

GOVERNMENT OF PUERTO RICO
LA FORTALEZA
SAN JUAN, PUERTO RICO

Administrative Bulletin Number: OE-2019-008

EXECUTIVE ORDER OF THE GOVERNOR OF PUERTO RICO, HON. RICARDO A. ROSSELLÓ NEVARES, TO EXERCISE THE POWERS ESTABLISHED BY ACT 5-2017, AS AMENDED, AND TO CENTRALIZE PROCEDURES FOR THE ACQUISITION OF NON-PROFESSIONAL GOODS AND SERVICES, TO DELEGATE POWERS TO THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY AND FOR OTHER RELATED PURPOSES

WHEREAS: This Administration is implementing all necessary measures to address the fiscal crisis and ensure efficient and effective administration of the Government of Puerto Rico ("Government") and its dependencies.

Over the years, the acquisition of goods and services by the Government faces inefficiencies that cause dislocations in the budget's administration.

WHEREAS: These problems are due, in part, to the decentralization and lack of uniformity in the purchases of the Executive Branch, the lack of incorporation of technological advances and the absence of modern procurement practices that maximize government resources.

WHEREAS: In addition, such decentralization is aggravated by exemptions to various government agencies, instrumentalities and public corporations (collectively, the "Government Entities") from the obligation to acquire non-professional goods and services, through the General Services Administration ("GSA").

Article 3 of the Reorganization Plan of the GSA of 2011 ("Reorganization Plan"), Reorganization Plan No. 3-2011, establishes that the provisions thereof will govern the processes of purchases and acquisitions of non-professional goods and services in the Executive Branch. As defined in Article 4 of the

WHEREAS: Reorganization Plan, the concept "Executive Branch" is defined as "all the departments, dependencies, agencies and instrumentalities of the Executive Branch of the Government of Puerto Rico, except public corporations and political subdivisions of the Government of Puerto Rico, the Office of Government Ethics, the University of Puerto Rico and the State Elections Commission ". However, the Reorganization Plan provides that public corporations will have the option, in a voluntary manner, to receive and benefit from the systems of acquisition of goods and non-professional services of the GSA.

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WHEREAS: Article 36 of the Reorganization Plan establishes that any purchase or sale made in contravention of the provisions of said Plan and the regulations approved in accordance therewith shall be null.

WHEREAS: Given the precarious fiscal situation of the Government Entities, it is necessary to remedy the above through a centralized process of acquisition of non-professional goods and services of the Executive Branch that produces efficiency and savings.

WHEREAS: Pursuant to Act 2-2017, known as the Fiscal Agency and Financial Advisory Authority of Puerto Rico Act, the Puerto Rico Fiscal Agency and Financial Advisory Authority ("FAFAA") has a ministerial duty to assist the Government Entities to face the serious fiscal crisis and, in addition, is responsible for coordinating the sustainable use of resources to achieve the implementation of the Government's Fiscal Plan, as well as to present a coordinated and global vision of the capital needs of the Government's instrumentalities.

WHEREAS: In accordance with the Government Fiscal Plan, one of the priorities within the transformation processes is the implementation of the framework of the Office of the Chief Financial Officer (hereinafter "OCFO"), with the goal of centralizing the management of the finances of the Government.

WHEREAS: According to the Government's Fiscal Plan, the centralization of the Government's finances management includes improvements to the budget process, expenditure monitoring, the integration of the Government's financial system, the standardization of procurement processes, hiring and human resources, among others.

WHEREAS: The Government's Fiscal Plan includes a clear call for centralization of government procurement and contracting, in order to achieve savings in the budget of all Government Entities, but also to achieve a transparent and uniform process.

WHEREAS: Pursuant to Executive Order No. OE-2018-034, the OCFO will supervise and coordinate the efforts of GSA to comply with the public fiscal and financial policy of the Government.

WHEREAS: GSA being the entity responsible for implementing the public policy related to the acquisition of non-professional goods and services, has some necessary tools to carry out procurement processes for all the entities that make up the Executive Branch of the Government and, therefore, will have a central role in the development of the OCFO.

WHEREAS: Act 5-2017, as amended, known as the Puerto Rico Financial Emergency and Fiscal Responsibility Act ("Act 5"), provides that, during the Emergency Period, the Governor shall exercise general

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oversight control over functions and activities of all Government Entities within the Executive Branch. Likewise, Section 206 (a) of the aforementioned statute grants the Governor broad powers to rectify the financial emergency declared by said Act. In addition, said section authorizes the Governor, together with FAFAA, to take all necessary measures to correct and rectify the financial emergency. As an example, among the measures authorized by Section 206 (a) of Act 5 are the following: limit the expenses of assigned funds, approve or disapprove any future execution contract of the Governmental Entities, and issue guidelines related to the disbursement or disposition of funds of the Government Entities. Similarly, Section 207 (b) grants powers to the Governor to instruct Government Entities to reduce expenditures through the implementation of administrative efficiency and to impose limits on contractual expenses of the Government Entities.

WHEREAS: Article 208 (a) of Act 5 establishes that "each governmental entity within the Executive Branch shall be under the supervision of the Governor unless otherwise provided in the Constitution of Puerto Rico." While Article 208 (d) of the aforementioned Act, authorizes the Governor to issue executive orders with the effect of "binding the officers, employees, agents and contractors of a governmental entity within the Executive Branch". Said article also provides that "the officials of a governmental entity within the Executive Branch shall take and give the guidelines so that the necessary and recommended actions are taken to comply with an executive order issued under [the] Section [208] applicable to the government entity."

WHEREAS: Article 209 of Act 5 authorizes the Governor to delegate to FAFAA, by means of an Executive Order, any power or responsibility included in said statute.

WHEREAS: Given the precarious financial situation of the Government and the Government Entities, it is imperative to exercise the powers granted by Act 5 to order Governmental Entities exempt from complying with the provisions of the Reorganization Plan, to take on and benefit from the processes and systems GSA has developed regarding the acquisition of non-professional goods and services.

THEREFORE: I, RICARDO A. ROSSELLÓ NEVARES, Governor of Puerto Rico, by virtue of the authority vested in me by the Constitution and the Laws of Puerto Rico, hereby declare and order the following:

SECTION 1. In accordance with the provisions of Articles 105 and 206 (a) (iii) of Act 5, all Governmental Entities of the Executive Branch, including all public corporations, are ordered to take on and benefit from the

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procurement processes and systems of non-professional goods and services developed by the GSA, in accordance with the Reorganization Plan. Provided, however, that the implementation of this mandate will come into force in phases, according to the calendar, norms and processes established by the GSA, under the supervision of the OCFO, which should guarantee continuity in government operations. Purchases of non-professional goods and services must continue their ordinary course until the GSA issues written guidelines implementing this Executive Order. However, exempt from this mandate are the Office of Government Ethics, the University of Puerto Rico, the State Election Commission, the Puerto Rico Fiscal Agency and Financial Advisory Authority, the Government Development Bank for Puerto Rico, and the Public-Private Partnerships Authority of Puerto Rico, the Authority for the Financing of the Infrastructure of Puerto Rico, the Aqueduct and Sewer Authority, the Electric and Power Authority, the Highway and Transportation Authority, and the Public Corporation for the Supervision and Deposit Insurance of the Puerto Rico Cooperatives (the "Excepted Entities"), which may voluntarily continue participating in the procurement processes and systems developed by the GSA.

SECTION 2.

Pursuant to Article 209 of Act 5, the other powers and faculties conferred upon the Governor by virtue of said statute for the implementation of this Executive Order are delegated to the FAFAA, including, but not limited to, identifying the personnel in the Governmental Entities that is necessary to strengthen the operations of the GSA and coordinate with the Office of Administration and Transformation of Human Resources to seek their prominence or transfer to the GSA, in accordance with Act 8-2017, as amended, known as the Administration and Transformation of Human Resources in the Government of Puerto Rico Act.

SECTION 3.

GSA is ordered to review all waivers and/or delegations that have been granted to the Government Entities to make purchases outside the GSA system, and provides that those waivers granted to Governmental Entities, excluding exemptions granted to the Exempt Entities are hereby canceled.

SECTION 4.

It is established that any auction, requisition, obligation of funds, purchase order, agreement and payment that is granted in contravention of the rules and processes established by the GSA will be null, unless the GSA authorizes otherwise in writing. GSA, under the supervision of OCFO and in coordination with FAFAA will

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have all the necessary faculties to monitor compliance with this Executive Order.

SECTION 5. It is provided that all regulations, rules, circular letters and procedures of the Governmental Entities that are incompatible with this Executive Order and of any directive implementing this Executive Order, will be ineffective until such incompatibility extends.

SECTION 6. It is provided that, during the term of this Executive Order, GSA shall have the additional faculty to hire professional services for the implementation of the provisions contained herein, provided that said processes advance compliance with the savings projected in the Government's Fiscal Plan.

SECTION 7. GSA may request the Governor of Puerto Rico or the Executive Director of the FAFAA to exercise their respective powers under other Governmental Entities under Act No. 2-2017 and Act No. 5-2017 in those cases deemed necessary by the GSA for the sound management of the resources and programs administered by the GSA or to carry out the work required with this Executive Order.

SECTION 8. NON-CREATION OF ENFORCEABLE RIGHTS. This Executive Order is not intended to create any substantive or procedural rights for third parties that may be enforceable in a judicial, administrative, or any other proceeding against the Government of Puerto Rico or its agencies, officials, employees, or any other person.

SECTION 9. REPEAL: This Executive Order supersedes any other Executive Order in whole or in part incompatible with this Executive Order, to the extent of such incompatibility.

SECTION 10. VALIDITY: This Executive Order shall enter into force immediately and shall remain in force until it is amended or revoked by a subsequent executive order or by law.

SECTION 11. SEVERABILITY: The provisions of this Executive Order are separate and independent of each other, and if any part, section, provision, or sentence of this Executive Order is declared unconstitutional, void or invalid by a court of jurisdiction and venue, such decision shall not affect the validity of the remaining provisions, which shall remain in full force.

SECTION 12. DEFINITIONS The terms used in capital letters in this Executive Order and that are not otherwise defined here will have the meaning assigned to them in Act 5.

SECTION 13. PUBLICATION. This Executive Order must be filed immediately with the Department of State and the widest possible publication is hereby ordered.

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IN TESTIMONY WHEREOFF, I issue this Executive Order under my signature and cause the Great Seal of the Government of Puerto Rico to be affixed in La Fortaleza, in San Juan, Puerto Rico, on this 21th day of February of 2019.

RICARDO A. ROSSELLÓ NEVARES
GOVERNOR

Enacted in accordance with the law, on this 21st day of February of 2019.

MARÍA MARCANO DE LEÓN
ACTING SECRETARY OF STATE