

REGULATION NO. _____

2316

GOVERNING THE CONTRACTING OF THE RENTAL OF PREMISES
IN THE AGENCIES OF THE GOVERNMENT OF PUERTO RICO

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Approved: Reinaldo Paniagua Diez
Secretary of State

GOVERNING THE CONTRACTING OF THE RENTAL OF
PREMISES IN THE AGENCIES OF THE GOVERNMENT
OF PUERTO RICO

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ARTICLE I - LEGAL BASIS

This Regulation is promulgated in virtue of the dispositions of article 14 (j) and article 22 of Law No. 164 of July 23, 1974, as amended, among others, by Law No. 78 of June 20, 1977.

ARTICLE II - PURPOSE

The purpose of this Regulation is to establish the norms which are to be followed in the rental contracts of premises for the official use of the agencies of the Government of Puerto Rico, so as to ensure that said rental contracts respond to the actual needs of the agencies.

ARTICLE III - APPLICATION

This Regulation is applicable to the departments, agencies and public corporations of the Government of Puerto Rico, already created or which could be created in the future, which are not expressly excluded by the Administrator.

This Regulation is not applicable to the municipalities nor to the public corporations whose organic laws state otherwise.

ARTICLE IV - DEFINITION OF TERMS

For the effects of this Regulation, the following words and phrases will have the meanings which are indicated as follows:

- A. Administrator - The Administrator of the General Services Administration or the official which he delegates.
- B. Agency or agencies - The governmental bodies, departments, agencies and public corporations of the Government of Puerto Rico, created or which could be created in the future, which are not expressly excluded by the Administrator; excepting those municipalities and such public corporations whose organic laws exclude them from the application of this Regulation.
- C. Rate of rental - The amount of money which the agency obligates itself to pay for the use or the benefit of the rented premises.
- D. 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 other purposes, such as, for 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.

E. Bid - The procedure that the Government of Puerto Rico utilizes through the corresponding agency to contract the rental of premises for official use, when the rental contracts have an effective term of more than five (5) years and up to a maximum of thirty (30) years.

ARTICLE V - SPECIFIC DISPOSITIONS

A. PREVIOUS APPROVAL REQUIREMENT OF THE RENTAL CONTRACT OF THE PREMISES BY THE ADMINISTRATOR AND EXCLUSIONS TO SAID REQUIREMENT.

1. Any agency can move or acquire new premises for the installation of offices or for any other purpose, only when it has obtained previously from the Administrator the approval of the rental contract of the premises.

2. The municipalities, the public corporations whose organic laws state otherwise and the agencies that are excluded by the Administrator on the basis of needs of the service, emergency, or any other circumstance he deems justifiable, can enter into rental contracts for premises, without the previous approval of same by the Administrator.

3. The Administrator can exclude from the previous approval requirement of a rental contract of premises, an agency or a certain type of premises; with the proviso that he can make any other exclusion that he deems convenient.

- a. The agency will submit to the Administrator a certification stating the reasons or grounds for which it cannot follow the normal procedure of the previous approval of the rental contract of the premises by the Administrator.
- b. The certification required in the previous clause (a) should be submitted to the Administrator, as an indispensable requirement, before the agency proceeds into any type of negotiation or agreement in relation to the rental contract of the premises.
- c. The Administrator, in order to grant or deny the exclusion, will only consider the case where just cause exists which prevents the following of the corresponding normal procedure in relation to the granting of the rental contract of the premises; with the proviso that the concept of just cause will not include haste or the urgent need of granting the rental contract of the premises due to negligence, lack of planning or forgetfulness on the part of the agency.
- d. The Administrator will grant or deny the exclusion based on the certification of the agency and in order to determine said exclusion, it will utilize its discretion in relation to the beneficial or detrimental effect of same on the public interest.

B- FACTORS TO BE CONSIDERED IN THE APPROVAL OF THE RENTAL CONTRACT OF THE PREMISES.

The Administrator will approve the rental contract of the premises, taking into consideration, among other information, that in which the agency justifies its need for space in relation to the following aspects:

1. The functions of the agency in terms of:
 - a. Its programs, personnel and existing and projected equipment.
 - b. The special facilities required by each program of the agency (example of these are: warehouses, archives, laboratories, conference rooms and others).
2. The physical facilities requested by the agency in relation to:
 - a. The physical condition of the proposed premises compared with the physical condition of the premises occupied by the agency.
 - b. The space necessities of the agency, the real as well as the reasonably foreseeable future ones.
 - c. The adequate location of the agency in accordance with the implementation of its work programs and its basic responsibilities.
3. The determination of the cost on the basis of the interest of the Government of Puerto Rico in offering some services efficiently.

C- CONTENTS OF THE RENTAL CONTRACT OF THE PREMISES
AND REQUIRED ANNEXES.

1. All rental contracts of premises should contain, among other information, the following:
 - a. The exact description of the premises indicating the number of floors, its area in square feet, rooms or divisions in each floor and the type of material which it was built with; with the proviso that the agency will be responsible of verifying the measurements of the premises to be rented before submitting the rental contract of the premises to the consideration of the Administrator.
 - b. The area of the lot, of the premises and of the parking area, subjects of the rental contract.
 - c. The exact address of the location of the property, including number and street in the urban zone, district or sector in the rural zone and kilometer number of the road, as well as any other pertinent information; also indicating, the location of the rental unit in the building, that is, if it is a ground floor, left front, right front or any other description of the location of the rental unit.
 - d. The exact date of the start and termination of the rental contract.
 - e. The necessary information so that the Department

of Consumer Affairs can fix the maximum rate of rental of the premises, with the proviso that said information will include in what category does the landlord possess the premises (as an owner, administrator, agent, or in another category) and the date the property was built.

- f. The rate of rental which the tenant will pay and the method of payment.
 - g. A clause stating that a dispensation was obtained from the Governor, in conformity with what is directed in Law No. 28 of June 8, 1948, when an official or employee of the agency which appears as a contracting party would have pecuniary interest, direct or indirect, in the rental contract of the premises.
 - h. The name and title of the job or position that are held by the persons authorized to approve the rental contract of the premises.
2. Every rental contract of premises will be accompanied by a certification by the head of the contracting agency or his authorized representative, where it states as evidence that negotiations were carried out to obtain the most reasonable rate of rental; with the proviso that in case of moving, this certification will be a requisite when the rate of rental of the new premises is higher than the rate of rental paid by the agency in the premises it formerly occupied.
 3. Every rental contract of premises will be accompanied by a legal certification signed by the Legal Advisor of the contracting

agency, indicating that said contract was revised in all its parts and that there is no legal objection to same.

D- FUNDS FOR THE PAYMENT OF THE RENTAL RATE OF THE PREMISES.

1. Every rental contract of premises will be formalized only when the necessary funds for the payment of the rental rate are contemplated in the budgetary appropriations of the agency concerned.
2. The agency that formalizes a rental contract of new premises, should encumber at the Preintervention & Accounting Administration of the Treasury Department, the necessary funds for the payment of the rental rate until the end of the fiscal year in which said contract is formalized and, besides, at the beginning of each fiscal year, it should forward to the Preintervention & Accounting Administration the corresponding miscellaneous obligations to encumber the necessary funds for the payment of the rental rate of the new premises under contract effective during that fiscal year.
3. The Secretary of the Treasury will not authorize the disbursement for the payment of the rental rate of the new premises, unless the rental contract has been previously approved by the Administrator.

E- INTERVENTION OF THE DEPARTMENT OF CONSUMER AFFAIRS

1. The contracting agency will send to the Department of Consumer Affairs, copy of the rental contract of the premises which it formalizes, as well as the amendments to the contract, as long

as this Department has jurisdiction over the same in virtue of Law No. 464 of April 25, 1946, as amended, known as the Law of Reasonable Rents.

2. The Department of Consumer Affairs will send to the agency and to the Preintervention & Accounting Administration of the Treasury Department the order fixing the rental rate.

F- INSURANCE POLICIES FOR THE PREMISES UNDER THE RENTAL CONTRACT

Every premises for official use under a rental contract should be covered by the corresponding insurance policies.

G- MODEL OF THE RENTAL CONTRACT OF PREMISES

The Secretary of the Treasury, in coordination with the Administrator, will design the model of the rental contract of premises to be used by the agencies and will emit the necessary instructions for its preparation and procedure.

ARTICLE VI - TYPES OF RENTAL CONTRACTS OF PREMISES

A. CONTRACTS THAT REQUIRE THE APPROVAL OF THE GOVERNOR OF PUERTO RICO.

1. The official or employee of an agency, authorized to contract in representation of said agency, can formalize a rental contract of premises in his capacity as a representative of the agency for which he works and a commercial enterprise in which he has, directly or indirectly, pecuniary interest, only if the Governor, upon previous recommendation from the Secretary of the Treasury and the Secretary of Justice authorizes it, according to what is directed by Law No. 28 of June 8, 1948.

2. The agency can also formalize a rental contract of premises in which any of its officials or employees has a direct or indirect pecuniary interest, only if the Governor approves it, with previous recommendation from the Secretary of the Treasury and the Secretary of Justice.
3. Any rental contract of premises that requires the approval of the Governor as directed in article VI (A) of the present Regulation and is formalized in contravention to said article will be cancelable.
4. In case that the rental contract of premises requires the approval of the Governor, the following procedure will be observed:
 - a. The agency will submit to the Administrator the rental contract of premises with the justification and documents for the granting of the dispensation or approval of the rental contract of premises by the Governor.
 - b. The Administrator will forward to the Governor the rental contract of premises with the justification and documents sent by the agency.
 - c. The Governor, after receiving the rental contract of premises with the annexes, will forward it to the Secretary of the Treasury and the Secretary of Justice for their study and recommendation.

- d. The recommendations of the Secretaries of the Treasury and Justice Departments will be forwarded to the Office of the Governor.
- e. If the Governor or his authorized representative approves the rental contract of premises, he will send it, as soon as possible, with the annexes to the Administrator, who in turn will send it with his approval to the originating agency in order to comply with the corresponding procedure for the approval of said contract according to its terms and duration.

B. CONTRACTS WITH AN EFFECTIVE TERM OF ONE (1) YEAR OR LESS.

The agency that needs to rent premises will take the necessary steps to ensure that these premises adapt themselves to their real needs, in a manner that if the term of duration of the rental of the premises was to be one (1) year or less, the following procedure should be followed:

1. The agency will submit to the consideration of the Administrator the rental contract of premises together with the corresponding justification at least thirty (30) calendar days before the effective date of the contract, with the proviso that the observance of this requirement will be strictly enforced in order to obtain approval of the contract.
2. The Administrator will either approve or disapprove the rental contract of premises and will return same to the contracting agency with a justification of his determination.

3. The contracting agency will send copy of the rental contract of premises to the Office of the Comptroller of Puerto Rico within a period of fifteen (15) days after the date of the granting of the contract; in accordance with Regulation Number eight (8), Registry of Contracts, approved by the Comptroller of Puerto Rico on March 9, 1976.

4. The agency will send the original of the rental contract of premises to the Treasury Department with the corresponding evidence of its registry with the Office of the Comptroller of Puerto Rico.

C. CONTRACTS WITH AN EFFECTIVE TERM OF MORE THAN ONE (1) YEAR
AND UP TO A MAXIMUM OF FIVE (5) YEARS

In order to obtain approval of a rental contract of premises whose effective term is more than one (1) year and up to a maximum of five (5) years, the following procedure will be observed:

1. The rental contract of premises, before granting same, will be submitted for the approval of the Administrator, the Director of the Bureau of the Budget and the Secretary of the Treasury, in that order.

2. The agency, in the first place, will submit the rental contract of premises together with the corresponding justification to the Administrator for his study and approval.

3. The Administrator will either approve or disapprove the rental contract of premises and will return it to the contracting agency, so that in case the contract has been approved, it will take the necessary steps to obtain its approval from the Director of the

Bureau of the Budget in regards to the availability of funds and subsequently, from the Secretary of the Treasury in regards to the correction in the obligations, according to the order that is required in Article VI (C) (1).

4. The Bureau of the Budget or the Treasury Department, in case of disapproving the contract, will notify the Administrator by means of an explanatory letter.

5. The agency will file the rental contract of premises with the Office of the Comptroller, in agreement with article 2 of Regulation No. 8 of March 9, 1976 of the Office of the Comptroller.

D. RENTAL CONTRACT OF PREMISES LOCATED ABROAD.

The term of duration of a rental contract of premises located in the United States or in another foreign country, can be up to a maximum of ten (10) years, subject to the requirements and established procedures in this Regulation for the rental contract of premises with an effective term of more than one (1) year and up to a maximum of five (5) years, as well as any other rule of law or regulation that may be promulgated in the future by the Administrator, the Secretary of the Treasury and the Director of the Bureau of the Budget.

E. CONTRACT WITH AN EFFECTIVE TERM OF MORE THAN FIVE (5) YEARS AND UP TO A MAXIMUM OF THIRTY (30) YEARS.

1. An agency could be authorized to grant a rental contract of premises with an effective term between more than five (5) years and up to a maximum of thirty (30) years when the purpose of the contract is any of the following:

- a. Construction of a new building whose cost exceeds two hundred and fifty thousand dollars (\$250,000.00).
- b. Construction of a new building whose rate of rental exceeds twenty-five thousand dollars (\$25,000.00) annually.
- c. Buildings under the above clause (a) or (b) already built but not rented.
- d. Buildings under the above clause (a) or (b) which to August 20, 1977 were under construction and which are rented to the agency with the previous approval of the Administrator, within a period of one (1) year starting June 20, 1977.

2. Every rental contract of premises whose effective term is more than five (5) years has to be submitted to the bidding procedure that is established in the Regulation covering Bids under Law No. 78 of June 20, 1977.

3. The agency, in any of the cases mentioned in the previous clause one (1), should submit to the Administrator a request for rental of premises.

- a. The request for rental of premises will be submitted to the Administrator after the call for bids.
- b. The request for rental of premises should be accompanied by evidence justifying that the use for which the premises are destined merit the term for which the rental is requested.
- c. The request for rental of premises should also be accompanied

by a certification from the Director of the Public Buildings Authority in terms that it does not have the requested facilities available, nor does it intend 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. Projecting 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 bidding procedure established by the Regulation covering Bids, under Law No. 78 of June 20, 1977.

ARTICLE VII - REPEAL

This Regulation repeals Circular Letter No. 1300-12-77 of April 25, 1977, issued by the Treasury Department in coordination with the

General Services Administration.

The present Regulation also repeals any other regulation previously promulgated, in relation with the contracting of rental premises for official use.

ARTICLE VIII- EFFECTIVE DATE

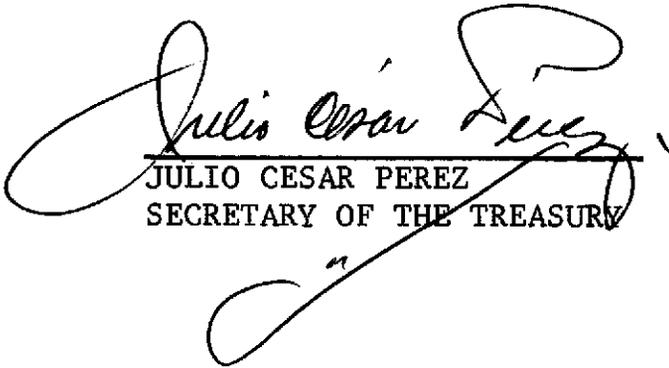
Due to its urgent nature, this Regulation will be in effect immediately after it is filed with the Office of the Secretary of State.

Approved in San Juan, Puerto Rico, on 10 of Apr.
1977.

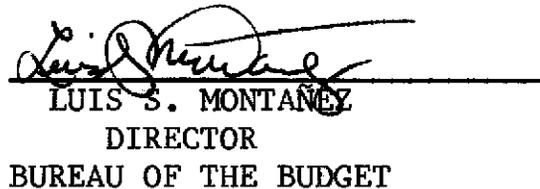


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