

DEPARTMENT OF STATE

Regulation No. 6632

Date: June 10, 2003

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Secretary of State

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COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF AGRICULTURE
SANTURCE, PUERTO RICO

GENERAL REGULATION OF PURCHASES AND AUCTIONS OF THE
DEPARTMENT OF AGRICULTURE AND ITS INSTITUTIONAL UNITS

INDEX

CONTENT	PAGE
SECTION 1 - LEGAL BASE	1
SECTION 2 - PURPOSE/REPEAL	1
SECTION 3 - SEPARABILITY CLAUSE	1
SECTION 4 - INTERPRETATION OF WORDS AND PHRASES	2
SECTION 5 - DEFINITIONS	2-5
SECTION 6 - BIDDERS REGISTRY	5
SECTION 7 - PENALTIES	5
SECTION 8 - COMPOSITIONS OF THE AUCTIONS BOARD	6
SECTION 9 - OPERATION OF THE BOARD	6
SECTION 10 - SESSIONS, QUORUM, ATTENDANCE, DUTIES OF THE BOARD	6
SECTION 11 - DUTIES AND FUNCTIONS OF THE BOARD	7-9
SECTION 12 - DUTIES AND POWERS OF THE PRESIDENT	9
SECTION 13 - FUNCTIONS OF THE SECRETARY	9
SECTION 14 - AUCTIONS PROCEDURES	10
SECTION 15 - TYPES OF AUCTIONS	10
SECTION 16 - CONTENT OF THE REQUISITION	10
SECTION 17 - OBLIGATIONS OF THE PURCHASES EXECUTIVE OFFICIAL	10
SECTION 18 - INFORMAL AUCTION	10-11
SECTION 19 - FORMAL AUCTION AND WAY OF SUMMONING	12

SECTION 20 – AUCTION’S LIST	12
SECTION 21 – CONTENT	12
SECTION 22 – PREPARATION OF SPECIFICATIONS	12
SECTION 23 – CONDITIONS	12
SECTION 24 – TYPES OF CONDITIONS	12-13
SECTION 25 – AMENDMENT OR CANCELLATION OF AN AUCTIONS LIST	13-14
SECTION 26 - APPROVAL OF AMENDMENTS TO THE AUCTIONS LIST	14
SECTION 27 – APPROVAL OF CANCELLATION	14
SECTION 28 - REFUTATION OF THE AUCTIONS LIST	14
SECTION 29 – TERMS TO PRESENT REFUTATION	14
SECTION 30 – CONTENT OF THE REFUTATION	14-15
SECTION 31 – ACTIONS TO BE FOLLOWED BY THE AUCTIONS BOARD	15
SECTION 32 – NOTIFICATION OF THE REFUTATIONS RESOURCE RESULT BEFORE THE AUCTIONS BOARD	15
SECTION 33 – REVIEW OF THE AUCTIONS BOARD DECISION	15
SECTION 34 – APPEALS’S EFFECT BEFORE THE BOARD OF APPEALS	15
SECTION 35 – WAY OF PRESENTING PROPOSALS	15-16
SECTION 36 – DEADLINES	16
SECTION 37 – IDENTIFICATION OF THE PROPOSALS	16
SECTION 38 – CONTENT OF THE PROPOSAL	16-17
SECTIONS 39 – PROPOSALS WITHDRAWALS AND OPENING CEREMONY	17
SECTION 40 – DEFINITION OPENING CEREMONY	14
SECTION 41 – PUBLICITY OF THE ACT	18
SECTION 42 – RESPONSIBILITY OF THE ATTENDANTS	18
SECTION 43 – OPENING AND READING	18
SECTION 44 – RESPONSIBILITY OF THE SECRETARY AFTER THE ACT	18
SECTION 45 – REQUIREMENTS FOR AWARDING AUCTIONS	18-20
SECTION 46 – DESERTED AUCTION	20
SECTION 47 – GENERAL ORDER TO PROCEED WITH THE AWARD	20-21

SECTION 48 – WHEN CALLING AN AUCTION IS NOT NECESSARY	21-23
SECTION 49 – CHANGE ORDER AND EXTRA WORK ORDERS	23-25
SECTION 50 – BOARD OF APPEALS	25
SECTION 51 – APPELLATION TO THE AUCTIONS BOARD AWARD	25
SECTION 52 – PROCEDURES FOR THE APPELLATION	25-26
SECTION 53 – APPELLATION'S FILE	26
SECTION 54 – OPPOSITION TO THE APPELLATION'S PETITIONS	26
SECTION 55 – EFFECT OF THE PRESENTATION OF THE APPELLATIONS REQUEST	27
SECTION 56 – CRITERIA FOR EVALUATING AN APPELLATION	27
SECTION 57 – DECISION OF THE AUCTIONS BOARD	27
SECTION 58 – RECONSIDERATION	27-28
SECTION 59 – JUDICIAL REVIEW OF THE RESOLUTION OF THE BOARD OF APPEALS	28
SECTION 60 – INTERNAL NOTIFICATION	28
SECTION 61 – REFUSAL TO COMPLY WITH THE CONTRACT	28
SECTION 62 – NONCOMPLIANCE OF THE CONTRACT	29
SECTION 63 – BONDS	29
SECTION 64 – REACH OF THE PUBLIC NATURE OF THE DOCUMENTS	29
SECTION 65 – PROHIBITION OF BEING BENEFITED FROM THE PUBLIC PROCEEDINGS	29
SECTION 66 – CRITERIA TO GOVERN THE ACQUISITION	29
SECTION 67 – NO PRECEDENT	30
SECTION 68 – SMALL BOX	30
SECTION 69 – PURCHASE ORDER	30-31
SECTION 70 – ACQUISITIONS BY MEANS OF CREDIT AGREEMENT OR PERSONAL FUNDS	31
SECTION 71 – ACQUISITION OF RECYCLED PRODUCTS	31
SECTION 72 – DELIVERY, RECEIPT, AND PAYMENT OF THE EQUIPMENT AND SUPPLIES	31
SECTION 73 – AMENDMENTS	32
SECTION 74 – REPEAL	32
SECTION 75 – EFFECTIVENESS	32

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF AGRICULTURE
SANTURCE, PUERTO RICO

**GENERAL REGULATION OF PURCHASES AND AUCTIONS
OF THE DEPARTMENT OF AGRICULTURE AND ITS INSTITUTIONAL UNITS**

SECTION 1 - LEGAL BASE

This Regulation is established pursuant to the Reorganization Plan Number 1 of May 4, 1994, in agreement to the provisions of Act No. 5 of April 6, 1993 and Act No. 170 of August 12, 1988, as amended better known as "Uniform Administrative Procedure Act".

SECTION 2 - PURPOSE / REPEAL

This Regulation is adopted with the purpose of establishing the procedure, which shall govern all purchases and auctions of goods and non-personal services carried out in the Department of Agriculture and its institutional units in order to create the organisms that shall be in charge of administering the aforementioned procedure pursuant to the public policy of the Commonwealth of Puerto Rico (ELA), and to repeal Regulation No. 5389, approved on February 27, 1996, "General Regulation of Purchases, Auctions and Appellations of the Department of Agriculture and its Institutional Units".

In cases of concessions, contracts, donations, legacies, agreements and other types of agreements, the transactions shall be governed by the clauses and conditions agreed between the parties for the development of the projects, as well as the applicable juridical ordinance. The Department may provide norms and complimentary procedures in order to speed up the purchases in the programs of those institutional units that offer goods and services and that collect for the same.

SECTION 3 - SEPARABILITY CLAUSE

If any provision, word, sentence, phrase, section or theme of this Regulation is declared unconstitutional or null by any Justice Court, such determination shall neither affect, nor invalidate the remaining provisions of this Regulation.

SECTION 4 – INTERPRETATION OF WORDS AND PHRASES

All words and phrases used in the Regulation herein shall be interpreted according to the context and the common meaning usually given.

Voices used in the Regulation in the present tense shall include the future tense; those used in the masculine gender shall include the feminine gender.

SECTION 5 – DEFINITIONS

- a) **Supplemental Agreement:** A written agreement executed by the Awarded Bidder and the Department or its institutional units which shall serve as a supplement of the existing contract to cover changes incidental to and necessary for the acceptable completion of the project.
- b) **Appellation:** Writing submitted by any bidder in an auction in order to request, before a superior level of award, review for the decision taken.
- c) **Award Notice:** Final decision of the Auctions Board in processes of formal auctions.
- d) **Change Notice:** Official document executed by the Purchases and/or Supplies Unit to legalize agreements that modify the transaction covered by a purchase order. It shall be prepared for every modification or alteration of the terms and conditions stipulated in the purchase order.
- e) **Purchase:** the means through which the government acquires goods, services or projects in exchanged of a money payment in strict compliance with all the provisions of Act No. 42 of August 5, 1989: "Preference Procurement Policy Act of the Government of Puerto Rico".
- f) **Purchaser:** Official authorized to purchase goods or nonprofessional services of the Department and its institutional units.
- g) **Quotation:** The sale offer of goods and nonprofessional services, from suppliers in accordance to the prices of the Office of Purchases.
- h) **Department:** Means the Department of Agriculture of the Commonwealth of Puerto Rico.
- i) **Institutional units:** The agencies attached to the Department of Agriculture, as defined on Act No. 170 of August 12, 1988, as amended.
- j) **Scientific Equipment:** Equipment and specialized scientific materials requested for use in research projects of the agency.
- k) **Emergency:** Situation that causes an unexpected or unforeseen public need and that requires an immediate action from the Commonwealth of Puerto Rico or the Department of Agriculture because the life, health or security of its citizens are in

danger, or because the effectiveness of the funds are close to expire or any opportunity of acquiring desired goods, works or services and the public interest may be adversely affected.

- l) **Specifications:** Group of fundamental characteristics of the equipment, materials and nonprofessional services used as reference by each line of an auction or quotation, such as: physical, functional, aesthetics and quality characteristics, with which the same are described.
- m) **Bond:** Guarantee or amount of money deposited in an institution authorized by law in order to assure the compelling with an obligation.
- n) **Appellation Bond:** Guarantee or amount of money required to any bidder that appeals auction award, in order to respond for the expenses of an appellation or any harm or prejudice that the same may cause to the Department of Agriculture. It shall be determined taking as a base ten percent (10%) of the total value of the proposal.
- o) **Performance Bond:** Amount of money required to the bidder as guarantee when an auction is adjudicated to him, with the purpose of assuring the compliance of the labor, service or delivery to be performed.
- p) **Bid Bond:** Guarantee that shall be required to all bidders that participate in an auction to assure the compliance of the offer. The bond may be in certified check, legal currency, or bond of an acknowledged company to make business in Puerto Rico.
- q) **Instructions:** Guides to prepare the proposals to the bidders; it shall include the warnings that shall be made to the bidders on changes and other matters that the Secretary, his authorized representative, or the Auctions Board deems necessary to point out to all bidders.
- r) **Jurisdiction:** Faculty or capability to comply with a matter or to resolve a controversy.
- s) **Board of Appeals:** Organism whose members are appointed by the Secretary in order to comply with the appellations in which an auction is refuted.
- t) **Auctions Board:** Administrative organism whose members are appointed by the Secretary of the Department of Agriculture and/or his authorized representative in order to execute and award auctions and whose functions shall be governed by the General Regulation for Purchases and Auctions of the Department of Agriculture and its Institutional Units".
- u) **Bidder:** Any natural or juridical person, registered in the Sole Registry of Bidders of the Commonwealth of Puerto Rico (Registro Único de Licitadores del Estado Libre Asociado de Puerto Rico), created by the General Services Administration by virtue of

SECTION 67 – NO PRECEDENT

The decision taken by the Auctions Board, or the appellate forums, in the determination of an auction, shall affect only the case under its consideration and shall not constitute precedent to other processes.

SECTION 68 – SMALL BOX

The Department may establish a small box fund or other emergency mean, in order to cover the costs of the acquisition of replacement parts and maintenance of motor vehicles that are necessary for the rendering of services to the agency, or to any other expense that the Secretary deems necessary. The amount of money of the fund to execute said purchases shall be determined by the Secretary, with the recommendation of the authorized representatives.

SECTION 69 – PURCHASE ORDER

- A. All requests for the acquisition of equipment, materials or services shall be made in the Purchases Unit through the "Requisition for Purchase Form, ASDA-DC", except in those situations that require an authorized contract.
- B. All requisitions shall have the authorization of the Secretary, or his authorized representative, of the Director of the requesting office, or his representative, and count with the budgetary assignment necessary for its approval.
- C. The purchases orders shall be verified in order to determine its correction, exactness, and the charge to be made to a fund or budgetary party.
- D. Purchase orders shall be delivered or remitted to the suppliers after making the reservation of the funds from the corresponding parties.
- E. The purchase orders, which require an advanced payment, shall be executed directly against the fund in the corresponding party of the permanent budget authorized by the Secretary of the Agency, or his authorized representative. In order to make the payments, the purchase order shall be issue and sent to the supplier.
- F. On emergency purchases in which the requirement of processing a purchase requisition and to establish the reserve of funds or corresponding parties is waived, the same shall take part of the purchase file or emergency order, the justification in writing in writing of the same. In these cases, the official that authorizes the emergency purchase shall make sure about the availability of funds in order to cover the purchase, and according to it, he shall order the execution of an emergency order.
- G. In those cases in which, after the purchase order is issued, unforeseen circumstances that merit changes arise, be it in price, quantity, specifications or other conditions, the

Act No. 85 of June 18, 2002, and who is available, interested in contracting and appears to the proposals presentation for Government Auctions.

- v) **Awarded Bidder:** Natural or juridical person to which the good pro of one or more parties in an auction are granted.
- w) **Purchases Office:** The Purchase Office of the Agricultural Services and Development Administration (ASDA) which is the unit that has under its charge the implementation of the "Regulation of Acquisition", as well as to initiate the procedures which facilitate the awarding and those that conclude the procedures of acquisition in the Government.
- x) **Requesting Office:** Any office, division or sub-division of the Department of Agriculture or its institutional units, which formally requests or requires the acquisition of goods and non-personal services.
- y) **Purchase Order:** Document issued by the purchases unit of the Department of Agriculture or its institutional units in order to acquire things, equipments, materials or nonprofessional services in exchange of a payment of money.
- z) **Appellant party:** The party that submits a resource permitted by this Regulation.
- aa) **Appellee party:** In cases of award revisions, the Auctions Board.
- bb) **Reconsideration:** Resource through which is requested the evaluation of the specifications, terms and conditions of any decision issued by the Auctions Board or the Board of Appeals.
- cc) **Bidders Registry:** Registry of suppliers in which the natural and juridical persons that compose the Sole Registry of Bidders of the Commonwealth of Puerto Rico, created by virtue of Act No. 85 of June 18, 2002 by the General Services Administration.
- dd) **Authorized Representative:** The official in whom the Secretary delegates in writing responsibilities related to this Regulation
- ee) **Requisition:** Document in which the requesting executes the exact description of what is intended to acquire, be it a good (materials and equipment) or nonprofessional services; the recommended specifications and those conditions that the Department is interested upon, in the transaction.
- ff) **Resolution:** Final decision issued by the Board of Appeals on the revision of any decision of the Auctions Board.
- gg) **Secretary:** The Secretary of the Department of Agriculture.
- hh) **Nonprofessional Services:** Those services at whose execution prevails additional factors other than the human factor.

- ii) Informal Auction: Procedure for the acquisition of equipment, material or non-personal equipment, whose cost for each purchase requisition to be acquired does not exceed the amount of \$40,000.00 for Services Programs and \$15,000.00 for Administrative Programs, according to Section 15 of this Regulation
- jj) Formal Auction: Procedure for the acquisition of equipment, materials supply or non-personal services whose cost for each requisition of purchase is estimated to exceed the amount of forty thousand dollars (\$40,000.00).

SECTION 6 – BIDDERS REGISTRY

Bidders shall be registered in the Sole Registry of Bidders of the Commonwealth of Puerto Rico, created by the General Services Administration (ASG), by virtue of Act No. 85 of June 18, 2002 and Regulation No. 6526, approved on October 24, 2002. Bidders interested in participating in these auctions shall provide to the Department the Certification of Eligibility issued to such purpose by the General Services Administration (ASG). Bidders shall also, present before the Board a Sworn Statement pursuant to Act No. 458 of December 29, 2000, as amended, better known as "Act that prohibits to award Governmental Auctions to Fraud Convicts, Misappropriation or Illegal Appropriation of Public Funds".

A. History of the Bidder – The Purchases shall keep a record of the bidders, which has obtained the awarding of an Auction and its compliance with the contractual obligations with the Department and/or its institutional units.

SECTION 7 – PENALTIES

Any person who furnishes fraudulent, misleading or false to any official or employee, whom at the moment of evaluation of the applications to enter into the Registry, voluntarily and maliciously, admits the fraudulent, misleading or false information, once the fact is proved, prior a hearing to such purposes, shall be considered as a violation to this Regulation and one or more of these penalties shall be imposed, as the case may be: Disablement to participate in auctions procedures for a term of two (2) years. In addition to it, the case may be referred to the Department of Justice so it shall take the corresponding action to impose any other penalty or sanction in agreement with the laws currently in force of the Commonwealth of Puerto Rico. In cases of employees and public officials, the case shall be referred to the Office of Government Ethics and a report shall be prepared to the Secretary in order to take care of the case pursuant to the provisions of the "Puerto Rico Public Service Personnel Act" Act No.5 of October 17, 1975, as amended and/or the applicable Regulation for personnel.

In all cases, the Department shall comply with the proper procedure of law established in the juridical ordinance of the Commonwealth of Puerto Rico.

SECTION 8 – COMPOSITIONS OF THE AUCTIONS BOARD

The Auctions Boards shall be organized in order to take care of the Formal Auctions of the Department as well as for all duties and functions that are specified in this Regulation.

- A. The Auctions Board shall be composed of three (3) official members, appointed by the Secretary, or his authorized representative, for a term of not less than two (2) years, extendable to a term of two (2) additional years. No member of the Board shall serve as such for more than two consecutive terms. None of the members may carry out functions related, directly or indirectly, to the steps for the acquisition or sale of goods or services of the Department.
- B. Types of Members -The members of the Board shall be classified as follows:
 1. The members shall be three (3) and shall be appointed by the Secretary or his authorized representative. The Secretary shall appoint the President and two (2) members, from which one (1) shall execute the functions of the Secretary of the Board.
 2. Substitute Members
The Secretary, or his authorized representative, shall appoint one (1) person in order to substitute any member who may not assist to a meeting due to any justified cause.

SECTION 9 – OPERATION OF THE BOARD

The Secretary shall provide the adequate mechanisms in order to facilitate the steps of the Board, including resources of personnel, equipment and space. With respect to the budget the Secretary shall assign the funds needed for the functioning of the Board.

SECTION 10 – SESSIONS, QUORUM, ATTENDANCE, DUTIES OF THE BOARD

- A. Attendance – The member of the Board shall be obliged to assist in person to all meetings.
- B. Quorum – A majority of the members of the Board shall constitute Quorum. The agreements shall be reached by the majority of the presents. In those cases where a draw exists the Auctions Board shall make a decision with the technical advice, which it deems necessary.
- C. No member of the Board shall receive no remuneration for discharging their duties. They may be entitled to a per diem and mileage if necessary while evaluating an Auction.

SECTION 11 – DUTIES AND FUNCTIONS OF THE AUCTIONS BOARD

- A. It shall examine all documentation submitted in order to execute the auctions process.
It shall decide everything related to the conditions and the Award of the auctions so these can be accomplished in agreement to the highest quality, economy and efficiency standards and in agreement with the norms in effect.
- B. It shall decide on the matters related to informal auctions and any other brought into its attention by the Secretary and the Executive Official.
- C. Take care and make decisions on refutations to Formal Auctions
- D. It shall appoint the members of the technical committees deemed necessary to create in order to make advisements in the award of Formal Auctions and other matters brought to its attention.
- E. When it does deems it necessary, it may require and evaluate recommendations of the requesting office related to the bidders proposals.
- F. The meetings of the Board shall be called by its President.
- G. The minutes of the meetings held by the Board shall contain the signature of all the present members at the meeting.
- H. In case of an absence of the President, the Secretary of the Department of Agriculture shall determine the person substituting him.
- I. The Auctions Board shall, with prior authorization of the Secretary, evaluate and decide which auctions shall be executed in order to sale the surplus of the movable property of the Department.
- J. The Secretary of the Auctions Board shall be responsible for keeping and maintaining updated the minute's book where all the agreements during the meetings held by the Board. Such minutes shall contain the signature of all the members present during the meeting.
- K. The Auctions Board, duly recommended by its advisors and experts, is empowered to cancel an auction before and after its award, as long as said recommendation is based on technical criteria and any other fundamental nature deemed to harm the best interests of the Department and/or its institutional units.
- L. Award: All decisions made by the Board on each auction, once adopted, shall be recorded in a written document, without being limited to, Minutes of the Meetings, Award Writ, Award Notification, among others.
- M. Content of the Award and Award Notification
The Award and its Notification shall include the following information:

1. Name and address of the bidders.
2. A review of each bidder's bid.
3. The determinant reasons or grounds in the award.
4. Defects, if any, in the bid's content.
5. Signatures – The award shall be recorded in the minutes and shall have the date and the signature of the Members, which participated in the award, and it shall be certified by the Secretary of the Board.
6. Any member may disagree and make clear his opposition in writing. It shall take part of the file.
7. The Writ of the Notification of the Award of an Auction shall be signed by the President of the Board or the Secretary of the same. This does not impede that when the circumstances thus justifies it, the Notification may be signed by any of the official members or a deputy member.
8. "Award Notice"

After the Board has awarded the auction, the Secretary is responsible to notify as soon as possible, all bidders, which submitted their proposals to the Requesting Office and the Office of Purchases.

1. Way

The Award shall be notified to the bidders through a writ titled "Award Notice", which shall be sent through the most adequate mean in agreement to the instructions given by the Board, to the address given in the bid. The Secretary shall certify the date of such Notice.

2. Content

- a) General

The Award Notice shall contain the following information:

1. Date of the Notice;
2. Date of the Award;
3. Name and address of the bidder;
4. Number of the auction;
5. Name of each bidder indicating the parties warded on his favor and the reason for the rejection of the not awarded parties;
6. Warnings in the event anyone does not agrees with the award, may request review for such before the Board of Appeals of the Department within ten (10) days counted from the date of the

notice, which shall be determined by the post office stamp of the Award Notice.

b) **Awarded Bidder**

In addition to the information on subsection "a", the Awarded Bidder or bidders Notice shall indicate the following:

- 1) Documents that he shall submit before the formalization of the contract;
- 2) The period of time that he shall have to produce the same shall be time that the Board deems reasonable for each case.
- 3) Warning that the award does not oblige the Government until the contract or the purchase order is granted.

SECTION 12 – DUTIES AND POWERS OF THE PRESIDENT

- A. Watch for the normal functioning of the Board.
- B. Direct the procedures of the Board.
- C. Call and preside the meetings of the Board.
- D. Preside, revise and adapt the recommendations of the members of the Board.
- E. Render to the Secretary of Agriculture, or his authorized representative, a Monthly Report on the auctions adjudicated and pending for award.
- F. Make recommendations on any aspect in order to improve the efficiency of the Auctions Procedures

SECTION 13 – FUNCTIONS OF THE SECRETARY

- A. Answer directly to the President.
- B. Custody all the information contained in the books, files and documents of the Board.
- C. Keep a file of all the correspondence received or delivered by the Board.
- D. Receive, open, deliver and custody the correspondence.
- E. Take care of the appointments to the meetings of the Board.
- F. Prepare the Notifications of Award and Agreements Adopted by the Board.
- G. Certify Agreements, Acts, or Awards issued by the Board.
- H. Take and prepare the Minutes of the Meetings and draw up Certificates on Agreements and Awards.

SECTION 14 – AUCTIONS PROCEDURES

It is the mechanism to be used when the Department or anyone of its institutional units have the need of acquiring any good or nonprofessional services by means of a summon to request proposals. It proceeds for the acquisition of goods and services pursuant to the public policy of the Commonwealth of Puerto Rico.

SECTION 15 – TYPES OF AUCTIONS

A. Informal: It proceeds for the acquisition of equipment or nonprofessional services, whose cost for each requisition of purchase shall not exceed the amount of forty thousand dollars (\$40,000.00) for the Services Program and fifteen thousand dollars (\$15,000.00) for the Administrative Program.

B. Formal: Procedure for the acquisition of goods equipment, materials or services whose quoted cost for each requisition of purchase exceeds the amount of forty thousand dollars (\$40,000.00).

SECTION 16 – CONTENT OF THE REQUISITION

The application shall contain the following:

- A. A description of what is intended to acquire.
- B. Recommended Specifications
- C. Specifications on the model, brand or other specifications
- D. Particular conditions in the application.
- E. Justification of the need of the Department or Institutional Unit.
- F. Use or destination.
- G. Certification of funds.

SECTION 17 – OBLIGATIONS OF THE PURCHASES EXECUTIVE OFFICIAL

The Purchases Executive Official shall have the responsibility of verifying the requisitions received and to make sure that it complies with the specifications and conditions established by Act No. 42 of August 5, 1989, Preference Procurement Policy Act of the Government of Puerto Rico; this Regulation and any other applicable law.

In cases of a Formal Auction, the Office shall have ready the lists for the Meeting within a reasonable period of time which shall not exceed ten (10) calendar days before the auction's date.

SECTION 18 – INFORMAL AUCTION

In cases of an informal auction, shall follow the criteria exposed hereinbelow:

- A. In purchases not exceeding three thousand dollars (\$3,000.00), the Executive Official of Purchases shall require a minimum of three (3) quotations. He may

execute discretion in order to select the supplier based on the favorable history, reasonability price and the quality of the product, as specified in the quotations received within the due date fixed or its presentation. The quotations shall be presented in original to the Purchases Office and the quotations presented by mail or fax shall not be accepted.

- B. For purchases not exceeding three thousand dollars (\$3,000) but which is not higher than forty thousand dollars (\$40,000), the Executive Official of Purchases shall require a minimum of three quotations, which shall be submitted to the Auctions Board for its authorization. The Board shall issue its approval within the term of five working days (5) counted from the quotations presentation. Quotations shall be presented in original to the Purchase Office and no quotation presented by telephone or fax shall be accepted.
- C. The bidder whose quotation satisfies better the standards of quality and economy of the Department and/or its Institutional units.
- D. The reasons justifying the award shall be included in the purchase file.
- E. Any purchase of equipment, not mattering its cost, has to have the original quotation in which the guarantee offered is indicated.
- F. The Purchases Executive Official shall have the authority to issue purchase orders pursuant to subsections A and B of Section 18 of this Regulation. In the case of the Agricultural Services Programs, it may obtain less than three quotations only when there no exists enough qualified or available bidders.
- G. The Officials or employees of the Department shall not intervene directly or indirectly, with the bidders in the preparation or delivery of the proposals lists. In the event there is determine through an Informal Hearing that any bidder has acted in agreement with an official or employee, may be eliminated from the Suppliers Registry without prejudice of the legal action deemed pertinent by the personnel of the Department.
- H. The Specifications and descriptions of the equipment, materials, or non professional services requested, including the purchase's terms and conditions, inspection and delivery date required shall be kept in writing and available for the interested bidders. It shall be part of the purchase order.
- I. On emergency situations these procedures shall not apply.
- J. These procedures shall not apply to purchase orders between Government Agencies as established on Act No. 42 of August 5, 1989.

SECTION 19 – FORMAL AUCTION AND WAY OF SUMMONING

Purchases whose estimated value exceeds forty thousand dollars (\$40,000.00) shall be executed through the mechanism of summoning by invitation. To such purpose the Sole Registry of Bidders created by the General Services Administration shall be used.

SECTION 20 – AUCTIONS LIST

It is the document, rendered to the bidders interested in quoting, which informs everything needed in order to present the proposals.

SECTION 21 – CONTENT

The Auctions List shall contain the following information:

- A. Notice
- B. Instructions
- C. Specifications
- D. Conditions

SECTION 22 – PREPARATION OF SPECIFICATIONS

The specifications shall be written by the Department of Agriculture or its institutional units and shall be reviewed by the Auctions Board.

SECTION 23 - CONDITIONS

The conditions of an Auction are the terms under which the delivery of the goods or the rendering of services is intended to be made. The norms established by the Office of the Governor, the Office of Government Ethics, the Office of the Comptroller or the Secretary of the Treasury.

SECTION 24 – TYPES OF CONDITIONS

- A. The general conditions are those based on the norms about the acquisition or dispositions that the Department or institutional unit needs.
 - 1. Bid Bond
 - 2. Performance Bond
 - 3. Trademarks
 - 4. Model
 - 5. Samples
 - 6. Certification of Inspection
 - 7. Quality of Containers
 - 8. Content and weight
 - 9. Date of Delivery
 - 10. Storage

11. General Conditions for Contracting

12. Any other necessary condition

- B. Special conditions are those established with regards to the goods or service acquired in agreement to the experiences, which causes its adoption.
- C. Particular Conditions are those capable of vary at any part of the auction, depending on the agency or its institutional units needs.
- D. The references to specific brands of articles shall be executed only as a guideline or index in order to help the bidder to determine the kind and type of articles wished to obtain. In these cases, the suppliers may submit quotations for other brands, which fulfils the specifications indicated in the auctions invitation. An auction invitation may be issued in order to acquire the specific brands when it is justified do to the previous experience or any other reason, that such brands are those that better satisfy the needs of the requesting office or the consumer in cases of the purchase and sale of agricultural materials. Such specifications shall be included in the purchase file.
- E. Quotations for the total amount of a purchase may be requested when it is deemed convenient to the best interests of the Department, but no restrictive specifications that in any way may limit the competition.

SECTION 25 – AMENDMENT OR CANCELLATION OF AN AUCTIONS LIST

Any amendment or cancellation to an auctions list may be executed before the Opening ceremony in the following cases:

- A. When the Department or its institutional units submit before the Auctions Board the changes needed in order to obtain the objectives of the Program that originates the auction.
- B. When the Secretary or his authorized representative, understands that the terms of the auctions list are not reasonable.
- C. When any substantial errors, affecting the validity of the auctions list, is found.
- D. When is necessary to modify the terms, amounts or to vary the conditions or specifications.
- E. When, for budgetary reasons, it is necessary to vary the amount, conditions or specifications of the auction.
- F. When any exceptional condition arises, that exempts the auctions procedures,
- G. When any party with a particular interest refutes the Auctions List.

- H. Any just cause that the Secretary, his authorized representative, or the Auctions Board deems necessary in order to advance or protect the interests of the Department of Agriculture.
- I. An auctions list may be cancelled after the Opening ceremony when a substantial error affecting the impartiality of the process of evaluation and award.

SECTION 26 - APPROVAL OF AMENDMENTS TO THE AUCTIONS LIST

The amendments shall be evaluated by the Auctions Board and shall be submitted to the Secretary or his authorized representative for his authorization. The notification shall be in writing, by telephone or fax to the corresponding bidders, at least forty-eight (48) hours prior to the date fixed for the opening. In exceptional cases, as long as the circumstances justify it, the forty-eight hours requirement may be waived. The notification shall be sent to all the bidders who presented proposals.

SECTION 27 - APPROVAL OF CANCELLATION

The Auctions Board shall write a minute expressing the reasons to cancel the list. Such minute shall be included of the file of the Auction and shall be notified to the Secretary, who shall be empowered to reject or accept the list's cancellation.

SECTION 28 - REFUTATION OF THE AUCTIONS LIST

- A. A bidder or party interested in participating in an auction, may request in writing the refutation of the list if he does not agree with the terms and conditions of the auction. The presentation of refutation shall not stop the auctions procedure. The Auctions Board shall immediately evaluate the reasons for the refutation and shall issue the determination within two working days following the presentation date.
- B. The party that refutes the list shall provide the Auctions Board, with the name of the bidders, which have submitted proposals in order to notify them with copy of the writ of refutation.

SECTION 29 - TERMS TO PRESENT THE REFUTATION

The refutation of the auctions list shall be submitted before the Auctions Board no later than five (5) days before the date fixed for the auction. This term has jurisdictional nature to wit, any refutation presented out of such term shall not be considered.

SECTION 30 - CONTENT OF THE REFUTATION

The refutation of an Auctions List shall contain the following:

- A. Number of the Auction
- B. A detailed relation indicating the specific parts, specifications or conditions whose terms are refuted.

- C. The grounds for the refutation.

SECTION 31 – ACTIONS TO BE FOLLOWED BY THE AUCTIONS BOARD

Once the refutation resource is filed, the presentation of a refutation resource, the Auctions Board may take one of the following actions:

- A. To reject the petition and order the continuance of the procedures.
- B. To amend the Auctions List
- C. To cancel the auction. Any cancellation requires the authorization of the Secretary or his authorized representative.

SECTION 32 – NOTIFICATION OF THE REFUTATIONS RESOURCE RESULT BEFORE THE AUCTIONS BOARD

The decision issued shall be notified in writing to the invited bidders within a period of time that shall not exceed two days following to the presentation of the refutation writ.

SECTION 33 – REVIEW OF THE AUCTIONS BOARD DECISION

The party, adversely affected by a decision of the Auctions Board may appeal before the Auctions Board of the Department, within ten (10) days following the date in which the notification is deposited in the mail. Copy the appeal shall be sent to the Secretary or his authorized representative. The adversely affected party shall present the bid bond.

SECTION 34 – APPEAL'S EFFECT BEFORE THE BOARD OF APPEALS

The Auctions Board shall receive the presented resource and might render one of the following decisions:

- A. Reject the appeal
- B. Grant a remedy with regards to the appeal that, partially or totally revokes the Auctions Board decision.

SECTION 35 – WAY OF PRESENTING PROPOSALS

- A. The bidders shall present their proposals in a sealed envelope and shall use the official forms provided by the Department of Agriculture or its institutional units.
- B. Bidders may add sheets in which they describe or clarify their proposals. In addition, they may include pamphlets or any other documentation that contributes to a better evaluation of their proposals.
- C. The envelopes or sealed packages shall be identified on the outside.
- D. Proposals shall be submitted individually for every auction.
- E. Every bid for a formal auction shall be submitted in the Purchases Unit of the Department. The envelopes shall be marked with the official seal of the Purchases Unit indicating the date and exact time in which it was received.

- F. Every proposal submitted shall be guarded by the Executive Official of Purchases until the time and date fixed for the opening of the auctions list. No bid shall be accepted if received after the time and date fixed, as indicated in the auction's invitation. No change shall be accepted once the proposals are submitted.
- G. Every proposal's envelope submitted after the time and dated fixed, shall be returned unopened by the Secretary of the Auctions Board.

SECTION 36 – DEADLINES

- A. Deadlines in order to present the proposals may be on the same day of the opening, no later than half (1/2) hour before the opening time indicated in the auction's list.
- B. The Secretary of the Auctions Board shall receive no bid after the opening of the envelopes containing the bidders proposals.

SECTION 37 – IDENTIFICATION OF THE PROPOSAL

The identification in the outside of each envelope or package shall contain the following information:

- A. Auction's number, auction's date, auction's time, and delivery time.
- B. Number of the project
- C. Name, telephone and address of the Bidder
- D. Bidders signature with indelible ink or pen.

SECTION 38 – CONTENT OF THE PROPOSAL

- A. All proposals shall be signed in ink by the bidder or his authorized representative. The proposals not complying with this requirement shall not be considered.
- B. Any proposal written in an illegible manner shall not be considered by the Auctions Board.
- C. Any erasure, crossing out, note or correction in the lists shall be initiated by whoever signed the proposal.
- D. The proposals shall be made in dollars and cents per party.
- E. A principal proposal and various alternate proposals of articles of similar quality at different prices shall be accepted, when in the auctions invitation is included a provision to such purposes.
- F. No proposals based on estimated prices or that may vary shall be accepted, except in those cases where in the auctions invitation has been included a provision establishing the conditions in which changes in prices shall be accepted once the auction is awarded.

- G. Only one proposal per bidder shall be accepted at every auction. If a commercial enterprise submits various proposals for an auction, from any of its associates, agents or officials, all its proposals shall be declared null and shall remain excluded from the process.
- H. Should a bidder realizes that a mistake has been committed in the offer, he shall notify it in writing and submits its correction before the Auctions Board before the Auctions opening.
- I. Modifications may be only made in the following circumstances:
 - 1. When the Auction List is modified or when the bidder thus requests it.
The proposals shall be modified before the opening.
 - 2. Amendments shall be made in writing, including a relation of all the information needed for the information of the Auctions Board.
 - 3. Every envelope that contains amendments shall be identified in the outside. The Board shall not consider those amendments received after the auctions opening date, because the bidder has had not identified the envelope in the outside.

SECTIONS 39 – PROPOSALS WITHDRAWAL AND OPENING CEREMONY

- A. The notification for proposals withdrawals shall be presented through letter or personally before the Auctions Board, explaining the reasons for such action. No verbal notifications shall be accepted.
- B. When a bidder withdraws his offer, in agreement to the previous subsection and according to the post office stamp the withdrawal was executed before the opening ceremony, but it is received after the same, and before the award, the Board shall not consider the offer.
- C. If the bidder withdraws the offer, but the post office stamp on the envelope shows a time and day posterior to the opening ceremony and the same is received after the award, the bidder shall be oblige to execute the contract and he may not contend late withdrawal on his favor.
- D. In the case the bidders refuses to execute, the bid bond shall be kept in order to respond for the excesses the dependency has to pay to the second bidder.

SECTION 40 – DEFINITION OPENING CEREMONY

The Opening ceremony shall be carried out at every auction with the purpose that the interested parties could know about the proposals received, verify if the basic requirements of form where complied with and to known the content of every offer.

SECTION 41 – PUBLICITY OF THE ACT

The act shall be open to the public. Those persons or suppliers that do not rendered their proposals and that assist to the opening ceremony shall be limited to observe the procedure and may neither examine the participating proposals nor made commentaries on the auction.

SECTION 42 – RESPONSIBILITY OF THE ATTENDANTS

Any person attending to the act shall sign the Attendance Registry, which shall be provided by the Secretary of the Board. In such Registry, the attending persons shall write the corporation, association, society or institution that he represents and his position in the company.

SECTION 43 – OPENING AND READING

- A. The President of the Board shall read the proposals aloud announcing the following:
1. Time in which the procedures are initiated.
 2. Number and subject of the auction.
 3. Identification of the bidding persons and companies that are representing the bidders of the act.
 4. Number of the party, product offered and quoted price.
 5. Delivery date offered, if apply.
 6. Guarantee, if apply
- B. Any bidder attending to the opening ceremony may examine, in the presence of the members of the Auctions Board, any offer after all proposals from such auctions have been opened and read before the public.
- C. Once the examination of the proposals has concluded and all the commentaries of the participant bidders have been listened and the President of the Board shall conclude the act, indicating the time in which the procedures were finished.

SECTION 44 – RESPONSIBILITIES OF THE SECRETARY AFTER THE ACT

- A. The Secretary shall write a minute which shall include the following information:
1. Number and subject of the Auction
 2. Time and Date of the Opening
 3. Name of the present bidders
 4. Brief summary of the proposals and the commentaries of the proposals opening ceremony.

SECTION 45 – REQUIREMENTS FOR AWARDDING AUCTIONS

- A. At equal conditions, the auction shall be awarded to the lowest bidder. The auction may be awarded to another bidder if the quality of the product and convenience of the Department in such sense, justifies it. In the evaluation of the proposals, the

recommendation of the requesting office and the technical committee, if any, may be requested in order to determine if the product or the quoted service satisfies the needs of the Department. In case that a bidder, which is not the lowest one, is selected the reasons for his selections shall be given in writing.

- B. One, various or all the proposals received as a result of an invitation for an auction may be rejected if the bidders lack of the adequate capability to comply with their proposals, or if the nature or quality of the equipment, materials or nonprofessional services does not adjust to the requirements, or if the quoted prices are considered unreasonable for being to high, or so low that raise doubts on the bidder compliance, or if for the interest of the Department its rejection is justified.
- C. In the event that two or more bidders make identical proposals in specifications, conditions and prices, it shall be proceed in the following manner:
 - 1. Draw Bidders shall be appointed, through any available mean of communication, for a date that may not exceed three days counting from the date of the determination. It shall be recorded in the file. Draw bidders shall appear in the Purchases Office, at the time and dated appointed, and submit their new prices in a new envelope, which shall be equal or lower than those previously quoted. Such envelopes shall be opened in the presence of the bidders or his representatives.
 - 2. If a new draw arises, the same procedure shall be followed.
- D. When the Board receives a bid of one sole bidder, the same may be accepted, or another decision may be taken, according to the public best interests.
- E. Should the quotation of the only bidder be of an unreasonable price, the same shall be rejected because there was not an adequate competition. The offer may also be rejected if the bidder is not reliable, in agreement to the requirements established in this Regulation.
- F. The Board may authorize the Department or its institutional units to negotiate with the only bidder in order to attain possible agreements. If no agreement is reached, the offer shall be rejected and the auction may be cancelled.
- G. Should all proposals be rejected for not complying with the specifications, or the conditions or because it proposes unreasonable prices, or because a collusive behavior intervenes, a minute shall be written containing the details that caused the rejection and a new auction shall be called.

- H. When all proposals exceed the funds available for the acquisition of the equipment, materials and non-professional services requested, the amount should be negotiated with the bidder that turns to be the lowest and which complies with all the requirements without the need to cancel the auction. In those cases the award shall require the previous authorization of the Secretary of the Department of Agriculture, or his authorized representative in the institutional units.
- I. The Auctions Board shall evaluate any proposal, or quotation which contains alterations, crossing outs, or irregularities and not having initiated by the bidder in order to determine if the same constitute a fundamental error that affects the award of the auction. If the bidder, or his authorized representative is present, shall be granted with the opportunity to make the pertinent corrections and to write his initials by the modifications made. However, if the bidder or his authorized representative does not assist to the auction's opening the Board may reject forthright his proposal.
- J. In the award process , the provisions of Act No. 42 of August 5, 1989, "Preference Procurement Policy Act for the Government's Purchases" that establishes as a public policy to favor the purchase of equipment, materials and non-professional services produced, manufactured, assembled or marketed in Puerto Rico. Such preference shall be included in the actions invitation. Purchases may be adjudicated in favor of businessmen or firms outside of Puerto Rico when no local firms that may serve the equipments, materials, or services wished to be acquired exists in Puerto Rico.

SECTION 46 – DESERTED AUCTION

When no bidder's proposals have being received on the date fixed for the opening of the proposals lists, the auction shall be declared deserted. For the acquisition of supplies and services in these cases, the Auctions Board shall recommend the Secretary or his Authorized Representative one out of two alternatives:

- a. To announce a new auction, or
- b. To make the purchase in the open market.

SECTION 47 – GENERAL ORDER TO PROCEED WITH THE AWARD

- 1. The Award shall take place in a private meeting in which the Board shall be constituted. The Secretary of the Board shall prepare a minute of all incidences that contain the relevant aspects of the meeting.
- 2. In such meeting shall be allowed the attendance of the representative of the requesting unit or technical committee, or

experts, which have participated in the proposals evaluation in order to advise the Board on their decision.

SECTION 48 – WHEN CALLING AN AUCTION IS NOT NECESSARY

- A. On emergency situations, whose circumstances and reasons shall be exposed in writing and approved by the Secretary of the Department, or his authorized representative, and shall take part of the purchase file. Under any circumstance, neither those situations that are not of urgent nature or unforeseen nor those in which should be follow the ordinary steps of purchase pursuant to the provisions of this Regulation, may be considered as an emergency. In these cases, the requesting office shall submit the documentation verifying that the delay on the ordinary steps for purchases responds to totally justified reasons.
- B. When in the market there is only one qualified supplier who may furnish the supplies or services intended to be acquired. The Auctions Board shall review the explicative memorandum of the requesting unit.
- C. When the acquisition may be awarded under the same prices, terms and conditions of the Purchase Order or auction performed within the sixty (60) days prior, as long as it is for the benefit of the Department. This subsection only covers the following purchase immediate to the last order. This shall only apply to the Agricultural Services Program of the Department. Said term may be extended to ninety (90) days for the Program of Purchase and Sale of Agricultural Materials.
- D. When the prices are not subject to competition for being regulated by Law or by a governmental authority.
- E. When the purchase is executed from any dependency and/or public instrumentality of the Commonwealth of Puerto Rico, United States or any foreign country.
- F. When replacements parts, accessories, additional equipment, or supplementary services for equipment whose reparation or service are under contract.
- G. In the event of equipment repair, including motor vehicles or machinery that cannot be moved that are not under contract, or that required to be moved to the possible supplier's repair shop prior to the quotation. When is sent to the exclusive supplier of the brand.
- H. In the event that the equipment, materials or services requires to be of a specialized nature, or is wished to buy certain type of brand in particular due to the proven service rendered. Due to the economy involved for keeping uniformity in multiples units, replacements parts or due to its superiority on the type or quality of

service that shall be obtained with the purchase unit and its conservation, all this shall be recorded on the requisition and be approved by the Secretary or his authorized representative.

- I. In purchases that shall be executed out of Puerto Rico because any known and qualified supplier in the local market may supply the materials, or services needed, or when the conditions in exterior markets are more advantaged than those in the local market. The Auctions Board shall decide over the explicative memorandum of the requesting unit. Such use shall be governed by acts, norms, administrative brochures and memorandums of the Commonwealth of Puerto Rico currently in force.
- J. When the purchase is executed according to the applicable provisions for direct purchases, as provided in this Regulation. (Please note the Norms and Procedures Complementary to this Regulation.)
- K. When it is a purchase of art objects, books and subscriptions, magazines and technical publications to be acquired from the publishing house or its exclusive representative.
- L. When the purchase is executed against an open order, whose budget is approved by the Secretary or his authorized representative and that are for the term or period within a fiscal year. (Please note Section VI of the Norms and Procedures complementary to this Regulation.)

The different programs may make emergency orders up to the amount of \$100.00 per order, except for the Agricultural Mechanization Program, whose emergency orders may be made up to \$200.00. The Secretary or his authorized representative shall establish the monthly maximum amount. Form DA-DC-12 titled EMERGENCY ORDER – INVOICE shall be used to such purposes.

- M. Neither office materials, batteries, tires nor equipment may be acquired through an emergency order. It may be used on unforeseen services or garage parts. The property number of the equipment, as well as the license plate in cases of vehicles. A monthly report of such expense shall be sent to the Purchases Office within the next 15 days of the following month in which it was used, to keep an evaluation.
- N. The scientific and specialized equipment and materials, requested in order to be used in research projects shall be excluded from the auctions process. The researcher in charge of the project shall work with the suppliers on the prices and conditions of the specialized equipment and materials. In cases where various

suppliers exist, at least three quotations shall be requested and the lowest quotation, which satisfies the needs of their project, shall be selected. The researcher shall render to the Secretary a report verifying in writing all the steps taken. The supply's requisition shall be justified specifying that such are scientific specialized equipment or material and that its purchase is not governed by the provisions related to auctions contained in this Regulation.

1. The purchases unit shall proceed to generate the purchase order for its final procedure with the priority established to such purposes.
 2. The institutional units shall establish the procedures needed for the control and compliance to the regulatory provisions applicable to such type of purchase.
- O. It may be acquired through a lease mechanisms with a lease purchase plan, as long as all the budgetary requirements are fixed therefor. The Department shall reserve the right of discontinue the payment and to return the equipment due to budget reasons, or when the need for the same ceases. In such purchases, the criteria to determine the need of carrying out a formal or informal auction, shall be the total cost of the article, assuming that the purchase option shall be executed. When auctions are carried out for this type of purchase, it shall be indicated in the auctions invitation. When a contract from the General Services Administration is used, it shall proceed pursuant to the norms established by the Administration.
- P. In the case of a leasing of equipment, as long as the necessary budgetary arrangements are executed. In such contracts the criteria to determine the need shall be the total cost of the lease and the budgetary impact in the requesting unit. The application must have the authorization of the Secretary, or his authorized representative, prior to the initiation of the procedures for the evaluation and selection of the equipment to be leased.

SECTION 49 – CHANGE ORDERS AND EXTRA WORK ORDERS

The Department of Agriculture and its institutional units without invalidating the Contract, may order extra work or make changes in the work within the general scope of the contract consisting of additions, deletions of any or all the quantities in the items of the Bid or other revisions, the contract sum and the contract time accordingly. All such alterations shall be authorized by change orders or extra work orders and shall be executed under the provisions contained on the Contract, within the Bid Schedule and/or summons or revision.

Change Order – is a written order to the Contractor signed by the Secretary or his representative, authorizing a change in the work or and adjustment in the contract sum and/or

term. In those contracts where is established a unit price the contractor shall perform the works according to the new agreement, but at the unit price originally agreed.

In Lump Sum Contracts the cost or credit to the Department and/or its institutional units resulting from a change in the work shall be determined in one of the following ways:

1. by mutual acceptance of a lump sum properly itemized;
2. by unit prices stated in the contract documents of subsequently agreed upon; or
3. by cost and a mutually acceptable fixed or percentage fee.

Extra Work Order – Is a written order signed by the Secretary or his representative, authorizing a change in the work, adjustment in the Contract Sum and time for services or work for which there is no applicable basis of payment, either direct or indirect, provided in the proposal or the contract or if the resulting overruns or underruns of any item or items exceed certain percentages. The percentages and the method to be followed for unit price adjustment shall be as follows:

1. Overruns of more than twenty five percent of any major item or items shall require a negotiated unit price, which shall be covered by a Supplemental Agreement. The original unit price shall apply to all work performed up to one hundred twenty five percent of the original proposal quantity for the item, and the negotiated unit price shall apply only to the quantity of the work performed in excess of said 125 percent. If a satisfactory negotiated price cannot be agreed upon for any item or items, the Department or its Institutional units reserves the right to require the Awarded Bidder (Contractor) to perform the work in the basis of the actual cost plus an established fee or eliminating the increasing quantity from the contract.

2. Underruns of more than twenty-five percent of any major item or items shall require a negotiated unit price for units of work finally performed shall be covered by a supplemental Agreement. The total quantity of worked finally performed shall be paid at the negotiated unit price, but in no case will the amount paid for the total quantity performed exceed seventy five percent of the original total amount for the item.

3. Overruns of a minor item to the extent that the amount of the item calculated at the original unit price, exceeds 6.25 percent of the original contract amount, shall require a negotiated unit price, which shall be covered by a Supplemental Agreement. The original unit price shall apply to all work performed in the item up to a value of 6.25 percent of the original contract amount and the negotiated unit price shall apply to the additional work. If a

satisfactory negotiated price cannot be agreed upon, the Department and/or its Institutional units reserves the right to require to the Awarded Bidder (contractor), to perform the work in the basis of the actual cost plus an established fee or eliminating the increasing quantity from the contract.

SECTION 50 – BOARD OF APPEALS

The Board of Appeals of the Department of Agriculture is hereby created in order to revise the awards of the Auctions Board presented before its consideration, and which shall be composed in the following manner:

- A. Three (3) official members and one (1) deputy member designated by the Secretary or his authorized representative, who shall appoint its President from among the official levels.
- B. The members of the Board of Appeals shall be nominated for a term of two (2) years that may be extended for one additional term. No member shall belong to the Board for more than four years.
- C. No member shall carry out functions related, directly or indirectly to the acquisition procedures, sale of goods or services of the Department.
- D. The President shall elect a Secretary from among its members.
- E. The attendance of two (2) of its members shall constitute quorum.

SECTION 51 – APPELLATION TO THE AUCTIONS BOARD AWARD

1. Any Bidder that is adversely affected by any award of the Auctions Board may, within a term of ten (10) days from the date of the auctions award, or the decision fully resolving the Motion to Reconsider, present a Request for Appeal before the Board of Appeals of the Department. The Board of Appeals shall consider it within the ten (10) days from its presentation. If any determination is made in its consideration the term to request review shall began to count from the date in which, a copy of the notice of the Auctions Board resolution fully resolving the motion, is filed in the record of the case. If the Auctions Board fails to take action with regard to the Request for Appeal within ten (10) days after its presentation, it shall be understood it has been rejected forthright and from said date the term to request review shall begin to count.

SECTION 52 – PROCEDURES FOR THE APPELLATION

1. The Appellation shall be formalized by presenting the writ of appeal and three (3) copies in the office of the Deputy Secretary of the Department, for the attention of the

Board of Appeals of the Department of Agriculture within the term provided on Section 51 of the Regulation herein.

2. Copy of the writ of appeal must be notified to the Auctions Board on the same date it was presented to the Board of Appeals.
3. The appellant party shall be responsible to notify all the bidders that participate in the auction and to the Department of Agriculture. The notification shall be executed by certified mail with receipt of acknowledgement or by any other similar mean of personal delivery with receipt of acknowledgement. The notification to all other bidders shall be executed within the jurisdictional term for the presentation of the appeal. This requirement is of strict compliance.
4. The appeal shall be accompanied by a bond of twenty - five (25%) percent of the value of the refuted parties.
5. Should the appellant be the contractor of the current, which shall be substituted with the proposed new contract, the effectiveness of such contract shall not be extended unless he pays a bond of the fifty (50%) percent of the approximate total cost which shall be renewed automatically under the same terms and conditions the auctions final award.

SECTION 53 – APPELLATION'S FILE

Once the notification of the Request for Appeal is received, the Auctions Board shall send the original file of the appealed auction to the Board of Appeals. The file shall be composed of: the summon and the auction's list, bidders attendance sheet, the original proposals presented in the auction, the minutes of the Auctions Board and the Notification of Award.

SECTION 54 – OPPOSITION TO THE APPELLATION'S PETITIONS

Within ten days following to the notification of the appellation, any of the bidders may present a writ of opposition to the appeal. Such writ shall be notified pursuant to Section 53 subsection 3 of this Regulation.

SECTION 55 – EFFECT OF THE PRESENTATION OF THE APPELLATIONS REQUEST

The presentation of an appellation shall not have the effect of paralyzing the refuted auction. However, at any bidders request, the Board of Appeals may issue an order against such action, not without granting a period of time to all other bidders in order to issue their opinions with respect to the paralyzation request.

SECTION 56 – CRITERIA FOR EVALUATING AN APPELLATION

The Board of Appeals shall take into consideration the following criteria when resolving an appellation:

1. If the award does not comply forthright with any applicable provision of the act, norm or regulation, or if the procedure followed in an arbitrary auction is refuted for not being in agreement with the provisions of this Regulation.
2. If the award is against a right or product of an arbitrary, illegal or unreasonable action.
3. If the award does not expresses the grounds that support it.
4. If the award is not supported by the file.

SECTION 57 – DECISION OF THE BOARD OF APPEALS

1. Except in those cases in which the procedure followed in an auction is refuted, the decision of the Board of Appeals shall be an award in the merits and shall have to warned it on the right to request review before the Circuit of Appeals Court. Such decision shall be notified to all the bidders, which participated in the refuted auction.
2. In the case there is found that during the auction the procedures provided in this Regulation were not followed, the file shall be returned to the Auctions Board to act in conformance to the instructions exposed in the Board of Appeals Resolution.

SECTION 58 – RECONSIDERATION

1. Any party which is adversely affected by a Resolution of the Board of Appeals may, within the unpostponable term of ten days counted from the date the Resolution was deposited in the mail, present a request for reconsideration. The Board shall consider the request within the next ten days after its presentation. . If it should reject it forthright or no action is taken within

those ten days, the term to request review shall begin to count from the date such rejection is notified or the ten days term expiration date, as the case may be.

2. If any determination is made into its consideration, the term to request review shall begin to count from the date a copy of the notification of the Board's resolutions fully resolving the request for reconsideration.

SECTION 59 – JUDICIAL REVIEW OF THE RESOLUTION OF THE BOARDS OF APPEALS

Any bidder which is adversely affected by a resolution of the Board of Appeals, may request judicial review of the same by presenting a revision resource before the Circuit of Appeals Court within a term of ten days from the date copy of the notification of the Board's Resolution is filed in the record of the case.

SECTION 60 – INTERNAL NOTIFICATION

Once the term of the judicial review of the Resolution of the Board of Appeals established in this Regulation, has elapsed and no Request for Review has been presented, the Secretary of the Auctions Board shall send the file to the Purchases Official and shall notify him that no Revision of the Resolution has being requested before the Circuit of Appeals Court. Upon this the contract shall be formalized pursuant to the norms of acquisition of the requesting unit.

- A. Should the Award be refuted pursuant to the Regulation, the Resolution issued by the Board of appeals shall be notified immediately. The contacting procedures shall depend on the provisions of the Resolution and of the ulterior procedures of the judicial review.

SECTION 61 – REFUSAL TO COMPLY WITH THE CONTRACT

If the bidder refuses to comply with the awarded bid, the Auctions Board shall be notified immediately and it shall send a report to the Secretary. The Board may choose from one of the following alternatives:

- A. To adjudicate the second bidder which complies with the specifications and conditions and whose bid is the lowest.
- B. If the noncompliance is not for just cause, the bid bond shall be executed in order to cover the payment of the amount proposed by him and the amount proposed by the second bidder. If such guarantee or bond is not enough to cover the payment of the amount proposed by him and the second bidder, the Board may act directly against the bidder in order to recover the differential.
- C. The Board may request the elimination from the Sole Registry of Bidders, for a term of not less that one year, or greater than three years.

SECTION 62 – NONCOMPLIANCE OF THE CONTRACT

The noncompliance with the contract by the bidder, at any phase of its execution, it shall be governed by the penal clauses contained in the same, including the Resolution of the obligation, plus the imposition of contractual damages and prejudices.

SECTION 63 – BONDS

- A. It may be presented by certified check, money order or bond from a company acknowledged to do business in Puerto Rico.
- B. Bid Bond: It shall be 25% of the total value of the quoted amount.
- C. Execution Bond: It shall be 25% of the contracted total.
- D. Appeal Bond: It shall be 25% of the total value of the appellant bidder's bid.
- E. These bonds shall be used in order to satisfy the Economic Damages Caused for those who are obligated to render them.

SECTION 64 – REACH OF THE PUBLIC NATURE OF THE DOCUMENTS

Auctions and contract records shall be public. Nevertheless, it shall not be considered public documents, accessible to the bidders and third persons, neither those prepared by a member of the Auctions Board during deliberations, nor reports or studies by an advisor committee, expert, or consultants of the Auctions Board or Board of Appeals. It shall be coordinated with the official holding the custody of the documents for its examination.

SECTION 65 – PROHIBITION OF BEING BENEFITED FROM THE PUBLIC PROCEEDINGS

According to the provisions of the Ethics in Government Act, Act No. 12 of July 24, 1985, as amended neither the officials in which the Secretary delegates the participation as a member or technical advisor in the auctions processes, in the function or supervision of purchases, nor any other employee shall request or accept, directly or indirectly, utilities, advantages, profits or earnings, royalties, loans, promises, favors or benefits from commercial firms or any person which provide services or products to the Department.

Any official that incurs in such practice shall be submitted to the applicable disciplinary procedures, and the case shall be referred to the Office of Government Ethics.

SECTION 66 – CRITERIA THAT GOVERN THE ACQUISITION

Any official authorized to accomplish or approve the acquisition of equipment, materials and nonprofessional services shall be governed by the criteria of necessity, utility, efficiency and economy. All acquisitions shall be made trying to satisfy to its maximum and at the lowest cost possible, the needs of the requesting Institutional Unit.

Executive Official of Purchases shall issue and Change Notice of such order. This change shall be processed with the justification and a Purchase Requisition requesting the increase of funds.

SECTION 70 – ACQUISITIONS BY MEANS OF CREDIT AGREEMENT OR PERSONAL FUNDS

- A. The Secretary shall establish the conditions in which the officials may execute direct purchases with personal funds to be reimbursed by the mean of a credit card property of the Agency. The Secretary shall fixate and revise the maximum amount to be reimbursed per purchases of supplies and services that made by any official of the agency under this mechanism. Such mechanism shall not be used in order to obviate the ordinary purchase procedures.
- B. Purchases executed by the officials or employees thus authorized, shall be endorsed by invoices or any other official document, which verifies the incurred expense.
- C. Disbursements to the official or payments to the enterprises that granted the credit shall be approved by the Director of Finances and the authorized official in the corresponding Unit.

SECTION 71 – ACQUISITION OF RECYCLED PRODUCTS

- A. The Purchase Unit of the System shall give preference to the acquisition of recycled product as long as the quality, the environment and the purpose for which it shall be used are not affected.
- B. The purchasing agents, prior to issue the purchase order, shall require from the suppliers that the quotation indicates if the product offered contains recycled material and the percent of recycled material contained.
- C. The Purchases Executive Official shall establish the mechanisms to execute purchases of paper that contains fifty (50%) percent of recycled fiber until reaching an ascending proportion of twenty-five (25%) percent of consumption of paper acquired by its institutional unit, as the cost of materials allows it. Those Regulations established by the Waste Management Authority, attached to the Natural and Environmental Resources Department of Puerto Rico shall always be observed.

SECTION 72 – DELIVERY, RECEIPT, AND PAYMENT OF THE EQUIPMENT AND SUPPLIES

- A. Delivery of equipment and supplies shall be executed directly to the office that executed the order, or in the central unit of delivery or receipt, as the case determines it. The procedures needed for the receipt and delivery of materials and supplies shall be established.

- B. Prior to the acceptance and payment of the supplies, it shall be verified that these are in strict agreement with the specifications and conditions stipulated in the purchase order.
- C. In order to assure the internal control in the functions of purchases, receipt, delivery, certification of payment, and the registry of the property received, functions of every area shall remain separated.
- D. The employee in charge of the section of receipt and delivery shall verify that the amount requested by the office corresponds to the order. When discrepancies arise, he shall initiate the corrective action.
- E. The report of the receipt of the purchase order shall be signed by the authorized person in the requesting office, when the employee in charge delivers the same.

SECTION 73 – AMENDMENTS

This Regulation may be amended by approval of the Secretary of Agriculture. All amendments executed to the Regulation herein shall be published in, at least one daily newspaper of general circulation in Puerto Rico during two consecutive weeks.

SECTION 74 – REPEAL

Regulation No. 5389, approved on February 27, 1996, "General Regulation of Purchases, Auctions and Appellations of the Department of Agriculture and its Institutional Units" is hereby repealed

SECTION 75 – EFFECTIVENESS

This Regulation shall take effect immediately, once approved and signed by the Secretary Agriculture and its issuance for registration in the Department of State of the Commonwealth of Puerto Rico, pursuant to the Uniform Administrative Procedure Act, Act No. 170 of August 12, 1988, as amended.

I have hereunto set my hand caused to be affixed the stamp of the Department of Agriculture to the Certification herein, in San Juan, Puerto Rico, on June 9 2003.


LUIS RIVERO CUBANO
SECRETARY OF AGRICULTURE