

REGULATION COVERING BIDS

UNDER

ACT NO. 78 OF JUNE 20, 1977

I N D E X

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REGULATION COVERING BIDS  
UNDER  
ACT NO. 78 OF JUNE 20, 1977

No. 2315  
Date: Nov. 23, 1977 1:00 PM  
Approved: Reinaldo Paniagua Diaz  
Secretary of State

ARTICLE I - TITLE

By: Lambert de Puelva  
Assistant Secretary of State

This Regulation will be known as the "Regulation Covering Bids under Act No. 78".

ARTICLE II - LEGAL BASIS

The Regulation Covering Bids under Act No. 78, is promulgated in virtue of the provisions of article 22 of Act No. 164 of July 23, 1974, as amended by Act No. 78 of June 20, 1977.

ARTICLE III - PURPOSES

This Regulation has, among its purposes, the following:

- A. Establish the procedure to be followed in each and every one of the bids that are held by virtue of the stipulations of Act No. 78 of June 20, 1977.
- B. Establish a Board of Awards whose function will be the holding of said bids.
- C. Establish and delimit the duties and authority of the Board of Awards.

ARTICLE IV - APPLICATION OF THE REGULATION

The agencies, the Board of Awards under Act No. 78 of June 20, 1977, and the bidders who participate in the calls for bids procedure will abide by the provisions of this Regulation.

ARTICLE V - DEFINITION OF TERMS

For the effects of this Regulation, the following words or phrases will convey the meaning indicated below:

- A. Administrator - Administrator of the General Services Administration or the official which he delegates.
- B. Agency or agencies - The governmental bodies, departments, agencies or public corporations of the Executive Branch of the Government of Puerto Rico, established or that may be established in the future, which are not expressly excluded by the Administrator from the previous approval requirement, by him, of a rental contract of premises for official use; with the exception of those public corporations whose organic laws state otherwise, thus excluding them from the application of Act No. 78 of June 20, 1977.
- C. Developer - The natural or juridical person who will promote the project, organizing the work of each professional sector that is necessary, and who will contract the rental with the government; with the proviso that upon contracting with the government, he should be the owner of the land, with the exception of those cases in which the Government is the owner of same.
- D. Specifications - Set of descriptive requisites including physical, functional and aesthetic characteristics and the quality of the materials which were used in the construction of the premises to be rented, in addition to the essential requisites which said premises have to comply with for the use they are destined for.
- E. Board - Board of Awards established by virtue of article 22 of Act No. 164 of July 23, 1974, as amended, by Act No. 78 of June 20, 1977.

- F. Bidder - The natural or juridical person with sufficient capacity and responsibility to participate in the calls for bids procedure as a bidder; with the proviso that an owner of land reserved for public use, may also participate.
- G. Premises - All type of physical space or facilities not excluded by the Administrator, and suitable for the official use of an agency, by means of the installation of offices or for any other purposes, among which, the following may be mentioned: public schools and complementary buildings to the public schools, libraries, bookstores, faculty and student housing; multiple services centers such as those for cafeterias, recreation and meeting; public hospitals, rest or convalescence homes and complementary buildings to said hospitals such as housing for nurses, cafeterias, laundry services and vocational and physical rehabilitation centers.
- H. Bidding forms - The forms containing the proposal made by the bidder and which will be part of the contract when the bidder is selected as the developer.
- I. Bid - The procedure that the Government of Puerto Rico utilizes in granting a rental contract of premises, with an effective term of more than five (5) years and up to thirty (3) years, as long as the object of the contract is a newly constructed building whose cost exceeds two hundred fifty thousand dollars (\$250,000.00), or whose rental rate exceeds twenty-five thousand dollars (\$25,000.00) annually; that is, buildings under any of the two previous alternatives already built, but not yet rented; or buildings under any of the first two

alternatives which to August 20, 1977 were under construction and are rented to the Government of Puerto Rico, with the previous approval of the Administrator, within a period of one (1) year starting on June 20, 1977.

#### ARTICLE VI - BOARD OF AWARDS

##### A. Establishment and Members

A Board of Awards is established whose members will be specifically the following:

1. The Administrator of the General Services Administration
2. The Executive Director of the Public Buildings Authority
3. The Secretary or the Undersecretary of the Treasury
4. The Director or Assistant Director of the Bureau of the Budget
5. The Director of the agency for which the building to be bid on will be constructed, and who will not be considered a permanent member of the Board.

##### B. Organization of the Board and the Term of certain Offices

1. The permanent members of the Board should elect among themselves the President and Secretary, with the proviso that in this election, the Director of the agency for which the building to be bid on will be constructed, will be excluded.

2. The President and the Secretary will carry out their respective tasks for the term that is determined by the Board.
3. In case of resignation, death, or incapacity of the President or Secretary of the Board, the permanent members of same will elect among themselves the President or Secretary.

C. Duties of the President

The President of the Board will be responsible in ensuring that the procedure established in this Regulation for the holding and awarding of a bid, is complied with.

D. Duties of the Secretary

The Secretary of the Board will have, among his duties, the following:

1. Will write the minutes which will include, among other matters, the date, hour and place of the meeting, those who attended, purpose of the meeting, matters brought up and decisions taken.
2. Will write the record of the proceedings where the final determination of the awarding of the bid will be expounded, specifying among other matters: date, hour and place of meeting; those who attended; number of the bid; opening hour of the bid; summary of the proposals received; awarding of the bid; basis for the award and any other important occurrence in relation to the determination.
3. Will sign the minutes, records and resolutions handed down by the Board.

4. Will be in charge of convoking the Board to a meeting.
5. Will carry out other functions related to his office, such as:
  - a. Keeping a control of blueprints and all documents pertaining to the bid.
  - b. Keeping a Bidders Registry for the bids and a Bonds and Deposits Registry, in order to give the corresponding follow-up to said bonds and deposits with the Office of the Comptroller of the Public Buildings Authority.

E. General duties of the Board

1. Keep a Minute Book
  - a. The Board will keep a Minute Book where it will file, in chronological order, the original of each of the minutes signed by all the attending members of the meeting.
  - b. The Minute Book will be under the custody of the Secretary of the Board.
  - c. The Minute Book will be available for examination by authorized government officials.
2. Keep a Records Book
  - a. The Board will keep a Records Book where it will file, in chronological order, the original of each of the proceedings signed by the President and Secretary of the Board.
  - b. The Records Book will be under the custody of the Secretary of the Board.

c. The Records Book will be available for examination by authorized government officials.

#### F. Jurisdiction of the Board

The Board will assume jurisdiction and will intervene in the procedure involving the holding and awarding of a bid for the rental contract of premises, whose effective term is greater than five (5) years and up to a maximum of thirty (30) years and if the object of said contract is any of the ones enumerated as follows:

1. A newly constructed building whose cost exceeds two hundred fifty thousand dollars (\$250,000.00).
2. A newly constructed building whose rate of rental exceeds twenty-five thousand dollars (\$25,000.00) annually.
3. Buildings under the above clause one (1) or clause two (2) that, although already built, have not been rented.
4. Buildings under the above clause one (1) or clause two (2), which to August 20, 1977 were under construction and which are rented to the agency, with the prior approval of the Administrator, within a period of one (1) year starting on June 20, 1977.

#### G. Meetings and Quorum

The Board will meet as many times as is necessary in exercising its jurisdiction and three (3) of its members will constitute a quorum.

#### H. Resolutions

The Board will hand down a resolution in which it will state its determination regarding the awarding of a bid, with the proviso that

all its determinations or agreements will be by majority vote of the members of the Board.

ARTICLE VII - RENTAL CONTRACTS OF PREMISES UNDER THE CALLS FOR BIDS PROCEDURE

Every rental contract whose effective term is more than five (5) years and up to thirty (30) years will be submitted to the calls for bids procedure established in this Regulation, when the object of the rental contract is any of those enumerated in Article VI (F) of this Regulation.

ARTICLE VIII - CALLS FOR BIDS PROCEDURE

A. Step prior to the Calls for Bids

The agency interested in granting a rental contract that requires that it be submitted to the calls for bids procedure in agreement with Article VII of this Regulation, will submit to the Administrator a request for the rental of premises according to what is instructed as follows:

1. The request for the rental of premises will be submitted to the Administrator prior to the call for bids.
2. The request for the rental of premises will be accompanied by evidence justifying that the use for which the premises are destined, merit the term for which the rental is requested.
3. The request for rental will also be accompanied by a certification from the Director of the Public Buildings Authority in terms that the Authority does not have available the facilities requested, nor plans to build them in the future.
4. The agency, in submitting its request for rental of premises,

will indicate the justifications for the use it will assign the premises to be rented, expounding and analyzing in these, among others, the following aspects:

- a. The inadequacy of the physical facilities that the agency has or the lack of adequate physical facilities.
  - b. Volume and type of service to be offered in the premises to be rented.
  - c. Projection of the agency's growth in its human resources and work programs, among other aspects.
  - d. Justification of the location of the premises to be rented in relation to the services which will be offered.
  - e. The reasonableness of the rental rate.
  - f. Urgency in the need of the premises.
  - g. Show proof of the agency's solvency in committing itself to a new rental rate.
5. The request for the rental of premises, with the authorization or approval of the Administrator, will be submitted to the calls for bids procedure, as it is established in this Regulation.

**B. Call for Bids**

1. The Public Buildings Authority, or the official in which it delegates, will be in charge of the preparation of the call for bids.
2. All calls for bids will contain the requirements of the agency in relation to its needs and will, therefore, include among other, the following information:

- a. Date, hour and place to submit the proposals.
- b. Date, and exact hour in which the bidding will be closed and the proposal envelopes opened.
- c. Place where the bidders can obtain the instructions and the documents pertinent to the bid.
- d. Manner in which the bidders will identify the envelopes containing the bidding forms.
- e. Location and description of the requested facilities or premises, which will form part of the specifications of the bid.
- f. The deadline in which the project should be completed and delivery of the facilities or premises effected.
- g. The amount of the binder required with the proposal to ensure that the bidder, in case he is awarded the bid, will formalize the contract for the stipulated effective term.
- h. A clause that specifies that the Board reserves its right to accept or reject the proposals and award the bid under the most favorable conditions to the public interest.
- i. The amount of money required as a deposit in order to deliver to bidders the pertinent bidding forms.
- j. All terms and conditions that will govern the bid.

- k. A bid subject to special conditions should contain in the call for bids, a note to these effects, clearly pointing out the condition.
  - l. A bid that requires some sort of certification or special document as part of the bidding forms, should include a clause with the terms of said requirement in the call for bids.
  - m. A bid that requires the installation of equipment, should include in the specifications, a clause in terms of what labor is to be performed, in order to comply with the regulations in force and common practices of safety and engineering.
3. The Executive Director of the Public Buildings Authority will submit the call for bids, prior to its publication, to the approval of the Administrator, the Director of the Bureau of the Budget and to the Secretary of the Treasury, who will mainly take into consideration in the approval, the minimal needs acceptable by the agency.
4. The call for bids, once approved by the officials mentioned in the previous clause three (3), should become public knowledge, with the following provisos:
- a. The public notice of the call for bids should be made at least thirty (30) days before the opening date of the proposal envelopes filed for a specific bid.

- b. The call for bids will become public knowledge, utilizing all those available means which ensure the adequate knowledge of the call for bids, on an equal opportunity basis to all bidders.
  - c. The opportunity will be given to each bidder, who is interested and qualified to participate in the bid, in accordance to the Bidders Registry, to obtain a copy of the call for bids, including copy of the forms of the contract documents, the necessary documents in order to be able to file the bidding forms and the instructions to the bidders to this effect; with the proviso that, according to what is established in Article VIII (B) (2) (i) of this Regulation, a deposit can be required from the bidders to cover the documents they received to participate in the bid.
5. The Board can cancel or amend any calls for bids, only for justifiable reasons and in the protection of the public interest, notifying all corresponding bidders within a reasonable term prior to the date and hour of the opening of the bid.

C. Receipt of the Bidding Forms

1. The bidding forms will be in a sealed envelope identified by the number of the bid, name and address of the bidder.
2. Every envelope containing the bidding forms should be filed with the Board of Awards located in the Board of Awards Room of the Public Buildings Authority.

3. All envelopes containing bidding forms will be stamped at the moment of filing, indicating date and exact hour they were received at the Board of Awards and they will be kept in a special file together with all the proposals received, until the date and hour set for the opening of the bid; with the proviso that the bidding forms received for each bid will be filed separately at the Board of Awards.
4. No bidding forms will be accepted which are received at the Board after the date and hour set for the opening of the envelopes containing the bidding forms.
5. The members of the Board of Awards, as well as the personnel of the agencies, cannot intervene, directly or indirectly, with the bidders in the delivery of their bidding forms.

D. Steps prior to the Opening of the Bid

1. Change in the bidding forms

All corrections or changes in the bidding forms should be duly initiated by the bidder or his authorized representative, otherwise, they will be considered null and void.

2. Modifications of the bidding forms

The bidding forms can only be modified before the opening of the bid, by means of a request made by the bidder or his authorized representative.

- a. The request for modification will be in writing and will include all the pertinent information justifying the modification.
- b. The request for modification will be filed with the Board of Awards in a sealed envelope identified with the number of the bid, date and hour set for the opening, name of the bidder and his address.
- c. The request for modification will not be admissible if it is filed after the date and opening hour of the bid.
- d. Every request for modification will be opened at the date and hour set for the opening of the original bid.

3. Withdrawal of bidding forms

- a. The withdrawal of the bidding forms of a bidder will be carried out by means of a written request indicating the reasons for the withdrawal.
- b. The request for said withdrawal will be filed before the opening of the bid.
- c. The bidder cannot file a substitute proposal once he has withdrawn the bidding forms filed originally.

E. Opening of the Bid

1. The bidders or their authorized representatives which attend the act of the opening of the bid will sign an Attendance Registry, indicating if they are appearing individually, or as the firm or corporation they represent.

2. The opening bid auction will be open to the public.
3. The Board of Awards will meet the day and hour set for the opening of the bid, when the envelopes containing the bidding forms which were received are opened.
4. The Secretary of the Board will proceed, in the presence of the bidders, to the opening of the envelopes containing the bidding forms received.
5. Each one of the proposals will be read aloud.
6. All value that is included as a bid warranty will be immediately remitted by means of an official dispatch to the Comptroller of the Public Buildings Authority.
7. After the reading of the proposals, the attending bidders at the bid auction may examine the bidding forms when so requested, in the presence of a member of the Board or an authorized official, so as not to alter or obstruct the procedures.
8. The withdrawal, change or modification of any of the bidding forms received will not be permitted once the Board has met and the bid auction declared officially open.

F. Evaluation of the bidding forms

1. The Board will not consider for evaluation any proposal that has not complied with the terms, conditions and requisites established in the call for bids.

2. The bidding forms should be signed in ink by the bidder or his authorized representative; with the proviso that if said signature is missing from the forms and, if before the opening of the bid, the receipt of a letter or some other document signed by the bidder is verified which shows and justifies said error, the Board can consider for evaluation the bidder's proposal, after he signs the forms.
3. Every proposal should arrive accompanied by a provisional bond or certified check, postal money order or a cash deposit in current legal tender in the amount indicated in the call for bids.
4. The Board will consider the proposals taking into account the factors of price, design and quality of the premises offered.
5. The Board will ensure that with the bidding forms of the bidder, what was specifically required has been filed and presented, such as complete preliminary blueprints duly approved by the Permits and Regulations Administration that cover all the specifications and phases of the project, such as architecture, structure, electricity, ventilation, air conditioning and plumbing; or final blueprints in the case of buildings already constructed.

6. The price offered in the bidding forms will be binding on the bidder which is selected as the developer, except when it is proven, to the entire satisfaction of the Board, that conditions arose that could not have been reasonably foreseen at the moment of bidding, which caused an increase in the costs of the project. In such case, the Board can make the corresponding adjustments in the price, taking into account the public interest.

G. Awarding of the Bid

1. The Board will award the bid, selecting a developer of the project.
  - a. The developer of the project which is awarded the bid, should be the owner of the land in order to negotiate the rental contract with the Government, except when the Government is the owner of the land.
  - b. The Board will be notified of any type of lien which this land is subject to, by submitting to it, the title search of same.
2. The Board will award the bid to the developer, which as a bidder, results in the most responsible bidder, offering with his proposal, the best premises or facilities within the specifications, terms and conditions required in the call for bids and for the lowest most convenient price to the public interest.

3. The Board will determine the awarding of the bid by majority of votes of its members.
4. The Board may award a bid, even though it receives only one (1) envelope containing the corresponding bidding forms, if beforehand, it is determined that all the norms established in Article VIII (B) on calls for bids were complied with and the only proposal received is just, reasonable and is in accordance with the specifications, terms and conditions of the bid.
5. The Board will have the authority to reject all bidding forms received by considering said proposals unacceptable and, in this case, the Board will proceed as follows:
  - a. It will reject the proposals received, annulling the bid.
  - b. It will recommend to the Public Buildings Authority that, in coordination with the Administrator, the Secretary of the Treasury and the Director of the Bureau of the Budget, to call for a new bid or negotiate the referred contract, according to what is most convenient to the specific case and to the public interest.
6. The Board will have the authority to reject the proposal lowest in price when:
  - a. The proposal is not in accordance with the specifications, terms and conditions required in the call for bids.

- b. There is official knowledge, by means of evidence, that the bidder presenting the proposal has not satisfactorily complied with contracts that have been granted him by the Government, or has been convicted for fraud in obtaining or complying with contracts.
  - c. There is justified determination, based on reasonable grounds, that the public interest would not be adequately protected.
7. The Board in awarding a bid will take into consideration, among other factors, the following:
- a. The ability of the bidder to carry out the tasks of planning, design and construction, deliver equipment and materials or lend services considered in relation to what is requested in the call for bids.
  - b. The quality and adaptability of the design of the materials, fixtures, equipment or services.
  - c. The financial responsibility of the bidder, his skill, experience, reputation, commercial integrity and ability.
  - d. Terms of delivery or completion of what has been offered.
  - e. Required documentation duly completed and presented.
  - f. Any other condition considered advantageous to the best public interests.
8. The Board can award a bid among bidders whose proposals are identical in prices, specifications and other stipulations and general concessions of the bid, utilizing the drawing by lots procedure or establishing the confrontation between

the bidders with identical proposals so that they either reduce or increase them.

9. The Board will make its determination of the award within a reasonable limit, but never more than sixty (60) calendar days following the date of the opening of the bid.
10. The Secretary of the Board will draw up a document covering the determination of the award, which will be signed by all the members of the Board.
11. The Board will have the authority to make a determination that does not involve the awarding of the bid, but instead, any of the following recommendations:
  - a. The call for a new bid
  - b. The direct negotiation with the bidder or the lowest most responsible bidder, if and when, that negotiation is the most convenient to the public interest.

#### H. Notification of the Awarding of the Bid

1. The Secretary of the Board will notify the bidder favored with the award of the bid by registered mail, which will specify, among other information, the following:
  - a. That the award will be conditioned to the proviso that, within a term of thirty (30) days, the bidder must produce evidence regarding the approval of the interim and permanent financing covering the cost of the development of the project.

- b. That in due time he will be notified the date for the formalization of the contract.
  - c. That he should provide for the corresponding construction insurance policies, issued by a company legally authorized to do business in Puerto Rico, sending copies of same to the petitioning agency.
2. The Secretary of the Board will also notify the result of the bid to the other participating bidders by means of registered mail.
  3. One (1) copy of each notification made by the Secretary of the Board will be sent to the Comptroller of the Public Buildings Authority, so that he may proceed to return the bidders' warranties and one (1) copy of each notification will be sent to the corresponding agency.

ARTICLE IX - REVIEW OF THE DECISIONS OF THE BOARD OF AWARDS  
BEFORE THE BOARD OF REVIEW OF THE GENERAL  
SERVICES ADMINISTRATION

A. Who may request review

Any participating bidder in a bid, as a petitioner, can request a review of the awarding of the bid at the Board of Review of the General Services Administration, in accordance with its Regulation of April 28, 1977.

B. Filing of the request for review

The request for review will be filed within ten (10) days after the notification of the awarding of the bid.

C. Notification of the appeal for review

The bidder should remit a copy of his request for Review to the Board of Awards.

D. Warranty requirement of the appeal for review

If the Board of Awards so determines, it can require from the petitioner the deposit of a warranty by means of a certified check, postal money order or a bond issued by a company authorized to do business in Puerto Rico; with the proviso that said warranty will answer to:

1. Any increase in the cost which the Government has to pay due to a delay in the negotiations of the contract, if it is determined that the action was interposed without any basis and that same is of a frivolous nature.
2. Any increase in the cost which the Government has to pay, if the bidder who has been awarded the bid after a resolution in his favor has been handed down, indicates that he will not back his original proposal.

ARTICLE X - FORMALIZATION OF THE CONTRACT

A. Dispatching a letter to the bidder

Once the period of grace to request a review has lapsed, the agency will immediately notify the awarded bidder by means of registered mail, in order to formalize the contract.

B. Contents of the letter to the bidder

The letter will indicate the following:

1. Date, hour and place for the formalization of the contract.
2. A clause indicating that the contract will be formalized according to the terms expressed in the call for bids and the bidder's proposal.
3. Any other information necessary for the formalization of the contract.

ARTICLE XI - APPROVAL OF THE REGULATION

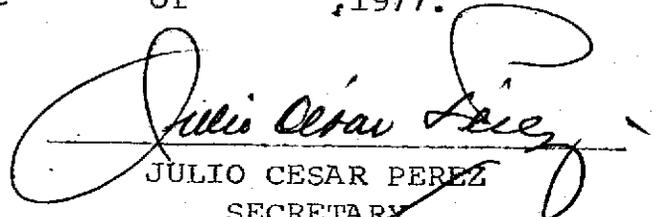
This Regulation was approved by the Board of Awards in a meeting held the 10 day of Nov., 1977.

ARTICLE XII - EFFECTIVE DATE

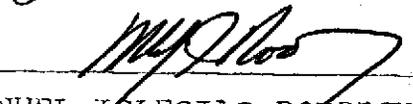
This Regulation, due to its urgent nature, will begin to take effect immediately after its approval by the Board and its filing with the Office of the Secretary of State.

At San Juan, Puerto Rico, the \_\_\_\_\_ of \_\_\_\_\_, 1977.

  
LEOPOLDO MERCADO SANTINI  
ADMINISTRATOR  
GENERAL SERVICES ADMINISTRATION

  
JULIO CESAR PEREZ  
SECRETARY  
TREASURY DEPARTMENT

  
LUIS S. MONTANEZ  
DIRECTOR  
BUREAU OF THE BUDGET

  
MANUEL IGLESIAS RODRIGUEZ  
EXECUTIVE DIRECTOR  
PUBLIC BUILDINGS AUTHORITY