

No. 3382 10:55 AM

Date: December 2, 1986

Approved: Héctor Luis Acosta  
Secretary of State

By: Ramón Acosta  
Assistant Secretary of State

COMMONWEALTH OF PUERTO RICO  
General Services Administration

BOARD OF REVIEW REGULATIONS

OF THE

GENERAL SERVICES ADMINISTRATION

Final

BOARD OF REVIEW REGULATIONS

TABLE OF CONTENTS

	Page
SECTION 1. - LEGAL BASIS .....	1
SECTION 2. - PURPOSE .....	1
SECTION 3. - DEFINITION OF TERMS .....	1-3
SECTION 4. - BOARD OF REVIEW ORGANIZATION .....	3-7
SECTION 5. - JURISDICTION OF BOARD OF REVIEW .....	7
SECTION 6. - PETITIONS THAT MAY BE FILED BEFORE THE BOARD OF REVIEW .....	7-8
SECTION 7. - PROCEDURE OF PETITION TO REVIEW A BID CALL BEFORE THE ASSISTANT ADMINISTRATOR .....	8
SECTION 8. - PROCEDURE FOR PETITION TO REVIEW .....	8-10
SECTION 9. - SPECIAL GUARANTEES .....	10-11
SECTION 10. - RIGHT TO INTERVENE IN THE PROCEEDINGS .....	11
SECTION 11. - OBLIGATIONS OF THE BID BOARDS OR OF THE ASSISTANT ADMINISTRATOR .....	11
SECTION 12. - EFFECT OF PETITIONS .....	11-12
SECTION 13. - VIOLATIONS AND PENALTIES .....	12-13
SECTION 14. - REPEAL .....	13
SECTION 15. - EFFECTIVENESS .....	14

BOARD OF REVIEW REGULATIONS  
OF THE  
GENERAL SERVICES ADMINISTRATION

SECTION 1. - Legal Basis

These regulations are approved pursuant to the powers conferred on the Administrator by sections 14h and 14j of Act No. 164 of July 23, 1974, as amended.

SECTION 2. - Purpose

The purpose of these regulations is to create the Board of Review of the General Services Administration and to establish the proceedings to be brought before it.

SECTION 3. - Definition of Terms

1. Administration - The General Services Administration.
2. Administrator - The Administrator of the General Services Administration.
3. Assistant Administrator - The Administrator of the General Services Administration.
4. Agreement - Any decision made by the Board on any petition before its consideration which does not entail the final disposition of the petition.
5. Petitioning Agency - Any Government agency which by law is bound to use the Administration services or those which, although not bound to do so, request them voluntarily, in which case they shall subject to the regulations and controls established by the Administration. The Administration shall be considered as another petitioning agency.
6. Mail - United States Federal Mail.
7. Decision - Opinion delivered by the Assistant Administrator to the Board of Bids.
8. Day - Working day.

9. Emergency (urgency) - Both terms shall be considered synonymous in these regulations. Emergency or urgency shall mean that situation which gives rise to unforeseen and unexpected public needs, and which requires immediate action on the part of the Government because the life, health or safety of the people are in jeopardy or there is danger that the public service or property of the Government be suspended or affected; or if the term to use the funds is about to expire and any opportunity to acquire the goods, works and services requested may be forfeited thereby adversely affecting public interest.
10. Specifications - Group of physical, functional, esthetic and quality characteristics of the goods, works and services requested.
11. Impeachment - Petition to the Assistant Administrator to review the specifications and conditions contained in the bid call documents.
12. Board - The Board of Review of the General Services Administration created herein.
13. Board of Bids - The Board of Bids of the Administration or of the petitioning agency authorized and appointed by the Administration to conduct bids which acts as administrative body to study, evaluate and award bids its functions being governed by the "Bids Regulations" of the Administration.
14. Regulating Board - Counseling Board of the Administrator in the drafting, revision and approval of specifications.
15. Bidder - Any person registered in the Bidders Registry of the General Services Administration available and interested in contracting and attending the Government bids.

16. Item - Breakdown of each one of the goods, works or services required in the bid.
17. Interested Party - Any bidder whose interests may be affected by the result of an award made by the Award Board, decision of the Assistant Administrator or resolution of the Board.
18. Petitioner - The party who files a petition of those permitted by these regulations.
19. Respondent - In the proceedings of Impeachment against a bid call, the Assistant Administrator, and in the cases of review of awards, the Bid Board.
20. President - The President of the Board of Review.
21. Bidders Registry - Registry of suppliers listing the natural or juridical persons accepted in the Administration to contract with the Government as having complied with the requirements established therefor.
22. Resolution - Final opinion rendered by the Board.
23. Review - Petition requesting the Board of Review to reevaluate any decision rendered by the Board of Bids or by the Assistant Administrator.
24. Secretary - The Secretary of the Board of Review.

#### SECTION 4. - Board of Review Organization

The Board shall consist of as many members as the Administrator deems to be necessary, which shall never be less than three (3). The Administrator shall designate the President from among the members he appoints. He may appoint alternates to substitute regular members of the Board during the absence of anyone of them. The Administrator shall appoint the Secretary and other administrative personnel.

1. Term

The Board members shall discharge their duties and hold their positions until their successors are appointed and qualify.

The members shall be paid per diems for each day a meeting is held which shall be set by the Administrator in accordance with the applicable law and the regulations promulgated by the Treasury Department.

2. Duties and Powers

a. The duties and powers of the Board shall be the following:

- 1) Adopt a seal;
- 2) Consider, evaluate, and decide the petitions filed before it;
- 3) Adopt, with the approval of the Administrator, the necessary internal rules for the functioning of the Board;
- 4) To hold and preside over the administrative hearings and meetings;
- 5) To delegate to an examiner the administrative hearings;
- 6) Each one of the Board members may act as official examiner in any case to which the Board assigns him,
- 7) To approve, modify or revoke the resolution projects when the administrative hearings have been presided by examiners.

b. The duties and powers of the President are the following:

- 1) To see that the regulations are complied with;
- 2) To see to the normal functioning of the Board;
- 3) To see that the Board members faithfully comply with the duties of their position;
- 4) To conduct the Board proceedings;
- 5) To represent the Board;
- 6) To preside over the administrative meetings and hearings of the Board;

- 7) To comply with the functions and duties inherent in his position.
- c. The functions of the Secretary shall be the following:
- 1) To keep under custody all the information contained in the books, correspondence, files, documents and records of the cases of the Board, as well as all the evidence related thereto;
  - 2) To hold control of all the correspondence and documents received and sent by the Board;
  - 3) To certify the documents of the Board;
  - 4) To draw up, control and keep the minutes of all the administrative meetings and hearings of the Board;
  - 5) To hold control over the resolutions and decisions of the Board;
  - 6) To send the records of the Board to the judicial courts;
  - 7) To be in charge of the administrative operation of the Board;
  - 8) To comply with all the functions and duties inherent in his position;
  - 9) To be the official custodian of the Board's seal.

### 3. Attendance and Quorum

The Board shall convene as many times as it may determine to be necessary in order to consider the matters submitted thereto or when the Administrator requests it.

The members shall attend the meetings personally and a majority of the members shall constitute quorum.

For any determination requiring the Board's approval, two (2) of its members shall constitute quorum.

### 4. Determinations of the Board

All the agreements and decisions of the Board shall be reached by a

majority of the members present who shall constitute quorum at the time of the vote.

5. Filing Petition for Review: Internal Proceeding

a. Registry of Petitions for Review

The Board shall keep a Registry of Petitions for Review in which the petitions shall be registered in the order they are received, assigning to each petition a registry number. Said registry number shall identify each case from its initiation to its final determination.

b. Hearings

- 1) The Board may hold hearings and receive and consider any oral or written testimony and any evidence it may deem to be pertinent. The absence of a member in the course of said hearings does not preclude him from participating in the argument and resolution by the Board of the case object of the hearing.
- 2) The presentation of testimony and admission of evidence during the hearings shall be governed by the rules established by the Board. The Rules of Procedure and of Evidence followed in the Courts of Justice shall not be applicable to the hearings and proceedings conducted in the Board. Notwithstanding, the Board may be guided by or apply said rules in those specific cases in which, in its opinion, their application may result in the benefit of the public interest.

c. Resolutions

- 1) In its resolutions the Board shall state the findings of fact and conclusions of law on which they are based.

- 2) The Board shall keep in its files the original of its resolutions and shall send copies thereof to the interested parties.
- 3) The determination issued by the Board as to any action shall affect only the case under its consideration.
- 4) The resolutions of the Board shall be final.

d. Notifications

The resolutions of the Board shall be notified as soon as possible to the parties who have formally appeared before it.

SECTION 5.- Jurisdiction of Board of Review

The Board shall have jurisdiction to settle controversies on the following matters.

1. Decisions issued by the Assistant Administrator with respect to bid call impeachments, except that no review of standard specifications approved by the Regulatory Board created by Act No. 164 of July 23, 1974, as amended, may be requested;
2. Awards made by the Bid Board;
3. Investigations concerning complaints presented by bidders to the Administrator or any matter which deems to be pertinent to be submitted to the Board's consideration;
4. When the Board of Bids or the Assistant Administrator eliminates the bidder from the Bidders Registry.

SECTION 6.- Petitions that may be Filed before the Board of Review

1. Review of Bid Call

Any bidder not agreeing with any term, specification or condition of a particular bid call who impeaches said bid call before the Assistant Administrator and feels aggrieved by the decision rendered by the latter, may file a petition for review of said decision before the Board.

2. Review of Award

Any bidder who has participated in a bid may file a petition before the Board for review of the award made by the Bid Board.

SECTION 7.- Procedure of Petition to Review a Bid Call before the Assistant Administrator

1. Term

Any impeachment of a bid call shall be filed before the Assistant Administrator within five (5) labor days from the posting date according to the mail office call was mailed, or within three (3) labor days of having received the bid documents by hand, depending on the type of bid call conducted.

2. Contents

The bid call impeachment petition shall be presented in original with two (2) copies, typewritten or hand printed and shall contain the following:

- a. Bid number.
- b. A detailed statement indicating the specific parts, specifications or conditions the terms of which are impeached.
- c. The reasons and specific arguments on which the impeachment is based, including the necessary documentary and material evidence, which show and prove that the allegations made to impeach the bid call are valid.
- d. A clear indication of the remedy or action sought.
- e. The signature of the petitioner or of his authorized representative.

SECTION 8.- Procedure for Petition to Review

1. Filing

- a. The petitioner who wishes to file before the Board any action allowed in these regulations shall do so by filing, within five (5) labor days from the posting date according to the mail office following the date the decision of the Assistant Administrator

or of the Bid Board was mailed, a petition for review, in original and two (2) copies before the office of the Secretary of the Board. He shall simultaneously notify the respondent and the successful bidder with a copy of the petition.

- b. When the Bid Call or the Award Notice is delivered by hand to the petitioner who wishes to file any action allowed in these regulations before the Board, he shall do so by filing it within three (3) days following receipt thereof.

## 2. Notification

He shall notify the respondent and the successful bidder simultaneously with a copy.

Irrespective of petitioner certifying that he sent copy of the petition to the respondent and to the successful bidder, the Secretary of the Board shall send a copy of the brief to both parties for the purpose of accelerating the proceedings.

The Board shall decide the petition for review within the shortest time possible.

## 3. Exceptions

Petitions permitted herein shall not lie when any of the following situations prevail:

- a. The regulatory term has expired;
- b. The arguments used to support the petition for review of a bid award constitute, in essence, an impeachment of the bid call in said bid;
- c. It is sought to challenge any requirement or provision established by law or regulations;

- d. The petitioner has failed to appear in previous stages of the procedure;
- e. The bidder did not originally participate in the bid.

4. Petition Form

The petition shall have to be typewritten or hand printed in original and two (2) copies and it shall contain the following:

- a. Bid number.
- b. The grounds on which he bases his status of interested party.
- c. A clear and detailed statement of all the facts of the case, allegations and reasonings on which the petitioner bases his petition and the documentary evidence in his possession and if the petition involves a review of award, the specific item or items the review of which is sought.
- d. A clear indication of the remedy sought.
- e. Certification that a copy of the petition has been sent to the respondent and to the successful bidder.
- f. The signature of the petitioner at the end of the petition. If the petitioner is a partnership, a managing partner should sign it and if it is a corporation one of its authorized officers. If it is filed by his legal representative the signature of said representative shall be sufficient.

SECTION 9. - Special Guarantees

- 1. The Board may request the petitioner, the interested party, or both, to post a guarantee which may consist of a bond issued by an insurance company authorized to do business in the Commonwealth of Puerto Rico, a certified check or money order in the name of the Secretary of the

Treasury. The General Services Administration Collector shall receive these guarantees. Said guarantee shall answer for any damage the Government may sustain in relation to this case.

SECTION 10.- Right to Intervene in the Proceedings

Any party who deems to have been affected may request the Board for leave to intervene in an action filed before it in order to establish his position as to the petition for review. If the Board considers that the party requesting intervention shall have his rights affected by the resolution of the petition, it shall allow his intervention. The Board shall order the affected party to file a petition for intervention within the time it deems pertinent. The intervener shall comply with all the requirements of form established in Section eight (8) of these regulations.

SECTION 11.- Obligations of the Bid Board or of the Assistant Administrator

The Bid Board or the Assistant Administrator from whose final decision an appeal is taken to the Board shall have five (5) days, to be counted from the date of notification of the Petition for Review, to file before the Board its answer to the allegations made in the petition for review.

SECTION 12.- Effect of Petitions

The petition filed to impeach or review, the decision shall paralyze the procedures related to the bid until final resolution of the matter before its consideration is rendered.

In case an emergency situation arises in which the General Services Administration considers that a Government program or service could be affected, the Board alone shall have power, upon justification by the petitioning agency and recommendation of the General Services Administration,

to authorize the execution of the corresponding purchase of the article(s) or service for the period that it might take the Board of Review to finally solve the case. In these cases the articles or services can not be acquired from petitioner when the latter has an extension of the previous contract.

If the bidder who files the petition should be the contractor in the existing contract, which shall be substituted by the new contract which would be authorized, the term of the new contract shall not be extended.

### SECTION 13. - Violations and Penalties

#### 1. Violations

Any Government employee who furnishes information about petitions at Board level or who intervenes with the documents, or in any other way, acts improperly, shall be subject to the imposition of sanctions provided herein or in any other applicable law.

Any bidder who does not comply with the provisions of these regulations shall have the sanctions provided therein imposed on him.

#### 2. Penalties

If the Board determines that any of the violations provided herein has been committed it may proceed as follows:

- a. If the person committing the violation is a Government employee, it may submit the matter to the consideration of the head of the agency so he may proceed with any of the actions provided by the Personnel Act.
- b. 1) If he is a bidder, it may order the foreclosure of his bond or that his name be immediately withdrawn from the Bidders Registry of the General Services Administration which is established by the Bid Board Regulations, for a period not less than six (6)

months to be counted from the next bid susceptible of being awarded to him, nor greater than three (3) years, or both and such bidder can not participate in any other bid for agencies in the Executive Branch for the some period of time.

2) Such penalty shall also be cause for his disqualification to a bid in the process of being awarded.

c. If the violation entails the commission of an offense or if, in the opinion of the Board, the violation of these regulations so warrants it, the matter shall be submitted to the Department of Justice so it may proceed pursuant to the provisions of Article 32 of Act No. 164 of July 23, 1974, as amended, which provides that any person violating any of the provisions of the regulations issued pursuant to said Act, shall commit a misdemeanor and, if convicted, shall be sentenced to pay a fine of not less than fifty dollars (\$50.00) nor more than two hundred and fifty dollars (\$250.00) or imprisonment in jail for a term of not less than one (1) month nor more than six (6) months, or both, in the discretion of the Court. The referral of the case to the Department of Justice for criminal action does not preclude the imposition of civil and administrative sanctions provided herein.

#### SECTION 14.- Repeal

These regulations repeal Regulations No. 1 of June 18, 1979, of the Board of Review.

Notwithstanding the foregoing, any petition for impeachment or review which might have been filed prior to the effective date of these regulations shall continue to be governed by the provisions of the previous regulations.

**SECTION 15. - Effectiveness**

These regulations shall enter into effect thirty (30) days after they are filed in the State Department of the Commonwealth of Puerto Rico, pursuant to the provisions of Act No. 112 of June 30, 1957, as amended, known as "Regulations Act of 1958".

Approved at San Juan, Puerto Rico, on this *24* day of November of 1986.

  
BLAS CONTRERAS  
Administrator