

(H. B. 1266)
(Conference)

(No. 153-2015)

(Approved September 18, 2015)

AN ACT

To adopt uniform evaluation, adjudication, and review standards for the procurement process of the Government of the Commonwealth of Puerto Rico by amending Sections 2, 31, 51, 52, 55, 60, 61, and 62 of Reorganization Plan No. 3 of November 21, 2011, as amended; and amend Section 3.19 and the second paragraph of Section 4.2 of Act No. 170 of August 12, 1988, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act”; and for other purposes.

STATEMENT OF MOTIVES

The Legislative Assembly of Puerto Rico believes that one of the main driving forces of economic activity is the procurement of goods and services by the Government of the Commonwealth of Puerto Rico, but more specifically, by the Executive Branch, which has the highest volume of business and the most opportunities to acquire a wide range of goods and services. For this activity to create jobs and be productive in our jurisdiction, however, it is critical that the procurement processes, including the public bidding processes, be conducted transparently, properly, and adequately.

To achieve this, uniform standards applicable to the Executive Branch’s procurement must be established, particularly those relating to the award criteria, specifications, terms and conditions, and reviewing processes. Although public bidding is generally considered to be an informal process, the different processes and stages in government procurement should not be treated leniently, carelessly, superficially, or without uniformity.

Evidently, these processes maximize the economic activity and generate jobs in the jurisdiction of Puerto Rico, in benefit of the State. Therefore, it is in the public interest that uniform and mandatory standards be established herein for the Executive Branch's procurement process, so as to guarantee that public funds are managed properly, transparently, and correctly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 2 of Reorganization Plan No. 3-2011 of November 21, 2011, as amended, known as the "Reorganization Plan of the General Services Administration of Puerto Rico of 2011," is hereby amended to read as follows:

"Section 2.- Declaration of Public Policy.-

This Reorganization Plan provides for the reorganization of the General Services Administration (hereinafter, the Administration). This plan is submitted pursuant to the provisions of Act No. 182-2009, known as the 'Act for the Reorganization and Modernization of the Executive Branch of the Government of Puerto Rico of 2009,' in order to promote a governmental structure that meets the actual needs and contributes to improving 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 under 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 procurement process for 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. As a result, there is a lack of uniformity in the procurement, as well as in the bidding evaluation and review processes. Hence, a solution is provided for in this Act.

It is the public policy of the Government of the Commonwealth of Puerto Rico to restructure the procurement process in the government sector to provide the Administration with the necessary tools to fully comply with its mission of streamlining the process of the acquisition of 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 mechanisms as are necessary 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 the Commonwealth 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 online catalogs, previously approved by the Technical Advisory Committee of the General Services Administration, that meet the specifications established by such Committee. It shall also receive quotes electronically and make online purchases. In doing so, 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, thus allowing the Government of the Commonwealth of Puerto Rico to invest most of its funds in direct services to citizens and reduce the operating expenses of the government sector itself that are chargeable 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 the Commonwealth of Puerto Rico. This system shall enable the electronic management of purchase requests for goods and services made by the Executive Branch, thus cutting down the number of steps required to do business with the Government of the Commonwealth 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 the Commonwealth of Puerto Rico and allow them to submit their quotes cost-efficiently.

The public policy of the Government of the Commonwealth 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 and instrumentalities of the Government of the Commonwealth of Puerto Rico to meet their obligations to their purveyors of goods and services was established, is hereby further reasserted.

This Plan creates the Public Bid Board, attached to the Administration, which shall be quasi-judicial in character and be empowered to award and evaluate, through a uniform procedure, that the bidding process of the Government of the Commonwealth of Puerto Rico be conducted in accordance with the provisions of this Plan.

Furthermore, in order to render the bidding process more reliable and transparent, the Public Bid Reviewing Board is hereby created, to be attached to the Administration, but with adjudicative autonomy. The Public Bid Reviewing Board shall have the duty to review all the awards made by the Public Bid Board of the General Services Administration and the Executive Branch that are protested.

The procurement system created under this Plan upholds and reasserts the public policy on procurement reserves set forth in Act No. 14-2004, as amended, known as the ‘Investment in Puerto Rican Industry Act’; Act No. 129-2005, as amended, known as the ‘Government of the Commonwealth of Puerto Rico Procurement Reserve Act’; and Act No. 253-2006.

Lastly, the processes to be reformulated shall enable the public sector to fully comply with those laws that were already enacted, but were not timely or effectively implemented. This shall also allow the Government to reduce expenditures and reap benefits from timely payments of the obligations incurred by the Government of the Commonwealth of Puerto Rico with vendors of goods and nonprofessional services, while generating savings for the General Fund.”

Section 2.- Section 31 of Reorganization Plan No. 3-2011 of November 21, 2011, as amended, known as the “Reorganization Plan of the General Services Administration of Puerto Rico of 2011,” is hereby amended to read as follows:

“Section 31.- Technical Advisory Committee.-

The Administrator shall establish the model specifications for the acquisition of goods and nonprofessional services, which shall be described accurately and using

a clear language in order to guarantee equal opportunities to all bidders, so that they may compete on the basis of the quality and other characteristics of the goods and services. Moreover, as part of the model specifications, clear criteria for the evaluation of a good or service must be included in order for the acquisition to be clearly guaranteed in terms of the services, parts, or replacements, as applicable, in every Government procurement within the Commonwealth of Puerto Rico. 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 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 Puerto Rican Industry Investment Board, the Secretary of the Department of the Treasury, the Director of the Office of Management and Budget, and the chief information officer of the Government of the Commonwealth of Puerto Rico, or their respective authorized representatives. These officials shall have expertise in specialized acquisitions, as required. Provided, that neither the members nor the representatives authorized by the Committee members shall 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 reviewing of model patterns or specifications, and issue 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 be approved by the Committee and notified to the Puerto Rican Industry Investment Board for their counseling 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) every month. The use of suitable technological media to hold such meetings shall be allowed. 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; however, the Committee shall meet at least once a month. The Committee shall provide the Administrator with any assistance as required for the implementation of the procurement system established in this Plan.

The members of the Committee and their authorized representatives shall comply with the provisions of Act No. 1-2012, as amended, known as the 'Puerto Rico Government Ethics Act of 2011,' or any substitute law. Any member of the Committee who in any manner and due to the diversity of his 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 himself from participating in that matter.

Every entity, agency, or instrumentality of the Executive Branch of the Government of the Commonwealth of Puerto Rico, as these are defined in this Act, shall submit its specifications for goods and services to the Administrator, who shall, in turn, provide the requesting entity with comments, recommendations, and conclusions so that the specifications to be formulated comply with this Plan, the

‘Investment in Puerto Rican Industry Act,’ as amended, and any other applicable law or regulation.

It is hereby provided that the Administrator shall strictly comply with the twenty (20) calendar day term to submit his comments. The entity that submitted the specifications shall show due deference to the indications of the Administrator and shall forthwith take the necessary measures to conform its specifications to the recommendations made by the Administrator. The regulations to be adopted or reviewed by these entities of the Executive Branch shall state the effectiveness and applicability of the provisions of this Plan.

If the Administrator determines that the specifications substantially meet the requirements of this provision, the Administrator shall so notify to the entity by issuing a certificate of conformity, and may make recommendations to the entity of any change in the specifications that may clarify or improve the language of the specifications.

If the Administrator concludes that the specifications of the entity fail to meet the requirements of this Section, the Administrator shall issue a certification of nonconformity and immediately notify the concerned entity stating the changes required to adjust the specifications of the entity. The entity shall adopt the changes within thirty (30) calendar days after receiving the notice of the Administrator’s determination.

Prior to using and applying the specifications, the entity shall obtain a certification of conformity issued by the Administrator. Pending the certificate of conformity, the entity may use and apply the model specifications that have been adopted by the Administration for such good or service.

The Administrator shall provide all of the aforementioned entities with advice and, in turn, all such agencies shall provide the Administrator with documents or information as are necessary for the Administrator to discharge the duties entrusted

to him under this Plan. Provided, that no government agency or entity, other than those excluded from this provision, may require as part of its specifications for goods or services, technical certifications, whether environmental or otherwise, that constitute exclusive criteria to determine conformity with the goods or service requirements. In this regard, certifications may be one of the requirements to be met bidders; however, similar criteria regarding the type or quality of the good or service that must be met by bidders, although they do not hold equivalent certification.

Likewise, no entity of the Executive Branch may establish requirements of form or conditions that are not essential to determine the quality, durability, and performance of the good or service to be acquired in order to disqualify other bidders or their respective tenders.”

Section 3.- Section 51 of Reorganization Plan No. 3-2011 of November 21, 2011, as amended, known as the “Reorganization Plan of the General Services Administration of Puerto Rico of 2011,” is hereby amended to read as follows:

“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 made by the Public Bid Board or the Public Bid Boards of the agencies or instrumentalities of the Executive Branch. 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 in this Plan and act independently from the Administration and the Public Bid Board. This Board shall hire sufficient technical, legal, and administrative personnel to carry out appropriate tasks, including resources as are necessary to discharge its duties. Provided, that the officials or employees of other agencies or entities may be detailed in order to assist the Board in carrying out its duties.

Provided, further, that any party disagreeing with a determination made by an agency's Public Bid Board whose decisions are subject to the jurisdiction of the Reviewing Board by virtue of the provisions of this Plan, shall exhaust all procedural remedies before this Reviewing Board prior to resorting to the Court of Appeals."

Section 4.- Section 52 of Reorganization Plan No. 3-2011 of November 21, 2011, as amended, known as the "Reorganization Plan of the General Services Administration of Puerto Rico of 2011," is hereby amended to read as follows:

"Section 52.- Appointments.

The Reviewing Board shall be composed of one (1) Chair, two (2) associate members, and one (1) alternate member, whom 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. Moreover, 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, public corporations or municipalities shall not be appointed to such office.

All members of the Reviewing Board shall be appointed for seven (7)-year terms. Provided, that for the initial designations, the Governor shall appoint the Board members for the initial 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. Once the initial terms of appointment end, the successors shall be appointed thereafter for a term of seven (7) years.

The members of the Reviewing Board shall hold office in the Reviewing Board until their successors are appointed and take office. 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 appointment, the successor shall be appointed to complete the term of his predecessor.

No member of the Reviewing Board shall adjudicate matters in which he has a direct or indirect personal interest or when he 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 himself. 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. 1-2012, as amended, known as the ‘Puerto Rico Government Ethics Act of 2011,’ or any substitute law.”

Section 5.- Subsections (a), (c), and (h) of Section 55 of Reorganization Plan No. 3-2011 of November 21, 2011, as amended, known as the “Reorganization Plan of the General Services Administration of Puerto Rico of 2011,” are hereby amended to read as follows:

“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 to bid awards made by the Public Bid Board, requests for proposals (RFPs) made by the Administration, or adjudications of any bid awards or requests for proposals or qualification requirements made by any other agency, instrumentality, or government entity of the Executive Branch, other than those excluded in this Plan;

- b) ...
- c) To issue any order, request, revocation, orders in aid of jurisdiction or stay of proceedings, or cease and desist orders, or resolution that may be appropriate under the law in the cases under its consideration, and that prevent their determinations from becoming academic. Every resolution issued by virtue of an adjudication shall include findings of fact and conclusions of law;
- d) ...
- e) ...
- f) ...
- g) ...
- h) In compliance with its reviewing duties imposed under this Plan, any member of the Reviewing Board may issue summons requiring the appearance of any official with expertise on the matter under discussion, person, witness, to take a testimony, or for the presentation of any kind of evidence pursuant to the code of laws in effect, including for the delivery of samples or the inspection of goods;
- i) ...
- j) ...
- k) ...
- l) ...”

Section 6.- Section 60 of Reorganization Plan No. 3-2011 of November 21, 2011, as amended, known as the “Reorganization Plan of the General Services Administration of Puerto Rico of 2011,” is hereby amended to read as follows:

“Section 60.- Term to Request Review.-

Any party adversely affected by an adjudication of the Public Bid Board of the Administration or of any other Public Bid Board of the Executive Branch, as provided in this Plan, may file a request for administrative review with the Reviewing Board, within the jurisdictional term of twenty (20) calendar days as of

the US Postal Service mailing date of a copy of the notice of the determination of the Public Bid Board regarding a bid award. Once the request for administrative review is filed, the appropriate Public Bid Board shall forward a certified copy of the record of the case to the Reviewing Board within three (3) calendar days as of the filing of the request for review.”

Section 7.- Section 61 of Reorganization Plan No. 3-2011, of November 21, 2011, as amended, known as the “Reorganization Plan of the General Services Administration of Puerto Rico of 2011,” is hereby amended to read as follows:

“Section 61.- Notice of Review.-

The party adversely affected shall notify a copy of the request for administrative review to the Public Bid Board and, simultaneously, to the vendor who was awarded the bid, pursuant to Section 60 of this Plan, as well as to all other participating bidders who were included in the notice of bid award. Such requirement shall be jurisdictional in nature. In the request for review, the petitioner shall certify to the Reviewing Board that said requirement was met. The notice may be served by certified mail, return receipt requested, or by any other electronic means as established in the regulations. As part of the notice of award, the Public Bid Board shall provide the petitioner with the mailing and email addresses reported by the participating vendors to the Public Bid Board during the protested bid process.”

Section 8.- Section 62 of Reorganization Plan No. 3-2011 of November 21, 2011, as amended, known as the “Reorganization Plan of the General Services Administration of Puerto Rico of 2011,” is hereby amended to read as follows:

“Section 62.- Review Procedure.-

When reviewing the awards made by the Public Bid Board, the Reviewing Board shall issue its decision on the request within a term of thirty (30) calendar days, which term may be extended for just cause for an additional fifteen (15)-day

term. Once the Reviewing Board issues its decision, 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 or an extension thereof, as provided above, 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 run.

Within ten (10) days after the parties are served with the notice of the request for review, the Reviewing Board shall summon the parties to an evidentiary hearing where the Board may receive additional evidence, whether testimonial, documentary or physical, that it may use to issue its determination regarding the review under its consideration. Likewise, the Reviewing Board shall hear expert testimony, receive and request sample tests of the goods in question, and conduct an independent self-analysis of the facts, the technical aspects, and other matters included in the record of the bid or on the request in question.

As part of the assessment and evaluation conducted by the Reviewing Board, there shall be taken into account any savings of public funds, economic activity, job creation, payroll payments, and revenues that the acquisition of a good or service may entail for the Government of the Commonwealth of Puerto Rico and the economy of the Island, among other factors on which the reviewed determination may have an impact.

Section 9.- Section 3.19 of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act,” is hereby amended to read as follows:

“The award of bids shall be informal, and the regulations and terms thereof shall be established by the agencies, insofar as these are always in strict compliance with the substantive legislation applicable to the procurements of the Government of the Commonwealth of Puerto Rico, and without impairment to the rights and

obligations of the bidders, in accordance with the public policy and laws in effect in the jurisdiction of Puerto Rico. The party adversely affected by a decision may file a motion for reconsideration with the agency within twenty (20) days as of the US Postal Service mailing date of the notice of award. Alternatively, the party adversely affected may file a request for review with the Reviewing Board of the General Services Administration or appropriate appellate body, as provided by law or regulation, within twenty (20) calendar days as of the US Postal Service mailing date of the notice of award. The agency or the Reviewing Board shall consider the motion within thirty (30) days after the filing thereof. The Board may extend said term only once for an additional term of fifteen (15) days. If a determination is made thereon, the term to request a judicial review shall begin to run from the US Postal Service mailing date of a copy of the notice of the decision of the agency, appellate body, or the Reviewing Board resolving the motion. If the agency, appellate body, or the Reviewing Board fails to act on the motion for reconsideration or the request for review within the appropriate term, as provided in this Act, it shall be understood that the motion was outright denied and the term to request judicial review shall begin to run from said date.”

Section 10.- Section 4.2 of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act,” is hereby amended to read as follows:

“ ...

If a bid award is protested, the party adversely affected by a judgment or final order of the agency, the Public Bid Reviewing Board of the General Services Administration, or the appellate body for bids, as the case may be, may file a request for review with the Court of Appeals within a term of twenty (20) days from the filing of a copy of the notice of entry of judgment or final order of the Public Bid Reviewing Board of the General Services Administration, or the appellate body, or

within the applicable term of twenty (20) calendar days from the expiration of the term provided in Section 3.19 of this Act. The mere filing of a request for review under this Section shall not have the effect of staying the adjudication process of the protested bid.

...”.

Section 11.- All agencies, entities, or instrumentalities of the Executive Branch of the Commonwealth of Puerto Rico, other than those excluded from the provisions of Reorganization Plan No. 3-2011, as amended, known as “Puerto Rico General Services Administration Reorganization Plan of 2011,” shall comply, with the following general evaluation or adjudication standards or criteria for their bidding processes, requests for proposals, or qualification requirements:

a) To establish clear, readily understandable, and objective specifications, which are not based exclusively on the notion or view of a government official or employee or external consultant, and that respond to objective criteria regarding the quality, functionality, durability, and optimum performance of the good or service to be acquired or contracted.

b) To refrain from requiring, without justification, compliance with materials, type of good or service, or conditions which are exclusive of a brand, business, or provider, to the detriment of all other suppliers or bidders, including bidders or manufacturers from Puerto Rico.

c) To conduct an objective examination or analysis of goods samples, whenever samples from the goods to be acquired are required. All participating bidders shall have a reasonable opportunity, upon due notice, to be present at said examination, whether during a pre-bid meeting or other meeting, prior to the award. All bidders shall have an opportunity to issue comments and observations regarding the samples of all other bidders in a reasonable and timely manner.

d) When analyzing the economic aspects of the purchase, to include an evaluation of the jobs, economic activity, and revenues received by the Government to be generated by the different tenders, according to the operational basis of each participating bidder.

e) If noncompliance with the specifications, conditions, or terms of the process is raised as a basis for disqualifying or rejecting a tender, to clearly state the grounds for such determination in the notice of award, as well as the technical analysis conducted and all the documents that support such determination.

f) To require every bidder to honor the warranty, if any, to the Government whether or not it is purchased through a distributor.

g) To provide that the warranty on the good or service shall clearly state the warranty's coverage and exclusions, including the transportation costs, if any. In the case of goods, the warranty shall also be certified by the local or foreign manufacturer, as well as by its representative or distributor, guaranteeing to the government entity the replacement of parts or goods, services, and labor under terms clearly stated in the bidder's tender and subsequently included in the contract executed with the winning bidder.

h) To adopt any measures as are necessary to ensure transparency, appropriateness, accuracy, reasonableness, and objectivity in the evaluation and award of bids and other procurement methods.

i) By signing the application form that contains the bid's specifications, as well as the goods or services procurement contract, the heads of agencies and/or their authorized representatives shall certify compliance with the provisions of Act No. 14-2004, as amended, known as the "Puerto Rican Industry Investment Act," at all the stages of the contracting process. The record of the bidding process, request for proposals, or qualification requirements shall state whether the use of products from Puerto Rico was considered pursuant to Act No. 14-2004, or the public interest

justification for not using such products. Furthermore, the heads of the procuring agency or their authorized representatives shall certify that the formulated specifications do not adhere, exclusively, to any model, good or service of any brand, product line, or business, produced or located inside or outside of Puerto Rico. Moreover, no official, employee, contractor, or consultant in charge of making recommendations, or preparing or reviewing the specifications, may condition, adhere, or subject the specifications to a specific model, brand, or product, and must circumscribe to the quality, safety, and objective characteristics of a good or service to be selected or contracted, so as to promote free competition among bidders and equal opportunities for all bidders to have their goods selected if they meet such requirements and characteristics.

j) To request that every bidder of goods and nonprofessional services provide an accurate and detailed description of the goods and services object of his tender, including the warranties and delivery terms, if any. No agency, public corporation, or government entity shall allow bidders or contractors to include generic or ambiguous descriptions in the delivery terms or warranties of their goods or services, in their bidding processes, requests for proposals, and the goods and services procurement contracts. In that sense, all bidders and contractors, as applicable, shall state clearly and thoroughly the specific period or the applicable terms of each warranty, the exceptions and conditions thereof, the warranty claim process, a clear description of the entity that shall provide the replacement, adjustment, correction, or repair of the good or service and the delivery terms of the goods or services. Any tender that fails to comply with the foregoing provisions, shall be deemed not to be submitted and may not be favored in the award of the bid or the request for proposals. Likewise, the provisions of this subsection shall not be omitted from the goods and services procurement process under any circumstances.

k) To take contractual measures to prevent the use of subcontractors as a subterfuge for the contractor to evade the provisions of this Act. To such ends, it shall be mandatory for the procuring government entity to demand, oversee, and ensure that their contractors include a clause in the subcontracts entered into with their works and/or services subcontractors, ensuring that the specifications, terms, and conditions of the tender bid or request for proposals faithfully and strictly state the contractual terms to be executed by said companies. Likewise, the provisions of this Act and Reorganization Plan No. 3-2011, shall fully apply to subcontracts arising out of contracts to which the provisions thereof apply; thus, neither the procuring government entity nor the contractor may violate, omit, or exclude the provisions thereof when selecting and hiring subcontractors and when setting forth the terms under which said subcontractor shall render such services or provide such goods.

l) It is hereby provided that any official or public employee of the government entities to which the provisions of this Act and Reorganization Plan No. 3-2011 apply, who impairs, hinders, or refuses to strictly comply with the provisions of this Act and said Plan, shall be subject to disciplinary actions, including, a reprimand, dismissal, or temporary suspension from duties. Prior to taking a disciplinary action, the procedure and rules established in the organic act of the entity, the regulations thereof, any other applicable law or regulations and/or the collective bargaining agreement, as applicable, shall be followed. Furthermore, when a contractor, consultant, or external advisor of the government entity impairs, hinders, or refuses to comply with these provisions or advises the personnel of the government entity in his memoranda, inspections, technical reports, expert reports, evaluations, or recommendations to omit, disobey, or refuse to comply with these provisions, it shall be sufficient grounds for terminating or ending his contractual relationship with the government. The preceding provision shall be included in the

contracts entered into with natural persons or foreign businesses that directly or indirectly intervene, participate, or provide advice in the procurement or bidding processes of government entities.

Section 12.- It is hereby provided that every law, regulation, or administrative order that is inconsistent with the provisions of this Act shall not be valid and be repealed to the extent they are incompatible with this Act. Furthermore, it is hereby provided that whenever federal funding is allocated, the General Services Administration and the Director of the Puerto Rican Industry Investment Board shall advise the agencies, entities, and public corporations on how to better comply with the provisions of this Act, but never in violation of any law, regulation or order adopted by the Federal Government of the United States of America, applicable to any federal program or funds used by any entity of the Executive Branch of the Government of the Commonwealth of Puerto Rico.

Section 13.- The entities of the Executive Branch shall take any actions as are necessary, appropriate, and convenient to achieve the purposes of this Act, including, but not limited to: revising regulations, establishing their internal, organizational, and budget structures as well as the account structure required for fund accounting and the relocation of offices. Such actions shall be completed within a term that shall not exceed thirty (30) calendar days after the approval of this Act in coordination with, and with the advice of the Office of Management and Budget, the Administrator of the General Services Administration, and the Director of the Puerto Rican Industry Investment Board.

Section 14.- Severability Clause.

If any section, subsection, paragraph, clause, chapter, item, phrase, or part of this Act were held to be null or unconstitutional by a Court with competent jurisdiction, said holding shall not affect, impair, or invalidate the remaining provisions of this Act. The effect of such holding shall be limited to the section,

subsection, paragraph, clause, chapter, item, phrase, or part of this Act thus held to be unconstitutional.

Section 15.- Effectiveness

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 153-2015 (H. B. 1266) (Conference)** of the **6th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to adopt uniform evaluation, adjudication, and review standards for the procurement process of the Government of the Commonwealth of Puerto Rico by amending Sections 2, 31, 51, 52, 55, 60, 61, and 62 of Reorganization Plan No. 3 of November 21, 2011, as amended; and amend Section 3.19 and the second paragraph of Section 4.2 of Act No. 170 of August 12, 1988, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act”; and for other purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 18th day of August, 2017.

Orlando Pagán-Ramírez
Acting Director