
FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



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BY ELECTRONIC MAIL

September 25, 2020

Karla G. Mercado Rivera, Esq.
Administrator and Chief Procurement Officer
General Services Administration
Government of Puerto Rico

Dear Ms. Mercado:

We acknowledge receipt of your letter dated September 22, 2020, which came as a surprise as it does not reflect our discussions and agreements on this matter. In your letter, you state that “the review process has dragged on for too long.” If the review process has dragged on too long, it is not as a result of the Financial Oversight and Management Board’s (the “FOMB”) actions. On the contrary, the FOMB has collaborated and attempted to establish an effective communication with the General Services Administration (the “GSA”) by being willing to discuss its comments to the proposed Uniform Regulation for Purchases and Bids of Goods, Works, and Nonprofessional Services since June 15, 2020.

As you are aware, on August 17, 2020, the GSA submitted an updated proposed Uniform Regulation in draft form (the “Draft Regulation”) for FOMB’s review and approval in accordance with its Review Policy of Rules, Regulations and Orders, established pursuant to Section 204(b)(4) of PROMESA (the “Policy”). On August 24, 2020, upon careful review of the Draft Regulation, the FOMB issued a letter rejecting it for failure to comply with the Fiscal Plan. In addition, the FOMB requested that a revised regulation be resubmitted “for the FOMB’s review and approval **prior to issuance** in accordance with the observations and required changes previously provided to you.”

Further, on August 28, 2020, the FOMB sent to the GSA an Excel file with specific additional recommendations as to the Draft Regulation. The Excel table (the “Table”) contains a full list of FOMB’s original comments to the proposed regulation, GSA’s response, and FOMB’s response to the updated regulations. The Table also provides detailed suggestions regarding steps needed to resolve the outstanding issues. As the FOMB has clearly stated before, the issues raised are central to the integrity of the procurement process and compliance with the fiscal plan.

Subsequently, the FOMB and the GSA agreed that the revised Draft Regulation would be submitted in segments corresponding with the numbered sections in the Table. The FOMB would then review the submitted segment and discuss it with the GSA representative in charge of the process to ensure that the FOMB’s observations were included in the revised version. For the purpose of these discussions, it was agreed that the revised segments would be submitted to the FOMB in Spanish to avoid the delay and expense of having it translated to English, before discussing with the FOMB. It was also agreed that after each segment is discussed with the FOMB, it will be translated to English to be submitted in compliance with the Policy. This agreement was reached in an effort to accelerate the process, as previous meetings between both teams had not been as productive as expected.

As of today, the GSA has submitted two segments of revisions to the Draft Regulation. The first segment (which addressed the FOMB’s comments 6-12 in the Table) was submitted to the FOMB on September 2nd, to which the FOMB responded with edits. The second segment, which addresses subsequent sections in the Table (sections 22, 24-29, 31-32, 34-35, 39-40 and 44-45), was submitted on September 15, and is being reviewed within the agreed time frame. It is important to clarify that, since the second segment includes exceptional purchases, it was agreed that the discussions would be more in depth to ensure that the FOMB’s observations are incorporated in the regulation. These measures are of critical importance to protect public funds and to avoid the lack of transparency and accountability that was unfortunately displayed during the COVID19 emergency.

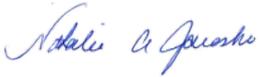
You also mention that the FOMB’s suggestions as to the Draft Regulation would: (1) require additional budgetary resources that are not contemplated in the FY21 budget resolution, and (2) require amendments to Act 73-2019. In relation to the first point, the FOMB’s position is that the GSA has not raised this issue before and if that is the case, it needs to file a budget reapportionment request with the Office of Management and Budget of the Commonwealth to secure any additional resources it deems necessary in order to handle this important matter. To our knowledge, at this point, the GSA has not filed such a request. With regards to the second point, you fail to identify any specific reasons to claim that the FOMB’s suggestions would require amendments to Act 73-2019. From our standpoint, the matters can adequately be addressed through rulemaking.

Lastly, you state that you “feel comfortable that together we can find a more expedited solution to this matter and find a resolution we can both agree upon.” It was the FOMB’s understanding that we had an agreement in good faith on the most effective way to continue with the review process and were proceeding accordingly. However, in light of your letter, FOMB underlines that we already gave you our comments and observations on the Draft Regulation. Therefore, the promptness of the review process is contingent on the time it takes the GSA to amend the Draft

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Regulation in line with FOMB's comments. At this point, the submittal is incomplete. We will review the Draft Regulation as soon as a revised draft is submitted to FOMB as per the Policy.

Sincerely,



Natalie Jaresko

CC: Mr. Omar Marrero Díaz, Esq.
Mr. Jaime El Koury, Esq.