GOVERNMENT OF PUERTO RICO
General Service Administration

Hon. Wanda Vázquez Garced
Governor

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ASG CIRCULAR LETTER No. 2021 - 03

Secretaries, Deputy Secretaries of Departments, Executive Director, Administrator, Dependencies and Instrumentalities of the Executive Branch of the Government of Puerto Rico.

ATT: Purchasing Directors, Buyer Delegates, Buyer Sub- delegates, Official Receivers, Auxiliary Receivers

SUBJECT: SPECIAL PROCEDURE FOR EXCEPTIONAL PURCHASES FOR EMERGENCY OR DISASTERS DECLARED BY THE GOVERNOR OF PUERTO RICO

I. LEGAL BASIS

This Circular Letter is promulgated pursuant to the powers delegated to the Administrator of the General Services Administration ("GSA"), as provided in Law No. 73 of July 23, 2019, known as the "Law of the General Services Administration for the Centralization of Purchases of the Government of Puerto Rico of 2019 ", as amended, ("Act 73-2019 ") and the Operational Plan for Catastrophic Incidents in Puerto Rico decreed pursuant to the provisions of Act No. 20 of April 10, 2017, known as the "Law of the Department of Public Safety of Puerto Rico"", as amended ("Act 20-2017").

Act 73-2019 regulates the bidding and purchasing processes carried out by all the Government Entities of the Government of Puerto Rico. This in order to standardize and regulate the processes so that they are more efficient, guaranteeing, among other things, transparency in the transactions that involve the disbursement of public funds. In turn, Law 73-2019 regulates purchases made in the event of an emergency declaration by the Executive, categorizing them as exceptional purchases, so they are exempt from processing through ordinary bidding methods.

In addition, Act 73-2019 creates the figure of the General Services Administration ("Administration"), who in turn is the Chief Purchasing Officer of the Government of Puerto Rico. The Administrator has the duty and the power in law to "establish the process in which goods, works and non-professional services, must be carried out, purchased, delivered and distributed; grant related contracts and choose the type of contract to be awarded, "and advise the Governor, government officials and the Legislative Assembly of Puerto Rico regarding public policy that by this Law or any other law, has been entrusted to implement the Administration ".

On the other hand, Act 20-2017 grants extraordinary powers to the Governor of Puerto Rico in the face of the emergency decree, among is the power to "dictate, amend, and revoke those regulations and issue, amend, and rescind those orders that it deems convenient to govern during a state of emergency or disaster". In accordance with the foregoing, the Operational Plan for Catastrophic Incidents in Puerto Rico ("Emergency Plan") of the Bureau for Emergency Management and Disaster Administration ("NMEAD") was established, which identifies the roles of each Government Entity in attention to the state of emergency.

Act 73-2019 establishes the processes that Exempt Entities must follow when making their purchases, including emergency purchases, there are various laws that establish the procedures that Exempt Entities must follow when making purchases, including emergency purchases, such as, Act No. 40 of May 1, 1945, among others.

II. PURPOSE

This Circular Letter is issued with the purpose of establishing and detailing the procedure for exceptional emergency purchases in Government Entities, pursuant to the provisions of Article 34 (f) of Law 73-2019. Likewise, this Circular Letter is issued with the objective to establishing the procedures that Exempt Entities will carry out when making emergency purchases, once the Governor of Puerto Rico has decreed a state of emergency.

III. SCOPE

This Circular Letter applies to all Departments, Agencies, Dependencies and other Instrumentalities of the Executive Branch of the Government (Government Entities), including the Exempt Entities, as defined in Act 73-2019.

IV. EXCEPTIONAL EMERGENCY PURCHASING PROCEDURE

1. All Government Entities, including Exempt Entities (as defined in Article 4 (o) of Law 73 of 2019, as amended), shall designate and authorize personnel to serve as liaison with the Special Operation Center ("COE") of the PREMA. These personnel must have access to the WEBEOC system, which must be requested at the following email: mesa@prema.pr.gov.

   a. If any situation arises with the WEBEOC system, contact Mr. Marcos Rodríguez of NMEAD at (787)724-0124 ext. 30000 or through the following email address: mrodríguez@prema.pr.gov.

   b. The person designated as liaison of each Government Entity must be in constant communication with its authorized buyer (buyer delegate and buyer sub-delegate) as well as appropriate financial personnel. Authorized buyer refers to those with a current appointment granted by the ASG or those designated by the Municipalities, Judicial and Legislative Branch.

   c. The liaison must document and justify the purchase, requiring all information from the buyer (buyer delegate and buyer sub-delegate). When justifying the purchase, the liaison must include and indicate the name of the buyer, Government Entity where he or she works, contact information including telephone number, and justification for the purchase.

      i. The authorized purchaser of the requesting Government Entity will complete the original ASG-566 Form "Purchase Order" with original signatures for the buyer's authorized representative and the Government Entity's representative. This will serve as a purchase order, "*conduce*", delivery receipt and invoice of the supplier, if duly

completed and ultimately approved. In the case of Exempt Entities, the emergency purchasing processes must comply with the internal procedures established for this purpose in addition to the filing of ASG-566 Form. For example, PRASA must follow Procedure No. 399, as established, when making emergency purchases.

ii. The head of the Governmental Entity or its authorized representative will approve the purchase orders issued by the buyer by means of his signature, after the agent of the Governmental Entity verifies that the goods or services described therein that will be purchased are not available. Purchase orders must be signed by a duly appointed buyer. In the absence of duly authorized buyers with a valid appointment, the name and position of the designated buyers during the emergency must be provided to the ASG.

iii. The purchase order will be charged against contracts previously established by the Entity, by emergency contracts granted by ASG (Form ASG-565) or the form corresponding to Exempt Entities. If there are no pre-established contracts, the Government Entity will submit the ASG 565 Form for review and approval by ASG personnel. The buyer will prepare a separate file which will contain the purchase orders in accordance with the Catastrophic Incident Operational Plan in Puerto Rico, and any other document related to the purchase, including but not limited to quotes, communications, agreements, and a copy of the ASG-565 Form.

iv. The buyer will make sure to list, with consecutive numbers, each purchase order issued during the emergency and will keep a record of them. This will apply to all Governmental Entities.

v. The buyer will write "Purchase Order under the Special Procedure of the National Emergency Plan" on the ASG-566 Form or the control number provided by COE on the corresponding form for Exempt Entities.

vi. Once the goods or services have been received, a designated individual at the Government Entity must sign the receipt provided in Form ASG-566 "Purchase Order"

or the corresponding form required for Exempt Entities, certifying that the goods or services have been received, as described and detailed in the Purchase Order. Any issue related to delivery or receipt of the goods or services must be reported to the buyer and recorded in the purchase file. These files must be audit ready by each particular emergency event.

vii. All communications must be conducted on the agency's information systems. Communications on personal devices are strictly prohibited except in emergency situations, but any such communication must be preserved and transferred to a permanent file in the agency's books and records within five (5) business days of the date of such communication. Such must be readily available for future audits by each particular emergency event.

2. All purchases related to the emergency-related purchase request must be submitted through Form 113 of the WEBEOC system, which must be accompanied by the following documentation:

   a. A statement attesting the Government Entity has complied with the provisions of OMB for the approval of funds;
   b. Purchase Order (Form ASG-566 or the form corresponding to Exempt Entities);
   c. Current contract or Emergency Agreement not to be part of those provided by ASG (Form ASG-565);
   d. Quote with all product specifications, including availability and delivery date;
   e. Any other documentation that could be required.

3. Once the COE receives the request (Form 113), specialized and authorized personnel (such as the emergency management coordinators at GSA) will evaluate and document the corresponding determination on the same form. The designated and authorized personnel shall be designated by NMEAD.

4. After being approved by the corresponding entities provided for by the Incident Commander, GSA staff will review and confirm that Form 113 contains all the required documentation. The GSA

Assistant Procurement Administrator will evaluate and recommend the acquisition indicating that the purchase request and procedures comply with the applicable requirements. The bidding officer or his representative will authorize the acquisition as required in Circular Letter 2020-07. Finally, the corresponding GSA personnel designated to the COE will assign a control number to Form 113.

5. Once the control number has been assigned, Form 113 will be referred to the personnel designated by OMB. OMB will not evaluate any purchase order that does not have the control number assigned to it.

6. The evaluation of each Form 113 must be carried out in a period not exceeding 24 hours, except for just cause, if the request is in accordance with the declaration of emergency.

7. Governmental Entities and Exempt Entities will follow the Emergency Procurement Guidelines as set forth in Appendix A attached hereto.

8. Payments will not be made prior to the receipt of requisitioned goods or services.

9. Competitive practices and multiple quotes should be maintained to the extent feasible. Thus, Governmental Entities and Exempt Entities must provide an explanation that is compelling for not attempting to acquire multiple price quotes (or the use of other than existing contracts).

10. Procurement must be consistent with any applicable federal requirements.

11. The Secretary, Executive Director or head of every Government Entity must submit to ASG, with a copy to the Governor and FOMB, a monthly certification confirming that the corresponding agency complied with the established procurement regulations.

12. Any proposed emergency purchase contract or purchase order, or series of related contracts, inclusive of any amendments, modifications, or extensions, with an aggregate expected value of $10 million or more must be submitted for approval prior to execution by the Financial Oversight and Management Board (the "Oversight Board") as required by PROMESA section 204(b) and its

Review of Contracts Policy. All other emergency purchase contracts or purchase orders must be submitted to the Oversight Board immediately upon execution.

13. As required by the Oversight Board, all agencies shall include as an attachment to all purchase orders and contracts executed pursuant to this Circular Letter, provided at the time of execution of said contracts, a certification provided by the contractor. This certification shall state that any campaign contributions, as that term is defined by Act 222-2011, as amended, known as the Puerto Rico Political Campaign Financing Oversight Act, made by the contractor (and in case of a corporate entity, by its shareholders, members or owners) has been made in accordance with said statute.

14. The General Services Administration ("GSA") will provideto Puerto Rico Innovation & Technology Service ("PRITS") a report of purchase orders with their corresponding control numbers that shall contain at a minimum the following information: i) order number, ii) goods or services acquired, iii) supplier from whom such goods or services were acquired, iv) purchase cost of such goods or services and v) government entity purchasing such goods or services, which PRITS shall publish within five (5) days of receipt of such information.

V. CURRENT EMERGENCY CONTRACTS

GSA maintains current emergency contracts, duly formalized, so that Government Entities can acquire goods or services in accordance with the Special Procedure for Emergency Purchases. The list of current emergency contracts is attached. However, if the agency needs other types of goods or services that are not contemplated in the aforementioned contracts, or there is no previous contract with the supplier, the ASG-565 Form must be completed, together with the corresponding purchase order. The ASG-565 Form must be duly approved by GSA personnel.

Government Entities are responsible for making payments in accordance with the rules established by the Puerto Rico Treasury Department or any other applicable regulation.

VI. REPORT TO THE ADMINISTRATOR

All Government Entities must complete Form ASG-567 "Report of purchases made during an emergency situation", which will include all purchases made by the entity during the emergency. The report shall be submitted to the ASG Administrator, not later than fifteen (15) days after the end of the state of emergency, pursuant to a decree of the Governor of Puerto Rico. The report must also include a copy of each purchase order generated during the emergency along with a copy of the invoice submitted for payment by the supplier, certified as an official copy of the original.

VII. REPEAL

This Circular Letter repeals Circular Letter 2020-03, and supersedes any General Memorandum, Administrative Order, that is incompatible in whole or in part, to the extent that such incompatibility exists. Circular Letter 2020-07 which establishes the new procedure for purchases and bids for goods, works and non-professional services in accordance with the centralization of purchases of the Government of Puerto Rico shall remain in effect, and is only repealed with respect to exceptional purchases for an emergency or disasters declared by the Governor of Puerto Rico.

VIII. VALIDITY AND PUBLICATION

This Circular Letter will take effect immediately[1].

Karla G. Mercado Rivera, Esq.
Administrator and Chief Procurement Officer

Appendix A

[1] This Circular Letter was reviewed, amended and approved by the Fiscal Oversight Board of the Government of Puerto Rico prior to its publication.

Emergency Procurement Guidelines:

1. PREMA, acting through GSA, should be the central purchasing entity for all emergency purchases following established emergency procurement guidelines under Act 73 and Circular Letter 2020-07 and 2021-03. Timing is essential, so the process must be expeditious, and the purchase should be only in the amounts necessary for the period of the emergency. It must be assured that the agency has the capacity and expertise and they must use GSA policies and procedure.

2. Relevant agencies[2] must clearly identify the need for products/services as per the emergency requirements and follow the GSA established emergency procurement guidelines. This should include exempt entities. GSA, PREMA and other relevant agencies must train personnel in advance of emergency events, on a regular basis, not less than annually.

3. GSA and the interested agency must match requirements with existing contracted suppliers to the extent possible, or search for new qualified suppliers to support the requirements identified if no existing suppliers are able to fulfill the requirements. GSA and the interested agency should investigate any new suppliers to minimize risk. All means possible should be used to maintain competition and arms-length transactions with the appropriate oversight.

4. GSA and the interested agency must ensure that the proposed products to be purchased are approved by all pertinent local and federal applicable regulatory agencies (FDA, USDA, etc.). The approval process should state the necessity of compliance from all relevant regulatory agencies. It is advised to establish separate guidelines to ensure that the required steps are followed, and a separate sign-off by the agency head and GSA ensuring compliance has been achieved. The

[2] The following entities are not required to follow GSA procurement processes:
Governmental Ethics Office: Office of the Inspector General of Puerto Rico, University of Puerto Rico, State Elections Commission, AAFAF, Government Development Bank, Public Private Partnership Authority, Puerto Rico Infrastructure Financing Authority, Aqueduct and Sewer Authority, Puerto Rico Electric Power Authority, Roads and Transportation Authority, Cooperatives Insurance Oversight Public Corporation, ASEM programs and facilities, Centro Medico, Hospital Cardiovascular, Hospital Industrial and regional dispensaries, State Insurance Fund, Metropolitan Bus Authority, and Public Buildings Authority.

relevant processes (and forms) will need to be adjusted to ensure that this compliance is attested to.

5. GSA must pre-negotiate pricing for existing suppliers. Price guidelines must be established for non-contracted suppliers. Negotiation of payment terms, delivery and pricing are important even during emergencies. To the extent possible, contracts and suppliers should be pre-identified and pricing schedule established.

6. The Government may consider unsolicited proposal for services or goods during emergency situations. However, strict and strong controls need to be in place to assure that these proposals are consistent with the interests of the Commonwealth and should be considered only after first establishing the need and the competitiveness of other suppliers.

7. GSA must enforce the proper use of competitive procurement mechanisms as described in Act 73 and Circular Letter 2020-07 and 2021-03. If not possible, Government must ensure strict approval and be limited as possible. All exceptions must be approved by higher level governmental representatives, properly documented, and never delegated. It may be necessary however, to relax or adjust the forms of competition in such situations. These adjustments need to be defined and agreed prior to the event and they must only be used when absolutely justified. The conditions under which they would be justified must be defined and it must assure that they are only used under those conditions. They should not be justified simply because there is an emergency declaration and they should be used only for absolutely necessary (not convenient) procurement. Emergencies should not be used to procure items that are not definitively needed as a result of the emergency.

8. In the rare and exceptional cases that an advance payment or prepayment is required, such payment shall be for a partial amount and not in full and shall require a bond or similar guarantee to minimize risk of non-performance, and otherwise be in compliance with Act No. 230-1974, as amended, known as the "Puerto Rico Central Accounting Act", and any incidental regulation adopted pursuant to said Act, including, but not limited to, Regulation Number 31 issued by the Puerto Rico Treasury Department on June 21, 2007. Letters of credit or other guarantee arrangement may be considered by the government in exceptional circumstances, subject to

procedures being in place to provide assurance that the procured items or services are actually received or to provide safeguards to that end. In every case, recourse against the supplier shall be provided for and contracts must be executed with the supplier that compel future repayment or delivery as specified and scheduled. Contract shall provide for specific remedies against the supplier in the event of supplier's non-performance.

9. Full payment should be reflected in the contract/purchase orders in order to avoid misunderstandings regarding total cost, i.e. must include all taxes, shipping, guaranty cost or other associated costs. While few circumstances may require flexibility in contract adjustments/exceptions and controlled levels of potential overruns, notification and approval must be required before any amendments or adjustments. Periodic controls are as necessary as the initial controls on the purchase order and clearance, and similar processes and procedures need to be identified.

10. All emergency purchases must be properly documented from intent to execution in a unique file. All process and decisions need to be evidenced in writing and available for audit at any time.

11. Highly recommended to identify and implement a Dynamic Purchasing System, in which all purchases, ordinary and emergency, are permanently recorded in all steps, and made audit ready. A proper system with a platform should be implemented, which can provide all necessary controls and assurances for credible sanctions against non-compliance and malfeasance.