



# Regulation for the Contracting of Advisory and Professional Services

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2020

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## **Introduction**

The Institutional Trust of Puerto Rico National Guard (FIGNA) is a public corporation of the Government of Puerto Rico, ascribed to the National Guard of Puerto Rico, created by Law No. 23 of July 23, 1991. It has all the necessary powers to carry out the purposes and provisions of its Organic Law, including, but not without being understood as a limitation, the powers to provide rules, regulations, and norms in relation to the exercise of its functions and duties.

This Regulation provides for the contracting of professional and advisory services within the Institutional Trust of the Puerto Rico National Guard, in tone with the provisions of a healthy administration stipulated in the current legislation.

### ***Article 1 – Title.***

This regulation will be known *as Regulations for the Contracting of Professional and Advisory Services* of the Institutional Trust of the Puerto Rico National Guard.

### ***Article 2 - Legal Basis.***

This Regulation is established under the power provided by Article 10 of *Law No. 23 of July 23, 1991*, as amended, approved in the Fifth (5th.) Ordinary session of the Thirteenth Legislative Session of Puerto Rico, known as "Law of the Institutional Trust of the Puerto Rico National Guard (FIGNA)". As a Public Corporation of the Government of Puerto Rico, the Institutional Trust of the Puerto Rico National Guard independent corporate capacity and legal personality to, among other things, contract the professional and advisory services that it deems necessary for the best performance of its functions. Similarly, this Regulation is established under the provisions contained in *Law No. 237 of August 31, 2004*, as amended, and better known as the "Law to

Establish Uniform Parameters in the Processes of Contracting Professional and Advisory Services for Governmental Agencies and Entities of the Commonwealth of Puerto Rico"

***Article 3 – Purpose.***

This Regulation is issued to lay down the rules to be followed by the Trust in the procurement of professional and advisory services. This Regulation applies to all professional and advisory service contracts granted by the Trust, as well as to any person or group of persons who establish or are interested in entering a contractual relationship with this type of service.

***Article 4 – Definitions.***

The following words and terms, when used or referred to therein, shall have the meanings set forth in the Trust regulations, without reference to sex or gender, and as follows:

1. **"Conflict of interest"** - Situation in which the personal or economic interest of the official or employee, persons related to it or the contractor, is or may reasonably be in conflict with the public interest.
2. **"Contract"** — Contract for professional or advisory services. Agreement, covenant, convention, or legal business, in which the parties undertake to give something, or to do or stop doing a certain act or work, and which is granted by the consent of the contractors, in relation to a certain object, material of the contract and by virtue of the cause established.
3. **"Contractor"** - Any natural or legal person to whom a governmental entity has awarded, or is in the process of granting, a professional services contract.
4. **"Employee"** - A person who holds a position in the Trust who is not vested on part of the sovereignty of the State, and includes regular, trusted, transitional and probative employees.

5. **"Trust" or "FIGNA"** – shall mean the Institutional Trust of the Puerto Rico National Guard; the public corporation and instrumentality of the Commonwealth of Puerto Rico, ascribed to the Puerto Rico National Guard, which constitutes an independent corporate body that will own and manage the real estate in which military stores operate, similar canteens and services in accordance with the Puerto Rico Military Code (25 L.P.R.A. secs. 2001 et seq.), which is transferred from time to time by the Adjutant General of Puerto Rico, and administrator of the funds of annuities, education and funds of repairs and capital improvements and other purposes, as established by the Law.
6. **"Official"** - A person who is vested in part of the sovereignty of the State or who holds a position or position in the Trust involved in the formulation and implementation of institutional public policy.
7. **"Person"** - A natural, legal or group of persons or associations, who are interested in entering a contractual, commercial or financial relationship with the Office, or who have perfected a contract for the provision of professional and advisory services with the Office.
8. **"Professional or advisory services"** — Those whose main benefit consists of the product of intellectual, creative or artistic work, or in the management of highly technical or specialized skills.

***Article 5 - Procurement Standards (Requirements).***

- a. The procurement of professional and advisory services is governed by the rules of necessity, austerity and modesty which must govern any disbursement of public funds.
- b. The procurement of professional or advisory services will be exceptionally refined and used only when the governmental entity does not count or cannot use the internal resources to

be contracted, or when the contractor's "expertise", skill or experience is necessary for the achievement of the purposes for which it is contracted. Any procurement process that is granted between a governmental entity and a contractor shall consider the actual need for the services to be contracted, the economic situation and the budget of the contracting governmental entity.

- c. The contracting of professional and advisory services is carried out by the award of a written contract between the parties, in which the specific obligations that are contracted must be indicated.
- d. Each contract must contain the following information and/or clauses:
  - 1. Contract Number.
  - 2. Name and identification of the contracting parties.
  - 3. Individual social security number or employer identification of the contracted party.
  - 4. Basis or legal authority to award the contract.
  - 5. Description and specific provisions on the services to be provided, such as: the form, hours, and tasks to be provided. Reference should be made to any existing proposal and to the supremacy of the contract on this proposal.
  - 6. Specify whether the Trust is responsible for providing the contracted party with incidental services, such as: secretarial, reproduction, telephone, postal service, or any other similar services directly related to the contract. Express mention should be made of the prohibition of misuse of property or services provided by the Trust for these purposes.

7. Any meeting or reporting requirements required by the Trust to the contracted party, the date on which it must submit them, and the relationship between the payment of fees and reporting.
8. Amount and method of compensation for services. The maximum amount to be paid for the contract must also be indicated. As a general rule, payments for professional and advisory services should be made on a monthly basis, unless other terms for payment are provided in contracts.
9. Account and item from which the services will be paid.
10. Term of validity: the start and end date of the contract. As far as possible, contract start, and end dates are set to working days. The term of validity is prospective and does not exceed 12 months.
  - (a) As a general rule, the term of validity of the professional and advisory services contract must fall within the same fiscal year. In special circumstances, contracts covering two different fiscal periods may be awarded, provided that the total tax period does not exceed 12 months.
  - (b) In such cases, a clause specifying that the contract is considered renewed at the beginning of the next fiscal year should be included, provided that the parties agree, and funds are available under the heading of professional and advisory services.
11. Date the contract is awarded.
12. Clause requiring the person or contracted entity to submit invoices in detail and certified. If applicable to the case, you must indicate in them the hours and the amount that is available to work.

13. Clause by which the contractor undertakes to submit a Debt Certification and Debt Certification of Sales and Use Tax issued by the Treasury Department (Hacienda) with their last invoice and to cancel any debt by corresponding withholding of payment for services, in the absence of an up-to-date payment plan with the Treasury Department (Hacienda).
14. Clause regarding withholding tax, established by the Internal Revenue Code for professional or advisory services.
15. Clause in which the contracted person states it is not obliged to provide child support, or that, if he/she is, he/she is up to date or has a payment plan with which he/she is complying.
16. Clause regarding termination or termination of the contract. In any case, a clause should be included that allows the Trust to resolve it, within 30 days from the date of written notification, without the right to compensation in addition to that accrued up to that time.
17. Clause in which the Trust may leave the contract without effect immediately in the event of negligence, abandonment of duties or non-compliance by the contractor.
18. Clause certifying that no official or employee of the Trust has a direct or indirect pecuniary interest in connection with the contract, or any other interest affecting it.
19. Clause certifying the absence of conflicts of interest. Contracts for legal services also include a clause in which the contractor agrees not to accept the legal representation of other interests in conflict with the Trust.



20. Clause certifying that the contractor has obtained the necessary authorization from any applicable government entity. The authorization is part of the procurement file.
22. Clause by which the contracted party certifies that he has not been convicted or found guilty of any crime against the public treasury (Hacienda), faith or public service. Likewise, it must be arranged for the immediate termination of the contract in case of being convicted of any of the aforementioned crimes.
23. Clause by which the contractor accepts to comply with Law No. 2 of January 4, 2018, as amended, known as the Anti-Corruption Code for the New Puerto Rico and with any standard or code of ethics governing his profession.
24. Clause by which the contractor agrees to know the ethical standards governing his profession, and that assumes responsibility for his actions.
25. Clause providing for the prohibition of acts or conduct constituting sexual harassment, the non-compliance of which is sufficient cause for the immediate termination of the contract.
27. Clause regarding the relief of liability for damages caused by the contracted party.
28. Prohibition clause on considerations prior to the submission of the contract for registration with the Office of the Comptroller of Puerto Rico.
29. Prohibition clause for the use of the Federal Social Security number as identification by the Trust.
30. Clause establishing the percentage to be retained if necessary, as a guarantee for the faithful performance of the services to be provided.

32. Any other clause required by law or regulation in force at the date of award of the contract.
- e. If applicable to the case, the contract must also contain the following clauses:
1. In cases where the services to be provided require the contracted person to make trips or incidental expenses to the contract, it must be specified in the contract if the Trust reimburses the cost of these.
  2. Contracts that are formalized with individuals include a clause in which they undertake to be responsible for making any payment corresponding to Federal Social Security.
  3. Contracts that are formalized with individuals include a clause certifying that they do not receive payment or compensation for regular services provided under appointment to another government agency, including public corporations and municipalities, unless they are authorized by law.
  4. When the person to be hired is a regular employee who by law may be hired, or has other contracts with any department, unit, corporate entity or municipality, a clause is included specifying that the contractor obtained any necessary authorization and that the work he performs or the contracts he owns are not incompatible with the new contract. Where the contract requires immunity from any government entity, it is managed prior to the award of the contract and becomes part of the file.
  5. FIGNA will require the party to be contracted to present and deliver the following certifications prior to the awarding of the contract, **regardless of the contract amount**, as applicable:
    - (a) Income tax filing Certification issued by the Treasury Department (Hacienda).

- (b) Negative Debt Certification issued by the Treasury Department (Hacienda).
  - (c) Copy of the Certificate of Merchants Registration issued by the Treasury Department (Hacienda).
  - (d) Certification of Establishment of Sales and Use Tax Forms (IVU) issued by the Treasury Department (Hacienda).
  - (e) Debt Certification of Sales and Use Tax (IVU) issued by the Treasury Department (Hacienda).
  - (f) Certification of Filing of Contribution Forms on Movable Property issued by the Municipal Revenue Collection Center (CRIM).
  - (g) Debt for All Concepts Certification, issued by CRIM.
  - (h) Certification of Registration as Employer and Debt for the Concept of Driver's Social Security, Unemployment and Disability, issued by the Department of Labor (companies, businesses or persons who have employees in their charge).
  - (i) Negative Certification of Child Support case or Statement Certification issued by the Administration of Child Support (ASUME).
  - (j) Certificate of Good Standing issued by the association, school or entity responsible for regulating the profession to which it belongs.
6. In cases where some of the certifications reflect debt and the person is under a payment plan, you must present evidence that the payment plan is up to date.
- (a) Where the person to be hired is prevented from presenting the aforementioned pre-contract certifications, because the generating entities cannot issue them to him/her at the time of requesting them, proceed with the awarding of the contract.

- (b) The contractor must submit a copy of the **application forms** for the aforementioned certifications before formalizing the contract.
  - (c) The forms must contain the official seal of the body that is processing it.
  - (d) The contractor is granted a period of 60 consecutive days from the date the contract is formalized, to complete the certifications.
  - (e) Failure to comply with this term is a cause of termination of the contract. In addition, the Trust does not issue any payment until the contractor complies with the submission of the certifications.
7. All certifications submitted must be in effect. The Trust will not accept expired or issued certifications more than 90 days prior to the date of award of the contract.
  8. Failure to present the certifications and the required documentation is sufficient reason for the Trust to refrain from entering the contract. The provisions of this subparagraph are established in accordance with the provisions of circular letters issued by the Chief of Staff of the Government and the Treasury Department (Hacienda) on the procurement of professional services in government. Any amendment to that regulation is understood to amend the requirements laid down in this Regulation.
  9. Contracts that are formalized with individuals include a clause that recognizes that the relationship with the contracted party is one of an independent contractor, while prohibiting the subcontracting or delegation of obligations, tasks, services, claims or rights that may arise from the contractual relationship.
  10. Any contract relating to confidential work must include a confidentiality clause providing that the contracted party maintains absolute reservation and confidentiality as to the

information provided to it by the Trust or that comes to its knowledge directly or indirectly. In the same way, it should be stated about the security of the documents and the ownership of the Trust.

11. If a contract is awarded with a foreign corporation, a clause will be included that the interpretation of the contract is governed by the laws of the Government of Puerto Rico, and that the contracted party submits to the jurisdiction of the judicial forums of Puerto Rico.
12. When the contract establishes that the payment is made in advance, it must comply with the regulations issued by the Treasury Department (hacienda) to regulate this type of payment.
13. Any contract requiring the use of computerized programs includes a clause for the purpose that all programs used in the provision of services have the corresponding licenses.
14. Each corporation is required to submit the following certifications prior to the conclusion of the contract:
  - (a) Certificate of Existence or Certification of Authorization to do Business in Puerto Rico, issued by the State Department.
  - (b) Certificate of Good Standing issued by the State Department.
  - (c) Corporate Resolution or other sufficient documents, according to the legal nature of the entity, that proves the ability to contract.
  - (d) Before entering into a contract with a company incorporated in the United States or in a foreign country that does not do business in Puerto Rico, and has no offices in

Puerto Rico, you are required to have a duly authenticated affidavit stating that you have no contributory responsibility to the Government of Puerto Rico. This document is attached to the contract.

15. In cases where the contractor provides services to other government agencies, simultaneously with the contract to be formalized with the Trust, it is not necessary for him to present the original of each required document. In this case, a faithful and accurate copy of the original certifications is allowed. The contractor must certify all contracts it maintains in force with the other entities.

***Article 6 - Contracts Registry.***

The Trust will maintain a record of the contracts it enters into and complies with the provisions of Law No. 18 of October 30, 1975, as amended, and Regulation 33, Registration of Contracts, Deeds and Related Documents, and Submission of Copies to the Office of the Comptroller of the Commonwealth of Puerto Rico, approved by the Office of the Comptroller.

***Article 7 – Amendments to Awarded Contracts.***

As a general rule, any change or modification to contracts must be incorporated by formal amendment in writing and during the term of the contract.

***Article 8 - Repeal and Previous Provisions.***

This is the first time that a "Regulation for the Contracting of Professional and Advisory Services" has been established for the Institutional Trust of the Puerto Rico National Guard. However, any Administrative Order or official document related to the subject is repealed. Any prior, verbal, or written communication or part thereof which conflicts with this Regulation is without effect after it enters into force.

***Article 9 – Amendments.***

The provisions of this Regulation may be amended at any time, as required by the operations of the Trust and in accordance with the provisions of Law No. 38 of 2017, as amended, known as the "Law on Uniform Administrative Procedure of the Government of Puerto Rico".

***Article 10 - Separability Clause.***

If any part of this Regulation is annulled or declared unconstitutional, the decision, opinion or judgment to that effect given shall not affect, prejudice, or invalidate the remnant of this Regulation. The effect of that judgment shall be limited to the part thereof which has thus been annulled or declared unconstitutional. If the application to a person or a circumstance of any part of this Regulation is invalidated or declared unconstitutional, the decision, opinion or judgment to that effect given shall not affect or invalidate the application of the remnant of this Regulation to those persons or circumstances in which it may be validly applied.

***Article 11 – Effective Date (Term).***

Upon approval by the Board of Directors, the Regulations shall enter into force immediately upon its establishment with the State Department, in accordance with the provisions of Law No. 38 of 2017, as amended, known as the "Uniform Administrative Procedure Act of the Government of Puerto Rico".

**Approved:**



José J. Reyes Peredo  
President  
Board of Directors  
Institutional Trust of the  
Puerto Rico National Guard

I, Andrés Ruíz, Secretary of the Board of Directors of the Institutional Trust of the Puerto Rico National Guard (FIGNA), CERTIFY that this Regulation for the Contracting of Professional and Advisory Services was duly approved by the Board of Directors of FIGNA at the meeting held on December 9, 2020. As provided for, it will enter into force immediately after its establishment in the State Department, in accordance with the provisions of Law No. 38 of 2017, as amended, known as the "Law on Uniform Administrative Procedure of the Government of Puerto Rico".



Andrés Ruíz  
Secretary  
Board of Directors  
Institutional Trust of the  
Puerto Rico National Guard