

GOVERNING THE BOARD OF REVIEW
OF THE PURCHASE AND SUPPLY
AREA OF THE GENERAL SERVICES ADMINISTRATION
OF THE COMMONWEALTH OF PUERTO RICO

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I. Legal Basis:

Act Number 96 of June 29, 1954 as amended (3 LPRA 915-925), known as Procurement and Service Act provides that it shall be the duty of the Secretary of the Treasury, to purchase, authorize the purchase or otherwise provide for the furnishing of all such supplies, materials, equipment, printing services and non-professional contractual services as may be required by any Commonwealth Government Agency. The Act also authorizes the Secretary of the Treasury to create an administrative unit to which he may delegate the powers conferred upon him by said Act.

The Administrative Order Number 2, approved by the Secretary of the Treasury on August 26, 1954 as amended on May 6, 1957 creates the Board of Review and Appeals of the Purchase and Supply Service with the purpose of considering and resolving impugnations against the decisions of the Purchase and Supply Service which is the administrative unit created by the Secretary of the Treasury by virtue of the Procurement and Service Act.

On June 21, 1968 was approved Act Number 113 known as the Reorganization Act. Its purpose is to provide a reorganization on the Executive Branch of the Government of the Commonwealth of Puerto Rico so that its structure faces best the needs and goals of Puerto Rico; that it achieves an efficient administration

on public affairs and an efficient and economical governmental functions.

According to the provisions of the Reorganization Act of 1968 as amended, and through the Reorganization Plan Number 2 of 1971 the General Services Administration was created transferring to it the functions of the Purchase and Supply Service. The Administrator of the General Services Administration replaced the Secretary of the Treasury on his faculties and functions on the boards created by the Procurement and Service Act; on his faculties and functions to receive property donated by the Government of the United States, and to keep it under his custody and distribute it.

II. Purpose:

This Regulation promulgated with the purpose of establishing the procedure to be followed by the bidders, by the Auxiliary Administrator of the Purchase and Supply Area of the General Services Administration and by the Board of Review of the Purchase and Supply Area in relation to actions that bidders may file with the Board.

III. Definitions and Terms:

For the purpose of this Regulation the following terms shall have the meanings hereafter expressed:

1. Board - Board of Review of the Purchase and Supply Area of the General Services Administration.
2. Administrator - The Assistant Administrator on the Purchase and Supply Area of the General Services Administration or his agent on whom he delegates the functions that this Regulation imposes on him.

3. Day - Any natural day of the week. When the last day of any of the terms established on this Regulation falls due on Saturday, Sunday or legal holiday, the period shall be extended until the next working day. Half day holiday shall be considered legal holiday in full.
4. Impugnation - Petition filed with the Assistant Administrator on the Purchase and Supply Area requesting review on one or more of the terms, requisites or aspects of the descriptions used on a public bid.
5. Review - Petition filed with the Board requesting a reevaluation of the decision given by the Assistant Administrator.
6. Interested Party - Any bidder that participates or intends participating in the impugned bid; as well as that governmental agency affected by the petition filed, decision or resolution given.
7. Acting Party - That party who files one of the petitions permitted by this Regulation.
8. Intervening Party - That interested party that can be affected by a decision on a petition filed by another party and who files appearance on the petition.
9. Decision - Opinion furnished by the Administrator.
10. Resolution - Final and firm opinion issued by the Board.

IV. The Board:

The Board shall consist of as many members as the Administrator of the General Services Administration deems necessary but never less than three (3). The Admi-

nistrator of the General Services Administration shall appoint the President and Secretary of the Board; and he may appoint substitutes for any of the members previously designated.

V. Meetings:

The Board shall meet as many times as it may determine necessary for the consideration of matters submitted thereto and when the Administrator of the General Services Administration orders so. The members shall personally attend the meetings and two thirds of them shall constitute quorum.

VI. Jurisdiction:

The Board shall have jurisdiction over the following matters:

1. Reviews against decisions made by the Administrator with respect to impugnations of invitations to bids, and of awards.
2. Any cases that the Administrator of the General Services Administration or the Administrator may deem advisable to file with the Board for consideration.

VII. Matters that can be brought upon the Board:

The following matters may be filed with the Board:

1- Impugnation of Invitation to Bid

Any interested party in disagreement with the terms of any invitation to bid issued by the Administrator or any department duly authorized to buy according to Act. No. 96 may impugn said invitation to bid, can file a petition of review of Invitation to Bid with the Administrator and can

file petition of review of his decision with the Board.

2- Review of Awards

Any bidder can file with the Board action to review any bid award granted by the Administrator.

VIII. Time Limits and Procedures for Impugnation:

The actions permitted under the provisions of this Regulation shall be filed within the terms and conditions that follows:

1. Impugnation of Invitation to Bid:

- a. Impugnation of Invitation to Bid shall be filed with the Administrator within the five (5) days subsequent to the mailing date of it. Any petition filed after said date will be refused.
- b. The Administrator will determine the validity of the impugnation and decide on its merits.
- c. The Administrator must deliver his decision in writing to all the appearing parties within the ten (10) days following the date of the receipt of the petition; but this period can be extended by the Administrator under extraordinary circumstances or when special studies or extraordinary effort is required in order to make a proper decision. When studies or specialized technical analyses needed could take more than the ten (10) days mentioned, the Administrator will issue written notification to the appearing parties.
- d. The decision rendered on the acting party's issues will be notified to the appearing parties through certified mail, so that any party

interested can file its petition of review with the Board within a ten (10) days limit from the date of mailing of the decision.

e. All impugnation shall be done written and shall consist of:

1) a detailed statement of all the facts, indicating the item, items, or specific parts of the invitation to bid whose description is being impugned.

2) the reasons and specific arguments with which the Administrator's position is being refuted including documentary evidence that shows and proves that the allegations made against the validity of the invitations to bid are valid and true.

3) a clear indication of the remedy or action requested.

4) signature of the appellant of his authorized representative.

5) said petition should be done on unmarked paper, letter size, type-written or printed, in original and two copies that will be send to the Administrator and covered with the following information:

ESTADO LIBRE ASOCIADO DE PUERTO RICO
ADMINISTRACION DE SERVICIOS GENERALES
AREA DE COMPRA Y SUMINISTRO

Peticionario

Caso # _____

Dirección

Solicitud de
Impugnación de:

Subasta # _____

IX. Procedure to Petition Review from the Board:

1. Suits Permitted

Petitions can be submitted to the Board for review of (a) the decision given by the Administrator on an impugnation of an Invitation to Bid (b) the decision given by the Administrator in his Notice of Award of Bid.

2. Terms

The interested party who wishes to file with the Board any action of the type authorized by this Regulation must do so filing with the Board, within ten (10) days from the date of mailing the decision, a written Petition of Review in original and three copies notifying copy to the parties within the five (5) days following the Administrator's reply, the Board must issue a resolution, if the case in issue needs studies or technical or specialized studies that could take more than the five (5) days herewith mentioned, the Board will notify it to the parties. On such a case the Board must solve within the shortest time possible.

3. Exceptions

Any interested party can file petition of review of any award rendered by the Administrator except:

- (1) when the required time to do so has elapsed.
- (2) when in essence, the arguments used to sustain the action go against the invitation to Bid.
- (3) when the petition filed is used to make collateral attacks against the requisites and dispositions established by law or regulations.
- (4) when the petitioner has not appeared previously in the procedure.

4. Filing and Notifying

The petition shall not be considered filed until it has been sealed by the Board. A copy of the petition must be filed with the Administrator, one with each of the interested parties and one with the agency involved. Lack of notification according to what has been established could, if the Board deems it so, be the reason for rejecting the petition.

5. Body of the Written Petition

The petition to review must be done written on letter size paper, without letterhead on print or typewritten at double space and shall be prepared as follows:

- a. a cover with this inscription:

JUNTA DE REVISION DEL AREA DE COMPRA Y SUMINISTRO

Peticionario

Número de Registro _____

Dirección

Revisión de: _____

Subasta # _____

- b. the pages under cover shall contain the following:
 - 1) facts that make him be an interested party.
 - 2) a detailed statement of all the facts concerning the case to the instant of appearing at the Board, including documentary evidence that indicates and proves that the allegations made against the validity of the decision are valid and true.

If review is being requested form an award:

- (a) It must indicate the items or specific items whose award is being asked to be reviewed; and establish all the reasons and arguments with which the Administrator's decision.
- 3) a clear indication of the remedy or concrete action requested from the Board.
- 4) certification to the effect that a copy of the petition was filed with Administrator and with each of the parties interested in the action.
- 5) copy of the written decision of the Administrator, if rendered. Statement to the effect that a copy is being enclosed.
- 6) the signature of the petitioner must appear at the bottom of the written petition. If the petitioner is a partnership the petition must be signed by a general partner; if it is filed by a corporation it must be signed by one of the authorized officials. If the petition is filed by the legal representative of the party, the signature of said legal representative shall be enough.

X. Additional Requirements of the Acting and Intervening Parties:

1- If the Board deems it so, it can require from the acting or intervening party or both a bond, deposited in certified check, money order, or official bond through an authorized agency of insurances and/or bonds duly qualified to do business in Puerto Rico. Said bond shall be executed in any of the following cases:

- a. When it is determined that the action filed was frivolous and had no

basis of arguments and as a consequence of it the Government costs increase because of the delay in the closing.

- b. When having a resolution on his favor an acting party retrieves his offer; and consequently the government has to pay higher costs.

2- All acting parties that finds itself unable to sustain his offer is obliged hereby to suppress his petition so that it doesn't cause prejudices in the public interest.

3- Any interested party who has appeared on the action with the Administrator can intervene in the action with the Board so that it may establish his views on the acting party's position. It may do so, filing with the Board within ten (10) days of receiving a copy of the Petition to Review, his Statement of Intervention of Interested Party accompanying with it all his evidence to the Board and a copy of the Statement alone to all the parties involved in the controversy. It must comply with the requisites established in Section IX (5).

XI. Obligations of the Administrator:

1- Refutation

The Administrator will have ten (10) days from the day he receives a copy of the Petition to Review Decision, to file with the Board his answer. His answer must comply with the requirements of Section IX (5) of this Regulation. He must send copies of his decision and answer to all the appearing parties and to the agencies involved.

XII. Obligations and Faculties of the Board:

1- Registry of Reviews

The Board shall keep a Registry of Reviews. The Secretary of the Board shall see to it that the appeals filed with the Board are entered in the Registry following the order of receipt and shall assign a register number to each one of them. The registry number shall identify each case from the beginning to its final disposition. The Board shall notify to the parties concerned the identification number in each case.

2- Hearings

- a. The Board may hold hearings and receive and consider any oral or written testimony and any other evidence it might deem pertinent. Said hearings shall be governed by that member of the Board whom the President assigns; or by the Board itself; but the Board's resolutions shall always be issued by the President.
- b. The presentation of testimonies and the admission of evidence during the hearings shall be governed by the rules established by the Board in each case. The rules of procedure and of evidence that are followed in the courts of justice shall not be applicable to the hearings and procedures of the Board, notwithstanding, the Board may at its discretion, be guided or apply such rules in the specific cases where their application may result in the best of public interest.

3- Technical Advice

In order to have all the necessary elements of judgement, a good advice and develop fully its functions, the Board can request the advice, aid and cooperation

of the different agencies, laboratories services or governmental and/or private technicians. Also the Board should be available to offer orientation to the agencies who request her aid.

4- Board Decisions

- a. The Board shall render its resolution written within the next ten (10) days following the date of receipt of the Administrator's answer, when it is a petition to Review an Impugnation of Invitation to Bid and within five (5) days when it is a Petition to Review and Award of bid unless that period be extended by Board itself upon considering that it doesn't have all the elements of judgement needed to issue a resolution.
- b. The Board shall keep in its files the original of its resolutions and shall mail a copy to the Administrator, to the agency involved, and others to each of the other parties involved. In its resolution, the Board shall expose the conclusions, factual or legal that sustain the resolution, according to applicable statutes and regulations. The resolution of the Board shall be final and firm from the moment in which they are issued, so they shall not be subject to further reconsideration.
- c. The final resolutions issued by the Board on any action will affect only the case under its consideration. This shall not constitute for the purpose of the parties precedent for future resolutions. Nevertheless the Board may if it deems it proper determine which cases that have been previously solved are similar in contents and substance and use

them as guides for solving specific issues.

5- Notification of Resolutions

The decisions of the Administrator as well as the resolutions of the Board will be notified to the parties through certified mail (return receipt requested).

6- Collection of Resolutions

The Board will publish, for records and general interest an annual collection of its most important resolution during that year. The Secretary of the Board will assemble the material.

XIII. Actions, Effects:

The actions filed pursuant to the provisions of this Regulation interrupt any further action on the matter until final decision, or resolution is rendered.

XIV. Abuse of the Impugnation and Review Process:

1- The Board of Review will determine in each petition of review of award, whether or not the petitioner has just cause.

2- Vendors with three or more frivolous actions in a twelve month period, may be removed from the approved Vendor List and prohibited from participating in the Bid Process for awards from the government for a period of not less than six months.

XV. Regulations Superseded:

This regulation supersedes Sections 7, 12, 13 and 14 of Regulation No. 38 Revised for governing the formal bid procedures for purchasing materials, supplies, equipment and non-personal services and the vendor invoicing and discount

procedures to be followed by the department, agencies and offices of the Government of the Commonwealth of Puerto Rico and its vendors approved by the Secretary of the Treasury, June 30, 1972.

XVI . Effective Date:

This Regulation shall take effect thirty (30) days after its filing in the Department of State of the Commonwealth of Puerto Rico in accordance with the provisions of the Regulations Act of 1958 as amended, unless its immediate effectiveness is ordered by the Honorable Governor of Puerto Rico.

San Juan, Puerto Rico, at this day of 31 of MAY 1973.


Edgar Balzac
Administrator