

REGULATION OF THE BOARD OF REVIEW
OF THE GENERAL SERVICES ADMINISTRATION

By: *Lambert de Pablos*
Assistant Secretary of State

Section 1. - Legal Basis

Act Number 164 of July 23, 1974, article 14, Subdivisions (h) and (j), and article 28.

Section 2. - Purpose

This Regulation is hereby promulgated with the purpose of establishing the procedure to be followed by the bidders, the General Services Administration, and all Government departments or agencies on whom the Administrator delegates the purchasing and/or contracting of services (in accordance with applicable laws) in relation to actions that any interested party may file with the Board. It also establishes the procedures to be followed by the Board itself.

Section 3. - Definition of Terms

- A. Administrator - The Administrator of the General Services Administration.
- B. Assistant Administrator - Anyone of the Assistant Administrators of the General Services Administration.
- C. Board of Review - The Board of Review of the General Services Administration.
- D. Board of Awards - The Board of Awards of the General Services Administration or any similar body of any department or agency on which the Administrator may delegate the right to perform duties inherent to such Board.
- E. Impugnation - Petition filed with the Assistant Administrator, (as this term is defined in this Regulation) requesting review on one or more of the terms, requisites or aspects of the descriptions used on a public bid.
- F. Review - Petition filed with the Board of Review requesting a reevaluation of any decision given by the Board of Awards or by the Assistant Administrator.
- G. Interested Party - Any bidder who participates or is interested in participating in the impugned bid; as well as that government agency affected by the petition, decision or resolution.
- H. Challenging Party - Any party who files one of the petitions permitted by this Regulation.

- I. Intervening Party - Any interested party who may be affected by a decision on a petition made by another party and files his intention to participate in the proceedings of the petition.
- J. Affected Party - In cases where a petition of impugnation or review has been filed, this term means: the Assistant Administrator concerned; the department or agency which originates the purchase request; the Board of Awards; and the successful bidder or bidders.
- K. Decision - Opinion rendered by the Assistant Administrator by the Board of Awards or any award made by said Board.
- L. Resolution - Final opinion rendered by the Board of Review.
- M. Day - Any calendar Day. In computing a specific term, if such term falls due on a holiday Saturday or Sunday the term shall be extended on to the nearest working day. A half-day holiday shall be considered a legal holiday in its entirety.

Section 4. - The Board of Review

The Board of Review shall consist of as many members as the Administrator deems necessary but never of less than three (3). The Administrator shall appoint the President and the Secretary of the Board as well as the other members and he may appoint substitutes to cover for absences of any of the regular members.

Section 5. - Meetings

The Board of Review shall meet as many times as it may determine necessary for the consideration of matters submitted thereto or when the Administrator request the Board to convene in order to consider matters referred by him. The members shall attend the meeting personally and a majority of the members shall constitute quorum. The decisions shall be reached by majority vote of the members present at the meeting.

Section 6. - Jurisdiction

The Board of Review shall have jurisdiction over the following matters:

- A. Review of decisions made by the Assistant Administrator with respect to impugnations of invitations to bid, except that no review may be requested against standard specifications approved by the Governing Board created by Act 96, approved on June 29, 1954, as amended, known as Purchase & Supply Act.
- B. Review of the decisions of the Board of Awards.

- C. Any subject matter that the Administrator may deem advisable to file with the Board.

Section 7. - Matters that may be brought upon the Board of Review

A. Impugnation of Invitation to Bid

Any interested party in disagreement with any term or condition of any invitation to bid issued by the Assistant Administrator may file a petition of review of Invitation to Bid with the Assistant Administrator and may file a petition of review of his decision with the Board of Review.

B. Review of Awards

Any challenging or intervening party may file with the Board of Review a request for review of any bid awarded by the Board of Awards.

Section 8. - Time Limits and Procedure for Impugnation

Impugnation or invitation to bid must be filed within the terms and conditions that follow:

- A. With the Assistant Administrator, no later than five (5) days after its mailing date. Any petition mailed or delivered to the Assistant Administrator after the term expires will be rejected.
- B. Shall consist of:
 - 1. A detailed statement of all the facts, indicating the item, items, or specific section of the invitation to bid, the description of which is being impugned.
 - 2. The reasons and specific arguments on which the impugnation is based, including the necessary documentary evidence which show and prove that the allegations made to impugn the invitation to bid are valid and true.
 - 3. A clear indication of the remedy or action requested.
 - 4. Signature of challenging party or his authorized representative.
- C. Said petition must be typewritten or hand-printed, in original and two copies which must be delivered or mailed to the Assistant Administrator. The impugnation must contain a cover sheet to read as follows:

Commonwealth of Puerto Rico
General Services Administration
Impugnation of Invitation to Bid

Petitioner
Address

Case No.
Bid No.

Section 9. - Procedure for Impugnation

- A. The Assistant Administrator will determine the validity of the impugnation and decide on its merits.
- B. The Assistant Administrator must deliver his decision in writing within the ten (10) days following the date of the receipt of the petition. This period may be extended by the Assistant Administrator under extraordinary circumstances or when special studies or extraordinary effort is required in order to make a right decision, in which case the Assistant Administrator will notify in writing all parties concerned.
- C. The decision rendered on the Challenging party's issues will be notified to the interested parties by mail, and posted on a bulletin board, in order that any affected party may file its petition of review with the Board within a term of ten (10) days from the mailing date of the decision.

Section 10. - Procedure for Petitioning Review

A. Actions authorized

Petitions may be submitted to the Board for review of:

1. Any decision given by an Assistant Administrator on an impugnation of invitation to bid.
2. Any award of Bid issued and notified by the Board of Awards.

B. Filing and Notifying

The challenging party interested in filing with the Board any action of the types authorized by this Regulation must do so by filing with the Board a written petition of review in original and two (2) copies. Said petition shall be delivered to the Board's Secretary office located at the General Services Administration Building, within ten (10) days from the date the decision is mailed by the Assistant Administrator or by the Board of Awards. Copy of the petition must be furnished to each one of the affected parties. The challenging party, at the moment of delivery or mailing of the petition for review to the Board of Review, must also notify the Assistant Administrator concerned or the Board of Awards of said action either by personal, written or telegraphic message.

Failure to notify affected parties, could be enough cause, if the Board of Review so determines for rejection of the petition.

The Board must resolve within the shortest possible time.

C. Exceptions

Petitions permitted under this section shall not be considered if one or more of the following conditions prevail:

1. The term to file the petition has expired.
2. The arguments used to support the petition for review constitute in essence, an impugnation to the Invitation to Bid.
3. The petition filed challenges any requisites and dispositions established by law and/or regulations.
4. The petitioner has not appeared previously in the procedure.

D. Format of the written petition

The petition to review must be hand-printed or typewritten and shall be prepared as follows:

1. A cover with the following inscription:

Commonwealth of Puerto Rico
General Services Administration
Board of Review

Petitioner

Register No.

Address

Review of

Bid No.

2. The inside pages shall contain the following:
 - a. Basis for claiming recognition as an interested party.
 - b. A detailed statement of all the facts concerning the case, including documentary evidence, allegations and reasons for filing of the petition.
 - c. When a petition of review of award is filed, it must indicate the item or specific items for which revision is requested.
 - d. A clear indication of the remedial or specific action requested from the Board.
 - e. Certification to the effect that a copy of the petition was filed with each and everyone of the affected parties.
 - f. The signature of challenging party must appear at the end of the petition. If the challenging party is a

partnership the petition must be signed by a managing partner. In the case of a corporation, it must be signed by one of its authorized officials. If the petition is filed by the legal representative, the signature of said legal representative shall be enough.

Section 11. - Additional Requirements of the Challenging and Intervening Parties:

- A. The Board of Review may require from the challenging or intervening party or both, furnish a warranty by either the posting of a bond issued by an insurance company authorized to conduct business in the Commonwealth of Puerto Rico, or a certified check or money order payable to the Secretary of the Treasury. Said warranty shall respond for any increase in costs for which the Government may stand liable:
1. Because of the delay in the process and completion of a purchase, if the Board determines that the action filed was untenable or frivolous.
 2. If after a favorable resolution is rendered, the challenging or intervening party refuses to maintain the original bid offer.
 3. Challenging parties unable to maintain the original bid offer must withdraw its petition in order to preclude losses or damage to the public interest.

Section 12. - Right to Intervene in Proceedings

Any affected party may intervene in a petition filed with the Board in order to establish its position with regards to the petition. It may do so by filing with the Board, within ten (10) days after receipt of a copy of the Petition to Review, its Statement of Intervention of Affected Party. The affected party must comply with all the requisites established in Section 10 (D) of this Regulation.

Section 13. - Duties of the Board of Awards and/or the Assistant Administrator

The Board of Awards and/or the Assistant Administrator whose decision is being appealed to the Board of Review, will have ten (10) days after the receipt of a copy of the Petition to Review Decision, to file with the Board his reply, indicating the argumentation and points of view regarding the statements included in the petition of review. Copies of his reply must be furnished to all affected parties.

Section 14. - Duties and Faculties of the Board of Review

A. Register of Petitions of Review

The Board shall keep a Register of Reviews where the appeals filed with the Board are entered following the order of receipt, and shall assign a register number to each one of them. Each case shall be identified by this register number from its inception to its final disposition.

B. Hearings

1. The Board may hold hearings and receive and consider any oral or written testimony and other evidence it may deem pertinent. The absence of a member of the Board from a hearing does not prevent him from participating in the discussions and resolution by the Board of the case object of that particular hearing.
2. The presentation of testimonies and the admission of evidence during the hearing 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. Nevertheless, the Board, at its discretion, may be guided or may apply such rules in specific cases where their application may result in the best of public interest.

C. Technical Advice

In order to obtain all the necessary elements of judgement as well as proper advice and to fully fulfil its functions, the Board may request the advice, aid and cooperation of departments, agencies, laboratory services and governmental or private technicians.

D. Resolutions

1. The Board shall express in its resolutions all the factual and legal conclusions that sustain the resolution. The resolutions of the Board shall be final.
2. The Board shall keep in its files the original text of its resolutions, and shall mail a copy to each one of the affected parties.
3. The final resolutions issued by the Board on any action will affect only the case under its consideration and shall not constitute, for the purpose of the parties, precedent for future resolutions.

E. Notifications of Resolutions

The resolutions of the Board of Review must be notified to the parties as soon as possible.

Section 15. - Effects of Petitions

The actions filed pursuant to the provisions of this Regulation interrupt any further action on the case appealed until final decision or resolution is rendered. In the event that an emergency arises in which the requisitioning department or agency feels that a given program or service may be adversely affected, only the Board (subject to justification by the requisitioner) is empowered to authorize the purchase of supplies or services needed during a reasonable length of time until the case is resolved.

Section 16. - Abuse of the Impugnation and Review Process

- A. The Board of Review shall determine those cases in which the petition filed is frivolous or untenable.
- B. The Board of Review may order the suspension from the Approved Vendor List established by Regulation No. 2, which regulates purchases under Act. No. 96 of June 29 1954, as amended, the name of any bidder found to have filed frivolous or untenable actions. The Board shall determine the duration of the suspension which shall not be less than six (6) months or more than two (2) years.

Section 17. - Derogation

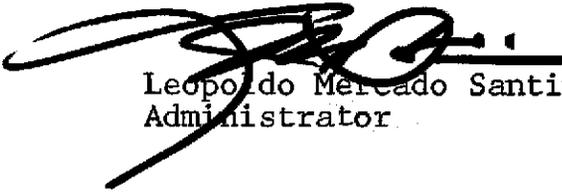
This Regulation supersedes Regulation number 1 of May 31, 1973 of the Board of Review.

However, all petitions for impugnation or review filed prior to the effective date of this Regulation shall continue to be governed by the previous Regulation.

Section 18. - Effective Date

This Regulation shall take effect thirty (30) days after its filing with the Department of State of the Commonwealth of Puerto Rico in accordance with the provisions of Act number 112 of June 30, 1957 as amended.

San Juan, Puerto Rico at this 28 day of april, 1977


Leopoldo Mercado Santini
Administrator