

# ***“Reorganization Plan of the General Services Administration of Puerto Rico of 2011”***

Reorganization Plan No. 3 of November 21, 2011

Drawn by the Governor of Puerto Rico and remitted to the Sixteenth Legislative Assembly, convened in its Fifth Regular Session, pursuant to the Act for the Reorganization and Modernization of the Executive Branch of the Government of Puerto Rico of 2009, in order to reorganize the General Services Administration.

To set forth the Reorganization Plan of the General Services Administration of 2011; to establish the powers, duties, responsibilities, and jurisdiction thereof; to restructure the procurement process of the Government of Puerto Rico to contract goods and nonprofessional services; to create the Public Bid Board of the General Services Administration of the Government of Puerto Rico and establish the powers, responsibilities, and jurisdiction thereof; to create the Public Bid Reviewing Board of the General Services Administration and establish the powers, responsibilities, and jurisdiction thereof; to amend Section 6 of Act No. 230 of July 23, 1974, as amended, known as the “Puerto Rico Government Accounting Act”; to amend Sections 6 and 9 of Act 129-2005, as amended, known as the “Government of the Commonwealth of Puerto Rico Procurement Reserve Act”; to amend subsection (a) of Section 4 of Act No. 5 of December 8, 1955, as amended, known as the “Puerto Rico Public Documents Administration Act”; to repeal subsection (c), amend current subsection (i), and renumber subsections (d), (e), (f), (g), (h), (i), (j), and (k) as subsections (c), (d), (e), (f), (g), (h), (i), and (j), respectively, of Section 6 and amend Sections 8 and 9 of Act 14-2004, as amended, known as the “Investment in Puerto Rican Industry Act”; to amend Section 7 of Act No. 140 of June 3, 1976, as amended; to amend Section 2 of Act 237-1995, as amended; to repeal Act No. 164 of July 23, 1974, as amended; to repeal Reorganization Plan No. 2 of 1971; to provide for the transfer of programs, funds, and property of the new government structure; to repeal Act 31-2001; and for other related purposes.

## **CHAPTER I. — PRELIMINARY PROVISIONS**

### **Section 1. — Title. —**

This Reorganization Plan shall be known as the “Reorganization Plan of the General Services Administration of Puerto Rico of 2011.”

### **Section 2. — Public Policy Statement. —**

This Reorganization Plan provides for the reorganization of the General Services Administration (hereinafter, the “Administration”). This plan is submitted under the provisions

of Act 182-2009, known as the “Act for the Reorganization and Modernization of the Executive Branch of the Government of Puerto Rico of 2009,” to promote a governmental structure that meets the actual needs and contributes to the betterment of the quality of life of our people. This reorganization seeks to optimize the effectiveness and efficiency of the government endeavor, streamline the process whereby services are rendered through the use of technological advancements, cut back on public spending, allocate resources strategically, provide citizens with greater access to public services, simplify regulations governing private activities without impairing the public interest, and reduce the tax burden of the people of Puerto Rico.

The Administration was created by Reorganization Plan No. 2 of 1971 with the intent to integrate ancillary services that were dispersed throughout different agencies, in order to improve the quality of services and reduce operating costs under norms to simplify and streamline procedures. However, with the passing of time, the Administration has become more ineffectual due to several factors, among which are: failure to incorporate technological advancements into the process of contracting goods and nonprofessional services and the continuous enactment of laws that exempt different government agencies from the requirement to submit to the procedures established by the Administration.

It is the public policy of the Government of Puerto Rico to restructure the procurement process in Government to provide the Administration with the tools necessary to fully comply with its mission of streamlining the process of contracting goods and nonprofessional services for the different public agencies. Uniformity in the procurement of goods, works, and nonprofessional services shall foster competition between vendors, enable the acquisition of the highest-quality goods and services at the lowest possible cost, and guarantee the highest yield of public funds. It is further guaranteed to the People that the funds are used fairly, impartially, openly, and transparently.

Likewise, it is necessary to establish vehicles for identifying opportunities to negotiate with vendors on the basis of large-volume purchases so as to reduce costs under the economies of scale principle, ensure a more efficient procurement process, define the roles and responsibilities of procurement officials, and guarantee the integration of the Executive Branch of the Government of Puerto Rico into the procurement system to be created.

The implementation of state-of-the-art technologies to be used in the implementation of this Plan shall allow the Executive Branch to access internet catalogs, receive quotes, and make purchases electronically. Therefore, the amount of time that an agency spends completing all the steps of the current procurement process, namely, from the time the acquiring agency determines that there is a need to the time the payment is made, shall be thus reduced. This system shall expedite and streamline acquisitions and, in turn, facilitate the process by rendering it transparent and easily auditable. Implementing systems that have been successful in other jurisdictions shall reduce the costs related to the acquisition of goods and nonprofessional services and allow the Government of Puerto Rico to invest more funds in direct services to citizens, as well as to reduce the operating expenses of the Government itself that are charged to the General Fund.

In order to strengthen our economy further, the system to be implemented pursuant to this Plan shall also be more expeditious and efficient for those doing business with the Government of Puerto Rico. This system shall enable the electronic management of purchase requests for goods and services made by the Executive Branch, thus cut down the number of steps required to do business with the Government of Puerto Rico. Potential vendors shall be able to participate in all of the procedures through the Internet, which shall provide them with immediate access to

purchase requests of the Government of Puerto Rico and allow them to submit their quotes cost-efficiently.

The public policy of the Government of Puerto Rico set forth in Act No. 25 of December 8, 1989, known as the “Act to Establish a Down Payment System for Government Purveyors of Goods and Services,” whereby a down payment system that allows the agencies of the Government of Puerto Rico to comply with their obligations with goods and services vendors was established, is hereby further reasserted.

This Plan creates the Public Bid Board, attached to the Administration, which Board shall have a quasi-judicial nature and be empowered to assess and award, through a uniform procedure, the public bids of the Government of Puerto Rico conducted in accordance with the provisions of this Plan.

Furthermore, in order to make the public bid process more reliable and transparent, the Public Bid Reviewing Board is hereby created, to be attached to the Administration, but with awarding autonomy. The Public Bid Reviewing Board shall have the duty to review all the awards made by the Public Bid Board that may be protested.

The procurement system created under this Plan upholds and reasserts the public policy on procurement reserves set forth in Act 14-2004, as amended, known as the “Investment in Puerto Rican Industry Act,” Act 129-2005, as amended, known as the “Government of the Commonwealth of Puerto Rico Procurement Reserve Act,” and Act 253-2006.

Lastly, the procedures to be reformulated shall enable the Government to fully comply with the different laws that have been enacted, but not implemented or effectively enforced with the passing of time. This shall also allow the Government to reduce expenditures and reap benefits from making prompt payments to vendors of goods and nonprofessional services that enter into contracts with the Government, while generating savings for the General Fund.

### **Section 3. — Scope. —**

The provisions of this Plan shall govern all goods and nonprofessional service procurement and acquisition processes in the Executive Branch, as defined herein. Public corporations and municipalities shall be able to voluntarily opt in and benefit from the goods and nonprofessional services procurement systems to be developed through a procurement process that shall be established for the Government of the Commonwealth of Puerto Rico. Such public departments, agencies, instrumentalities, and entities of the Executive Branch of the Government of Puerto Rico that participate in a PPP Contract, as defined in Act 29-2009, as amended, known as the “Public-Private Partnership Act,” shall be exempted from the application of this Plan only on matters pertaining to the PPP Contract in question. The provisions of this Plan shall be supplementary in nature for the municipalities, except as otherwise provided.

### **Section 4. — Definitions. —**

For the purposes of this Plan, the following terms shall have the meaning stated below, except where the text of the Plan otherwise indicates. Likewise, any word used in the singular form shall be understood to also include the plural form when the use so justifies; and the masculine gender shall include the feminine gender, or vice versa:

- a) *Administration*: shall mean the General Services Administration of the Government of Puerto Rico.
- b) *Administrator*: shall mean the Administrator of the General Services Administration of the Government of Puerto Rico.
- c) *Goods*: shall include personal property, or complementary, substitute, consumer, or capital goods, or any thing movable, whether by itself or by another force, and that may be fungible or not, such as, but not limited to: food; office supplies and equipment; construction materials and equipment; ground or air transportation means; any land or sea area; school supplies; medical and scientific equipment; electronic information processing equipment, machinery, and supplies and the accessories, parts, and materials for maintenance and repair thereof; and any other elements necessary for the operations of the Government of Puerto Rico.
- d) *Certificate of Competency*: shall mean the certificate issued by the General Services Administration of the Government of Puerto Rico to any bidder or vendor attesting to the latter’s compliance with the requirements established through regulations to be registered in the Exclusive Register of Bidders.
- e) *Acquisition*: shall mean the total number of similar grouped needs, whether goods or nonprofessional services, that shall be acquired in a single transaction or at a specific time, because they have similar purposes, common vendors, or better serve the public interest.
- f) *Procurement Official*: shall mean the official or employee of any instrumentality of the Executive Branch, or any municipality, or public corporation who, upon the advice of the appropriate agency, shall be empowered by the Administrator to make acquisitions to render the operations of the General Services Administration of Puerto Rico more flexible.
- g) *Emergency Acquisitions*: shall mean such acquisitions made to address certain unexpected and unforeseen public needs for goods and nonprofessional services that compel the Government of Puerto Rico to take immediate action due to a situation that endangers lives or public health and safety if a service is suspended or affected or which places the property and the Federal and State-funded programs of the Government of Puerto Rico in jeopardy.
- h) *Regular Acquisitions*: shall mean those acquisitions of goods and nonprofessional services made under an open contract or from a vendor whose prices are already established and fixed for a specific period. Generally, these acquisitions include items used frequently in the daily operations of an agency, instrumentality, municipality, or public corporation of the Government of Puerto Rico.
- i) *One-time Acquisitions*: shall mean those acquisitions for which there is no open contract and are made to obtain a specific item or good for a determined period.
- j) *Contract*: shall mean a written agreement or arrangement entered into by the parties for contracting goods and nonprofessional services.
- k) *Open Contract*: shall mean a contract negotiated by the General Services Administration of Puerto Rico whereby regular acquisitions shall be made and whose requirements shall be established by the Administrator through regulations to such effects.
- l) *Call for Bids*: shall mean a written or electronic communication whereby natural or juridical persons are called or invited to appear in a specific place or to participate in a specific act.
- m) *Specifications*: shall mean a group of essential characteristics of the equipment or supplies referred to in each item of a public bid or acquisition, as well as the physical, operating, esthetic, and/or quality characteristics or features that describe the required type of goods, as well as the instructions for installation, assembly, or connection.

- n) *Public Bid Board*: shall mean the Public Bid Board of the General Services Administration of the Government of Puerto Rico.
- o) *Reviewing Board*: shall mean the Public Bid Reviewing Board of the General Services Administration of the Government of Puerto Rico.
- p) *Invitation*: shall mean a document or group of documents that shall contain the instructions on how to submit a bid or tender.
- q) *Bidder*: shall mean a natural or juridical person registered in the Exclusive Register of Bidders of the General Services Administration that is available and interested in participating at a public bid of or in a contract with the Government of Puerto Rico for goods and nonprofessional services.
- r) *Threshold*: shall mean the maximum limit that may be authorized by the personnel of an agency for regular acquisitions, as notified in writing by the head or authorized representative of such agency to the General Services Administration.
- s) *Executive Branch*: shall mean all the departments, entities, agencies, and instrumentalities of the Executive Branch of the Government of Puerto Rico, except for public corporations and the political subdivisions of the Government of Puerto Rico, the Office of Government Ethics, the University of Puerto Rico, and the Commonwealth Election Commission.
- t) *Exclusive Register of Bidders or Register (ERB)*: shall mean the electronic register that shall contain the names, addresses, and all the information required by the Administration from any natural or juridical person qualified and classified by the General Services Administration to contract with the Government of Puerto Rico upon meeting the requirements established by the Administrator through regulations, and the applicable laws and regulations.
- u) *Ancillary Services*: shall mean transportation services and services related to the surplus property and any other services that may be rendered by the Administration to enable the Executive Branch to perform its essential duties, and that are not in conflict with other laws.
- v) *Nonprofessional Services*: shall mean such services that are not rendered by a natural or juridical person with specialized knowledge or skills that require credentials such as a college degree or license.
- w) *Public Bid*: shall mean an organized and planned procedure to acquire goods and nonprofessional services at an estimated cost of over one hundred and ninety-five thousand dollars (\$195,000), based on the competition between bidders and vendors that make their offers to the Administration at the lowest possible cost.

## CHAPTER II. — GENERAL SERVICES ADMINISTRATION

### Section 5. — Creation. —

The General Services Administration of Puerto Rico is hereby created as the entity of the Executive Branch responsible for the implementation of the public policy regarding the procurement of goods and nonprofessional services for such Government Branch, as well as for the municipalities and corporations that opt to institute this policy.

### Section 6. — Powers and Duties of the Administration. —

The Administration shall have the following general powers and duties:

- a) To provide, in coordination with the Office of Management and Budget and/or the chief official in charge of the information systems of the Government of Puerto Rico, the information systems and tools necessary to enable the Executive Branch to acquire quality goods and nonprofessional services at the lowest possible cost;
- b) To promote efficiency and thrift in the services rendered by the Administration to the Executive Branch and the citizens in general;
- c) To take on loans, award contracts, and execute instruments as necessary therefor;
- d) To establish a procedure whereby goods and nonprofessional services may be contracted, delivered, or allocated;
- e) To assess periodically the programs and norms to develop the procedures and methods that allow to redirect the endeavor of the Administration, taking into account the changing needs in the services and activities entrusted to the Administration;
- f) To set forth the policy and method to provide for the optimum use of the surplus property from the government agencies, pursuant to the applicable laws or regulations; and
- g) To publish in the website of the Administration, with the advice of the official in charge of the information systems of the Government of Puerto Rico, or his/her representative, all documents related to providing notice, holding, and awarding bids for all public works, as well as the acquisition of goods and services through public bid for all government agencies, the public corporations and municipalities that opt to institute the provisions of this Plan. Such website spot shall be known as the Exclusive Register of Public Bids of the Government of Puerto Rico and shall include, but not limited to, the notice of public bids, a description thereof, participating bidders, public bid award or cancellation date, the successful bidders, the price for which the bid was awarded, and any other information that the Administration deems to be necessary. As new opportunities for public bids are published, an electronic notice thereof shall be furnished daily to each of the bidders registered in the ERB.

## **Section 7. — Administrator. —**

The Administration shall be managed by an Administrator, who shall be appointed by the Governor with the advice and consent of the Senate of Puerto Rico and hold such office until a successor is appointed and takes office. The Administrator shall report directly to the Governor and act as his/her representative in the discharge of his/her office. The Administrator shall be of legal age, renowned professional capability and moral probity, and have knowledge and experience in the public administration field. A person who has held an elective office during the term for which he/she was elected by the People of Puerto Rico shall not be appointed to the office of Administrator.

The Administrator shall earn the same annual salary as a member of the Court of Appeals of Puerto Rico. Likewise, he/she shall appoint, with the consent of the Governor, a Deputy Administrator who shall have the same qualities required from the Administrator. The Administrator shall delegate to the Deputy Administrator such tasks as he/she may deem necessary for proper operation and management in compliance with this Plan. The Deputy Administrator shall have experience and knowledge in government procurement system administration and management.

The Administrator, the Deputy Administrator, the personnel of the Administration, and the personnel that participates in the procurement process shall be subject to compliance with the

provisions of Act No. 12 of July 24, 1985, as amended, known as the “Ethics in Government Act of the Commonwealth of Puerto Rico” or any substitute law, as well as the norms and regulations approved thereunder.

### **Section 8. — Powers and Duties of the Administrator. —**

The Administrator shall have the following powers and duties in addition to those conferred in this Plan or any other applicable laws:

- a) To advise the Governor, government officials, and the Legislative Assembly of Puerto Rico on the public policy set forth by this and any other pertinent law whose implementation has been entrusted to the Administration;
- b) To establish the necessary norms and controls for the use and conservation of public property under his/her custody, pursuant to the applicable laws and regulations;
- c) To coordinate services and programs of the Executive Branch covered under this Plan and those of the departments, agencies, instrumentalities, or political subdivisions of the Government of Puerto Rico that voluntarily attach to the Administration;
- d) To lay the groundwork to create greater opportunities for cooperative efforts and achieve the integrated coordination of the services rendered by the Administration with all other government entities of the Government of Puerto Rico;
- e) To establish the internal organization, including the management and operation of potential regional offices with the advice of and in coordination with the Office of Management and Budget;
- f) To plan, direct, and supervise the operations of the Administration;
- g) To appoint the personnel of the Administration in compliance with Act 184-2004, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico,” and the provisions of any other applicable law;
- h) To delegate to subordinate officials and authorized them to sub-delegate to other officials any duty or power conferred to them, except for the appointing and the rulemaking authorities;
- i) To contract technical, professional or highly specialized personnel or any other services that are necessary to carry out the duties of the Administration;
- j) To adopt, amend, and repeal regulations to comply with the provisions of this Plan and any other applicable laws;
- k) To impose and collect duties, fees, and other charges for services rendered to the Executive Branch and such public corporations and municipalities that opt to receive the services of the Administration. Such charges, save for the fuel supply and service surcharge, shall be established based on the total number of sales invoiced by the Administration, so as to generate sufficient revenues to cover budgeted and authorized expenditures, but which do not exceed twenty percent (20%) during the first year, fifteen percent (15%) during the second year, ten percent (10%) during the third year, and seven percent (7%) during the fourth year and thereafter, for the goods and services total sales volume generated annually, as of the effective date of this Plan;
- l) To seize all abandoned or unclaimed personal property within the premises of the buildings under his/her jurisdiction, and use, transfer or otherwise dispose of such property in accordance with the regulations adopted to such effect, and in compliance with the applicable legislation and regulations;

- m) To perform any proper or necessary actions to efficiently achieve the objectives of the public policy set forth by this Plan;
- n) To award contracts and execute other instruments germane to the exercise of his/her powers;
- o) To perform all the tasks delegated to him/her through Act 70-1992, as amended, known as the “Puerto Rico Solid Waste Reduction and Recycling Act,” insofar as they are not in conflict with the provisions of this Plan;
- p) To acquire, lease, sublet, sell, purchase, donate, or dispose of real or personal property in any manner as necessary to comply with this Plan or other applicable laws and regulations. The Administrator shall not receive gifts for the use of his/her agency from entities that are attached to the ERB, have a personal or pecuniary interest in public bids, or may constitute a potential conflict of interest. The agencies may dispose of the gifts received subject to the policy adopted therefor;
- q) To represent the Administration in acts and activities that so require;
- r) To adopt an official seal of the Administration, of which judicial notice shall be taken;
- s) To supervise and ensure that both the Administration and the Public Bid Board shall not accept tenders of prices in excess of the manufacturer’s suggested retail price; and
- t) Any other type of activity geared toward complying with the provisions of this Plan and the regulations to be implemented thereunder:

**Section 9. — Charges for Other Services Rendered to the Executive Branch and Other Recipients of Services of the Administration. —**

The Administrator is hereby empowered to establish, by regulation, any charges for the use of the facilities of the Administration and for any other service rendered to any government entity of the Executive Branch, public corporations, and/or municipalities that use such services.

The charges established under this Section shall not include those established for the contracting of goods and nonprofessional services established in subsection (k) of Section 8 or those established in Section 15 of this Plan.

The revenues from such activities shall be used mainly to defray the costs related to the implementation of the new procurement system and, subsequently, reinvested by the Administration in the reduction of charges to users, the rendering of more services, potential expansions, machinery and equipment replacement, and other incidental expenditures. Any budget item, fund, reserve, or appropriation of any government entity covered by the provisions of this Plan allocated for services rendered in compliance with the provisions of this Plan may be transferred by the Governor, or his/her authorized representative, to the Administration.

**Section 10. — Refunds or Rebate Method. —**

The Administration shall return, not later than December 31 of each year, through refund or rebate, and ratably to the amount of acquisitions made by each of the agencies, corporations, and municipalities that participate in the procurement system, such portion generated as gains in excess of the expenditures incurred and budgeted by the Administration for the previous fiscal year. Such rebate shall be made in the form of a credit for future acquisitions to the order of the appropriate agency, corporation, or municipality. The Administrator shall establish through regulations the manner in which this provision shall be complied with.

Once the appropriate amount is determined for each agency in the form of a credit for future acquisitions, the Administration shall notify the same to the Office of Management and Budget.

### **Section 11. — Confidentiality of Information. —**

The Administration, in compliance with the applicable local and Federal laws and regulations, shall take the necessary measures to guarantee the confidentiality of the information furnished by the bidders and any other information gathered by the Administration in the discharge of its duties, as applicable. Likewise, it shall ensure that the integrated information system only allows access to authorized employees, officials, agents, or representatives of the Administration to the necessary and relevant information to carry out their specific duties. Should any official intentionally violate any confidentiality agreements to benefit a certain participating bidder for the purpose of having the bid awarded to him/her, such official shall be sanctioned by immediate job separation and charges shall be filed pursuant to the due process of law and the regulations adopted.

### **Section 12. — Filing of Information. —**

The Administration shall progressively use a method or technology that allows for the digital filing of information and/or documents so as to maximize the space use in the facilities of the Administration and to render efficient and effective redundancy practicable in the orderly and secure storage of documents.

### **Section 13. — Prohibition. —**

Any government entity that is required, by the provisions of this Plan or any other applicable law, to use the services of the Administration shall not develop programs within its subdivisions that are similar to those offered by the Administration or seek those services from any entity other than the Administration except through an express authorization of the Administrator.

## **CHAPTER III. — ANCILLARY SERVICES**

### **Section 14. — Administration and Control of Motor Vehicles and Other Means of Transportation. —**

The Administration shall have direct jurisdiction over the administration of all motor vehicles and any other ground, air, and maritime means of transportation, as well as the parts and accessories thereof and the services necessary for the maintenance of any vehicle that is the property of or is used by the Executive Branch. The Administration shall directly obtain the aforementioned means of transportation through purchase, lease, or any other method allowed under the laws of the Government of Puerto Rico. Likewise, the Administration is hereby empowered to acquire any good, including, but not limited to, fuel, equipment, or replacement parts necessary for the operation, maintenance, or repair of such vehicles and to negotiate repair and maintenance service contracts for the means of transportation of the entities of the Executive Branch.

### **Section 15. — Fuel Supply Surcharge. —**

As of the effective date of this Plan, the Administration shall fix a fuel charge that shall not exceed six and a half cents (\$0.065) per liter (L) for the first year, five and a half cents (\$0.055) per liter (L) for the second year, four and a half cents (\$0.045) per liter (L) for the third year, and four cents (\$0.04) for the fourth year and thereafter.

### **Section 16. — Line of Credit for Fuel Acquisition. —**

The Administration may contract with agencies, corporations, and municipalities to open a line of credit for fuel acquisition, as it may deem appropriate. However, when the total amount of the invoice for the acquisition of fuel is not paid in full by the agency, corporation, or municipality within a fifteen (15)-day term after the date of invoice, such line of credit shall be cancelled and the fuel may only be acquired using the fleet card or any other alternative pre-paid electronic means. For such purpose, the agency, corporation, or municipality shall deposit in advance of the acquisition the amount it wishes to have available for use.

### **Section 17. — Regulations on the Administration and Control of Motor Vehicles and Other Means of Transportation. —**

The Administrator shall promulgate regulations on:

- a) The acquisition, use, maintenance, sale, and all matters related to the operation and condition of the vehicles and the means of transportation under his/her jurisdiction;
- b) The permanent allocation of motor vehicles to headquarters and the instrumentalities of the Executive Branch that reasonably so requires, as established through Regulation by the Administration;
- c) The norms under which the instrumentalities of the Executive Branch may be authorized to seek their own means of transportation, as well as the maintenance and repair thereof, pursuant to the aforementioned provisions of this Section;
- d) The norms and procedures whereby authorizations to operate official vehicles shall be issued or revoked and the requirements for these authorizations;
- e) The norms and procedures whereby a court proceedings shall be initiated to recover damages caused to the fleet of the Executive Branch under his/her jurisdiction and to reach administrative settlements on the claims for damages to the fleet, whether in legal tender or in kind, following the process established for such instances through regulations approved by the Secretary of the Department of the Treasury and the Secretary of the Department of Justice. Attached to the documents relative to any transaction carried out by the Administrator, there shall be included an estimate of the damages caused prepared by a duly qualified insurance claims adjuster specifying the estimated amount for the same. A sufficient number of photographs shall also be included to attest to the damages caused, as well as of the vehicles in question and their corresponding licenses plates.

## **Section 18. — Plan to Incentivize the Use of Private Vehicles. —**

The Administrator shall devise a plan to stimulate employees and officials of the Executive Branch who use vehicles for the discharge of the duties of their office to acquire and use private vehicles through a mileage compensation system for miles driven and adopt the necessary regulations for the implementation thereof. Such system shall be computed based on the official road map of Puerto Rico and compensate users based on the rate established from time to time by the Secretary of the Department of the Treasury, as well as any other compensation method that the Administrator may deem reasonable.

## **Section 19. — Surplus Property. —**

The Administrator may dispose of public property declared as surplus through, among others, the following methods:

- a) Transfer to the entities of the Executive Branch required by this Plan to acquire and dispose of property with the intervention of the Administration;
- b) Transfer or sale at a nominal price to such government entities that are not required by this Plan to acquire and dispose of property with the intervention of the Administration;
- c) Transfer or sale at a reasonable price to duly incorporated nonprofit entities that serve a social purpose and are eligible under any social program to receive funds from the Government of Puerto Rico;
- d) Transfer or sale to a specific government entity of the United States of America, whether Federal or State; and
- e) Transfer, sale at auction, assignment, gift, or alienation of equipment or property to the Executive Branch, public corporations, municipalities, or duly registered nonprofit organizations, in compliance with the requirement of filing Annual Reports with the Department of State, or to any bona fide farmers certified as such by the Department of Agriculture, as well as aquaculturists, aviculturists, artisans, fishermen, and common carriers duly recognized and authorized to practice as such by the government entity empowered to do so, or through sale at auction for interested bidders.

The Administrator shall also have the power to administer any Federal program that due to its nature, purpose, and scope is related to the duties commissioned to the Administration by this Plan. This power entails, but is not limited to, the administration of a program for the receipt, safe-keeping, and subsequent distribution of the property of the Government of the United States of America by virtue of the Federal Property and Administrative Act of 1949, as amended, or any subsequent substitute law of similar import. In the exercise of such power, the Administrator shall enter into and negotiate agreements or arrangements as necessary for the Government of Puerto Rico to receive any Federal funds and benefits that shall inure to the success of such programs. For such purpose, the arrangements or agreements shall be entered into with duly authorized Federal or State government entities of the United States of America. Such agreements or arrangements shall include, among other issues, the exchange of information on programs, studies, and research conducted regarding such programs, and shall be within the scope of duties of the Administration, the applicable Federal and State laws, and the laws of the Government of Puerto Rico.

The Administrator is hereby further empowered to analyze other Federal programs that may affect the services rendered by the Administration so as to make recommendations to the Governor on the formulation and planning of the public policy to be implemented with respect to the programs and to assist the Government of Puerto Rico in rendering services more efficiently, expeditiously, and economically.

#### **Section 20. — Freight Charges on Federal Surplus Property. —**

The Secretary of the Treasury is hereby empowered to make advance payments from the funds of the General Fund not encumbered for other expenditures of the Administration, provided that the Office of Management and Budget certifies the availability of such funds, up to a maximum amount of fifty thousand dollars (\$50,000) to pay freight charges on any Federal surplus property donated to the Government of Puerto Rico.

The Executive Branch and municipalities benefited from such property shall reimburse the Administration for the expenditures incurred in the transportation and the Administration shall remit such reimbursements to the General Fund.

#### **Section 21. — Assignment of Duties and Limitations of Officials and Employees. —**

The duties of the Administration, under the provisions of this Plan, shall be carried out by the Administrator or the officials and employees subject to his/her jurisdiction or by any other entity of the Government of Puerto Rico expressly designated by the Administrator to such effect. Any designation or assignment of duties and delegation of power to any government entity made by virtue of the authority conferred by this Plan shall be made with the consent of the appropriate government entity. Furthermore, the Administrator may provide personnel or facilities of the Administration under the conditions agreed upon with the appropriate Appointing Authority.

In the discharge of the duties imposed by this Plan, the Administrator is hereby empowered, pursuant to the applicable laws and regulations, to transfer to any government entity the necessary funds to structure any program of the Administration.

The official or employee of the Administration or any government entity to which the Administrator has temporarily assigned or delegated any duty of the Administration and that intervenes at any stage of the development of such duty shall be subject to compliance with the provisions of Act No. 230 of July 23, 1974, as amended, known as the “Puerto Rico Government Accounting Act,” and Act No. 12 of July 24, 1985, as amended, known as the “Ethics in Government Act of the Commonwealth of Puerto Rico,” or any other substitute law, as well as to the provisions of this Plan and any other applicable legal provision.

### **CHAPTER IV. — GOVERNMENT PROCUREMENT**

#### **Section 22. — Procurement by the Administration. —**

The Administration shall process, through a centralized automated system, the acquisitions of goods and nonprofessional services of the Executive Branch, and public corporations and municipalities that voluntarily decide to use the services of the Administration and negotiate open contracts for regular acquisitions. The Administrator shall ensure that all requested goods

and nonprofessional services are timely provided pursuant to the procurement methods established by law or regulation.

Whenever Federal acts or regulations allow for or require any procedure other than that described in this Plan, the contracting entity may follow the Federal procedures, but shall be required to issue a written statement to the Administrator and the Reviewing Board describing the applicable Federal laws or regulations, pursuant to the provisions of this Plan or any applicable legal provision.

The Administration may extend these services, through an agreement between the parties, to such municipalities, public corporations, or both, that so request. The participation of such municipalities or public corporations in this Plan shall be voluntary and for all or some of the acquisitions of goods and nonprofessional services, as established by the Administrator through regulations.

### **Section 23. — Regulation on the Procurement Process. —**

The Administrator shall establish, through a regulation approved pursuant to Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act,” the mechanisms and processes necessary to procure goods and nonprofessional services in a more streamlined, efficient, and transparent manner. Such process shall include the identification of the roles and tasks required for the best operation of the goods and nonprofessional services procurement process. Furthermore, it shall detail the procedures, roles, duties, and responsibilities of the personnel that shall participate directly in the process to procure goods and nonprofessional services, covering the entire procurement process from the time the acquisition is planned to the time the payment is made, eliminating duplication of duties and steps that add no value to the process.

The new regulations shall also include any procedure that shall be conducted by the Executive Branch and the public corporations and municipalities that voluntarily opt to use the services of the Administration to procure their goods and nonprofessional services and thus avail themselves of the services rendered by the Administration pursuant to this Plan.

### **Section 24. — Acquisitions Through Public Bids. —**

It shall be necessary to employ the public bid method when the amount of the acquisition exceeds one hundred and ninety-five thousand dollars (\$195,000). Provided, that every two (2) years, the threshold for the holding of a public bid shall be reviewed by the Administrator through regulations approved under Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act,” and be adjusted to the consumer’s price index rounded up to the next highest thousand.

The procedure to procure goods and nonprofessional services through public bids may include, if deemed to be necessary and in compliance with the requirements established by the Administrator through regulations, Requests for Qualifications (RFQs), Requests for Information (RFIs), and Requests for Proposals (RFPs).

The Administrator shall determine, in compliance with the provisions of this Plan and the public bid regulation adopted thereunder, at which time the public bid mechanism shall be used to contract goods and nonprofessional services, and establish the procedure to be followed for

the same while incorporating to the greatest extent possible any technological advancements. The Public Bid Regulation shall include, among other things:

- a) The requirements, obligations, and responsibilities to be met by each bidder in order to participate in a public bid or any other process related thereto;
- b) The general conditions to accept and evaluate any offer, in addition to the guidelines for awarding a public bid to the bidder responsible for and responsive to the lowest pricing offer, or the bidder responsible for and responsive to the highest sales volume; provided, that it is within the terms, conditions, and specifications of the public bid;
- c) The standards that the Public Bid Board shall use to reject offers when the bidder lacks responsibility; its offer is unreasonable; the nature, quality, or description of the goods or nonprofessional services does not comply with the terms, conditions, and specifications of the public bid thus constituting a gross irregularity or informality of the offer; or when so required to protect the public interest; among other circumstances. The award or rejection of such offer on the aforementioned grounds shall be issued with findings of fact and conclusions of law to duly sustain the validity of the record and to guarantee the due process of law when a decision is protested;
- d) The warranties and bonds required from the bidder to whom the public bid is awarded. The warranties shall be of the type and in the amount deemed to be convenient to ensure compliance with the purchase order or contract, including, but not limited to performance bonds and bid bonds;
- e) Any bidder that appears before the Agency to participate in any public bid or to provide services pursuant to the intent of this legislation shall submit to the Administrator a sworn statement every six (6) months attesting to the fact that none of the offenses contained in Section 3 of Act 458-2000, as amended, have been committed;
- f) For the purpose of maintaining the purity of the procedures, limiting controversies as much as possible, and responsibly addressing compliance with Act 253-2006, known as the “Investment in Puerto Rican Industry Act,” the holding of a pre-bid meeting shall be an essential requirement to define the following matters, among others:

1. To verify that the bidder is current in terms of all the requirements established by the Administration regarding the Exclusive Register of Bidders of the General Services Administration;
2. To ensure that the preferential percentages and the amendments that the Administrator could make are applicable to all eligible products under the “Investment in Puerto Rican Industry Act,” whenever there is a controversy in that respect, and the granting of additional preferential percentages, if applicable, as well as others that may be implemented by the Administrator through amendments of any lawful nature. To elucidate any confusion between local products and products from outside of Puerto Rico pursuant to the case law that clarifies these concepts;
3. To warn participating bidders about the consequences of the noncompliance with the requirements of a public bid in the event that they are awarded such bid, as well as the use of other bidders in descending order to comply with the needs of the Agencies and other matters of public interest;
4. To explain all that pertains to the specifications, characteristics, quality, service, delivery time, billing, noncompliance sanctions, and consequences for using prices over the manufacturer’s suggested retail price, and others.

The Administration shall not accept any bid containing prices in excess of the manufacturer’s suggested retail price.

### **Section 25. — Exceptions to Acquisitions Made Through Public Bids. —**

As an exception, it shall not be necessary to hold a public bid when any of the following circumstances is present:

- a) It is a regular or one-time acquisition, as defined in this Plan and whose amount does not exceed one hundred and ninety-five thousand dollars (\$195,000), provided, that the calculation of the total amount of acquisitions shall be subject to compliance with the provisions of Section 37 of this Plan;
- b) The Governor has declared a state of emergency;
- c) The specific agency that shall acquire the goods and nonprofessional services proves that the same should be qualified as an emergency acquisition;
- d) The acquisition is made from the Government of the United States of America, or any of its States, or through its agencies and instrumentalities, or departments, quasi-public corporations or their subsidiaries and affiliates, or any instrumentality of the Government of Puerto Rico;
- e) The minimum prices are fixed by law or a competent government authority;
- f) The good, work, or nonprofessional service may be provided by a sole source or vendor and may not be substituted by a similar one, for which the Administrator shall issue a certification;
- g) No offer is submitted in a public bid and the loss of available funds to acquire the necessary goods or nonprofessional services is imminent; and
- h) An open contract exists which includes the good or nonprofessional service to be acquired, whether from the Government of Puerto Rico or the Government of the United States of America, any of its States, or through any of its agencies and instrumentalities, or departments, agencies, quasi-public corporations or their subsidiaries and affiliates.

### **Section 26. — Regular Acquisitions. —**

The Executive Branch and those public corporations and municipalities that voluntarily opt to use the services of the Administration shall be required to make their acquisitions through the centralized procurement system of the Administration. No good or nonprofessional service with an open contract negotiated by the Administration may be acquired from a vendor other than those that negotiated with the Administration. The Administrator shall establish a procedure to be followed by the Executive Branch and those public corporations and municipalities that voluntarily opt to use the services of the Administration to carry out their regular acquisitions.

### **Section 27. — One-time Acquisitions. —**

Whenever there is no open contract negotiated by the Administration, the Executive Branch and those public corporations and municipalities that voluntarily opt to use the services of the Administration shall have to request, in coordination with the Administration, at least three (3) quotes from registered vendors that are classified under a specific category in the Exclusive Register of Bidders and follow the procedure established by the Administrator through regulations, provided, that the aforementioned acquisition shall not exceed one hundred and

ninety-five thousand dollars (\$195,000). Absent vendors registered in the ERB, whose quotes do not exceed the manufacturer’s suggested retail price, the agencies of the Executive Branch, public corporations, or municipalities may resort to the local open market and the Continental United States market to seek the quotes required for the acquisition of the goods and services needed pursuant to the provisions of this Plan with respect to one-time acquisitions.

If after conducting the procurement process established to make one-time acquisitions, the agency, public corporation or municipality determines that the same shall become a repetitive acquisition, it shall request the Administration to negotiate an open contract so that subsequent purchases are made in compliance with the mechanisms of regular acquisitions.

### **Section 28. — Emergency Acquisitions. —**

Whenever the Governor of Puerto Rico declares a state of emergency, the Administrator shall establish through regulation the procedure to be followed for the acquisition of goods and nonprofessional services that are necessary to address the emergency and for which there is no open contract negotiated by the Administration.

Likewise, the Administrator shall establish the requirements to be met and the procedure to be followed by an agency subject to compliance with this Plan, in the event that a state of emergency has been declared, to acquire goods and nonprofessional services during such time. Such regulation shall render the process to procure goods and nonprofessional services more flexible to allow for the speedy and efficient response from the Government of Puerto Rico to any existing emergency.

### **Section 29. — Emergency Acquisition Review. —**

The Administrator shall ensure that the Executive Branch and the public corporations and municipalities that voluntarily opt to use the services of the Administration comply with the following:

a) Within thirty (30) days after the acquisition has been made whose total sum exceeds the amount established for such purposes through regulations as a result of an emergency situation declared by a specific agency, the highest-ranking official of such agency shall submit a certification to the Administration, under oath, containing: (i) a detailed account of the facts or events that constituted the emergency; (ii) the grounds that warrant the need to acquire the aforementioned goods or nonprofessional services; (iii) proof that the acquisition was made pursuant to the procedures established by law or regulations for such situations. The certification under oath and any additional documents shall be referred for evaluation to the Reviewing Board. In a period not exceeding thirty (30) days after the review of such documents has begun, the Reviewing Board shall submit to the Administrator a report stating I detail any acquisition that failed to comply with the legal or regulatory standards for acquisitions made during an emergency.

b) Fifteen (15) days after the conclusion of a state of emergency declared by the Governor of Puerto Rico, the Reviewing Board shall examine a representative sample, as defined through regulations adopted by the Administrator to such effect, of the acquisitions made during such emergency by the Executive Branch and the public corporations and municipalities that make all their acquisitions through the Administration. The Reviewing Board shall determine whether the

acquisitions were made pursuant to the intent of this Plan, in terms of allowing for greater flexibility when a state of emergency has been declared.

The Board shall make its determinations available to the agencies, corporations, and municipalities for the purpose of advising them as to the deficiencies or errors in their transactions and how to avoid them in the future.

During a period that shall not exceed forty-five (45) days after the review of such acquisitions has begun, the Reviewing Board shall submit to the Administrator a report stating in detail any acquisition that failed to comply with the regulatory standards for acquisitions made during an emergency as declared by the Governor.

### **Section 30. — Thresholds. —**

The Administrator shall establish through regulations approved under Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act,” the necessary standards to establish different thresholds for the personnel of the Executive Branch, the municipalities, and public corporations that make their acquisitions through the Administration. Likewise, each agency shall notify the Administrator in writing about the personnel that shall be authorized to request such acquisitions, both regular and one-time acquisitions, and the thresholds authorized therefor.

### **Section 31. — Technical Advisory Committee. —**

The Administrator shall establish the model specifications for the acquisition of goods and nonprofessional services. To assess and approve the model specifications, the Administrator shall have the counsel and technical advice of the Board for the Investment in the Industry and a Technical Advisory Committee chaired by the Administrator or his/her authorized representative and composed of the Secretary of the Department of Consumer Affairs, the Secretary of the Department of Agriculture, the Executive Director of the Board for the Investment in the Puerto Rico Industry, the Secretary of the Department of the Treasury, the Director of the Office of Management and Budget, and the chief official in charge of the information systems of the Government of Puerto Rico or their corresponding authorized representatives with expertise in specialized acquisitions, as required. Provided, that the members or the representatives authorized by the Committee members shall not participate or intervene directly or indirectly in any matter related to the Public Bid Board or be affiliated to or have any direct or indirect financial interest in any bidder or contractor.

The Technical Advisory Committee shall advise the Administrator in the drafting or revision of model patterns or specifications and issue its recommendations. Once the patterns and specifications are approved by the Administrator, these shall be applied to any goods and nonprofessional services acquisition until they are uniformly rendered ineffective in terms of conditions and scope. Any change made to the model specifications by the Administrator shall have the approval of the Committee and be notified to the Board for the Investment in the Puerto Rico Industry for their counsel and technical advice. Any interested vendor may review the model patterns or specifications of the products offered by the vendor and submit recommendations to the Committee as prescribed by regulations to be approved by the Administrator. The Administrator shall allocate the necessary resources such as, but not limited

to, personnel, budget, and equipment for the proper operation of the Committee. In turn, the Committee may require, upon consultation with the Administrator, technical support, services, and cooperation from government entities or professional services through contracts, subject to the regulations adopted for such purposes. The Committee shall meet during the first year of its existence at least once (1) a month, allowing for the use of suitable technological media to hold such meetings. After the first year has elapsed, the Committee may determine the frequency with which such meetings shall be held to follow up any pending effort or task. The Committee shall provide the Administrator with any assistance he/she requests for the implementation of the procurement system established in this Plan.

The members of the Committee and their authorized representatives shall be subject to compliance with the provisions of Act No. 12 of July 24, 1985, as amended, known as the “Ethics in Government Act of the Commonwealth of Puerto Rico,” or any substitute law. Any member of the Committee who in any manner and due to the diversity of his/her duties in the public service, and in some cases, for being a member of other boards of the Executive Branch, has a conflict of interest with a bidder or contractor, shall disqualify him/herself from participating in that matter.

### **Section 32. — Needs Assessment Estimate. —**

The Administrator shall establish through regulations the procedure and the date for the Executive Branch and the public corporations and municipalities that voluntarily opt to use the services of the Administration to file, at the very least, the monthly and annual estimates of assessed needs for potential acquisitions and the authentication and review method for such estimates by using technological advancements to the greatest extent possible. The review of such needs assessment estimates shall be made at least quarterly to allow the Administration, as well as the Executive Branch and the public corporations and municipalities that voluntarily opt to use the services of the Administration, to conduct their works with the most accurate and precise information possible.

Potential needs assessment estimates filed by the Executive Branch and the public corporations and municipalities that make their acquisitions through the Administration shall be confidential, except when needed for official purposes. Any official or employee who reveals these reports, their contents, or any information related thereto without an official authorization or in contravention of this provision may be removed from his/her office or position after having complied with the applicable provisions of Act 184-2004, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico,” and the rules and regulations promulgated thereunder. The removal sanction shall not prevent the application of Sections 70 and 71 of this Plan or the pertinent action for contravening the provisions of Act No. 5 of December 8, 1955, as amended, known as the “Puerto Rico Public Documents Administration Act.”

### **Section 33. — Purchase Request. —**

The Administrator shall establish through regulations the requirements for purchase requests, as well as the procedure and conditions for the filing thereof with the Administration. For such purpose, the Administrator shall seek to integrate and use technological venues and applications.

Furthermore, the Administrator may authorize purchase orders and contracts upon the encumbrance of funds to cover the payment of the goods received or the nonprofessional services rendered. Likewise, he/she may cancel purchase orders to protect the public interest when there are special circumstances or proper justification, and in the case of a specific acquisition or contract of an agency, municipality, or public corporation, the Administrator shall notify the originator in advance, in writing or electronically, of such circumstances or justification.

#### **Section 34. — Compliance with Preferential Acquisition Policy. —**

The Administration shall condition the approval and validation of any purchase order, public bid, acquisition of goods or nonprofessional services to compliance with the preferential acquisition policy set forth in Act 14-2004, as amended, known as the “Investment in Puerto Rican Industry Act,” Act 129-2005, as amended, known as the “Government of the Commonwealth of Puerto Rico Procurement Reserve Act,” and Act 253-2006, and compliance with those measures that ensure compliance with such policy.

Any public official, officer, or employee that acts in contravention of this provision shall be removed from his/her office upon compliance with the applicable provisions of Act 184-2004, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico,” and the Rules, Norms, and Regulations promulgated thereunder.

The Administration shall conduct periodic audits to oversee compliance with the provisions of this Section.

#### **Section 35. — Invoicing. —**

One year after the date of approval of this Plan or six (6) months after the centralized automated procurement system has been established, whichever occurs first, any invoicing pertaining to goods and nonprofessional services acquisitions shall be made electronically. Such invoicing shall certify that the goods were actually acquired and that the nonprofessional services were actually rendered.

For the purpose of safeguarding and ensuring the integrity and the availability of information, such as purchase orders, any pertinent approvals, proof of fund encumbrance, receipt confirmation for goods and nonprofessional services, and proof of invoicing, as well as any other information related to such transactions, the Administration shall follow the due process according to the best practices of disaster control and management recognized by the information technologies industry.

#### **Section 36. — Null Acquisition or Sale. —**

Any acquisition or sale made in contravention of the provisions of this Plan and the regulations adopted thereunder shall be nullified. Should there have been a public fund investment, such funds may be recovered through the pertinent civil action by the Government of Puerto Rico and any of its agencies.

Should a public official be found to be responsible for having invested public funds in contravention of this Plan, he/she shall respond with his/her own moneys. Likewise, any acquisition or sale made in contravention with Act 458-2000, as amended, shall be nullified.

### **Section 37. —Fractioning. —**

It is hereby prohibited to divide a request or group of requests for the same good or nonprofessional service for the purpose of issuing more than one purchase order to one or more vendors with the intent to circumvent the requirements established for procurement processes, including, but not limited to the thresholds established to hold a public bid. This prohibition shall not apply in those cases in which the division of requests or group of requests is necessary to comply with legal requirements, including, but not limited to those established in Act 14-2004, as amended, known as the “Investment in Puerto Rican Industry Act,” Act 129-2005, as amended, known as the “Government of the Commonwealth of Puerto Rico Procurement Reserve Act,” and Act 253-2006.

### **Section 38. — Digital Catalog. —**

The Administration shall create and maintain a digital catalog that shall contain the descriptions of items, goods, supplies, and nonprofessional services through the use of a clear and uniform terminology that shall be used in the procurement process. This catalog shall be available through a website to the Executive Branch, public corporations, and municipalities that voluntarily opt to use the services of the Administration, and the bidders included in the Register.

## **CHAPTER V. — EXCLUSIVE REGISTER OF BIDDERS**

### **Section 39. — Creation of the Exclusive Register of Bidders. —**

The Administration shall have the responsibility to prepare, administer, maintain, and manage the Exclusive Register of Bidders of the Government of Puerto Rico. The Executive Branch, public corporations, and municipalities shall be required to use the Register, before acquiring any goods and nonprofessional services, except for the special or exceptional circumstances set forth in Section 43 of this Plan, and furnish the Administration any information regarding the contractors or bidders registered in the Register, mainly on matters related to the contractual track record of any bidder, including possible instances of noncompliance by said contractors or bidders.

The Administration shall be required to share with every agency of the Executive Branch, public corporation, or municipality, any information about the contractual track record of any bidder or contractor, when thus required and vice versa.

### **Section 40. —Enrollment in the Register. —**

Any natural or juridical person that wishes to enter the goods and services procurement market of the Executive Branch, public corporations, and municipalities of the Government of Puerto Rico shall be required to enroll in the Exclusive Register of Bidders. The Administration shall

publish notices to inform about the requirement to enroll in the Register. The publication of said notices shall be made in two of the following media: the written press or the radio and always on the websites of the Administration and the Government of Puerto Rico.

#### **Section 41. — Register’s Availability. —**

The Register shall be available on the website of the Administration and its entries shall be open and available for use by agencies of the Executive Branch and any public corporations and municipalities that voluntarily opt to use the services of the Administration.

#### **Section 42. —General Duties of the Administration With Regard to the Exclusive Register of Bidders. —**

The Administrator shall have the duty to:

- a) Evaluate, under objective criteria, to be established by regulations, every bidder that intends to be contractually bound with the Government of Puerto Rico upon enrollment in the Register, for the purposes of ensuring that the Executive Branch, public corporations and municipalities of the Government of Puerto Rico only contract with natural or juridical persons of proven moral and financial solvency that have not been convicted or pled guilty in a Commonwealth or Federal forum, or in any other United States jurisdiction, for any of the offenses constituting fraud, misappropriation or embezzlement of public funds, listed in Section 3 of Act 458-2000, as amended;
- b) Ensure uniformity in the requirements to be included in the Register;
- c) Oversee that every bidder truly and effectively complies with the necessary requirements to validate his/her contracting with the Government of Puerto Rico, so that no bidder shall be made to comply several times during the same period with the same requirements by different government bodies. If, as part of the enrollment process, a bidder is required to produce documents issued by Government agencies, such as certificates of incorporation, or outstanding tax debts, the bidder shall have the option to request and obtain such documents or authorize the Administration to obtain them, by paying in advance by check the total sum of the fees or costs required by the different agencies for issuing such documents. Such authorization shall be deemed to be a timely filing of such documents;
- d) Keep the entries of the Register updated.
- e) Make public the requirements that must be met by parties that wish to enroll in the Register, both the general and the specific requirements to bid with the Government, as provided by the Executive Branch, public corporations, and municipalities of the Government of Puerto Rico, on the basis of their specific needs;
- f) Oversee bidders’ contractual transactions with the Government to ascertain that such transactions comply with the formalities, requirements, and obligations enforceable by law;
- g) Reduce the costs of the public bid process, by choosing to use the invitation for bids system and the website simultaneously, in lieu of a call for bids in the newspaper;
- h) Issue a certificate of competency to any bidder, agency of the Executive Branch or public corporation attesting to the competency of a bidder to participate in the procurement process of an executive agency or public corporation of the Government of Puerto Rico;
- i) Approve, amend, and repeal regulations to structure the Register; and

j) Impose, collect and fix any fair and reasonable rates, fees, rents, and other charges for the annual enrollment in the Register and the issuance of the certificate of competency, which shall cover at least any related expenses incurred by the Administration.

#### **Section 43. —Exceptions. —**

The Administrator may exempt the Executive Branch, public corporations, and municipalities—under the special or exceptional circumstances prescribed further below in this Section and through regulations adopted for such purpose—from the requirement of acquiring goods and services contingent upon the enrollment of the vendor in question in the Register. Special or exceptional circumstances shall be the following:

- a) Acquisitions by offices of agencies and departments of the Government of Puerto Rico located outside of Puerto Rico that are carried out in the jurisdiction where they are located;
- b) Acquisitions of medical, scientific, or technological or any other equipment or highly specialized material, for whose acquisition there is no authorized vendor or representative available in Puerto Rico; and
- c) Purchases carried out as a result of an emergency, as defined in this Plan.

Special circumstances shall only be those situations that are submitted in writing and duly justified by the heads of agencies or departments, to be evaluated on a case-by-case basis and that require the approval of the Administrator. These exceptional circumstances shall be evaluated from a restrictive standpoint and the approval thereof must be justified by the compelling nature of the situation, which would seriously injure the functions of the agency or the services rendered by the same if enrollment in the Register is not overridden. The Administration shall adopt by regulations the provisions related to the special or exceptional circumstances established in this Section.

### **CHAPTER VI. — PUBLIC BID BOARD**

#### **Section 44. — Creation. —**

The Public Bid Board is hereby created, to be attached to the Administration, which shall be a quasi-judicial body empowered to evaluate and award, through a uniform procedure, bids on contracts of the Government of Puerto Rico made in compliance with the provisions of this Plan. The Administration shall provide the Public Bid Board with the necessary administrative support to discharge its functions.

#### **Section 45. — Composition of the Public Bid Board. —**

The Public Bid Board shall be composed of one (1) member designated by the Administrator; one (1) member designated by the Secretary of the Department of the Treasury; one (1) member designated by the Director of the Office of Management and Budget; one (1) member designated by the Secretary of the Department of Economic Development and Commerce; and one (1) member designated by the President of the Government Development Bank. Each member of the Public Bid Board shall carry out his/her duties at the will of the officer who designated him/her.

Upon request by the agency, corporation or municipality for which a public bid is conducted, one (1) additional member shall be incorporated to the Public Bid Board in representation of said government body, who shall have voice without vote. This member shall be part of the Board until the bid process pertaining to the government body that he/she represents concludes.

The Governor shall designate from among the Board members, the person who shall chair the Board. All members of the Public Bid Board shall devote all their time to serving on the Board.

The members of the Public Bid Board shall be of legal age, residents of Puerto Rico, knowledgeable in the public administration and government procurement fields, and must have not been convicted in any judicial or administrative forum in or outside of Puerto Rico. At least one (1) of the members of the Public Bid Board shall be an attorney-at-law admitted to the bar by the Supreme Court of Puerto Rico. All other members of the Public Bid Board shall have, at least, a college degree and five (5) years of professional experience.

The members of the Public Bid Board shall be subject to compliance with the provisions of Act No. 12 of July 24, 1985, as amended, known as the “Ethics in Government Act of the Commonwealth of Puerto Rico,” or any substitute law.

No member of the Public Bid Board shall make awards in matters in which he/she has a direct or indirect personal interest or when he/she is related to any of the bidding parties within the fourth degree of consanguinity or the second degree of affinity. If any conflict of interest should arise, the affected member of the Public Bid Board shall disqualify him/herself from the entire bidding process. In addition, such member shall be subject to any penalty, fine or sanction established in this Plan.

#### **Section 46. — Compensation. —**

The members of the Public Bid Board shall be compensated pursuant to the provisions applicable to the agencies or government bodies to which they belong. If they are employees of the Government of Puerto Rico, they shall not receive any per diem whatsoever for discharging their duties in the Public Bid Board, except for reimbursement of reasonable expenses incurred in carrying out their tasks, as provided by law and authorized by the Chair of the Public Bid Board.

#### **Section 47. — Quorum. —**

The simple majority of the members of Public Bid Board shall constitute a quorum to hold sessions and make decisions. All the agreements of the Public Bid Board shall be reached by majority vote. If necessary, as an exception, the Board members may be cast their votes through electronic media.

#### **Section 48. —Powers and Duties of the Public Bid Board. —**

The Public Bid Board shall have the following powers and duties:

- a) To issue invitations for bids;
- b) To evaluate and award bids for every acquisition, contracting or lease of goods and nonprofessional services, whose estimated cost exceeds the amount of one hundred ninety-five thousand dollars (\$195,000) or as modified by the Administrator, as provided in this Plan;

- c) Not to accept bids containing prices in excess of the manufacturer’s suggested retail price;
- d) To hold meetings and/or hearings;
- e) To issue bid award notices or any order, requirement or resolution that may be allowed under the law in matters under its consideration;
- f) To evaluate and make determinations on matters under its consideration speedily and efficiently, thus safeguarding the procedural and substantive rights of the parties;
- g) To keep a complete record that documents any events that have taken place in the case;
- h) Any other power or duty conferred under this Plan or by regulations; and
- i) To allow bidders to examine the records of duly awarded bids and provide a copy thereof once the appropriate fees, established by regulations, have been paid.

The Public Bid Board shall discharge its duties pursuant to the Public Bid Regulation and any applicable laws and regulations.

#### **Section 49. — Powers, Functions, and Duties of the Chair of the Public Bid Board. —**

The Chair shall have the following powers, functions, and duties:

- a) To represent the Public Bid Board in all those functions inherent to his/her office;
- b) To call sessions or meetings of the Public Bid Board;
- c) To preside over the proceedings of the Public Bid Board;
- d) To advise the Administrator in the drafting of the Public Bid Regulation or suggest amendments to the same, which shall be considered by the Administrator;
- e) To prepare the calendar of sessions for opening bids;
- f) To identify any needs for specialized technical advise and request the Administrator to designate the provider of such specialized technical advise, including, but not limited to personnel of the agency of the Executive Branch for which the public bid process is being conducted;
- g) To oversee compliance with the procedure for holding and awarding bids pursuant to applicable laws and regulations;
- h) To supervise the administrative personnel designated by the Administrator;
- i) To use the available resources of the Administration, in coordination with the Administrator;
- j) To submit quarterly reports on awarded bids and bids pending award to the Administrator or the official onto whom he/she delegates, or any other report requested from him/her;
- k) To authorize the reimbursement of reasonable expenses to the staff under his/her supervision pursuant to the regulation adopted for such purposes by the Department of the Treasury and any applicable legal provision;
- l) To adopt an official seal, of which judicial notice shall be taken, to authenticate the agreements, orders or resolutions of the Board; and
- m) Any other power, function or duty conferred under this Plan or by regulation.

#### **Section 50. — Notice of Agreements. —**

Once any matter under the consideration of the Public Bid Board has been adjudicated, the Board shall notify its final determination pursuant to the procedures and mechanisms established in the Public Bid Regulation. The final determination of the Public Bid Board shall state the findings of fact and conclusions of law. Any party adversely affected by any action, final

determination or resolution of the Public Bid Board may request review, as provided in Chapter VII of this Plan.

## CHAPTER VII. — PUBLIC BID REVIEWING BOARD

### **Section 51. — Creation of the Public Bid Reviewing Board. —**

The Public Bid Reviewing Board is hereby created, to be attached to the Administration, which shall be a quasi-judicial body empowered to review any protest in connection with a determination or award of the Public Bid Board. The Administration shall provide the Reviewing Board with the necessary administrative support to discharge its functions. However, the Reviewing Board shall operate with autonomy pursuant to the code of laws in effect as established by this Plan and act independently from the Administration and the Public Bid Board.

### **Section 52. — Appointments. —**

The Reviewing Board shall be composed of one (1) Chair and two (2) associate members and one (1) alternate member, who shall be appointed by the Governor with the advice and consent of the Senate. The Chair of the Reviewing Board shall be an attorney-at-law duly admitted to the bar by the Supreme Court of Puerto Rico and hold office on a full-time basis. Likewise, at least one (1) of the associate members shall be a Certified Public Accountant.

The members of the Reviewing Board shall have at least five (5) years of experience, after having been duly admitted to the practice of their professions in Puerto Rico, as applicable.

The members of the Reviewing Board shall be of legal age, residents of Puerto Rico, and knowledgeable in the public administration and government procurement fields. However, employees of the Executive Branch, corporations or municipalities shall not be appointed to such office.

All members of the Reviewing Board shall be appointed for a term of seven (7) years. Provided, that for the initial designations, the Governor shall appoint the Board members for the terms herein provided: the Chair, for a term of seven (7) years; one (1) associate member, for a term of five (5) years; one (1) associate member, for a term of three (3) years; and the alternate member, for a term of three (3) years. Upon concluding the terms of the first appointments, the successors shall be appointed thereafter for a term of seven (7) years.

The members of the Reviewing Board shall hold their office in the Reviewing Board until their successors are appointed and take office in said Board. Immediately after a vacancy arises in the office of Chair of the Reviewing Board, the Governor shall designate one of the associate members already confirmed to hold the office of Chair temporarily. In the event of a permanent vacancy in the office of any other member of the Reviewing Board before the expiration of his/her appointment, the successor shall be appointed to complete the term of his/her predecessor.

No member of the Reviewing Board shall adjudicate matters in which he/she has a direct or indirect personal interest or when he/she is related to any of the bidding parties within the fourth degree of consanguinity or the second degree of affinity, in which case, such member shall disqualify him/herself. Furthermore, such member shall be subject to any penalty, fine or

sanction established in this Plan or any other applicable law, including, but not limited to Act No. 12 of July 24, 1985, as amended, known as the “Ethics in Government Act of the Commonwealth of Puerto Rico,” or any other substitute law.

**Section 53. —Removal.—**

The Governor may declare a vacancy in an office held by any member of the Reviewing Board due to physical or mental disability that impairs such member to carry out the duties of his/her office, or for gross negligence in discharging his/her duties, for dereliction of duty, or for being convicted of a felony involving moral turpitude.

**Section 54. — Compensation.—**

The Chair of the Reviewing Board shall earn the same annual salary as a Superior Judge of the Court of First Instance of Puerto Rico. All other members of the Reviewing Board shall receive per diems equal to the minimum per diem received by the members of the Legislative Assembly of Puerto Rico for each day of session. Board members shall never earn more than fifty thousand dollars (\$50,000) a year, which shall be taxable, and the alternate member shall never earn more than ten thousand dollars (\$10,000) a year, which shall be taxable. Furthermore, if any employee of the Government of Puerto Rico is appointed to the office of any of the two (2) associate members or to that of alternate member, such Board member shall not receive any per diem whatsoever, except for reimbursement of reasonable and justified expenses incurred in carrying out his/her duties, as provided by law or regulations and authorized by the Chair of the Reviewing Board.

**Section 55. — Powers and Duties of the Reviewing Board.—**

The Reviewing Board shall have the following powers and duties:

- a) To review and adjudicate any protest of bid awards made by the Public Bid Board and requests for proposals (RFPs) made by the Administration;
- b) To hold hearings for oral arguments;
- c) To issue any order, requests, revocation, or resolution as appropriate under the law in the cases under its consideration. Every resolution issued by virtue of an adjudicated matter shall include findings of fact and conclusions of law;
- d) To settle issues brought for its consideration speedily and efficiently, thus safeguarding the procedural and substantive rights of the parties;
- e) To evaluate written statements submitted by the contracting bodies to the Administrator in cases in which Federal laws or regulations allow for or require a procedure other than that provided in this Plan;
- f) To evaluate certifications and any additional document referred thereto with respect to acquisitions made as a result of an emergency in a specific agency of the Executive Branch, public corporation, or municipality and submit to the Administrator a report stating in detail any acquisition that failed to comply with the legal and regulatory standards established for emergency acquisitions, within a period that shall not exceed thirty (30) days after the Reviewing Board has begun to review such documents;

- g) To examine a representative sample of the acquisitions made during a state of emergency by the Executive Branch, the municipalities, and any public corporations that make their acquisitions through the Administration, in order to ascertain whether the same were carried out pursuant to the procedures established by laws and regulations in such situations, and whether the goods acquired were truly necessary during the emergency and could have been lawfully acquired pursuant to such procedure. To submit to the Administrator a report stating in detail any acquisition that failed to comply with the regulatory standards established for acquisitions during a state of emergency declared by the Governor, within a period not to exceed forty-five (45) days after the Reviewing Board has begun the examination of such acquisitions;
- h) In compliance with its reviewing duties imposed by this Plan, any member of the Reviewing Board may issue summonses requiring the appearance of any official with expertise on the matter under discussion, person, witness, to take a deposition, or for the presentation of any kind of evidence pursuant to the code of laws in effect;
- i) To keep a complete record that documents any events that have taken place in the case;
- j) Any Reviewing Board member may administer oaths;
- k) To require, through any of its members, compliance with the summonses issued by resorting to any Part of the Court of First Instance and requesting such Court to order compliance therewith. The Court of First Instance shall give preference to the expedited resolution of such request. The Court of First Instance shall be empowered to hold any person in contempt for disobeying such orders. Any person may be prosecuted and convicted of perjury if he/she has given false testimony before the Reviewing Board; and
- l) Any other power or duty conferred under this Plan or by regulation;

#### **Section 56. — Powers and Duties of the Chair of the Reviewing Board. —**

The Chair of the Reviewing Board shall have the following powers and duties:

- a) To adopt, amend, and repeal bylaws as necessary for the internal operations of the Reviewing Board, as well as to address the issues brought for its consideration, including emergency regulations, pursuant to the provisions of this Plan and Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act,” and any other applicable law.
- b) To contract services of technical, professional, highly specialized or other personnel as necessary to carry out his/her functions or those of the Reviewing Board;
- c) To authorize the reimbursement of reasonable expenses to the staff under his/her supervision pursuant to the regulation adopted for such purposes by the Department of the Treasury and any applicable legal provision;
- d) To supervise the administrative personnel assigned by the Administrator;
- e) To use the available resources of the Administration, in coordination with the Administrator;
- f) To represent the Reviewing Board in any acts or activities as required;
- g) To assign work areas, discretionally, during the administrative phase of the Reviewing Board, to one (1) or more of the members. The assignment of work areas may be altered or rendered ineffective by the Chair when, in his/her judgment, any factor or factors of public interest or operating efficiency so warrant;
- h) To adopt an official seal, of which judicial notice shall be taken, to authenticate the agreements, orders, or resolutions of the Board; and
- i) Any other power, function, or duty conferred under this Plan or by regulation.

### **Section 57. — Quorum. —**

The simple majority of the members of the Reviewing Board shall constitute a quorum to hold sessions and make decisions. All the agreements of the Reviewing Board shall be reached by majority vote. Board members shall not cast explanatory votes; rather, they shall only indicate their position in favor or against the decision. The vote of each Board member shall be entered in the minute book of the Reviewing Board, which shall constitute a public document. If necessary, as an exception, Board members may be cast their votes through electronic media.

### **Section 58. — Service and Other Fees and Charges. —**

The Reviewing Board shall fix, by regulation, the charges, fees, or rates to be paid for: (a) filing requests for review, as applicable; (b) copies of any requested public document; and (c) any other transaction or service rendered at the request of the public in compliance with the provisions of this Plan. However, the Reviewing Board or person onto whom it delegates shall be empowered to provide copies, free of charge, to the Office of the Governor, the Department of State, the Legislative Assembly, State or Federal overseeing entities, and persons or entities that meet indigence requirements as established by the Board by regulation. All revenues received on any account by the Reviewing Board in the discharge of its ministerial duties to implement the provisions of this Plan, from the sources specified in this Plan or any other sources, shall be covered into a special account to be created in the Administration in favor and at the disposal of the Administration. With priority over any other matter, and in the following order, the Administration shall dispose of such funds during the first three (3) years for: the acquisition of technological and other office equipment, as necessary; and the contracting of external experts, among others, after having reached an agreement with the Board.

## **CHAPTER VIII. — REVIEW PROCEDURE BEFORE THE PUBLIC BID REVIEWING BOARD**

### **Section 59. — Uniform Administrative Procedures Act. —**

Bid award procedures before the Public Bid Board and bid award review procedures before the Public Bid Reviewing Board shall be governed by the procedures established in this Plan and any provision of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act,” that is not contrary to the provisions of this Plan.

### **Section 60. — Term to Request Administrative Review. —**

Any party adversely affected by an award of the Public Bid Board of the Administration may request administrative review of a bid award to the Reviewing Board, within the jurisdictional term of ten (10) calendar days as of the date of the entry on record of a copy of the notice of the determination of the Public Bid Board with regard to a bid award. Once the request for administrative review is filed, the Public Bid Board shall forward a certified copy of the record of the case to the Reviewing Board within five (5) calendar days as of the filing of the request for review.

## **Section 61. — Notice of the Review. —**

The adversely affected party shall send a copy of the request for administrative review to the Public Bid Board, and simultaneously to the vendor who was awarded the bid, in compliance with Section 60 of this Plan. Such requirement shall be jurisdictional in nature. In the request for review, the petitioner shall certify to the Reviewing Board that it has complied with said requirement. The notice may be made by certified mail, return receipt requested, or through any other electronic media as established in the regulation. If so requested by the adversely affected party, the Public Bid Board shall provide it with the mailing and email addresses reported by the participating vendors to the Public Bid Board during the protested bid process.

## **Section 62. — Review Procedure. —**

When reviewing the awards made by the Public Bid Board, the Reviewing Board shall issue its decision with respect to the request within a term of ten (10) calendar days. The Reviewing Board shall issue its decision, after which any interested party may resort to the Court of Appeals by means of a request for review, as provided in this Plan.

If the Reviewing Board fails to resolve the administrative review within the term provided herein, the request for review shall be deemed to be denied outright. Once such term elapses, the term to resort to the Court of Appeals shall begin to count.

If the Reviewing Board deems it necessary, it may hold a hearing in which the Board may receive additional proof that could lead it to decide upon the review under its consideration.

## **Section 63. —Notice. —**

Once an issue under the consideration of the Reviewing Board has been decided, the Reviewing Board shall notify the interested parties in writing by mail, return receipt requested, as provided by regulation. Such notice shall include the grounds that support such determination.

## **Section 64. — Term to Request Judicial Review. —**

The party adversely affected by a determination of the Reviewing Board may file a request for review with the Court of Appeals, as provided in Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act.”

## **CHAPTER IX. — TRANSFER OF POWERS**

### **Section 65. —Transfer of the Programs of the Administration. —**

- a) The Public Documents Administration Program of the Administration is hereby transferred to the General Archive of Puerto Rico, attached to the Institute of Puerto Rican Culture;
- b) The Building Construction and Conservation Program of the Administration is hereby transferred to the Public Building Authority;
- c) The Site Leasing Program of the Administration is hereby transferred to the Public Building Authority.

## **Section 66. — Transfer of Responsibilities, Property, and Funds. —**

With respect to the Administration’s programs transferred herein for the specified ends and purposes, every property or any interest thereon is hereby transferred, to wit: records, files, and documents, debts or claims, liabilities, and contracts of any kind; rights and privileges of any kind; licenses, permits, and other authorizations; funds appropriated and to be appropriated, if applicable; and the necessary personnel, as determined by the Administrator in coordination with the Executive Director of the Institute of Puerto Rican Culture or the Executive Director of the Public Building Authority. None of the provisions of this Section shall be deemed to revoke, modify, alter, ratify, or nullify any agreements, arrangements, claims, or contracts executed by the officials responsible for the programs, activities, and functions transferred under this Plan and in effect at the time such Plan becomes effective. As part of the program, function, power, and duty transfer provided herein, the Administrator shall conduct, with the cooperation of the Executive Director of the Institute of Puerto Rican Culture or the Executive Director of the Public Building Administration [sic], as appropriate, an analysis thereof in order to integrate and consolidate similar functions, programs, and activities to prevent duplication or redundancy of efforts and maximize the use of resources.

## **CHAPTER X. — AMENDMENTS**

### **Section 67. —Amendments. —**

a. Section 6 of Act No. 230 of July 23, 1974, as amended, known as the “Puerto Rico Government Accounting Act,” is hereby amended to read as follows:

“Section 6.- Accounting and Pre-audit of Public Funds of Agencies.-

a. ....

b. All financial transactions of the executive agencies shall be pre-audited by the Secretary in accordance with the principles, norms, procedures, rules and regulations adopted by him/her. In determining the pre-audit procedures to be followed and the scope of the examination of vouchers and other documents, the Secretary shall consider the auditing principles generally accepted in the accounting practice, effectiveness of the fiscal organization, accounting system, money inflow and outflow procedures, internal audits, and the administrative practices related to the corresponding executive agencies. Provided, however, that any acquisition of goods or nonprofessional services made by or through the General Services Administration shall be exempted from this procedure. Nevertheless, the Administration shall ensure that pre-audit procedures are efficiently replaced with automated procedures, taking into account the purpose sought by such fiscal practice. Such automated electronic procedures shall be incorporated and certified by the Administrator with priority before beginning the goods and nonprofessional service procurement process by the Administration.

c. ....

d. ....

e. ....”

b. Section 6 of Act 129-2005, as amended, known as the “Government of the Commonwealth of Puerto Rico Procurement Reserve Act,” is hereby amended to read as follows:

“Section 6.- Reserve Program.-

1. ....
2. ....
3. ....

4. The Administration shall identify the goods or nonprofessional services that may be acquired from small and medium-sized businesses.

5. The agencies shall employ the ERB to confirm that the businesses meet the requirements for participating in the Reserve Program and for conducting the procurement processes with small and medium-size businesses.

6. The Administration shall keep reports, which shall be deemed to be public, to document and inform the achievements attained in complying with the objectives of this Plan. Likewise, the Administrator shall be responsible for identifying those acquisitions in which small and medium-size businesses may participate and establish a method for determining which shall be included in its Reserve Program pursuant to the standards established in this Act.

7. Once the Administration has identified an acquisition as being adequate for the Procurement Reserve Program, it shall limit the invitation to duly registered small and medium-size businesses, registered and classified, as such and reject any offer from businesses that are not classified as small or medium-size businesses.”

c. Section 9 of Act 129-2005, as amended, known as the “Government of the Commonwealth of Puerto Rico Procurement Reserve Act,” is hereby amended to read as follows:

“Section 9.- Exceptions.-

In those circumstances whereby Federal laws or regulations allow for or require a procedure other than the one established in this statute, the contracting agency shall follow the Federal procedures, but shall be required to issue a written statement describing the applicable Federal laws and regulations. Likewise, the procedure established through this Act shall be applicable whenever the items to be acquired comply with the specifications, models and other standards required, and the terms and conditions established in the bid solicitation or purchase order, and that the price thereof, after applying the preferential investment standard as provided by regulations pursuant to Section 10 of this Act, is the lowest price. The provisions of this Act shall be rendered ineffective when the fiscal situation of the agency or the public interest require that other priorities be established. The head of the agency shall have the duty to request a dispensation to the Governor to render ineffective the provisions of Section 2 of this Act. The regulations under this Act shall provide the means to obtain said dispensation.”

d. Subsection (a) of Section 4 of Act No. 5 of December 8, 1955, as amended, known as the “Puerto Rico Public Documents Administration Act,” is hereby amended to read as follows:

“Section 4.-

(a) The Executive Director of the Institute of Puerto Rican Culture or his/her authorized representative in the Executive Branch; public corporations and municipalities, the Chief Justice of the Supreme Court or his/her authorized representative in the Judicial Branch; the President of the Senate or his/her authorized representative; the Speaker of the House or his/her authorized representative; the Comptroller or his/her authorized representative are hereby empowered to administer in the agencies under their jurisdictions, the Public Document Administration Program established by virtue of this Act, as provided below. Provided, that the Presiding Officers of both Houses of the Legislative Assembly or their authorized representatives shall remit the original recording of legislative sessions, public hearings, pictures, and videos as well as any other analogous documents related to the legislative measures process, after ten (10) years have elapsed from the closing of the Legislative Assembly that has produced the same, for their permanent conservation in the General Archive. Each House of the Legislative Assembly shall regulate, through a written regulation, all matters that pertain to the orderly transfer of such documents to the General Archive.

...”

e. Section 6 of Act 14-2004, as amended, known as the “Investment in Puerto Rican Industry Act,” is hereby amended to read as follows:

“Section 6.- Powers of the Board.-

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...
- (g) ...

(h) Ascertain with the Technical Advisory Committee of the General Services Administration that, in the drafting and review of the model specifications, the availability and ability of the industry in Puerto Rico to produce, assemble, bottle, and distribute such item are taken into account.

- (i) ...
  - (j) ...
- ...”

f. Section 8 of Act 14-2004, as amended, known as the “Investment in Puerto Rican Industry Act,” is hereby amended to read as follows:

“Section 8.- Classification of Products and Services.-

... The Board shall keep a list of said articles duly classified and indicating their class, origin, trademark, shape, dimensions, properties, samples, catalogs, and any other information deemed convenient to facilitate its selection in Government acquisitions.

Provided, that the Administrator of the General Services Administration, in the case of agencies that make their acquisitions of goods and nonprofessional services through the centralized procurement system, the Finance Directors of the municipalities, and the delegate of the procurement official or manager of public corporations, shall submit to the Board on a monthly basis any information regarding bids and acquisitions made pursuant to this Act.”

g. Section 9 of Act 14-2004, as amended, known as the “Investment in Puerto Rican Industry Act,” is hereby amended to read as follows:

“Section 9.- Responsibility of Agencies.-

Secretaries of departments, heads of agencies and instrumentalities, and the mayors, as well as the Administrator of the General Services Administration, shall oversee that the professional and technical personnel in charge of drafting specifications for items to be acquired by the Government, and of the acquisition of goods and services, perform their work taking into consideration the availability of goods and services provided by companies operating within Puerto Rico and that when establishing the bid specifications, terms, conditions and general instructions, they do not eliminate said articles and services from the bid. Every acquisition made under the provisions of this Act shall be subject to strict supervision and follow-up as provided in this Section to ensure the most faithful compliance with the representations, terms, and conditions for the acquisition.”

h. Section 7 of Act No. 140 of June 3, 1976, as amended, is hereby amended to read as follows:

“Section 7.- The equipping of spaces and their operation and functioning shall be carried out under the regulations promulgated by the Department and the Public Building Authority to assure the utmost benefit to persons with disabilities and concessionaires.”

i. Section 2 of Act 237-1995, as amended, is hereby amended to read as follows:

“Section 2.- All government entities whose land premises or parking lots belong or are administered by other government agencies, corporations or public instrumentalities, shall request the authorization of such other entities to lease such premises, or if necessary, they shall request the prior authorization of the Public Building Authority.”

## CHAPTER XI. — REPEALS

### **Section 68. — Repealing Clause. —**

The following Acts are hereby repealed:

- a) Act No. 164 of July 23, 1974, as amended;
- b) Reorganization Plan No. 2 of 1971; and
- c) Act 31-2001, as amended.

## CHAPTER XII. — ADMINISTRATIVE PENALTIES AND FINES

### **Section 69. — Penalties. —**

Any person that violates the provisions of this Plan or the regulations approved thereunder shall incur a misdemeanor, and upon conviction, shall be sanctioned by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), in addition to any other applicable penalty provided by law or regulation that may apply.

### **Section 70. — Administrative Fines. —**

The Administrator shall be empowered to impose administrative fines to any natural or juridical person that:

- a) Violates the provisions of this Plan or the regulations adopted thereunder, in which case, the administrative fines shall not be less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each violation; provided, that each day the violation persists shall be deemed to be an independent violation;
- b) Fails to comply with any resolution, order or decision issued by the Administrator, in which case, the administrative fines shall not be less than one thousand dollars (\$1,000) nor more than twenty thousand dollars (\$20,000) for each violation; provided, that each day the violation persists shall be deemed to be an independent violation; and
- c) Has showed contumacy in the commission or repeated violations of this Plan or the regulations adopted thereunder, in which case, the Administrator, in his/her discretion, may impose an additional administrative fine of up to fifty thousand dollars (\$50,000) for each violation.

At the time of imposing an administrative fine, the Administrator shall take into account the provisions contained in Act 454-2000, as amended, known as the “Small Business Administrative and Regulatory Flexibility Act.”

The imposition of administrative fines or criminal sanctions shall be subject to the provisions contained in Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act.”

## CHAPTER XIII. — GENERAL AND TRANSITORY PROVISIONS

### **Section 71. — Special Laws. —**

Any law currently administered or enforced by the Administration on which no provisions has been otherwise made in this Plan shall be deemed to be amended for the purposes of facilitating the implementation of the provisions and purposes thereof. Said laws shall be interpreted in the broadest and most favorable manner for the implementation and purposes of this Plan. In the event of a conflict between the provisions of any law and those of this Plan, the provisions of this Plan shall prevail.

## **Section 72. — Exemptions. —**

The Administration shall be exempted from all kinds of taxes, fees, levies, excises, or charges, including license taxes imposed or to be imposed by the Government of Puerto Rico or any political subdivision thereof, on its operations, real or personal property, capital, revenues, and surplus. Furthermore, the Administration and the Reviewing Board are hereby exempted from all kinds of fees and levies imposed by law for the handling of court proceedings, the issue of certifications in the offices and agencies of the Government of Puerto Rico and its political subdivisions, and the issue of public documents and recording thereof in any public registry of Puerto Rico.

## **Section 73. — Payment Plans. —**

Any agency, corporation or municipality that, as of the effective date of this Plan, has a debt pending payment with the General Services Administration, shall enter into a payment plan to be strictly complied with for the total amount owed, which shall be paid in full in monthly installments, which shall not exceed thirty-six (36) months. The Administration shall stop rendering services to any agency that fails to comply with such payment plan.

## **Section 74. — Pending Cases. —**

Any pending administrative procedure, case, complaint, or indictment for violations of the laws or part thereof, or regulations repealed or affected by this Plan, initiated before the effective date of this Plan, shall continue to be processed by the Administration, as applicable, under the laws in effect at the time the violation took place. No civil action filed regarding the structuring of any of the laws or parts thereof, either repealed or affected by this Plan and being processed prior to the effective date of this Plan or any applicable law, shall be affected by any of the repeals or modifications made by this Plan.

## **Section 75. — Requests or Issues Pending Processing. —**

Any request for services or administrative issue not involving contest or enforcement, duly submitted and pending processing as of the effective date of this Plan, shall be processed under the legal provisions applicable at the time of the submission of such request.

## **Section 76. — Regulations, Administrative Orders, Circular Letters, and Memoranda.**

Any regulations that govern the operations of the government body reorganized herein and that are in effect at the time of the approval of this Plan, to the extent they are not inconsistent with the provisions of this Plan, shall continue to be in effect until they are amended, repealed, or replaced. Likewise, any administrative order, circular letter, memorandum or interpretive document of the Administration on any issue covered by this Plan, which was issued before the effective date of the same, shall be evaluated and amended, as the case may be, within one hundred and eighty (180) days, to be counted as of effective date of this Plan. Any administrative

order, circular letter, memorandum or interpretive document that is inconsistent with the provisions of this Plan or the regulations adopted thereunder shall lack validity and effectiveness.

### **Section 77. — Contracts. —**

Any contracts executed by the Administration, including, but not limited to multiple award contracts that are in effect at the time of the approval of this Plan, shall continue in effect and upon their expiration any new contracting to obtain the goods and services provided under such contract shall be managed and transacted under the provisions of this Plan.

### **Section 78. — Budget and Accounting System. —**

As of the approval of this Plan, the budget of the Administration and any other funds shall be transferred to the new agency created under this Plan. For each fiscal year, the Administration shall submit a budget request before the Office of Management and Budget, according to its needs and the limited resources of the Government, including an estimate of its own revenues for the same fiscal year. The operating expense budget of the Administration, originating from its own revenues, shall not exceed fifteen million dollars (\$15,000,000) for the first year, fourteen million dollars (\$14,000,000) for the second year, and thirteen million dollars (\$13,000,000) for the third year thereafter, as of the approval of this Plan.

The expense budget of the Administration shall include an item for the Public Bid Reviewing Board, in which not less than five hundred thousand dollars (\$500,000) shall be set aside to be used to carry out the purposes of this Plan and to establish its internal structure so as to allow for the achievement of the appropriate operational, technical, and regulatory autonomy.

All the moneys received by the Administration in discharging its duties, shall be covered, as provided by the applicable Federal and Commonwealth laws and regulations, into the accounts of the Administration, as determined by the Secretary of the Treasury and pursuant to the provisions of Act No. 230 of July 23, 1974, as amended, known as the “Puerto Rico Government Accounting Act.”

Furthermore, the Administration shall establish, subject to the approval of the Secretary of the Treasury, the accounting system required for the proper control, recording of operations, and interconnectivity with the central accounting system of the Government of Puerto Rico.

### **Section 79. — Industrial Capital Fund. —**

A special fund, to be denominated as the “Industrial Capital Fund of the General Services Administration,” is hereby created in the Department of the Treasury, which shall succeed, for all legal purposes, the fund with the same name created pursuant to Act No. 164 of July 23, 1974, as amended. This Fund shall be constituted by consolidating the revolving or industrial capital funds of the Administration’s programs and the revenues generated from other services rendered by the Administration to the various government agencies, to cover the activities and services for which such revenues are received.

The balance and liabilities of the “Industrial Capital Fund of the General Services Administration” created by virtue of Act No. 164 of July 23, 1974, as amended, are hereby transferred to the aforementioned “Industrial Capital Fund.”

The Administrator is hereby empowered, after consultation with and approval of the Government Development Bank, to take money on loan for the exclusive purpose of financing the installation and implementation of the new centralized automated system for the acquisition of goods and nonprofessional services and the applications and platforms related thereto, to achieve the purposes of this Plan and carry out future improvements to the same, thus securing the payment of its obligations with this Fund. The Administrator is also empowered to place a lien on any contract, earnings, or revenues to secure such obligations. The Administration may sue and be sued on behalf or in representation of the Government of Puerto Rico for any claim that may arise as a consequence of the obligations assumed pursuant to the preceding paragraph, and to such effect, the Government of Puerto Rico hereby waives its immunity, subject to the prescriptive terms and procedures established by law, without being subject to the provisions of Act 104-1955, as amended known as the “Claims and Suits Against the Commonwealth,” and any sentence that may be pronounced against the Government of Puerto Rico shall be payable, upon becoming binding, with the funds available in the Industrial Capital Fund of the General Services Administration.

#### **Section 80. — Human Capital. —**

All the employees of the Administration to whom the provisions of this Plan apply are hereby guaranteed their jobs, rights, privileges, and status related to any pension, retirement, or savings fund or loan system under which they were covered at the time of the approval of this Plan.

Subject to the below provisions, none of the provisions of this Plan shall be construed as to modify, alter or nullify any agreement, arrangement, claim, or contract that have been executed by the officials or employees responsible for the agencies reorganized under this Plan and that are in effect as of the effective date of such Plan. Any claim brought by or against such officials or employees pending resolution as of the effective date of this Plan shall remain in force until its resolution.

The Administration shall be governed by the provisions of Act 184-2004, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico,” and any other applicable law. Furthermore, any employee shall be automatically enrolled in the Retirement System to which he/she is entitled, or whose benefits he/she was receiving at the time of the approval of this Plan.

The Administration shall establish and comply with its own job classification and compensation plans, taking into account the new functions of the agencies and their internal organization, the availability of funds, the need to reduce administrative expenditures, and the elimination of duplicate functions.

As of the effective date of this Plan, the Administration shall recognize the labor union or unions that represent their unionized employees, respectively, and assume the collective bargaining agreement or agreements in effect until their termination; provided, that such agreements are not inconsistent with the provisions herein.

Neither the provisions of this Plan nor the provisions of any other general or supplemental law may be used during the reorganization process as grounds for dismissal with respect to any employee holding a permanent career position in the agencies reorganized under this Plan.

Before the provisions of this Plan become effective for each agency of the Executive Branch, the highest-ranking official of each of said agencies shall design a restructuration process for

procurement offices and other offices with similar duties, in order to facilitate the implementation of this Plan. Such process shall take effect at the same time that this Plan becomes applicable to such agency of the Executive Branch. Provided, that if the Administrator determines that any specific employee who currently carries out such procurement functions in an agency of the Executive Branch should be transferred to the Administration to carry out similar functions, the employee shall exercise his/her prerogative to accept or decline his/her transfer to the Administration. In such case, the Administration shall recognize such employee’s job, rights, privileges, and status with regard to any pension, retirement, or savings fund or loan system under which he/she was covered at the effective date of this Plan.

### **Section 81. —Annual Reports. —**

Every fiscal year, the Administrator shall render a report to the Governor, the Office of Management and Budget, the Office of the Inspector General of Puerto Rico, and the Legislative Assembly, which shall include the presentation of the Expense Budget of the Administration. These reports shall contain all the information pertaining to his/her efforts, revenues, expenditures, studies, and research for the preceding fiscal year. Likewise, when he/she deems it necessary or upon request, the Administrator shall render any other special report that may be deemed convenient or as required by the Governor or the Legislative Assembly.

It is hereby established that the Office of the Inspector General of Puerto Rico shall pre-audit the operations and procedures of the Administration, as well as the fiscal operations of the Agency shall be audited and examined by the Office of the Comptroller every two (2) years.

### **Section 82. — Studies or Research. —**

The Administration may conduct and publish all kinds of studies or research and compilation of statistics regarding matters that affect or that inure to the improvement of, among other things, the programs and services of the Administration or the agencies or instrumentalities to which it renders services. To such ends, it may require any information deemed necessary, appropriate, and convenient to achieve such purposes and approve any rules and regulations deemed necessary and reasonable to effectively carry out its operations in compliance with the provisions of this Plan.

The Administrator may issue summonses requiring the appearance of witnesses and the presentation of data or information to attain the purposes of this Plan. He/she may also administer oaths and take testimonies, data, or information him/herself or through his/her duly authorized representative. If a summons issued by the Administrator is not duly complied with, the Administrator may resort to the Court of First Instance of Puerto Rico and petition the Court to order compliance with such summons. The Court of First Instance shall give preference to the expedited resolution of such petition and issue orders to compel the appearance of witnesses or the presentation of data or information previously required by the Administrator. The Court of First Instance is empowered to hold any person in contempt for disobeying such orders. No person may refuse to comply with a summons issued by the Administrator or his/her representative or to produce the evidence required or refuse to answer any question with regard to any study or research or because the required evidence could incriminate or subject him/her to criminal prosecution, or because it could cause him/her to be removed or suspended from his/her

job, profession, or occupation; however, the testimony or evidence given by said person at the request of the Administrator or his/her representative, or by virtue of a court order, shall not be used or produced as evidence against such person in any criminal proceeding, or civil or administrative proceeding that may result in the removal or suspension from his/her job, profession or occupation, after having claimed his/her right against self-incrimination, except that the person shall not be exempted from being prosecuted or punished for perjury when so testifying.

#### **Section 83. — Exemptions. —**

Any work performed through the 'La Obra en tus Manos Program' of the Office of the General Coordinator for Socio-Economic Financing and Self-Management, the cost of which does not exceed the sum of one hundred ninety-five thousand dollars (\$195,000), or any other program of the successor agency with like purposes, shall be exempted from the application of the provisions of this Plan, provided, that such works do not exceed the sum of one hundred ninety-five thousand dollars (\$195,000)."

#### **Section 84. — Disclosure. —**

This Plan and the impact thereof constitute information of public interest. Therefore, the Modernization Council of the Executive Branch is hereby authorized to educate and inform the citizenry about this Plan and the impact thereof. It is vital and essential for the citizenry to be informed about the changes in the duties and functions of the agencies concerned, the new procedures to be followed, and the rights and obligations of the citizens.

#### **Section 85. — Severability Clause. —**

If any section, subsection, paragraph, subparagraph, chapter, clause, phrase, or part of this Plan were ruled invalid or unconstitutional by a Court with competent jurisdiction, such ruling shall not affect, impair, or invalidate the remaining provisions of this Plan, and the effect of the ruling shall be limited to the section, subsection, paragraph, subparagraph, chapter, clause, phrase, or part of this Plan thus ruled invalid or unconstitutional.

#### **Section 86. — Effectiveness. —**

This Plan shall take effect immediately after its approval. The Governor is hereby authorized to adopt transition measures as necessary to implement the provisions of this Plan, without interrupting public services and all other administrative procedures of the agencies that shall be part of the Administration, including the establishment through Executive Order of up to three (3) dates for the implementation of this Plan, whereby the agencies of the Government of Puerto Rico shall be divided into up to three (3) groups in order to stagger the application of the provisions of this Plan to the agencies of the Executive Branch. Provided, that all the agencies of the Executive Branch shall be integrated to the digital centralized procurement system of the Administration not later than eighteen (18) months after the approval of this Plan. The agencies of the Executive Branch may continue to carry out their acquisitions in the same manner they

used to prior to the approval of this Plan, until the date set by the Governor for each one of them to be incorporated in the implementation of the provisions of this Plan. It is hereby provided further, that until their integration into the digital centralized procurement system of the Administration, these agencies shall identify those acquisitions in which small and medium-sized business may participate and establish a method to determine those acquisitions that shall be included in their Procurement Reserve Program.

The necessary, appropriate, and convenient actions to be taken to attain the purposes of this Plan, including, but not limited to the review of regulations; the establishment of the internal, programmatic, and budget structure, as well as the account structure required to carry out the accounting of funds; and the relocation of offices shall be initiated within a term that shall not exceed thirty (30) calendar days as of the approval of this Plan, in coordination with and with the advice of the Office of Management and Budget.

**Note. This compilation was prepared by the Puerto Rico OMB staff who have striven to ensure it is complete and accurate. However, this is not an official compilation and may not be completely free of error. It contains all amendments incorporated for reading purposes only. For accuracy and exactitude please refer to the act original text. Compiled by the Office of Management and Budget Library.**