke the delegation granted at any time if deemed appropriate.

## **Article 20.2 - Delegations**

According to the powers bested in the Administrator, the Administrator may delegate functions and responsibilities to the appropriate entities, thereby allowing for the decentralization of certain operational processes, but without losing centralized control of purchases. This model, within the framework of purchase reform established in Act No. 73-2019, ensures that all procurement is processed under the same scheme and electronic platform, guaranteeing the traceability, transparency, and efficiency of the processes. Centralization of purchases is maintained through a sole platform where all acquisitions are registered, and processes are managed according to the guidelines established by the ASG. Thus, although specific functions are delegated to the entities, centralized control and regulation of purchases area kept intact, thereby ensuring greater consistency and control in the entire system.

## **TITLE VIII - FINAL PROVISIONS**

### **CHAPTER XXI - APPROVAL PROCESS AND EFFECT**

#### **Article 21.1 - Severability Clause**

The provisions of this Regulation are severable from each other. If any title, chapter, article, paragraph, word, sentence or part of this Regulation is found to be unconstitutional, invalid or null by a court with competence and jurisdiction, such ruling with not affect, impair, or invalidate the remaining provisions and parts of this Regulation. In such case, the effect thereof will be limited to the title, chapter, article, paragraph, word, sentence or specific part and it shall not be deemed to affect or impair in any manner the application or validity thereof in any other instance of the Regulation.

### **Article 21.2 - Repeal**

The Uniform Regulation for Buyers and Bids of Goods, Works and Nonprofessional Services of the General Services Administration of the Government of Puerto Rico, Regulation No. 9230, dated November 18, 2020, is hereby repealed as well as its amendment, Regulation 9292, dated July 23, 2021 and any other regulation, policy, procedure, rule, circular letter, internal memorandum that that may be incompatible or in conflict with the provisions herein, whether in part or in full, is hereby set aside, to the degree of such incompatibility or conflict.

### **Article 21.3 - Effect**

This Regulation will enter into effect thirty (30) days after filing with the Department of State and will be applicable to all procurement procedures initiated after its effective date.

### **Article 21.4 - Transition**

All bidding processes that have been published and are pending award by the effective date of this Regulation, will be governed by the provisions of the bid notice and the rules and regulations in effect at the time of its publication.

Beginning on the effective date of this Regulation, all new bidding processes that are initiated will be governed exclusively by the provisions herein, including the procedures, requirements, terms and conditions stipulated in this Regulation.

In San Juan, Puerto Rico, this day February 6, 2026.

A handwritten signature in blue ink, appearing to read 'Karla G. Mercado Rivera', is written over a horizontal line.

Karla G. Mercado Rivera, Esq.  
Administrator and Chief Procurement Officer